

A Short History of Pedlary legislation and enforcement 1697-2011

The aim of this paper addresses a mischief in interpretation of current street trading legislation so as to avoid inflicting unlawful potential victim status on pedlary.

Background to certified pedlary and the origins of licensed street trading

Licences on hawkers and pedlars first entered into Statute in 1697¹ for a year to raise funds through duty, taxation and fees to reduce debt incurred by the state. Monies gained were managed initially by the Board of Transportation and subsequently through a variety of controllers. On renewal in 1698 the Treasury appointed a new Board of Commissioners of Hawkers, Pedlars and Petty Chapmen. The duties were renewed for varying periods until 1716 when they were made permanent. In 1810 the Hawkers and Pedlars' Board was abolished and its work taken over by the Board of Hackney Coach Commissioners.

In 1832 licensing work passed to the Board of Stamps and the duties were successively administered by the Board of Stamps and Taxes in 1833 and the Board of Inland Revenue in 1849.

In 1864 the stamp duties on hawkers and pedlars' licences were converted to excise licence duties and in 1871 these duties ceased to be levied on licences to **hawkers on foot. Such traders were subsequently required to take out a certificate from the police under the Pedlars' Act 1871² 1881³.**

The licence duties on other hawkers (e.g. those travelling with a horse) remained in force, collection having passed to the county councils under the Local Government Act of 1888⁴. The Hawkers Act 1888⁵ regulated travelling hawkers who used horses, carts, or any means of locomotion to any place, house, shop, room, booth, stall or other place whatever, where the trader did not usually reside. Administrative responsibility passed from the Board of Customs and Excise to the local authorities in 1950 following the Finance Act 1949. Hawkers' licences were finally abolished under the Local Government Act 1966⁶.

Between 1966 and 1982 hawkers remained unregulated with the result that public highways and streets became congested. In 1980⁷ the Highways Act made provisions to deal with **wilful obstruction** of the highway enabling prosecution of static hawkers. Section 137 provided exemption for those with **lawful authority** and that lawful authority existed in the description of *pedlar* being one and the same as a *hawker* in the Pedlars Act and so began the misuse by unlicensed static hawkers of using the authority of a pedlars certificate. In 1982⁸ street trading regulations were introduced for adoption

¹ <http://www.british-history.ac.uk/report.aspx?compid=46913>

² <http://www.legislation.gov.uk/ukpga/Vict/34-35/96>

³ <http://www.legislation.gov.uk/ukpga/Vict/44-45/45>

⁴ <http://www.legislation.gov.uk/ukpga/Vict/51-52/41>

⁵ <http://pedlars.info/images/stories/roberts/1888hawkers.jpg>

⁶ <http://www.legislation.gov.uk/ukpga/1966/42/schedule/3/enacted>

⁷ <http://www.legislation.gov.uk/ukpga/1980/66/section/137>

⁸ <http://www.legislation.gov.uk/ukpga/1982/30/schedule/4>

by local authorities to control static pitches by way of licence. Location of pitches are scrutinised and approved by the highways department to avoid obstruction of the highway and are for exclusive use by approved static traders. Schedule 4 regulations provided specific exemption for certified traders (pedlars) who, being on foot, could move to avoid obstruction.

A legislative **mischief** began in the 1982 legislation because of anomalous terminology introduced in the words **licensed street trader** instead of **licensed static hawker**. Confusion exists because the generic term ‘street trader’ refers to both certified trader and licensed trader who both trade in the street and a stricter textual construction is **certified pedlar** or **licensed trader**. The certified means of trade is mobile and the licensed means of trade is static and that is the primary difference between certificate and licence. The second significant difference being one of scale and proportion – a certified trader carries goods on foot and is able to move, but since 1982⁹ a licensed trader with large scale wagon, stall or cart is not entitled to move about and must remain in a static location allocated by council with the approval of the highways department in relation to possible obstruction.

How legislation to exempt pedlary led to prohibition in some jurisdictions circa 1994

By 1984¹⁰ the Police and Criminal Evidence Act gave police powers of seizure for evidence of an offence but there were no powers of retention if a photograph or sample would suffice, this continues under those councils adopting the LG(MP)Act 1982.

Further changes to street trading regulation introduced provisions for prosecuting alleged offences by unlicensed traders but there remains, in all legislation, the exemption for pedlary.

In 1994¹¹ the London Local Authorities Act made provisions such as seizure, confiscation, forfeiture & compensation that led to an abuse of those powers by some council authorities against certified traders on grounds that they did not hold a street trading licence - regardless that a street trading licence is not required for the trade of pedlary and more especially that certified pedlary remained explicitly exempt within that legislation.

It was then that pedlars became **potential victims** of over zealous council enforcement officers with powers to seize and retain goods until a court hearing months later and effectively put a pedlar out of business for the duration. The financial effect of this on some pedlars was devastating but for others who pursued their legitimacy in Court there was success although with considerable financial burden.

By 1996 powerful lobby organizations such as ALB, NABMA, LGA, ATCM sought abolition of the pedlars certificate and despite lacking public or government support Westminster Council sought a private bill which in its first draft simply left out any

⁹ in jurisdictions that adopted the LGMPA, LLAA and private Acts

¹⁰ <http://www.legislation.gov.uk/ukpga/1984/60/enacted>

¹¹ <http://www.legislation.gov.uk/ukla/1994/12/schedule/19/enacted>

exemption for pedlary that pre-existed in street trading legislation in spite of its own internal report in 1996 - that *bona fide pedlars have never caused a problem*¹² (a statement reiterated in the BIS commissioned Durham Report 2009).

A report¹³ from the Secretary of State on the bill opposed the omission of an exemption for pedlary on grounds of principle. The promoters then added the exemption with the qualification *if the trading is carried out only by means of visits from house to house*.

From 1999¹⁴ pedlars in private bill jurisdictions have been prosecuted for not trading at houses, have their goods seized, confiscated and forfeited, and are liable to suffer penalties and at court large fines and legal costs having entered a “not-guilty” plea with a realistic defence. Such cases continue to this day.

How to apply proper interpretation to the purpose and activity of pedlary when:

“A person acting as a pedlar under the authority of a pedlars certificate is not street trading for the purposes of street trading legislation...

if the trading is carried out only by means of visits from house to house”

Current cases against pedlars in London expose the critical misuse of this amended exemption for pedlary by applying **literal** interpretation to be that a pedlar may only trade at houses and nowhere else. This unsafe interpretation is taken in isolation outside the context of either the Pedlars Act or subsequent static trading regulation.

Courts now adopt a purposive approach replacing a strict constructionist view of interpretation [Pepper-v-Hart 1992]¹⁵.

It can be submitted that legislation attaching amendment to the Pedlars Act be the same (pari materia) and of relevance to understand the intention and meaning of all private Acts which seek to remedy the mischief of unlicensed static street trading. Lord Upjohn [Regina-v-Sect of State¹⁶] says “you cannot look at a section or sub-section in isolation to ascertain an intention of Parliament... words cannot be read in isolation”

Only refers to the **means** of travelling trading as in, being mobile other than compared to and excluding stationary means of trading.

Visits **from** house **to** house does not mean that the trade must be **at a house** but that the trader must be going **from** some place **to** some other place over a **period of time**.

A pedlar under the Pedlars Act goes from town to town **or** to other men’s houses.

A licensed trader under static trading legislation cannot move from place to place.

Historically both trade on the street but a pedlar may also trade any other place.

¹² extraordinary council meeting 13 November 1996

¹³ 8 July 1998 to House of Lords on City of Westminster bill

¹⁴ <http://www.legislation.gov.uk/ukla/1999/1/contents/enacted>

¹⁵ <http://www.bailii.org/uk/cases/UKHL/1992/3.html>

¹⁶ <http://www.publications.parliament.uk/pa/ld200001/ldjudgmt/jd001207/spath-2.htm>

House is irrelevant in this context because **visiting from** any place **to** any other place means movement, over time, between places, whilst trading. If the word **house** was where the trade could **only** occur then Parliament would have stated **at** houses. Likewise if Parliament intended to prohibit trading in the street between houses then it would have stated **at houses and not in the street**, but it did not do so.

In 1847¹⁷ every person who wilfully and wantonly disturbs any inhabitant by pulling or ringing any door bell, or knocking at any door may be committed to prison – this Act persists.

House-to-house or door-to-door selling has never been specifically regulated (until 2008¹⁸ for goods above £35)¹⁹. It is noteworthy that no public legislation exists about what may be done on a private door-step.

Construction within its **proper context** is shown to be consistent with both the Pedlars Act and static trading legislation and more especially the 1881 Pedlars Act²⁰ that entitles a pedlar to “*act within any part of the United Kingdom*”. In contrast a literal interpretation leads to anomaly and mischief.

Issues

The primary purpose of static trading legislation is to prohibit unauthorised trading. Authorised trading is by licence and certificate only. Those acting under the authority of a certificate must at all times act in good faith as a pedlar by adopting **travelling means** as distinct from a licensed trader who adopts **static means**. This is not to say that a pedlar must remain in perpetual motion as unreliably referred to in case law²¹ and rejected by findings in Select Committee.

A secondary purpose of static trading legislation is to prohibit unauthorised obstruction of the highway. A person acting as a pedlar, carrying goods on foot is a pedestrian and because of inherent mobility a pedlar cannot cause an obstruction unless wilful. Case law²² finds that pedlars are entitled to use small means of carrying goods similar in scale and proportion to any other pedestrian.

¹⁷ <http://www.legislation.gov.uk/ukpga/Vict/10-11/89>

¹⁸ <http://www.legislation.gov.uk/uksi/2008/1816/contents/made>

¹⁹ an untested case is sometimes levied under Section 4 of the Pedlars Act that door-to-door sellers, being within the Section 3 description of other person are caught requiring a certificate

²⁰ <http://www.legislation.gov.uk/ukpga/Vict/44-45/45>

²¹ the aphorism in *Watson-v-Malloy* 1988 ‘*a pedlar is one who trades as he travels as distinct from one who merely travels to trade*’ was later criticised as of no assistance in *Stevenage-v-Wright* 1996 regarding dubious ‘*aphorisms about travelling to trade*’ but was later erroneously relied upon as definition in *Chichester-v-Wood* 1997 ‘*a pedlar trades as he travels rather than travels to trade*’. Each of these precedents misquotes the words in the Pedlars Act ‘*travels and trades...*’. Select Committee 2009 [Bournemouth & Manchester] found that this did not mean that a pedlar should remain in **perpetual** motion.

²² *Shepway-v-Vincent* 1994

Licensed static trading means²³, subject to exemptions, *the selling, offering for sale, display or exposing for sale of any article (including a living thing); and the supplying or offering to supply a service for gain or reward* **but** this is easily confused by very similar text in pedlary legislation, *carrying to sell or exposing for sale any goods*. A pedlar may be found factually to be **unlicensed** but his activities are nonetheless lawfully **authorised** by certificate to trade within any part of the United Kingdom.

The difficulty for pedlars lies in local authorities tactical change from correctly issuing a Summons for an alleged civil offence under the Pedlars Act (not acting as a pedlar) to issuing a Summons for an alleged criminal offence under these new forms of legislation (acting without a licence).

Whereas the burden of proof previously lay with prosecution proving beyond reasonable doubt that the certified trader was not acting as a pedlar, what now occurs is that a pedlar invariably has to prove that the activity was not that of an unlicensed street trader. When councils take a pedlar to Court they usually have barrister advocates and so with a lay pedlar rarely winning in a Magistrates Court, probable success is relied upon in a Crown or High Court but with considerable financial burden for legal representation. This reversal of the burden of proof awaits judicial review and has remained a matter of public importance since the introduction of street trading legislation in 1982.

Conclusions

- 1 A pedlar is a travelling trader as distinct from a static trader
- 2 A pedlar is certified whereas a static trader is licensed
- 3 A certificate entitles the trader to move about whilst trading
- 4 A licence to trade in the street is a limit on the place to trade
- 5 A certificate does not limit the goods traded
- 6 Certified and licensed traders may sell or expose for sale goods and articles
- 7 Acting as a pedlar provides exemption from licensed trading regimes
- 8 The qualification of exemption on a pedlar ensures non-static trading
- 9 Pedlars do not only trade at houses but may trade any place
- 10 Pedlars trading place to place may also trade between places
- 11 Pedlars may trade in the street
- 12 The burden of proof remains with the prosecution to show that a trader was not acting as a pedlar and not that the trader was acting without a licence under an irrelevant regime

End

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Should any legal person or otherwise find credible fault in this paper we should be pleased to receive comment with source reference.

²³ City of Westminster Act 1999 clause 2 Interpretation, LLAA etc

Addendum A – Pedlars of Foodstuffs

Section 23 of the Pedlars Act grants exemption from the necessity for a certificate to be obtained by three categories of persons namely –

- (1) Commercial travellers, dealers or agents
- (2) Sellers of vegetables, fish, fruit, or **victuals** (food and drink), and
- (3) Market traders who pay a toll

Section 24 of the Pedlars Act made provision not to diminish powers vested in local authorities and whereas the LGMPA 1982 Part 9 gave powers to those local authorities adopting the Act to control the Sale of Food by Hawkers, **such powers were repealed** by the Food Safety Act 1990²⁴. This meant that pedlars and hawkers could trade **victuals**.

Today in 2011 there are statutory requirements to satisfy recent European Directives as outlined by Food Safety Authority, FSA, to pedlars.info 15 December 2010 as follows:

“Anyone supplying or selling food in the UK will be subjected to Regulation (EC) 178/2002²⁵ which lays down the general principles and requirements of food law in the EU. Some of the key provisions are contained in Articles 14 – 20. In particular, Article 14 where food shall not be placed on the market if it is unsafe.

*Regulation (EC) No. 852/2004²⁶ ‘on the hygiene of foodstuffs’ covers all aspect of a food business, from premises and facilities through to the personal hygiene of staff. In addition, food should be handled, prepared, cooked, stored and transported in a hygienic manner and at temperatures which will not give rise to a risk to health. There is also a requirement to have an effective food safety management procedure in place, appropriate to the nature and size of the business and to **register the food business with the appropriate competent local authority.**”*

In relation to pedlars.info specific enquiry about pedlary of foodstuffs the FSA replied: *“Regulation 852/2004 does not apply to ‘the direct supply, by the producer, of small quantities of primary products to the final consumer, although these activities are subject to the general requirements relating to the placing of unsafe food on the market.*

In the UK, Environmental Health Departments (EHDs) are responsible for enforcing food safety legislation and carrying out food premises inspections. The pedlars will need to contact their respective EHD in the area where their premises is located for further specific advice. (They wouldn’t be expected to contact numerous EHDs). EHDs will make a decision about registration based on individual circumstances – food product, quantity, frequency of selling etc.”

²⁴ <http://www.legislation.gov.uk/ukpga/1984/30/section/134?view=extent>

²⁵ http://eur-lex.europa.eu/pri/en/oj/dat/2002/l_031/l_03120020201en00010024.pdf

²⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:226:0003:0021:EN:PDF>

Clearly Section 23 provides that sellers of victuals do not require a certificate but should they choose to travel and trade then they would be classified as pedlar or hawker requiring a certificate and nothing in law explicitly prohibits them from obtaining a certificate. Sellers of victuals who obtain a certificate because they intend to travel and trade are wisely safeguarding themselves with lawful authority against committing an offence under the Pedlars Act of ‘acting as a pedlar without a certificate’, and by 1982 under the LGMPA there were penalties for ‘acting without a licence’ for a static pitch (now wrongly referred to as street trading). Providing they act as a pedlar (travelling trader) then the LGMPA does not apply. It must be remembered that pedlars of **any goods** are explicitly **not street trading**²⁷ for the purposes of street trading legislation. Pedlars cannot be charged with **engaging in street trading** (static trading) if they are travelling trading as a pedlar.

It is clear that local authority licensing officers have no powers over pedlars of foodstuffs under street trading legislation and their only power is to ensure that a pedlar has registered the food business with the appropriate competent authority. Whereas there was once an offence (under the LGMPA and in Scotland the CGSA) for hawking food, namely victuals, the only current offence under street trading regulation may be that of non-registration with EHD as a food business.

A pedlar of foodstuffs with EHD registration in hand is not lawfully obliged to carry public liability insurance but is a matter of common sense and is considered a low-cost business expense.

Pedlars of foodstuffs acting as such and carrying a valid pedlars certificate and EHD registration provides adequate defence of due diligence²⁸ to avoid commissioning an offence.

End of Addendum A

26 June 2012 update re pedlars of foodstuffs:

- 1 There have been some minor updates in the above text for clarity.
- 2 Early in June 2012 pedlars.info sent BIS (government department responsible for updating street trading and pedlary law) pedlars proposed amendments²⁹ to national legislation as a viable alternative to BIS alarming policy to repeal the Pedlars Act. Subsequent pedlar research has established that in respect to registration with EHDs there are two categories of foodstuff namely ‘high-risk’ and ‘low-risk’. High-risk includes fresh prepared foodstuffs and low-risk includes pre-packaged foodstuffs. Pedlars of low-risk foodstuffs do not require registration with EHDs. Pedlars of

²⁷ LGMPA Schedule 4 Section 1 (2) (a); LLAA; London Local Authorities Act 1990 Part 3 Section 21 (2) (a); London Local Authorities Act 1994 Section 6 & Schedule 19; London Local Authorities Act 2004 Section 20 & Schedule 4; City of Westminster Act 1999 Section 3 (a); and all similar private Acts

²⁸ under LGMPA Schedule 4 Section 10 (2)

²⁹ <http://www.pedlars.info/bis-consultation/109-7-june-2012-pedlars-act-proposed-amendments.html>

high-risk foodstuffs do require registration with EHDs. It is therefore advisable to check with your EHD and obtain some documentation about their considered view of your need for business registration. Such documents will be of use when a pedlar is challenged by street trading or police officers. It is important to inform such officers that they have no jurisdiction over foodstuff trading and that the **Competent Authority** is the EHD who apply the same rules and exemptions to all traders.

- 3 The proposed amendments to LGMPA (in Scotland the CGSA) and LLAA dated 5 June 2012 are herewith updated as follows and form part of the ongoing government consultation with stakeholders regarding legislative amendments:
 - i. the means of visits from house to house are ambulant means of trading as distinct from static means of trading,
 - ii. trading at any premises adjoining a street or in any public place including a street,
 - iii. not being restricted by designation of streets for licensed street trading,
 - iv. goods or tools of handicraft being carried on the person or in a carrying device of a pedestrian scale and proportion which is pushed or pulled by the person,
 - v. subject to not remaining in one static position whilst not engaged in continuous trading,
 - vi. not requiring a street trader's licence to trade in the street
 - vii. not requiring a certificate for door to door sales under the value of £35
 - viii. **high-risk fresh foodstuff trading (unlike low-risk prepacked foodstuff trading) requiring registration with a local Environmental Health Department.**
- 4 Further information from the Food Standard Agency³⁰ is available on-line.

End of update 26.06.12

³⁰ <http://www.food.gov.uk/foodindustry/regulation/hygleg/hygleinfo/foodhygknow/>

Addendum B – Additional Commentary

The **1697 William III Act for licensing Hawkers and Pedlars** is important as the benchmark for all further legislation about street trading carried through to this day, and it is also the Act by which all subsequent legislation, including private Acts and bills, needs to be and can be assessed, in particular considering the scope of pedlars' activity.

The *Recital of 8 & 9 W.III.c25 s.1* and the following sections to *s.XV* sets out definitions, principles, protocols, and administrative processes by which mobile traders are allowed, but pay a levy, and how those persons are distinct from static or installed traders.

In *s.IX* there is the *Proviso*, allowance, or as in the contemporary term of “*exemption*” - for the customary activities of selling *printed Papers, Forms of Prayer, Proclamations, Gazetts, Acts of Parliament*, with the means of existence: *Fish, Fruits, or Victuals*, and with the customary trades of mending and making, Goods and Wares, and *from carrying abroad exposeing to Sale or selling, and goeing about*, such activities and principles as were later included in terms of the Pedlars Act.

In the 1697 Act there is also the very clear statement that this legislation is to be applied throughout *the Kingdom*, which in the modern context of the *Pedlars Act* is to be throughout the *United Kingdom*. With that awareness it is difficult to understand how parliament today is not instructing those persons drafting legislation to be aware of the historical precedent and to be as precise and as inclusive.

Bringing the 1697 Act alongside all the various private attempts to restate how pedlars are to be treated within a street trading framework exposes the frailty of narrow private interests without them being tested through any judicial or administrative court review. Solo attempts at applying a local law with local interpretation against the omnipresent grandeur of allowance in the 1697 social contract, only, and rather simply, reflects the past era of medieval fiefdoms and shows them not fit for purpose in a new millennium.

Section 1 of the *Recital* sets out the type of person trading, with what, where the trade is allowed and how the trade is to be carried out:

every Hawkers Pedlars Petty Chapman or any other trading Person or Persons going from Town to Towne or to other Mens Houses and travelling either on Foot or with Horse Horses or otherwise within the Kingdom of England or Dominion of Wales or Town of Berwick upon Tweed (except as herein after is excepted) carrying to sell or exposeing to sale any Goods Wares or Merchandizes

Here is the basis of the future wording of the *Pedlars Act*.

The text is continuous and contiguous: the person is described, but not only as one type but with the comprehensive and inclusive - “*or*”.

Persons are many and various, as in the Pedlars Act - “**or**” and able to travel throughout the (United) *Kingdom* - going from Town to Towne **or** to other Mens Houses.

This exact setting out of law has been corrupted successively since David Chambers of Westminster City Council Licensing was given the telling moment to gather the APPG and the ATCM with the support of NABMA and others in a conference suited to the aim of altering street trading regulations and to effectively abolish the overall allowances provided by the social contract of the 1697 Act.

Chambers made the invidious choice of substituting “*and*” for “*or*” while restating the part of the *Pedlars Act* that defines the mobility of pedlars:

- “*from Town to Towne **or** to other Mens Houses*”
to be **only**:
- “*from Town to Towne **and** to other Mens Houses*”.

This change in text has been interpolated into all private legislations since then and is yet to be tested as lawful.

End of Addendum B
njmcGerr, pedlar and parliamentary agent.
11.03.11