

Responses to BIS and Scottish Government Consultation on Modernising Street Trading and Pedlars Legislation – Pedlars' responses A to N

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PETER ASTON

(As this response contains an allegation about a Council Enforcement official BIS has redacted that person's name and related details which might otherwise identify them)

From: Pedlars Admin
To: Street Trading and Pedlary Research
Cc: peter aston
Sent: 09/02/2010 at 12:37
Received: 09/02/2010 at 12:40
Subject: reply to URN09/1074 peter aston

Sirs
STAKEHOLDER REPLY URN09/1074
please publish this email submission on behalf of peter aston >

sincerely
Robert
pedlars.admin

Begin forwarded message:

> From: Pedlars Admin
> Date: 1 February 2010 10:00:13 GMT
> To: nicholas.brain@n-somerset.gov.uk
> Subject: your ref: High Street Pedlars
>
> Nicholas Brain
> Chief Solicitor
> North Somerset District Council
> Weston-super-Mare
>
> Sir
>
> I draw your attention to <http://www.pedlars.info> which provides
> information as a resource centre for regulators and regulated.
>
> It has come to our attention that a licensing officer is
> misleading and harassing law abiding citizens in Weston-super-Mare
> and we ask that you bring appropriate disciplinary action and
> confirm that no further threats or intimidation will occur.
> As evidence we attach at the bottom of this email a communication
> that has been sent by your officer.
>
> You will be aware of the legislation for practitioners of pedlary
> and if not you will find reference on the website. You will also
> find reference to significant volume of case law that may assist
> licensing officers training programme.
>
> The said officer opinion is simply wrong in the following statements:
> point 2: "do not trade as you travel"
> point 3: "do not travel from town to town"
> "or remain within the borough"
> "or return to the borough on a daily basis"
> point 4: "you cannot remain stationary or stand to trade and/or
> pause when not effecting sales"
> "this is legislation under the Pedlars Act"
> "You are only allowed one sweep"
> "you cannot walk up and down High Street continually
> or return to it within 24 hrs"
>
> This information is being sent to BIS as part of a current
> consultation to indicate the low-level of understanding of
> legislation and the lack of any code of professional conduct by
> officers who bully and intimidate.
>

> yours faithfully
>
> R Campbell-Lloyd
> Roll B Parliamentary Agent
> admin at pedlars.info
>
> 22 April 2009
> Mr Aston
> I have replied to you on similar matters before.
> The legislation regarding Pedlars has not changed.
> The piece of paper you signed and were given a copy of explains what
> a Pedlar can and cannot do - it is not signed so that you can sell
> your goods in High Street. For your information;
> 1. A Pedlar has to possess a valid Pedlars Certificate.
> 2. Do not trade as you travel.
> 3. Do not travel from town to town or remain within the borough or
> return to the borough on a daily basis.
> 4. You go to customers rather than allowing them to come to you
> and you cannot set up, pitch remain stationary or stand to trade and/
> or pause when not effecting sales
> This is legislation under The Pedlars Act.
> The letter you were given explains this fully and in Weston we have
> looked at a stated case regarding Pedlars where remaining still for
> 20 minutes was upheld as Street Trading and a successful prosecution
> was brought.
> You are only allowed one sweep of the High Street/any street and
> take a reasonable time to complete this, walking extremely slowly
> will not be looked on favourably - you cannot walk up and down High
> Street continually or return to it within 24 hrs.
> The Town Centre Partnership assist in the policing of the High
> Street in Weston and issue these letters as a matter of course. If
> you or other Pedlars disregard the contents of this letter after it
> has been issued then the Police /Licensing Officers may well report
> you/others for illegal Street Trading and seize all goods, which may
> if prosecution follows, be destroyed.
> I hope this clarifies the matter for you.
> Regards

> Licensing Officer

ANDREW CARTER

Dear Sirs,

Please find attached a file with my reply to the consultation.

Yours faithfully,

Mr Andrew Carter

Mr A D Carter

RESPONSE TO BIS CONSULTATION ON STREET TRADING AND PEDLARY

INTRODUCTION

It is with reluctance and apprehension that I feel in participating in this consultation questionnaire. The questions are loaded, the document is factually incorrect in law, and is nothing more than a local authority wish list formatted in ‘the Governments preferred option’ I will however give my answers in the hope that quality of replies over quantity will carry some weight.

I have already drawn to your attention how many pedlars find the document difficult to understand, and being that most pedlars are ordinary simple folk who choose their lifestyle in order to be alleviated from buearocracy and regulation, I will be very surprised if you get a response from even 1% of certified pedlars in the UK. Opposed to that are the 400 plus local authorities, hundreds of Town Centre managers, Trading Standards departments, Chambers of Trade and Commerce, Local Government Associations and a raft of other bodies who would dearly love to eliminate pedlars from UK streets. How do you intend to draw fair and balanced conclusions given the obvious weight of responses you are going to receive that direct towards options that would make being a pedlar very difficult or almost impossible?

During our meeting with you last December you stressed you did not wish to eliminate pedlars and conceded they had a part to play in a modern trading society. I can therefore only hope you attach more weight to the few responses you are going to receive from pedlars as opposed to the predictable ones from the many other stakeholders you have contacted in this consultation.

QUESTION 1

ANSWER: NO

You seem to be using the terms definition and clarification in one breath, there is a difference between the two. Clarification has been the issue in many High Court cases a full list of which you have been sent and are now aware of. From these case law has been formulated which certainly clarifies what a pedlar is permitted or not permitted to do. Any clarification if needed can be as per the Private Legislation currently going through Parliament incorporated through amendments to the Local Government (MP) Act taking into consideration case law. This Act is adoptive and local authorities can choose whether to adopt the updated LGMP Act. As you are aware we are petitioning the current batch of Private Bills and oppose those that have received Royal Assent

With regards to the definition of a pedlar there has never been any dispute or misunderstanding regarding what is a pedlar. The Pedlars Acts may well be over 100

years old, but many of our core Acts that govern how we live today are much older than this. The recent High Court cases have centred on what a pedlar may or may not do to avoid being prosecuted for street trading, not the definition of a pedlar itself. The Pedlars Acts may well use some phrases that sound dated or include some trades that would not be seen today, but the core activities remain relevant. The statement “Travels and trades on foot and goes from town to town or to other mens houses, carrying to sell or exposing for sale” defines most clearly how most modern day pedlars work today. The term “without horse or other beast bearing or drawing burden”, has been universally understood to mean, without locomotion and with ones own effort in carrying their goods as a pedestrian on their persons or by means of assistance using a small appendage.

The Pedlars Acts therefore do not need to be altered because of their definition. The definition of a pedlar is as applicable today as when the Acts were first introduced.

QUESTION 2

The list isn't worth the paper it is written on! As stated case law has stated what is lawful for a pedlar to do. There is only one part of this list that is correct in law, and that is “Must be a pedestrian”. I suggest case law is referred to when compiling a list for clarification purposes.

QUESTION 3

ANSWER NO:

The definition as previously stated is not in need of change but permissible activities or clarification can be incorporated by amendments to the LGMPA as ruled by the Opposed Bill Committee on the Bournemouth and Manchester Bills where they ruled the size of a trolley must be no bigger than 1 cubic metre. This ruling considered case law (Shepway vs Vincent) and put an exact size on the up till then undefined size of an allowable appendage. I am not against the trolley or appendage size being restricted , but argue that as with the Private Bills that this applies to the same method can be used to add clarification under the LGMPA by incorporating amendments.

QUESTION 4

Yes look at all case laws to fully understand the allowable activities of a pedlar. The definition of a pedlar is fit for purpose, any requirements that give clarity can be incorporated into the LGMPA through amendments.

QUESTION 5

ANSWER YES:

We have long argued that a national database with more stringent checks and criteria for obtaining a certificate is something we agree to. A standard certificate for all of the UK with a photo and other details that can be verified eg. A unique certificate number that can be verified from a central database would eliminate all ambiguity with regards to authenticity. The Police have a PNC system and a department within them or the Home Office would be ideally suited to carry out this task. I understand the current cost of 12.25 pounds would have to change and an increased cost that reflected these changes would be acceptable. It has to be borne in mind pedlars have to renew their certificates annually and the cost of implementing this system would soon be recovered.

With regards to fixed penalty notices I am in the main against these and do not support better verification for this purpose.

QUESTION 6

ANSWER NO:

As a requirement to obtaining a certificate in addition to the list, proof of eligibility to work in the UK on a full time basis should be included, and this can be achieved by either showing a birth certificate, national passport (This will show either a work permit/visa or if the person was an EU national), or other proof of entitlement to work in the UK. The applicant should also show his or her Tax Reference number demonstrating they intend to work legally. This information along with the applicants National Insurance number can be stored in the centralized system and need not be shown on the certificate. The certificate itself should show, name, address, age, certificate number, a photograph, expiry date, and where the application was made. All other relevant information can be stored in a centralized system. It is my strong belief that this improved application procedure will result in a small reduction in applications but a much larger reduction in the numbers of alleged breaches of street trading laws.

QUESTION 7

ANSWER YES:

I have given my response in answers to question 5

QUESTION 8

ANSWER NO:

In addition to the suggested list, I suggest the following;

Visa/work permit number or proof of entitlement to work
Tax Reference number
Height
Eye colour
Country of birth

QUESTION 9

BIS reasoning for the removal of pedlar service providers from the Pedlars Act is that it is because of a services directive from Brussels You say it would be less burdensome for these type of traders, but without a pedlars certificate their protection under such a certificate is removed. As a pedlar you have “lawful excuse” with regards to obstruction of the highway. Can you therefore show how service providers working on the highway can trade lawfully seeing that they no longer enjoy the protection of their pedlar certificates?

QUESTION 10

ANSWER NO:

Your proposed term “by reason of misconduct or other sufficient reason”, is loose, open to interpretation, and would be difficult to define in law should an appeal be necessary. Misconduct—such a loose term, could mean late for work, speeding, parking illegally, sticking two fingers up at a camera, oh so the list goes on. Likewise “other sufficient reason” maybe your hairs too long, or you wear the wrong colour trousers etc.etc. The present requirement of the Pedlars Act “of good character” is something the Police currently look at and usually involves criminal record checks. This is evidence to an applicants suitability. If a centralized system is introduced any checks would be nationwide and the Police are best placed to carry out those checks. Due to the nature of Pedlary, where a pedlar is interacting with the public and is involved with the supply of goods or services perhaps any unspent convictions for “serious crimes of dishonesty” could be used to determine the applicants suitability.

If the applicant fails the above checks then a certificate can refused subject to the right of appeal through the courts. It must be added persons applying for a street trading licence do not always have criminal record checks carried out by the local authorities, and any person can open a shop no matter what previous convictions they have, subject to no licensing requirements being needed for the type of retail they intend to operate.

QUESTION 11

ANSWER NO:

Your point that different police authorities have varying forms of checking a persons suitability would not exist if a centralized issuing body were charged with the checks, and as stated in my answer to question 10 the proposed criteria is open to abuse.

QUESTION 12

ANSWER NO:

What a ridiculous proposal from a pedlars perspective. Would you leave a fox to guard the chickens, or put the Ku Klux Klan in charge of race relations? Its as simple as that as far as pedlars are concerned. You state “we do not currently consider these concerns to be sufficient reasons not to transfer responsibility”---why not? If you are as independent and undecided as you claim, why does your department take this view? In all my years as trading as a pedlar I have yet to come across a local authority that welcomes pedlars. They resent not having control and revenue from us and to give them the responsibility to issue our certificates would be a death warrant for pedlars. Emotive terminology I know but we are in the real world as pedlars and to a man do not want the local authorities to have any responsibility at all with regards to the issuing of our certificates.

You state the police are not responsible for issuing any other form of trading licences. Correct me if I am wrong but who has the say whether liquor licences are issued albeit through the magistrates? The Police have the dedicated resources to verify a persons suitability, not local authorities. A reflective increase in the cost of a certificate could well provide resources to the police enabling them to finance the delivering their other objectives.

QUESTION 13

ANSWER NO:

If legislation is altered as per your suggestion ie.”by reason of misconduct or other sufficient reason” it would not ensure a fair and non-discriminatory regime as my replies to question 10 and 11. If the refusal is based on convictions as per my reply to question 10 and appeals can be heard through the judiciary then I would be inclined to answer yes.

QUESTION 14

There are over 400 local authorities in the UK compared to I believe around 46 police forces. The suggestion of a National Database with the police retaining the responsibility of issuing certificates is my preferred option. The Pedlars Act today is

as relevant as when it was introduced as per my reply to question 1, and is good law and safeguards both pedlars and the public. Pedlars although being at the smaller end of the trading scale have to meet annually quite stringent criteria, far more than most other forms of traders.

QUESTION 15

ANSWER NO:

The Pedlars Act is a good Act and there is no need to replace it. It can however be altered to incorporate a National Database system which is centralized and continues to operate by the Police or Home Office, with the criteria of “good character” drafted into police guidelines as per my reply to question 10 with regards to the issuing of certificates.

QUESTION 16

ANSWER NO:

The Pedlars Acts are for pedlars.

QUESTION 17

One of the regular complaints local authorities make is the inability to enforce consumer protection or trace alleged offenders. The Pedlars certificate gives protection to both pedlars and the public and for traders to be allowed to trade in the manner of a pedlar with no certification requirements would be a green light for rogues and criminals to be free to operate on the street . Why do you think the Pedlars Acts were introduced? Pedlars do not sell shoddy goods or are not fly by night traders and would not want to see their certificates removed to facilitate the removal of the Pedlars Acts. With regards to local authorities exercising restrictions I will answer this in question 25.

QUESTION 18

ANSWER: Option A

QUESTION 19

ANSWER NO:

The department uses a figure of 7000 pounds as a typical cost for a prosecution. When asked for evidence as to how this figure was arrived at, it was stated as a figure quoted verbally by a town centre manager during the Trading Standards Institute Conference in Brighton in July of last year. This figure cannot be substantiated with evidence and therefore the entire basis of the argument for FPNs or seizure is flawed. You state a ratio of 10 to 1 was found to be the ratio of costs outweighed in favour of pedlars. Perhaps an increase in fines through the courts could alleviate this. Fixed penalty notices are issued for traffic offences, dropping litter, and dog fouling, but a person if they so choose can go before a court and plead their innocence. They do not have their vehicle seized or dog impounded until the day they prove their innocence. I can only agree to FPNs for p[edlars offences such as trading without a certificate, assigning a certificate to another, borrowing a certificate, failure to produce a certificate, or begging. As for charges of not acting as a pedlar it is for the courts to determine whether an offence has been committed not some over-zealous, paid operative working for the local authority.

QUESTION 20

I have given my views regarding giving further powers to civilians to either issue FPNs or have the power of seizure where even the Police do not have these powers under PACE rules where a photo would suffice as evidence. This is a dangerous path eroding civil liberties, human rights, and contravenes all that has for almost 1000 years been the pillar of our democracy, namely the right to be heard when accused in a court of justice. If a pedlar has had their goods seized on grounds of reasonable suspicion this reverses the burden of proof and they are therefore presumed guilty until they can prove their innocence, and up until that point their goods and equipment have been taken and their ability to continue to work has been terminated.

QUESTION 21

I have given my answer in the list in reply to question 19

QUESTION 22

One hundred pounds, and this is only for offences listed by me in reply to question 19

QUESTION 23

ANSWER NO:

We like pedlars really, they add character and an alternative shopping experience in todays retail environment, we just don't want them in our town! Up to this point most of BIS preferred options would ensure trading as a pedlar would become so restrictive as to make peddling unviable. Come on! Stop being biased towards local authorities, and if you are serious as to your independence and impartiality reflect this in your submissions to the Minister after this local authority directive (consultation) has been completed.

QUESTION 24

Your question ends "that this would address the issues of concern to some local authorities in relation to unfair trading and competition". Of course any provisions for more enforcement is certain to meet with local authorities' approval---what a stupid question! The truth is many local authorities disapprove and resent any pedlars because they are seen as unfair trading and competition in their eyes due to them not getting revenue from pedlars. They also cloud the difference between trading in the street and street trading.

QUESTION 25

ANSWER NO:

Pedlars are unique in that they are mobile and instantaneous in their ability to adapt to conditions. Who else is resourceful and adaptable to be able to turn up on a sporting victory parade with the likes of horns flags and whistles at an instant's notice? How on earth can the cumbersome machinery of a licensing department at a relevant local authority be expected to even contemplate a day licence scheme for such an event? Her Majesty is visiting a town, our armed forces are holding a homecoming parade, the list is endless and legislation that restricts this flexibility by giving powers to LAs to limit the number of pedlars is a restrictive trading practice.

We cater to public demand and nowhere in this consultation have I seen any evidence of their views or any method to gauge what their views are. All this questionnaire seems to be addressing is the concerns of local authorities that wish to create fiefdoms exercising total control as to what is traded on the street.

I want to refer to a Superintendent Lee of Greater Manchester Police who gave evidence at the Select Committee Hearing in the House of Commons in support of the promoters of the Private Manchester Bill that is still going through Parliament. He gave evidence saying that the large crowds at some events and a large number of pedlars who were using trolleys were a safety issue that was the plank of his

argument. Has there ever been any incident where accidents have occurred or even nearly occurred due to numbers of pedlars at any given event using a trolley or otherwise? Its nonsense and a red herring. Pedlars are pedestrians and although I am in favour of limiting the size of permissible trolleys to try to say that a large number of pedlars is a safety issue is poppycock. Are you going to restrict the numbers of pushchairs at an event, the number of disabled trolleys, or the numbers of people carrying their shopping in their trolley? It's as straightforward and ridiculous as that.

QUESTION 26

Disagree totally; see my response to question 25

QUESTION 27

No observations

QUESTION 28

I am a pedlar and therefore are not concerned with street trading licence appeals

QUESTION 29

I understand what you have done and your reasons given with regards to a pedlar of services. You say pedlars of services will be able to ply their trade anywhere in the UK, except where private legislation has come into force. As previously asked by me, what protection do pedlars of services have "in law" to be able to trade after their protection of a pedlars certificate is removed?

QUESTION 30

ANSWER NO:

The list is misleading and fails to take into account case law. A pedlar does not have to be continuously moving between sales so as to show they are looking for their customers, and your interpretation relies on one case law, namely Chichester vs Wood. In this case there is confusion because an order 57 rule 1 was not followed up in spite of it being ordered. There are several other case laws where judgements have stated a pedlar can stop other than reasons of a sale which you have not taken into

consideration when compiling both the checklist and draft guidance. True a pedlar must travel as they trade but not in perpetual motion and can stop for other reasons other than making a sale. There is also no case law stating you must trade from street to street. The checklist and draft guidance needs to be reconsidered and re-written in accordance with case law, otherwise it is baseless.

QUESTION 31

ANSWER NO:

It does not meet the needs of pedlars because it disregards case law precedents

QUESTION 32

Perhaps a further meeting with BIS representatives can be held with pedlars. Together we can look at case law and perhaps reach agreement on draft guidance that takes into account case law.

QUESTION 33

OTHER COMMENTS: I have given my response to the questionnaire much thought and consideration and I know doubt the department are aware that pedlars desire to continue to trade does create hostility from local authorities. You acknowledge all forms of trade can be argued to take from another but it is all about scale and pro rata what a pedlars pays is relative to scale and is not really unfair competition. If pedlars are restricted so much that their trade would become unviable, who will be next? Would the next target be street traders? Perhaps markets themselves.

In my replies I have given suggestions that I believe with more stringent requirements to obtain a certificate, draft guidelines based on case law and a centralized issuing system, alleged cases of street trading offences would be significantly reduced.

BRIAN AND JACK GIBBON, AND MIKE PARRY

Sorry for my late reply to your 90 pages of mainly unintelligible waffle. I am not the dimmest candle in the bunch but my self Brian Gibbon, Mike Parry and Jack Gibbon have read this document but in no way have we understood it. The assumption that we hunt in packs as stated by the chair of the town centre managers association is utter drivel. As stated somewhere in this document, generally we are sole traders and really don't want to be near other pedlars so as to increase our market share. Our trading is nearly always 'event specific', i.e. football team homecomings, Christmas lights switch ons. Also, a great majority of our work is outside shop opening hours. If, as I gather your proposal is for local authorities to grant licenses, how would I get a license for tomorrow, for example, for whichever team happens to win the ladies cup final tonight if their club decides to give them a homecoming? We could not exist without the vast majority of the population thinking we offer a service. Imagine the next big event in the UK after your proposals - the country wants to celebrate but there are no flags, horns or whistles. What a good sight to the nation. On the issue of human rights it is always said our rights are not infringed because we can go door to door. You have it all wrong. Ban the distasteful practice of every kind of doorstep selling. I would not like to see me going down the path to some householder's dwelling, they may be frightened rigid. The police would spend more time answering calls from frightened householders than whatever time they spent checking out our suitability to lawfully ply our trade. Nearly every town or event we visit we are asked for our certificate which was granted by the police in our home town, no problem. How many times are Market Traders asked for their address, name etc by the authorities unless it's trading standards when a suspected offence is committed? All we are all asking for is the right to work. It's not broke, so don't try to fix it tweak it to feth it up to the 21st century. Please leave well alone. Many thanks for reading our impassioned rambling. Yours Brian Gibbon pedlar's cert number 5703 issued by North Wales police, Mike Parry cert number 2271 and Jack Gibbon cert number 5702.

FRANKIE FERNANDO

Hi Roger,

I have answered the consultation as best as I can and hope that it will be useful.

Kind regards

Frankie Fernando

PEDLARS

The definition of 'pedlar'

Question 1: Do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons.

Answer 1: Yes

Question 2: Do you think anything should be taken out or added to the list and why?

Answer 2:

Possible new definition(s)

A pedlar:

- a. Must be a pedestrian. - **Agreed**
 - b. Must move around to trade – keeping a reasonable distance from their last sales position, moving on until another sale is made. – **Not Agreed**
 - c. Should avoid standing still between sales when trading. – **Not Agreed**
 - d. Should only pause to make a sale when trading. – **Not Agreed**
 - e. May use a small means of transporting goods e.g. trolley to carry stock.
-

Agreed

Comment - I agree that a pedlar should not have a fixed position for selling as this would make them a street trader. However it would also be very tiring for a pedlar to move constantly around. At the moment it is considered appropriate that a pedlar should be allowed to stand in the same position for no more than 15 minutes. I think that this seems to work well but should be clarified so that there is

no confusion. The next sales position should then be a reasonable distance from their last sales position.

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

Answer 3: The size of the trolley should definitely be limited as some pedlars do take advantage. I think 1.5m square is a workable size.

Question 4: Do you have alternative suggestions? Please provide them.

Answer 4: No

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Answer 5: Yes. At the moment the certificate is just a piece of paper that anyone can copy. The other problem is because the certificate varies so much from one place to the next authorities do not always recognise the certificate. If there was more information on the certificate it would make it easier for enforcement officers to check out the validity of the certificate and the identity of the pedlar.

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

Answer 6: I am happy with the information listed but I would like to add that I think the certificate should be in the form of an identification badge that the pedlar should wear and that it should be visible at all times that the pedlar is working.

Question 7: Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification?

Answer 7: Yes

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

Answer 8: Yes

Question 9: With reference to section 6 of this document would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

Answer 9: No, I do not think it is necessary as the service providers are able to still work anywhere throughout the UK.

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Answer 10: Yes

Question 11: Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?

Answer 11: This is quite an interesting question and I feel I am in a good position to answer this question with experience. My husband was refused a pedlars certificate by Eastbourne Police Station on the grounds of being a person of not good character. My husband was very upset by this as he does a lot of work helping others, has given lots to charity and at present gives away forty holidays a year to a women's refuge.

However Eastbourne Police Station deemed my husband not to be of good character because of minor offences he had committed many years ago. My husband is not the same person he was when he was a young man and he has grown and learnt by the mistakes of his past.

My husband decided to fight the decision and took the Chief Super Intendent of Eastbourne Police to court for unfairly denying him a pedlar's certificate. The judge found in favour of my husband on the grounds that his previous offences were spent and could no longer be used against him.

My husband's court case has now set a legal precedence on this issue, this being the case "good character" should be replaced by "The applicant should not have any previous convictions that are not spent."

I do feel that once this position is clarified with all the issuing authorities there will definitely be a more consistent approach to refusal of applications.

Issuing Authority for Pedlar's Certificates

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

Answer 12: I strongly believe that the responsibility for issuing pedlars' certificates should not be transferred from the police to local authorities.

1. The police are in the best position to PNC checks on applicants. If the responsibility was transferred to the local authorities they would then still have to contact the police for information. This would mean that the process would take longer, involve more people and be less cost effective.
2. Also I believe that the local authorities are not impartial and in the past have been extremely negative towards pedlars.

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Answer 13: Yes, as long as the issuing authority stays with the police.

Question 14: What are your views on the above option, and how this might affect street trading or pedlar activity?

Answer 14: At present pedlars are able to sell their wares in the town centres and door to door. If the local authorities were given powers to designate streets as prohibited I can guarantee that they would designate the town centres as prohibited forcing pedlars **to solely go from door to door**.

Question 15: With further work do you think this option is viable? Please give reasons for your answer.

Answer 15: I do not think this option is viable because the local authorities would push the pedlars out of their towns. Pedlars help to create a colourful atmosphere in the town centres and this would be lost.

Also we did a survey with the public and asked them if they would prefer pedlars approaching them in the town centres or in their homes, the majority of those asked said they were more happy to be approached whilst out shopping than when they were at home.

Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act?

Answer 16: I believe that the present way of accessing a pedlars certificate is the best and most cost effective. The police are in the best position to do a check on the suitability of an applicant and are already geared up to provide pedlars with certificates. All that is required is a little more clarity in the process to make the service better.

Enforcement

Question 18: Which of the above options do you favour?

Answer 18: I would chose option A. Every person who commits a criminal offence or a civil offence has the right to a court hearing before a magistrate or a judge.

Question 19: Should Local Authority Enforcement Officers be given powers to issue fixed penalty notices seize goods, with forfeiture by order of the Court? Please give reasons for your answer.

.

Answer 19: No, I believe giving the local enforcement officers the rights to seize goods and give FPN's would be abused and lead to pedlars being bullied. The pedlars would then have to fight to get their goods and their money back. This

could lead to serious financial and emotional difficulties for the pedlars and could lead eventually to push them out.

Question 20: If you favour introducing new powers for local authority enforcement officers, can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this or other areas? If you do not support further powers, can you provide evidence to support this view?

Answer 20: I know of certain pedlars who have had their goods seized and were taken to the police station unfairly for questioning. This is particularly damaging when a pedlar has bought certain products to sell for a specific event such as a football match etc. By the time the pedlar has been released from police custody and waited even longer to receive their goods back the goods are no longer relevant and the pedlar has lost a large amount of income.

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

Answer 21: I do not agree with FPN's.

Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer.

Answer 22: I do not agree with FPN's

5.2 Power to impose local restrictions on certified pedlar activities

Question 23: Do you agree with the Department's general perception, as set out above? If not, please explain.

Answer 23: I do believe that pedlars are often confused with illegal street traders. Anyone who is acting outside of the law should be held accountable. I believe that if there was more clarity and understanding of the pedlars act that a lot of problems could be dismissed. At present it is not just the illegal street traders who benefit from the lack of clarity but also the authorities who use the uncertainty to bully law abiding pedlars!

I also feel it is important to give the consumer the freedom of choice and that having pedlars on the high street does not impair the takings of the local businesses. Also it is unfair to say that pedlars sell inferior goods as we buy from the same suppliers as the shops.

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Answer 24: I do not agree with the enforcement options previously mentioned as I feel these could be abused by the authorities. I do believe however that a sufficient demarcation between legitimate pedlary and other street trading is necessary and this can be done by the education of local law enforcers and improved visible, consistent design pedlars licenses.

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

Answer 25: No I do not agree that restrictions on the numbers of pedlars in specified areas and at specified times are justifiable. When there are events and festivals there is enough business for everyone. Also pedlars are business people and if they turn up to an event and there is too many other pedlars working the area they will move on and that is what is beautiful about the flexibility of being a pedlar.

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

Answer 26: I do not agree with any restrictions.

Question 27: Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice?

Answer 27: I have been a pedlar for many years and I have never had a problem with too many of us being in the same place at the same time. I believe that we are able to judge for ourselves if there are too many of us in a certain area. It would not benefit any of us to try to trade in an over crowded area. I think to involve local authorities in this matter is completely unnecessary and over complicates the situation.

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

Answer 28: Appeals in London should be determined by the Magistrates Court as they are better placed to deal with these issues and have more knowledge and understanding in this subject area.

Question 29: If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.

Answer 29: I am not aware of any evidence.

Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give

reasons for your answer including anything you would like to see added or removed.

Answer 30: The checklist is OK but I think that pedlars should wear a visible pedlars certificate so that it makes it easier for local authorities to distinguish us from illegal street traders. Also I think that there should be a limit on the size of a trolleys used. I think that most of the animosity from the local authorities and small businesses is directed at the guys you see in the high street with their massive trolleys that block the high street and the consumers view of shops. If these could be eradicated I think everyone would be a lot happier.

Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

Answer 31: Yes but only with the additions I mentioned above.

Question 32: Do you have suggestions for amendments to the guidance? If so please specify how the guidance might be reformatted, added to or subtracted from, and why.

Answer 32: I have already suggested my amendments in answer no. 30.

General Comments

Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see impact assessment), we are happy to receive them as well.

Answer 33: I have nothing else to add.

GARY ARMSTRONG AND LENA HOLT

Please find word attachment from Gary Armstrong and Lena Holt

We are ESOL teachers who are paid as seasonal workers, and during the summer holidays rely on peddling as an income. Should this source of income be taken away we would have to reconsider what has been our profession for the last 10 years. We feel that this consultation is being pushed after intense and coordinated lobbying by LA's, who have deliberately exaggerated the problems they face. From our own observations these problems could have easily been dealt with by the LA's, but haven't been, so to make their case for restrictions on pedlars even stronger. Unfortunately we haven't answered all the questions, as some are answered elsewhere in the consultation.

Qu 1. No

Enough case law exists to determine the duties and responsibilities of a pedlar

Qu 2 No (refer to above)

Qu 3. Possibly restrict to 1m cubed as suggested in shipway

Qu. 4

Qu.5 Yes. Updating and standardising the certificate will hopefully add legitimacy to the occupation of pedlar. However, I disagree with the government's reference to reliability of handing out FPN's as the reason. being

Qu. 6 No. Proof of the right to work in the Uk. Many of the Issues that LA's have had are actually with Israelis who are only here on a student visa. The reason they have been to work as pedlar's is down to police admin rather than failings in the pedlar's act.

Qu. 7 Yes

Qu.8

Qu.9

Qu.10 No. Again the problem is not with those pedlars who are law abiding bt with those that flout the guidelines. These may be sellers using fake certificates. It is very subjective to determine 'good character' and if left to LA's or their guidelines would mean none are issued.

Qu. 11 No. See above

Qu. 12 Absolutely no. We are an anathema to them

QU.13 No. We need an 'unbiased' authority as in the police.

Qu.14 The issuing of pedlars certificates should be left to the police

QU.15 La's can have no say in certification

Qu. 16 No

Qu.17 The pedlars Act is fit for purpose especially if some of the other proposals are taken on board.

Qu.18 option A. As someone who has been subject to misuse of LA powers and PCSO powers I strongly oppose the whole idea of FPN's .

Qu.19 No (see above)

Qu.20

Qu.21

Qu.22

Qu.23 Yes/no. Many acts of peddling don't occur in high streets and are therefore not a threat to 'established businesses'. Also where many town centres are turning into a plethora of pound shops and charity shops the pedlar is no longer able to compete on those terms. To say that pedlars offer inferior goods is also a fallacy. We generally use the same wholesalers as market traders and when required will have Ce standard. The pound shops are certainly not selling high quality goods.

Qu.24

Qu.25 No. Unenforceable under existing and proposed licensing

Qu.26

Qu.27

Qu.28

Qu.29

Qu.30

Qu.31

Qu.32

Qu.33

Gary Armstrong -

Lena Holt-

- **Paul Holt**

FYI - please note stakeholder comment on the BIS consultation by Paul Holt.

Begin forwarded message:

From: paul holt
Date: 9 February 2010 11:00:34 GMT
To: Pedlars.admin@gmail.com
Subject: email from pedlars.info: consultation

This is an enquiry e-mail via <http://www.pedlars.info/> from:
paul holt

hi
i am a pedlar and have read the consultation and find the questions very
difficult to understand but if i can give my support in any way please contact
me at my e mail address thanks
paul holt

IAN KRUGER

- **IAN KRUGER**

Dear Sir, As a self employeed pedlar for the past five years, i am alarmed that in a time of social instability; due to the pending financial restrains, and savage cut backs that will be necessary for balance of payments, etc that this over zealous, and totally illogical programe to basically make peddling unworkable, with rules, and penalties, is unjustified, and in my opinon immoral. Also it is my firm conviction that if the genral public understood what was happening to legal law abiding citizeans who are trying to simply make a living, in a job they enjoy doing; like myself, they would be digusted, at the way certain pressure groups have distorted the truth, with misinfomation in regards to legal law abiding pedlars. In my opinon they have acted in a disgracful way, spending enormous amounts of money unnecessarily. Also it is imperitive that the BIS consultation is rewritten so that the lanuage used is understoodable, and not in a legalistic manner, as a goverment body,you should have considered the needs of pedlars, and the general public, to understand what the consultation papers portray, in there present form fail to do so, to those who are not familar with legalist language.

> On 19 Jan 2010, at 13:05, ian kruger wrote:
>
> > This is an enquiry e-mail via <http://pedlars.info/> from:
> > ian kruger <
> >
> > Please could you include me in future representation within
> > parlementry debates etc Please send mr. Chope mp, obe, a personal
> > letter of appreciation, and thanks in regard to his tireless work,
> > and defense of pedlars rihgts, and well being, etc thanks, ian kruger
> >
>

MATTHEW HICKS

• MATTHEW HICKS

To whom it may concern,

My name is Matthew Hicks, I live in Dudley in the West Midlands and have worked as a Pedlar for fifteen years. During this time I have never been arrested while practicing my trade. I therefore consider myself a legitimate pedlar.

Peddling allows a person to pick and choose when and where they work. This has afforded a degree of flexibility to my life and enabled me to look after my daughter, study at University and become a full time secondary schoolteacher. Indeed, it is an ideal occupation for students who want to avoid the burden of debt and many take up peddling while at university.

Being I newly qualified teacher I find that my salary is not enough to pay a mortgage and the inevitable debts incurred while at university. Nor is it sufficient to pay the bills and look after my daughter. It is for this reason that I continue to act as a pedlar in the West Midland's Centre where I sell Helium Balloons on Saturdays.

It is my belief that the Bournemouth Borough Council Bill and the Manchester City Council Bill could have an adverse affect upon my business. Should these bills pass I fear that many town centres in the West Midlands will take advantage of the bill and ban legitimate pedlars from selling in town centres. I believe that most councils will not offer alternative pitches for pedlars to sell and those that do will ask for a rent that will make a part time business unviable. Should this happen I believe that I would experience severe financial hardship and force me to sell up and move into lodgings. Such a scenario is not what I envisaged when I began training to teach.

Moreover, the impact of these bills will be far more serious for those who rely on peddling as their main income. Many student pedlars I know will be forced to compete for minimum wage jobs and rack up debts that they will be paying back for the rest of their lives. Other pedlars who work fair grounds in the summer months and pedal in the winter will have to consider changing their life styles completely.

As I am sure you are aware, the media often unfairly portray the people it writes about in an unfavourable light. It is partly for this reason that many people have a distorted view of who pedlars really are. For this reason, I would like to inform you that I have never sold counterfeit goods, always paid taxes and never sold goods that have been declared unfit by trading standards. Like the Eliza Doolittles' of the past, modern day pedlars are everyday honest people who are trying to get by on not a lot. In the past this country has been sympathetic to such people. Legitimate pedlars do not cause trouble in town centres and laws are already in place to deal with those that transgress. The Bournemouth and Manchester bills will be the final nail in the coffin for the little man and further monopolies big business's strangle hold business.

Yours Sincerely,
Matthew Hicks.

MERIEL CAMPBELL-LLOYD

Dear Sirs

My family have been pedlars for many years but I have only recently obtained a certificate. I have been aware of how to trade as a pedlar and have heard about the problems that authorities give my family when they go to different towns. This is the reason why I did not begin earlier and why I decided to go to the meeting with BERR in London last year. I had hoped that the government would tell councils that pedlars have a right to trade just like any other legal business and that there was no right to give them such grief.

I have now read the questions of the consultation and the proposals that government is recommending and I am shocked that it has gone back on its word since our meeting. You said that you did not want to get rid of pedlars but that is exactly what you are proposing by piling up such pressure that I will just give up. You are giving too much power to councils who already abuse us and I have first hand lessons of this.

I expected that the proposals would help relieve me from any contact with councils provided I was acting as a pedlar. But you recommend that my goods can be seized, I can get fined with fixed penalty notices, I can be taken to court on councils suspicion, and I can be driven off the street and forced to work at doors where people don't want me. I think you have lied to all the pedlars who came to meet you in London and I don't think you have actually listened to Mr Chope in parliament. His arguments were true and honest about pedlars and just because he lost the vote to those who did not even hear him doesn't mean that he was not telling the truth and this makes me loose faith that parliament is for the people.

Why have you jumbled up 90 pages of information without actually saying that you want to get rid of pedlars? You say that the new regulation will help pedlars but you know it won't because they will be caught up with illegal traders that are meant to be the target of councils and you also know that London now has more illegal traders than ever before - people are desperate to earn a living. Just walk the streets outside your office and down the

south bank and you will find plenty of illegal traders forced to work after hours to avoid officers.

I have heard a lot about pedlars and it is a lie that they go door to door selling and you have been told why that lie exists to show that when a pedlar is on the street they are committing an offense. You have fallen into this idea that came from councils who want to control us as casual traders but when I travel around I haven't got time to go and find if a council office is open and apply for a casual trading licence - they are never open at weekends when I work and I don't trust them to help me anyway.

I was told that the Durham report would give you evidence so you could make a government policy to help pedlars. I have read the report but they found that you don't have to change any laws to help pedlars and recommend that you tell councils to apply existing rules and just update the form for pedlars cert application and issue good guidelines. They didn't recommend confiscation and penalties so why do you? They said most councils don't have any problems and that the only problems identified were complaints from other jealous traders and the size of hawkers trolleys. I don't use a trolley because I am a pedlar but if newspaper sellers are regulated on size then surely a hawker can also.

I have not answered any of the questions in this paper because when I read through them it is quite clear that pedlars are being steam-rolled, straight-jacketed and made to look like they are a national problem needing to be stamped out. I think the government is not really looking to help pedlars but to confuse everybody into believing that they are.

I personally make and trade paper kites on the streets as a novelty gift for £3 and I would like to know what your paper does to enable me to continue?

yours sincerely
Meriel Campbell-Lloyd

ROBERT CAMPBELL-LLOYD

12 August 2009 draft
in preparation for final submission during formal consultation period to be announced shortly

BUSINESS INNOVATION & SKILLS – Stakeholder Consultation – Street Trading & Pedlary

The objective of this report on pedlary is to assist fair & proportionate drafting of legislation to reflect current government policy, to bring consistency into law and to comply with national & EU legislation. Pedlary has for the last decade been subject to an intentional disabling of the lawful working of the Pedlars Act by private business seeking to restrict / prohibit lawful activities by altering / qualifying such activities through adoptive local legislation which has caused national anomaly and inconsistency. Select Committee has now redressed this difficulty and pedlars herewith provide timely consultation to government seeking to draft national reform reflecting a reasonable compromise of the views of all stakeholders.

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A HISTORY OF PEDLARY with an overview of the legal complexities

A contemporary account of legislation concerning pedlary and why local authority street trading regimes are not fit for purpose to regulate pedlars *with commentary in italics*.

1. **1847¹**: licensed hawkers were exempt from tolls at Markets & Fairs opened for public use: *exemption survives today enabling certified pedlars the same rights*.
2. **1847²**: it became unlawful to wilfully & wantonly disturb any inhabitant by knocking at any door: *this law survives and with the consequence that private legislation is misconstrued as it drives pedlars to knock on doors*.
3. **1867³**: it became lawful to deposit goods in the street by hawkers and itinerant traders, within regulation: *this law survives*.
4. **1871⁴**: pedlars and hawkers became regulated by statute to give them lawful authority to travel and trade going from town to town or to other men's houses. They were also relieved of the penalty of the Town & Police Act. A pedlar was without beast of burden who traded on foot as a pedestrian: *this law*

¹ Market & Fairs Clauses Act 1847

² Town Police Clauses Act 1847

³ Metropolitan Streets Amendment Act 1867

⁴ Pedlars Act 1871

survives and when enforced is sufficient to close down all rogues who use oversize trolleys and carts (i.e. hawkers) and which is the main problem identified by councils.

5. **1871⁵:** the doctrine of restraint-of-trade was recognised as unlawful but to protect trade union funds trades unions were permitted to practice restraint of trade: *elsewhere it is an unlawful practice.*

6. **1881⁶:** the restriction on pedlars to operate within a particular jurisdiction was removed, thereafter pedlars could trade in any part of the United Kingdom: *this law survives with the consequence that private legislation is incompatible as it seeks to restrict where a pedlar may trade. This restriction removed on July 1st 2009 by the House of Commons Opposed Bill Select Committee (SC) hearing the Bournemouth Borough Council bill & Manchester City Council bill (OB BBC&MCC).*

7. **1888⁷:** hawkers were distinguished from pedlars as with a horse or beast of burden: *the licence fee contributed to the local costs of maintaining the highways. This definition of a hawker is fundamental to understanding why problems exist for councils: the word hawker was not removed from the Pedlars Act and so following abolition of the Hawkers Licence in 1966 hawkers claimed thereafter exemption as pedlars: this is the root cause of all legislative problems and confusion, and has not been resolved by private bills.*

8. **1897⁸:** claimants whose goods became the property of police could take Court action for their return: *this law survives, consequently seizure & confiscation clauses if enforced by police are incompatible.*

9. **1966⁹:** the Hawkers Licence was abolished and hawking became unregulated. Hawkers could only be charged with obstruction of the highway, being unlicensed and without lawful excuse but hawkers found the lawful excuse in obtaining a Pedlars Certificate: *difficulties in courts then arose. Councils who failed to enforce the definition of a pedlar upon hawkers chose in 1999 to legislate privately to get rid of pedlars & hawkers, but pedlars were innocent victims caught in a disproportionate blanket policy as identified by the July 1st 2009 Select Committee (SC).*

10. **1980¹⁰:** legislation introduced for removal of obstruction from the highway if the obstruction is unlawfully deposited: *hawkers argue that their trolleys and barrows had lawful protection under the authority of a pedlar's certificate: this law survives .*

11. **1982¹¹:** Local Government (Miscellaneous Provisions) Act 1982 (LGMPA), an adoptive legislation introduced to control static locations occupied under licence from local authority and subject to approval by the Highways Department. Exemptions from this regime included the trade of a pedlar. The legislation differentiates between trading (a) and selling (f).

Part IX – Sale of Food by Hawkers clauses 18 & 19 exempts sale of food by hawkers¹²: *hawkers can be closed down if the law is applied: by not closing them down problems arose in courts and by 1999*

⁵ Settlement Acts 1871 & Trade Union Act 1871

⁶ Pedlars Act 1881

⁷ Hawkers Act 1888

⁸ Police Property Act 1897

⁹ London Local Authority Act 1966

¹⁰ Highways Act 1980 – section 137

¹¹ Local Government (Miscellaneous Provisions) Act 1982 – schedule 4 street trading; Civic Government (Scotland) Act 1982 (CGSA) c.45 clause 39 (3) (d); London Local Authority Act 1990 (LLAA) clause 21 (2) (a)

¹² although later repealed by the Food Act 1984, which in turn was repealed by the Food Safety Act 1990. Unlicensed food sellers can be closed down unless they claim to be hawkers acting under a valid pedlar's certificate

councils began introducing unnecessary private legislation. This law survives and all private legislation since 1999 is based on an amendment to it.

12. **1984**¹³: a constable may seize anything if he has reasonable grounds for believing (a) that it is evidence in relation to an offence but [clause 22(4)] nothing may be retained if a photograph or copy would be sufficient for use as evidence in a trial or for forensic examination: *this law survives and is incompatible with seizure & forfeiture clauses in private legislation since 1999 (as in 8 above).*
13. **1990**¹⁴: exemption from LGMPA 1982 persists for pedlars and now includes hawkers selling door to door [clause 2(e)]: *this law survives giving hawkers lawful entitlement to sell door to door but private legislation since 1999 does not provide safeguard for hawking between houses and the private legislation is therefore unworkable in practice.*

14. **1994**¹⁵: exemption persists for pedlars and hawkers who use the street for a cart or vehicle to expose and sell their goods door-to-door (*as above*).

15. **1999**¹⁶: (*City of Westminster Act*) exemption persists for pedlars clause (e) & hawkers clause (b) but the exemption for pedlars is altered to include the words “if the trading is carried out only by means of visits from house to house”: *in the July 1st Select Committee (SC) hearing the Bournemouth Borough Council and the Manchester City Council bills made protective provision for those pedlars not trading ‘only’ from house to house. All private legislation 1999-2009 is now subject to review. The committee found that pedlars may continue to trade other than only by door-to-door or through review of such as the City of Westminster Act 1999 “only by means of visits from house to house”.*

16. **2009**¹⁷: (SC) found that pedlars were also other than door-to-door sellers and as such i.e. traders on the streets, they could continue to trade anywhere, but when in those two regimes of Bournemouth & Manchester their activities would be conditioned as follows:

1. Goods must be carried on foot on the person or in a trolley pushed or pulled by the person with carrying capacity of no more than 1 cubic metre subject to:
2. the pedlar must not stop in one place for more than 5 minutes
3. must then move on at least 200 metres, interrupted only by stops for a specific sale
4. cannot return to within 5 meters of any of their previous spots in a 12 hour period
5. cannot move to a position within 50 meters of another pedlar with the same authority
6. pedlar must display a certificate prominently

Existing legislation is adequate for the purposes of enforcement

From this historical perspective it is clear that enforcement of legislation ought to differentiate between the modus operandi of the **trade** of a pedlar and the modus operandi of **selling** by an unlicensed hawker or a by a licensed trader. Identifying whether the trader is a pedlar or a hawker enables simple enforcement of existing legislation without need for private bills, this has been found to be very successful in removing rogue traders in towns & cities who do not see a need for private bills to deal with perceived problems. It is clear that when a hawker cannot carry goods as a pedestrian in the street then the protection of a pedlars certificate is insufficient. Small scale hawking in the street has now been defined in comparison with large scale hawking of goods from door to door and which may continue unaffected

¹³ Police & Criminal Evidence Act 1984 C.60 Part II Cl 19(3)

¹⁴ London Local Authority Act 1990 section 21 clause 2(a)

¹⁵ London Local Authorities Act 1994

¹⁶ City of Westminster Act 1999

¹⁷ Bournemouth Borough Council bill & Manchester City Council bill

and clarification has now been established that provides an adequate alternative for councils considering private bills.

Why issuing of pedlar's certificates by councils is unworkable

The *LGMPA, CGSA & LLAA* provides council with regulation and control over obstacles and static pitches on the public highway, but has **nothing whatever** to do with pedlars. Pedlars are itinerant, do not occupy a static pitch, are pedestrians and can move. Councils do not recognise the instrument of a Licensed Street Trader from outside their jurisdiction: on this basis pedlars are concerned that they would not recognise a Certificate from outside the jurisdiction. As pedlars are itinerant and do not trade only in one town they would require a Certificate in each jurisdiction (410 authorities) making the cost prohibitive. Some councils and powerful lobby groups have waged a propaganda war against pedlars since 1999 with the aim to repeal the Pedlars Acts, but lacking public support they sought to get around Statute using private bills to become Acts. These councils prejudicing against the very notion of pedlary may not be relied upon to be fair nor reasonable with the issue of Certificates for Pedlars. Councils restrict the use of licences and consents and if such restriction were placed on pedlars: where to trade, when to trade, what to trade, how often to trade, pedlary could easily become prohibitive. Councils can take weeks to issue Licences and there is no guarantee that a Certificate would be issued any quicker, if at all, and this affects the itinerant nature of a pedlar to turn up anywhere, at any time, with whatever goods. Councils can withdraw Licences on such grounds as not occupying allocated space for the hours granted and such power to withdraw Certificates threatens the itinerant nature of pedlary and is unworkable.

Enforcement officers may have opinions, but pedlars are concerned that councils do not have a code of conduct nor a training regime to ensure consistent interpretation of pedlar legislation and may simply continue with intimidation, harassment, unlawful seizure & with confiscation which are the hallmarks of confusion, ignorance and misinterpretation of law. Pedlars are answerable to the courts with a burden of proof and this is a safeguard in law to prevent regimes establishing unfair local trading.

Private bills contain 'seizure' clauses and 'fixed penalty' clauses that are construed as double-jeopardy clauses: "*an officer may seize...the officer may give that person a notice offering him (no mention of her) the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty payable within 14 days*". Here is double-jeopardy: if the pedlar enters a defence, goods¹⁸ will be seized; if the pedlar agrees to pay the penalty, goods can still be seized and not returned for 14 days. The added hidden penalty¹⁹ is that the right to immediate redress by a Magistrate is removed adding further burden on the pedlar both in time required to seek redress, time required to gain redress, and time out from being able to continue as a pedlar.

If councils were to issue Certificates it would not reduce the burden on public government finances but more likely increase them since the most competent authority to provide background checks on whether a person is fit and proper to hold a Pedlar's Certificate would still be the police and local authorities would still have to consult with them. One authority with all the resources at hand is police, and if police forces

¹⁸ 'goods' include the Pedlars Certificate, which if seized will impose further penalty on the person effectively preventing that person carrying out any further activity as a pedlar so making that person liable for criminal prosecution should trade continue without certificate.

¹⁹ only a Magistrate may rescind a Pedlar's Certificate (Pedlars Act 1871 Clause 16) "...may deprive such pedlar of his certificate..."

feel that there is a burden on resources with regard to the issuing of Certificates, then a simple increase in the fee to cover such additional costs as exist, would be all that is needed.

Why evidence²⁰ shows that proper enforcement is a preferred choice

Evidence shows that councils who apply Pedlar legislation and the provisions of the *LGMPA* have all the necessary instruments to remove hawkers from the streets;

- evidence shows that private Acts do not deal with illegal traders and actually increase the number of rogues because a pedlar's certificate is no longer recognised and thus not required;
- evidence shows that councils want clarification on the permissible activities of pedlars to preserve the identity of genuine pedlars as distinct from rogues.
- evidence shows that enforcing existing legislation is effective.

Why private legislation is a burden on Parliamentary time

Promoters have brought some 10 bills before Parliament over the past decade and Dr Iddon has indicated that some 50 further bills are anticipated. There is a heavy burden both on the public purse and on the private charge payers in those areas that seek to promote private bills.

The way forward for pedlary

A decade of private legislation has been enacted and the full effects now documented.

Pedlars will now object to all future private bills modelled on the City of Westminster Act 1999: scrutiny of the Bournemouth & Manchester bills has shown that pedlars are not only door-to-door sellers but can operate in local authority control areas.

www.pedlars.info will now update the Magistrates Association about these bills so that if and when pedlars are drawn before courts they can no longer be prosecuted for trading *other than from door-to-door* in those towns that introduced private legislation between 1999 & 2009.

The government launched a consultation period beginning on the July 1st 2009: the very same day that pedlars won lawful recognition for continuation of their historic rights.

The Importance of Government Guidance:

The adoptive statutes of the *LGMPA*, *CGSA* & *LLAA* under which most local authorities operate a street trading regime states that "*Pedlars are not street trading for the purposes of this Act*" but there is widespread neglect of this lawful fact. The propaganda campaign against pedlary has incited consistent harassment and intimidation towards pedlars by authorities. Pedlars have no representative organization to defend their rights & independence from interference and contend that government has responsibility to provide guidance to authorities, police & magistrates on the point of law that *Pedlars are not street trading for the purposes of the LGMPA, CGSA & LLAA*. Such guidance should include an interpretative regime that clearly points out the difference between a pedlar and a street trader such as indicated in this document at **F - DEFINITIONS Language & Glossary**.

The effectiveness of guidance is the responsibility of the chief Licensing Officer in each authority who oversees training programmes for officers on the street. It is these officers whose training determines the involvement of police who are otherwise not involved in enforcement but who also require guidance to ensure that their time is not wasted in unwarranted engagement with pedlars.

²⁰ Street Trading & Pedlary in GB – A Report by Durham University for BERR/BIS

Guidance should also reach the Magistrates Association to inform courts about the problems caused by too narrow and literal interpretation obliging a pedlar to remain in perpetual motion, effectively prohibiting pedlary - which has been found by the select committee (*OB BBC MCC*) to be unsound.

Pedlars need to be informed about new legislation and government guidance: the Durham Report recognises that the only method of communicating with all pedlars is via the annual renewal procedure which would require government to inform all police jurisdictions. Finally, pedlars contend that it is the responsibility of government to inform all other stakeholders such as the ATCCM, IoL, NABMA, NMTF and the LGA amongst others.

Pedlars Certificate is a unique forerunner of a National Identity Card²¹ (*NIC*)

Local Authorities could not possibly issue National Identity Cards but it is this same notion that *NABMA* now promotes having conceded that there are human rights issues with their former publicity to have the Pedlars Act repealed.

Foreign nationals living in Britain are being issued *NIC* and citizens of Manchester begin a voluntary scheme this year.

The purposes are clear and are not so different to the original purposes of a Pedlars Certificate.

These are contemporary equivalents that simply fulfil the needs of councils & police similar to that of the need to identify those with a pedlar's certificate.

²¹ <http://www.homeoffice.gov.uk/passports-and-immigration/id-cards/>

B CHRONOLOGY of LEGISLATION with internet sources in blue, page references to Petitioner's evidence, and brief notes in relation to pedlary.

Markets and Fairs Clauses Act 1847: [44]²²

- hawkers exempt from tolls at markets & fairs which are open for public use - section 13
- http://www.England-legislation.hmso.gov.uk/RevisedStatutes/Acts/ukpga/1847/cukpga_18470014_en_1

Town Police Clauses Act 1847 clause 28 [44.1]

- unlawful to wilfully & wantonly disturb any inhabitant by knocking at any door
- http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1847/cukpga_18470089_en_1#pb3-l1g11

Metropolitan Streets Amendment Act 1867: [45]

- accepts deposit of goods in the streets by hawkers or itinerant traders – within regulation
- http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1867/cukpga_18670005_en_1

Pedlars Act 1871: [46]

- describes the activities of a pedlar in detail – includes hawker in the definition
- use of certificate limited to issuing district
- obtaining of a certificate
- regulations
- hawker has same meaning as pedlar
- no exemption for rogues & vagabonds holding certificate
- duties
- http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1871/cukpga_18710096_en_1

Settlement Acts 1871: [not incl]

- the doctrine of restraint of trade was unlawful but to protect trade union funds they were enabled to practice restraint of trade – Trade Union Act 1871
- http://books.google.ie/books?id=6pgMo-Vwj6QC&pg=PA10&lpg=PA10&dq=Settlement+Acts+1871&source=bl&ots=A6ueP4ZFeW&sig=E-ZA8YlelCWVu6d_pOqV5KiDPM&hl=en&ei=CM00Sr_2NYiZjAeItuyBCg&sa=X&oi=book_result&ct=result&resnum=1

Pedlars Act 1881: [47]

- extends the scope of 1871 Pedlars Act to any part of United Kingdom
- http://www.England-legislation.hmso.gov.uk/RevisedStatutes/Acts/ukpga/1881/cukpga_18810045_en_1

Hawkers Act 1888: [48]

- “The contemporary use of wheels originates from the Hawkers Act 1888 different to the Pedlars Act 1871 in that a hawker was with a horse or other beast *to carry a burden* and a pedlar was without a horse or other beast *to carry a burden*; thus it is argued by a hawker, subsequent to the abolition of the Hawkers Act, that there is an entitlement to “*anything on wheels*”

²² reference to page numbers in Evidence from Petitioners on Bournemouth B C bill

- Hawkers License abolished under the Local Government Act 1966 [49]
- For history - google - Board of Commissioners of Hawkers, Pedlars, and Petty Chapmen

Police Property Act 1897: [50]

- C.30 60&61 – Disposal of property in possession of police (does not extend to Scotland)
- In connection with their investigation of a suspected offence
- Claimant may take an action in court
- See also 1984 Police & Criminal Evidence Act
- [http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=police+property+act+1897+&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYP](http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=police+property+act+1897+&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmendment=0&TYPE=QS&NavFrom=0&activeTextDocId=1065108&PageNumber=1&SortAlpha=0)

London Local Authority Act 1966: [49]

- Hawkers Licence abolished
- Until 1982 hawkers and static street trading was unregulated
- Hawkers could only be charged with obstruction of the highway, being unlicensed without lawful excuse
- Then hawkers found the legal excuse in obtaining a pedlars certificate
- Difficulties in courts then arose

Local Government Act 1972: chapter 70 part XI clause 239 [...]

- Gives power to local authority to promote local bills
- Does not specifically grant local authority the powers of police in regard to seizure & forfeiture contained in private legislation – in conflict with seizure & forfeiture procedures in Police & Criminal Evidence Act 1984 – private legislation gives officers greater powers than police – extremely dangerous precedent
- http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1847/cukpga_18470089_en_1#pb3-l1g11

Cheshire County Council Act 1980: c.xiii Part VI [not included]

- Clause 30 (2)(b) lists as an offence any person without consent hawks, sells or offers or exposes for sale anything: an anomaly: pedlars are authorised by their Certificate to sell anywhere in the United Kingdom.
- The Act may be open to challenge from Pedlars for infringement of Human Rights

Highways Act 1980: Section 137 [51]

- Provides legislation for removal of obstruction from the highway
- Penalty for wilful Obstruction – “*If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a Highway he is guilty of an offence and liable to a fine not exceeding level 3 on the standard scale*”.
- Section 149 Subsection 2 Clause (a) and (b) confers powers on any authority to remove anything forthwith and without having to seek a removal or disposal order from a magistrate if the thing is unlawfully deposited on a highway and constitutes a danger (including a danger caused by obstructing the view) to users of the highway
- http://www.glass-uk.org/index.php?option=com_content&task=view&id=840&Itemid=724

Local Government (Miscellaneous Provisions) Act 1982 (LGMPA): [52]

- Schedule 4 Street Trading:
- adoptive not compulsory
- contains 198 clauses to control Licensed Street Trading
- only ONE subclause relates to pedlars
- states pedlars are not street trading for the purposes of this Act
- pedlars exempt from local legislation because of national regulation and do not occupy a fixed pitch
- differentiates between trading (a) & selling(f)
- licences limit places, times, days, articles, etc
- Pedlars contend that private legislation 1999-2009 is incompatible with this Act – an attempt was made to alter the scope / remit of local authorities to include the control of pedlary in designated streets but the *OB BBC MCC* found the amendment to *LGMPA* misleading and the textual alterations redundant - pedlars are also other than door-to-door sellers.
- http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1982/cukpga_19820030_en_1

- Part IX – Sale of Food by Hawkers clause 18 & 19:
- exempts sale of ‘sealed’ food - ‘food’ does not include milk & cream
- Repealed by Food Act 1984 C.30, s.134, sch.11
- Repealed by Food Safety Act 1990 C.16, s.s.54, 59(4), Sch. 5
- Unlicensed food sellers can be closed down under this legislation unless they claim to be hawkers acting under a valid Pedlars Certificate.
- Food-selling hawkers and oversized-hawking operations are an identifiable problem – nothing whatever to do with small scale pedlars who are pedestrians carrying their goods – promoters of private bills fail to differentiate

Civic Government (Scotland) Act 1982 (CGSA) : [not included]

- Part 1 s.s. 7(1) exempts those traders with a lawful excuse i.e. a Pedlar’s Certificate from a Street Trading offence
- s.s. 39(3) states a street traders licence shall not be required for (d) any activity for which a pedlars certificate has been granted
- http://www.England-legislation.hmso.gov.uk/RevisedStatutes/Acts/ukpga/1982/cukpga_19820045_en_2

Hampshire Act 1983: c.5 Part 3 [not included]

- Clause 7(2) lists as an offence any person without consent hawk, sells or offers or exposes for sale anything, an anomaly: pedlars are authorised by their Certificate to sell anywhere in the United Kingdom.
- The Act may be open to challenge from Pedlars for infringement of Human Rights
- http://www.opsi.gov.uk/acts/localact1983/pdf/ukla_19830005_en.pdf

Police & Criminal Evidence Act 1984: [53]

- (C.60) Part II clause 19 (3) The constable may seize anything [which is on the premises] if he has reasonable grounds for believing (a) that it is evidence in relation to an offence which he is investigating or any other offence

- c1 22 (4) Nothing may be retained for either of the purposes mentioned in subsection (2)(a) (1. being evidence for use in a trial and 2. forensic examination) above if a photograph or copy would be sufficient for that purpose.
- Pedlars contend that private bills are incompatible with statute because they give greater powers to council than to police; police may not retain goods if photo' or copy would suffice but council has no such safeguards and goods may not be claimed until after a prosecution which could take several months; in the meantime a pedlars means of trade are confiscated which is unworkable.
- <http://www.statutelaw.gov.uk/legResults.aspx?LegType=All+Legislation&title=police+%26+criminal+evidence+act+1984&searchEnacted=0&extentMatchOnly=0&confersPower=0&blanketAmdment=0&TYPE=QS&NavFrom=0&activeTextDocId=1871554&PageNumber=1&SortAlpha=0>

Essex Act 1987: c.XX Part V [not included]

- Clause 11(2)c lists as an offence anyone who hawks, sells or offers or exposes for sale anything – anomaly: pedlars are authorised by their Certificate to sell anywhere in the United Kingdom.
- The Act, as with all similar Acts, may be open to challenge from Pedlars on the grounds of infringing Human Rights
- http://www.opsi.gov.uk/Acts/localact1987/PDF/ukla_19870020_en.pdf

London Local Authorities Act 1990 (LLAA): [54]

- exemption persists for Pedlars section 21 clause 2(a)
- exemption extended clause 2(e) to cover door to door hawkers
- http://www.opsi.gov.uk/acts/localact1994/ukla_19940012_en_2#sch1

London Local Authorities Act 1994 (LLAA) : [55]

- exemption persists for pedlars & hawkers - hawkers who use the street for a vehicle to expose & sell goods
- introduces seizure, forfeiture & compensation clauses giving officers greater powers than police under Police & Criminal Evidence Act 1984; unlawful to confiscate if photo evidence or sample would suffice, but private legislation has no safeguards against council officer abuse
- http://www.opsi.gov.uk/acts/localact1994/ukla_19940012_en_1

Human Rights Act 1998 (HRA) : [55A]

- liberty, security, private life, expression, assembly, association, discrimination, property – all detailed in other documents to be attached to this
- promoters of private legislation attempt to get around HRA by *control of pedlars as compared to prohibition*: - ever since the Medway bill scrutiny by the JCHR evidence for *justification of HR infringements* has not been heard: - this remains an issue as no other private bill HR process has been given public view despite its potential to impact on the public
- http://www.opsi.gov.uk/acts/acts1998/ukpga_19980042_en_1

City of Westminster Act 1999 (CoW) : [56]

- exemption persists for pedlars clause (e) & hawkers clause (b)
- exemption altered for pedlars clause (e) “*if the trading is carried out only by means of visits from house to house*”: here is the obfuscation of the difference between door-to-door sellers and (the trade of) pedlars which sets the precedent for all subsequent similar private legislations creating anomaly, being misleading, confusing, contentious, and anti-competitive

- conflicts national & local legislation
- interpretation open to abuse
- unworkable because the language of means is not clear
- a hawker with a trolley with the size used by a Licensed Street Trader cannot get the trolley to a house and so by practical necessity must trade on the street thereby committing an offence
- in conflict with EU directives
- see petitions at <http://www.pedlars.info>
- http://www.opsi.gov.uk/acts/localact1999/ukla_19990001_en_1

Regulation of Investigative Powers Act 2000: [57]

- Chapter 23 Part II clause 180: the consequences of not obtaining an authorisation under this part, where there is an interference by public authority with Article 8 rights and there is no other source of authority, may be that the action is unlawful by virtue of Article 6 of the Human Rights Act 1998
- Surveillance evidence may be unlawful
- Does the council have authority under S.28, 29 or 30 from the Secretary of State: if so on what grounds is it proportionate?
- <http://www.opsi.gov.uk/acts/acts2000/en/00en23-b.htm>

Street Trading Act (Northern Ireland) 2001: [not incl]

- activities which are not street trading include *clause 2(e) pedlars*, but anomaly occurs in the use of wording which originated in 1999 private legislation to amend LGMPA: *pedlars who trade other than from house to house are also not street trading for the purposes of the Act.*

London Local Authorities Act 2004 (LLAA): [58]

- exemption persists for pedlars & hawkers (*altered as in City of Westminster Act 1999*)
- street trading definition altered to include ticket touts
- http://www.opsi.gov.uk/acts/localact2004/ukla_20040001_en_1

EU Directive 36/EC “Recognition of Professional Qualifications” 2005: [not incl]

- Article 18 (1) states: *for the activities in List II of Annex IV, the activity in question must have been previously pursued (a) for five consecutive years on a self-employed basis or as a manager of an undertaking.*
- Annex IV List II 2 Directive 75/369/EEC Article 6: *where the activity is regarded as being of an industrial or small craft nature - ISIC nomenclature - The following itinerant activities: (a) the buying and selling of goods: - by itinerant tradesmen, hawkers or pedlars (ex ISIC Group)*
- pedlars under EU Directive are recognised professionals and as such should not (*under Article 5, subsection 1 of Title II Free Provision of Services*) be restricted, for any reason relating to professional qualifications, from the free provision of those services in another member state.
- any restriction of pedlars under UK law is open to challenge by an equivalent professional from another member state
- <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32005L0036:EN:HTML>

Legislative & Regulatory Reform Act 2006: [59]

- allows a Minister to remove or reduce any burden resulting directly or indirectly on any person from any legislation
- the instrument is a regulatory Reform Order
- http://www.opsi.gov.uk/acts/acts2006/ukpga_20060051_en_1

London Olympic Games & Paralympic Games Act 2006: [not incl]

- Olympic Delivery Authority (*ODA*) intend to take over “*a wide range of trading types, including trading taking place on private land and by certificated pedlars as well as street trading presently licensed by local authorities*”. Pedlars concerns have been notified to *ODA*.
- http://www.opsi.gov.uk/acts/acts2006/ukpga_20060012_en_1

Bournemouth Borough Council & Manchester City Council Bills 2007: [59A]

- substantial petitions ‘Against’ have raised the issue of re-wording these bills
- the petitioners contention is about the fundamental incompatibility of these bills with existing statute
- <http://www.publications.parliament.uk/pa/ld200607/ldprbill/003/003.htm>

House of Lords Select Committee Special Report Paper 148 2007: [59B]

- directs special attention be granted to ‘genuine pedlars’
- directs Bournemouth & Manchester to prepare training programme for officers with regard to genuine pedlars
- pedlars contend that the promoters undertakings attached to the paper fail to respond to the specific directions and are therefore, by intent, worthless
- <http://www.publications.parliament.uk/pa/ld/ldsess08/118.htm>

Regulatory Enforcement and Sanctions Act 2008: [59C]

- enables the Local Better Regulation Office to co-ordinate regulatory enforcement by local authorities and for the creation of civil sanctions for regulatory offences as an alternative to criminal prosecution when enforcing existing legislation
- http://www.opsi.gov.uk/acts/acts2008/en/ukpgaen_20080013_en_1

City of Westminster Bill 2009: [60]

- clause 3 alters meaning of street trading from City of Westminster Act 1999
- changes any *article* to any *item* by the unexplained use of “item” : as perhaps a “thought” or any need to change “article” to anything other than in “an article of faith”
- qualifies *services* as those *in a street*
- alters the meaning of street trading in *Cow 99* to include *ticket touts* as in *LLAA'04*
- clause 4 alters selling of *articles or things* to *items*, changes perishable *items* to *goods*
- exemption persists for hawkers selling 4(1), an altered exemption persists for pedlars trading 4(4)
- clause 5 legislates the receptacle size for newsvendors
- 6 pedlars gave evidence before Select Committee July 15th 2009 to submit their defence²³ against a locus challenge by the promoters but were denied on the basis that the bill is a re-enactment of the 1999 Act and pedlars should have petitioned against the original
- <http://services.parliament.uk/bills/2008-09/cityofwestminster.html>

²³ minutes of hearing available online at
<http://www.publications.parliament.uk/pa/ld200809/ldprbill/cofw/evid/ucob02.htm>

Draft Services Directive 2009: [60A]

- issued by BERR / BIS May 20th 2009 under EU directive to pedlar stakeholders with deadline for comment June 9th and UK implementation by year end 2009.
- EU notified BERR 2006 but pedlar stakeholders not informed until too late to comment: pedlars await replies to concerns
- Profession of pedlary not granted due process
- BERR failed an opportunity to consult all pedlar stakeholders during the Durham Research 2008
- without due process any government department proposal such as an amendment to the Pedlars Act is open to contention
- <http://www.berr.gov.uk/whatwedo/europeandtrade/europe/services-directive/implementation/page51289.html>

Draft Statutory Instruments 2009²⁴ Identity Cards:

- Identity Cards Act 2006
- Contains many elements that the Durham Report suggests for upgrading the pedlar's certificate application procedure for it to conform to contemporary conditions
- <http://www.homeoffice.gov.uk/passports-and-immigration/id-cards/>

²⁴ http://www.opsi.gov.uk/si/si2009/draft/ukdsi_9780111479063_en_1

C CHRONOLOGY of PRECEDENTS with brief notes in relation to pedlary.

Watson-v-Malloy April 1988: [62]²⁵

- The case relates to a hawker (Mr Malloy set up a portable stand in a stationary position for the day) who claimed exemption from street trading regime under the Pedlars Act which includes *hawker* in the definition of a pedlar.
- By definition Hawkers Act1888 a hawker *travels with a horse or other beast bearing or drawing burden* but a pedlar by definition *travels and trades on foot without any horse or other beat bearing or drawing burden*.
- It is no longer common for hawkers to use horse or beast and instead use a trolley, stand, cart or wheeled stall.
- The justices heard the distinction but noted that such was not literally drawn in the relevant legislation.
- They recognised the vital conjunctive “and” between travels and trades noting the ordinary/popular conception of a pedlar being an itinerant seller.
- All future cases have adopted the dubious aphorism of: *a pedlar is one who trades as he travels as distinct from one who travels to trade... this does not mean he cannot stop... he goes from place to place... rather than setting up a pitch and allowing customers to come to him* in place of adopting the definition in law: *travels and trades*
- The fact that Mr Malloy set up a fixed pitch for the day took him outside the definition of a pedlar

Manchester-v-Taylor 1989: [63]

- Mr Taylor was on foot, he was travelling, he was trading, he was carrying his goods, he was in a prohibited street, he had stopped for 10-15 minutes
- J Procter found that Mr Taylor was indeed trading as a pedlar

Normand-v-Alexander Jan 1993: [64]

- Under the Civic Government (Scotland) Act 1982 pedlars are exempt from street trading regulation
- Street trading is defined in s.s.39(2) as hawking from a kiosk or moveable stall
- The hawker pushed a stall on wheels, traded and remained on or about the same place each day
- Found the nature of that particular activity fell outside the definition of pedlar
- Quotes Watson-v-Malloy

Prentice-v-Normand Dec 1993: [65]

- Under CGSA as above
- Mr Prentice was selling cigarette lighters from a tray he carried, calling out to customers, whilst walking in the street and stopping to sell

²⁵ reference to page numbers in Evidence from Petitioners on Bournemouth Borough Council bill

- An appeal was refused on the grounds that he was calling out to attract customers to come to him and therefore not a pedlar going to the customer
- Quotes Watson-v-Malloy

Shepway-v-Vincent March 1994: [66]

- Mr Vincent pushed or pulled a trolley and traded in a prohibited area
- Question put: can a pedlar use a small means of carrying/transporting his goods? Finding, yes
- Question put: whether the whole apparatus is of such a scale to take the pedlar outside the definition of pedlar? Finding on matter of fact, no
- The case establishes that a pedlar can use a small means of carrying goods
- The case leaves open the question of whether a hawker can use a large scale operation as a pedlar
- Appeal against the pedlar dismissed
- Quotes Watson-v-Malloy

Westminster-v-Elmasoglu Feb 1996: [67]

- Mr Elmasoglu was a seller of food (hotdogs & burgers) from a substantial barrow, moving position and waiting for customers to approach
- Question put: was the stopping incidental to the *trading* or was the stopping incidental to the *trading whilst travelling*
- Found: not acting as a pedlar, appeal refused
- Quotes Watson-v-Malloy

Tunbridge Wells-v-Dunn March 1996: [68]

- Mr Dunn sold balloons for periods of 15-20 minutes in 8 locations on various dates; did not trade from a fixed position; had no stand; moved up and down a prohibited street offering to sell
- Question put: does a pedlar have to remain in perpetual motion at all times save to make a sale?
- Appeal against pedlar dismissed
- Quotes Watson-v-Malloy

Stevenage-v-Wright April 1996: [69]

- Mr Dunn sold wrapping paper from a large shopping bag at his feet for an hour on a prohibited street calling to passers by
- Question put: what is the nature of the trading practice of the seller & what is the nature of his conduct whilst he is stationary for the purpose of the selling?
- Found: a person must travel as well as trade, but he does not have to do them both simultaneously
- Found: the trade of a pedlar includes *exposing for sale any goods*
- Found: not acting as a pedlar
- Quotes Watson-v-Malloy

Wrexham-v-Roberts July 1996: [70]

- Mr Roberts sold helium balloons on a prohibited street; he moved regularly and stopped and also hovered from time to time
- Found: not necessary for a pedlar to be going somewhere in particular
- Found: a pedlar may walk up and down a busy shopping street
- Found: entitlement to stop to trade is not only limited to a pause for the purpose of effecting an individual sale
- Found: the conduct of a pedlar may not be so narrowly prescribed; may stop to tie shoelace; may stop to speak to someone; may stop to buy something to eat
- Found: a pedlar should be and be seen to be a peripatetic trader (*walking about in connection with one's calling; itinerant*)
- Found: there are other reasons why he may pause; decision to be based on fact and degree regarding activity and pauses
- Appeal against pedlar dismissed
- Quotes Watson-v-Malloy

Chichester-v-Wood March 1997: [71]

- Mr Wood sold flowers from a barrow on wheels as he moved through a prohibited street
- Question put: on the evidence was he acting as a pedlar?
- Found: 9 points to be considered
- Found: the words in an Act of Parliament are to be interpreted in the context of the Act in question at the time the Act was passed
- Found: on the evidence he was not acting as a pedlar
- Quotes Watson-v-Malloy
- Found: the burden is on the prosecution to prove the size of the appendage was that of a street trader *rather* than the pedlar having to prove that it was only small
- Question put : what does a stand mean, does it mean a static pitch or does it mean an appendage? Point of public importance under Order 57
- Question put: whether a person is acting as a pedlar within the meaning of Section 3 of the Pedlars Act 1871 when he sells goods from a barrow to members of the public who approach him.
- Proposed: that the question be put to HL to conveniently deal with the problem of defining the distinction between 'pedlar' and 'street trader'
- Although Sharpe Pritchard (SP) were directed to draft a certificate [order 57] which covers the issues in this case as a point of law of general public importance, the matter remains outstanding.

Croydon-v-Burdon Aug 2002: [72]

- Mr Burdon sold goods from a large barrow on wheels whilst moving around consent streets
- Question put: on the evidence was he acting as a pedlar? No
- Found: to be engaged in street trading from a series of different pitches rather than pedlaring: that is to say moving and selling as he moves, stopping for the purpose of conducting a particular sale

- Further question put: can a pedlar stop to expose his goods for sale or stop for the purpose of procuring orders?
- The principle was established and Point not Certified, nor returned to the Magistrates: determination reversed

D CHRONOLOGY of GOVERNMENT REPORTS & others with brief quotes and comments in *italic* relating to pedlary.

8 July 1998 – Report of the Secretary of State for the Home Dept on Westminster bill [74.1]²⁶

- Opposes the omission of pedlars exemption on principle because of local incompatibility with national Pedlars Acts. *First notification of problems with the proposed legislation.*
- Concern about displacement onto other boroughs and the consequential burden on resources on others. *Shifting the burden not only a concern for adjoining jurisdiction but also impacts directly on private householders within the jurisdiction.*
- Not appropriate through ad hoc changes through local legislation. *Not then and not now as it causes confusion and inconsistency.*

2003-04 – Joint Committee of Human Rights Report on Medway bill HC [75.0]

- [6b] JCHR raised concern about seizure, forfeiture and any modification to effect a Pedlars Certificate, but noted there was no justification for interference with human rights.
- [6c] Promoters reply:
 - interference can be justified if in accordance with law *and* necessary in a democratic society *for* the prevention of a crime on the *grounds* of reasonable suspicion. *Change to the law arises in the bill: it has not been shown to be necessary: pedlary is not a crime; questionable about being "over-zealous" as reasonable grounds? Creation of an untenable Reverse Burden;*
 - control is distinct from deprivation and can be in the public interest *unless* the judgment is manifestly without foundation: *consistent petitioners' contention.*
- Promoters to establish that the control is in the public interest: *remains outstanding;*
 - that contention is accepted by Parliament: *no evidence exists and is misleading;*
 - interference to be proportionate to the aim pursued requires a fair balance between seizure & forfeiture: *seizure is unlawful under the Police & Criminal Evidence Act 1984 if a sample or photograph would suffice. Loss of apparatus means unemployment until outcome of Summons.*
 - the bill contains compensation provision: *unless there is the claim of reasonable suspicion or about being over-zealous...*
 - manifest problems: complaints about unfair competition from licensed street traders and shopkeepers: *but pedlars are part of the open free market;*
 - the bill would not affect any genuine pedlars: *misleading;*
 - it does not take away the right to trade; still be able to apply for a licence: *unlikely given all the restrictions: pedlars as itinerants do not fulfil criteria for Licensing.*

2005-06 – JCHR Report on Leicester, Liverpool, Maidstone bills [76.0]

- [8.3] In accordance with SO 38(3) HL the promoters have provided a statement of opinion of the Bill's compatibility with ECHR: *such opinion is regarded by the promoters as privileged and not accessible to the public who are those directly affected by the bills and without public impact assessment.*
- [8.6] reservations about **proportionality** to a legitimate aim; about justification for the interference; about establishing if there is a case: *decision rests with Select Committee.*
- [8.7] Unopposed Bill Committee heard principle justification: pedlars were circumventing street trading regime without paying same fees; exposing public to inferior goods.

²⁶ reference to page numbers in Evidence from Petitioners on Bournemouth B C bill

- [8.8] in the light of that evidence – no significant risk of incompatibility: *this was an unopposed bill committee finding and pedlars were not consulted.*

23 May 2006 – DTI Minister for Trade Report on Leicester bill HL [77.0]

- no evidence as to whether the provisions in the bill were in the general interest.
- that HL committee should consider the justification for the limitation on the rights of pedlars

23 Jan 2007 – DTI Min for Trade Report on Bournemouth & Man bills HL [78]

- under Standing Order 98A & 38(3) statement of opinion re compatibility with ECHR: “I believe...subject to one point: the promoters establishing that infringing pedlars rights is in the general interest. The promoters have received legal advice...” - *privileged and not accessible to the public who are the general interest.*

March 2007 – Rogers Report ‘National enforcement priorities for local authority regulatory services’ [79]

- [page 94] policy area of street trading scored lowest impact; scored highest impact for effectiveness of enforcement; scored 0 on national priority
- [page 167] identifies door-step selling to vulnerable consumers targeted by rogues; noted local authorities have no enforcement powers
- report subsequently ignored by private bill promoters and their agents

10 July 2007 – HL Special Report Paper 148 on Bournemouth & Manchester bills [80]

- Strong reservations about the use of piecemeal private legislation to remedy perceived problems in national legislation: *this reservation re-iterates the government Report 10 years earlier in 1998 about piecemeal remedies. It acknowledges that the problems are only perceived and not evidence based.*
- Recommends government to undertake urgent review of ‘trading in the streets’ and ‘selling from door to door’: *this is clearest recognition of the two completely distinct activities identifying the differentiation between a pedlar and a Licensed Street Trader as per LGMPA 1982 clause 2(a) & (f)*
 - a pedlar is a ‘trader in the street’ and not a street trader;
 - a pedlar is also not a ‘seller from door to door’
- Requires the promoters to train officers not to prevent genuine pedlars from trading. The letters of undertaking confuse a pedlar with unregulated door-to-door sellers who are not ‘genuine pedlars’ as defined in the report with proper interpretation as in “traders in the street”. The undertakings are therefore considered to be misleading & worthless.

17 Oct 2007 – DFID/BERR Report to Lord Harrison on his committees recommendation for government review towards national legislation [81]

- The Minister regrets cannot support the committee recommendation
- Accepts that some authorities may face difficulties
- Some difficulties may be caused by licensed (*this is an error, therefore “certified”*) pedlars
- Local authorities have existing powers to tackle illegal traders, if they choose to take them up, and to tackle counterfeit & dangerous goods

- The government requires a strong evidence-based case
- In the absence of evidence the case has not been made
- Rogers Review evidence showed street trading licensing has low impact on community and not a national priority
- Suggest alternative route is Regulatory and Enforcement Sanctions Bill

3 Nov 2007 – Special Report by Petitioner - Written questions to Joint Committee (HR) [82]

- general questions 1-8 to the promoters: *remain unanswered.*
- human rights questions 9-16 to the *JCHR*: *remain unanswered.*
- list of concerns over the promoters “*Legal Framework*” to persuade change in the law: *remain unanswered.*

30 December 2007 – agent's letter to JCHR [83.5]

- letter concerns lack of compliance with human rights charter
- lists 6 threshold criteria to determine the merits of *JCHR* scrutiny
- each criteria requires substantial response from committee: *remain unanswered.*

15 Jan 2008 – Joint Committee on Human Rights (*JCHR*) letter re Bournemouth bill [83.3]

- JCHR no longer intend to report on any private bill
- Save for exceptional cases where serious and wide-ranging infringements are proposed: *prohibition of pedlary is serious and without justification: this affects 48 million eligible citizens, is exceptional and requires intervention and protection by parliament.*
- We recognise that the bills may raise human rights issues which are worthy of further scrutiny: *such issues have not been addressed and remain “worthy of further scrutiny”.*
- The most appropriate forum for scrutiny is the House of Commons Opposed Bill Select Committee: *the opposed bill committee declared they were not expert in human rights issues which is why petitioners wrote to JCHR as the experts.*

21 Jan 2008 – agent's letter to JCHR [83.1]

- Request that the *JCHR* list the human rights they consider are worthy of further scrutiny: - *remains unanswered.*

1 Feb 2008 – Mark Egan letter to Agent [83.0]

- JCHR will write to Chair of OBC: *failed: - letter from JCHR July 1st 2009*

19 May 2008 – Human Rights Framework submission on Bournemouth & Manchester bills [84]

- Petitioner's report on how private legislation attempts to circumvent human rights and compatibility with the European Charter of Human Rights and questions whether the bills:
 - are proportionate to interference with the rights of private life;
 - interference on the basis of “*suspicion*” is justifiable in a democratic society;
 - have interference that is fair, balanced & proportionate;
 - interference is a necessary control or that there is policy of an amount of blanket prohibition;
 - interference restricts freedom of association favouring other socio-economic groups;
 - reverse burden of proof: is compatible with a presumption of innocence;
 - conditional defence: is compatible with a fair trial;

- whether construction & interpretation for private legislation with amendment to the LGMPA carry a too narrow and literal construction as proposed by the promoters, or does it carry the same liberal construction as has always applied to pedlary? *The opposed bill select committee has subsequently found the promoters' interpretation unsafe and has sent both bills to be re-written*
- Proportionality of interference:
 - is the measure designed to achieve the legislative objective rationally connected to it;
 - are the means used to impair rights no more than necessary to accomplish the objective;
 - is an outright ban on pedlary in designated streets proportionate?

18 Sept 2008 – Consultation Report: Pedlars, BERR & Durham University [85]

- Public observation exercise: *public questionnaire about pedlars reflects positive endorsement.*
- Consultation report on Focus Group: *notes solutions to procedural issues.*
- Interpretation issues: *with list of solutions.*
- Certificate issues: *with list of solutions.*
- Evidence issues: *with list of solutions.*
- Negative propaganda issues: *with list of solutions.*
- Legal issues: *with list of solutions.*
- Cultural identity issues: *with list of solutions.*
- Modus operandi issues: *with list of solutions.*
- Public questionnaires 108 responses [86]

24 September 2008 – www.pedlars.info website launched online

- A pedlar not for profit reference centre for regulators and regulated: www.pedlars.info
- news, legislation, petitions, faq's, lobbying, research, gallery, history, contact

8 Oct 2008 – Legal Questions to BERR / MoJ / Promoters [87] Stakeholder questions in reference to: *Pedlars (Street Trading Regulation) bill* and others:

- Given that a pedlar by statute is not street trading, what is the legal argument by which a pedlar may be caught by the bill?
- What is the legal argument for primacy of the bill to restrict pedlars over that of the Pedlars Act 1881 entitling pedlars to trade anywhere?
- What is the legal argument for denying protection under the Pedlars Act 1881?
- What is the legal argument to justify denial of a pedlar's human rights?
- What legal argument is there to shift the burden from the public (street) to the private domain (house)?
- What is the legal justification for imposing a blanket policy of restraint of trade on pedlary?
- What evidence can be relied upon by promoters that rogue traders will cease to operate?

November 2008 – BERR/Durham Report [88] Summary of findings from stakeholder questionnaire about street trading & pedlary:

- Local authorities are confused about identity of pedlars, traders and rogues.
- Many authorities encounter no problems with illegal trading and respond with no benefit to introduce private legislation.
- Some authorities want greater powers by way of sanctions such as seizure and fixed penalties
- Some authorities want control to regulate pedlars.
- Pedlars concerned that overzealous enforcement by authority already exists.

- There is little evidence that certified pedlars present problems nor do they compete with other traders, consumers value their presence and regard buying from pedlars a positive experience.
- Allegations of illegal street trading is hard to quantify: most complaints from retailers concerned competition rather than illegal trading or obstruction.
- Greatest concern seemed to be with large scale hawkers gathering in small spaces on peak days.
- Pedlars & police recognise the need to modernise and standardise certificates rather than repealing the Pedlars Act. Inadequacies in the current system make inconsistency to enforcement practice between areas, and are exacerbated by a degree of ignorance among enforcement officers.
- Possible changes include: consistent definitions and guidelines; redesign and standardisation of pedlars certificate; proof of insurance; proof of eligibility to work in the UK and registration as self-employed.
- Increase in the cost of a pedlars certificate to reflect current administrative costs.
- Pedlars value the freedom not to be restrained on local licensed fixed locations, times & product range because as itinerants they move from town to town without prior notice; pedlars are strongly opposed to restricting their trade to door-to-door selling.

22 Jan 2009 – DFID / BERR Report on City of Westminster bill [89]

- Minister's European Charter of Human Rights compatibility statement:
- "I believe, save in respect of the restriction on pedlars activities...."
- "I have not seen the evidence to justify restrictions are in the general interest..."

29 June 2009 – 30 minute video of contemporary issues about pedlary

- Click this link to a video about pedlars having to petition Parliament:
<http://gallery.me.com/julianmcdonnell#100134>

30 June 2009 – Opposed Bill Committee on Bournemouth & Manchester bills

- Minutes of two days of hearings²⁷

1 July 2009 – JCHR letter to the Opposed Bill Committee for the Bournemouth & Manchester bills

- Reiterates that "the committee has cleared the bill from scrutiny on the basis that they do not raise significant human rights issues... as they fall below the threshold for significance": *regardless of the anomaly presented by the minister on his statement of compatibility on the City of Westminster bill 2009 with the same text as stated above* [89]

15 July 2009 – City of Westminster bill 2009

- Minutes²⁸ of evidence by promoters against pedlar's rights to object to the bill

²⁷ <http://services.parliament.uk/bills/2007-08/bournemouthboroughcouncil.html>

²⁸ <http://www.publications.parliament.uk/pa/ld200809/ldprbill/cofw/evid/ucob02.htm>

E CHRONOLOGY of DISCRIMINATION & ABUSE of Language with brief quotes and *comments in italics* relating to pedlary and numbered references in red are page numbers in Evidence from Petitioners presented to the Opposed Bill Committee on the Bournemouth Borough Council bill.

13 May 1998 – Sharpe Pritchard (SP) submission to Unopposed Bill Committee on points raised in Home Office Report on the City of Westminster bill [22]²⁹

- Submits that pedlars sell from door to door: *pedlars trade anywhere not only door to door and pedlars contend this SP statement deliberately misdirects Parliament*
- Contends that the bill would have no detrimental effect on genuine pedlars: *the promoters did not acknowledge pedlars as stakeholders, they were not consulted, they were and are directly affected: pedlars contend the statement is untruthful, unfounded, and misdirects an unopposed bill committee and Parliament*
- Organised crime, anecdotal evidence, bogus customers, lookouts, runners, concealed stock: *pedlars contend this is the source of all unsubstantiated & misleading scare-mongery using emotive language to describe pedlars which persists for the next decade*

22 Nov 1999 – NABMA representation to Public Protection Executive [23]

- Repeal the Pedlars Acts: *a stated aim of the NABMA*

26 Jan 2000 – the City of Westminster presentation to the APPG & ATCCM [24]

- street trading legislation is in a mess: *not for pedlars*
- Local Government (Miscellaneous Provisions) Act 1982 is well past its use by date: *no evidence*
- regulators & regulated want new legislation: *pedlars not regarded as stakeholders*
- addresses the issue of Pedlars: *fear-mongery, there is no issue unless one is posited*
- all parties were content: *no they were not: - pedlars were not consulted*
- limits pedlars to house to house visits: *pedlars have always traded town to town or to other men's houses*
- accords with the purpose of Pedlars Acts: *misleading, completely the opposite*
- lovely definition: *a snide remark that makes the "definition" derogatory*
- not sure how hot dog seller fits: *fits because of legislation in the LGMPA*
- we had to prove they were not peddling: *rightly so but they want to reverse the burden of proof*
- town to town and to other men's houses: *misleading, misdirection*
- writing to persons affected: *to all those in cahoots except those affected i.e. pedlars*

9 Sept 2003 – Promoters [Clarkson] Evidence before Select Committee on LLA bill [25]

- [224] “The simple issue is pedlars avoid street trading control”: *misleading, the simple issue for pedlars is that the bill tries to avoid public statute as pedlars are EXEMPT from street trading regulation*
- [225] “Condition precedent is to understand what a pedlar is... going along a road and selling goods at the far end of the journey”; *misleading, the condition precedent requires a thorough study of the history of pedlary*
- [226] “to protect the itinerant but perhaps to avoid the vagrant”: *introduces innuendo, smear and prejudice as it fails to put the words in context*

²⁹ reference to page numbers in Evidence from Petitioners on Bournemouth B C bill

- [228] “street trading regime there for self-safety, fairness of competition”: *a pedlars certificate is also a safeguard for the public and a protection against unfairness of competition*
- [229] “City of Westminster **pioneers** to cut out a pedlars exemption”: *but no reasoned evidence*
- [230] “what the mischief is”: *the mischief is that the concept is worth investigation*
- [237] “we have not removed the exemption for door-to-door sellers”: *pedlars are not only door-to-door sellers, such traders are not regulated, never have been*

16 June 2004 – Promoters [Lewis] Evidence before Committee on Medway bill [26]

- [11] “I should emphasise does not abolish pedlar’s exemption because house to house selling still permitted”: *misleading: reference to a concept that is unregulated*
- [16] “pedlar is an anachronism... hotdog, counterfeit, shoddy, opportunist”: *misleading emotive propaganda*

12 April 2006 – Local Government Association Media Office Press Release: Beware Del Boys [27]

- “Thousands of pedlars, substandard, fake, illegal, clutter, eyesore, aggressive, hijack, fake, cheap, safety, nightmare, businesses loose” *Misleading emotive propaganda*

22 April 2006 – Local Government Association (LGA) periodical launches war on Pedlars [28]

- “Warning, pedlars, substandard, fake, dangerous, exploit, outdated law, clutter eyesore, aggressive, hijack, fake, cheap, criminal gangs”: *misleading emotive propaganda*
- “LGA calling to seize peddlers goods – fake or not”: *such scope is unlawful*

7 Sept 2006 – Bath Council - fighting fund [30]

- Council minutes concerned about the NABMA request for a fighting fund

Jan 2007 – NMTF Newsletter – Pedalling on with pedlars laws [29.1]

- Dr Brian Iddon promotes private members bill for national regulation, supported by NABMA
NABMA wants to repeal the Pedlars Acts

21 Feb 2007 – Pedlars (Street Trading Regulation) bill – Dr Iddon [31]

- “town to town carrying”: *misquote of Pedlars Act misdirects Parliament*
- “Pedlars originally operated outside town centres”: *misdirects Parliament, pedlars operate the Pedlars Act 1881 anywhere*
- “My bill is not contentious”: *for whom as it is modelled on the CoW’99 and is very contentious for genuine pedlars*
- “counterfeit, stolen, sub-standard”: *unsubstantiated repetition of Sharpe Pritchard’s original allegation May 13th 1998*
- “it clarifies the definition of peddling”: *misleading, it confuses the definition*
- “Pedlars will be able to continue”: *misleading, the bill conflicts with the Pedlars Act 1881*
- There is later evidence that Dr Iddon has had a change of heart about his bill written the same as Bournemouth, now considering it as a bit harsh on pedlars

16 May 2007 – NABMA & Sharpe Pritchard afternoon talk with wine & canapés [32]

- “The proliferation of pedlars...” Dr Iddon, Lewis, Wilson, and NABMA among others: *promoting the private business of Roll A Parliamentary Agents with enticements to attend*

1 July 2008 – NABMA website home page [35]

- Misleading photo of hawker not pedlar

3 July 2007 – HL Submission of Evidence by promoters [33]

- “Wide range of goods by illegal street traders”: *goods sold not only by illegal rogues but also by licensed hawkers, pedlars, shops, and all and any other businesses*

3 July 2007 – HL promoters submission – legal framework [34]

- Identifies what promoters consider the issue - *but the issues are much broader*
- No street trading refers to licensed hawking - *the misuse of language misleads*
- Sets out reasons to refuse - *why a pedlar will be un-able to fulfil the obligations*
- Against a background of limited control - *on the contrary there is scope for total control and prohibition as in Leicester*

18 July 2008 – Institute of Licensing (IoL) website article [36]

- Photo of illegal trading - *to support article against pedlars*
- Rewriting of history: *misleading, await identification of author from the Institute*

27 July 2008 – BBC News: “Pedlar Power Prompts Law Change” (prompted by the LGA & IoL) [37]

- “The idea of pedlars being fledgling businessmen could not be further from the truth”: *unfounded smear against those who are proud of their trade*
- “Here today gone tomorrow pedlars”: *propaganda*
- “Perceived unfair financial advantage”: *a pedlar carries his goods (0.4x0.3m) but a market trader has 100 times larger operation (4x3m)*

4 August 2008 – LGA Media Office Press Release: “Modern Day Del Boys” [38]

- Gangs, unsafe, faulty, packs, criminals, obstruction, intimidating, threatening”: *if these allegations be true, and they are not, it is not safe for legislation to shift burdens onto residents and were this slur to have been published against any other person or group then it will have caused legitimate complaint of slander*

4 Aug 2008 – Mirror Newspaper: “Councils demand pedlars be pushed off the streets” [39]

- “Shoddy, dangerous, plagued, foreign criminal gangs, flogging, intimidation.. Hazel Harding, head of the LGA says pedlars operate in packs.. criminal gangs, obstructing, threatening..”
Misleading emotive propaganda and as above liable to just cause for slander

23 April 2009 – Manchester Evening News: “Crackdown on dodgy street traders” [40]

- Bid to crackdown on rogue street sellers: *misleading to prohibit pedlars*
- Street Traders object to unfair competition: *pedlars object to restraint of trade*
- Police have no say: *misleading, pedlars are vetted in most places*

19 May 2009 – Memorandum of the LGA posted on www.parliament.uk [41]

- LGA has been lobbied by members - *to prohibit pedlars*
- Pedlars traditionally go door to door – *misleading, they trade anywhere*
- Getting proof is resource intensive – *misleading, pedlars defence is resource intensive*

- Hard to stop pedlars selling faulty goods - *misleading smear campaign*
- Poor quality even dangerous – *fear mongering smear campaign*
- Linked to criminal gangs - *unsubstantiated fear-mongery and liable to being slander*
- Intimidating and threatening - *unsubstantiated fear-mongery and slander*
- Of respondents 90% said pedlars a problem - *no objective analysis*

F DEFINITIONS: - Language & Glossary with a view on the Pedlars Act

The Anglo Saxon exegesis about “*Petty Chapman*” is precisely why despite all the disparagement about Pedlars being an anachronism, the Pedlars Act in its **entirety** is absolutely relevant.

There are many CHAPMAN about in the land and never should they be done away with. There’s always the ever present need and requirement for a society to have the presence of “chapman”, pedlars and all the rest of the persons described in the Pedlars Act for vibrancy in life and with the supply of its every need whether known or not known, already available elsewhere or brought to the public’s attention.

This is easily and most cost effectively achieved by the low impact self-sustainable presence of pedlars along with the chapman and the others. If it is that Local Authorities find this a hard concept to grasp then there needs to be better and firmer support for Local Authorities by central government: not by the inverse route of misapplying the EU contingency about *subsidiarity*, but by an increase in training and support for officials and by re-locating part of the benefit of the business charge, rates and levies.

It is easy to understand that the Pedlars Certificate lays a simple foundation of understanding for the current debate and issues surrounding a national Identity Card. Such a concept is very contemporary and leads logically to the proposition that pedlars may be the early recipients of a form of National Identity Card as a cost-effective alternative to creating a new identity instrument to replace the pedlars Certificate.

Following the Glossary are two comparison charts differentiating particular types of street traders and thereafter some issues regarded contentious when resolving pedlar legislation.

a) PEDLAR , Certified Pedlar & Genuine Pedlar

Pedlars Act 1871:

The term pedlar means:

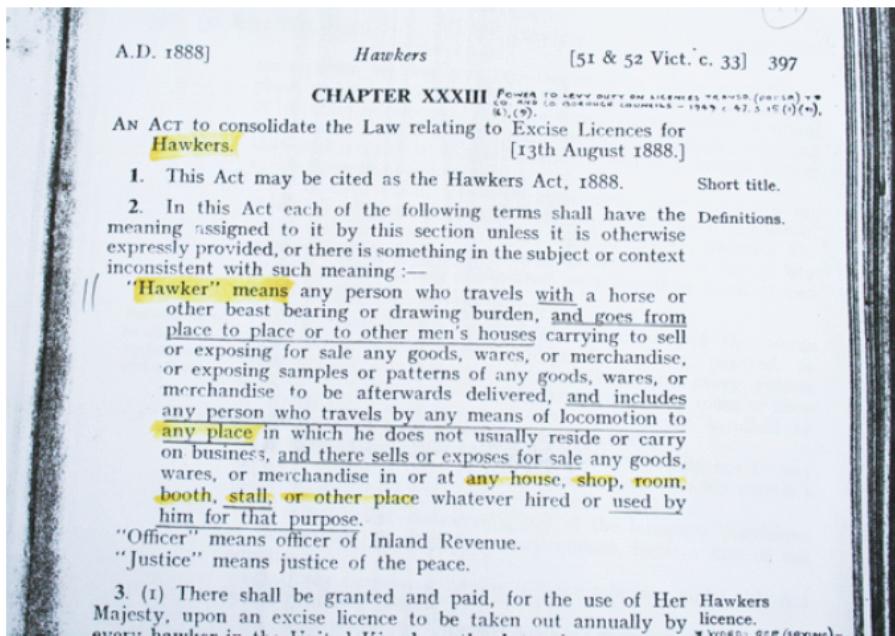
“Any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs
or other person who
without any horse or other beast bearing or drawing burden
travels
and trades
on foot
and goes from town to town
or to other men's houses
carrying to sell or exposing for sale any goods wares or merchandise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

Pedlars Act 1881:

“authorises a person to act as a pedlar within
any part of the United Kingdom”

b) HAWKER, Certified Hawker

Hawkers Act 1888:



Hawkers Licences were finally abolished under the Local Government Act 1966 which was followed by the LGMPA 1982 to enable control and licensing of hawking in designated streets; elsewhere there were no constraints.

c) PETTY CHAPMAN

Chapman is a derivative of the Saxon word Caepman, meaning a marketman, a monger or a merchant. According to a list of colonial occupations, a chapman is a peddler or dealer of goods, usually itinerant, going from village to village.

The name comes from the Old High German choufman or koufman, which became the Old English céapman. Old High German chouph, Old Saxon cop and Old English céap meant barter, business, dealing, which, combined with mann or man, gives the name CHAPMAN. Other spellings of the name include cepeman, cypman, cypmann, chepmor, caepmon, and even shapman!

The Oxford English Dictionary supplies four meanings for chapman:

A chapman was a man whose business was buying and selling: - a merchant, trader or dealer.

Second, he was an itinerant dealer who travelled about from place to place selling or buying; one who kept booths at markets etc; a hawker, a peddler (English spelling).

The third meaning is that of an agent in a commercial transaction, a negotiator or broker.

Fourth, a chapman was a purchaser or customer.

There is also a citation that appears to be a law handed down by Edward VI in 1553 that a petty chapman was a retail dealer.

It is plain to see from this derivation, how the Pedlars Act is a necessary and vital part of the life of community: that the Pedlars Act encapsulates every one eligible throughout the land, both as customers and as the necessary agents for business or as a broker. These sorts of transactions can be carried out anywhere and it is unreasonable to view them merely as the purview of only a select few who meet in secret. Closed doors indicate closed minds, and closed minds prejudice a vibrant society.

d) TINKER

A tinker was originally an itinerant tinsmith, who mended household utensils, but “menders” remain travelling throughout the land

e) OTHER

Other means none of the aforementioned, distinct from the aforementioned or implied in them, but also indicates that the Pedlars Act encompasses all and any lawful activity.

f) LICENSED STREET TRADER / Licensed Static Hawker/ large-scale fixed-pitch hawker

Hawker Licensed by Council to sell from a fixed pitch with barrow in a designated street.

The difference is between a mobile hawker with no guarantee of any definite prospect for any trade and one who with a fixed pitch enforced by licence has some help to secure the probability of regular trade

g) CERTIFIED PEDLAR & small-scale hawker

Pedlar Certified by Police acting for the Magistracy to trade as a pedestrian with small means to transport goods anywhere.

h) ROGUE, ROGUE TRADER, ILLEGAL TRADER, Illegal Street Trader

None of the above

i) street trader

Non-specific term generally related to any activity in the street for gain or reward. Includes all the above. Should not be confused with “Street Trader” being the formal text for a “Licensed” trader.

j) Itinerant

Traveller from place to place; not fixed or stationary; travelling on a circuit especially in the pursuit of a trade or a calling

COMPARISON CHART between PEDLARS and STREET TRADERS

	PEDLAR	STREET TRADER
Regulation	Pedlars Acts	Local Authority (MP) Act
Statute type	National	Local
Type of Authority	Pedlars Certificate	Street Trading Licence
Issued by	Magistracy via Police	Local Authority/Council
Revocation	yes – by Magistrate	yes – by Council
No of Clauses of Regulation	27	10
No of subclauses	38	190
Minimum age	17	17
Application Form Document Form	Pedlars Act Form A Form B Pedlars Act	Designed by Council Licence
Photographic Identity	Not required	Yes
Renewal	Annual	Annual
Public Liability Insurance	Not required	Required
Scale of operation	Pedestrian 0.12m ² 1%	Fixed pitch 4x3m 12m ² 100%
Cost per annum	£12.50	£600 - £2500
Cost per square meter	0.4x0.3m ² = £104	4x3m ² = £50 - £207
Cost per day	varies	£1.64 - £6.84
Restrictions:		
Where to trade?	By choice anywhere in UK	Specific allocated space
When to trade?	By choice – any time	Specific times & days
What to trade?	By choice – any product	Specific products only
Competition?	No restriction	Restricted to 500m
Conditional?	Within the Law	Yes
Burden on local charges	None	Yes
Are they Street Trading?	No – LGMPA S3Sch4Cl2(a)	Yes
Is obstruction an issue?	No – a pedlar can move	Yes – hence regulation

COMPARISON CHART between PEDLARS and HAWKERS

	PEDLAR	HAWKER
Regulation	Pedlars Acts 1871 - current	Hawkers Act 1888 – repealed
Type of Authority	Pedlars Certificate	Hawkers Licence abolished for those with horse under Local Gov Act 1966 Those on foot deemed pedlars
Issued by	Magistracy via Police	Local Authority/Council Hence Licensed Hawker
Scale of operation	Pedestrian <u>without</u> beast of burden	<u>with</u> beast of burden/cart, trolley, stall, stand
Burden on local charges	None	as per Licensed Street Traders
Are they street trading?	No they are traders in the street exempt from the concept of street trading by LGMPA 1982	open to interpretation
Is obstruction an issue?	No – a pedlar can move	subject to the Highways Act

Pedlar's Contentions

The above comparison has been prepared in response to L Justices (*Chichester-v-Wood 1997*) direction to Sharpe Pritchard regarding Certification on a point of Public Importance under Order 57 to the House of Lords on the following questions to define the distinction between **pedlar** and **street trader** raising the following questions:

- 1 What does a stand mean?
- 2 Does it mean a static pitch or does it mean an appendage?
- 3 Is a person acting as a pedlar within the meaning of Section 3 of the Pedlars Act1871 when goods are sold from a barrow to members of the public who approach him.

Petitioners contend that these questions require more detailed clarification because of confusion caused by the use and misuse of language over and through the years of precedent and legislation and therefore posit the following questions to define the distinction between a **Certified Pedlar** or **small-scale hawker** and **Licensed Street Trader** or **large-scale hawker** with a fixed location:

- 4 What distinguishes a **pedlar** from a **hawker** albeit that they are joined in the Pedlars Act?
- 5 What **scale of operation** differentiates a pedlar from a hawker?
- 6 What **modus operandi** differentiates a pedlar from a hawker?
- 7 What **activities** differentiate a pedlar from a hawker?
- 8 What distinguishes a small-scale operation from a large-scale operation?

In 1966 the Hawkers Licence was abolished and until 1982 hawking remained unregulated. In 1982 the Hawkers License became the Local Authority Street Traders Licence. The new form of License was for a **fixed location** and no longer applied to a mobile pitch. Mobile hawkers continued to operate.

In 1988 (*Watson v-Malloy*) Lord Justices attempted to re-define the words **travels and trades** extracted from the statute definition, but confusion has persisted to the degree that Clarkson Q.C. for the promoters, (Bournemouth & Manchester bills) considered a pedlar / hawker must remain in **perpetual motion**, but this was found by the Select Committee to be an anomalous unworkable notion.

In courts a hawker's defence relies on definition as being a pedlar but it is the scale and proportion of a hawker's operation that has been central to all concerns about pedlary.

Precedent exists in **news-vendor** legislation that defines acceptable dimensions of apparatus so it is quite acceptable in law to legislate such scale & proportion.

Under the *LGMPA* a pedlar is **not street trading** but promoters of private legislation twist words to alter this legal fact.

A pedlar is more accurately defined as a Certified trader in the street, as distinct from a Licensed Street Trader, or "*Licensed static Hawker*".

In the *LGMPA* 1982 hawkers were combined with pedlars in s.4 clause 2(a) but Parliament in the London Local Authorities Act 1990 gave distinction to hawkers in section 19 Part III clause 21(2)(e) and this distinction has persisted in *LLAA'94*, the City of Westminster Act 1999 clause 3(b) and in the City of Westminster bill 2009 clause 4(1).

The promoters of the Bournemouth bill relied on the *LGMPA'82* in which hawkers and pedlars are joined in clause 2(a) and so it was promoted under the bill that a hawker, with means of transporting goods by trolley, barrow, cart, or other would be caught by the bill, as follows:

The following are not street trading for the purposes of this Schedule [Act] - trading by a person acting as a pedlar [hawker] under the authority of a pedlar's certificate granted under the Pedlars Act 1871 if the trading is carried out only by means of visits from house to house.

This raised the question of a hawker being **incapable** of fulfilling the terms of the bill in a designated street in Bournemouth given that the means can be a heavily laden cart or trolley which by necessity remains on the street and therefore accessible to the public.

Further concern was raised about the redundant additional wording "*if the trading is carried out only by means of visits from house to house*" because pedlars do not trade only by such means, they trade also by other means.

HL Special Report Paper 148 - 10 July 2007 Lord Harrison's Select Committee

the Report's Conclusion:

[The Committee] considers that the Government should undertake an urgent review of the law on trading in the street and selling from door to door... These exact words parallel the exemptions in *LLAA'90* clauses (a) & (e) and were not drafted without reason.

The government in response produced the Durham Report which though interesting and full of widespread support for the current / existing regime for pedlary, failed in its "*review of the law on trading in the street and selling door to door*".

[The Committee] further require the promoters... to undertake... to give particular attention to training officers... so that genuine pedlars ... are not prevented from carrying on their trade".

The report then attached two undertakings by the promoters of the bills which on the surface appear to fulfil the undertakings, but under closer scrutiny of the language appear worthless.

Pedlars contend that the undertakings are worthless because the training programme refers only to *door-to-door* activity in Bournemouth: "*calling door to door*", and in Manchester: "*trade door to door*". They each fail to undertake training in the meaning of the words "*trading*", "*selling*", & "*genuine pedlar*", and so perpetuate an oversight which can lead to a mischief.

Issues of Public Importance

The Lord Justices in 1997 (*Chichester-v-Wood*) gave direction regarding Certification on a Point of Public Importance for the House of Lords.

Lord Garrison in 2007 for the Select Committee gave direction to the Government on the same point of public importance.

Neither has been achieved and pedlars contend that private legislation is in a mess serving only to obfuscate the issues.

Pedlar's Options

Petitioners 'against legislation that appears pitted against their interest' have two options:

- Firstly: to take a case through courts and ultimately for **Judicial Review**. The process may take 10 years and a minimum of £50,000 and poses an immense and insurmountable burden.
- Secondly: and a reason for petitioning Parliament is to seek the **equivalent of Judicial Review**. This process may take a few years but is not an insurmountable burden on those directly affected as can be reckoned in this brief summary by lawful genuine pedlars.

The objective is the same: namely Certification on a Point of Public Importance.

Need for Clarification

Pedlars in general as members of the public have had placed on them Private Bills which in the normal understanding of private bills should only affect in law: only those **specified individuals** likely to be effected enough to require compensation and able to be compensated by specific undertakings. Petitioners "Against" the bills drawn to remove their entitlement to the safety of the Pedlars Act were asked in the House of Lords what **undertakings they sought**, but they sought no personal compensation but did propose amendment to help **clarify the law**.

The promoters objected [753-758 Bournemouth & Manchester HL Select Committee] on the basis that it would change their **flagship** legislation.

Until Parliament gives clarification on a Point of Law pedlars contend that the private "flagship" has either sailed into the doldrums awaiting a breath of fresh air from the Law Lords or it is has been shipwrecked by misconstruction.

G NATIONAL LEGISLATION PROPOSALS

The government is consulting on how to bring pedlary and street trading regulation up to date and there is a logical policy sequence available to the minister:

Either:

- a) amend the Local Government (Miscellaneous Provisions) Act & the London Local Authorities Act to reflect the findings of the Bournemouth Borough Council & Manchester City Council bills HC Select Committee
- b) amend the Pedlars Acts to reflect the findings of the Select Committee & the Durham Report

or:

introduce a Reform Order under the Legislative & Regulatory Reform Act 2006 to remove or reduce the burden resulting directly or indirectly on any person (pedlars) from any legislation (private acts)

or:

promote the Pedlars (Amendment) bill modelled on private members legislation as introduced by Dr Iddon

Background:

Amendment proposed by Select Committee to Private Bills dated 1 July 2009 states:

"All the bill except clause 5 survives as drafted

Clause 5 needs amendment

The pedlar trading house to house survives

For those not trading house to house:-

- *Their goods or tools of handicraft must be carried on foot on the person or in a trolley pushed or pulled by the person with carrying capacity of no more than 1 cubic meter – subject to the next point*
- *They must not stop on one place for more than 5 minutes*
- *They must then move on at least 200 meters interrupted only by stops for a specific sale*
- *They cannot return to within 5 meters of any of their previous spots in a 12 hour period*
- *They cannot move to a position within 50 meters of another pedlar with the same authority*
- *They must display their certificate prominently*

The exception for pedlars is to be qualified to the effect that nothing in it shall be taken to extend the range of activities comprising acting as a pedlar"

N.B. The following is an analysis with comment *in italics* of the above. This amendment simply restates the Pedlars Act 1881 but with conditions i.e. a pedlar who “trades town to town or to other men’s houses”, or, “only by means of visits from house to house”, may trade anywhere under certain conditions.

“All the bill except clause 5 survives as drafted

Clause 5 needs amendment

The pedlar trading house to house survives: *making the clause 5 superfluous as an amendment to the LGMPA and others such as the CGSA & LLAA & devolved government Acts*

For those not trading house to house:

- Their goods or tools of handicraft must be carried on foot on the person or in a trolley pushed or pulled by the person: *wording has to be altered so that the trolley has capacity and not the person* with carrying capacity of no more than 1 cubic meter – subject to the next point
- They must not stop on one place: *'position' is more accurate as 'place' is easily misinterpreted as a particular town or street* for more than 5 minutes: *precedent indicates that 15-20 minutes is normal but there is always the exception and a pedlar can have continuous trade extending beyond a specified period; it is unfair and not justifiable for a pedlar to have to abandon any interests other than “unless engaged in continuous trading or notified by an officer with just cause”*
- They must then move on at least 200 meters: *'they must then move on' is sufficient to ensure a non-static position, the distance is irrelevant and possibly unworkable: suggest delete ‘at least 200 meters’; interrupted only by stops for a specific sale, proposed change: ‘for a specific sale or trade’; a pedlar’s trade is not limited to only selling but includes other reasons to stop in a position: to communicate, to exchange, to demonstrate, or any other activity allowed for by the Pedlars Act*
- They cannot return to within 5 meters of any of their previous spots in a 12 hour period: *this poses the question about a pedlar crossing a spot previously occupied and is stopped for a sale: the clause may be unworkable, the purpose is only to keep the pedlar moving and not to prohibit the trading*
- They cannot move to a position within 50 meters of another pedlar with the same authority: *until such time as all pedlars certificates are of the same form an unsuspecting pedlar may be unaware of other pedlars, which raises the question of penalty and whether this clause indicates not being useful as it goes against HRA in terms of most allowances of conversation, association and such*
- They must display their certificate prominently: *whilst trading*

The exception for pedlars is to be qualified to the effect that nothing in it shall be taken to extend the range of activities comprising acting as a pedlar.”

The following is an amendment to the Local Government (Miscellaneous Provisions) Act (LGMPA) and the London Local Authority Act (LLAA) to reflect the findings of the Select Committee:

a) AMENDMENT to Local Government (Miscellaneous Provisions) Act 1982 & London Local Authority Act 1990

Since 1999 Private Bills have attempted to restrict pedlary to house to house visits by modifying an adoptive Act but the committee on the Bournemouth & Manchester bills amended the misnomer relied on by the promoters that: *pedlars are only door-to-door sellers and must remain in perpetual motion whilst trading on the street.* The amendment clarifies that pedlars are not only door-to-door sellers and that they can trade other than from door-to-door i.e. anywhere as per the 1881 Act. Whilst trading in the street their allowable activities are conditioned.

The London Local Authorities Act 1990 clause 2(e) extended clause (2)(f) *LGMPA '82* to include hawking door-to-door, this is now consistent in the following proposed amendment.

The Local Government (Miscellaneous Provisions) Act 1982 C.30 Schedule 4 Street Trading³⁰

"Clause (2) The following are not street trading for the purposes of this Schedule –

- (a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871;*
- (f) selling things, or offering or exposing them for sale, as a roundsman,"*

Proposed amendments:

Clause (2) The following are not street trading for the purposes this Schedule –

- (a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871 subject to the following:*
 - i. a pedlar's trade includes trading by means of visits from house to house
 - ii. a pedlar's trade also includes other than trading only by means of visits from house to house
 - iii. trading "town to town or to other men's houses" carries the same meaning as "only by means of visits from house to house" in that pedlars are pedestrian and mobile
 - iv. a pedlar's goods or tools of handicraft must be carried on the person or in a trolley with a carrying capacity not exceeding one cubic meter which is pushed or pulled by the person, subject to the following points:
- 1. a pedlar may not stop in one static position for more than fifteen [15] minutes unless engaged in displaying skill in handicraft, trading or stopped with just cause by an officer
- 2. a pedlar must then move on at least twenty [20] meters from that static position interrupted only by stops to trade, display, to engage with an officer or in compliance with rights granted by the HRA
- 3. a pedlar cannot move to a position within five [5] meters of any previous position within a one [1] hour period
- 4. a pedlar must display a Pedlar's Certificate prominently
- 5. the exception for pedlars is to be qualified to the effect that nothing in it shall be taken to extend the range of activities comprising acting as a pedlar

³⁰ see ADDENDUM 1

- (f) selling things, or offering or exposing them for sale, as a roundsman or:
 i. a hawker selling articles or things to occupiers of premises adjoining any street

The following is an amendment to the Pedlars Act 1871 to reflect the findings of Select Committee & the Durham Report:

b) AMENDMENT to Pedlars Act 1871

Clause 3 shall survive

Clause 5 alter the fee to £12.50 or £25.00 or £50.00 or £100.00 to take account of current reasonable administrative costs.

Clause 8 add third paragraph:

"The entry in such register shall also be entered onto a national police database and a public database [to be determined] where name, current certificate number, and issue date can be verified."

Schedule TWO - Form A³¹ – Form of Application for a Pedlar's Certificate

Clause 4 delete "within thepolice area".

Clause 5. My National Insurance number is

Clause 6. I have £5,000,000.00 public liability insurance and attach copy of the policy.

Clause 7. I accept that my application will undergo a police criminal record check.

Clause 8. Attached are 2 certified recent passport photographs.

Clause 9. I accept that if this application is successful my name, my certificate number and its date when issued will be entered on a national database for public scrutiny.

Schedule TWO - Form B³² – Form of Pedlar's Certificate

Delete the words "within thepolice area"

Add: national database certificate number, photograph, name, date issued

c) please note that with amendment to the LGMPA & LLA4, the following Acts will be superseded:

City of Westminster Act 1999, City of Newcastle upon Tyne Act 2000, Royal Parks (Trading) Act 2000, London Local Authority Act 2004, Medway City Council Act 2004, Leicester, Liverpool & Maidstone Borough Council Act 2006, Northern Ireland Assembly Act 2006, or needing to be revised as with the CURRENT BILLS BEFORE PARLIAMENT: Bournemouth, Canterbury, City of Westminster, Leeds, Manchester, Nottingham, Pedlars (Amendment), Reading

Clause 5 Pedlars is redundant and forthwith deleted, note: the clause number varies throughout the Acts but textually remain the same

³¹ see ADDENDUM 2

³² see ADDENDUM 2

d) AMENDMENT to Essex Act 1987 Part V*"Clause 11 (2) Any person who – "**after the word person insert "with the exception of a pedlar acting under the authority of a pedlars certificate issued under the Pedlars Act 1871"***AMENDMENT to Hampshire Act 1983 c.V Part III***"Clause 7(2) Any person who – "**after the word person insert "with the exception of a pedlar acting under the authority of a pedlars certificate issued under the Pedlars Act 1871"***AMENDMENT to Cheshire County Council Act 1980 Sect 30***"Clause 30 (2) Any person who – "**after the word person insert "with the exception of a pedlar acting under the authority of a pedlars certificate issued under the Pedlars Act 1871"***e) REFORM ORDER under the Legislative & Regulatory Reform Act 2006**

If the minister accepts any or all of the above as a solution, this instrument may not require further consideration.

f) PEDLARS (AMENDMENT) BILL introduced by Dr Iddon 2007

Difficulties have been identified in this model and therefore can be considered redundant.

H OUTSTANDING ISSUES

- a) there are certain issues in specific legislations to do with devolved government such as in Northern Ireland & Scotland that require further attention.
- b) The Olympic Delivery Authority (*ODA*) intend to take over "*a wide range of trading types, including trading taking place on private land and by certificated pedlars as well as street trading presently licensed by local authorities*". Pedlars concerns have been notified.
- c) hawkers (pedlars) of food require clarification by government (more than the Food Safety Act) as to whether any workable regime exists and if so what conditions exist for such as chestnut roasters, sellers of peanuts, candy-floss, coffee & croissants, ice-cream, drinks & water, sealed or unsealed food etc.
- d) clarification is required on the outstanding principle of previous legislations such as the 1847 right of access without charge for pedlars and hawkers to any market, fair, or festival open for public use whether organised by local authority or private contractor.
- e) Guidance is required by government on the issue of doorstep sales and about publicity circulated by Trading Standards authorities and consumer advice organisations to be plain and purposeful with information for householders to understand the law and not to be scared by unnecessary fear.

END

research by admin at <http://www.pedlar.info>

Robert Campbell-Lloyd, Nicholas McGerr, Simon Casey

copies of any documents referred to in this report are available at cost

email: pedlars.admin@gmail.com

attached to this report see ADDENDUM 1 & 2

ADDENDUM 1

SCHEDULE 4
STREET TRADING**Annotations:**

Modifications etc. (not altering text)

C1 Sch. 4: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1). Sch. 4 applied (with modifications) prosp by 2000 c. viii, ss. 3, 4

Interpretation

1 (1) In this Schedule—

"consent street" means a street in which street trading is prohibited without the consent of the district council;

"licence street" means a street in which street trading is prohibited without a licence granted by the district council;

"principal terms", in relation to a street trading licence, has the meaning assigned to it by paragraph 4(3) below;

"prohibited street" means a street in which street trading is prohibited;

"street" includes—

(a) any road, footway, beach or other area to which the public have access without payment; and

(b) a service area as defined in section 329 of the M1 Highways Act 1980,

and also includes any part of a street;

"street trading" means, subject to sub-paragraph (2) below, the selling or exposing or offering for sale of any article (including a living thing) in a street; and

"subsidiary terms", in relation to a street trading licence, has the meaning assigned to it by paragraph 4(4) below.

(2) The following are not street trading for the purposes of this Schedule—

(a) trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the M2 Pedlars Act 1871;

(b) anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order;

(c) trading in a trunk road picnic area provided by the Secretary of State under section 112 of the M3 Highways Act 1980;

(d) trading as a news vendor;

(e) trading which—

(i) is carried on at premises used as a petrol filling station; or

(ii) is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop;

(f) selling things, or offering or exposing them for sale, as a roundsman;

(g) the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;

(h) the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;

(i) the doing of anything authorised by regulations made under section 5 of the M4 Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

(3) The reference to trading as a news vendor in sub-paragraph (2)(d) above is a reference to trading where—

(a) the only articles sold or exposed or offered for sale are newspapers or periodicals; and

(b) they are sold or exposed or offered for sale without a stall or receptacle for them or with a stall or receptacle for them which does not—

(i) exceed one metre in length or width or two metres in height;

(ii) occupy a ground area exceeding 0.25 square metres; or

(iii) stand on the carriageway of a street.

Annotations:

Marginal Citations

M1 1980 c. 66.

M2 1871 c. 96.

ADDENDUM 2
<h3>SCHEDULES</h3> <p style="text-align: center;">SCHEDULE ONE</p> <p style="text-align: center; color: red;">F1</p> <p>Annotations: Amendments (Textual)</p> <p>F1 Sch. 1 repealed by (E.W.) Police Act 1964 (c. 48), Sch. 10 Pt. I and (S.) Police (Scotland) Act 1967 (c. 77), Sch. 5 Pts. I, II</p> <p style="text-align: center;">SCHEDULE TWO</p> <p style="text-align: right;">Section 5.</p> <p style="text-align: center;">FORM A</p> <p>Form of Application for Pedlar's Certificate.</p> <p>1 I.A.B. [Christian and surname of applicant in full] have during the last calendar month resided at in the parish of in the county of</p> <p>2 I am by trade and occupation a [here state trade and occupation of applicant, e.g., that he is a hawker, pedlar, &c.]</p> <p>3 I am years of age.</p> <p>4 I apply for a certificate under the Pedlars Act 1871, authorizing me to act as a pedlar within the [F1 police area].</p> <p>Dated this day of (Signed)A.B.</p> <p style="text-align: center;">Form B.</p> <p>Form of Pedlar's Certificate</p> <p>In pursuance of the Pedlars Act 1871, I certify that A.B. [name of applicant] of in the county of aged years, is hereby authorized to act as a pedlar within the [F1 police area] for a year from the date of this certificate. [To be altered, if necessary, to correspond to any order of the Secretary of State or Lord Lieutenant of Ireland as to time of expiration of licenses.]</p> <p>Certified this day of A.D. (Signed)</p> <p>The certificate will expire on the day of A.D.</p> <p style="text-align: center;">Form C.</p> <p style="text-align: center; color: red;">F2</p> <p>Annotations: Amendments (Textual)</p> <p>F1 Words in the Second Schedule substituted (22.8.1996) by 1996 c. 16, ss. 103(1), 104(1), Sch. 7 Pt. II para. 6</p> <p>F2 Form C repealed by Statute Law Revision Act 1883 (c. 39)</p> <p>Extent Information:</p> <p>E1 This version of this provision extends to England, Wales and Scotland only; a separate version has been created for Northern Ireland only</p>



BIS STREET TRADING

STREET TRADING AND PEDLAR LAWS

A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime.

6 NOVEMBER 2009

[note: The title to this consultation is **misleading** and **confusing**.

Authors of the title fail in the first instance to distinguish the two types of legislated 'street trading'. By adopting the language of private business the meaning of the common expression 'street trading' is clouded in confusion. It is surely government duty to stakeholders to give clarity and guidance where confusion persists.

The consultation document claims amongst other things to rely on case law and it is in case law [Chichester-v-Wood] that the justices acknowledged uncertainty in the law on defining the distinction between 'pedlar' and 'street trader' under an Order 57 as a point of public importance.

The following 5 pages explain the difference between 'certified' and 'licensed' street trading.

The following is therefore a more accurate title for this consultation:

BIS – STREET TRADING – CERTIFIED AND LICENSED

A joint consultation on modernising street trading legislation, and on draft guidance on the current regimes.

BIS is urged by pedlars to correct this fundamental error and notify stakeholders.

14 November 2009
pedlars.info
link to pedlars information2.doc]

Pedlars Information

- 1 There are two lawful categories of street trading – **Certified & Licensed**.
- 2 By definition street trading ‘includes selling or offering or exposing for sale any article’ and applies to both Certified & Licensed ‘trading in the street’ commonly known as ‘street trading’.
- 3 A Licensed street trader is restricted to a fixed pitch and calls upon provision of local authority services.
- 4 A Certified street trader is unrestricted and exempt from local authority street trading regime and services.
- 5 Both types of trade include the exhibiting of goods to attract sales. Exhibiting includes the demonstrating of goods and attraction of customers but there is a difference in the context of attracting customers or going to one’s customer.
- 6 A Licensed street trader is not free to move the pitch from one location to another – this is because a particular space is allocated for the licence and services provided.
- 7 A Certified street trader is itinerant and therefore free to travel in search of a market and customers in towns and cities of his choice, where and when he chooses, and with what goods he chooses. It is in this context that the expression “he must go to his customers” refers. It does not mean that a pedlar must remain in perpetual motion.
- 8 Nothing in law prohibits a Certified street trader from trading in one town or a particular street for any length of time though remaining in one spot for 15-20 minutes has been cited in case law [Manchester-v-Taylor 1989, Tunbridge Wells-v-Dunn 1996].
- 9 A Certified street trader may trade in a ‘designated’ street [Tunbridge Wells-v-Dunn 1996], or may walk up and down a busy shopping street [Wrexham-v-Roberts 1996].
- 10 A Certified street trader must travel as well as trade but does not have to do both simultaneously; he must not occupy a particular position or pitch for any significant period; [Stevenage-v-Wright 1996].
- 11 A Certified street trader’s entitlement to stop is not only limited to effect a sale or a series of sales; does not take the activities outside the definition of pedlar; conduct should not be so narrowly prescribed; there are other reasons he may stop eg procuring orders [Wrexham-v-Roberts 1996] [Croydon-v-Burdon 2002].
- 12 A Certified street trader may stop and wait for members of the public to approach him [Tun Wells-v-Dunn]
- 13 Words in an Act of Parliament are to be interpreted in the context of the time the Act was passed [Chichester-v-Wood 1997].
- 14 Hawkers, defined also as pedlars, are permitted to use a small means of carrying goods [Hawkers Act 1888 – repealed], [Opposed Bill Committee on Bournemouth & Manchester bills 2009].
- 15 In jurisdictions where private bills have been enacted the attempted amendment to restrict pedlars to only door to door selling has been overturned [Opposed Bill Committee on Bournemouth & Manchester bills 2009] finding that pedlars can also go ‘other than from door to door’, in fact any place and this includes the street whether designated or not.
- 16 Certified street traders have lawful authority [Certificate] to use the public highway with or without small means of conveyance [Highways Act 1980 Section 137] [Shepway-v-Vincent 1994].
- 17 Certified street traders are exempt from the street trading regime of the Local Government (Miscellaneous Provisions) Act 1982 & Civic Government of Scotland Act 1982 which apply only to regulation of Licensed street traders.
- 18 To determine whether the activities of a pedlar fall outside the protection of a Certificate a number of facts are to be considered: scale and proportion of equipment compared to Licensed trader; number and type of goods on display; whether goods were being carried, pushed or pulled; whether any burden on local resources; whether itinerant traveller and trader or not; whether a fixed pitch was established [Chichester-v-Wood 1997]

19 List of Case Stated:

1988 Watson-v-Malloy	1996 Tunbridge Wells-v-Dunn
1989 Manchester-v-Taylor	1996 Stevenage-v-Wright
1993 Normand-v-Alexander	1997 Wrexham-v-Roberts
1993 Prentice-v-Normand	1997 Chichester-v-Wood
1994 Shepway-v-Vincent	2002 Croydon-v-Burdon
1996 Westminster-v-Elmasoglu	

DEFINITIONS: - Language & Glossary

a) **PEDLAR**, Certified Pedlar & Genuine Pedlar
Pedlars Act 1871:

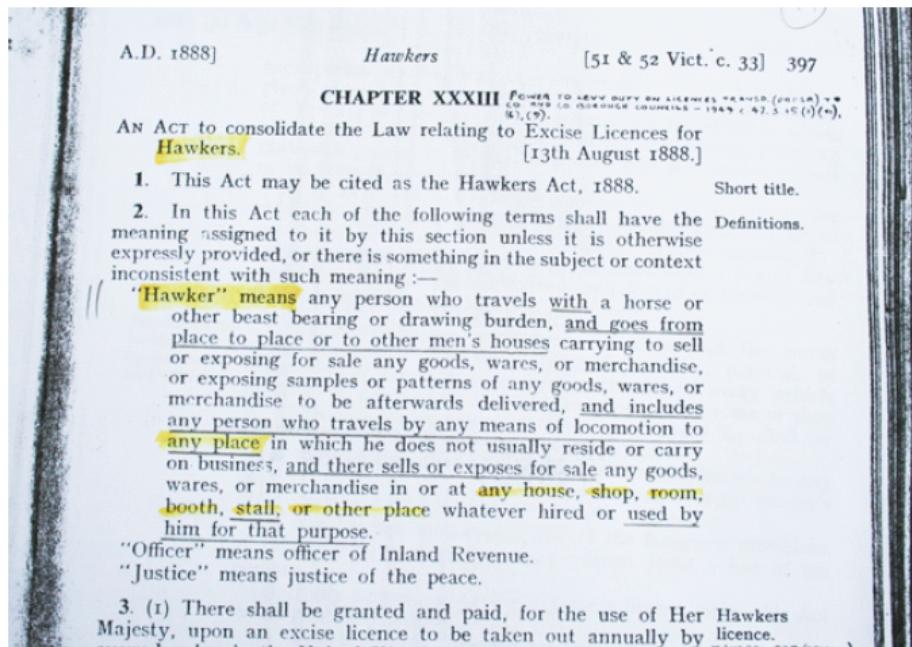
The term pedlar means:

"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 or merchandise immediately to be delivered or selling or offering for sale his skill in handicraft."

Pedlars Act 1881:

"authorises a person to act as a pedlar within any part of the United Kingdom"

b) **HAWKER**, Certified Hawker
Hawkers Act 1888:



Hawkers Licences were finally abolished under the Local Government Act 1966 which was followed by the LGMPA 1982 to enable control and licensing of hawking in designated streets; elsewhere there were no constraints.

c) PETTY CHAPMAN

Chapman is a derivative of the Saxon word Caepman, meaning a marketman, a monger or a merchant. According to a list of colonial occupations, a chapman is a peddler or dealer of goods, usually itinerant, going from village to village.

The name comes from the Old High German choufman or koufman, which became the Old English céapman. Old High German chouph, Old Saxon cop and Old English céap meant barter, business, dealing, which, combined with mann or man, gives the name CHAPMAN. Other spellings of the name include cepeman, cypman, cypmann, chepmor, caepmon, and even shapman!

The Oxford English Dictionary supplies four meanings for chapman:

A chapman was a man whose business was buying and selling: - a merchant, trader or dealer.

Second, he was an itinerant dealer who travelled about from place to place selling or buying; one who kept booths at markets etc; a hawker, a peddler (English spelling).

The third meaning is that of an agent in a commercial transaction, a negotiator or broker.

Fourth, a chapman was a purchaser or customer.

There is also a citation that appears to be a law handed down by Edward VI in 1553 that a petty chapman was a retail dealer.

It is plain to see from this derivation, how the Pedlars Act is a necessary and vital part of the life of community: that the Pedlars Act encapsulates every one eligible throughout the land, both as customers and as the necessary agents for business or as a broker. These sorts of transactions can be carried out anywhere and it is unreasonable to view them merely as the purview of only a select few who meet in secret. Closed doors indicate closed minds, and closed minds prejudice a vibrant society.

d) TINKER

A tinker was originally an itinerant tinsmith, who mended household utensils, but "menders" remain travelling throughout the land

e) OTHER

Other means none of the aforementioned, distinct from the aforementioned or implied in them, but also indicates that the Pedlars Act encompasses all and any lawful activity.

f) LICENSED STREET TRADER / Licensed Static Hawker/ large-scale fixed-pitch hawker Hawker Licensed by Council to sell from a fixed pitch with barrow in a designated street.

The difference is between a mobile hawker with no guarantee of any definite prospect for any trade and one who with a fixed pitch enforced by licence has some help to secure the probability of regular trade

g) CERTIFIED PEDLAR & small-scale hawker

Pedlar Certified by Police acting for the Magistracy to trade as a pedestrian with small means to transport goods anywhere.

h) ROGUE, ROGUE TRADER, ILLEGAL TRADER, Illegal Street Trader

None of the above

i) street trader

Non-specific term generally related to any activity in the street for gain or reward. Includes all the above. Should not be confused with "Street Trader" being the formal text for a "Licensed" trader.

j) Itinerant

Traveller from place to place; not fixed or stationary; travelling on a circuit especially in the pursuit of a trade or a calling

COMPARISON CHART between CERTIFIED PEDLARS and LICENSED STREET TRADERS
Note: both categories are commonly known as 'street traders'

	CERTIFIED	LICENSED
Regulation	Pedlars Acts	Local Authority (MP) Act
Statute type	National	Local
Type of Authority	Pedlars Certificate	Street Trading Licence
Issued by	Magistracy via Police	Local Authority/Council
Revocation	yes – by Magistrate	yes – by Council
No of Clauses of Regulation	27	10
No of subclauses	38	190
Minimum age	17	17
Application Form Document Form	Pedlars Act Form A Form B Pedlars Act	Designed by Council Licence
Photographic Identity	Not required	Yes
Renewal	Annual	Annual
Public Liability Insurance	Not required	Required
Scale of operation	Pedestrian 0.12m ² 1% Up to 1 cubic metre vol	Fixed pitch 4x3m 12m ² 100% any size within fixed pitch
Cost per annum	£12.50	£600 - £2500
Cost per square meter	0.4x0.3m ² = £104	4x3m ² = £50 - £207
Cost per day	variable	£1.64 - £6.84
Restrictions:		
Where to trade?	By choice anywhere in UK	Designated places only
When to trade?	By choice – any time	Specific times & days
What to trade?	By choice – any product	Specific products only
Competition?	No restriction	Restricted to 500m
Conditional?	Within the Law	Yes
Burden on local charges	None	Yes
Are they Street Trading? Is obstruction an issue?	No – LGMPA S3Sch4Cl2(a) No – a pedlar can move	Yes Yes – hence regulation

COMPARISON CHART between PEDLARS and HAWKERS

	PEDLAR	HAWKER
Regulation	Pedlars Acts 1871 - current	Hawkers Act 1888 – repealed
Type of Authority	Pedlars Certificate	Hawkers Licence abolished for those with horse under Local Gov Act 1966 Those on foot deemed pedlars
Issued by	Magistracy via Police	Local Authority/Council Hence Licensed Hawker
Scale of operation	Pedestrian <u>without</u> beast of burden	<u>with</u> beast of burden/cart, trolley, stall, stand
Burden on local charges	None	as per Licensed Street Traders
Are they street trading?	No they are traders in the street exempt from the regime of street trading by LGMPA 1982	open to interpretation
Is obstruction an issue?	No – a pedlar can move	subject to the Highways Act

This information is produced for Regulators and Pedlars by www.pedlars.info a not for profit online information centre to assist in differentiation between pedlary regime and local authority regime for street trading.

2 November 2009

Report by any authority to determine whether the **activities of a trader** are those of a Certified Pedlar protected by a Pedlars Certificate or whether the activities fall outside that protection and therefore subject to Licensed Street Trading Regime.

QUESTIONS:	YES	NO
1 does the trader have a current Pedlars Certificate?		
2 is the trader a pedlar? ie carrying goods on the person		
3 is the trader a hawker? ie using a means of carrying goods		
4 if the trader is a hawker, is the scale of operation that of a Licensed trader ie large-scale trolley		
5 has the trader moved more than a few metres since first observed?		
6 is the trader causing obstruction?		
7 is the trader attracting custom?		
8 is the trader avoiding custom?		
9 is the trader exposing 1 product or a large range of products akin to a Licensed trader?		
10 does the trader's operation require any local services? eg garbage removal		
11 has the trader established a fixed pitch akin to a Licensed trader?		
12 are you aware of the difference between certificate and licence?		

QUESTIONS:	ANSWER:
a) describe why the trader is not a pedlar?	
b) what trading activity was not considered pedlary?	
c)	

Date: time: location: trader's name: officer's name:

STATIC - [see page 5 Executive Summary Clause] for definition]

STREET TRADING AND PEDLAR LAWS: A consultation on modernising street trading and pedlar legislation, and on draft guidance

Introduction

The UK and Scottish Governments are consulting on the case for amending and modernising the law as it applies to the control of street trading and the certification of pedlars. [note: the consultation document does not concern licensing regime but only that of the pedlars certification regime and there are significant differences between the two street trading regimes.]

In February 2009, the UK Government published research from Durham University into the application and perception of street trading controls and pedlar legislation (<http://www.berr.gov.uk/files/file49664.pdf>), which gave us a better understanding of how stakeholders view the current framework and what changes they would like to see.

This introduction gives insufficient origin to the framework and history required for first time readership, especially and significantly those least represented pedlars who struggle to understand the motives for increasing their burden. Recommend the intro be re-written.

Pedlars are regulated by the Pedlars Act 1871 (as amended) (please see Annexes C and D), which requires pedlars to apply for a certificate from the police in order to trade anywhere in the country.

The Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A) (please see Annex E) provides local authorities in England and Wales with the option to adopt powers to regulate street trading. Those councils which do adopt the powers can designate streets in their area as prohibited, consent or licence streets for street trading purposes. They can then require street traders, but not certified pedlars, to apply for licences in order to trade in designated streets for trading in those streets. In addition there are some private Acts of Parliament which provide some local authorities with enhanced powers to tackle illegal street trading. attempt to impose restrictions on certified pedlars with the effect of making them door to door sellers but the notion was overturned in Opposed Bill Committee.

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. Licences are not required for any activity in respect of which a pedlars certificate has been granted.

Devolved Administration Issues

This consultation discusses among other things the relationship between the UK-wide pedlars' certification provisions and local authority powers to licence street trading. In Scotland, street trading is regulated under the Civic Government (Scotland) Act 1982 (please see Annex F). In Northern Ireland, street trading is regulated under the Street Trading (Northern Ireland) Act 2001.

At this stage, in discussing possible options which impact on the relationship between local government licensing of street traders and national certification of pedlars this document generally makes reference to the provisions of the Pedlars Act 1871 which apply nationally and the Local Government (Miscellaneous Provisions) Act 1982 which apply in England and Wales. Nevertheless, the possible options for change are clearly relevant to and may impact on the regimes in Scotland and Northern Ireland. As work continues with a view to further developing any of these options 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.

having no regard nor understanding of pedlars considerations to date is a government pretence to seek
This consultation also seeks views on draft guidance for local authorities, the police, and pedlars in England and Wales without providing a comprehensive statement about existing legislation and its proper implementation.

The main areas this consultation seeks views on are:

[note: proportionate to what?]

- Ways of making the ~~street~~^{static} trading and pedlary regulatory regimes more proportionate and effective. This includes consideration of whether to provide an alternative appeal body in place of the Secretary of State in relation to ~~some street trading appeals~~^{prosecution of pedlars} in London.
- Providing local authorities with ~~additional enforcement options in respect of illegal street trading.~~^{guidelines to deal with} [note: the original text is so misleading as to be vulgar - a less discreet agenda to introduce private business text that attempts to make illegal the activities of pedlars]
- Updating the Pedlars Act 1871 to ~~modernise the certification scheme and the definition of a pedlar, including consideration of~~^{application process to equate with licence application process.} Whether responsibility for issuing certificates should be transferred from the police to local authorities, ~~and, if so, what options there are for maintaining the current position whereby a certificate authorises trading throughout the UK.~~^{whose declared aim via LGA, NABMA is to repeal the Pedlars Act but who realise that there are serious human rights infringements. Local legislation is simply incompatible with National legislation.}
- Consider introducing a means by which, local authorities might exert proportionate limits on certified pedlar activity in designated areas ~~might replicate private business text whose interpretation has now been found to be flawed.~~^{intention to prohibit} ~~Consider the implications of~~^{whether or not there are alternatives for} ~~genuine pedlars~~
- Options for revoking the Pedlars Acts and providing for adequate regulation of ~~itinerant traders~~^{licensed & certified} within the street trading regime.
- Draft guidance on the application of the current regime in England and Wales for enforcement officers, ~~street traders and pedlars looking at~~^{to more clearly assess} what constitutes acceptable ~~street trading and pedlary~~^{licensed & certified} practice and obliging local authorities to put in place approved code of practice and training programme for officers.
- On a point of public importance to clarify the difference, if any exists, between the generic expression 'street trading' and 'pedlary' by clarifying the difference between Licensed Street Trading [local licence issued by local authority] and Certified Street Trading also known as Certified Pedlary [national certificate issued by police].
- Consider whether or not repeal of the Pedlars Act constitutes an infringement of human rights that is proportionate to the legitimate aim pursued - ie the legislative objective is sufficiently important, the measures designed are irrational or unfair, are necessary to accomplish the aim, are justified in a democracy.
- Consider the recommendation of the Durham Report that adequate legislation currently exists and that government guidelines and clarification should suffice with minor amendment to the application procedure for pedlar's certificates.
- Consider the public response to the notion that local authorities having allegedly identified problems with street trading regimes now seek to place those problems onto the door steps of local residents.
- Consider the economic & cultural implications of prohibiting entrepreneurial enterprises that begin life on the streets with low overhead cost and broad public approval and that is available to all members of the public above age 17.

Issued: 6 November 2009

Respond by: 29 January 2010

Enquiries In relation to England and Wales to:

Deba Hussain or Roger Dennison
Consumer and Competition Policy Directorate
Department for Business, Innovation & Skills
Bay 416
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 2115 or 020 7215 6693
Fax: 020 7215 2837
E-mail: streettradingandpedlaryconsultation@bis.gsi.gov.uk

Enquiries In relation to Scotland to :

Walter Drummond-Murray
Criminal Law & Licensing Division
Scottish Government
GW.15, St Andrew's House
Regent Street
EDINBURGH EH1 3DG
E-mail: <mailto:Walter.Drummond-Murray@scotland.gsi.gov.uk>

This consultation is relevant to certified Pedlars, Street Traders, Local Authorities, Police, consumers, Trading Standards officials, Town Centre Managers.

1 Executive summary

BIS were urged to consult with all stakeholders and whereas 100% of local authorities and 100% of police jurisdictions were contacted a disproportionate 1% of those directly and negatively affected, namely pedlars, were contacted so most of those adversely affected by this consultation will be unaware of the burden. Grounds for not contacting 100% of pedlars was 'economic restriction'. The Durham Report cost £86,550 and it estimates there to be

under the authority of a pedlars certificate which is different to a licence for static traders. Pedlars can act anywhere but static traders can only occupy places allocated by local authority in conjunction with the Highway authority concerning possible obstruction.

1. ~~There are approximately 4000 pedlars in the UK who operate by moving around to customers carrying their goods. They are usually sole sellers e.g. selling balloons, etc.~~

~~Whereas street traders are static traders and usually operate in a specific location with a stall selling fruit, clothes, etc. Many street traders operate in street markets.~~

Research has found public endorsement of pedlary but local authorities seek control to enable restriction of pedlary.

2. Our overall approach to this consultation is to seek solutions to:

- Modernise and streamline the framework for enforcement.
- Standardise operations nationally across the local authorities.
- Clarify operations and reduce burdens for pedlars, street traders, and enforcing authorities.
- Provide assurance to consumers that illegal traders will be dealt with appropriately.

ways of prohibiting the activities of pedlars along the lines argued in private bills

- by giving councils powers to seize, confiscate & forfeit pedlars goods
- ensure that pedlars have no recourse through the courts
- increase the burden on pedlars through presumption of guilt
- perpetuate the notion that pedlars are illegals

- alternative 2. Our overall approach is to acknowledge the findings of the Durham Report which:

contends that no legislative changes are required and gave evidence that the current regime for enforcement is adequate.
recommends National Guidance from government to all local authorities to overcome their lack of understanding of existing legislation.
recommends modernising the application for a pedlars certificate FormA to be more consistent with the application process for Static Trader Licence.
recognises that negative propaganda towards pedlars originates in those authorities who introduce private bills as a loophole to get around national legislation.

3. A summary of each of the main policy issues, which are considered in the consultation, is provided below.

Pedlars & the Pedlars Act

4. This consultation addresses the issue of updating the Pedlars Act 1871 (as amended) to modernise the definition of a pedlar and clarify lawful pedlar activity. We are considering whether a pedlar's possible means of transporting goods i.e. trolley size should be included in the Act.

Licensed Street Trading and the Local Government (Miscellaneous Provisions) Act
4.1 Some councils have brought private legislation to alter the exemption qualification for pedlars in the LGMPA 1982. The Act gives local authorities regulatory powers over static traders and its only mention of pedlary and/or pedlars is an explicit exemption from the street trading regime. Private bills have sought unsuccessfully to restrict pedlary door to door sales but the OBC found that pedlars may also go other than only from door to door and this finding reaffirms the Pedlars Act 1881 entitling pedlars to go anywhere and such includes the street. This consultation considers the suitability of amendment to the LGMPA to implement the findings of the OBC in the matter of defining the legitimate and lawful activities of genuine pedlars.

The Pedlar's Certificate

5. There is no standardised format for pedlars' certificates and they may vary depending on where they are issued. Currently licences are paper based. The consultation considers the introduction of an identity card type licence which includes name, address, photo, where the licence was obtained, and expiry date, etc, with a view to looking at options for a valid certificate to be easily recognisable to enforcement officers nationwide.

Failure to use a consistent Form A application has led to enforcement officer confusion.

found in the Pedlars Act Form A, but some jurisdictions disregard this and issue a different format

certificates

which could also include a photo not required by the current method

fact that a Pedlars Certificate is a precursor to an

6. At present, there is no centrally held information on pedlars, so there is no means by which the validity of certificates can be verified quickly. Also, the findings in the Durham report indicated that a national database of pedlars would be welcomed by most people including pedlars themselves. This consultation is seeking views on establishing and maintaining a national database for pedlars, and also the type of information this system will hold e.g. name, address, etc all of which (except a photograph) already exists in paper copy awaiting simple databasing and numbering, the cost is yet to be assessed.

Grant of Certificate

[note: this consultation is meant to be inclusive of both Certificated and Licensed trading]

7. We would like respondents to consider whether the term 'being of good character' should be removed from the certifying requirements, so the licensing authority issues certificates based on the suitability of the applicant. This would include considering the applicant's trading history and previous offences related to pedlary and other offences that would deem a person unsuitable to trade as a pedlar.

**Why the existing
Issuing Authority for Pedlar's Certificates** should remain unaltered

- ~~delete~~ 8. This consultation raises the option of transferring the responsibility for issuing of pedlars certificates from the police to local authorities, which may be better placed to certify pedlars, as they licence other traders. However, it is necessary to consider how such a system might operate, given the UK-wide nature of the pedlar certificate, and whether the police can still carry out a security check when contacted by a local authority.
- insert 8. This consultation considers the validity of the proposition that responsibility for issuing certificates should be transferred from the police to Local Authorities who issue Licences under the Local Authority (MP) Act for Public Entertainment, Sex Establishments and Static Trading amongst others. Static Trading creates fixed obstacles which must be assessed by the Highways Authority but pedlars are mobile and able to move and unlike static traders do not call on the services of Councils. Application for Static Trading Licence does involve criminal check by police and many jurisdictions carry out this check against Certificate Applicants and as this process may be adopted nationally there is no financial cost benefit to change. Evidence exists that some Local Authorities who promote private bills simply want removal of pedlars and with the powers of FPNs, and such clauses as reasonable suspicion, confiscation, seizure and forfeiture, it is clear that pedlars rights are severely compromised and their continued protection can only operate fairly via the Courts. Furthermore Licensed Traders are not recognised outside their own jurisdictions and the same would apply to Certified Traders. Local Authorities can not manage a national database but the police already have the most cost effective system. Increased costs for LA's to maintain national database and police checks will increase the financial burden on pedlars.

Other options or possible outcomes in the light of establishing the shape of a future regime [note: this is incoherent and misleading jargon and has been submitted to Plain English for the Golden Bull Award]

- ~~delete~~ 9. We would like to receive your views on options which revoke the Pedlars Acts and either substantially replace the provisions of the Act, including the need for a certificate within the street trading regime, or remove the requirement for certification while maintaining the right of itinerant traders to trade throughout the UK, subject to their mode of trading and possible local restrictions which can be properly justified by local authorities.

Enforcement of current Street Trading & Pedlary laws [note: this is incoherent and misleading jargon as it is not to do with static trading]

- ~~delete~~ 10. This consultation considers the need to empower local authority enforcement officers to issue fixed penalty notices or on the spot fines in respect of street trading. It also considers giving them powers of seizure from suspected offenders with forfeiture by order of the courts. This would bring the rest of the UK in line with London Councils who already have access to these powers under the London Local Authorities Acts, the City of Westminster Act 1999 and other Councils with private Acts.

insert **Enforcement of existing Pedlary Laws**

10. The Durham Report identifies that most LA's don't have any enforcement issues with pedlars. Those few LA's that have been encouraged by private business to introduce local acts claim confusion and want increased powers to restrict and prohibit pedlars in town centres. Pedlars like all traders are dependent upon town centres and any restraint of trade on one group of traders for the benefit of any others is wholly disproportionate. It is also disproportionate and undemocratic that the few private interest LA's should prejudice government policy on national legislation. Pedlars.info has provided to BIS a detailed report on all aspects of existing legislation, case law, with concrete proposals for national legislation based on the very latest outcomes from opposition argument in Select Committee Hearings on Bournemouth & Manchester private bills. The proposals are grounded in reality and lead the way to achieve consensus by all reasonable stakeholders. They propose amendments to the Pedlars Application process to bring it in line with comparative regimes. They propose amendment to LGMPA Schedule 4 Street Trading to condition the authorised activities of pedlars to reflect the findings of the most recent Select Committee. The full documentation can be found at <http://www.pedlars.info/bis-consultation.html> click 12 August 2009.

Power to impose local restrictions on certified pedlar activities

- ~~being led by the thinking in private business~~
~~11. This consultation discusses the case for restricting pedlar activity in specific circumstances, the qualitative thinking that enabled the Select Committee on Private Bills to reach a fair & reasonable regime amendment to LGMPA 1982. Those LA's that have not adopted the LGMPA are not affected. The amendments are considered proportionate to meet the needs of all stakeholders.~~
~~number of pedlars in designated areas. For example, at peak periods of trading activity or congestion, such as Christmas, summer festivals, historic town centres, etc.~~

Final Point of Appeal for Street Trading Appeals (London only)

[note: why is this in this document? the entire document is about pedlars and is nothing whatsoever to do with any legislative changes to Static Traders - the point should be dealt with elsewhere or this entire document should be opened up to a full discussion about ALL street trading]

12. This consultation considers the removal of the Secretary of State (SoS) as the final point of appeal in respect of street trading licences in London, to bring the appellate body in line with rest of the UK i.e. the Magistrates Court.

Services Directive

[note: pedlars have been ignored by CCP meddling with the Pedlars Act even though the proposed amendments do not clarify for a pedlar of services that a Certificate will no longer be required and the consequences of no longer having protection of a Certificate from LAs. The amendment fails to inform would be pedlars "of others" about providing services. BIS requires further assistance about interpretation of the Pedlars Act and the alternatives to conceding to EU timetabling of 31 Dec 2009 - there are alternatives but BIS.CCP have ignored them.]

- ~~delete~~ 13. In order to comply with the proper implementation of the Services Directive requirements by 31 December 2009, the Government intends to amend the Pedlars Act by removing pedlars who provide services from the regime. Therefore, pedlars of services will no longer need a certificate after 31 December 2009. We are seeking respondents' views on our interpretation of the Directive's requirements, and further evidence if they feel we have misinterpreted our obligations in anyway.

- insert 13. Following consultations with pedlars and in consideration of this current round of consultations we can justify continuation of the presumed Authorisation Scheme to enable government to proceed with current reforms unhindered by imposition of time scale determined by outside directives. We believe there is a case for derogation and extension of time for these issues to be resolved, so that all parties are appeased and compliance with the Services Directive takes place without mistakes being made.

Draft Guidance for Regulators and the Regulated

- ~~delete~~ 14. Draft guidance for pedlars, street traders and enforcers in England and Wales has been produced on the current regime (please see Annex B). This consultation is seeking stakeholder views on the draft guidance to ensure that it is clear and concise, and meets the needs of the target audience as necessary.

The Scottish Government propose parallel guidance for Scotland, reflecting the different case law in Scotland.

- ~~insert~~ 14 This draft guidance accepts the findings of the Durham Report 10 February 2009 and takes its recommendations from the Executive Summary as follows:

1 Local Authorities expressed confusion.....

We annex to this document research provided by stakeholders that lists by chronology all legislation concerned with pedlary; all case law concerning pedlary; all government reports concerning pedlary; examples of negative campaigns to diminish the lawfulness of pedlary; definitions and glossary about pedlary with particular reference to differentiating between types of trading on the street; national legislation proposals based on findings of Select Committee modified to meet national rather than local needs; together with a summary of some of the outstanding items to address.

Differentiating between types of trading on the street is very clearly laid out within Section F of the research and is available also at <http://www.pedlars.info/bis-consultation/59-bis-stakeholder-consultation-12-aug-2009.html>. This comprehensive reference clarifies language and acceptable pedlar activities and provides an easy check list for those in doubt. We recommend that all Regulators and Regulated disseminate this information.

2 LA's indicate few if any difficulties with pedlars.....

We accept the findings that the public appreciate pedlars and their wares and our direction is to tighten up on the soft touch approach without introducing draconian regulation as sought in private acts that inevitably stifle competition and free trade. A proportional and balanced approach is needed based on strengthening existing legislation where proved deficiencies are identified - many if not most are covered by the findings in the recent Select Committee. We are tolerant of the proportionality fact that most genuine pedlars have no adverse effect on other local business if only because the scale of their operation is so considerably smaller than that of Licensed traders and local shops and most often their goods and handicraft are not available through other traders.

3 LA's desire greater powers of sanction.....

The Select Committee formulated suitable sanctions in the form of amendment to the LGMPA that give those LA's who have adopted that Act to enjoy the greater powers sought. Those powers effectively control the activities of pedlars. These local amendments have been considered in a national perspective and proposed with modification in the attached Annex.

4 Some LA's seek to integrate pedlars into their street trading regime.....

The issue has been addressed elsewhere in this document and in summary we believe it to be unworkable and not cost effective. Its implementation would require a repeal of the Pedlars Act which the government wishes to preserve.

5 Overzealous enforcement by councils.....

Those LA's who have local Acts to restrict pedlars have now to deal with the fact that the amendment to the LGMPA does not exclude pedlars trading "other than only by means of visits from door to door" as found by the OBC and entitles them under the 1881 PA to continue acting as they always have - ie anywhere in UK. Evidence shows that pedlars are an easy target for officers who accept no responsibility for their own ignorance and pedlars legitimately complain of harrassment and intimidation.

6 Scale of pedlary small and no evidence of problems or competition.....

We accept that consumers value the presence in town centres of pedlars and regard buying from pedlars a positive experience.

7 Scale of illegal trading is unquantifiable.....

We have no evidence of nuisance from illegal trading and accept that most complaints come from local retailers concerned with competition.

8 Concern related to obstruction.....

We have no evidence that genuine pedlars who are mobile cause obstruction issues and consider that such issues are caused by illegal traders who are also a burden for pedlars. The above proposed amendments to LGMPA will enable enforcement officers to take vigorous action against illegal traders.

9 Stakeholders recognise a need to standardise and modernise certificate application process.....

We do not accept that the Pedlars Act needs repealing or replacing but that a more balanced and proportional application procedure can be applied to a nationally consistent Certificate recognisable by all stakeholders. We accept that confusion exists due to some jurisdiction choosing not to recognise the Form A & Form B format for issuing Certificates.

10 Possible changes to procedures:

- (a) *issuing of certificate.....* that Form A and Form B of the Pedlars Act be modified to incorporate photo ID, public liability insurance number, NI number
- (b) *guideline for approved activities.....* that detailed examination and agreement be reached on statute definition and case law considerations
- (c) *standardisation of Certificate.....* police to add national identification number
- (d) *greater burden on pedlar when applying for Certificate.....* insurance, work permit, registration of self-employment

11 Increase in cost of Certificate.....

We recommend that the reasonable costs incurred for a better format Certificate be reflected in the cost of Certificate.

12 Opposition to restrict pedlars to door to door selling.....

The OBC has found that pedlars also trade other than only door to door and this proper understanding is reflected in the proposed national amendment to LGMPA referred to above.

The Scottish Government propose parallel guidance for Scotland which in the matter of Case Law is no different in Principle as the two Case Stated cite the principle arguments of English Law.

BIS URN09/1074 Consultation Reply via pedlars.info
11 February 2010

The following is a list of separate email questions from pedlars to BIS about the consultation document URN 09/1074 - **BIS replies in blue**.

1 URN 09/1074 policing taskforce reference: 19 Nov

please provide access to Report by Alan Brown in the trafficlightssummary.pdf referred to at footnote 4 page 76 of your report URN 09/1074

BIS reply:

This information is accessible by clicking the web link in the electronic version of the consultation document on the BIS web site. I have been able to access the information via that web link. Alternatively you may wish to type the address into a web browser to produce the same effect. Please let me know if you have technical problems when you try these approaches. If necessary I will investigate and see how else the information might be made available to you.

as this did not answer the question, pedlars have reiterated and BIS now refer us to andrew.sadler@homeoffice.gsi.gov.uk who has replaced Alan Brown - we have requested copy of the report to enable an intelligent response - 4 Dec

2 URN 09/1074 average costs £7000: 19 Nov

please provides access to statistical information and calculation of the figures in your point 89 page 23 and whether any of those cases related to small scale genuine pedlary or as indicated they relate to large scale static trading/hawking

BIS reply:

The cost to local authorities of £7000 as an average to bring street trading cases to court was outlined by a local authority representative attending the session we held at the Trading Standards Institute in July. The precise nature of the offences or offenders was not clear. Other representations by or on behalf of local authorities to us and in the House, for example a Mr Scraggs' input to day two of the Opposed Bills Committee on Manchester and Bournemouth, have described similar sums and a variety of circumstances (mostly as you know revealing illegal street trading as opposed to wrong doing by genuine pedlars). However, it seems the chief issue identified by local authorities is the cost of enforcement where they are presented with a trader not acting in accordance with a pedlar's certificate. They claim that evidence gathering, involving prolonged periods of observation, to the point at which they can prosecute for illegal street trading, is costly. In these circumstances total costs of up to £7,000 do not seem unreasonable. We look forward to receiving any responses which can either confirm this

as being a reasonable estimate, or refute it. The remaining figures in paragraph 89 are sourced from the Association of London Government and relate to street trading prosecutions under the London Local Authorities Act and date from 2003/4.

see pedlars further question 12 below

3 URN 09/1074 misrepresentation: 19 Nov

We are receiving calls pointing out that your report misrepresents case law and would be grateful if your Counsel in CCP Kevin Davis will attend the meeting 2 December 2009

BIS reply

Kevin Davis will be attending on 2 December meeting and we will be pleased to receive views on presenting the case law in the draft Guidance. You should note, however, that he is not a lawyer or "Counsel".

4 URN 09/1074 pedlars comments: 19 Nov

We are passing on to you some comment from pedlars about your report

4.1 pedlars are asking us to explain the document, what does it mean

4.2 the complaint that it is not written in plain english and simple language

4.3 it makes no sense to common people

BIS reply to 4.1,2,3

We are disappointed to learn that some people do not understand what the consultation is about. We made every effort to ensure that the consultation reflects Plain English principles before the material was released. Although there is no question of withdrawing the consultation, or revising its content, we will of course be happy to explain to any individuals any element of the document.

4.4 there is no introduction as to where the document originates, who instructed it, why

BIS reply:

This work arose in response to a number of Private Bills (and a Private Members Bill) in Parliament seeking additional powers for local authorities in the areas of street trading and restrictions on pedlary.

As you may recall in the July 2007 Lord Harrison's Committee, having considered the Bournemouth Borough Council and the Manchester City Council Bills, recommended that BERR (now BIS) consider whether there was a case for national legislation in this area. Concern at the number of private bills and whether they suggested a need for

national legislation was also raised in the context of the Brian Iddon Private Members Bill by the House Authorities. In response to this the then Minister agreed to consider the national position further, and agreed that the Department should commission some research into the area.

As you know, the Durham research project in 2008 was designed to gather evidence from the stakeholder groups directly affected by the application and perception of local authority controls and pedlar legislation with a view to better identifying any shortfalls in the regimes, both in terms of practicalities and interpretation.

House of Commons Hansard of 21 April 2009 Column 183 onwards shows the debate in the House of Commons on the Manchester City and Bournemouth Council Bill. It records that following the publication of the Durham report in February 2009 Gareth Thomas (the former Consumer Affairs Minister) announced that the Government would be consulting to seek views from the wider constituency on the findings of the Durham research and on possible ways forward.

Although he was not yet in a position to set out firm proposals, he expected that, in general, the consultation would cover more flexible enforcement tools, the possibility of guidance for pedlars and enforcers on the current regime, the question of updating the Pedlars Act and the possibility of adapting the street trader licensing scheme in respect of the activities of pedlars.

The Minister and others in Government had not formed a view on what the exact response to the research should be. The Government wanted, genuinely, to obtain feedback and evidence from as wide a group as possible to help it think through the various options.

As we explained to the attendees at the Trading Standards Institute Conference, on 1 July, we are keen to gather responses to the consultation from the public relating to potential improvements which could be made to the existing framework in the areas of:

Guidance on existing legislation

Enforcement

Updating the Pedlars Act

This message has been displayed since the summer on the BIS web site.

I hope this has helped to clarify the reasons behind our continuing to work on this area and the decision to consult.

4.5 it appears threatening and intimidating

BIS reply

It is also regrettable that the consultation document has been seen as threatening or intimidating by anyone. It was certainly not our intention that the consultation should be perceived as such. It does not present Government intent, but seeks views. We can only reiterate that no decisions have been made in respect of this legislation, or the guidance, and none will be made until Ministers have had the opportunity to consider the responses to our questions.

We would like to re-emphasise that the consultation reflects the differing views of all the stakeholders who participated in the 2008 research exercise undertaken by Durham

University, and others. It is an open invitation to let the Government have views and any further evidence in response to the possible options discussed.

4.6 is there any benefit to pedlars in participating

BIS reply

Having hopefully assured you and your colleagues that the consultation is a genuinely open exercise we invite as many members of the pedlar community as possible to respond to the questions posed by the consultation. Their views will be listened to and taken into account as any future plans for change are developed.

4.7 it says it will reduce the burden on pedlars but everything smacks of restriction, control and ending of their work as pedlars

BIS reply

We are seeking views on ways to achieve a balance of the different interests in trading in the street against a background of private action which seeks to restrict pedlar activities.

4.8 it appears not to be a consultation but a 'Notice of Intent'

BIS reply see 4.5

4.9 is fearful that he will no longer be able to work

BIS reply see 4.7

4.10 it appears to be a wish list from councils

no reply!

4.11 civil servants are doing private business in the name of government

BIS reply

We do not fully understand this charge. However, we believe the consultation document is balanced in its presentation of the views and information we have received so far.

4.12 didn't the Durham Report say just enforce existing laws and give guidance about them to councils

BIS reply

The Durham report suggested that there was no evidence to suggest a need for national restrictions on pedlar activities but that there may be a case for evidence based

restrictions in some local areas. The report also suggested that there may be a case for extending local authority enforcement powers in relation to illegal street trading although the evidence for that was far from firm. The report also suggested that there was a need for clear guidance for the enforcement authorities and pedlars. The consultation looks at and seeks views on all of these issues.

5 Please confirm that you received our emailed letter dated 22 September 2009. Please also confirm who if anybody at BIS read the 40 page report attached to the letter.

BIS reply

Your 22 September email and subsequent messages were acknowledged by my 1 October email (copy enclosed for ease of reference). The material is available to colleagues within the department with an interest in street trading and pedlary.

6 URN09/1074 Lord Bach RESA: 24 Nov

Please explain why your report has not mentioned Lord Bach, for the government stating in (Hansard 29 Nov 2007) "that local authorities have adequate legislation to deal with illegal street trading and noted that the Regulatory Enforcement and Sanctions Act 2007 allows local authorities to impose a range of administrative sanctions as an alternative to criminal prosecution when enforcing existing legislation, thereby reducing the need for local authorities to promote private bills" or for the government to model policy in terms of private business?

BIS reply

Things have moved on a little since Lord Bach's comments during the debate on the Bournemouth Borough Council Bill in 2007. Interested local authorities have continued to argue their case for extended powers to be able to deal with illegal street trading, including, they say, the power to seize goods and the Durham Report has been published. The consultation document reflects this continuing desire on the part of interested local authorities. As with the rest of the document this element is open to discussion and subject to decisions further down the line in the light of the responses to the consultation.

7 URN09/1074 RESA2008: 24 Nov

Please explain why your consultation fails to address RESA as introduced by Ms Vadera as a civil alternative to criminal prosecution of pedlars modelled on private business? "Regulations help to protect citizens, consumers, workers, and the environment as well as ensuring fair competition amongst businesses. The way in which regulation is enforced can make a major difference to each of these groups, and local authorities play a critical role in the way that this is done. Effective local authority regulatory enforcement can ensure that compliant businesses operate freely in an increasing competitive market, while resources are targeted at the

rogues that present the greatest threat to consumers and citizens. I am pleased, therefore, to introduce this consultation on the Primary Authority scheme.

One of the most significant obstacles to delivering effective local authority regulatory enforcement is the lack of communication between local authorities.

For businesses that operate across a number of local authorities this can result in inconsistent and uncoordinated advice and enforcement. Ultimately, this leads to unnecessary duplication of effort and wasted resources.

I believe that the Primary Authority scheme will play a critical part in addressing this, and we need to make sure that the scheme works effectively. This is why we are seeking your views on the detailed operation of the Primary Authority scheme and the statutory instruments that will shape this."

BIS reply

In respect of the Regulatory Enforcement and Sanctions Act, I am sorry but I do not quite follow your point regarding criminal prosecutions and private business. Perhaps this is a topic you will want to say something about in our forthcoming meeting. Similarly I am afraid we do not understand why you have raised the issue of Primary Authority scheme in this context, but appreciate that Baroness Vadera's comments in relation to more effective communication and lack of consistency across local authorities has resonance in this context.

More generally, in relation to the powers available under the Regulatory Enforcement and Sanctions Act 2008, work to implement that Act and the alternative sanctions it provides for local authorities continues. Those powers are not available yet to local authorities. You will note that the consultation document does not address the technical means by which any eventual outcomes will be implemented. We will consider that when any decisions are made in the light of the responses to the consultation. However, if a decision was made to make new sanctions available to local authorities in national legislation we would take into consideration what powers they may by then have access to as the result of the RES Act. If by such a time they already had those powers there would be no need to take further action. You will note, however, that the RES Act does not provide for powers of seizure or confiscation.

8 URN09/1074 Rogers Report: 24 Nov

Please explain why your report does not mention the findings of the Rogers Report. BERR's own Better Regulation Office, BRE, in the Rogers Review of National Enforcement Priorities for Local Authority Regulatory Services 2007 places street-trading issues "at the lowest level of priority".

This evidence based report is from Peter Rogers the chief executive of Westminster City Council responsible for the first of these private bills but Butterfield, the Westminster Trading Standards Officer stated in evidence before the Select Committee on the London Local Authorities Bill c.299 - that in Westminster 3 years after Assent "pedlars are gone but significant illegal street trading persists".....

BIS reply

he Rogers Review sought to establish a set of key national priorities for local authorities to pursue in the context of their very broad enforcement responsibilities and obligations. Street trader licensing was identified in the context of national priorities as low priority. However, adopting and pursuing the recommendations of the report does not preclude local authorities from applying greater priority to local issues which a local authority chooses also to prioritise. Clearly, those local authorities who take the view that they have a particular problem with illegal street trading have chosen that as a local priority for them. We do not believe that in discussing a possible option in the consultation document whereby local authorities for whom this is a local priority might better and more efficiently enforce against illegal street traders or Pedlars Act offences is in conflict with the Rogers recommendations for national priority areas. As you know, the Durham Report underlined that the enforcement concerns of local authorities in relation to illegal street trading were far from held nationally and we would not advocate that solutions would be national priorities. We take the view, therefore, that the Rogers Report is not particularly relevant to this work.

9 URN09/1074 scotland: 25 Nov

Your document includes UK and Scottish government and on page 7 you indicate that guidance for Scotland will reflect different case law. Pedlars in Scotland express concern and have asked us to find out why you have inserted this differentiation.

In Normand-v-Alexander 1993 Case Stated relies heavily on Watson-v-Malloy 1988 UK.

In Prentice-v-Norman 1993 Case Stated relies on Normand-v-Alexander which relies on Watson-v-Malloy UK.

Pedlars contend that the geographical location of these Case Stated is irrelevant and that the Principle extends throughout the UK. Furthermore those Principle Arguments have been developed in 8 subsequent Cases.

We remind you and your Scottish counterpart that the Scottish Government Report on Street Trading 2004 concludes that "the Task Group are content that the exemption in Civic Government (Scotland) Act c.45 at Section 39(3)(d) remains valid - ie that a street traders licence shall not be required for any activity in respect of which a certificate under the Pedlars Act 1871 has been granted".

Your attention is also drawn to evidence that Strathclyde Police under the authorisation of the Divisional & Area Procurator Fiscal Central & West Division enforces a no tolerance policy toward pedlary in Glasgow and refuse to concede any ground.

Can you please explain why pedlary which is a civil matter in both UK & Scotland is being referred in Scotland to "Criminal Law & Licensing Division"?

no reply

10 URN09/1074 extension of time: 25 Nov

We are receiving complaints from pedlars that the launch of your URN09/1074 coincides with a very busy period in their trading year, especially that it includes the 12 days of Christmas and because they are finding your document very confusing they request more time to consider the implications and how to respond.

You have given an 84 day period 6 Nov - 29 Jan which is an extension of 1 week on the obligatory 6 week guideline previously mentioned.

Please confirm that the consultation period will be extended for a further 4 weeks to 26 February 2010.

BIS reply

We have responded to your 25 November request for an extension to the consultation period. To allow all potential stakeholders enough time to respond to the consultation, we are extending the deadline for consultation responses to Friday 12 February 2010. I am happy to re-confirm that the consultation material does not present Government intent, rather it seeks views from the public on possible options. No decisions have been made in respect of possible legislative change, or the guidance, and none will be made until Ministers have had the opportunity to consider the responses to our questions. In closing I have received your 30 November emails and look forward to seeing you and your colleagues tomorrow, 2 December. I hope that after our meeting you and many other pedlars will go on to offer views in response to the consultation material before the extended closing date of Friday 12 February 2010.

11 URN09/1074 case law + comparison: 25 Nov

Attached is a summary of Case Stated together with guidance about Certified & Licensed traders.

We trust this will assist in clarifying the perceived shortfalls in your Pedlary Checklist on page 38.

Please confirm if the document contains any misleading or confusing information?

BIS have received your Case Law Comparison material. If the intent behind comments in the BISedit document was to lead BIS to withdraw the consultation material please note that BIS will not be doing so.

12 URN 09/1074 average costs £7000: 19 Nov & 26 Nov

Further question to BIS reply to question 2 above

In summary and factually your figure relies on a single anecdotal comment without substantiation and you have failed to indicate the nature of the offense or the types of offenders whether Licensed or Certified or neither.

Please provide details of "other representations" made.

As evidence in support you rely on Mr Scragg [Hansard] "757 (Mr Scragg) It is difficult to quantify the exact costs to the City Council. I can point to some legal costs of our Legal Department between 2006 and 2009 when the legal costs which were incurred in taking street trading cases amounted to £9,657. Of that figure, £3,187 was awarded in costs by the court which left a deficit of £6,500, and that is purely just legal costs and it does not take account of the costs of the time of my officers, the GMP officers and CCTV operators as well. On top of that, I also have to pay officers overtime to come out on Saturdays and Sundays when these traders are trading on a regular basis, and those are additional costs as well."

We have prima facia evidence that the average over 3 years costs for a case in Bournemouth & Manchester is £1105.

We have further prima facia evidence that average income from fines amount to £547 with average loss of £558.

In making your case at page 84 you calculate an unjustified $200 \times 7000 \times 10 - 3.5\% = £13m$ but the above evidence calculates $200 \times 1105 \times 10 - 3.5\% = £2.13m$

Income from fines $200 \times 547 \times 10 - 3.5\% = £1.055m$. Your claim of net benefit of £13m over a ten year period is a gross mis-calculation.

Your reliance on anecdotal evidence from 1 individual and "others" unsubstantiated is unacceptable.

Your cost analysis evidence on page 73/4, 80, 84/5 is flawed to the extent that readers are misled and incapable of forming an intelligent response about FPN's.

The entire document URN09/1074 should be withdrawn as misleading.

BIS will take your views on Average Costs and LGA Survey into consideration as the Impact Assessment is developed in light of responses to the consultation. BIS will not be withdrawing the consultation.

13 URN09/1074 LGA survey: 26 Nov

We are receiving further concerns.

Your footnote #9 refers to an LGA survey when it is actually a propaganda Press Release dated 4 Aug 2008 authored by the media department of the LGA presenting a distinct bias against Pedlary supported by NABMA & cohorts to "repeal" the PA.
Please explain why you have chosen to present an unbalanced article without any counterbalance eg <http://www.pedlars.info/news/30-letter.html>.

Please provide the readership of your document with an evidence base that thoroughly investigates your statistics (51 out of 57) with:
analysis of the nature of the alleged "problems";
how many allegations were connected to Certified pedlars;
how many to Static traders;
how many to others;
and how many successful prosecutions of Certified pedlars were recorded in the survey?

Without this information the readership of your document is misled and unable to make an intelligent response.

BIS will take your views on LGA Survey into consideration as the Impact Assessment is developed in light of responses to the consultation

14 URN09/1074 edits page1-7: 27 Nov

We are obliged to respond to errors and inaccuracies in your document URN09/1074.
We attach edits with explanatory notes to remove prejudice against pedlars for clarity and objectivity.
This is sent in anticipation of our meeting 2 December prior to editing the remainder of the document.

If the intent behind comments in the BISedit document was to lead BIS to withdraw the consultation material please note that BIS will not be doing so.

15 URN09/1074 evidence compilation: 3 Dec

Question has arisen:

Pedlars are lodging concerns with we 4 individuals and/or pedlars.info in preference to responding to you re Q1-33.

We are prepared to collate those responses and concerns and include them in our joint response via pedlars.info.

We are asking each person to agree that their name be published as respondent at the conclusion of our replies.

Will the above suffice or does your process require every comment and response be attributed to a particular person?

You are aware that pedlars.info is not a formal organisation and exists only as a reference centre and point of contact.

We welcome clear understanding about how you intend to analyse the responses.

BIS reply

Thank you for your email and for this offer of assistance.

Ideally, as I'm sure you will appreciate, we would like to receive individual responses direct if at all possible and anything you and your colleagues can do to encourage that in the first instance would be much appreciated and very helpful. As I said at the meeting we are more than happy to help people through the process by explaining the questions and the content of the consultation on a one to one basis.

Failing that we are happy to receive comments and responses from or via any source including your good selves. It would be helpful in terms of our analysis if each comment could be attributable to the individual with contact details because the option of being able to contact folk in respect of any comments or views which we do not fully understand is important. We would certainly not want to waste your time by simply acting as "middleman" where that would not be necessary.

Without seeing the responses of course, I wonder whether any collation would be necessary on your part. For example we would be happy to receive forwarded emails or a document detailing a series of emails if that was simpler. It strikes me that would be less work for you.

A concern I have with your proposal is that of the possible perception of others on seeing the published responses. That is, that the full breadth and depth of the response from the pedlar "side" may not come across if the bulk of those responses is presented in a single paper.

16 URN09/1074 1994 Government Consultation: 7 Dec

It appears that a government consultation was carried out in 1994 regarding pedlars. The source of this information is from a debate in the commons between Dr. Brand and Mr. Howarth, HC Deb 01 July 1998, vol315 cc316-22. The reference is at the second from last paragraph of:

<http://hansard.millbanksystems.com/commons/1998/jul/01/pedlars>

This we presume would have been under the remit of the DTI at the time, and we would therefore expect that your office which carries on the duties of the former DTI, will have this document available as a public record for our scrutiny?

awaiting reply

17 URN09/1074 definition of a pedlar or actions of a pedlar: 8 Dec

On page 13 of the consultation document you allege confusion because of the age of the Pedlars Act.

Pedlars are complaining to us that their forefathers have relied on the Pedlars Act for 138 years because it is good law and should not be sullied by the fact of its age - such logic undermines Parliament itself.

The definition of a pedlar should not be altered because it gives by example some of the trades that existed in 1871 but was never intended to be an exhaustive list. The insertion of "or other person" makes allowance for any other person such as, in contemporary life, a balloon twister, an artist etc. It grants a liberty and the freedom to do anything by way of a chosen trade or a 'yet to be evolved' trade.

The difficulty created by the LGMPA concerns not the definition of a pedlar but the allowable activities of a pedlar. This is so because the LGMPA exempts persons acting as a pedlar being answerable to LA's. In Court the LA is obliged to prove that the person was not acting as a pedlar if they are to succeed in an allegation of illegal street trading. The essential yardstick for measuring is not some intellectual abstraction but is grounded in the regulation of a Licensed Static Trader whose fixed pitch is outlined on the street, who occupies that pitch for 365 days a year up to 10 hours a day, and receives services provided by the local authority in exchange for a licence fee.

The definition is not intended to reflect the activities of a modern-day pedlar - these may only be argued on the basis of Case Law since 1982 when the LGMPA was introduced. Your Annex B fails to adequately disclose and scrutinise Case Law [11 in all] and at point 45 gives no indication whatever about the position in Scotland. Without this no reader can make an intelligent response and we note that you have not responded to our earlier concern dated 25 November re Scotland.

We have supplied you with a full schedule of Case Law indicating allowable activities. You say you have read this but are unwilling to respond and unwilling to amend the misleading information on page 38 and we would ask again how any reader can intelligently respond without full disclosure.

My colleagues and I thank you for your comments which will be taken into account as we consider the responses to the consultation and develop the draft guidance following the consultation.

18 URN09/1074 parallel guidance for scotland: 9 Dec

The consultation document refers to "parallel guidance for Scotland, reflecting the different case law in Scotland" page 7.

Page 13 cl 45 refers to England & Wales in Annex B draft guidance but Scottish draft guidance is missing.

Page 23 options B & D do not provide information about FPN's in Scotland.

Page 31 cl 117 again refers to parallel guidance but there is none.

Please provide all the missing information to enable an intelligent response.

- there is no special significance to the fact that this consultation is handled by Criminal Law and Licensing Division. The division deals with a wide range of matters including licensing in respect of alcohol, gambling, knives dealers, and street traders.

- the references in the document are to proposed guidance in Scotland. It hasn't been written yet. It is likely that guidance would be similar to guidance for England and Wales.
- I am not sure that any substantial devolution issues particularly delayed the consultation. There were discussions between officials to ensure that the differing Scottish aspects were reflected in the document. For example, the presence of the Civic Government (Scotland) Act 1982.
- In that same spirit, we have mentioned in the consultation Scottish case law. We sought only to highlight that there is a separate legal system in Scotland with its own body of case law. Any guidance we produce will reflect that. There was no implication that the Scottish courts have taken a radically different approach to the issues.
- I note your points about the conclusions of the 2004 task group. Nevertheless, the consultation explains why it is worth looking at the issues again.
- I also note what you say about the situation in Strathclyde. As these are operational decisions of Strathclyde Police and the Crown Office it would not be appropriate to comment. Clearly the final decision in specific cases will rest with the courts.
- As regards Fixed Penalty Notice's, as the consultation says, in Scotland there is the option of a 'fiscal fine' as an alternative to prosecution. We don't propose at the moment to extend the scope of FPN's in Scotland to apply to offences specifically in relation to illegal trading.

19 URN09/1074 LA's without LGMPA page 67-8: 10 Dec

Please explain why those LA's who have not adopted the LGMPA have not been consulted?

Please confirm how many LA's have adopted the LGMPA?

Please confirm which organisations are government quangos/state funded?

We have made every effort, through UK local government umbrella bodies, to draw our consultation to the attention of local authorities, and have asked the LGA to do so. We hope that a large number of them, including those which have, and those which have not, adopted powers from the Local Government (Miscellaneous Provisions) Act, will choose to respond to the consultation.

We hope you will understand that for resource reasons it is not practical to attempt to communicate with every pedlar in the UK, particularly as police records are not all held electronically.

We have noted your views and representations as regards a national database.

20 URN09/1074 national audit office: 10 Dec

During the last 20 months we have written to you 5 times urging you to produce a thorough audit of pedlars in the UK.

At this time you do not know how many pedlars are affected by your consultation and it appears you do not care to find out.

In the absence of your willingness may we suggest that you make arrangements with the National Audit Office.

We note that they are not on the consultee list.

We propose that the NAO could offer more reliable competence to your empty and fabricated cost benefit analysis.

As far as our consultation goes we hope to receive views from a reasonable cross section of pedlars to help inform decisions. Your response suggests that you would like BIS to involve the National Audit Office in an exercise to research pedlar numbers nationally. Such a research exercise is unlikely to fall within the NAO's list of functions. If you would like to find out more about the NAO's role you can visit their web site at www.nao.org.uk

You have also asked whether any of the organisations shown within the list of consultees receive public funds. We have not investigated how the bodies listed are funded.

Irrespective of how an organisation is funded, we fully expect that their consultation responses (where they choose to respond) will represent properly considered views and ideas. We will be assessing all the responses critically particularly with regard to evidence to support the views expressed.

21 URN09/1074 minutes of meeting: 14 Dec

Those who attended the meeting on 2 Dec asked particular questions that were not minuted and again ask:

- 1 Why has BIS ignored pedlars.info amendments to the BIS consultation pages 1-7?
- 2 Why did BIS legal counsel Michelle Rafferty not read those amendments prior to the meeting?
- 3 What reason is there for Michelle's opinion that FPN's are justiciable and within HRA/ECHR?
- 4 What reason is there for Michelle's opinion that "reasonable suspicion" (as in the context of the cause of the Brixton Riots) is justiciable and within HRA/ECHR?
- 5 What reason is there for not applying for "transitional" arrangements for possible derogation of the Services Directive to allow time to consult with pedlars about the implication of meddling with the Pedlars Act through the Statutory Instrument?

It is helpful to receive your comments on the meeting note. We hope that you and your colleagues will be mindful that we do make a real effort to communicate effectively with all our stakeholders including pedlars. As we mentioned in the meeting we are a busy section with a variety of equally important policy areas on which we work aside from street trading and pedlary. Having said that, we appreciated your comments about the way the law is sometimes interpreted and your concerns. We should add that our meeting

note recorded only the relevant areas of discussion relating to clarification of the consultation document.

The comments on the subject matter (that "Fixed Penalty Notices" and 'reasonable suspicion' are not justiciable and within Human Rights Act / European Convention on Human Rights") are viewed as responses and we will be taking these into consideration when formulating policy. It should be noted that the proposals in the consultation document, if taken forward, would be subject in any event to Parliamentary scrutiny including the compatibility of the proposals with the HRA.

Finally, you may like to note that BIS Colleagues responsible for the implementation of the Services Directive will respond to you shortly about transitional arrangements.

END

NICK MCGERR

as attached

NJM ana BIS URN 091074.pdf

nicmcGerr

njm

**"STREET TRADING AND PEDLAR LAWS:
A joint consultation on modernising Street Trading and Pedlar Legislation..."**
Response by N.J.McGerr, Pedlar, Petitioner, and agent at Parliament UK.

**Question 1 : Do you agree that the definition is in need of updating and
clarifying ? If not please provide your reasons.**

Answer : No.

Reasons : Please refer to the following as answer 1 to condition
all other questions in the document: BIS URN 09/1074

The authors of this BIS government document URN 09/1074 misrepresent it not only by title but with law itself. Any useful response to the questions posed is immediately disabled at the outset by the format and use of language throughout, and primarily by the lack of clarity that it seeks to achieve.

As can be seen further in this commentary, there is no explanation of what the government is attempting by amalgamation of "street trading" and pedlary, both of which are historic and customary activities, and both subject to different law and interpretation. The assumption is that the process is facile, however its outcome is not, as witnessed through current judicial practice when on the firm basis of evidence.

It is plain from the **Introduction and Executive Summary**, that there is a disproportionate emphasis on disrupting the safeguard of the Pedlars Act and no attempt to improve the one definitive law on regulation of street trading, adoptive, Local Government (Miscellaneous Provisions) Act 1982 - the LG(MP)A:

- which clearly includes pedlars within terms of "street trading" but in this government document is then intended to regulate visits not in the street but at homes and on doors without any definitive or descriptive conditions.

This confusion is abetted by the government in its paucity of attention to detail, and more than that, it is guilty of looking at pedlary as being the only "issue" rather than that of "rogue" trading.

This attempt by the government to achieve a "proportionate" result by altering the "definition" of a pedlar to conform to some post-dated regulation is doomed to failure and goes directly against the Pedlars Act in which there is complete reliance on:

*"Interpretation of certain terms.. if not inconsistent with the context...
terms have the meanings hereinafter respectively assigned to them".*

Both the initial decision and the ultimate definition about a pedlar is therefore to be made by a judge and not to be pre-ordained by a codified description.

**"STREET TRADING AND PEDLAR LAWS:
A joint consultation on modernising Street Trading and Pedlar Legislation..."**

response by N.J.McGerr, Pedlar

answer to question 1

2

What can only be realised by the fulfillment of the intended result as directed by this government's departmental construction is for the Pedlars Act to be utterly destroyed, which by prompt to the Minister to sign off under 19 Impact Assessment page 71 is:

"What is the problem under consideration? Why is government intervention necessary?"

with the implied offence and supposed reason:

"certified pedlars may be trading as "street traders"..."

followed by the fallacy, because:

"Local Authorities (LAs) can make a provision for the licensing of street traders, but the responsibilities for certification of pedlars (and therefore enforcement) is undertaken by the police... limited resources mean such pedlars are rarely prosecuted".

What is ignored by this construction, a method in law not favoured by judiciary, is that Pedlars as street traders are lawful by certificate and not by licence;

LA's do not have extant pedlar certification or licensing regimes nor have any been moved towards provision of such despite the recommendation of Parliament, and that somehow a change in law will be able to make for an increase in "resources" i.e. cash.

It is of vital constitutional importance to have attention drawn to all these inconsistencies in what appears to be government's intention, and to preserve the authority of the Pedlars Act,

Street trading is an activity defined by the LGMPA and one which is inclusive of pedlars' activity exempting them from regulation under terms of the LG(MP)A and it is until now, often only through the LG(MP)A that attacks on the Pedlars Act can be made - but the LGMPA itself is coming under attack by this government paper with its confusion and haphazard technique of cut and paste:

URN 09/1074 page 29, 111 6 Services Directive

"Pedlars who just provide a services..." attempts to explain a decision that has been taken by BIS in terms of the private legislation by some LAs to extend the LG(MP)A
"to providing services in the street"

**"STREET TRADING AND PEDLAR LAWS:
A joint consultation on modernising Street Trading and Pedlar Legislation..."**

response by N.J.McGerr, Pedlar

answer to question 1

3

ignoring the confusion on [page 77](#) describing:

Street traders: 'selling or exposing or offering for sale... or offering to supply any service...'

and on [page 10](#):

"Thus, street trading under the LGMPA regulates the sale of goods only".

BIS has decided to eliminate part of the function of pedlars by excising the potential for two activities of pedlars on the very little basis of having found "very little evidence", and again having to rely for argument on the fallacy of [page 29 112](#):

"only a pedlar of services operating exclusively door to door who is exempt from having to obtain a street trader licence..."

relies yet again on unjusticiable law about any person or a pedlar visiting a house or going to a door for trade required to have a Street Trader licence to satisfy the regulation for exemption that is a condition of the primary statute.

The comment made on [page 29 114](#):

"Incidentally"... indicates precisely how little authority the department views the LAs have to carry out major reform of licensing regimes without considerable resources applied and how little confidence there can be in suggestions that there is sufficient capacity for LAs to take on the principles for granting certification away from police.

This contradictory and confusing text demonstrates not only the incomprehension of its authors about pedlary but also the impossibility of good law being applied as a result of it.

The authors join with those wanting to attack the Pedlars Act, those who rely on change to the application of the Pedlars Act through amendment to the LG(MP)A - but there is nothing in this report written about the LG(MP)A and its relationship to the Pedlars Act which alters street trading, helps to adjust the law conditioning street trading or in their words to "modernise".

**"STREET TRADING AND PEDLAR LAWS:
A joint consultation on modernising Street Trading and Pedlar Legislation..."**

A response by N.J.McGerr, Pedlar

answer to question 1

4

The Pedlars Act 1871 is referred to in the LG(MP)A because in terms of "STREET TRADING", the trading activities of pedlars are exempt from regulation, which makes the whole ambit of this consultation redundant, unless its priority has been set outside of its terms of reference and within the demands of those who have declared an interest to "cut away" at the Pedlars Act such as the NABMA, Sharpe Pritchard, and the LGA.

These authors also ignore utterly the unique and important historic context of the Pedlars Act, whilst at the same time adopting the vulgar expressions of its detractors such as it being antique, archaic, or anomalous, when in fact the Pedlars Act is an effective and unique piece of legislation which gives more than the little it states, the most critical aspect of which is:

- that a person has to be of good character with that assessment being the judgment of law through the aegis of police and magistrates and subject to self appeal by a responding person considering to be suitable.

This "consultation" is an attempt by the authors to change this basis of law and revert it to some sort of self-serving ad hoc regime that can be useful to only a very narrow clique within society in danger of causing damage to the principle of law and corruption of the society:

- reference *Butterfield*, witness for the promoters on the effect of the City of Westminster Act 1999.

The Pedlars Act then is in its essence a preface to any attempt following it to define the nature of a person in law such as in an *Identity Act*, and is therefore very modern in its application and usefulness:

- but it relies completely on interpretation for its effect - it is a recognition in law that it is almost impossible to codify human nature except by proscription or prescription.

So the Pedlars Act does not go to definition apart from setting out what a pedlar may not do in contravention of the Pedlars Act: c.96 Clause 4(1), which is the ground for a pedlar to be of good character, and so the Pedlars Act sets out the "means" of a pedlar, that is a description of activities that indicate a pedlar, including at the outset a "hawker" and then including any "or other person":

**"STREET TRADING AND PEDLAR LAWS:
A joint consultation on modernising Street Trading and Pedlar Legislation..."**

A response by N.J.McGerr, Pedlar

answer to question 1

4 a

So the Pedlars Act not going to particular definitions but with descriptions of indicative activities is its own regulation, it is what authorises a pedlar, it is the pedlar's own authority, on its own conditions, for a pedlar to proceed on an own recognizance as validated by police and approved by a magistrate - Pedlars Act: c.96 Clause 4(1)

"The term "pedlar" means 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."

This flow of english is no more "old" and useless than the institutions from which it sprang, and as for the trammelling of the Act carried out in panic to satisfy a European Directive when there is always time for transition:

I viewed with great pleasure the work of a chair-mender sited at Calverley in Tunbridge Wells, and follow with interest a pedlar displaying *skill in handicraft* or any *caster of metals* plying a way through Westminster, and there is always any "or other person".

URN 09/1074 because of its lack of attention to the origin of the legislation and by its misuse of language: ignores the nicety of the Pedlars Act and its liberal foundation upon the permissive use of "or" which allows for the constant widening of its scope through time and additional expertise.

Damage has been done to its interpretation and its later exploitation through private legislations by deliberate changes made to the wording of the original Act in subsequent dependent legislation - as at first instigated by David Chambers of Westminster City Council addressing the ATCM conference with the idea that pedlars may only go by making visits to houses and doors, and that a pedlar "goes from town to town and", rather than "or to other men's houses."

**"STREET TRADING AND PEDLAR LAWS:
A joint consultation on modernising Street Trading and Pedlar Legislation..."**

A response by N.J.McGerr, Pedlar

answer to question 1

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The crux of the DEFINITION about a pedlar is of a person who is a pedestrian who goes about and trades and is lawful with a certificate that attests to honesty limited only by the conditions that the certificate is current: Clause 4, not forged: Clause 12, borrowed or lent: Clause 10, not used for begging: Clause 13, and must be shown on demand: Clause 17.

Further emphasis is required in this consultation to differentiate this type of trader from others because a pedlar is 'mobile' and does not occupy a LA licensed 'static' pitch. It is this comparative yardstick that forms the pillars of difference between the two types of lawful street trading.

The answer to the first question of this consultation is therefore perhaps contained in the response to most of the other questions, with the consultation misleading in the form that it is presented. Its understanding about pedlars is scant, and its purpose has been devised to conform not to the better regulation of street trading but is in fact to abnegate a freedom and facility open to all suitable persons throughout the UK.

Which is why the prominent use of "proportionate" in the context of justification for the authors' proposals so that the work glides easily through HR legislation can be considered disingenuous.

The number of persons suitable in the UK, which has not been properly assessed nor researched, has the potential of about 48 million, and then there is Europe.

For this reason alone the consultation puts HMG in peril of reprimand by the European Court on many grounds including that of occasioning disproportionate effect whilst aping most of the private business legislators who have relied on their legislation being proportionate as "in the general interest" to suit the domestic HRA.
Stupidity is obvious therefore, before the first question is asked, and is within:

4. Certification Process The UK and Scottish Governments' Preferred Option*
(note this as Government's preferred option based on our (their) assessment..)

Option B

48. It seems clear that the *outdated language used to define a pedlar* in the Pedlars Act is *leading to some confusion* around what a pedlar's lawful activities are. *It is a general principle of better regulation* that legislation should be clear and transparent for those subject to the legislation, and those charged with enforcing it.
It is on this basis that we would propose to update the definition.

**"STREET TRADING AND PEDLAR LAWS:
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A response by N.J.McGerr, Pedlar

answer to question 1

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* The basis of the government's preferred option is flawed because the: "our assessment of the evidence to date" - has Scotland outside of the UK.

It is not "clear" that there is any basis to "update" the definition:

"outdated" - only because this URN 09/1074 states it to be so;
"define a pedlar" - the "confusion" is by the authors mixing the descriptive means of a pedlar with the conditions to be a pedlar set out in the original and primary Act; but as made in a vital comment by Durham: this Act could be altered usefully to: "enable easier identification of genuine certificates"

This is the only & most practical aspect of the whole of this "consultation" which has to take place within the terms: "easier identification of genuine certificates".

- set out in a revised and updated text for the Forms A&B of the national certification scheme of the statute which states:
- a pedlar may go throughout the United Kingdom, and which should now include Europe in order to comply with European legislation and as should the LG(MP)A .

Part 48 of the consultation notes perversely:

"*It is a general principle of better regulation that legislation should be clear and transparent for those subject to the legislation...*"
because: pedlars are expressly EXEMPT from conditions of regulation other than the conditions of the Pedlars Act and other applicable national laws, and certainly exempt from the regulatory conditions of street trading in the LG(MP)A.

It is therefore inappropriate and doubtful that this consultation has any true effect other than to confirm the prejudices of those who have set out to REVOKE the Pedlars Act as intended by this consultation on page 20 4.6 78:

Revoking Pedlars Act and licensing Pedlars under ... LG(MP)A.

Other than this, national government has stated a lack of urgency to address the "pedlar issue" and there has not been any similarly strident lobby to attach change to the LG(MP)A, which is itself only applicable locally. noted hypothetically in 81. page 21:

"However, the street trading provisions in the LG(MP)A and CG(S)A are currently optional for local authorities. We would need to consider further how this might be reconciled with a desire to retain national access to pedlar certificates. It might, for example, be appropriate to require all local authorities to participate in the certification of pedlars..."

**"STREET TRADING AND PEDLAR LAWS:
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A response by N.J.McGerr, Pedlar

answer to question 1

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Not only does this attempt at convergence go directly against the ECHR and the HRA, but given not only the reluctance and most often the right of LA's to resist the imposition of central authority:

- there is not the funding to support such an edict, nor as has been noted in Parliament will it be supported by the fallacious imposition of seizures and FPNs.

This URN 09/1074 is of itself anomalous and as has been suggested in Parliament: "absurd", with the prospect of having government legislation based on it seen as: "intolerable".

The importance of understanding the evolution of law has been emphasised most recently by *Elizabeth Wilmshurst* alert to the danger of government hiding its processes, not declaring its interests, but relying on a single arbitrary decision, which has then to be subject to judicial review.

The Pedlars Act has no other reference other than to itself and is based not on any pre-existing law but on customary practice. To a great degree that practice continues among holders of Certificates of good character, and review is continuing on the basis of judicial interpretation which is of itself open to appeal and hence is the cornerstone of the "evolving" law of society.

Any attempt to codify the activities of a pedlar, a common pedestrian when in trade, or to "define" a pedlar, goes against the history of legal precedent and the common law of society.

That a pedlar bears a Certificate as a testament to honesty is such a unique treasure that it surely is something that should be encouraged for a more widely appreciated and effective morality in the health and safety of an ethical society: - but not for it to be casually disposed of with so much impertinence.

This government consultation should ally itself with the history and social culture of the common nations and not be swayed by disparate and unrepresentative groupings of private interests who have yet to declare themselves to be in the wider public general interest, or to reveal an agenda that conforms to widespread common values based on comprehensive evidence and not mere anecdote.

**"STREET TRADING AND PEDLAR LAWS:
A joint consultation on modernising Street Trading and Pedlar Legislation..."**

A response by N.J.McGerr, Pedlar

answer to question 1

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Parliament in 1871 made a law about people being able to go about anywhere, to allow knocking on other persons' doors and approaching people in the street without being judged a nuisance.

The need for the law followed the 1847 *Town Police Clauses Act* which would have continued to catch pedlars if not for the introduction of the Pedlars Act. Parliament gave legitimacy to pedlars' established and useful activities - clearing away the confusion about pedlars introducing themselves and then to be arrested for committing an offence.

There is now however with this URN 09/1074 an attempt to revert back to this "confusion" which can be viewed easily as being promulgated deliberately.

The introduction of the Pedlars Act was to correct the situation for people who went about selling or displaying their wares being harassed by various authorities such as town constables and bailiffs, as now with licensing officers, city marshals, sub-contracted "security", CPSOs, and types who enjoy picking on those less fortunate than themselves. This coercive and awkward tendency continues to persist throughout many "*modern*" regimes.

Pedlars are pedestrians and quite vulnerable when carrying items of value or needing to seek out conversation in order to promote some mutual interest and can easily be set upon.

Historically this was the situation which many honest and purposeful individuals found themselves to be in when being attacked as vagrants and rogues, which is why Parliament introduced the safeguard of the Pedlars Act to remedy the grievance and:

- to lessen the amount of potential breach of the peace and in 1871 to encourage a better flow of economy throughout the United Kingdom.

The Pedlars Act has no definition other than the word itself which is as the English dictionary has it:

"traveling vendor of small wares usually carried in a pack";

and sometimes with the more common pejorative understanding of a person who is a teller of tales, or "retailer".

**"STREET TRADING AND PEDLAR LAWS:
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A response by N.J.McGerr, Pedlar

answer to question 1

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The definition of a pedlar is therefore exact in the Pedlars Act.

It is written clearly as in the statute, and the descriptions that follow are included there as explanatory guidance so that those needing to evaluate a person with a pedlar's certificate can have some indication about that person's lawful activity.

Within that list of possible activities is the all encompassing allowance of "or other" that permits anyone who has been proved by police and authorised by a magistrate to hold a Pedlars Certificate, while at all times of trade complies with all conditions of that certificate: not to have it forged, lent or borrowed, or to be used to be a beggar: - can on production be allowed to proceed without let or hindrance and within all other laws.

The Pedlars Act is thus very restrictive, well conditioned, and good regulation.

What the authors of this consultation document URN 09/1074 attempt to enforce as a definition of pedlary, is a list of possible activities, but they derive these activities in many different terms such as it having been formed by "*old legislation*" which in their words is:

"leading to confusion about its interpretation over time"

The LGA and other of their confederates add further facetious contempt by pillorying pedlars as "*rogues*" going about in "*malevolent gangs*".

This is to divert attention away from the initial charm of the list which is in fact not a definition but is a list wholly descriptive and entirely open to interpretation by the important inclusion of the words "*or other*".

The authors of this document have thus at the outset sought to remove from this consultation any ambit of judicial inquiry by forcing upon stakeholders a narrow and restricted understanding of the law and one which despite the inclusion of various references to case precedents, ignores, not only the original and unique formula of this Act, but includes the prejudices of those who are striving to strike down this primary and useful statute by yet again reverting it back to before its inception:

when pedlars and the public did not have the safety of the Pedlars Act.

..

"STREET TRADING AND PEDLAR LAWS:
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A response by N.J.McGerr, Pedlar, (refers to and is conditioned by answer to Question 1)

ANSWER TO QUESTION 2: YES & NO - a reformat & careful questions required

REASON: Refer to answer to Question 1. - this question 2 should not be posed in terms of "Option B" as "the list" is not presented in the Pedlars Act as definition only as a list of descriptive terms, and it is for a court of law to apply interpretation. The pre-condition set out by this question has been pre-determined by the department on pages 42- 43 of the "consultation" 8.1 - 8.3 with the ludicrous amalgam in 8.3: "*that this criteria is comprehensive.. when a person is acting as a pedlar or a street trader*", This is not a distinction in law, the LG(MP)A 1982 states that a pedlar is exempt from street trader regulation. The distinction is therefore false and the criteria is not comprehensive because it ignores court Order 57 Rule 1. The distinction introduced by the authors of this consultation lets in a head capable of a simple prosecution of a pedlar. This gambit is typical of the whole consultation. The "list" format is an attempt to codify law as purely functional, whereas there is history to culture and custom: with nature not yet described as entirely mechanistic - so this question is thus inappropriate, entirely wrong and redundant.

ANSWER TO QUESTION 3: YES & NO – its all relative

REASON: As referred to in answer to Question 1.- this question cannot be answered as "the list" is only a list of indicative descriptive terms. It is for a court of law to apply interpretation. The term pedlars in the Pedlars Act includes *hawkers* and it is only since the revocation of the Hawkers Act that courts of law have recognised hawkers to be able to have a means of carrying and transportation: size and use has been judged on the facts and ruled accordingly. It is for courts of law to determine the Pedlars Act, and it is for regulating authorities to bring forward the relevant offence according to the relevant law out of many, which could for example be about obstruction or having a false certificate. This consultation needs to have more thorough scrutiny of existing law, and also to be able to recommend a wider review of all law and associations such as the ATCM & the NABMA impinging on HMG & the purview of Local Authorities.

ANSWER TO QUESTION 4: YES

SUGGESTION: Apart from a repeat of the comments given above in answer to Questions 2 & 3 - this question cannot be answered with effect as it has no point of reference other than its own box. The whole of this consultation needs to be revised in order to establish both a domestic and European context and not be so limited to an obscure agenda that seeks only to penalise pedlars.

**"STREET TRADING AND PEDLAR LAWS:
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A response by N.J.McGerr, Pedlar, (refers to and is conditioned by answer to Question 1)

ANSWER TO QUESTION 5: NO

REASON: Refer to answer to Question 4. - this question is not reasonable nor usefully answered because its "description" is loaded by the context of its origination and by the fact that it does not address the reality of the Pedlars Certificate as national, with national authority, and needing to be administered by national agency such as police and not as implied "dependent on whether the issuing authority should change"; point 58 indicates that the purpose is to increase LA's power to isolate pedlars simply as immediate offenders with burdens of FPNs & seizure: "*these options... will only be viable if the enforcement officer can be confident of the offenders details*" - this statement is in contrast to the certificates true value as a witness to good behaviour and a pre-cursor to an I.D. card. The Pedlars Certificate is already "viable" as it supports national opportunity and is evidence of vital & viable jurisprudence. The certificate's issue is for the protection of the pedlar and not as an aid for prosecution. Revising this consultation should place this question in the proper context: cf. questions 6-16 and further.

ANSWER TO QUESTION 6: NO

REASON: Refer to Question 5 point 58: "*This will benefit certificate holders*" - only as they will be charged an undisclosed amount of money and draw no other benefit than that their I.D. is confirmed with a photograph (PACE) releasing pedlars from the drudgery of too much harassment. Cost is not & cannot be related to scale & will not be covered by fee. Variation removes cost equivalency: adding applications increases potential and with the probability of EC and approved non EC input. The equation: total of fees = recovery cost of central database, is fatuous & absurd. A national update of data systems as enabled recently by Berners-Lee allied to efficient communication systems does not make "the list" a priority and may go against other conventions if too many details are available for public view. Embedding information which can be accessed by a scanner is more modern & pertinent and fits better with the prospect of a centralised monitoring authority.

ANSWER TO QUESTION 7: YES&NO

CONDITION: page 17- Scots have declared Unilateral Independence? This clears all answers to previous Q's. A database has to include all of UK with EC and with international access. Establishment cannot be recovered through a scale of fees. The text: "The UK and Scottish Governments' Preferred Option" indicates the bias throughout - that this consultation looks only towards local application.

**"STREET TRADING AND PEDLAR LAWS:
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ANSWER TO QUESTION 8: NO

REASON: The Durham proposal is for a "central computerised collection of data on pedlars'certificates"; this as a question is somewhat similar to "eats shoots & leaves"? The need is for minimal data & not to maximise the information held on a certificate, therefore name, number & if technically possible, a photograph or laser bar-code; removing data-sharing capacity from one agency & granting it solely to another incapacitates the system - whilst allowing too much access to too much information is similar and contravenes too many aspects of privacy & security. As police currently run data checks, and also input & access data on a wide variety of activities, police are the priority function requirement monitored by a supervisory and appeal agency: - with that all approved officers will then have the technical solution of a scanner to validate a pedlar's Certificate. Without significant lawful authority this question as proposed through point 63, but without any reference made to origin - that LAs will be aided to share data because of some "retail" collaboration like M&S cash desks..? This is not only dangerous but preposterous.

ANSWER TO QUESTION 9: YES

COMMENT: placing this question in at this point of the document exemplifies the department's technique of cut & paste - removing the possibility of a logical flow of reasoning and indicating knee jerk panic to satisfy assumed conditions. **REASON:** the precipitate reaction by BIS to introduction of a Services Directive indicates many flaws in the department's ability to have a well considered approach. The arbitrary decision to eliminate elements of the Pedlars Act whilst in "consultation" about pedlary, using the tool of a Statutory Instrument without putting the issue through full debate in Parliament nor by suspending the initiation of the directive as allowed for by the EC: indicates that any better consideration about pedlars is more likely to be put in jeopardy. This consultation has to be in root and branch concordat with the principle of pedlary, otherwise its only result will be to spread more offence.

"STREET TRADING AND PEDLAR LAWS:
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A response by N.J.McGerr, Pedlar, (refers to and is conditioned by answer to Question 1)

ANSWER TO QUESTION 10: NO

REASON:

Point 69. Yet again the government authors show their ignorance of the Pedlars Act and their state of inverted logic: there is no statement of proof required for the grant of a Certificate: the applicant is self asserting to be capable of acting as a pedlar within terms of being a pedlar, all under the aegis of magistrates and police who are best able to assess the balance of evidence more than the ill defined "other" of "Option B": which does not declare itself, but is: the narrow but strong lobby of private interests as displayed through private bill business in Parliament . This Option is yet a further push towards removing the entire substance of the Pedlars Act by textual manipulations carried out under the guise of some sort of efficiency that is not provable and does not come within the remit of fairness nor justice. On proof of evidence there is a right of appeal to the respondent through a court, rather than the sole adjudicator being LAs with many unspecified views.

ANSWER TO QUESTION 11: YES and but NO

SUGGESTION: the usual muddle up and conflict of text & supposed meaning with this "consultation" - it is obvious from the context of these questions that the proposal is to hand authority for the grant of certificates over to LAs and as a result LAs will be more able to have more and more frequent "*more consistent.. refusal of applications*".

LAs , especially those with private business interests have the most amount of refusals for licences on the simple basis that they are not prepared to allow for them.

ANSWER TO QUESTION 12: NO

REASONS:

Section 4.5 page19 - arguments are illogical, tautological and fallacious:

point(s) 71: not all LAs adopt LG(MP)A; 72: LA's control only static positions; 73: Pedlars statute does not require police to make trading decisions, but police can & do issue licences; 76: the double negative: "We do not currently.. not to transfer.." is the fallacy, shows LACK of consideration in reality and displays precisely why this "consultation" is flawed - that somehow there is no doubt about "illegal street trading" but "uncertainty" about "legitimate pedlary" despite there being a statute about Pedlars, and that somehow: - when that is dissolved the issue "will be clarified"... (?)

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ANSWER TO QUESTION 13: YES&NO - clear terms are stated in the Pedlars Act.
CONDITION: this question is conditioned by "What does the evidence say?" which is then not provided, instead only the tortuous assembly of words attempting to verify "refusal of applications in the legislation"; what legislation - the efficacy of the LG(MP)A which is known and has been stated by the department's researchers to be incompetent to take on the Pedlars Act...? It is significant that this question is asked at 13 as it refers back into the consultative process and reflects forward on to all others.

ANSWER TO QUESTION 14: NO
REASON: for all reasons stated up to this point that the Pedlars Act is fit for purpose and the LG(MP)A whilst suitable for many administrative functions of local government is not suitable nor can be easily adopted to reflect a wider concern. Again to satisfy bureaucratic regulation there is the deliberate false distinction made between "pedlary" and "street trading" in order to fit a misconception and a ridiculous outcome: that with no "Pedlars there is a definition of & about Pedlars.

ANSWER TO QUESTION 15: NO
REASON: there is no "reason" other than the demands of a small but persuasive lobby, a narrow sector of LA's, the destruction of "viable" law, the awkward instigation of an unknown process that has no basis in actuality, the removal of effective and viable safeguards, the imposition of an uncapped tariff of fees, the trammelling of human liberty, and an opportunity for government departments to have a long sledge through a proven and well regarded constitution.

QUESTION 16: YES but these are not options by BIS, nor is allowed a wide margin of CONSIDERATION. Instead attention is directed to one sole (im)probable regime: "*definition which reflects the current trading practices of legitimate pedlars*". "Current" as is always changing, "the river flows and down into the sea"; there is only "legitimate pedlars", & this absurd situation is addressed in answer to Q17

ANSWER TO QUESTION 17: YES of course if pedlary as constituted is ruined
REASONS: AS ABOVE: THERE HAS BEEN ONLY A VERY CONDITIONED SET OF QUESTIONS WHICH DIRECT TOWARDS A SINGLE RESULT. PEDLARS THROUGH THEIR RESPONSE TO THE PRESSURES PUT UPON THEM BY THOSE WANTING TO ERADICATE PEDLARS AS A FACET OF SOCIETY HAVE IN CONTRAST MADE PRACTICAL & PURPOSEFUL RECOMMENDATIONS AS TO HOW THEIR IDENTITY CAN BE PRESERVED & IMPROVED. SOME PEDLAR "OPTIONS" REQUIRE ONLY TECHNICAL ADJUSTMENTS - WHEREAS THIS BIS DOCUMENT HEADS TOWARDS ONLY A DISINTEGRATION OF LAW.

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ANSWER TO QUESTION 18: OPTIONS: the options provided under "an alternative vote system" drill down into a percentage indicator that ensures that pedlars, outnumbered by establishment, will be penalised, and by an unfair and invidious regime. Pedlars' are authenticated by law & on the judgment of courts. LAs finding justice costly enough to seek to avoid it (point 88) need to revise and educate their procedures and not seek a revenue stream through FPNs that has been overtly criticised by the Magistrates Association, and now by this incomprehensible combination of options: option D is options 2&3 i.e. in Impact Assessment (ii)..(?) Pedlars will be denied the authority of a magistrate and suffer a grievance worse than a speeding motorist - "*not shared by all authorities*"
REASON: take this and all further responses to Questions in this consultation as being in agreement with the joint submission by pedlars in the 12th Feb 2010 pdf document: - <http://www.pedlars.info/bis-consultation.html>

ANSWER TO QUESTION 19: NO – there is no overall and complete request evidenced by LAs: point 88 "may", the most influence bought to bear on this view is from authorities that have bought their plundering power with private business exploiting local communities; the calculations as presented are inaccurate and not well based, do not yield expected results and with no capped limit are likely to serve only oppressive regimes to help with the pay off for hiring sub-contractors.

ANSWER TO QUESTION 20: NO
Do not agree with the principle or effectiveness of FPNs as the Magistrates Association do not in principle agree with FPN's and for the reasons outlined above in Q19 and with responses made by the pedlars joint response document, which details that FPNs have no effective impact on diminishing the rate of crime
<http://www.pedlars.info/bis-consultation.html>

ANSWER TO QUESTION 21: NO
Is what "*list of offenses in respect of FPNs*" complete and correct?
The detailing of "Street Trading Offences" and "Pedlars Offences", as somehow actionable by the same process: - is WRONG.
Pedlars have the aegis of the law, of magistrates, and of police. LAs can write what they like into their adopted LG(MP)A and the scale of fees, penalties, licences, and charges is of their own devising. They choose to favour their own and their licensed street traders are not so likely to lose their goods by seizure & forfeit unless counterfeit & are more likely to be on a lower scale than pedlars who are not favoured at all by all LAs - as well publicised by the LAs PR media. To force pedlars out of statutory protection into the unregulated maw of the LAs need for extra income that LAs misguidedly assume will be more efficient, of cost benefit & potential revenue generating, is not only not correct – it is vicious & absurd.

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"STREET TRADING AND PEDLAR LAWS:
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A response by N.J.McGerr, Pedlar, (refers to and is conditioned by answer to Question 1)

ANSWER TO QUESTION 22: ZERO & REASONS are for pedlars: bias, as the view to be taken by this consultation resulting in only "the minister" signing off on an Impact Assessment that is not capable of being affected by the respondents and has been designed essentially to revoke the Pedlars Act and introduce a phalanx of LAs, not all who have agreed or can agree & who may be incapable of introducing a costly & swingeing attack on pedlars

QUESTION 23: answer agrees <<http://www.pedlars.info/bis-consultation.html>>
REASON: "the Department's general perception" sets itself nicely into the subjective "desired outcome" WHEN IN FACT THE PRESENT AND CURRENT LAWFUL SITUATION IS that "those certified pedlars" - note the lack of those with Pedlars Certificates – DO TRADE LEGITIMATELY.. not "would be" or "in addition to properly.." - note the introduction of and emphasis on the false distinction between pedlars.. and "street traders" as: - PEDLARS ARE STREET TRADERS AND EXEMPT BY PROPER AUTHORITY OF A WELL REGULATED LG(MP)A REGIME, but not by this extravagant and tortuous government attempt to cobble together some sort of effective regime across the UK by harnessing a collection of possibly subservient but demanding Local Authority .

QUESTION 24: answer agrees <<http://www.pedlars.info/bis-consultation.html>>
REASON: constant use of hypotheses by this consultation with such as: "would also be important" is in context of pandering to LAs prejudices but is not helpful and "Clearly this would require further work.." for the department..(!) while pedlars have to consider the absurdity of the suggestion that it is better for them not to attend gatherings of people - to be "given a reasonable time in advance.." to decide what to do with themselves (not to go somewhere where they are likely to be fined, arrested, prosecuted, have their goods seized and most probably destroyed...(?!).. There is the effective law of the PEDLARS ACT which permits pedlars to trade ANYWHERE throughout the UK and here in this document there is no substantive evidence nor any made at Parliament about "unreasonable numbers of pedlars"; more than that: there is in the law of the **Market & Fairs Clauses Act 1874** provision for pedlars not to be prevented from being at public gatherings that have access for the public. See also all other pedlar comment on "unfair trading and competition"

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QUESTION 25: NO agree with <http://www.pedlars.info/bis-consultation.html>

REASON: pedlars are lawful and there is sufficient law for them to be accommodated within any public gathering as much as any other member of the public - as pedlars are members of the public and not some secretive or arcane body that needs to be hidden away from the public to prevent an outbreak of some hideous and hitherto unknown scourge, but often local authorities and associations have been the cause of terrible events - such as Hillsborough, and the City of Manchester "Rangers" event. NOTE: BIAS in the list of questions - all of which are to do with INCREASE TO LA POWER AND PENALTY AND NONE TO DO WITH THE BETTER REGULATION OF LAs DESPITE DEMAND OF PARLIAMENT. Point 105 that follows has no comment box, HOWEVER THE QUESTION ARISES: How can HMG "in consultation" insist LAs enter domestic premises without hurt to the HRA & ECHR? POINT OF LAW.

QUESTION 26: NO agree with <http://www.pedlars.info/bis-consultation.html>

NOT MUCH CRITICISM IS REQUIRED FOR THIS CONSULTATION TO BE ABNDONED UTTERLY ON THE BASIS OF IRRESOLUTION: 'assuming the rationale for prohibiting static street trading' applies equally to trading as a pedlar" – "rationale" (p27) or ILLOGICAL – "static street trader"/ licensed static street trader / "trading as a pedlar" / mobile pedestrian.. pedlar...? DUH?

QUESTION 27: umm.. so agree with <http://www.pedlars.info/bis-consultation.html>

OBSERVATIONS: "aired" ..? "methodology" ..? "notice" ..? consistency of approach..? "restrictions were properly communicated" ..? who is PRIMUS INTER PARES with this fabulous UNCOSTED "further work... in the light of this consultation" ..? This "this" as presented in this "consultation" is so little considered it APPEARS so far VERY OBSCURE

QUESTION 28: NO agree with <http://www.pedlars.info/bis-consultation.html>

REASON: pedlars as referred to throughout this response to this document are and always should be under the aegis of law, magistrates, and police; if this question is aimed at pedlars "in the light of" pedlars becoming licensed vassals of local authority then pedlars in a real, traditional, customary, social, economic, and public sense will have ceased to exist.

THIS ISSUE IS TO BE DETERMINED BY THE SUPREME COURT, wait & see

QUESTION 29: YES & NO agrees with <http://www.pedlars.info/bis-consultation.html> because pedlars are investigating the conditions used by the SI to bring in the SD:

- this issue has been moved towards being determined arbitrarily during this consultation AND ON THE BASIS "of no evidence" which suggests further review in both domestic & European courts. HMG has not made PROPORTIONATE response and there is thus "detriment" to upwards of more than 48 million people

QUESTION 30: NO and agrees with <http://www.pedlars.info/bis-consultation.html>

REASONS: As above & outlined by my response in answer to Q.1 - there has been only a very conditioned set of questions throughout this consultation which directs towards only a single result: -THE SCRAPPING OF THE PEDLARS ACT & THE DESTRUCTION OF PEDLARY.

QUESTION 31: YES & NO – it's impossible to answer other than to agree with <http://www.pedlars.info/bis-consultation.html>

The public the main "target audience", a mass of people, have not been sufficiently contacted. Criticism has been made from the beginning at Q.1 and throughout this response to the "consultation": that terms as set out by the authors of this strange document are frequently WRONG. So it is with this "Draft Guidance" which may well meet its "needs of the target audience", particularly "enforcers", but doubt persists as to why there is, as here: "traders", which then has to be conditioned by the addition of "pedlars" - who are traders and only exist as such but who are also denied lawful authority by the composition of this URN 09/1074 and of its maladroit application which certainly denies any "degree of consistency of interpretation"

QUESTION 32: YES and agree with responses made by the pedlars' joint response document at <http://www.pedlars.info/bis-consultation.html> and for government to employ the wisdom of years:

- for this consultation to be based on any FAIR level it needs to give to pedlars appropriate support with the same equality of opportunity enjoyed by all other respondents:
- given equal portions of access for time & facilities required for guidance to be "reformatted", pedlars as with Q33 will then be able to agree they "are happy to receive them", but pedlars need to know about point 45: SCOTLAND, is it in UK?

ANSWER TO QUESTION 33:

ZERO COMMENT – unless all responses made so far by pedlars in reply to BIS questions are given full value, and agreement is made to responses in the pedlars' joint response document <http://www.pedlars.info/bis-consultation.html> and put to good use to preserve the wisdom of years, with assistance given as required and made available with access to the cost basis of the Impact Assessment which is restricted by no comment box other than the minister signs off in agreement;
"pedlars, tellers of tales and retailers" ... it's their life & a good gift to M&S!

njm