

Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006L0123:EN:HTML>

(The following verbatim text has been emboldened to highlight special context for considering retaining an authorisation scheme for pedlary.)

(1) *The European Community is seeking to forge ever closer links between the States and peoples of Europe and to ensure economic and social progress. In accordance with Article 14(2) of the Treaty, the internal market comprises an area without internal frontiers in which the free movement of services is ensured. In accordance with Article 43 of the Treaty the freedom of establishment is ensured. Article 49 of the Treaty establishes the right to provide services within the Community. The elimination of barriers to the development of service activities between Member States is essential in order to strengthen the integration of the peoples of Europe and to promote balanced and sustainable economic and social progress. In eliminating such barriers it is essential to ensure that the development of service activities contributes to the fulfilment of the task laid down in Article 2 of the Treaty of promoting throughout the Community a harmonious, balanced and sustainable development of economic activities, a high level of employment and of social protection, equality between men and women, sustainable and non-inflationary growth, a high degree of competitiveness and convergence of economic performance, a high level of protection and improvement of the quality of the environment, the raising of the standard of living and quality of life and economic and social cohesion and solidarity among Member States.*

(2) *A competitive market in services is essential in order to promote economic growth and create jobs in the European Union. At present numerous barriers within the internal market prevent providers, particularly small and medium-sized enterprises (SMEs), from extending their operations beyond their national borders and from taking full advantage of the internal market. This weakens the worldwide competitiveness of European Union providers. A free market which compels the Member States to eliminate restrictions on cross-border provision of services while at the same time increasing transparency and information for consumers would give consumers wider choice and better services at lower prices.*

(9) *This Directive applies only to requirements which affect the access to, or the exercise of, a service activity. Therefore, it does not apply to requirements, such as road traffic rules, rules concerning the development or use of land, town and country planning, building standards as well as administrative penalties imposed for non-compliance with such rules which do not specifically regulate or specifically affect the service activity but have to be respected by providers in the course of carrying out their economic activity in the same way as by individuals acting in their private capacity.*

(12) *This Directive aims at creating a legal framework to ensure the freedom of establishment and the free movement of services between the Member States and does not harmonise or prejudice criminal law. However, Member States should not be able to restrict the freedom to provide services by applying criminal law provisions which specifically affect the access to or the exercise of a service activity in circumvention of the rules laid down in this Directive.*

*public policy*  
(17) *This Directive covers only services which are performed for an economic consideration. Services of general interest are not covered by the definition in Article 50 of the Treaty and therefore do not fall within the scope of this Directive. Services of general economic interest are services that are performed for an economic consideration and therefore do fall within the scope of this Directive. However, certain services of general economic interest, such as those that may exist in the field of transport, are excluded from the scope of this Directive and certain other services of general economic interest, for example, those that may exist in the area of postal services, are the subject of a derogation from the provision on the freedom to provide services set out in this Directive. This Directive does not deal with the funding of services of general economic interest and does not apply to systems of aids granted by Member States, in particular in the social field, in accordance with Community rules on competition. This Directive does not deal with the follow-up to the Commission White Paper on Services of General Interest.*

(31) This Directive is consistent with and does not affect Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications [11]...

11) "regulated profession" means a professional activity or a group of professional activities as referred to in Article 3(1)(a) of Directive 2005/36/EC;

DIRECTIVE 2005/36/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL  
of 7 September 2005 on the recognition of professional qualifications:

Directive 75/369/EEC (Article 6: where the activity is regarded as being of an industrial or small craft nature) ISIC nomenclature

The following itinerant activities:

(a) the buying and selling of goods:

– by itinerant tradesmen, hawkers or pedlars (ex ISIC Group 612)

– in covered markets other than from permanently fixed installations and in open-air markets.

(39) The concept of "authorisation scheme" should cover, inter alia, the administrative procedures for granting authorisations, licences, approvals or concessions, and also the obligation, in order to be eligible to exercise the activity, to be registered as a member of a profession or entered in a register, roll or database, to be officially appointed to a body or to obtain a card attesting to membership of a particular profession. Authorisation may be granted not only by a formal decision but also by an implicit decision arising, for example, from the silence of the competent authority or from the fact that the interested party must await acknowledgement of receipt of a declaration in order to commence the activity in question or for the latter to become lawful.

(40) The concept of "overriding reasons relating to the public interest" to which reference is made in certain provisions of this Directive has been developed by the Court of Justice in its case law in relation to Articles 43 and 49 of the Treaty and may continue to evolve. The notion as recognised in the case law of the Court of Justice covers at least the following grounds: public policy, public security and public health, within the meaning of Articles 46 and 55 of the Treaty; the maintenance of order in society; social policy objectives; the protection of the recipients of services; consumer protection; the protection of workers, including the social protection of workers; animal welfare; the preservation of the financial balance of the social security system; the prevention of fraud; the prevention of unfair competition; the protection of the environment and the urban environment, including town and country planning; the protection of creditors; safeguarding the sound administration of justice; road safety; the protection of intellectual property; cultural policy objectives, including safeguarding the freedom of expression of various elements, in particular social, cultural, religious and philosophical values of society; the need to ensure a high level of education, the maintenance of press diversity and the promotion of the national language; the preservation of national historical and artistic heritage; and veterinary policy.

(41) The concept of "public policy", as interpreted by the Court of Justice, covers the protection against a genuine and sufficiently serious threat affecting one of the fundamental interests of society and may include, in particular, issues relating to human dignity, the protection of minors and vulnerable adults and animal welfare. Similarly, the concept of public security includes issues of public safety.

(48) In order to further simplify administrative procedures, it is appropriate to ensure that each provider has a single point through which he can complete all procedures and formalities (hereinafter referred to as "points of single contact"). The number of points of single contact per Member State may vary according to regional or local competencies or according to the activities concerned. The creation of points of single contact should not interfere with the allocation of functions among competent authorities within each national system. Where several authorities at regional or local level are competent, one of them may assume the role of point of single contact and coordinator. Points of single contact may be set up not only by administrative authorities but also by chambers of commerce or crafts, or by the professional organisations or private bodies to which a Member

State decides to entrust that function. Points of single contact have an important role to play in providing assistance to providers either as the authority directly competent to issue the documents necessary to access a service activity or as an intermediary between the provider and the authorities which are directly competent.

(54) The possibility of gaining access to a service activity should be made subject to authorisation by the competent authorities only if that decision satisfies the criteria of **non-discrimination, necessity and proportionality**. That means, in particular, that authorisation schemes should be permissible only where an a posteriori inspection would not be effective because of the impossibility of ascertaining the defects of the services concerned a posteriori, due account being taken of the risks and dangers which could arise in the absence of a prior inspection. However, the provision to that effect made by this Directive cannot be relied upon in order to justify authorisation schemes which are prohibited by other Community instruments such as Directive 1999/93/EC of the European Parliament and the Council of 13 December 1999 on a Community framework for electronic signatures [17], or Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the internal market (Directive on electronic commerce) [18]. The results of the **process of mutual evaluation** will make it possible to determine, at Community level, the types of activity for which authorisation schemes should be eliminated.

(56) According to the case law of the Court of Justice, public health, consumer protection, animal health and the protection of the urban environment constitute **overriding reasons relating to the public interest**. Such overriding reasons **may justify the application of authorisation schemes** and other restrictions. However, no such authorisation scheme or restriction should discriminate on grounds of nationality. Further, the principles of necessity and proportionality should always be respected.

(64) In order to establish a genuine internal market for services, it is necessary to **abolish any restrictions on the freedom of establishment and the free movement of services** which are still enshrined in the laws of certain Member States and which are incompatible with Articles 43 and 49 of the Treaty respectively. The restrictions to be prohibited particularly affect the internal market for services and should be systematically dismantled as soon as possible.

(94) In accordance with the Treaty rules on the free movement of services, **discrimination on grounds of the nationality of the recipient or national or local residence is prohibited**. Such discrimination could take the form of an obligation, imposed only on nationals of another Member State, to supply original documents, certified copies, a certificate of nationality or official translations of documents in order to benefit from a service or from more advantageous terms or prices. However, the prohibition of discriminatory requirements should not preclude the reservation of advantages, especially as regards tariffs, to certain recipients, if such reservation is based on legitimate and objective criteria.

**HAVE ADOPTED THIS DIRECTIVE:  
CHAPTER I - GENERAL PROVISIONS**

**Article 1 - Subject matter**

1. This Directive establishes general provisions facilitating the exercise of the freedom of establishment for service providers and the free movement of services, while maintaining a high quality of services.
2. This Directive does not deal with the liberalisation of services of general economic interest, reserved to public or private entities, nor with the privatisation of public entities providing services.
3. This Directive does not deal with the abolition of monopolies providing services nor with aids granted by Member States which are covered by Community rules on competition.

This Directive does not affect the freedom of Member States to define, in conformity with Community law, what they consider to be services of general economic interest, how those services should be organised and financed, in compliance with the State aid rules, and what specific obligations they should be subject to.

4. This Directive does not affect measures taken at Community level or at national level, in conformity with Community law, to protect or promote cultural or linguistic diversity or media pluralism.

5. This Directive does not affect Member States' rules of criminal law. However, Member States may not restrict the freedom to provide services by applying criminal law provisions which specifically regulate or affect access to or exercise of a service activity in circumvention of the rules laid down in this Directive.

#### Article 4 - Definitions

For the purposes of this Directive, the following definitions shall apply:

- 1) "service" means any self-employed economic activity, normally provided for remuneration, as referred to in Article 50 of the Treaty;
- 2) "provider" means any natural person who is a national of a Member State, or any legal person as referred to in Article 48 of the Treaty and established in a Member State, who offers or provides a service;
- 6) "authorisation scheme" means any procedure under which a provider or recipient is in effect required to take steps in order to obtain from a competent authority a formal decision, or an implied decision, concerning access to a service activity or the exercise thereof;
- 7) "requirement" means any obligation, prohibition, condition or limit provided for in the laws, regulations or administrative provisions of the Member States or in consequence of case-law, administrative practice, the rules of professional bodies, or the collective rules of professional associations or other professional organisations, adopted in the exercise of their legal autonomy; rules laid down in collective agreements negotiated by the social partners shall not as such be seen as requirements within the meaning of this Directive;
- 8) "overriding reasons relating to the public interest" means reasons recognised as such in the case law of the Court of Justice, including the following grounds: public policy; public security; public safety; public health; preserving the financial equilibrium of the social security system; the protection of consumers, recipients of services and workers; fairness of trade transactions; combating fraud; the protection of the environment and the urban environment; the health of animals; intellectual property; the conservation of the national historic and artistic heritage; social policy objectives and cultural policy objectives;
- 9) "competent authority" means any body or authority which has a supervisory or regulatory role in a Member State in relation to service activities, including, in particular, administrative authorities, including courts acting as such, professional bodies, and those professional associations or other professional organisations which, in the exercise of their legal autonomy, regulate in a collective manner access to service activities or the exercise thereof;
- 11) "regulated profession" means a professional activity or a group of professional activities as referred to in Article 3(1)(a) of Directive 2005/36/EC;

## CHAPTER II - ADMINISTRATIVE SIMPLIFICATION

### Article 5 - Simplification of procedures

2. The Commission may introduce harmonised forms at Community level, in accordance with the procedure referred to in Article 40(2). These forms shall be equivalent to certificates, attestations and any other documents required of a provider.

3. Where Member States require a provider or recipient to supply a certificate, attestation or any other document proving that a requirement has been satisfied, they shall accept any document from another Member State which serves an equivalent purpose or from which it is clear that the requirement in question has been satisfied. They may not require a document from another Member State to be produced in its original form, or

as a certified copy or as a certified translation, save in the cases provided for in other Community instruments or where such a requirement is justified by an overriding reason relating to the public interest, including public order and security.

The first subparagraph shall not affect the right of Member States to require non-certified translations of documents in one of their official languages.

**CHAPTER III - FREEDOM OF ESTABLISHMENT FOR PROVIDERS SECTION 1 - Authorisations**

**Article 9 - Authorisation schemes**

1. Member States shall not make access to a service activity or the exercise thereof subject to an authorisation scheme unless the following conditions are satisfied:

- (a) the authorisation scheme **does not discriminate** against the provider in question;
- (b) the need for an authorisation scheme is justified by an **overriding reason relating to the public interest**;
- (c) the objective pursued cannot be attained by means of a **less restrictive measure**, in particular because an a posteriori inspection would take place too late to be genuinely effective.

**Article 10 - Conditions for the granting of authorisation**

1. Authorisation schemes shall be based on criteria which preclude the competent authorities from exercising their power of assessment in an **arbitrary manner**.

2. The criteria referred to in paragraph 1 shall be:

- (a) **non-discriminatory**;
- (b) **justified by an overriding reason relating to the public interest**;
- (c) **proportionate to that public interest objective**;
- (d) **clear and unambiguous**;
- (e) **objective**;
- (f) **made public in advance**;
- (g) **transparent and accessible**.

**Article 11 - Duration of authorisation**

1. An authorisation granted to a provider shall not be for a limited period, except where:

- (a) the authorisation is being automatically renewed or is subject only to the continued fulfilment of requirements;
  - (b) the number of available authorisations is limited by an overriding reason relating to the public interest;
- or
- (c) a limited authorisation period can be justified by an overriding reason relating to the public interest

**CHAPTER IV – OF FREE MOVEMENT OF SERVICES - SECTION 1 - Freedom to provide services and related derogations**

**Article 16 - Freedom to provide services**

1. Member States shall respect the right of providers to provide services in a Member State other than that in which they are established.

The Member State in which the service is provided shall ensure free access to and free exercise of a service activity within its territory.

Member States shall not make access to or exercise of a service activity in their territory subject to compliance with any requirements which do not respect the following principles:

- (a) non-discrimination: the requirement may be neither directly nor indirectly discriminatory with regard to nationality or, in the case of legal persons, with regard to the Member State in which they are established;
- (b) necessity: the requirement must be justified for reasons of public policy, public security, public health or the protection of the environment;
- (c) proportionality: the requirement must be suitable for attaining the objective pursued, and must not go beyond what is necessary to attain that objective.

2. Member States may not restrict the freedom to provide services in the case of a provider established in another Member State by imposing any of the following requirements:

- (a) an obligation on the provider to have an establishment in their territory;
- (b) an obligation on the provider to obtain an authorisation from their competent authorities including entry in a register or registration with a professional body or association in their territory, except where provided for in this Directive or other instruments of Community law;
- (c) a ban on the provider setting up a certain form or type of infrastructure in their territory, including an office or chambers, which the provider needs in order to supply the services in question;
- (d) the application of specific contractual arrangements between the provider and the recipient which prevent or restrict service provision by the self-employed;
- (e) an obligation on the provider to possess an identity document issued by its competent authorities specific to the exercise of a service activity;
- (f) requirements, except for those necessary for health and safety at work, which affect the use of equipment and material which are an integral part of the service provided;
- (g) restrictions on the freedom to provide the services referred to in Article 19.

**Article 20 - Non-discrimination**

1. Member States shall ensure that the recipient is not made subject to discriminatory requirements based on his nationality or place of residence.

2. Member States shall ensure that the general conditions of access to a service, which are made available to the public at large by the provider, do not contain discriminatory provisions relating to the nationality or place of residence of the recipient, but without precluding the possibility of providing for differences in the conditions of access where those differences are directly justified by objective criteria.

**Article 23 - Professional liability insurance and guarantees**

**5. For the purpose of this Article**

- "direct and particular risk" means a risk arising directly from the provision of the service,
- "health and safety" means, in relation to a recipient or a third person, **the prevention of death or serious personal injury**

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- 6) Our updated analysis of the provisions of the Services Directive against the authorisation scheme (certification) for pedlars in the Pedlars Acts and the authorisation scheme (licensing and consent) for street traders under the Local Government (Miscellaneous Provisions) Act 1982 and other similar street trader licensing regimes in the UK has resulted in the following general conclusions:
  - a) The certification system for pedlars is **untenable** (we do not think such a system can be justified within the terms of the directive as it is **too restrictive**). Not only does the certification regime contain a residency requirement (**banned** under the directive) but we have **no evidence to support the need** to impose an authorisation regime based on a test of "good character" (which would be the most significant remaining criterion). We do not therefore think that continuing the certification regime can be justified as acceptable under the Directive.

BIS failed to consult on the Services Directive and instead have drawn ill-founded conclusions.

Pedlars contend that certification is tenable.

The 'residency requirement' can either be deleted from the *Pedlars Act* in its form of application for a Certificate or retained as the residency specification to ascertain the origin of the application as it is about a requirement for authorisation to make an application (*preamble 94*). *Section 5 (1)* with minor amendment is therefore compatible.

The 'good character' reference is not a 'test' but relates to an applicant's *human dignity* (*preamble 41*) and the professional intent of self-authorised 'good faith' attested by the *Pedlars Act Form A* application. Any compatibility issue can be resolved through amendment by mutual evaluation of harmonising the form (*preamble 54 & Article 5*).

**10) The changes we [BIS] consider necessary are:**

- a) *Repeal of the Pedlars Acts, as a deregulatory measure.*
- b) *Removal of provisions in private or local Acts, and in devolved regimes which have the effect of making certain pedlars [those not trading door to door – see 42] subject to street trading regimes, also a deregulatory measure.*
- c) *To ensure the continued freedom of pedlars to trade, and to prevent re-regulation by another route, we intend to amend the current general exemption from street*