



Northern Ireland
Assembly

Committee for Social Development

OFFICIAL REPORT (Hansard)

Street Trading: DSD Briefing on
Consultation Outcome

13 June 2013

NORTHERN IRELAND ASSEMBLY

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Members present for all or part of the proceedings:

Mr Alex Maskey (Chairperson)
Mr Mickey Brady (Deputy Chairperson)
Ms Paula Bradley
Ms Pam Brown
Mr Gregory Campbell
Mr Michael Copeland

Witnesses:

Ms Caroline Hobson Department for Social Development
Mr Liam Quinn Department for Social Development

The Chairperson: I welcome Caroline Hobson and Liam Quinn. Are you happy enough to give us a bit of an update on the consultation?

Mr Liam Quinn (Department for Social Development): Certainly, Chairman. I will explain the background to the issue and then pass you over to Caroline, who will go through the detailed responses to the consultation.

Street trading is regulated in Northern Ireland by the Street Trading Act (Northern Ireland) 2001. The EU services directive came into force in 2009. It requires member states to ensure that legislation covering the provision of goods and services does not restrict free-market activities. There are concerns that our Street Trading Act and similar Acts in Great Britain do not fully comply with that directive. An example is around provisions that allow a council to refuse an application because there are enough traders selling the goods that the applicant wishes to sell. In addition, a street trading licence can only be issued for up to three years, but under the directive, a licence should normally be for an indefinite period. There are some other minor technical issues that Caroline can go through.

The other issue that was covered in the consultation was pedlars. Pedlars are door-to-door salesmen who travel on foot. They are regulated in Northern Ireland by the Street Trading Act and the UK-wide Pedlars Act 1871. We have been advised that the residency condition in the Pedlars Act falls foul of the EU services directive and must be amended.

Given that those issues involve compliance with an EU directive and have UK-wide implications, a joint consultation was carried out with the UK and Scottish Governments. The responses were largely from the local councils, which are the main stakeholders and are responsible for regulating street trading in Northern Ireland.

Caroline will take members through the responses to the consultation.

Ms Caroline Hobson (Department for Social Development): In total, 56 responses were submitted, 17 of which were from individuals and 39 from organisations. The organisations that expressed interest included local authority representative bodies such as the Institute of Licensing, the Northern Ireland Local Government Association and Belfast City Centre Management. As Liam said, the councils represented the stakeholder with a key interest in the consultation, with 20 of them providing a response. The reason for that is that councils are responsible for issuing licences and for regulating street trading in their areas. Their comments reflected the concerns that any proposed changes to the legislation may affect their ability to effectively regulate and control street trading activity and may result in the problems that they experienced before the legislation came into operation. The concerns were reflected in a lot of the comments in response to some of the street trading proposals. I will refer to a couple of those, but I am happy to give any information and further detail required on any of the other proposals.

The proposal to remove the discretion for a council to refuse to grant a licence if there are enough traders trading in the goods that the applicant wishes to trade attracted 34 responses. The concerns were about the lack of control over mobile street traders, such as ice cream vans, that may result if the provision were removed. Another concern was how to deal with multiple applications for a particular street trading pitch. The need for consideration to be given to the likely impact on existing shops and businesses in an area before granting a licence to trade in particular goods was also stressed.

Another proposal was to provide councils with discretion to issue licences for an indefinite period, which is a requirement of the directive, and include that new provision in addition to the three-year duration that is in the legislation. A total of 32 responses were received on that one. The main comments reflected that it was felt that issuing a licence for a limited duration was necessary to ensure that high standards of trading were maintained and that new opportunities for new applicants who want to engage in street trading were provided. It was also seen that limiting the duration of a licence allowed the councils to react to local circumstances, should there be changes such as redevelopment.

Another example is the proposal to include a new provision to ensure that any licence applications are not automatically granted if they have not been processed within a specified time during which mandatory licence conditions have not been met. Mandatory conditions might include trading in a place that the council has not designated as suitable. The councils were mainly in agreement with the proposals for a number of reasons. It was seen as imperative that the licensing committees are given considerable time to consider all applications, and it was considered important that the administrative process is allowed to be completed before any decision on a licence is made.

We received 41 responses on the proposal to repeal the Pedlars Act, including 17 from the councils. A number of other organisations also responded. The main concern raised by the respondents was that the deregulation of pedlars may be detrimental to city centres and may result in nuisance and disturbances to people and vehicles, which are the very things that the current legislation aims to regulate. The potential for negative impacts on other organisations, licensed street traders, the Police Service of Northern Ireland, consumers and tourists was also identified. It was recognised, however, that the Pedlars Act is out of date and that there is an opportunity to update, clarify and strengthen its provisions. On the way forward, as Liam mentioned, the UK-wide consultation ended on 5 April. We are currently in the process of analysing the responses to it. We also liaise closely with Westminster and the Scottish Government, which is also considering the way forward on the matter. We aim to take a joint approach with them before taking forward any changes to the legislation. The Minister is keen to hear views from the Committee prior to making any decisions on the way forward. He is also keen to stress that he will ensure, as far as is possible, that our streets continue to be regulated against inappropriate street trading. We are also keen to make the minimum number of changes to our legislation, sufficient only to ensure that we are in compliance with the European services directive.

The Chairperson: Thank you very much for that, Caroline and Liam.

Mr Brady: I am not sure that there are too many pedlars left. I have just a couple of questions. When I was growing up in the Newry area, there was a thing known as "paveeing". I do not know whether you know it by name.

The Chairperson: We probably do not have any information on things that far back.

Mr Brady: It is where people go around farms, in particular, selling bedclothes and household items. I am not sure that that still goes on to any degree. There was that kind of pedlar, but it was called "paveeing", and people made quite a good living out of it.

The other thing is that, in Newry, you see street traders only on St Patrick's Day. I do not know whether the council issues licences then. I know that this year there was a whole problem because they were moved from one end of town to the other, and there were ructions. However, that is another issue. That is really the only time that you see such people.

You see people selling 'The Big Issue'. Is that street trading?

Ms Hobson: That is exempt under the street trading legislation. Certain traders are exempt, and I am nearly certain that that is one such exemption.

Mr Brady: I know that it used to be enforced. There was a guy in Warrenpoint who used to sell fish. He ran for council once and reckoned that he got more summonses from the council than he got votes. Therefore, it was fairly strictly enforced at one stage.

The other thing is that, in shopping centres, such as the Quays and the Buttercrane in Newry, there are people who are not associated with the shops but have stalls there. Is that street trading?

Mr Quinn: That is not a public street.

Mr Brady: That is what I was wondering. Therefore, it is only in areas that councils designate? Those stalls would be a different matter.

Mr Quinn: That is a matter for the owners of the shopping centre.

Mr Brady: That was just for clarification. Sellers of things such as 'The Big Issue' are also exempt?

Mr Quinn: That is exempt, yes.

Mr Brady: Because it is charity, I presume?

Mr Quinn: Newspaper sellers are also exempt. In the past, there were newspaper sellers, but they were not considered to be pedlars. Pedlars travel door to door, but a street trader has a stall or a mobile vehicle of some sort.

Mr Brady: On flag days and the like, say for football clubs, you have to apply to the PSNI for a licence on a particular day that it would designate. Is that a different thing?

Mr Quinn: That is a different thing again.

Mr Brady: I just asked to clarify. Thank you.

Ms P Bradley: I should have declared an interest at the beginning, as I am a member of a local council.

Mr Campbell: I would like to hear a résumé, if you can provide one, of what an indefinite licence is. What are the benefits of that?

Ms Hobson: It is a requirement in the directive. Our main objective is to bring our legislation into line with the directive. Under the directive, a licence should be valid for an indefinite period. Therefore, you should not be putting a limit on for how long someone can have a licence, or for how long someone can trade. Councils were specifically concerned at our doing that, for some of the reasons that I have mentioned. They were concerned that, if traders have a licence that went on for ever, it would prevent new entrants — people coming over to enter the market to trade. The number of designated sites is limited, so there will be an issue around competition.

Mr Campbell: I understand fully the concerns about it. I am trying to see some of the benefits.

Mr Quinn: It is already in European law. The reasons for bringing it in —

Mr Campbell: Set that to one side for a moment.

Mr Campbell: Yes. The reason for bringing the indefinite licence in is that what exists is seen to be artificial interference with the free market. You set an arbitrary date by which a licence must finish, and there is no real reason or rationale for that date.

Mr Campbell: Just as most other licences do, whether it be a driving licence, a television licence or a passport. Almost everything that you get has a lifespan.

Mr Quinn: Yes, but this concerned only with services and the provision of goods in the free market.

Mr Campbell: Particularly in these austere times, young people finding it difficult to get employment may want to try street trading to see whether they can make a living out of it. If they got a licence and then moved on to something else, under the proposal that the licence is indefinite, if you had a number of them, they would, theoretically, be able to return 20 years from now and say, "I still have a licence to trade in Royal Avenue, and I am coming back next Saturday." People would have forgotten that that person had a licence. That would be possible, I take it, under the indefinite proposal.

Mr Quinn: Caroline, is there a provision for a licence to be revoked if it is not used?

Ms Hobson: Yes. A council would have the power to revoke a licence if it were not used for a proper period or not used enough. If somebody wanted to test the market, there is an option in the legislation to obtain a temporary licence. There may be an opportunity after that to be issued with an indefinite licence.

Mr Campbell: If applicants were aware that a licence was for an indefinite period, why would they bother to apply for a temporary licence? Why go for something with a lifespan if you know before you sign on the dotted line that you can get one that could last for the next 60 years? The onus is then on a council to revoke the licence.

Mr Quinn: If the person does not use it.

Mr Campbell: I would have to be convinced. It is an absurdity that any sort of licence be totally open-ended. People could have a licence for 60 years, and the council would then have to take action and say, "Well, actually, we have too many because 40, 50 or 100 people have never used them, and we are now going to have to pursue them to see why they are inactive." If they are being inactive and there is a lifespan, they presumably would not renew the licence. I would have thought that beneficial. I have serious reservations about that aspect of the legislation, Chairman.

The Chairperson: I presume we need to have some understanding of the framework. There is an argument for having an indefinite licence, but is there then a requirement to meet criteria to get that licence? In other words, for example, you have to trade in a designated area and for a minimum number of days per week, or whatever the case may be. If we had those answers, that might answer some of Gregory's questions.

Mr Quinn: That is a fair point.

Mr Campbell: I see that quite a few people thought it reasonable that if it were an individual applying, there should be photographic evidence. What would be the argument against that?

Ms Hobson: We did not receive any comments opposed to that proposal. In the responses that we received, everybody was content or had no comment.

Mr Campbell: Again, that seems sensible.

Mr Copeland: How would anyone know that a street trader's licence was not being used?

Ms Hobson: It would be for a council to monitor. Councils are responsible for issuing licences and regulating street trading, so they would perhaps go out and check to see whether somebody was utilising it.

Mr Copeland: That would still be quite difficult, though.

Ms Hobson: Definitely.

Mr Copeland: Can those licences be purchased in the name of a company or are they in the name of an individual? I can see a trade growing up, with licences like a milk quota.

Ms Hobson: Our legislation as it stands has a requirement for a licence to be for an individual. We received legal advice that that was not in compliance with the European directive, which requires that it has to be a specific legal form. It has to be specifically informed to make an application. Therefore, one proposal was to remove the requirement that a person applying for a street trading licence be an individual. That means that a company can apply.

Mr Copeland: That could lead to a trade in licences.

Mr Quinn: They are not transferable.

Mr Copeland: If somebody acquires the company, that person acquire the licence.

Mr Quinn: Presumably, yes.

Mr Copeland: It could, in effect, lead to a trade in licences. It does not happen so much here, but in other places those things can become quite valuable.

You said earlier that 'The Big Issue' sellers were exempt. I know of places where they sell roses, bangles and all sorts of other stuff as well as 'The Big Issue', and they are doing that because they are exempt for selling 'The Big Issue'. Nevertheless, they are conducting a trade on the back of that. Will anything be done to prevent that, because it really annoys some people, especially around Blackstaff Square and such places?

Mr Quinn: It is a matter for the local councils through enforcement.

Mr Copeland: The other issue is pedlars. Have you any notion of the number of prosecutions that there have been under the Pedlars Act?

Ms Hobson: No. We tried to get information from the PSNI, but it could not give us any information. The PSNI is responsible for issuing the pedlar's licence, and it had no records.

Mr Copeland: I live in a village, and not a night goes by without somebody knocking the door and handing me a menu or an invitation to a gospel revival. Now, it depends on what you constitute to be "selling". To me, someone handing you a menu is selling. I am happy for people to put things through the letter box, but when they knock the door, to me, that is peddling. It is really annoying when it happens four or five times a night. Will the legislation address that?

Mr Quinn: I am not sure whether it is peddling or not. They could say that they are advertising their restaurant or takeaway. That is an unusual one. We are all familiar with the menu being stuck through the letter box, but I am not —

Mr Copeland: It depends on what constitutes selling. Someone knocking your door from a revival tent is selling —

Ms Hobson: I think that pedlars would have to have the goods on them. Other sales reps may not necessarily be pedlars, because they are not carrying the goods with them at the time. They may be taking orders and delivering at a later date, which might be slightly different.

Mr Brady: If the council were to give someone a designated area, and the trader was not in that area, would that be grounds for revoking the licence? It would be quite difficult to enforce non-usage of a

licence. We have been talking about testing shops when discussing the tobacco retailer legislation in the Health Committee, and that happens only once every five years or something. Therefore, given resources, it would be quite difficult for the council to do that.

I am being parochial here: the council owns Newry market, and it issues licences for stalls. Does that come under this? I think that it is one of the oldest markets in Ireland.

Mr Quinn: No, it covers only street trading.

Mr Brady: So market stalls are outside the legislation?

Mr Quinn: It relates to selling on the streets. A designated area, such as Newry market, which is owned and managed by the council, is a separate issue.

Mr Brady: In Europe, you tend to have market stalls right along streets, as opposed to having the market in an enclosed area, so that is different.

Mr Quinn: It is a different thing completely.

The Chairperson: Annex A to the paper deals with the proposed amendments, and this may relate to questions that Gregory asked earlier. One proposed amendment deals with the conditions of use, and we might need that clarified. The last sentence states:

"the proposed amendment will also impose conditions on the use of this ground in relation to established traders."

Ms Hobson: We do not think that we can justify the revocation of a licence. Councils can revoke a licence if somebody is not using the pitch enough. In other words, if there is insufficient use. What we are saying is that, because of the directive, it is harder to justify keeping in things for temporary traders as opposed to established traders. What we are saying is that we do not think that we can justify keeping in that provision for temporary traders, so we cannot use that as grounds against them to revoke a licence. We do think, however, that we can justify using it for established traders, because they are in a location all the time. Therefore, if they do not use their licence enough, we can perhaps go down the route of revoking it. However, we were going to insert conditions on the use of the ground, which councils could apply only if there is evidence to show that somebody else is looking to use the pitch that the established trader is not utilising to full effect. I hope that that makes sense. We are happy to provide any —

The Chairperson: Sure. We may need you to come back up once Gregory has a wee look at that.

Pam, are you looking in? Pam is back. Was the zip line successful?

Ms Brown: Yes, it was amazing. I just apologise for being late and for how I am dressed. I declare an interest as a member of Antrim Borough Council.

The Chairperson: Thank you very much. Are members content? We have put that question to Caroline. If, after we get the response, we need any further information, we will no doubt get that. Nobody else has indicated to speak on this one. I am not sure where that takes us.

I have one question. You told us that some of the stakeholders are concerned about the deregulation of street traders on the basis that they think that it could lead to a rise in illegal street trading? What safeguards are there in and around preventing further illegal street trading?

Ms Hobson: The main concern is that if the Pedlars Act were repealed, it would result in pedlars not being regulated, and there is a fear that, as a consequence, illegal street trading would occur. No decision has been made. However, if it is deemed that the Pedlars Act has to be repealed in order to comply with the directive, we are looking at alternative options that would mean that pedlars were still regulated to try to prevent any illegal street trading.

The Chairperson: Do you, or does the Minister, have any time frame in mind for taking any of this forward?

Mr Quinn: The Minister is obviously in discussions with colleagues in Great Britain, because it is a joint consultation. At the moment, the time frame that we are working to is to try to come up with proposals that will bring our law into compliance with the EU directive while, as Caroline said earlier, doing the minimum to ensure that there is still regulation. We hope to have proposals formulated over the summer that will meet that requirement. We will then be able to come back to the Committee in the autumn, if needs be, to say what the Minister proposes to do.

The Chairperson: OK. It is difficult to get a clear sense of where people's minds are on this, but I get the instinctive feeling that they are as much concerned about the directive and its implications. Members may want to consult their colleagues on this.

Mr Quinn: That came out in the consultation: that there are concerns about the implications of the directive.

The Chairperson: I recently dealt with complaints from traders with businesses on the road because the council had given approval for street trading. The traders said, "We are paying rates and this, that and the other. Where does that leave us?". There is no restriction on people setting up a stall to sell on their corner. It is very understandable, given the high cost of running a business.

OK. Are members content that we will consider this further?

Members indicated assent.

The Chairperson: We will look forward to a further briefing, perhaps in the autumn, which you mentioned.

Mr Quinn: Yes.

The Chairperson: OK. Thanks very much, Liam and Caroline, for presenting to the Committee this morning and for dealing with members' queries. If we need any more information, we will certainly come back to you. Thanks very much.

Are members content to park this for now? I suggest that members consult their colleagues on this and then come back. OK?

Members indicated assent.