

## **BOURNEMOUTH bill – Research Paper into EU Directives regarding Recognised Professions – Pedlary\***

\* source regarding pedlary as recognised profession: Annex A List 1 Point 4

[http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31999L0042&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=31999L0042&model=guichett)

\* source regarding recognition of profession:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0036:EN:HTML>

### Summary:

Under EU Directive/2005/36/EC on "The Recognition of Professional Qualifications" Article 18 (1) states " for the activities in List II of Annex IV, the activity in question must have been previously pursued (a) for five consecutive years on a self-employed basis or as a manager of an undertaking". Annex IV List II 2 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). Pedlars under EU Directive are recognised professionals and as such (being recognised professionals) should not (under Article 5, subsection 1 of Title II Free Provision of Services) be restricted, for any reason relating to professional qualifications, from the free provision of those services in another Member State. Pedlars therefore assert that Parliament should seek recognition of their professional status throughout EU by proposing the adoption of the Pedlars Acts throughout EU, ref Article 63

### Article 63

#### **Transposition**

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 20 October 2007 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

## TITLE I

### **GENERAL PROVISIONS**

#### Article 1

##### **Purpose**

This Directive establishes rules according to which a Member State which makes access to or pursuit of a regulated profession in its territory contingent upon possession of specific professional qualifications (referred to hereinafter as the host Member State) shall recognise professional qualifications obtained in one or more other

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(1) OJ L 78, 26.3.1977, p. 17. Directive as last amended by the 2003 Act of Accession.

(2) OJ L 77, 14.3.1998, p. 36. Directive as amended by the 2003 Act of Accession.

Member States (referred to hereinafter as the home Member State) and which allow the holder of the said qualifications to pursue the same profession there, for access to and pursuit of that profession.

#### Article 2

##### **Scope**

1. This Directive shall apply to all nationals of a Member State wishing to pursue a regulated profession in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualifications, on either a selfemployed or employed basis.

2. Each Member State may permit Member State nationals in possession of evidence of professional qualifications not obtained in a Member State to pursue a regulated profession within the meaning of Article 3(1)(a) on its territory in accordance with its rules. In the case of professions covered by Title III, Chapter III, this initial recognition shall respect the minimum training conditions laid down in that Chapter.

3. Where, for a given regulated profession, other specific arrangements directly related to the recognition of professional qualifications

are established in a separate instrument of Community law, the corresponding provisions of this Directive shall not apply.

#### Article 3

##### Definitions

1. For the purposes of this Directive, the following definitions apply:

(a) 'regulated profession': professional activity or group of professional activities, access to which, the pursuit of which, or one of the modes of pursuit of which is subject, directly or indirectly, by virtue of legislative, regulatory or administrative provisions to the possession of specific professional qualifications; in particular, the use of a professional title limited by legislative, regulatory or administrative provisions to holders of a given professional qualification shall constitute a mode of pursuit. Where the first sentence of this definition does not apply, a profession referred to in paragraph 2 shall be treated as a regulated profession;

(f) 'professionalexperience': the actual and lawful pursuit of the profession concerned in a Member State;

(g) 'adaptation period': the pursuit of a regulated profession in the host Member State under the responsibility of a qualified member of that profession, such period of supervised practice possibly being accompanied by further training. This period of supervised practice shall be the subject of an assessment. The detailed rules governing the adaptation period and its assessment as well as the status of a migrant under supervision shall be laid down by the competent authority in the host Member State.

The status enjoyed in the host Member State by the person undergoing the period of supervised practice, in particular in the matter of right of residence as well as obligations, social rights and benefits, allowances and remuneration, shall be established by the competent authorities in that Member State in accordance with applicable Community law;

(h) 'aptitudetest': a test limited to the professional knowledge of the applicant, made by the competent authorities of the host Member State with the aim of assessing the ability of the applicant to pursue a regulated profession in that Member State. In order to permit this test to be carried out, the competent authorities shall draw up a list of subjects which, on the basis of a comparison of the education and training required in the Member State and that received by the applicant, are not covered by the diploma or other evidence of formal qualifications possessed by the applicant.

The aptitude test must take account of the fact that the applicant is a qualified professional in the home Member State or the Member State from which he comes. It shall cover subjects to be selected from those on the list, knowledge of which is essential in order to be able to pursue the profession in the host Member State. The test may also include knowledge of the professional rules applicable to the activities in question in the host Member State.

The detailed application of the aptitude test and the status, in the host Member State, of the applicant who wishes to prepare himself for the aptitude test in that State shall be determined by the competent authorities in that Member State;

#### Article 4

##### Effects of recognition

1. The recognition of professional qualifications by the host Member State allows the beneficiary to gain access in that Member State to the same profession as that for which he is qualified in the home Member State and to pursue it in the host Member State under the same conditions as its nationals.

2. For the purposes of this Directive, the profession which the

applicant wishes to pursue in the host Member State is the same as that for which he is qualified in his home Member State if the activities covered are comparable.

[Just states rights to pursue professions in other member states under the same conditions as their nationals.](#)

### **Article 13**

#### **Conditions for recognition**

1. If access to or pursuit of a regulated profession in a host Member State is contingent upon possession of specific professional qualifications, the competent authority of that Member State shall permit access to and pursuit of that profession, under the same conditions as apply to its nationals, to applicants possessing the attestation of competence or evidence of formal qualifications required by another Member State in order to gain access to and pursue that profession on its territory.

Attestations of competence or evidence of formal qualifications shall satisfy the following conditions:

- (a) they shall have been issued by a competent authority in a Member State, designated in accordance with the legislative, regulatory or administrative provisions of that Member State;
- (b) they shall attest a level of professional qualification at least equivalent to the level immediately prior to that which is required in the host Member State, as described in Article 11.

2. Access to and pursuit of the profession, as described in paragraph 1, shall also be granted to applicants who have pursued the profession referred to in that paragraph on a full-time basis for two years during the previous 10 years in another Member State which does not regulate that profession, providing they possess one or more attestations of competence or documents providing evidence of formal qualifications.

Attestations of competence and evidence of formal qualifications shall satisfy the following conditions:

- (a) they shall have been issued by a competent authority in a Member State, designated in accordance with the legislative, regulatory or administrative provisions of that Member State;
- (b) they shall attest a level of professional qualification at least equivalent to the level immediately prior to that required in the host Member State, as described in Article 11;
- (c) they shall attest that the holder has been prepared for the pursuit of the profession in question.

So a pedlar may also have only 2 years experience out of ten to be recognised.

But what would happen if an individual did not meet this requirement...?

He.....

#### *Article 14*

#### **Compensation measures**

**1. Article 13 does not preclude the host Member State from requiring the applicant to complete an adaptation period of up to three years or to take an aptitude test if:**

**(a) the duration of the training of which he provides evidence under the terms of Article 13, paragraph 1 or 2, is at least one year shorter than that required by the host Member State;**

(b) the training he has received covers substantially different matters than those covered by the evidence of formal qualifications required in the host Member State;

(c) the regulated profession in the host Member State comprises one or more regulated professional activities which do not exist in the corresponding profession in the applicant's home Member State within the meaning of Article 4(2), and that difference consists in specific training which is required in the host Member State and which covers substantially different matters from those covered by the applicant's attestation of competence or evidence of formal qualifications.

2. If the host Member State makes use of the option provided for in paragraph 1, it must offer the applicant the choice between an adaptation period and an aptitude test.

For example in 1(c) and (2) above a Polish man coming to the UK with no experience of pedlary because they do not have the profession in law yet or the individual lacks experience (two years in ten), then he will need to be given an adaptation peroid and or aptitude test.

WOULD THIS INVOLVE GOVERNMENT TRAINING? It can be seen now this is getting rather complicated for government and consistency/transparency in laws would need to be established in order for this to be workable and fair. Eg explaining all the private bills to the poor soul!!!

It continues:

Where a Member State considers, with respect to a given profession, that it is necessary to derogate from the requirement, set out in the

previous subparagraph, that it give the applicant a choice between an adaptation period and an aptitude test, it shall inform the other Member States and the Commission in advance and provide sufficient justification for the derogation.

If, after receiving all necessary information, the Commission considers that the derogation referred to in the second subparagraph is inappropriate or that it is not in accordance with Community law, it shall, within three months, ask the Member State in question to refrain from taking the envisaged measure. In the absence of a response from the Commission within the abovementioned deadline, the derogation may be applied.

3. By way of derogation from the principle of the right of the

applicant to choose, as laid down in paragraph 2, **for professions**

**whose pursuit requires precise knowledge of national law** and in respect of which the provision of advice and/or assistance concerning national law is an essential and constant aspect of the professional activity, the host Member State may stipulate either an adaptation period or an aptitude test.

[Exactly the point noted before: the profession does require precise knowledge of national law!!!  
THE UK GOVERNMENT IS GOING TO HAVE TO IMPLEMENT SOME POLICY ON THIS?](#)

TO BE NOTED ALSO:

#### **ADMINISTRATIVE COOPERATION AND RESPONSIBILITY FOR IMPLEMENTATION**

*Article 56*

##### **Competent authorities**

1. The competent authorities of the host Member State and of the home Member State shall work in close collaboration and shall provide mutual assistance in order to facilitate application of this Directive. They shall ensure the confidentiality of the information which they exchange.

2. The competent authorities of the host and home Member States shall exchange information regarding disciplinary action or criminal sanctions taken or any other serious, specific circumstances which are likely to have consequences for the pursuit of activities under this Directive, respecting personal data protection legislation provided for in Directives 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement

[UK government is going to have to tell them about the Private Bills in other words?????](#)

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of such data <sup>(1)</sup> and 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) <sup>(2)</sup>.

The home Member State shall examine the veracity of the circumstances and its authorities shall decide on the nature and scope of the investigations which need to be carried out and shall inform the host Member State of the conclusions which it draws from the information available

to it.

3. Each Member State shall, no later than 20 October 2007, designate the authorities and bodies competent to award or receive evidence of formal qualifications and other documents or information, and those competent to receive applications and take the decisions referred to in this Directive, and shall forthwith inform the other Member States and the Commission thereof.

#### HAS THE UK GOVERNMENT done this??

4. Each Member State shall designate a coordinator for the activities of the authorities referred to in paragraph 1 and shall inform the other Member States and the Commission thereof.

The coordinators' remit shall be:

- (a) to promote uniform application of this Directive;
- (b) to collect all the information which is relevant for application of this Directive, such as on the conditions for access to regulated professions in the Member States.

For the purpose of fulfilling the remit described in point (b), the coordinators may solicit the help of the contact points referred to in Article 57.

#### *Article 57*

##### **Contact points**

Each Member State shall designate, no later than 20 October 2007, a contact point whose remit shall be:

- (a) to provide the citizens and contact points of the other Member States with such information as is necessary concerning the recognition of professional qualifications provided for in this Directive, **such as information on the national legislation governing the professions and the pursuit of those professions, including social legislation, and, where appropriate, the rules of ethics;**
- (b) to assist citizens in realising the rights conferred on them by this Directive, in cooperation, where appropriate, with the other contact points and the competent authorities in the host Member State.

At the Commission's request, the contact points shall inform the Commission of the result of enquiries with which they are dealing pursuant to the provisions of point (b) within two months of receiving them.

#### HAS THE UK GOVERNMENT DONE THIS?

#### *Article 58*

##### **Committee procedure**

1. The Commission shall be assisted by a Committee on the recognition of professional qualifications.

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(i) OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003.

(e) OJ L 201, 31.07.2002, p. 37.

2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period provided for in Article 5(6) of Decision 1999/468/EC shall be set at two months.

3. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

#### *Article 59*

##### **Consultation**

The Commission shall ensure the consultation of experts from the professional groups concerned in an appropriate manner in particular

in the context of the work of the committee referred to in Article 58 and shall provide a reasoned report on these consultations to that committee.

This may mean we may be regarded as experts from a professional group and have a voice in Europe now via the Committee on the recognition of professional qualifications - Article 58 above

## TITLE VI OTHER PROVISIONS

### Article 60

#### Reports

1. As from 20 October 2007, Member States shall, every two years, send a report to the Commission on the application of the system. In addition to general observations, the report shall contain a statistical summary of decisions taken and a description of the main problems arising from the application of this Directive.
2. As from 20 October 2007, the Commission shall draw up every five years a report on the implementation of this Directive.

### Article 61

#### Derogation clause

If, for the application of one of the provisions of this Directive, a Member State encounters major difficulties in a particular area, the Commission shall examine those difficulties in collaboration with the Member State concerned.

Where appropriate, the Commission shall decide, in accordance with the procedure referred to in Article 58(2), to permit the Member State in question to derogate from the provision in question for a limited period.

### Article 62

#### Repeal

Directives 77/452/EEC, 77/453/EEC, 78/686/EEC, 78/687/EEC, 78/1026/EEC, 78/1027/EEC, 80/154/EEC, 80/155/EEC, 85/384/EEC, 85/432/EEC, 85/433/EEC, 89/48/EEC, 92/51/EEC, 93/16/EEC and 1999/42/EC are repealed with effect from 20 October 2007. References to the repealed Directives shall be understood as references to this Directive and the acts adopted on the basis of those Directives shall not be affected by the repeal.

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### Article 64

#### Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

### Article 65

#### Addressees

This Directive is addressed to the Member States.

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I hope that included the UK? Can't see any reason why it shouldn't have been.

Researched by Simon Casey 16 June 2009 for [www.pedlars.info](http://www.pedlars.info)  
Researcher's comments/questions in blue text