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8 October 2011

Dear Rachael & Marcelle

### **Implications of BIS policy formulation URN11/542**

It is understood that BIS will publish draft legislation later this year but the policy statement in *URN11/542* to amend the exemption for pedlary in local Acts and the LGMPA / LLAA does not remove the burden of 'potential victim status' unless the definition of 'Street Trading' in all legislation is amended to allow unlicensed trading without authority by any person: 'trading' in all legislation is "*selling or exposing for sale any goods*".

The Pedlars Act differs in principle from 'street trading regulation' and that is why pedlary is an exempt activity when referred to in the restrictive 'control' regulations of Street Trading. This means that no regulation applies to 'pedlary' other than the Pedlars Act.

For those who continue to not understand the Principle engaged by the *Pedlars Act*:

The *Pedlars Act* provides **common law privilege** to any eligible pedestrian person above 17 to trade **with** complete freedom based on **purely individual decisions**.

The attempt to expunge or diminish pedlary to fit within narrow local economic street trading restraints is fraught with complex HMG constitutional problems and is an obvious attempt to circumvent both the principle and the terms of the Services Directive (SD) *preamble 12*.

The attempt to expunge a statutory civil liberty and regulate its rights under criminal law also goes against the principle aims of BIS "*to remove unnecessary barriers to growth*".

A less controversial legislative solution for BIS lies in amending the *Pedlars Act* by addressing the only two compatibility issues noted in *URN11/542 6(1)* arising from

implementing the *Services Directive*, namely ‘residency’ and ‘good character’.

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-assessed ‘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*).

Pedlars contend that BIS has failed to consult adequately on implementation of the SD. In November 2009 the Grand Committee erroneously accepted BIS submissions and rushed approval of the *Provision of Services Regulations 2009* (PSR2009) that lacked sufficient scrutiny to stop wrongful interpretation of what constituted a ‘Service Provider’. Not only has that error been entered into Statute with amendment to the *Pedlars Act* ‘*skill in handicraft*’ but there has been no review of the PSR and its consequences since its introduction in 2009.

**The purpose of the Pedlars Act is to keep undesirable traders off the street.**

PSR 2009 contains no such safeguards - only duties to provide contact details, with no punishment for failing to do so! In this respect deregulating pedlary actually opens the street to undesirables, including children. Strengthening the Pedlars Act is the solution and had been BIS policy until *URN11/542*.

Further examples of anomaly arises in PSR *Section 24/25*: a competent authority must (for any service provider) respect non-discrimination, necessity and proportionality; but not impose restrictions on residency, registration, private contractual arrangements or identity documents unless they are justified for reasons of public policy, public security, public health or the protection of the environment. None of these reasons apply to any service which the relevant authority determines to be of *general economic interest*.

*Preamble 17* of the SD defines ‘*general economic interest*’ as ‘*services that are performed for an economic consideration*’. It follows therefore that a competent authority may dismiss *Section 24* if justified for reasons of public policy, security, health or protection of environment.

BIS has attempted to provide the justification in *6 (v)* but pedlars are now asking why it is that BIS has set out conflicting agenda by helping local authorities to endorse pedlary but also making it more difficult for pedlary?

Nonsense justification could also be used to stop other pedestrians entering a street!

In *URN11/542* page 4 at *6(iii)* no grounds for retaining the authorisation scheme for licensed trading have been submitted despite pedlars requesting it – there is simply an unfounded ‘belief’ that licensing and consent is compatible with the SD following necessary amendment.

Pedlars submit that the *Pedlars Act* is compatible with the SD following minor

amendment but BIS ignores this consideration.

In circumvention of SD *preamble 12* - HMG/BIS intends repealing the **civil law provisions** of the *Pedlars Act* and applying the **criminal law provisions** of Street Trading regulation which specifically affects the access to or the exercise of the profession of pedlary.

*Article 5 (2) & (3)* of the SD makes provision for introduction of a harmonised form equivalent to 'a certificate'. In the case of the profession of pedlary such a certificate already exists and can be ratified/harmonised by *mutual evaluation (preamble 54)*.

Pedlars have approached MPs and MEPs with a research paper MEP4.pdf concerning the *Services Directive* and how that is seen to conflict with the BIS *Executive Summary* in *URN11/542* .

In the event of pedlars continuing participation with government's consultation on "*Street Trading and Pedlar Laws*" being ignored and discounted, it will be a matter for UK & ultimately EU Courts to hear how BIS is able to justify an unprecedented disenfranchising of a cultural profession - that of pedlary.

As stakeholders pedlars are looking forward to your full engagement and cooperation with forwarding on-going consultation.

Sincerely

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attachment MEP4.pdf