



ARTICLE NO: 1A

**LICENSING & APPEALS
COMMITTEE**

**MEMBERS UPDATE 2013/14
ISSUE: 2**

Article of: Assistant Director Community Services

Relevant Managing Director: Managing Director (People and Places)

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**SUBJECT: CONSULTATION ON PROPOSED CHANGES TO THE PROVISION OF
SERVICES REGULATIONS 2009: NATIONAL APPLICABILITY OF LICENCES**

Wards affected: Borough wide

1.0 PURPOSE OF ARTICLE

- 1.1 To provide Members with the response submitted to the Government Department for Business Innovation and Skills consultation regarding proposed changes to the Provision of Services Regulations 2009: national applicability of licences.
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2.0 BACKGROUND

- 2.1 The EU Services Directive 2006/123/EC (the Directive) was introduced principally to make it easier for service providers to sell their services anywhere in Europe, whether by establishing premises or operating temporarily across national borders. EU Member States were required to implement the Directive by 28 December 2009. In the UK, the Directive was brought into force by the Provision of Services Regulations 2009 (the Regulations). The Government Department for Business Innovation and Skills (BIS) has been principally responsible for the implementation of the Regulations in the UK.
- 2.2 However, the European Commission (the Commission) has recently expressed its concern over a potential violation by the UK of the Directive in the area of national applicability of authorisations or licences to provide services. The Commission is concerned that the Regulations make no presumption that a licence issued by a competent authority whose functions relate only to part of the UK (such as England, or Scotland) will apply throughout the UK, and that this breaches Article 10(4) of the Directive. The Government believes that the Commission's concerns regarding this issue may be justified.

2.3 As a result, BIS consulted on a proposal to amend the Regulations throughout the UK. The aim of the amendments were to require that licences apply, and are recognised nationwide (including licences issued by competent authorities whose functions relate to only part of the UK), unless there are good policy reasons otherwise.

2.4 The consultation ran from 8 February 2013 to 8 March 2013.

3.0 CURRENT POSITION

3.1 Given the short consultation period, the Council response to the consultation was made in accordance with the agreed Council protocol on consultations. Accordingly, an email was sent to all Members and Directorate Service Heads on 22 February 2013.

3.2 The consultation proposed to allow certain “personal” licences to be valid across the UK, instead of just within the operational boundary of the Authority that issued them - unless an exception exists in law where there is a “good policy reason”. To ensure some control of licences across the UK, the proposals would also require licence holders to register with the relevant local authority in which they intend to operate.

3.3 Within West Lancashire, the proposals apply to:

- Street Trading Consents
- Scrap Metal Dealers
- Special Treatments (i.e. skin piercing, tattooists, acupuncture)

The proposals do not include:

- Licences for taxi drivers, vehicles or operators
- Any licence granted in respect of a specific premises or related to such premises

4.0 ISSUES

4.1 The comments received from Members were incorporated into a draft response that was submitted to the Portfolio Holder for Health, Leisure and Community Safety on 6 March 2013. The formal Council response was submitted to BIS on 8 March 2013.

4.2 There were 6 key questions detailed in the consultation, only two of which are relevant to Council services. The response that was submitted to BIS in response to these two questions is attached at Appendix 1 to this report.

5.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY

5.1 There are no significant sustainability impacts associated with this article at this time and, in particular, no significant impact on crime and disorder. The article has no significant links with the Sustainable Community Strategy.

6.0 FINANCIAL AND RESOURCE IMPLICATIONS

6.1 There are no significant financial or resource implications arising from this article at this time.

7.0 RISK ASSESSMENT

7.1 This item is for information only and makes no recommendations. It therefore does not require a formal risk assessment and no changes have been made to risk registers as a result of this article.

Background Documents

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Article.

Equality Impact Assessment

This article is for information only and does not have any direct impact on members of the public, employees, elected members and/ or stakeholders. Therefore no Equality Impact Assessment is required.

Appendices

Appendix 1: Consultation response to the Department for Business Innovation and Skills.

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Q. Do you foresee any unintended consequences resulting from this approach to national applicability? If so, please provide details.

Our concerns relate to licences / permissions for street trading, scrap metal dealer and special treatments. There is a need to clarify the responsibility for taking legal action. The consultation doesn't explicitly state that the originating authority is notified upon registration in another authority, but it does say that the originating authority is responsible for any complaints. It should be clarified whether the originating authority takes any enforcement action or the registering authority would take legal action and pass this information on to the originating authority. The originating authority would obviously have no jurisdiction in the registering authority with regard to such licences.

Additionally, given the recent BIS consultation on changes to pedlar / street trading law, we have concerns that the national applicability of licences was not covered, or alluded to, in street trading consultation. We have concerns that the national applicability of street trading licences could effectively introduce 'pedlar type' licence (even though the current Government proposals are to repeal existing pedlar legislation) allowing a person to obtain a licence anywhere in England and Wales and trade where they wish.

Q. Can you provide a list of personal licences where national applicability would be inappropriate? Please provide reasons and/or evidence.

Our concerns relate to licences / permissions for street trading, scrap metal dealer and special treatments. We have concerns that the consultation document does not attempt to identify the licences likely to be affected. Numerous local authorities have very specific controls in respect of such permissions. For example, street trading requirements are tailored to local circumstances and cannot be replicated nationally. Therefore, as national licence applicability is required by the Services Directive, guidance on the consistency of application and enforcement would be welcomed to encourage a consistent approach between local authorities. This would help to avoid applicants taking advantage by routinely obtaining permissions from a local authority with less onerous licensing requirements and using these permissions within the boundary of another local authority with more stringent requirements.