

## EUROPEAN PARLIAMENT

18 November 2011

### **FORMAL COMPLAINT from Pedlars and Parliamentary Agents in the United Kingdom to the European Commission**

**Subject: Alleged breach of obligations by HMG to implement EC law – the Services Directive 2006/123/EC within the Member State of the UK**

On 2<sup>nd</sup> 3<sup>rd</sup> & 9<sup>th</sup> November 2011 the United Kingdom House of Lords sat in Select Committee to consider 4 Private Bills in 4 separate jurisdictions namely Canterbury, Leeds, Reading & Nottingham. The bills seek powers to restrict “service” providers known as pedlars under the Pedlars Act<sup>1</sup> 1871 & 1881 through amendment to local street trading regulation under the Local Government (Miscellaneous Provisions) Act 1982, the LGMPA, that grants explicit exemption to Certified traders “acting as a pedlar”.

HMG, Her Majesty’s Government gave evidence via BIS, the Department of Business Innovation and Skills to the committee [in a Report 20 October 2011] which addressed its concern that the bills under examination were not compatible with the SD, Services Directive 2006/123/EC.

BIS also finds that the LGMPA to which the bills attach amendment is itself not compatible with the Services Directive and they confirm that incompatibility made both the 4 private bills and the LGMPA illegal<sup>2</sup>. Similar repercussions extend to 13<sup>3</sup> other restrictive Authorisation Schemes.

During the Hearing the promoters made ad hoc amendments to the bills that BIS now understand “*will probably address the compatibility concerns*”. The promoters could not address the LGMPA incompatibility issues with the SD as BIS will not be introducing amendment to the LGMPA until 2012.

Notice has been written to the HL Grand Committee that should the Select Committee allow further progress of these private bills that rely on illegal LGMPA legislation then HMG risks infraction proceedings by the European Commission.

This process is herewith begun.

The Grand Committee HL endorsed Section 45 of the Provision of Services Regulations 2009 against stakeholder concerns formally notified to BIS and a sitting committee

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<sup>1</sup> The Principle of the Pedlars Act: “The Pedlars Act provides common law privilege to any eligible pedestrian person to trade with complete freedom based on purely individual decisions”

<sup>2</sup> <http://services.parliament.uk/bills/2010-11/readingboroughcouncil/committees/houseoflordsopposedbillcommitteeonthereadingboroughcouncilbill201011.html>  
scroll to col 511

<sup>3</sup> Seven similar private Acts beginning COWA 1999; LLAA2004; The Cheshire CC Act 1980; the Civic Government (Scotland) Act 1982; the Hampshire Act 1983; the Essex Act 1987 and the Street Trading Act (Northern Ireland) 2001

member Lord Lucas. Responsibility for this erroneous Order lies with BIS who failed to apply to pedlars and street traders the 2006 SD meaning of “*service*” being “*any self-employed economic activity*”.

BIS against formal stakeholder advice is currently formulating legislation to de-regulate pedlars and repeal the Pedlars Act in an attempt to implement a very narrow interpretation of the SD that fails to preserve the 314 year old cultural identity and profession of pedlary allowable under the SD Article 4.8: “*conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives*”. Article 1.5 of the SD explicitly prohibits the application of criminal law to control service providers [pedlars] “*in circumvention*” of the rules of the Directive. Allowing bad application of criminal law by local authorities using the mechanism of private legislation to redefine/expunge the cultural identity of a self-regulated profession protected by the Pedlars Act brings further risk of infraction proceedings against HMG by the Commission.

This process is herewith begun.

We the undersigned formally request issuance of a Pre-226 letter of enquiry to HMG.

**Simon Casey**

Certified Pedlar, Wiltshire

Petitioner against Canterbury City Council bill and Nottingham City Council bill

And

**Nicholas McGerr**

Certified Pedlar, Somerset

Petitioner against the Bournemouth Borough Council bill

And Parliamentary Agent for

David Murphy, Petitioner against the Manchester City Council bill

And

**Robert Campbell-Lloyd**

Parliamentary Agent for

Andrew Carter, Petitioner against the Reading Borough Council bill

And

Tony Furnivalis, Petitioner against the Leeds City Council bill