

# Chief Executive's Department

## Democratic Services

Your reference:

Being dealt with by: Mr. H. Downey

Our reference:

Ext. 6311

Date: 13th January, 2015

Ms. Emma Murray,  
Private Secretary to the Minister  
for Social Development,  
5th Floor, Lighthouse Building,  
Gasworks Business Park,  
BELFAST  
BT7 2JB

Dear Ms. Murray,

The Council's Licensing Committee, at its meeting on 17th December, 2014, endorsed the following comments which had been formulated in response to the publication by the Department for Social Development of the outcome of its consultation exercise on the repeal of the Pedlars Acts and amendment of the street trading legislation in Northern Ireland:

### **Changes to the Pedlars Acts 1871 and 1881**

#### ***Proposal: Remove the current residency requirement and introduce a new good character check.***

The Police Service is responsible for the licensing of pedlars and it has been clear for many years that the police are not in a position to properly monitor and supervise the provisions of the current pedlar's legislation. The PSNI in the original consultation stated that pedlars should be licensed by councils as mobile street traders. No substantive response was received from any N. Ireland pedlar regarding this proposal.

In this respect, there are concerns as to whether the police will be in a position to deal effectively with the proposed new requirements regarding checks on good character. Indeed there is potential for the situation to get much worse with the prospect of large numbers of pedlars coming to the UK from abroad as the residency requirement 'of at least one month before applying' will be removed.

Democratic Services Section

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**Changes to the Street Trading Act (Northern Ireland) 2001  
in relation to pedlars**

***Proposal: Remove the current house to house restriction placed on pedlar trading in the Street Trading (Northern Ireland) Act 2001 (the Street Trading Act) and provide a power in the Street Trading Act to allow councils to designate areas as unsuitable for pedlars, to carry out trading. This power can be relied on in relation to pedlars pushing or pulling a receptacle and thereby causing undue nuisance or inconvenience to persons or vehicles using such an area.***

The proposed removal of the 'house to house' restriction regarding pedlars in N. Ireland is a cause of concern, particularly in Belfast, and it could undermine the existing street trading regime which was introduced in 2001 to counter serious problems associated with an over-proliferation of street trading in the City. In effect these proposals will allow a pedlar to trade in the City centre even if the Council has designated prohibited areas, as long as the pedlar isn't pushing or pulling a trolley; they can trade from a bag, sell flowers or trade from a tray worn around the neck.

Members will be fully aware of the City centre problems regarding Tour Bus ticket sellers. With a Pedlars Certificate ticket sellers will be free to trade wherever they wish as long as they aren't using a push/pull receptacle.

Our concern is that Pedlars, who are in actually Mobile Street Traders, will effectively become un-regulated in what they sell and where they go. These traders should be licensed as Mobile Street Traders under the Street Trading Act (N.I.) 2001, as it would be perverse that a person selling from their person or from a receptacle which they can carry in the street should not be subject to the same licensing controls as a person selling from a larger trolley or vehicle or a fixed street trading position in the same street.

In our view, for this to have any chance of working, the proposed changes need to remove the reference to 'pushing or pulling a receptacle'.

**Changes to the Street Trading Act (Northern Ireland) 2001  
in relation to street traders**

***Proposal: Ensure an application for a Street Trading Licence (not processed in time) will not be deemed to have been granted where mandatory grounds for refusing a licence apply.***

This proposal is agreed and was a matter we had raised with the Department.

***Proposal: Give councils the discretion of granting Street Trading Licences for extended periods (as long as this does not create a barrier to trade in localities where there is excess demand for street trading pitches) – currently the regime allows licences to be granted for a period of up to 3 years.***

It is essential in the public interest that there is fair access for all those wishing to trade to have the opportunity to apply for a licence should they wish to do so. This is also a fundamental right under EU law. The Council is therefore unlikely to grant a licence for a longer period than 3 years.

Members will be well aware of the number of times the Council has considered competing applications for the same pitch or mobile route, if the licence was for an indefinite period new applicants would be disadvantaged. A finite licence period also allows for trading activity to be formally monitored by means of a regular application/renewal process to ensure compliance with other relevant legislation (food safety for example).

***Proposal: Allow electronic applications for Street Trading Licences and in the case of electronic applications, one photo can be submitted rather than two – currently the legislation specifies two photos to be submitted with an application made in writing.***

Agreed – applications have been available on the Council's website for many years.

***Proposal: Remove the requirement that an applicant for a Street Trading Licence is an individual.***

Agreed.

***Proposal: reduce the number of discretionary grounds that a council has in regards to refusing or revoking a Street Trading Licence.***

Section 9(1) (a) (iv) of the Street Trading Act provides that a council may refuse an application on the grounds that there are already enough shops or street traders who are trading in the applicant's goods. This ground is widely used by this Council when determining multiple applications for a particular street trading pitch as a means of refusal. During the consultation, the Council had requested that the Street Trading Act be amended to take into account situations where there are multiple applications for the same stationary pitch or for a number of mobile traders in the same area.

Despite support during the original consultation for maintaining this ground of refusal, the DSD does not believe it can be justified under the Directive and therefore Section 9(1) (a) (iv) of the Street Trading Act will be removed.

Section 9(1) (d) and Section 10(1) (c) of the Street Trading Act provides that a Street Trading Licence may be refused or revoked if the licence is not being used to its full extent. We still maintain that these grounds are not incompatible with the Directive and that these grounds are necessary and justified to ensure that prime pitches are fully utilised.

These grounds will be maintained for established traders who reside in the United Kingdom. However, traders who reside outside the UK, for example in the Republic of Ireland and are referred to as 'temporary' traders, will be exempt from having a licence refused or revoked for insufficient use.

We still maintain that this provision should apply to both 'temporary' and local traders. Expressly preventing these grounds from applying to temporary traders is viewed as being discriminatory against established UK based operators.

***Proposal: Remove the requirements that a temporary licence is limited to 7 days and may only be granted to an applicant up to 5 times in any year.***

Agreed – this is a positive move, as on a number of occasions, temporary street traders who have wanted to trade for more than 7 consecutive days have had to apply for multiple temporary licences and have been penalised by the cost of making multiple applications. It also allows the council to 'test the water' with a proposed new site before entering into the long and complex process of designation.

***Proposal: It is expected the regulations will come into force in Spring 2015.***

The DSD needs to be mindful that in Spring 2015 there are a number of significant changes taking place with the reorganisation of local government.

It is officers' opinion that the proposed amendments go far beyond that which is required to ensure conformity with the Directive and have the potential to jeopardise the ability of this Council to regulate street trading generally, particularly, where trading takes place and how that trade is conducted.

The Licensing Committee agreed also that the Minister be invited to meet with an All-Party delegation from the Committee to discuss its concerns around the Department's proposals.

The Committee's decision was ratified by the Council at its meeting on 5th January.

I would request that you draw the Committee's response and its request for a meeting to the Minister's attention and advise me of the outcome.

Yours sincerely,

Democratic Services Officer