

Civic Government (Scotland) Act 1982
Street Trading and Pedlar Laws**Report by Director, Corporate Resources****1 Purpose of Report**

To appraise members about impending changes to the Street Trading and Pedlar Laws; and to seek views on a consultation.

2 Background

On 2 December 2010, the Committee approved submission of a response to a joint consultation in this respect by the Scottish Government in conjunction with The Department for Business Innovation and Skills on modernising Street Trading and Pedlar Legislation. Generally, the Committee supported a change in the legislation.

A further consultation dealing with the repeal of the UK wide Pedlary Acts (and the implications on the licensing of Street Traders) was released on 23 November 2012. A response is due by 15 February 2013.

The consensus now is that the retail sale of goods is generally a service activity within the scope of the European Directive and since pedlars and street traders are engaged in the retail sale of goods, it has been concluded that changes are required to both of these regimes.

2 Consultation

The purpose of the consultation is to ensure that the street trading and pedlary regimes comply fully with the requirements of the Services Directive. The UK Government are seeking views from stakeholders in relation to the repeal of the Pedlars Acts and changes to the respective street trading regimes. The Scottish Government is seeking views in relation to the repeal of the Pedlars Acts.

3 General effect

In the consultation documents, the view is expressed that the requirements of Articles 9 and 16 of the Directive are not met in relation to the certification regime contained in the Pedlars Acts, and therefore the repeal of the Pedlars Acts 1871 and 1881 in relation to the whole of the UK is appropriate, including a repeal of the current definition of “pedlar” contained in the Pedlars Act 1871. Instead, it is proposed that new, more precise and up-to-date definition of what behaviour constitutes acting as a pedlar be inserted into the pedlar

exemption from the relevant street trading regimes. The effect of inserting 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 repeal of the Pedlars Acts will have effect in Scotland. As a result of the repeal, consequential amendments will be necessary to provisions of other Scottish legislation (i.e. those which refer to the Pedlars Acts or to pedlars’ certificates), to ensure that the legislation remains workable.

Pedlar activities may therefore be regulated under the street trading regime operated under the Civic Government (Scotland) Act 1982. It would be for local licensing authorities to determine the extent to which pedlars are regulated in a particular area. It will also be for licensing authorities to ensure compliance with the Services Directive by ensuring that any decision to licence pedlary is supported by evidence, proportionate and justified by the public interest.

4 Application

The consultation generally refers to the impact on England & Wales but any changes may impact on Scotland & Northern Ireland. In the light of the response to this consultation, the UK and Scottish Governments will explore fully with the devolved administrations the implications for the regulation of street trading within the respective jurisdictions.

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. Currently, licences are not required for any activity in respect of which a pedlar’s certificate has been granted.

5 Consultation

The Police have been consulted and have yet to respond.

6 Conclusions

The Pedlars Acts 1871 and 1881 are outdated and need modernising. Research commissioned by BIS from Durham University showed that many of the problems encountered were caused by illegal/rogue pedlars rather than those with licences.

It is perceived that pedlary in Midlothian does not present a significant problem. Street Traders are licensed, the activity is regulated and there are no real problems.

The repeal / replacement / amendment of both sets of the Pedlars’ Acts may make the different elements fit better.

For its part, the Scottish Government are not proposing any further amendments. The position for Scotland will therefore be that Pedlar activities will fall into existing street trading resolutions as the exemption for Pedlars will disappear.

The Scottish Government Officials advise that the issue will be for licensing authorities to look at their local resolutions and determine whether they actually *want* to licence the activities that will fall into street trading by default once the exemption is gone – and whether they have evidence to support that approach.

One of the reasons for repeal is that there is no evidence to support wholesale regulation of pedlar activity (with evidence being required to justify the regime under the services directive). In England and Wales an alternative structure is being put in place for providing control but with some large exemptions for people who 'trade as they travel' - for example by allowing traders who don't stay in one place for more than ten minutes to avoid regulation. The view of the Scottish Government is that the '82 Act offers enough flexibility to allow licensing authorities in Scotland to achieve the same end of proportionate, evidence backed regulation. A blanket approach of licensing all pedlar activity may be hard to justify under the services directive. Therefore, for example, the City Councils, may want to licence pedlar activity around football grounds and in the city centre but not licence door to door pedlary. In the rural areas, it may be the door to door pedlary that causes concern. However, currently, there is no evidence to back this up.

7 Recommendation

It is recommended that the Committee:-

- a) note the report and that in the event that the repeals are effected, a further report will be submitted to the Committee in due course;
- (b) support the repeal of the Pedlars' Acts and provide any comments; and
- (c) remit submission of a response to the Director, in consultation with the Chair.

27 November 2012

Contact Person:	R G Atack	Tel No: 0131 271 3161
Background Papers:	File: CG10.23 (RGA/GL)	