



**BIS**

## **STREET TRADING AND PEDLAR LAWS**

**A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime.**

6 NOVEMBER 2009

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

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

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

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

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

**BIS – STREET TRADING – CERTIFIED AND LICENSED**  
**A joint consultation on modernising street trading legislation, and on draft guidance on the current regimes.**

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

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

## Pedlars Information

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

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

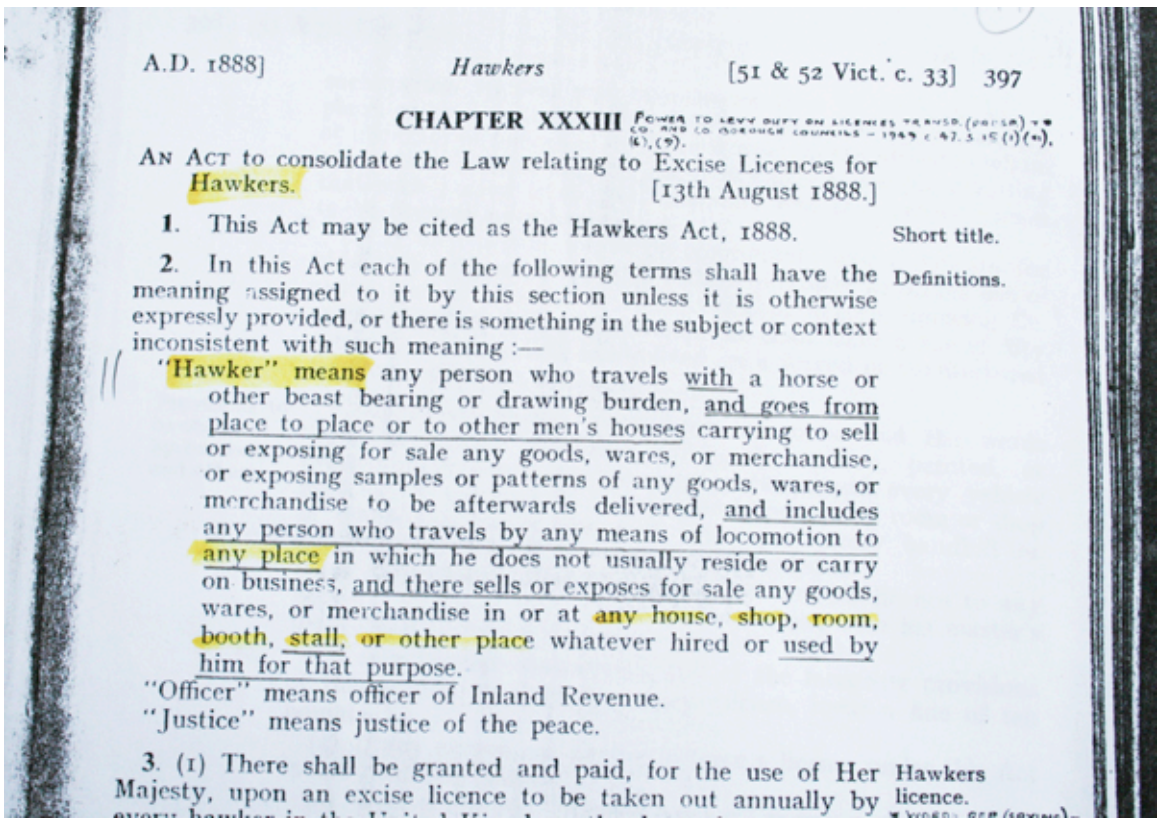
**DEFINITIONS: - Language & Glossary**

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

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

**Pedlars Act 1881:**  
“authorises a person to act as a pedlar within  
any part of the United Kingdom”

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



Hawkets 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 **CERTIFIED PEDLARS** and **LICENSED STREET TRADERS**

Note: both categories are commonly known as ‘street traders’

	<b>CERTIFIED</b>	<b>LICENSED</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% Up to 1 cubic metre vol	Fixed pitch 4x3m 12m <sup>2</sup> 100% any size within fixed pitch
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	variable	£1.64 - £6.84
Restrictions:		
Where to trade?	By choice anywhere in UK	Designated places only
When to trade?	By choice – any time	Specific times & days
What to trade?	By choice – any product	Specific products only
Competition?	No restriction	Restricted to 500m
Conditional?	Within the Law	Yes
Burden on local charges	None	Yes
Are they Street Trading?	No – LGMPA S3Sch4Cl2(a)	Yes
Is obstruction an issue?	No – a pedlar can move	Yes – hence regulation

**COMPARISON CHART between PEDLARS and HAWKERS**

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

**This information is produced for Regulators and Pedlars by [www.pedlars.info](http://www.pedlars.info) a not for profit online information centre to assist in differentiation between pedlary regime and local authority regime for street trading.**

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

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

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

Date:

time:

location:

trader's name:

officer's name:

# ~~STREET TRADING AND PEDLAR LAWS: A consultation on modernising <sup>static</sup>street trading and pedlar legislation, and on draft guidance~~

## Introduction

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

In February 2009, the UK Government published research from Durham University into the application and perception of <sup>[note: this was the statement of intent but was not undertaken]</sup> ~~street trading controls and~~ pedlar legislation (<http://www.berr.gov.uk/files/file49664.pdf>), which gave us a better understanding of how stakeholders view the current framework and what changes they would like to see.

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

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

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

In Scotland, the Civic Government (Scotland) Act 1982 gives local authorities powers to regulate <sup>static</sup> ~~street~~ trading by requiring persons selling or offering to sell goods and services in a public place, whether from a kiosk, vehicle, moveable stall or otherwise, to hold a licence. Licences are not required for any activity in respect of which a pedlars certificate has been granted.

## Devolved Administration Issues

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

At this stage, in discussing possible options which impact on the relationship between local government licensing of <sup>static</sup> ~~street~~ traders and national certification of pedlars this document generally makes reference to the provisions of the Pedlars Act 1871 which apply nationally and the Local Government (Miscellaneous Provisions) Act 1982 which apply in England and Wales. Nevertheless, the possible options for change are clearly relevant to and may impact on the regimes in Scotland and Northern Ireland. As work continues with a view to further developing any of these options in the light of the response to this consultation the UK and Scottish Governments will explore fully with the devolved administrations the implications for the regulation of <sup>static & mobile</sup> ~~street~~ trading within the respective jurisdictions.

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



## The main areas this consultation seeks views on are:

[note: proportionate to what?]

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

Issued: 6 November 2009

Respond by: 29 January 2010

### Enquiries in relation to England and Wales to:

Deba Hussain or Roger Dennison  
Consumer and Competition Policy Directorate  
Department for Business, Innovation & Skills  
Bay 416  
1 Victoria Street  
London SW1H 0ET

Tel: 020 7215 2115 or 020 7215 6893  
Fax: 020 7215 2837  
E-mail: [streettradingandpedlaryconsultation@bis.gsi.gov.uk](mailto:streettradingandpedlaryconsultation@bis.gsi.gov.uk)

### Enquiries in relation to Scotland to :

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

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

# 1 Executive summary

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

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

1. ~~There are approximately 4000 pedlars in the UK who operate by moving around to customers carrying their goods. They are usually sole sellers e.g. selling balloons, etc. Whereas street traders are static traders and usually operate in a specific location with a stall selling fruit, clothes, etc. Many street traders operate in street markets.~~

Licensed

or market

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

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

aim [note: the 4 points are not approaches but aims]

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

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

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

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

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

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

## Pedlars & the Pedlars Act

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

whether there are any grounds for

and what guidance government can give to

the findings of the Durham Report & the Opposed Bill Committee on the Bournemouth & Manchester bills to determine the merits for legislative change.

### Licensed Street Trading and the Local Government (Miscellaneous Provisions) Act

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

## The Pedlar's Certificate

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

a

found in the Pedlars Act Form A, but some jurisdictions disregard this

and issue a different format

certificates

fact that a Pedlars Certificate is a precursor to an

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

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

## National Database of Pedlars

6. ~~At present, there is no centrally held information on pedlars, so there is no means by which the validity of certificates can be verified quickly. Also, the findings in the Durham report indicated that a national database of pedlars would be welcomed by most people including pedlars themselves.~~ This consultation is seeking views on establishing and maintaining a national database for pedlars, and also the type of information this system will hold e.g. name, address, etc

all of which (except a photograph) already exists in paper copy awaiting simple databasing and numbering, the cost is yet to be assessed.

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

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

retained in

or whether only the requirements for a local authority licence should be considered.

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

delete 8. This consultation raises the option of transferring the responsibility for issuing of pedlars certificates from the police to local authorities, which may be better placed to certify pedlars, as they licence other traders. However, it is necessary to consider how such a system might operate, given the UK-wide nature of the pedlar certificate, and whether the police can still carry out a security check when contacted by a local authority.

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

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

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

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

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

## insert **Enforcement of existing Pedlary Laws**

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

## **Power to impose local restrictions on certified pedlar activities**

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

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

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

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

## **Services Directive**

[note: pedlars have been ignored by CCP meddling with the Pedlars Act even though the proposed amendments do not clarify for a pedlar of services that a Certificate will no longer be required and the consequences of no longer having protection of a Certificate from LA's. The amendment fails to inform wouldbe pedlars "ot others" about providing services. BIS requires further assistance about interpretation of the Pedlars Act and the alternatives to conceding to EU timetabling of 31 Dec2009 - there are alternatives but BIS.CCP have ignored them.]

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

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

delete

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

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

insert

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

1 *Local Authorities expressed confusion.....*

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

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

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

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

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

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

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

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

5 *Overzealous enforcement by councils.....*

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

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

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

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

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

8 *Concern related to obstruction.....*

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

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

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

10 *Possible changes to procedures:*

(a) *issuing of certificate.....* that Form A and Form B of the Pedlars Act be modified to incorporate photo ID, public liability insurance number, NI number

(b) *guideline for approved activities.....* that detailed examination and agreement be reached on statute definition and case law considerations

(c) *standardisation of Certificate.....* police to add national identification number

(d) *greater burden on pedlar when applying for Certificate.....* insurance, work permit, registration of self-employment

11 *Increase in cost of Certificate.....*

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

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

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

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