

**Responses to BIS and Scottish Government Consultation on
Modernising Street Trading and Pedlars Legislation - Other response
Natalie Cookson – reformatted for size reasons to highlight
Stakeholder's comments**

Dear Sir/Madam

Please find attached my response to the consultation on pedlary. I am not a pedlar myself, but work as an IT project manager for a national building society. As part of my job I am regularly asked to review documents. I am happy to further discuss any of the points that I have made.

Please provide an acknowledgement receipt of my response.

Yours sincerely

Natalie Cookson

STREET TRADING AND PEDLAR LAWS: A consultation on modernising street trading and pedlar legislation, and on draft guidance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

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.

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.

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.

NLC: I have concerns that from the offset, you are trying to define a relationship between pedlary and street trading, when clearly in legal terms they are distinct forms of trading. The link is tenuous, to the extent that each trading activity takes place on the street.

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.

1 Executive summary

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.

NLC: This statement appears to have no factual basis. The demarcation between street traders and pedlars implies that the latter sell goods of inferior quality and market value. The derogatory nature of this statement towards pedlars implies that the consultation is not independent and has a hidden agenda. This statement leads the reviewer to believe that pedlars provide a lesser service.

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.

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.

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,

4. Certification Process

4.1 Pedlars and the Pedlars Act

What is the issue?

42. Pedlars are regulated by the Pedlars Acts 1871 and 1881. The Acts have not been significantly updated since they were passed and it seems likely that the fact that they are over 100 years old has led to some confusion over time about their intended meaning and how they translate to pedlars activities today. We are therefore seeking to modernise and streamline the relevant elements in the Act, as outlined below.

NLC: Doesn't this make a mockery of the entire UK legal system, which is based fundamentally on old law? Does a law dating back to 1871 and 1881 by its very definition need replacing? Is there a current drive to update old laws? Please provide evidence to support the claim that laws need to be updated based on their inception date.

The definition of 'pedlar'

43. Section 3 of the Pedlars Act 1871, which makes provisions for the issue of certificates, defines a pedlar as:

....."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."

44. The definition uses terms and phrases that are not used today and may not accurately reflect the activities of the modern-day pedlar. The lack of clarity around the definition of a pedlar has led to difficulties for both enforcement officers and pedlars, where their respective interpretations of lawful or unlawful behaviour often differ.

NLC: I fail to understand why the language needs to be updated. It seems perfectly clear to me that the law defines the following:

A pedlar travels on foot
A pedlar is itinerant
A pedlar carries to sell or exposes for sale his goods or his skill in handicraft
A pedlar can take orders for goods or services

45. The situation is further complicated as the definition of a pedlar and what is or is not permitted has been the subject of subsequent case law. The draft guidance at Annex B sets out what appears to be the current position in England and Wales.

NLC: The method by which Case Law provides a legal interpretation of statute law is well founded. To suggest that this process is overly complex undermines the very foundation of the UK legal system.

46. The definition is generally understood to mean that a pedlar is an itinerant trader who travels and trades on foot. A person who travels by car from town to town and then proceeds to trade on foot could be a pedlar because he is trading on foot. However, an individual who sells goods from a fixed position would appear not to be trading as a pedlar as envisaged in the definition. A certified pedlar cannot lawfully trade from a fixed position without a street trading licence in areas designated as licensing areas by local authorities.

The UK and Scottish Governments' Preferred Option *

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.

NLC: It seems clear to whom? I am not legally trained, and yet have no issue with the language used. Do magistrates, judges and solicitors back up this view? Where is your evidence to back up the statement 'it seems clear'? Is there conflicting Case Law? If so please provide details. As this statement stands it is nothing more than an unsubstantiated option, and this implies that the document author has a hidden agenda.

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

NLC: I do not agree that any documented evidence has been presented so far to suggest that the definition of a pedlar needs to be updated. Clearly any law dating back to 1871 will have language and grammatical differences to the present day, but provided a clear interpretation can be made I do not see the need to update or revoke the original act. No conflicting evidence has been provided to suggest that there are issues with interpretation. Please provide evidence to support your position.

Possible new definition(s)

49. In the event that the UK and Scottish Governments do decide to update the definition of a pedlar, or pedlary, we have drafted a list of elements which could be reflected in a new definition, for comment. To an extent, these reflect the case law on

the issue further details
of which are set out in the draft guidance at Annex B:

A pedlar:

.. Must be a pedestrian.

.. Must move around to trade - keeping a reasonable distance from
their last sales position,
moving on until another sale is made.

NLC: The Pedlars Act 1871, makes no reference to the distance between
sales. There has been no evidence presented to suggest that distance
is currently an issue, please provide information to support this
recommendation. Evidence aside, I fail to see how 'reasonable
distance' could be defined let alone enforced or abided by.

.. Should avoid standing still between sales when trading.

NLC: Define standing still, is this in minutes or milliseconds?
According to EU 'Working Time Regulations 1998' any adult working more
than 6 consecutive hours is entitled to a 20 minute break. Beyond
regulation it is common sense that one might stop to adjust ones
clothing, take a drink, secure monies and a plethora of other
plausible reasons to remain static for a short period of time.

The use of the word 'avoid' is open to interpretation. This
consultation has suggested that confusion is an issue with regards to
the regulation of pedlary. I fail to see how the above statement would
address this perceived issue, and may confuse matters further. Indeed,
would this statement create more avenues for abuse? At present it is
quite clear that a pedlar should be itinerant. With the suggested
definition someone might argue that they could not 'avoid' standing
still because of a condition. Therefore, someone with a broken leg
might become a static trader for the duration of their recovery.

Someone with a permanent condition might argue the point that they cannot avoid being static and therefore remain in a permanent fixed pitch.

.. Should only pause to make a sale when trading.

NLC: It is not possible to define a trading activity as a pause. Good customer service requires the seller to be fully engage with the customer, offering advice and exchanging polite conversation. Engagement with a customer may go beyond the time it takes to make a sale, giving directions or general information about tourist attractions. It would be improper to penalise a pedlar for engaging conversationally with a customer.

.. May use a small means of transporting goods e.g. trolley to carry stock.

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

NLC: The above list not comprehensive and is erroneous. It needs to be totally re-evaluated.

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.

NLC: A pedlar must be able to move his means of transport on foot. This in itself creates a physical upper limit. The definitive size of a trolley cannot be defined, as the dimensional nature of each trading street would need to be considered. What is acceptable in one town or street may not be acceptable in another. The Pedlars Act defines that the seller must be itinerant, and the Highways Act deals with obstruction, so I fail to see the need to have trolley size specified.

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

NLC: The draft guidance is so incomplete and ill thought out that it does not seem appropriate to answer this question at this time.

4.2 The Pedlars' Certificate

What is the issue?

50. Currently, pedlars' certificates are issued by the pedlar's local police station. A pedlar must provide proof that they have lived in the area for the preceding month. Certificates cost £12.25 and are valid across UK unless there is private legislation limiting a pedlar's activities, for example to door to door trading, in areas designated by local authorities under street trading legislation.

NLC: This is a statement of fact and in no way defines an issue. Is the issue the licensing authority, the face value of certificate, the time that the individual has lived in the area? This statement is vague and lacks substance.

51. While the Pedlars Act requires a certificate to be in the form specified in schedule 2 or as near to the form as circumstances permit, it appears that there is no standardised format for certificates so they vary across UK, and the information required to be given in the application and on the certificate has not changed since it was originally specified in the Act.

What does the evidence say?

52. The Durham report found widespread support from all stakeholder groups for updating the pedlar's certificate.

53. Local authority enforcement officers felt that the lack of standardisation and the inadequacy of the information provided on some certificates meant that verifying valid certificates was difficult and time-consuming.

54. Pedlars held the view that updating and modernising the certificate would offer them increased protection from enforcement officers failing to recognise valid certificates and minimise the time required to verify certificates.

55. It was suggested that the pedlars' certificate should include the following information:

- photograph of holder

- National Insurance number (or equivalent for foreign nationals)

- Address

NLC: I do not agree that a certificate which might be displayed to members of the public should display home address details. This would jeopardise the personal safety of the seller. Perhaps a counterpart document could be issued for purposes of verification but not display?

- Issuing authority name & contact details

- Expiry date

- Unique certificate number

56. There is also a link to proposals in the enforcement options in section 5, as these options if taken forward following consultation, will only be viable if the enforcement officer can be confident of the offender's details.

The Options

57. We believe that this will make it easier for enforcement officers to identify lawful pedlars and verify valid certificates. There is also an implication for the fixed penalty notices (FPNs) proposals in the enforcement section, as these cannot be issued if the enforcement officer cannot establish the address of the offender. Having this information on the face of the certificate will therefore increase the effectiveness of FPNs.

NLC: Identification and penalty notices are two separate issues. Address should not be included for ease of enforcement if pedlar safety might be risked.

58. A standardised format will increase confidence in the certificate as enforcement officers will be more familiar with it. This will benefit certificate holders as well, as increased confidence in the certificate would mean they are less likely to encounter problems of enforcement officers not accepting certificates, or having to go through time-consuming verification procedures. Including a photograph should also limit the use of a certificate by someone other than the certified pedlar.

59. The cost of issuing the updated and standardised certificates is likely to be higher than the current cost of issuing certificates (which has not been up rated since 1985). It is suggested that the additional money would be recouped from the fee for the certificate. Currently £12.25 per annum, the fee would need to rise to reflect the costs associated with the new system. The costs associated with a new system will be dependent on whether the issuing authority should change. It is worth noting, however, that most public authorities already have the means of producing such identification documents for security reasons, for example producing their staff identity passes.

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.

NLC: I agree that a modified certificate would be beneficial; however the details would need more thorough investigation.

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.

NLC: Address should be removed as previously noted. The format of a certificate/display card would need to consider the personal details of the seller, as is the case of police identification cards.

4.3 National Database of Pedlars

What is the issue?

60. Currently there is no centrally-held information on pedlars and there appears to be a need for a national database. Police stations issue pedlars' certificates and store data as they choose with no formal means of data-sharing. This means that information on pedlars is not easily accessible and even obtaining basic information, such as the number of pedlars' certificates issued in a year, requires the significant effort of contacting each police station to request individual figures. Even if all police stations were contacted, it is likely that a high number of them would only hold paper records, which would make information extraction and collation difficult and time-consuming.

* This is currently the Government's preferred option based on our assessment of the evidence to date. It is not established policy.

63. There is also a consumer protection and enforcement angle to consider. Although the Durham report did not find significant numbers of consumer complaints about pedlars, some stakeholders have expressed concern that the mobile nature of pedlars trading activities means that consumer complaints are difficult to follow up. A central database will increase the capability of information sharing between Local Authorities, and might also aid complaint handling and providing information to the police if necessary. Local Authorities have used shared databases to track retail enforcement and trading standards offences. For example the retail enforcement pilot which is hosted by one Local Authority, but accessible to all.

NLC: Although I agree that a national database would be useful I would question the consumer protection angle. Currently what consumer protection exists for purchases made from street/market traders? Please provide details of the comparable systems of enforcement and outline how these databases are used to protect consumer interests.

The Options

Option A: Do nothing - continue with no database. (Option (i) in the Impact Assessment)

Option B: Legislate for a national database for pedlars, holding the following information on each certified pedlar in UK:

- all the information displayed on the pedlar's certificate, including name, address, issuing authority and certificate number.
- an indication as to whether street trading and pedlary offences have been committed previously.

NLC: Surely this can be cross referenced to a central database of convictions? If not, what guarantees can be given that the two systems would be kept in sync? How easily could an erroneous footprint be removed?

- details of sanctioning authority where offences have been committed.

(Option (iii) in the Impact Assessment)

The UK and Scottish Governments' Preferred Option*

Option B

64. We feel that a national database for pedlars will make it easier to verify pedlar's certificates and would facilitate more efficient enforcement. For example, under the current system there is no way for an enforcement officer to authenticate a pedlar's certificate unless they contact the issuing police station directly. This may be time-consuming on the part of both enforcement officers and the police. A national database would allow all enforcement officers and issuing authorities to have direct access to all relevant information about a pedlar, such as their certificate issuing authority and any previous offences. (Subject to rules on spent convictions)

65. The cost of setting up and maintaining the database would be recouped from the certificate fee. Currently £12.25 per annum, the fee would rise depending on the costs associated with the new system.

66. If a National database is set up, any access to information

regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 and the Scottish equivalents) will be addressed as necessary.

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

NLC: I agree that the idea of a national database is sound in principle.

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.

NLC: I disagree that address should be held, for the afore mentioned reasons.

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.

NLC: This consultation has not provided enough information to enable the reviewer to provide an informed answer.

Option B: Replace 'good character' with criteria that can be more objectively determined.
(Option (iii) in the Impact Assessment)

Government's Preferred Option*

Option B

69. We suggest the requirement in the Act that a pedlar be 'of good character' in the view of the chief officer of police should be replaced with a provision for the issuing authority to be able to refuse an application where it is considered that the applicant is unsuitable to hold the certificate by reason of misconduct or other sufficient reason. This would establish that applicants do not have to prove they are suitable for holding a pedlar's certificate but that if their previous history establishes their unsuitability, this will be grounds for refusing a certificate. We consider this will increase understanding on the part of both prospective pedlars and certificate issuing officers on the basis for grant of a certificate. The wording in the LG(MP)A 1982 on street trading licences (paragraph 3(6)(d) of Sch. 4) refers to an applicant being unsuitable "by reason of having been convicted of an offence or for any other reason". Paragraph 5 (3) (a) of Schedule 1 to the CG(S)A provides for refusal of applications for street traders on the grounds that the applicant is "not a fit and proper person to be the holder of the licence." We consider the proposed criteria a reasonable extension of current provisions. There will continue to be a right of appeal against a refusal of the application.

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?

NLC: Being of good character is referenced in the UK in relation to gun licensing, see <http://www.countryside-alliance.org.uk/shooting-campaigns/applying-for-a-shotgun-or-firearms-licence/firearms-licence->

application-process/

This relates to references for the applicant, but clearly the issuing police officer is faced with the same dilemma... is this person really of good character and what is the absolute definition of good character? As a pedlary activity is less dangerous than carrying a fire arm I would contest the need to removed being of good character from the Pedlars Act.

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

NLC: The proposals do not outline offenses specifically relating to pedlary. The replacement of 'being of good character' with 'is not a fit and proper person to be the holder of the license' does not offer any clarity. The issuing body will still have to make an objective analysis about the credibility of the applicant. Surely the criminal checks system is sufficient to determine the suitability of the applicant? This is certainly acceptable within the UK education system where staff have access to young children.

The suggestion that application refusal might be 'for any other reason' is contrary to the consultations objective to remove ambiguity in the current system.

4.5 Issuing Authority for Pedlar's Certificates

What is the issue?

70. Currently, pedlars' certificates are issued by the local police for the area in which the pedlar resides. A pedlar must prove he has resided in the area for 1 month prior to the application.

We are considering whether the police are the most appropriate authority to issue certificates taking into account views that have been expressed in respect of this issue and the other questions in this consultation document.

71. Should we decide, for example, that local authorities are better placed to certify pedlars, as

Government's Preferred Option*

Option B

73. Responsibility for issuing pedlars' certificates is transferred from the police to local authorities. The police are not responsible for issuing any other trading licences and therefore lack the wide-ranging expertise and dedicated resource of local authority licensing divisions.

74. Certificates would still be valid for a year throughout the UK.

75. In 2005, the policing bureaucracy taskforce recommended that responsibility for issuing pedlars' certificates should be taken away from the police, in line with the wider government objective of reducing police bureaucracy. Transferring the issuing of licences to local authorities would free up valuable police time to enable them to deliver their other objectives.

NLC: Certification needs to be at a National Level and therefore if the police are not willing to issue licenses a national alternative would need to be provided.

76. We understand that some stakeholders hold concerns about how this would work in practice. Police are largely seen to be neutral on the issue of pedlars, whereas local authorities have a particular interest in controlling and monitoring trade in their streets. Some stakeholders believe that some local authorities might have difficulty in reconciling their desire to promote the prosperity of local businesses, shops and static street traders, with a duty to ensure that legitimate traders who choose to trade as itinerant pedlars are able to ply their trade. We do not currently consider these concerns to be sufficient reason not to transfer responsibility. This is on the basis that the areas of

doubt and uncertainty about what constitutes legitimate pedlary, as opposed to illegal street trading, will be clarified.

NLC: By suggesting that clarification will change local authority option and appease the concerns of the traders is at best naive. The consultation should not dismiss outright the concerns of the traders, but should look to determine if a separate investigation is necessary into the pedlar/council relationship. If such an investigation was to prove that contention exists, consideration would have to be given to both sides of the argument. As this statement stands the author has expressed allegiance with the local authorities, without providing evidence to support this view.

77. However, as mentioned above, we will need to consider further how this might work in practice. In particular, we will need to consider stakeholders' views on a national database, covered earlier in this consultation. We recognise the difficulty of balancing the possible need to manage pedlars' activities in designated areas with the underlying freedom of pedlars to trade on a national basis under the authority of the certificate. We note that the terms for granting a certificate are clearly laid out in the Pedlars Act 1871 (s5) and so too is the route of appeal against a decision to refuse an application.

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.

NLC: The Pedlars certificate is national, and therefore it requires a national and independent body to issue such licences. Local authorities quite correctly manage street trading licenses as the number and nature of static pitches can be defined within a geographical boundary. Pedlary falls out of the scope of this model.

Indeed, one can look to the DVLA in terms of the national driving licence; where councils consider congestion to be an issue they are free to adopt private bills to manage and implement charging zones.

Although I make this statement without empirical evidence to support my claim, it seems obvious that local authorities will be continually under pressure from chambers of commerce to protect their trading interests. This relationship removes council impartiality from the decision making process.

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?

NLC: I do not consider that the proposed terms are remotely 'clear', and as such the right of appeal will not safeguard the fairness of certification. At this time, I do not feel able to offer a comprehensive answer to this question. It is my opinion that much more work needs to be done in relation to certification.

4.6 Other options or possible outcomes in the light of establishing the shape of a future regime.

78. We would value your views on the following possible options which would result in repealing the Pedlars Acts.

Revoking Pedlars Act and licensing Pedlars under the Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A) and Civic Government (Scotland) Act 1982

79. The LG(MP)A (and Civic Government (Scotland) Act 1982) provides local authorities with the option to adopt powers to regulate street trading. Where the powers are adopted, local councils may designate streets in their area as prohibited, consent or licence streets for street trading purposes. As mentioned previously the Pedlars Act has not been updated for

well over 100 years, and appears to be in need of modernising and updating to bring it in line with current times and trading in the 21st century.

NLC: What evidence do you have to support this? It is misleading to suggest that modernisation is necessary without proving evidence.

80. If the certification function in relation to pedlars was to be passed to local authorities, even though the national nature of the pedlar's certificate was retained (see Section 7) it would seem simpler to revoke the Pedlars Act and ensure that all of the relevant provisions were incorporated into the LG(MP)A and Civic Government (Scotland) Act 1982. All regulation of trading in the street would then effectively be covered by the same regime.

NLC: Surely laws are not revoked because of simplicity alone? Wouldn't a single law covering two distinct forms of trading lead to more confusion and not less? No evidence has been provided to support revoking the Pedlars Act.

81. 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, irrespective of whether they adopt the street trading provisions of the Act. This would maintain the current position whereby pedlars are able to obtain certificates locally but the certificates would have effect nationwide.

82. For Scotland, this could be achieved by use of the power in section 44 of the Civic Government (Scotland) Act 1982 to licence additional activities and to

repeal or modify enactments. This power has already been used to bring licensing of various activities within the ambit of the 1982 Act.

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

NLC: I think that the above option would dissolve the rights of Pedlars as a minority group of traders and would not serve to reduce the perceived confusion. Watering down the rights of pedlars would risk a massive injustice to this legal profession.

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

NLC: I do not think any amount of revision could persuade me that combining two distinct legal acts was a good idea. In administering and abiding by the law it is necessary to have a clear single point of truth. The point of truth for Pedlars is the Pedlars Act.

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

Revoking the Pedlars Act and excluding pedlar activity from street trading regulation except in specific, defined, circumstances.

83. We have been considering an option where the Pedlars Act could simply be revoked. Pedlars would not be required to obtain a certificate but could trade as pedlars provided they did so within any local restrictions decided by individual local authorities.

84. The adoptive street trading provisions would be amended to exempt defined modes of trading (i.e. a definition which reflects the current trading practices of legitimate pedlars).
The legislation would also set out the specific conditions under which a local authority could modify the exemption in specific circumstances so as to provide for, say, restrictions on numbers of non-licensed traders in designated streets at particular times or for particular events.

85. This option would:

a) overcome any difficulties in relation to setting up a new national certification regime for pedlars

NLC: This would allow those without working visas to act as Pedlars without any checks on their rights to work. This would be detrimental to existing Pedlars who are entitled to work in the UK. On a broader scale, such an open system might lead to abuse of minors, vulnerable people and immigrants for example. This proposal would contradict the government's aim to manage immigration and working rights, see http://www.direct.gov.uk/en/Employment/Understandingyourworkstatus/Migrantworkers/DG_10026524. Such a system might increase the burden on the police, as they would be unable to check a certificate and would therefore have to investigate residence visas.

b) meet the desire of pedlars to be able to trade freely in the street as pedlars currently do.

NLC: If local restrictions are applied then pedlars will no longer be free to trade. Such local authority control would promote un-competitiveness, blocking legitimate traders from working when the council see fit. This would imply that shops have a greater right to trade than Pedlars. Such restrictions might be seen to allow monopoly behaviour and would impact customers by reducing the shopping options available to them.

c) avoid the need for instituting a new administrative procedure to regulate pedlars.

NLC: It has not been shown that a new administrative procedure is necessary.

d) be capable of addressing the difficulties experienced by some local authorities of traders misusing the pedlars' certificate to make street trading enforcement more difficult.

NLC: No evidence has been presented that Pedlars misuse the certificate. The Miscellaneous Provisions act deals with street trading offences. If local authorities are unable to implement the Miscellaneous Provisions act then I would suggest it is this law which is in need of review.

e) would enable local authorities to exert some control over the level of itinerant trading activity where it was justifiable and proportionate to do so.

NLC: The report is attempting to mislead the reviewer that a problem exists when no evidence has been presented to support the claim.

Question 17: What are your views on the above option? Please give reasons for your answer.

NLC: In line with the above comments I do not believe that this option is workable and more importantly I do not feel it is fair. No evidence has been presented to suggest that Pedlars are currently a problem and any proposed changes must look to protect pedlary rights not dissolve them.

What does the evidence say?

88. The Durham report found that the significant time and financial cost of prosecution may, in some cases, be deterring local authorities from pursuing illegal traders.

NLC: If councils are claiming that Pedlary is an issue then it is there duty to the local community to invest the resources to properly manage the issue. Local constituents should, quite correctly, expect local authorities to pursue all forms of illegal activity. Time and cost cannot be used as an excuse to ignore illegality. I would be interested to know what other offenses councils do not pursue because of a lack of finance or resource. FPN's would serve an injustice to legitimate traders.

The report found that costs to local authorities typically outweighed the costs to defendants by more than 10:1. NLC : Please provide evidence of this ratio. Over what percentage of cases and over what time period was this statistic determined.

Coupled with the relatively small fines typically imposed by the Courts, some local authority respondents felt that prosecution was therefore a disproportionate and ineffective deterrent for street trading offences. NLC: The courts determine the level of fine in line with the seriousness of the offence. It is disrespectful to the UK legal system to suggest that those administering justice are not imposing proportionate fines.

FPNs are a quicker and less costly route of dealing with street trading offences. However, this view was not shared by all local authorities, with some reporting no desire for further powers².

NLC: Quicker, and less costly. Does this consultation propose to turn pedlary offenses into a money making scheme for councils?

89. Local authorities indicate that that on average it costs them up to £7000 to take a street trading case to court. Successful cases result in average fines for offenders of £150-200,

with legal costs awarded by the courts of around £350.

NLC: Are these figures back up by verified statistics? Please provide a summary of how these costs were derived.

Council costs by their very nature are going to be higher than those of the individual, this should not take away the individual's right to go to court. Are councils suggesting that they should be able to issue FPN in order to save costs, without regard for the right of individuals to remain innocent until proven guilty. If this is allowed for Pedlary then will councils exert pressure for these powers to be extended elsewhere? Before we know it there will no longer be any court cases, and councils will simply go around fining people instead of having to build a proper case for conviction. This is a dangerous avenue to pursue.

The Options

Option A: Do nothing (Option (i) in the Impact Assessment)

Prosecution through the Courts will continue to be the only sanction available for street trading offences for those authorities without Private Acts.

Option B: Provide local authority enforcement officers in England and Wales with powers to issue FPNs in respect of street trading offences.

Option C: Provide local authority enforcement officers with powers of seizure, with forfeiture by order of the courts.

Option D: Provide local authority enforcement officers in England and Wales with powers to issue FPNs and powers of seizure, with forfeiture by order of the Courts (i.e. a combination of options 2 and 3). (Option (iii) in the Impact

Assessment)

NLC: Seizure of goods is in contravention of PACE and the Human Rights act. Goods may be seized but must be returned to the owner of a copy or photograph will be sufficient at court.

* This is currently the Government's preferred option based on our assessment of the evidence to date. It is not established policy.

Government's Preferred Option *

Option D

90. Fixed Penalty Notices offer an alternative civil sanction for lesser street trading offences and should reduce the number of costly and resource-intensive court cases, as well as saving the burden of reaching criminal prosecution. It will also allow swifter action against offenders (immediate action as against the time taken to set a court date and hold a hearing), which could be of particular use for tackling repeat offenders, who having received a warning offend again. Making action easier, notwithstanding than any action must be properly justified and proportionate, might also mean that local authorities who choose to adopt these powers are able to devote their resources to other priorities. Pedlar offences would also be subject to these sanctions.

NLC: Fixed penalty notices require the issuer to be able to make an objective decision. This is possible for example in a no alcohol zone, where the law makes it clear that alcohol may not be openly consumed in the designated area. Pedlary cannot be enforced objectively, and therefore the entire proposal of FPN's in relation to pedlary offenses is flawed.

91. Depending on the outcome of this consultation, we will consider the actual levels of the FPNs later. However, we envisage that they would be set between £100 - £300 depending on the nature of the offence. NLC: Speeding fines are fixed at significantly lower rates. This level makes the guidance look like a money making exercise.

We envisage that the following offences would attract FPNs:

Street Trading Offences

- Contravention of condition of street trading licence or temporary licence.
- Failure to produce street trading licence on demand.

NLC: Would this allow certificate holders the right to produce the licence within 7 days as is the case with driving licences?

- Unlicensed street trading.

NLC: Unlicensed street trading would have to be proven and cannot be objectively determined by an enforcement officer. This offence cannot fall into the category of FPN's.

Pedlars Act Offences

- Acting as a pedlar without having obtained a certificate
- Lending, transferring or assigning of certificate to another.
- Borrowing or making use of a certificate from another.
- Failure to produce certificate on demand.

NLC: Would this allow certificate holders the right to produce the licence within 7 days as is the case with driving licences?

92. In respect of seizure of goods, this will bring the rest of the UK

in line with London Councils,
which already have such powers under the London Local Authorities Act
2004 and the City
of Westminster Act 1999.

NLC: Has the Westminster Act been reviewed in light of the human rights act and PACE? The fact that a council has a power does not by default make it right to roll this power out countrywide.

93. Seizure of goods ensures an immediate stop to illegal trading while a court case is pending.
This addresses the issue of offenders receiving fines that are so low as to be seen as an acceptable 'overhead' to unlawful trading. Provisions for compensation in the case of unlawful seizure would be introduced to ensure that this sanction is only applied where enforcement officers are very confident of their grounds for prosecution.

NLC: One is not prevented from driving ones car while waiting for a court case, and as such one should not be prevented from trading either. This statement assumes that the trader is guilty until proven innocent.

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

NLC: None

Question 19: Should Local Authority Enforcement Officers be given powers to:

- i) issue fixed penalty notices

NLC: No, see above arguments

- ii) seize goods, with forfeiture by order of the Court?

NLC: No, see above arguments

Please give reasons for your answer.

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?

NLC: The Miscellaneous Provisions act and the Highways act give councils all the power that they need to manage street trading and pedlary.

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.

NLC: The list of offences is not correct, as it defines offences that could only be proven in a court of law. The offense relating to unlicensed street trading should be removed.

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

NLC: I do not believe FPN's should be used at all.

5.2 Power to impose local restrictions on certified pedlar activities

Unfair competition

94. Pedlars have operated for centuries. The research suggests that pedlars are not for the most part the cause of the problems experienced by some local authorities, but that more clarity and more flexible enforcement against illegal street traders may provide the key to tackling unfair trading by those who seek to benefit from the current uncertainties around what a certified pedlar is entitled to do.

NLC: If pedlars are not an issue, why is pedlary included in this consultation at all? This would suggest that the focus of the consultation is misplaced.

95. We are aware that some local authorities view restrictions on pedlar activities as a way of supporting local established businesses by restricting the competition which pedlars might represent. We understand that some local businesses object to itinerant traders on the grounds that they undercut their prices by supplying inferior products of the same type. We fully appreciate this argument in relation to the types of trading which have been described to us. For example, we have been informed of cases of essentially static or barely mobile large stalls which are set up outside of retail outlets and which sell the same or similar products where the trader seeks to maintain that a pedlar's certificate provides permission to trade in this way when otherwise he would be subject to local street trading controls. We would not argue with the view that such practices represent unfair trading and should not be permitted where a local authority has chosen to regulate street trading.

NLC: You describe quite clearly a case of illegal street trading which

is a prosecutable offence. In this circumstance the council could easily build a case for prosecution. The itinerant nature of a pedlar would not allow them to have a large stall, and the very foundations of the Pedlars act would require them to move around. As such a legitimate pedlar would never commit the offence described. The councils view is clearly against free market values and the principle of competitiveness. I find it remarkable that this consultation supports this view. This leads me to believe that the consultation is far from independent, and a hidden agenda is held by both the councils and the BIS. It appears to me that the BIS have taken the councils examples as given, not attempting to make their own investigation into the validity of the claims. I feel that the lack of verification undertaken by the BIS undermines the value of the report.

96. While the Government is committed to tackling unfair trading wherever it occurs, it also supports diversity as a means of achieving competitive markets. It is true that pedlars do not have the same overheads in terms of fees and local taxes to pay, but the same could be said of licensed street traders in comparison to retail shop outlets. No-one argues for restrictions on street markets, or for that matter, online sellers, because they offer cheaper goods than other retail outlets. Indeed, street markets are widely supported as providing for diversity in products and shopping experience, yet they are clearly in competition with other local traders. The Government believes that consumers should be able to choose on quality, convenience and value for money, irrespective of the route to market.

97. Nevertheless, we also appreciate the difficulties faced by some local enforcement officers in gathering evidence of illegal street trading under the current regime. Even so, we are not convinced that pedlars who trade as pedlars (i.e. within the terms of the Pedlars' Act or within the possible alternative definitions discussed elsewhere in this document) are the cause of these problems. We would contend that in respect of the problems which have been described to us, and which have been mentioned in the course of the progress of private Bills in Parliament, the introduction of a package of measures along the lines of those discussed in this document would have the effect of enabling local authorities to deal effectively with all illegal street

trading. The desired outcome is that in addition to properly licensed, or consented, street traders, only those certified pedlars who trade legitimately would be trading in the streets.

NLC: Perhaps the councils might consider a review of their enforcement departments abilities to gather evidence, rather than expecting a change in the law to accommodate their failings?

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

NLC: I feel that the departments general perception is skewed in favour of the councils and is discriminatory towards pedlars. See previous comments.

Restricting Certified Pedlars in Private Acts

98. It is clear from the comments of those supporting some of the private Bills currently before the UK Parliament that some of those local authorities do not wish to restrict pedlars' opportunities to trade. However, it is also clear that there are traders holding pedlars certificates who are taking advantage of the uncertainties in the current regime, and that local authorities faced with these problems feel they have little alternative but to seek to tackle these traders by bringing them firmly within the street trading regime (by amending the exemption for all pedlars). In so doing, by default, they restrict the trading activities of law abiding pedlars. The evidence and other views we have received suggests that, to a considerable degree, this is a regrettable consequence of seeking to tackle unfair trading.

NLC: I have seen no evidence regarding pedlars who take advantage of the regime. A statement like this should not be made without providing empirical evidence. I consider that this statement is deliberately misleading and aims to lead the reviewer into a specific line of thought.

99. The Department is therefore working to identify solutions which make it easier for enforcement authorities to deal with illegal street trading while not unduly restricting pedlars from carrying out their legitimate trade in the street.

Providing for restrictions on pedlar activities

100. As the Durham researchers made clear, while there was no substantive evidence to suggest that pedlars' activities should be restricted nationally, they did acknowledge that there may be circumstances in which some local restrictions could be considered appropriate. They suggested these restrictions might be the subject of local acts with a heavy burden of proof attached to establish genuine evidence of a local problem.

101. However, if the Government were to amend the current regime we would be minded to also consider providing for a system whereby a local authority could implement local restrictions on pedlar activities under specific conditions. This would clearly be more efficient than the ad hoc promotion of local bills and the resources that takes from local authorities.

NLC: I have concerns that efficiency (time and money savings) is being promoted above thoroughness. Surely the current system ensures that councils have a watertight case. Any watered down powers might be open to abuse by councils, who have already stated that the find enforcement both time consuming and costly.

102. Given the evidence and what we would intend to be the effect of a package of measures of the type discussed in this document we would be wary of providing powers whereby

. At peak periods of seasonal activity at specific locations which have a history of attracting unreasonable numbers of pedlars - summer season on sea fronts for example.

NLC: Please provide evidence that peak periods are an issue. If Pedlary activity increases at certain times of year this would only be a problem if an obstruction were to occur. In such circumstances councils have powers under the Highways act.

. Areas of pedestrian congestion where street trading is already prohibited - historic town centres during tourist season.

NLC: The Highways Act deals specifically with obstruction and gives powers for articles to be removed. The numbers of tourists themselves at peak periods are more likely to create an obstruction. Do councils also intended to licence and monitor the number of shoppers?

. Special annual or occasional local events with a history of attracting unreasonable numbers of pedlars - fairs - County shows - large sporting events - local festivals etc.

NLC: This implies that static sellers, such as shops, market holders or street traders have more of a right to sell at peak periods than pedlars. I would suggest that the proposal is trying to use the argument of congestion (with no supporting evidence) to squeeze pedlars out of free market and promote the interests of local business.

. Streets in which static street trading is already prohibited, assuming the rationale for prohibiting static street trading applies equally to trading as a pedlar.

NLC: It could be argued that a transient seller creates no more of an obstruction than a group of tourists with a guide. This argument lacks substance.

104. Precisely how a limit on numbers could be managed in a fair way should we believe be for local authorities to consider, perhaps by issuing day licences during periods of restriction, but consistency of approach and methodology would be important. It would also be important that restrictions were properly communicated to pedlars a reasonable time in advance of them taking effect in order that pedlars can properly plan their activities and have time to apply for any licence, possibly on the day they intend to trade in a given location. We understand that pedlars often take factors such as the weather into consideration when deciding where to trade on a given day. Clearly, this would require further work in the light of the outcomes of this consultation.

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.

NLC: I do not agree that more enforcement options are needed, see above arguments.

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.

NLC: I have seen no evidence to support the need for restrictions.

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?

NLC: The illustrations provide no evidence that pedlary is an issue. I do not agree that the circumstances have been upheld with sufficient evidence to warrant a change in local authority powers.

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

NLC: The consultation has suggested that licences themselves are a burden to the issuing authority, which would only be exacerbated by the issue of day licenses. The transient nature of a pedlar allows them to move from town to town as they see fit. This might be judged on the day, according to the weather, the number of shoppers etc. Within this model of trading, the issue of day licenses would be unworkable.

Position of private Acts of Parliament

105. To the extent that any new provisions had the same effect as provisions in private Acts of Parliament, or provided for alternative means of addressing the issues addressed by those Acts, the Government would seek to repeal those Acts in consultation with the local authorities concerned.

body as they already entertain some appeals in this subject area.

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.

NLC: I consider that the magistrates' court should deal with appeals as they are more than capable of analysing the arguments.

. Services Directive

109. In order to ensure proper implementation of the Services Directive on 31 December 2009, the UK and Scottish Governments intend to amend the Pedlars Act by removing service providers from its scope. The Services Directive requires member States to remove any authorisation schemes which might act as a deterrent or a barrier to service providers from other member States operating in the UK. In the UK and Scottish Government's view the pedlar certification scheme amounts to an authorisation scheme which cannot easily be justified on the criteria set out in the Services Directive.

110. To meet the deadline for implementation the Department has decided to remove pedlars who provide only services from the regime. The implementing legislation is due to come into force on 28 December 2009. After that date, pedlars of services only will no longer need a pedlar's certificate. Certificates obtained by pedlars of services before the changes come into effect will continue to apply until they expire.

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.

NLC: I would require further time to fully investigate the evidence presented, and as such I prefer not to answer this question.

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.

NLC: I do not agree with the statement that a pedlar must keep reasonable distance. Also, the pedlars act does not state a pedlar must carry his goods. The law states: **carrying to sell or exposing for sale.**

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.

NLC:

7.1 again only mentions that a pedlar carries his goods, missing out the fact that he is entitled to expose his goods for sale.
8.4 this guidance seems persistent in defining a pedlar as only being permitted to carry his goods, when the law states '**carrying to sell or exposing for sale**'. Thus far I have suspected that the aims of the consultation are pre-defined. The draft guidance only serves to support my view. Given the biased nature of the consultation I do not believe that the guidance meets the needs of the target audience.

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.

NLC: I believe that the guidance needs to be completely re-drafted, preferably by an issuing body that can be considered totally independent.

8. 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.

NLC: I would have expected to review this document by writing in-line comments into the original PDF. Having to save a text based version is not only time consuming to the reviewer, but also the document author when they have to reconcile comments back to the original.