

BRIEFING

29 September 2012

To: Secretary of State for BIS

From: Pedlar Stakeholders

Re: BIS URN09/1074 & URN11/542 Street Trading & Pedlary Law - Modernisation

Services Directive implementation & exemption:

- 1.0 The [Services Directive](#)¹, (the SD) provides for economic and social progress; free movement of services; elimination of barriers; social protection & cohesion; competitiveness; consumer choice; recognition of professional qualifications including crafts & pedlary; preservation of national historic and artistic heritage in particular social & cultural values; non-discrimination.
- 1.1 Member States may not restrict pedlars by applying criminal law provisions under other regulation [Article 1.5].
- 1.2 Whilst the EU acknowledged professional status for pedlary within the SD 2006, HMG failed to provide a self-regulating professional category in the 2007 [EC Recognition of Professional Qualifications Regulations](#)². Unlike the European Commission, BIS almost by contempt did not even consider pedlars as stakeholders in the passage of the bill.

BIS policy, competence & scrutiny:

- 2.0 BIS URN 09/1054 - joint consultation, proposed **preservation & modernisation** of Street Trading & Pedlar Legislation with guidance on current legislation.
- 2.1 The consultation sought views on BIS interpretation of the Services Directive if mis-interpreted. Stakeholder pedlars reported interpretation failures but *Provision of Services Regulation Act* Section 45 became law & currently victimises some pedlars under street trading offences.
- 2.2 Durham University research reported to the government about “modernising” the *Pedlars Act* and followed up with a second [Report](#)³ “*Selling in the Streets: Pedlary as an Entry Route to Entrepreneurship*” to guide policy makers about the cultural/economic virtues of pedlary.
- 2.3 Pedlars petitioned against four private bills that attempt to restrict pedlary (in current Session).
- 2.4 BIS URN11/542 policy was changed to ‘**repeal**’ the *Pedlars Act* for non-compliance with the Services Directive. No consideration was given to simple resolution of the only identified problems of ‘*residency*’ and ‘*good character*’ conditions.
- 2.5 HL Special Report Paper 242 on the current four private bills removed all restrictions & sanctions against pedlary from private bills and provided regulation on scale and proportion of means of operation by a pedlar as the only valid concern by promoters about street trading regulation in the four cities. This at the end of a decade of red-herring propaganda emanating from the passage of ten private bills by promoters.
- 2.6 During the Select Committee Hearing BIS admitted interpreting the Services Directive *not in the correct way* and confirmed that all piggy-backed bills attached to all Street Trading Acts *are already illegal* under the Services Directive. BIS confirmed policy to repeal the *Pedlars Act* for non-compliance but to stakeholders surprise there was no policy to repeal Street Trading Acts for non-compliance.

¹ <http://www.pedlars.info/images/stories/roberts/sd.pdf>

² <http://www.legislation.gov.uk/ukxi/2007/2781/contents/made>

³ <http://www.pedlars.info/bis-consultation/76-durham-report-2010.html>

Street Trading Regulation principle & exemptions:

- 3.0 The principle of all Street Trading Regulation whether national or local is to control licensed traders allocated a fixed positions on- designated streets with apparatus producing large-scale obstacles that may cause obstruction and public safety issues.
- 3.1 Exemptions from regulation include trading by pedestrian pedlars who cause no public safety obstacle greater than any other pedestrian shopping with the usual footfall.

Pedlars Act principle & modernisation:

- 4.0 The *Pedlars Act* Section 3 text has been maligned as containing anachronistic descriptions of some forms of pedlary dating from 1871 but in contemporary language the principle remains a flagship of *Think Small First* policy:
The *Pedlars Act* provides common law privilege to any eligible pedestrian person to trade with complete freedom based on any simple individual contract decision within any part of the UK.
- 4.1 The enabling [principle](#)⁴ within the *Pedlars Act* provides allowance to trade without restriction whereas Static Street Trading Regulation controls what, where, when & how trading occurs. Though both trade in the street, the principles of pedlary and street trading are different and that is why pedlary is an exempted trading activity throughout all street trading regulation. The only problem exists in interpretation of the amended pedlars' exemption that awaits Judicial Review or adoption of legislative amendments drafted and proposed by stakeholders.
- 4.2 BIS policy consultations have been [summarised](#)⁵ to assist stakeholder pedlars to consult on drafting suitable amendments to existing legislation as a modernisation alternative to repeal. These simple revisions were published in July 2012 and sent to BIS deregulation team requesting that they be circulated to others in BIS whose brief was not deregulation but modernisation.
- 4.3 BIS August 2012 [reply](#)⁶ causes serious stakeholder concern about the lack of due process, compliance, competence, scrutiny of pre-legislative proposals and failure to adopt a *Think Small First* principle with micro-business exemption in policy formulation.

EU Think Small First principle & micro-enterprise exemption:

- 5.0 Andrea Leadsom MP in the Westminster Hall 18 September 2012 debate (column 244) on [EU-UK Relationship \(Reform\)](#)⁷ informed parliament that “*The EC has agreed in principle to subsidiarisation for micro-business as it is not an EU competence to delve into businesses if they are British-only businesses and British micro-businesses should be exempt from any EU intervention whatsoever*”.
- 5.1 BIS failure to implement this principle has prompted stakeholders in good conscience to seek policy redress through the Secretary of State. The Small Business Act for Europe aims to anchor the [Think Small First](#)⁸ principle in national policy-making. *The European Commission seeks wherever possible to exempt micro-enterprises from EU legislation to reduce regulatory burden.*
- 5.2 Pedlar stakeholders consider it untenable that BIS cherry-pick some European directives to suit pre-determined agenda and disregard directives that counter such agenda.

⁴ <http://www.pedlars.info/pedlar-research/93-private-act-interpretation.html>

⁵ <http://www.pedlars.info/bis-consultation/109-7-june-2012-pedlars-act-proposed-amendments.html>

⁶ <http://www.pedlars.info/bis-consultation/118-communications-with-bis-re-urn11542.html>

⁷ <http://www.publications.parliament.uk/pa/cm201213/cmhansrd/cm120918/halltext/120918h0001.htm>

⁸ <http://ec.europa.eu/enterprise/policies/sme/small-business-act/>

Problem:

BIS consultation on *Modernising Street Trading & Pedlar Laws* has without due process turned into Repeal of the *Pedlars Act*. Under Section 45 of the *Provision of Services Regulation Act* (the PSR) either by error or by intent the Services Directive has been fragmented and mis-applied to inflict potential victim status on some pedlars. Pedlars are being excluded from what they perceive as an ongoing quest by BIS to remove pedlary as a common law activity and to have it placed within a textually re-arranged description cited within local street traders licensing regulations. This wasteful and redundant task is culturally destructive and incapable of providing protection from eventual prohibition. It will not give pedlars any rights they do not already have. Stakeholders have submitted substantive reasons to BIS for upholding the principle of the *Pedlars Act* but have been informed that there will be no consideration of stakeholder proposals or concerns until after the current policy agenda is fulfilled.

Solution:

The Secretary of State can direct civil servants to adopt the *Think Small First* principle and exempt the micro-business of pedlary from Services Directive compliance. In prioritising this principle he can justify removing the regulatory burden on pedlars and direct civil servants to revert to the 2009 policy of *modernisation* through direct consultation with the MoJ and those stakeholders most directly affected. A suitable Statutory Instrument can amend the *Pedlars Act*, amend the Street Trading exemption for pedlary and expunge Section 45 of the PSR.

The major amendment proposals have already been drafted by stakeholders, submitted to BIS and published online.

Problem:

Private business in parliament sponsored the first of many private Acts that adopt identical textual amendment to pedlars' exemption from street trading regulation. Promoters categorically stated to parliament and gave pedlars to understand that the *City of Westminster Bill* with its amended pedlar exemption was never intended to harm "genuine pedlars". Private bills between 1997 and 2006 received little objection and few petitions. By 2007 pedlars came to understand that *genuine pedlars* were being victimised by very narrow interpretation and application of the pedlars' exemption and therefore objected to two bills in 2007 and a further four in 2009. The interpretation issue continues as witnessed by ongoing prosecutions in courts but HL Paper 242 finally establishes that pedlars may also trade in the street. When this is properly considered and applied it strikes out the too narrow interpretation that pedlars trade only at houses.

Solution:

Pedlar stakeholders have proposed textual amendments to the adoptive *Local Government (Miscellaneous Provisions) Act*, the *London Local Authorities Act* and the *Pedlars Act* to ensure that there is clarity in interpretation and consistency throughout the legislation. Pedlars have written about these amendments to Norman Lamb M.P. when a Minister at BIS urging him to make the pedlars' amendments part of the ongoing *Joint Consultation on Modernising Street Trading and Pedlar Legislation* and so replacing any need for "Draft Guidance" about the current regime.

Summary:

BIS policy devised by Roger Dennison's CCP team with URN 09/1074 ignored or failed the 2006 EU Services Directive in its interpretation and application to UK legislation.

In 2009 pedlars as stakeholders notified only at the eleventh hour requested Kevin Davis to amend enactment of the harmful Section 45 in the *Provision of Services Regulation* but despite direct warnings by pedlars to BIS and members of the Grand Committee - pedlars are now held victim by this erroneous law drafted by civil servants who are in every other way supposed to benefit society, the public and to safeguard the realm.

As a result of HMG's consultation document URN 11/542 the "deregulation" team at BIS has invented policy that is either ignorant or dismissive of EU policy proposals. Pedlars contend that *Think Small First* for micro-business in the UKGB permits HMG's policy-makers to adopt the EU Services Directive to allow for the British-only micro-business of pedlary.

This is in contrast to the 2011 policy direction which merely echoed the 1997 private business interest in repeal of the *Pedlars Act* and the propaganda that has produced the subsequent decade of private bills attempting to disable the *Pedlars Act*.

Repeal will not be a successful outcome either for promoters or government as it will spawn unidentifiable rogues & vagabonds and criminal activities will replace genuine pedlary with streets returning to the unregulated and chaotic situation that preceded and required the origination and Assent for the *Pedlars Act*.

As a result of an era of struggle by people of good faith and honesty, pedlary is approved as a lawful activity by the public, government, local authorities, promoters of local bills and practitioners.

As a micro-business exempt from EU legislation pedlars urge the Secretary of State to return the policy focus of his department to genuine consultation with pedlars.

Pedlars proposed draft amendments are uncontested and resolve all issues arising.

The amendments bring compatibility to all national, local and private Pedlary & Street Trading Acts based primarily on proper contextual interpretation of existing law.

Directing civil servants to preserve the *Pedlars Act* avoids undermining the aspirational principles of both British and EU law. It enables delegations from Britain about the EU-UK Relationship (Reform) to lead European discussion on legislative models that mobilise genuine economic recovery from grass-roots upwards.



Pedlary is a British only micro-enterprise.
Pedlary is a self-regulating EU profession.
Big begins Small

END