

**REPORT OF**  
**THE SECRETARY OF STATE**  
**FOR**  
**BUSINESS, INNOVATION & SKILLS (BIS)**  
**ON THE**  
**PROMOTERS' PROPOSED DRAFT AMENDMENTS**  
**TO**  
**CANTERBURY CITY COUNCIL BILL**  
**LEEDS CITY COUNCIL BILL**  
**NOTTINGHAM CITY COUNCIL BILL**  
**AND**  
**READING BOROUGH COUNCIL BILL**

1. BIS submitted a Report to the Committee on 19 November 2011 setting out BIS's concerns about the compatibility of clauses 4 and 5 of each of the above Bills with the Services Directive ("SD").
2. The Promoters of the Bills have proposed draft amendments which are intended to address these concerns. The Committee has requested that BIS assist the Committee by providing a further written Report to the Committee setting out whether BIS is of the view that the draft amendments adequately address BIS's concerns. This is that Report.
3. The draft amendments which are referred to in this Report are those which were sent to BIS on the Promoters' behalf on 4<sup>th</sup> November 2011. (They contain several revisions to the draft amendments the Promoters provided at the Committee session on 3<sup>rd</sup> November 2011.) BIS has also considered the Note which was provided by the Promoters on 3<sup>rd</sup> November 2011, explaining the effect of the draft amendments. BIS is grateful for the explanation contained in that Note.
4. In BIS's view, if the Bills are amended in accordance with the proposed amendments, this will probably address the compatibility concerns BIS had

expressed in its previous Report to the Committee. However, in the spirit of attempting to assist the Committee with its consideration of the Bills, BIS sets out below various issues which the Committee may wish to consider further and which arise as a result of the SD and/or the Provision of Services Regulations 2009 (S.I. 2009/2999) (“the PSR”).

5. BIS would like to emphasise that this Report and the previous Report submitted by BIS to the Committee can do no more than to set out BIS’s views on the legal issues, based on our limited understanding of the reality of the urban environment for street trading and pedlary in the four cities concerned. Ultimately, of course, definitive views on the legal issues can only be given by the Courts.

#### **Clause 4 of each Bill (provision of services)**

6. The proposed amendments will have the effect that the street trading licensing regime contained in Schedule 4 to the Local Government (Miscellaneous Provisions) Act 1982 (“Schedule 4”) will not be extended to cover itinerant traders supplying services in the street for gain or reward. Accordingly, the proposed amendments address the concerns BIS had expressed in relation to Clause 4.
7. However, BIS feels it important to point out that the proposed amendments go beyond what is necessary to address BIS’s concerns about Clause 4. This is because the proposed amendments will also have the effect that the Schedule 4 regime will not be extended to cover static street traders supplying services for gain or reward. BIS had not expressed concerns about the extension of the regime to this category of trader since, in BIS’s view, the reasons for needing to regulate static street traders supplying services are likely to be identical or very similar to the reasons for needing to regulate static street traders selling goods.

#### **Clause 5 of each Bill (pedlars)**

8. BIS is of the view that the proposed amendments to Clause 5 address the concerns BIS had expressed in relation to Clause 5.
9. The effect of the new proposed Clause 5 is that a pedlar using a trolley which exceeds the dimensions specified in the proposed new paragraph 1(2B) of Schedule 4 will not automatically need to obtain a street trading licence/consent when trading in a licence/consent street. He will only need to do so if either-
  - (a) the trolley size brings him outside of the definition of a pedlar under the principles set out in the relevant case law; or
  - (b) although the trolley size does not bring him outside the case law definition of a pedlar, the street in question falls within an area which has been designated by the Council under the proposed new Clause 5(7).

10. The Council will be obliged to exercise the designation power in the new proposed Clause 5(7) compatibly with Articles 9 and 16 of the SD, by virtue of regulations 14 and 24 of the PSR (which implement Articles 9 and 16 respectively). (This is because a designation will have the effect of making a pedlar whose trolley exceeds the specified dimensions (but which is within the case law limits) subject to the Schedule 4 regime.)
11. In BIS's view, therefore, the maximum trolley dimensions specified in the proposed new paragraph 1(2B) of Schedule 4 will not give rise to SD compatibility concerns. BIS would simply note that, the more restrictive the specified maximum dimensions are, the more difficult it will be for the Council to designate an area under the proposed new Clause 5(7). The Committee may therefore wish to consider whether it would be preferable to substitute greater specified dimensions for trolley size in the proposed new paragraph 1(2B) of Schedule 4.
12. Similarly, BIS notes the restriction in the proposed new paragraph 1(2A)(b)(ii) of Schedule 4 that the items used for any purpose connected with the trading are "not displayed for sale in or on" the trolley. The Committee may wish to consider whether it might be preferable for the Bills to specify the maximum dimensions of the trolley combined with any display of items for sale. (BIS also wonders why a Council might object to items being displayed for sale entirely within a transparent trolley which did not exceed the maximum specified trolley dimensions. Surely it is space which is the concern.) Again, the more restrictive the requirements imposed by the Bills, the more difficult it will be for a Council to make a designation under the proposed new Clause 5(7). So the Committee may wish to consider further the nature of the restrictions in the proposed new paragraph 1(2A)(b)(ii) of Schedule 4.

signed by

Graham Branton  
Senior Civil Servant  
Department for Business, Innovation and Skills  
Consumer and Competition Policy  
1 Victoria Street  
London  
SW1 OET

8 November 2011