

□ **Research Paper 23 Nov 2009**

BIS is consulting on whether or not **Fixed Penalty Notices** (FPN's) or **Seizure** of goods should be applied to offences relating to Pedlary on the basis of "**reasonable grounds for suspicion**". The Private Acts (Local laws) such as The City of Westminster Act 1999 contain clauses relating to FPN's and Seizure.

Presuming that government would use similar if not identical wording to those Acts and apply it to national legislation, we'll look at what these local laws (Acts) say:

**Section 6 Seizure:** [extract from Bournemouth B C bill]

- (1) Subject to the following provisions of this section, if an authorised officer or a constable has reasonable grounds for suspecting that a person has committed a relevant offence, the authorised officer or constable may seize—
- (a) any article in relation to which he suspects an offence has been committed and which is being offered or exposed for sale or displayed; or
  - (b) any other article which—
    - (i) is in the possession of or under the control of any person who is offering or exposing for sale or displaying an article; and
    - (ii) is of a similar nature to the article being offered or exposed for sale or displayed, as the case may be; or
  - (c) any receptacle or equipment being used by that person.
- (2) No article, receptacle or equipment shall be seized under subsection (1) unless the conditions of subsection (3) apply.
- (3) The conditions are that the article, receptacle or equipment—
- (a) may be—
    - (i) required to be used in evidence in any proceedings in respect of the suspected offence; or
    - (ii) the subject of forfeiture under section 8; and
  - (b) in the case of an article is not of a perishable nature.

This might look like legal jargon, but essentially an authorised officer, e.g. Council licensing officer, Highways Officer, Police Officer who "has reasonable grounds for suspicion" may if they think you have committed an offence seize your goods to be used in evidence in a court of law (unless they are perishable) and so you would not see them again until the court date.

In most cases a pedlar can loose stock and apparatus leading to a legal claim for loss of income for the period from seizure to conclusion of a Court hearing many months later. What now follows in an examination of why a pedlar will never receive any compensation – these bills are misleading.

Compensation for unlawful seizure is included within these bills if it can be proven as unlawful via civil action in County Courts, as the clause states in the following example:

[extract from Bournemouth B C bill]

(3) The court may only make an order for compensation under subsection (2) if satisfied that seizure was not lawful under **section 6**.

You would therefore have to prove that the officer did not have “reasonable grounds for suspicion” to be eligible for compensation

### **What does "Reasonable Grounds for Suspicion" mean?**

This legal term has its origins in American law and found its way into UK anti-terrorism legislation and is now being applied to pedlars. Pedlary is a civil matter and not a criminal nor anti-terrorism matter and such burden on pedlars is unbalanced and disproportionate to the aim of the legislation. Adequate powers exist in the PACE Act 1984 c.60 Part II clause 22(4) *“Nothing may be retained.....if a photograph or copy would be sufficient for the purposes of evidence at a trial for an offence”*.

The following court case defined the term more precisely:

O'HARA-v-CHIEF CONSTABLE RUC, House of Lords, 1997 2 WLR 1

<http://www.parliament.the-stationery-office.co.uk/pa/ld199697/ldjudgmt/jd961214/ohara01.htm>

The case related to a defendant arrested under anti-terrorism laws and imprisoned. He argued that the officer did not have "reasonable grounds of suspicion" and so claimed damages against the Crown for false imprisonment. His appeal was dismissed by the judges on the following grounds:

*Lord Hope:*

*"To prove a defence under the statute, the defendant must prove (1) that the arresting constable genuinely formed the requisite suspicion in his own mind, and (2) that there were reasonable grounds for that suspicion. The foundation of the*

*second requirement depends only on what was in the mind of the arresting constable, not the mind of any other person. Whether it was reasonable to form the suspicion depends on the facts known to him at the time of the arrest, which may be information from an anonymous informer or from another police officer or other source. The reasonableness of the suspicion depends on the source of the information and its context, seen in the light of all the surrounding circumstances. The fact that the information reasonable believed to be true is later discovered to be false is irrelevant."*

*"In the present case the evidence that was adduced was scanty but was such as could lead the trial judge to make the inference that he did, ie to hold that the constable had reasonable suspicion."*

Lord Steryn:

*"The appeal should be dismissed on the narrow ground that the evidence of the constable, though scanty, which was unchallenged in cross-examination, was enough for the trial judge to infer the existence of reasonable suspicion."*

*"The principles of interpreting statutes worded as the Act in question are as follows. Reasonable suspicion does not have to mean evidence amounting to a prima facie case. The information may be hearsay. The information causing the suspicion must be in existence to the knowledge of the arresting constable when he made the arrest. The exercise of the discretion whether to arrest vests in the officer who makes the arrest."*

- This looks like more legal jargon perhaps, but essentially what they are saying is any authorised officer who makes up his mind or thinks you've committed an offence and despite having only scanty evidence as opposed to real hard facts (Prima facia case) has acted lawfully. Furthermore if it is found later on in a court case that the evidence was false that does not make any difference!
- Relating this to Pedlars you can see now that an insurmountable burden is placed on the pedlar, the officer seizes your goods due to suspicion, nothing more, your goods are taken away from you, and you would have no right to compensation for unlawful seizure, because it would be almost impossible to prove that the officer did not have the "reasonable suspicion" in his mind when he thought an offence had been committed.
- You would need to have a log book of your every movement or have someone film you as your were working, to prove otherwise!!
- The goods can also be seized not just for evidence in a court but also to

- be destroyed under a Forfeiture Order by a court!!
- None of the above is mentioned in the BIS consultation although they do mention some Private Acts by name only and appear to approve of them, so we suspect this might be their intention in national law regarding pedlars.

### **Fixed Penalty Notices FPN's**

The numerous Private Acts that government seem intent on following also contain clauses relating to Fixed Penalty Notices (FPN's), which is an additional option for authorised officers besides Seizing goods.

One clause in these laws (Acts) relating to this says:

*"Where on any occasion an authorised officer finds a person who he has reason to believe has on that occasion committed a relevant offence in the city, the officer may give that person a notice offering him the opportunity of discharging any liability to conviction for that offence by payment of a fixed penalty."*

- You can see that the wording has now changed to "reason to believe" which would appear to have the same meaning as "reasonable suspicion" in the case of seizure. (Note: The legal term: Reasonable grounds for believing - means a more evidential base is needed to make the decision, but they have not used the word "grounds" in Private Acts)
- So if the officer decides not to Seize your goods as evidence for a court case and or a Forfeiture Order, the officer may also give you an FPN instead.
- You might well feel that you should pay this as opposed to having your goods seized, which might persuade him not do so, but if you decide not to accept it your goods would be seized.
- There are no clauses in these Private Acts that enable a pedlar to challenge a FPN in a court (unlike parking fines), only that if it's not paid within 14 days, court proceedings would then take place.

### **WHAT WOULD YOU DO IF AN OFFICER WITH THESE POWERS CAME UP TO YOU ON THE STREET?**

Pay the FPN? and hopefully keep your goods?

**OR** Try to prove in a court that the officer did not have "reason to believe" you had committed an offence.

**It's quite a dilemma and either way the pedlar will loose.**