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Pedlars

I understand that a constituent has recently contacted you about the regulation of pedlars. You asked for an update on the situation following on from the Library standard note on the subject dated June 2012.

Summary

1. Current regulation of pedlars and street traders

As mentioned in my previous note, a pedlar is different to a street trader. Section 3 of the [Pedlars Act 1871](#) defines a pedlar as:

...any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft.

In other words, a pedlar is defined in the Act as an itinerant trader. He travels and trades on foot. However, case law has established that a trader may act as a pedlar even if he is not travelling from town to town on foot.¹ Accordingly, a person who travels from town to town by car and then proceeds to trade from house to house on foot is a pedlar, because in passing along each street he is held to be 'travelling'. The two cases of *Watson v Malloy* and *Watson v Oldrey*, heard together by the Divisional Court, qualified the statutory definition of a pedlar.² The court's decision prevents the pedlar from operating from a pitch – he must move. A pedlar is required to go to his customers.

Currently, a person intending to trade as a pedlar (anywhere in the UK) must apply for a pedlar's certificate from the police³ and must meet the following criteria:

- he must have resided in the police area for the chief officer of police to whom he applies for the certificate for at least one month before his application;⁴

¹ *Sample v Hulme* [1956] 1WLR 1319

² 1988 1 WLR 1026

³ A Pedlar's Certificate is issued by the police under the authority of the Magistracy

⁴ Section 4 of the *Pedlars Act 1871* (as amended)

- be of good character (and in good faith intend to carry on the trade of a pedlar); and
- be above 17 years of age

With a valid certificate, pedlars can trade anywhere in the country; it is the essence of their business that they move from place to place. As an itinerant trader, a pedlar can choose not only when and where he trades but also what products or services he sells.

In contrast, street traders in England and Wales are required to apply for a licence to trade in certain designated areas under Schedule 4 to the [Local Government \(Miscellaneous Provisions\) Act 1982](#) (the LG(MP)A). By designating certain streets as prohibited streets, local authorities' can control where street trading takes place.

A street trader is licensed and regulated by a particular local authority. Unlike a certificated pedlar (who can trade anywhere in the UK), a street trader's licence is not recognised by any other local authority. For the purposes of Schedule 4 a street trading is defined as:

"[...] the selling or exposing or offering for sale of any article (including a living thing) in a street."

A street trader is usually only individually licensed in respect of a particular pitch; a licence may contain conditions as to when and where he/she can trade and the type of goods sold (to prevent unfair competition with rival shop-keepers). Licences are granted at the discretion of the relevant council and street traders are required to pay a fee for their annual trading licence.⁵

It is important to note that certified pedlars are specifically exempt from Schedule 4 of the LG(MP)A 1982.

In Scotland, the [Civic Government \(Scotland\) Act 1982](#) gives local authorities powers to regulate street trading by requiring persons selling or offering to sell goods and services in a public place (whether from a kiosk, vehicle, moveable stall or otherwise) to hold a licence.

2. Proposals to amend the law on pedlary and on street trading

The Government has proposed abolishing the statutory requirement for all pedlars to have a valid certificate. Its recent review of the *Pedlars Acts 1871 and 1881* must be seen in the context of the UK (along with other Member States) being seen to comply with the [European Services Directive 2006/123/EC](#) (the Directive).⁶

The Directive aims to "*eliminate barriers to the freedom of establishment for service providers in the Member States and to the free provision of services between Member States (while maintaining a high quality of services)*".⁷ In effect, the stated aim of the Directive is to make it easier for service businesses (such as pedlars and street traders) to set up or sell their services anywhere in the EU. The Directive was implemented in the UK by the [Provision](#)

⁵ Street trading is lawful in any undesignated streets unless it offends against the provisions of the general law, e.g. obstruction

⁶ OJ No. L376, 27.12.2006, P.36

⁷ Department of Business Innovation and Skills (BIS), '[Street Trading and Pedlary Laws – Compliance with the European Services Directive](#)', November 2012, [online] (accessed 4 December 2012)

of Services Regulations 2009.⁸ Regulation 45 of those Regulations made specific but limited amendments to the *Pedlars Act 1871*.

In November 2009, the UK Government and the Scottish Government jointly consulted on proposals to amend and modernise the legislation governing street trading and pedlary.⁹ This consultation followed research by Durham University.¹⁰ In the Government's published [response](#) to this consultation, it was explained that since the *Provision of Services Regulations 2009* were made the UK Government had revised its view about the scope of the Directive.¹¹ The consensus among EU Member States, including the UK (reached in 2010) was that the retail sale of goods is generally a service activity within the scope of the Directive. This change in interpretation has meant that the UK Government has had to reconsider how legislation containing authorisation schemes (such as those applied to pedlars or street traders) needs to change in order to satisfy the requirements of the Directive. The Government stated its position as follows:

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.

Further, we do not believe pedlars should in general be regulated under other schemes. In other words, the European Services Directive and our preference both suggest we should deregulate pedlary and help pedlars be freer to trade across the UK.

Some elements of the street trader licensing regimes are also not, in our view, compatible with the Directive and will need changing. But we believe the principle of street trader licensing and consent is compatible with the Directive in relation to established traders (i.e. traders established in the UK) and temporary providers (i.e. traders established in another EEA state) where it can be justified for each in accordance with the Directive, but it is not in general compatible with the directive to apply such regimes to pedlars. Because the possible grounds in the Directive for justifying the existence of an authorisation regime are more limited for temporary traders than for established traders, we anticipate that two separate street trading licensing regimes may be required - one for temporary traders and one for all other traders.¹²

A new UK-wide consultation document, '[Street Trading and Pedlary Laws – Compliance with the European Services Directive](#)', with draft regulations, was published in November 2012.¹³

⁸ S.I. 2009/2999

⁹ Department of Business, Innovation and Skills (BIS), '[Street Trading and Pedlary Laws: A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime](#)', 6 November 2009, [online] (accessed 4 December 2012)

¹⁰ '[Street trading and pedlary in Great Britain: a report of research into the application and perception of local authority controls and pedlar legislation](#)', Policy Research Group, St.Chad's College, University of Durham, 2009, [online] (accessed 4 December 2012)

¹¹ Department of Business, Innovation and Skills (BIS), '[Street Trading and Pedlary Laws: A Joint Consultation on Modernising Street Trading and Pedlar Legislation – Government Response](#)', March 2011, [online] (accessed 4 December 2012)

¹² *Ibid*

¹³ Department of Business Innovation and Skills (BIS), '[Street Trading and Pedlary Laws – Compliance with the European Services Directive](#)', November 2012, [online] (accessed 18 December 2013)

An [Impact Assessment](#) of the draft regulations was published on the same day.¹⁴ BIS also published in 2013 an additional [briefing document](#) to assist stakeholders in responding to the proposals outlined in the consultation document.¹⁵ The Government and the Northern Ireland Executive sought views from stakeholders on repeal of the *Pedlars Acts* and also on changes to their respective street trading regimes. In contrast, the Scottish Government only sought views on the repeal of the Pedlars Acts.

Specifically, views were sought on the following proposals:

- Repeal of the UK wide *Pedlars Acts 1871 and 1881*.
- A new, clear and up to date definition of what behaviour constitutes acting as a pedlar for the purposes of the pedlar exemption under the street trading regimes of England, Wales and Northern Ireland.
- Changes to Schedule 4 to the *Local Government (Miscellaneous Provisions) Act 1982* ('LG(MP)A') to ensure compliance with the Services Directive - (the street trading regime of England and Wales and for Northern Ireland).
- Changes to the Northern Ireland (Street Trading) Act 2001 to ensure compliance with the Services Directive.

The consultation ended on 5 April 2013. According to the [Gov.UK website](#), responses are still being considered by the Department for Business, Innovation and Skills (BIS). The Government's response is expected to take the form of decisions made in light of the consultation, a summary of the views expressed and reasons given for decisions finally taken.

Further detailed information on the European Services Directive is set-out below.

The significance of European Services Directive 2006/123/EC on pedlars

The [Directive](#) distinguishes between two categories of 'service provider':

- (i) 'established traders' (i.e. traders established in the UK); and
- (ii) 'temporary traders' (i.e. traders established in another EEA state, but who are exercising the right to provide cross-border services in other Member States)

An 'authorisation scheme' is defined by Article 4(6) of the Directive as:

[...] 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.

In order to make an established or temporary trader subject to an authorisation scheme the requirements of Articles 9 & 16 of the Directive must be met. Specifically, Member States are prohibited from making access to, or the exercise of, a service activity in their territory subject to an authorisation scheme unless the following conditions are satisfied:

¹⁴ Department for Business, Innovation and Skills, '[Street trading and pedlar laws: compliance with the European Services Directive – Impact Assessment](#)', November 2012, [online] (accessed 18 December 2013)

¹⁵ Department for Business, Innovation and Skills, '[Briefing Document - Pedlars Information to Written Questions to her Majesty's Government](#)', BIS/13/737, dated 2013, [online] (accessed 18 December 2013)

- **Non-discrimination** - the authorisation scheme does not discriminate against the provider in question:
- **Necessity** - the need for an authorisation scheme is justified by an overriding reason relating to the public interest (for example, public policy, public security, public safety, public health, protection of consumers, recipients of services and workers, combating fraud, and the protection of the environment);
- **Proportionality** - the objective pursued cannot be attained by means of a less restrictive measure

According to the Government, the current statutory requirement for a person who wishes to act as a pedlar in the UK to apply to the police for a pedlar's certificate is an authorisation scheme for the purposes of the Directive. It must therefore comply with Articles 9 & 16.

Two of the main proposals outlined in the November 2012 consultation document is to repeal the *Pedlars Acts 1871 and 1881* in relation to the whole of the UK¹⁶ and to introduce a new updated definition of a pedlar.

(a) Repeal of *Pedlars Acts 1871 and 1881*

It is the Government's view that retention of the pedlars' certification regime (in respect of either 'established' or 'temporary traders') would not be compatible with the Directive. As the certification scheme is the main purpose of the *Pedlars Acts*, the Acts should be repealed in their entirety.¹⁷

In its consultation document, the Government outlines in detail how it arrived at this view. Under the current pedlars' certification regime, the applicant must have been resident in a police area for at least one month before an application for a pedlar's certificate can be made. This residency requirement is specifically prohibited by Articles 14(1) and 16(1)(a) of the Directive (as it is a discriminatory requirement based directly or indirectly on nationality). A trader from another Member State who wishes to travel to the UK and to trade as a pedlar here (whether he wishes to establish himself here or to trade here temporarily) will be unable to do so for at least a month whilst this restriction remains in place.

In addition, it is argued by the Government that the requirement that the applicant must be of 'good character' is difficult to determine and flawed in practice on the basis that there are no standardised checks in relation to adjudicating 'good character' by the issuing authority. The Government thinks that retention of this requirement cannot be justified under Article 16 in relation to temporary traders, and that it is also very unlikely that its retention can be justified under Article 9 in relation to established traders.

The certification regime also imposes a requirement that an applicant be above 17 years of age. It is the Government's view that retention of this requirement cannot be justified under either Article 9 or 16 of the Directive. Individuals under the age of 17 are not generally restricted from starting up their own business, providing they adhere to the rules governing that particular trade.¹⁸

¹⁶ In this consultation, Scotland are jointly consulting on the repeal of the Pedlars Acts only

¹⁷ Various consequential amendments and repeals will be needed to certain provisions of primary and secondary legislation

¹⁸ [The Children and Young Persons Act 1933](#) contains provisions designed to protect young persons

(b) Introduction of a new updated definition of a pedlar

It is also the Government's view that a new and updated definition of a pedlar should be inserted into the street trading legislation.¹⁹ The effect of creating this new definition would be to continue to protect the rights of 'genuine' pedlars to operate (including those established in other European Economic Area (EEA) States who wish to exercise their freedom to provide services in the UK). The Government's position is outlined in the consultation document as follows:

We have considered proposals made by several pedlars to amend the Pedlars Acts rather than to repeal them. However, [...] we do not think that we can retain the certification scheme (including the 'good character' requirement) consistently with the Directive. 'Genuine' pedlars will be able to continue to trade without the Pedlars Acts being in place, so we see no practical reason for them to remain in force. Without the certification regime, the main significance of the Acts is to provide a definition of pedlary – albeit one which is currently out of date and not very clear – which is of value to the pedlar community as it forms the basis for their exemption from the street trading regime contained in Schedule 4 to the LG(MP)A. We are therefore proposing to formulate a clearer and more modern definition of pedlary for the purposes of that exemption, to enable 'genuine' pedlars to continue to trade.

The Government is aware that some pedlars have an emotional attachment to the Pedlars Acts and see their proposed repeal as a threat to their identity and their position within communities. But it makes no legal difference whatsoever whether the definition of pedlary that is used for the purpose of the pedlar exemption from Schedule 4 to the LG(MP)A is set out in an old Act of Parliament or in Schedule 4 to the LG(MP)A itself (in provisions which are inserted by the proposed Regulations). What matters is the terms of the definition.

[...] the Government is also committed to making the law clearer and more up-to-date. Our view at this stage, therefore, is that the definition of pedlary in the Pedlars Acts should be repealed, and a new and updated definition of pedlary should be inserted into the street trading legislation.

Our view is also that, apart from imposing a barrier to trade which cannot be justified in accordance with the Directive's requirements, the Pedlars Acts place unnecessary burdens on pedlars who should be free to trade with the minimum restrictions and costs placed on them. They are also unnecessarily burdensome on local police forces who are responsible for issuing the pedlar certificates.²⁰

It is the Government's view that following repeal of the *Pedlars Acts*, 'genuine' pedlars should continue to be exempt from Schedule 4 to the LG(MP)A, so that they are free to trade with the minimum number of restrictions.²¹ To this end, it intends to insert into Schedule 4 a new detailed definition of what activity constitutes acting as a pedlar for the purposes of the pedlar exemption contained in paragraph 1(2)(a) of Schedule 4. The stated aim of this new

¹⁹ See paragraph (1)(2)(a) of Schedule 4 to the LG(MP)A and section 2(1)(e) of the [Street Trading Act \(Northern Ireland\) 2001](#)

²⁰ Department of Business Innovation and Skills (BIS), '[Street Trading and Pedlary Laws – Compliance with the European Services Directive](#)', November 2012, [online] 9 accessed 4 December 2012)

²¹ *Ibid*

definition is to make it easier for local authorities to take enforcement action against illegal street traders.

It is proposed that this new definition continues to include a requirement that the pedlar only trades on foot. In addition, a pedlar will be required either:

- (a) to trade by means of visits from house to house; or
- (b) if he trades by other means (i.e. trading with pedestrians while travelling through the streets) or partly by other means (i.e. partly trading with pedestrians while travelling through the streets and partly trading house to house), to comply with various requirements explained below

First, the pedlar must either carry all his goods on his person without any means of support, or all such goods must be carried in or on a receptacle (which may or may not be wheeled) which he pushes or pulls. The combined dimensions of that receptacle together with any articles in or on it must not be more than 2 metres high, 1 metre long, and 1 metre wide. The receptacle must be pushed or pulled by the pedlar since the nature of pedlary is that the pedlar keeps on the move. The Government has decided to limit the size of the receptacle/display used in order to balance the rights of pedlars to trade with the rights of other street users and the need to keep the streets reasonably clear of obstructions.²²

Second, it is proposed that a pedlar should be allowed to remain static in the same location to trade for a maximum of 10 minutes after his arrival there. He should then move on to a location which is at least 50 metres away from the first location, and again he should remain in that second location for no more than 10 minutes. He cannot immediately return to the first location since he cannot return to a location he has previously occupied within 3 hours of leaving that location. Nor can he occupy a location within 50 metres of any location he has occupied during the previous 3 hours. The draft regulations (attached to the consultation document) set out how distance is to be measured for the purposes of the 50 metres minimum distance requirement. The important point to note is that these requirements are intended to keep a pedlar trading while on the move.

However, it is recognised by the Government that a pedlar may be approached by one or more potential customers during the 10 minute period mentioned above but be unable to conclude the transaction with that customer during that period. Similarly, a pedlar may be approached by one or more potential customers while travelling from one location to a location at least 50 metres away. In order to avoid placing unreasonable restrictions on a pedlar's ability to do business, the Government proposes an exception to the above restrictions to enable a pedlar who is approached in this way to remain in his location beyond the 10 minute period or to stop to conclude those transactions. Once all transactions have been concluded (or aborted) the pedlar must continue to move away immediately.

4. What impact will the proposed reforms have on the Private Acts of local authorities?

Some local authorities in England and Wales have introduced their own Private Acts to enable them to regulate pedlary and street trading in a way that they consider best suits their

²² Department of Business Innovation and Skills (BIS), '[Street Trading and Pedlary Laws – Compliance with the European Services Directive](#)', November 2012, [online] 9 accessed 4 December 2012)

local needs. The Government has emphasised the need for local authorities to screen their local street trading legislation against the requirements of the Directive.²³

Whilst acknowledging that proposals contained in the November 2012 consultation document would impact on local authorities, the Government stated that it was open to the idea of giving more effective enforcement powers to local authorities. It stated:

We will look to seek views on the possibility of giving more effective enforcement powers to local authorities in England and Wales in order to help them enforce the reformed street trading and pedlary regime more robustly. We will be working with local authorities to identify the exact challenges that are faced (or potentially could be faced in light of some of our new proposals), in their specific localities. The outcome we would be seeking is a new legal framework which helps local authorities effectively tackle any illegal street traders, whilst respecting the free market provisions of the Directive and defending the business interests of legitimate pedlars and street traders.²⁴

I hope this update is helpful.

²³ This is already a legal obligation under the [Provision of Services Regulations 2009](#)

²⁴ Department of Business Innovation and Skills (BIS), ' [Street Trading and Pedlary Laws – Compliance with the European Services Directive](#)', November 2012, [online] 9accessed 4 December 2012)