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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. **1847**<sup>1</sup>: licensed hawkers were exempt from tolls at Markets & Fairs opened for public use: *exemption survives today enabling certified pedlars the same rights*.
2. **1847**<sup>2</sup>: 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. **1867**<sup>3</sup>: it became lawful to deposit goods in the street by hawkers and itinerant traders, within regulation: *this law survives*.
4. **1871**<sup>4</sup>: 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*

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<sup>1</sup> Market & Fairs Clauses Act 1847

<sup>2</sup> Town Police Clauses Act 1847

<sup>3</sup> Metropolitan Streets Amendment Act 1867

<sup>4</sup> 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. **1871**<sup>5</sup>: 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. **1881**<sup>6</sup>: 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. **1888**<sup>7</sup>: 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. **1897**<sup>8</sup>: 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. **1966**<sup>9</sup>: 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. **1980**<sup>10</sup>: 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. **1982**<sup>11</sup>: 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 hawkers<sup>12</sup>: *hawkers can be closed down if the law is applied: by not closing them down problems arose in courts and by 1999*

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<sup>5</sup> Settlement Acts 1871 & Trade Union Act 1871

<sup>6</sup> Pedlars Act 1881

<sup>7</sup> Hawkers Act 1888

<sup>8</sup> Police Property Act 1897

<sup>9</sup> London Local Authority Act 1966

<sup>10</sup> Highways Act 1980 – section 137

<sup>11</sup> 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)

<sup>12</sup> 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**<sup>13</sup>: 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**<sup>14</sup>: 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**<sup>15</sup>: 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**<sup>16</sup>: (*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 1<sup>st</sup> 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**<sup>17</sup>: (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

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

<sup>14</sup> London Local Authority Act 1990 section 21 clause 2(a)

<sup>15</sup> London Local Authorities Act 1994

<sup>16</sup> City of Westminster Act 1999

<sup>17</sup> 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, goods<sup>18</sup> 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 penalty<sup>19</sup> 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

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<sup>18</sup> '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.

<sup>19</sup> 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 evidence<sup>20</sup> 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.

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<sup>20</sup> 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 Card<sup>21</sup> (*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.

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<sup>21</sup> <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]<sup>22</sup>

- 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](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#pb3-11g11](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1847/cukpga_18470089_en_1#pb3-11g11)

**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](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](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-ZA8YlelCWWut6d\\_pOqV5KiDPM&hl=en&ei=CM00Sr\\_2NYiZjAeItuyBCg&sa=X&oi=book\\_result&ct=result&resnum=1](http://books.google.ie/books?id=6pgMo-Vwj6QC&pg=PA10&lpg=PA10&dq=Settlement+Acts+1871&source=bl&ots=A6ueP4ZFeW&sig=E-ZA8YlelCWWut6d_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](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 Hawkerc 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 Hawkerc Act, that there is an entitlement to “*anything on wheels*”

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<sup>22</sup> 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=polic+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#pb3-11g11](http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1847/cukpga_18470089_en_1#pb3-11g11)

### **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](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](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](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 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
- [http://www.opsi.gov.uk/acts/localact1983/pdf/ukla\\_19830005\\_en.pdf](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

- cl 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&blanketAmendment=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](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](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](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](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](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](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](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](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](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 15<sup>th</sup> 2009 to submit their defence<sup>23</sup> 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>

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<sup>23</sup> 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 20<sup>th</sup> 2009 under EU directive to pedlar stakeholders with deadline for comment June 9<sup>th</sup> 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 2009<sup>24</sup> 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/>

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<sup>24</sup> [http://www.opsi.gov.uk/si/si2009/draft/ukdsi\\_9780111479063\\_en\\_1](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]<sup>25</sup>**

- 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 Act 1888 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

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<sup>25</sup> 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]<sup>26</sup>**

- 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.

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<sup>26</sup> 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 Septemeber 2008 – www.pedlars.info website launched online**

- A pedlar not for profit reference centre for regulators and regulated: [www.pedlars.info](http://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 hearings<sup>27</sup>

#### **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**

- Minutes<sup>28</sup> of evidence by promoters against pedlar’s rights to object to the bill

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

<sup>28</sup> <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]<sup>29</sup>**

- 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" degoratory*
- 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*

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<sup>29</sup> 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 – Peddling 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:

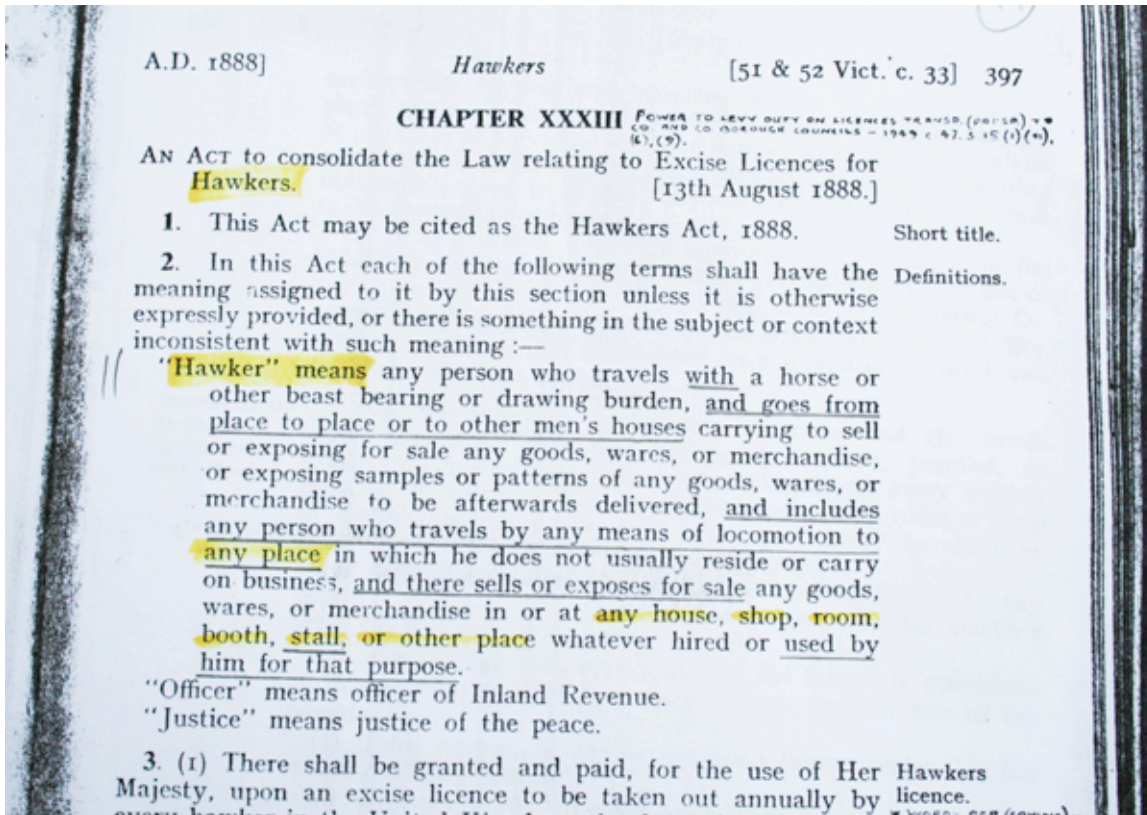
“Any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs  
**or** other person who  
**without** any horse or other beast bearing or drawing burden  
travels  
**and** trades  
**on** foot  
**and** goes from town to town  
**or** to other men's houses  
**carrying** to sell or 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, chepmon, 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

	<b>PEDLAR</b>	<b>STREET TRADER</b>
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	Pedlars Act Form A	Designed by Council
Document Form	Form B Pedlars Act	Licence
Photographic Identity	Not required	Yes
Renewal	Annual	Annual
Public Liability Insurance	Not required	Required
Scale of operation	Pedestrian 0.12m <sup>2</sup> 1%	Fixed pitch 4x3m 12m <sup>2</sup> 100%
Cost per annum	£12.50	£600 - £2500
Cost per square meter	0.4x0.3m <sup>2</sup> =£104	4x3m <sup>2</sup> = £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 S3Sch4C12(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 Act 1871 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 Harrison 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 Trading<sup>30</sup>**

*“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*

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<sup>30</sup> 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 A<sup>31</sup> – Form of Application for a Pedlar’s Certificate**

*Clause 4 delete “within the .....police 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 B<sup>32</sup> – Form of Pedlar’s Certificate**

*Delete the words “within the .....police area”*

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

**c) please note that with amendment to the LGMPA & LLAA, 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*

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<sup>31</sup> see ADDENDUM 2

<sup>32</sup> 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*

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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 <sup>M1</sup>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 <sup>M2</sup>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 <sup>M3</sup>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;
  - (j) the doing of anything authorised by regulations made under section 5 of the <sup>M4</sup>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

## SCHEDULES

## SCHEDULE ONE

..... F1

**Annotations:****Amendments (Textual)**

- 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

## SCHEDULE TWO

Section 5.

## FORM A

Form of Application for Pedlar's Certificate.

- 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
  - 2 I am by trade and occupation a [*here state trade and occupation of applicant, e.g., that he is a hawker, pedlar, &c.*]
  - 3 I am years of age.
  - 4 I apply for a certificate under the Pedlars Act 1871, authorizing me to act as a pedlar within the [F1 police area].
- Dated this day of (Signed) *A.B.*

## Form B.

Form of Pedlar's Certificate

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.*]

Certified this day of A.D. (Signed)

The certificate will expire on the day of A.D.

## Form C.

..... F2

**Annotations:****Amendments (Textual)**

- 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
- F2 Form C repealed by Statute Law Revision Act 1883 (c. 39)

**Extent Information**

- E1 This version of this provision extends to England, Wales and Scotland only; a separate version has been created for Northern Ireland only