

Pedlars of Foodstuffs – Research Paper 18.02.2011

Section 23 of the *Pedlars Act* grants exemption from the necessity for a certificate to be obtained by three categories of persons namely –

- (1) Commercial travellers, dealers or agents
- (2) Sellers of vegetables, fish, fruit, or **victuals** (food and drink), and
- (3) Market traders who pay a toll

Section 24 of the *Pedlars Act* made provision not to diminish powers vested in local authorities and whereas the *LGMPA1982* Part 9 gave powers to those local authorities adopting the Act to control the Sale of Food by Hawkers, **such powers were repealed** by the *Food Safety Act 1990*¹. This meant that pedlars and hawkers could trade **any goods** including **victuals**.

In 2011 there were statutory requirements to satisfy recent European Directives as outlined by Food Safety Authority, FSA, to pedlars.info 15 December 2010 as follows:

“Anyone supplying or selling food in the UK will be subjected to Regulation (EC) 178/2002² which lays down the general principles and requirements of food law in the EU. Some of the key provisions are contained in Articles 14 – 20. In particular, Article 14 where food shall not be placed on the market if it is unsafe.

*Regulation (EC) No. 852/2004³ ‘on the hygiene of foodstuffs’ covers all aspect of a food business, from premises and facilities through to the personal hygiene of staff. In addition, food should be handled, prepared, cooked, stored and transported in a hygienic manner and at temperatures which will not give rise to a risk to health. There is also a requirement to have an effective food safety management procedure in place, appropriate to the nature and size of the business and to **register the food business with the appropriate competent local authority.**”*

In relation to pedlars.info specific enquiry about pedlary of foodstuffs the FSA replied:

“Regulation 852/2004 does not apply to ‘the direct supply, by the producer, of small quantities of primary products to the final consumer, although these activities are subject to the general requirements relating to the placing of unsafe food on the market.

In the UK, Environmental Health Departments (EHDs) are responsible for enforcing food safety legislation and carrying out food premises inspections.

¹ <http://www.legislation.gov.uk/ukpga/1984/30/section/134?view=extent>

² http://eur-lex.europa.eu/pri/en/oj/dat/2002/l_031/l_03120020201en00010024.pdf

³ <http://eur->

[lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:226:0003:0021:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:226:0003:0021:EN:PDF)

The pedlars will need to contact their respective EHD in the area where their premises is located for further specific advice. (They wouldn't be expected to contact numerous EHDs). EHDs will make a decision about registration based on individual circumstances – food product, quantity, frequency of selling etc.”

Clearly Section 23 provides that sellers of victuals do not require a certificate but should they choose to **travel and trade** then they would be classified as pedlar or hawker requiring a certificate and nothing in law explicitly prohibits them from obtaining a certificate. Sellers of victuals who obtain a certificate because they intend to travel and trade are wisely safeguarding themselves with lawful authority against committing an offence under the *Pedlars Act* of ‘acting as a pedlar without a certificate’, and by 1982 under the *LGMPA* there were penalties for ‘acting without a licence’ for a static pitch (now wrongly referred to as street trading). Providing they act as a pedlar (travelling trader) then the *LGMPA* does not apply. It must be remembered that pedlars of **any goods** are explicitly **not street trading**⁴ for the purposes of street trading legislation. Pedlars cannot be charged with **engaging in street trading** (static trading) if they are travelling trading as a pedlar.

It is clear that local authority licensing officers have no powers over pedlars of foodstuffs under street trading legislation and their only power is to ensure that a pedlar has registered the food business with the appropriate competent authority. Whereas there was once an offence (under the *LGMPA* and in Scotland the *CGSA*) for hawking food, namely victuals, the only current offence under street trading regulation may be that of non-registration with EHD as a food business.

A pedlar of foodstuffs with EHD registration in hand is not lawfully obliged to carry public liability insurance but is a matter of common sense and is considered a low-cost business expense.

Pedlars of foodstuffs acting as such and carrying a valid pedlars certificate and EHD registration provides adequate defence of due diligence⁵ to avoid commissioning an offence.

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⁴ *LGMPA* Schedule 4 Section 1 (2) (a); *LLAA*; *London Local Authorities Act 1990* Part 3 Section 21 (2) (a); *London Local Authorities Act 1994* Section 6 & Schedule 19; *London Local Authorities Act 2004* Section 20 & Schedule 4; *City of Westminster Act 1999* Section 3 (a); and all similar private Acts

⁵ under *LGMPA* Schedule 4 Section 10 (2)

Update - 26 June 2012

- 1 There have been some minor updates in the above text for clarity.
- 2 Early in June 2012 pedlars.info sent BIS (government department responsible for updating street trading and pedlary law) pedlars proposed amendments⁶ to national legislation as a viable alternative to BIS alarming policy to repeal the *Pedlars Act*. Subsequent pedlar research has established that in respect to registration with EHDs there are two categories of foodstuff namely '**high-risk**' and '**low-risk**'. High-risk includes fresh prepared foodstuffs and low-risk includes pre-packaged foodstuffs. Pedlars of low-risk foodstuffs do not require registration with EHDs. Pedlars of high-risk foodstuffs do require registration with EHDs. It is therefore advisable to check with your EHD and obtain some documentation about their considered view of your need for business registration. Such documents will be of use when a pedlar is challenged by street trading or police officers. It is important to inform such officers that they have no jurisdiction over foodstuff trading and that the **Competent Authority** is the EHD who apply the same rules and exemptions to all traders.
- 3 The proposed amendments to *LGMPA* (in Scotland the *CGSA*) and *LLAA* dated 5 June 2012 are herewith updated as follows and form part of the ongoing government consultation with stakeholders regarding legislative amendments:
- i. the means of visits from house to house are ambulant means of trading as distinct from static means of trading,
 - ii. trading at any premises adjoining a street or in any public place including a street,
 - iii. not being restricted by designation of streets for licensed street trading,
 - iv. goods or tools of handicraft being carried on the person or in a carrying device of a pedestrian scale and proportion which is pushed or pulled by the person,
 - v. subject to not remaining in one static position whilst not engaged in continuous trading,
 - vi. not requiring a street trader's licence to trade in the street
 - vii. not requiring a certificate for door to door sales under the value of £35
 - viii. **high-risk fresh foodstuff trading (unlike low-risk prepacked foodstuff trading) requiring registration with a local Environmental Health Department.**
- 4 Further information from the Food Standard Agency⁷ is available on-line.

End of Update 26.06.12

⁶ <http://www.pedlars.info/bis-consultation/109-7-june-2012-pedlars-act-proposed-amendments.html>

⁷ <http://www.food.gov.uk/foodindustry/regulation/hygleg/hygleginfo/foodhygknow/>