

**REPORT TO:** Licensing Sub-Committee

**MEETING DATE:** 14 February 2013

**BY:** Executive Director (Support Services)

**SUBJECT:** Consultation on repeal of Pedlars Acts

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## **1 PURPOSE**

- 1.1 To advise the Sub-Committee of the issues raised by the ongoing Consultation on the proposed repeal of the Pedlars Acts and the proposed response on behalf of the Council.

## **2 RECOMMENDATIONS**

- 2.1 That the Sub-Committee consider the terms of the proposed response to the Consultation laid out at paragraphs 3.8 and 3.9 below and authorise the Corporate Legal Advisor to issue same.

## **3 BACKGROUND**

- 3.1 In November 2012, a Consultation was launched jointly by the UK Government, the Scottish Government and the Northern Irish Assembly, on proposals to repeal the Pedlars Acts 1871 and 1881, with consequent changes to licensing relative to Street Trading.
- 3.2 The proposals are being made with a view to achieving compliance with the European Services Directive 2006/123/EC. The Directive is designed to make it easier for businesses to set up or sell their services anywhere in the EU. Government is of the view that the authorisation scheme contained within the Pedlars Acts is incompatible with the requirements of the Directive.
- 3.3 In terms of the Directive, authorisation schemes must be justified in the public interest, and must not discriminate against the provider. In order to obtain a certificate under the Pedlars Acts, a trader must have resided in the area where he intends to trade for one month prior to applying, be of good character, and be over the age of 17. The residence requirement is a direct breach of the terms of the Directive as it discriminates against non-local traders. The age limit is also considered to be discriminatory. There is no clear test for establishing "good character".

- 3.4 For these reasons, Government is of the view that the Pedlars Acts are no longer fit for purpose and so should be repealed outright. Doing so would result in an amendment to Section 39 of the Civic Government (Scotland) Act 1982, which covers Street Traders licences. There are a number of exemptions from the need to obtain a Section 39 licence. One of these is in sub-paragraph (3) (d)- “any activity in respect of which a certificate under the Pedlars Act 1871 has been granted”. The proposed repeals would include the repeal of this exemption.
- 3.5 Pedlars’ certificates are issued by the Police, not the Council. The direct result of the repeal of this exemption would be that pedlars may find themselves requiring to obtain a street traders licence under Section 39 of the 1982 Act - assuming that they otherwise fall within the ambit of that section. It would appear that in many cases they will not - see paragraph 3.9 below.
- 3.6 For Scotland, the ambit of the Consultation is in fairly short compass. There are only four questions. One of these is aimed solely at the Police, and another is aimed solely at persons carrying on the business of a pedlar. The two remaining questions are:- **(1) Do you agree with the proposed repeal of the Pedlars Acts 1871 and 1881 UK-wide? (2) Do you consider that repeal would have an impact on any other organisation, individual or group? If so, please provide details of that organisation etc and what you consider the impacts on them to be.**
- 3.7 The Consultation period closes on 15 February, so that there will effectively be no further time to consider the issues following the meeting of the Sub-Committee. It is proposed that the response for the Council be along the lines in the following paragraphs.
- 3.8 (1) Yes. It is clear that legislation requires to comply with the European Services Directive. The Pedlars Acts are of considerable age and are clearly not best designed for the business practices of the 21<sup>st</sup> Century. Amending the Acts in order to make them compliant with the Directive would in all likelihood be so complex as to virtually re-enact them in a different form. Repeal therefore seems to be the most sensible option.
- 3.9 (2) It is noted that the proposal in England include amendments to the Legislation governing Street Trading so as to provide a new definition of “Pedlar” for that purpose. No similar proposal is made for Scotland. The only change in Scotland would be the repeal of Section 39(3) (d) of the Civic Government (Scotland) Act 1982, which is the exemption for those persons who hold a certificate under the Pedlars Act. This would appear to be a lost opportunity and potentially problematic.

Paragraph 1.138 of the Consultation suggests that pedlar activities may therefore be regulated under the 1982 Act and that it would be for Local Authorities to determine the extent to which pedlars are regulated in their area. This is, of course, on the assumption that the activities of the pedlars otherwise fall within the description of “street trading”. Section 39 covers activities carried out in a “public place”. However, the nature of

pedlary in its current form is, generally speaking, that of door-to-door travelling salespersons. The selling or offering of services are therefore likely in many cases NOT to be taking place in a public place, but in the private property of the persons they call on.

It therefore appears possible that a significant proportion of the activities currently regulated by certification under the Pedlars Acts will no longer be subject to any regulation, given that the activities will not fall within the statutory definition of "Street Trading" unless that is amended accordingly, or unless a new discretionary licensing provision for pedlary is introduced under section 44 of the 1982 Act by Scottish Government.

It is suggested that this matter requires to be considered with a view to closing the potential gap which repeal of the Pedlars Acts could otherwise cause as matters are currently structured for Scotland.

#### **4 POLICY IMPLICATIONS**

- 4.1 None - if primary legislation is changed, the Licensing Authority and licence holders will require to adapt to the new position.

#### **5 EQUALITIES IMPACT ASSESSMENT**

- 5.1 This report is not applicable to the well being of equalities groups and an Equalities Impact Assessment is not required.

#### **6 RESOURCE IMPLICATIONS**

- 6.1 Financial – There could, arguably, be a slight increase in the number of Street Trader Licences issued and fee income connected therewith.
- 6.2 Personnel - None
- 6.3 Other - None

#### **7 BACKGROUND PAPERS**

- 7.1 Street Trading and Pedlary Laws- Compliance with the European Services Directive- Joint Consultation November 2012

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