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## RESPONSE TO BIS CONSULTATION ON STREET TRADING AND PEDLARY

### INTRODUCTION

It is with reluctance and apprehension that I feel in participating in this consultation questionnaire. The questions are loaded, the document is factually incorrect in law, and is nothing more than a local authority wish list formatted in ‘the Governments preferred option’ I will however give my answers in the hope that quality of replies over quantity will carry some weight.

I have already drawn to your attention how many pedlars find the document difficult to understand, and being that most pedlars are ordinary simple folk who choose their lifestyle in order to be alleviated from buearocracy and regulation, I will be very surprised if you get a response from even 1% of certified pedlars in the UK. Opposed to that are the 400 plus local authorities, hundreds of Town Centre managers, Trading Standards departments, Cambers of Trade and Commerce, Local Government Associations and a raft of other bodies who would dearly love to eliminate pedlars from UK streets. How do you intend to draw fair and balanced conclusions given the obvious weight of responses you are going to receive that direct towards options that would make being a pedlar very difficult or almost impossible?

During our meeting with you last December you stressed you did not wish to eliminate pedlars and conceded they had a part to play in a modern trading society. I can therefore only hope you attach more weight to the few responses you are going to receive from pedlars as opposed to the predictable ones from the many other stakeholders you have contacted in this consultation.

## QUESTION 1

ANSWER: NO

You seem to be using the terms definition and clarification in one breath, there is a difference between the two. Clarification has been the issue in many High Court cases a full list of which you have been sent and are now aware of. From these case law has been formulated which certainly clarifies what a pedlar is permitted or not permitted to do. Any clarification if needed can be as per the Private Legislation currently going through Parliament incorporated through amendments to the Local Government (MP) Act taking into consideration case law. This Act is adoptive and local authorities can choose whether to adopt the updated LGMP Act. As you are aware we are petitioning the current batch of Private Bills and oppose those that have received Royal Assent

With regards to the definition of a pedlar there has never been any dispute or misunderstanding regarding what is a pedlar. The Pedlars Acts may well be over 100 years old, but many of our core Acts that govern how we live today are much older than this. The recent High Court cases have centred on what a pedlar may or may not do to avoid being prosecuted for street trading, not the definition of a pedlar itself. The Pedlars Acts may well use some phrases that sound dated or include some trades that would not be seen today, but the core activities remain relevant. The statement “Travels and trades on foot and goes from town to town or to other mens houses, carrying to sell or exposing for sale” defines most clearly how most modern day pedlars work today. The term “without horse or other beast bearing or drawing burden”, has been universally understood to mean, without locomotion and with ones own effort in carrying their goods as a pedestrian on their persons or by means of assistance using a small appendage.

The Pedlars Acts therefore do not need to be altered because of their definition. The definition of a pedlar is as applicable today as when the Acts were first introduced.

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## QUESTION 2

The list isn't worth the paper it is written on! As stated case law has stated what is lawful for a pedlar to do. There is only one part of this list that is correct in law, and that is “Must be a pedestrian”. I suggest case law is referred to when compiling a list for clarification purposes.

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## QUESTION 3

ANSWER NO:

The definition as previously stated is not in need of change but permissible activities or clarification can be incorporated by amendments to the LGMPA as ruled by the Opposed Bill Committee on the Bournemouth and Manchester Bills where they ruled

the size of a trolley must be no bigger than 1 cubic metre. This ruling considered case law ( Shepway vs Vincent ) and put an exact size on the up till then undefined size of an allowable appendage. I am not against the trolley or appendage size being restricted , but argue that as with the Private Bills that this applies to the same method can be used to add clarification under the LGMPA by incorporating amendments.

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#### QUESTION 4

Yes look at all case laws to fully understand the allowable activities of a pedlar. The definition of a pedlar is fit for purpose, any requirements that give clarity can be incorporated into the LGMPA through amendments.

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#### QUESTION 5

ANSWER YES:

We have long argued that a national database with more stringent checks and criteria for obtaining a certificate is something we agree to. A standard certificate for all of the UK with a photo and other details that can be verified eg. A unique certificate number that can be verified from a central database would eliminate all ambiguity with regards to authenticity. The Police have a PNC system and a department within them or the Home Office would be ideally suited to carry out this task. I understand the current cost of 12.25 pounds would have to change and an increased cost that reflected these changes would be acceptable. It has to be borne in mind pedlars have to renew their certificates annually and the cost of implementing this system would soon be recovered.

With regards to fixed penalty notices I am in the main against these and do not support better verification for this purpose.

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#### QUESTION 6

ANSWER NO:

As a requirement to obtaining a certificate in addition to the list, proof of eligibility to work in the UK on a full time basis should be included, and this can be achieved by either showing a birth certificate, national passport ( This will show either a work permit/visa or if the person was an EU national ) , or other proof of entitlement to work in the UK. The applicant should also show his or her Tax Reference number demonstrating they intend to work legally. This information along with the applicants National Insurance number can be stored in the centralized system and need not be shown on the certificate. The certificate itself should show, name, address, age,

certificate number, a photograph, expiry date, and where the application was made. All other relevant information can be stored in a centralized system. It is my strong belief that this improved application procedure will result in a small reduction in applications but a much larger reduction in the numbers of alleged breaches of street trading laws.

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#### QUESTION 7

ANSWER YES:

I have given my response in answers to question 5

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#### QUESTION 8

ANSWER NO:

In addition to the suggested list, I suggest the following;

Visa/work permit number or proof of entitlement to work  
Tax Reference number  
Height  
Eye colour  
Country of birth

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#### QUESTION 9

BIS reasoning for the removal of pedlar service providers from the Pedlars Act is that it is because of a services directive from Brussels You say it would be less burdensome for these type of traders, but without a pedlars certificate their protection under such a certificate is removed. As a pedlar you have “lawful excuse” with regards to obstruction of the highway. Can you therefore show how service providers working on the highway can trade lawfully seeing that they no longer enjoy the protection of their pedlar certificates?

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#### QUESTION 10

ANSWER NO:

Your proposed term “by reason of misconduct or other sufficient reason”, is loose, open to interpretation, and would be difficult to define in law should an appeal be necessary. Misconduct—such a loose term, could mean late for work, speeding, parking illegally, sticking two fingers up at a camera, oh so the list goes on. Likewise “other sufficient reason” maybe your hairs too long, or you wear the wrong colour trousers etc.etc. The present requirement of the Pedlars Act “of good character” is something the Police currently look at and usually involves criminal record checks. This is evidence to an applicants suitability. If a centralized system is introduced any checks would be nationwide and the Police are best placed to carry out those checks. Due to the nature of Pedlary, where a pedlar is interacting with the public and is involved with the supply of goods or services perhaps any unspent convictions for “serious crimes of dishonesty” could be used to determine the applicants suitability.

If the applicant fails the above checks then a certificate can be refused subject to the right of appeal through the courts. It must be added persons applying for a street trading licence do not always have criminal record checks carried out by the local authorities, and any person can open a shop no matter what previous convictions they have, subject to no licensing requirements being needed for the type of retail they intend to operate.

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#### QUESTION 11

ANSWER NO:

Your point that different police authorities have varying forms of checking a persons suitability would not exist if a centralized issuing body were charged with the checks, and as stated in my answer to question 10 the proposed criteria is open to abuse.

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#### QUESTION 12

ANSWER NO:

What a ridiculous proposal from a pedlars perspective. Would you leave a fox to guard the chickens, or put the Ku Klux Klan in charge of race relations? Its as simple as that as far as pedlars are concerned. You state “we do not currently consider these concerns to be sufficient reasons not to transfer responsibility”---why not? If you are as independent and undecided as you claim, why does your department take this view? In all my years as trading as a pedlar I have yet to come across a local authority that welcomes pedlars. They resent not having control and revenue from us and to give them the responsibility to issue our certificates would be a death warrant for pedlars. Emotive terminology I know but we are in the real world as pedlars and to a man do not want the local authorities to have any responsibility at all with regards to the issuing of our certificates.

You state the police are not responsible for issuing any other form of trading licences. Correct me if I am wrong but who has the say whether liquor licences are

issued albeit through the magistrates? The Police have the dedicated resources to verify a persons suitability, not local authorities. A reflective increase in the cost of a certificate could well provide resources to the police enabling them to finance the delivering their other objectives.

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#### QUESTION 13

ANSWER NO:

If legislation is altered as per your suggestion ie.”by reason of misconduct or other sufficient reason” it would not ensure a fair and non-discriminatory regime as my replies to question 10 and 11. If the refusal is based on convictions as per my reply to question 10 and appeals can be heard through the judiciary then I would be inclined to answer yes.

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#### QUESTION 14

There are over 400 local authorities in the UK compared to I believe around 46 police forces. The suggestion of a National Database with the police retaining the responsibility of issuing certificates is my preferred option. The Pedlars Act today is as relevant as when it was introduced as per my reply to question 1, and is good law and safeguards both pedlars and the public. Pedlars although being at the smaller end of the trading scale have to meet annually quite stringent criteria, far more than most other forms of traders.

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#### QUESTION 15

ANSWER NO:

The Pedlars Act is a good Act and there is no need to replace it. It can however be altered to incorporate a National Database system which is centralized and continues to operated by the Police or Home Office, with the criteria of “good character” drafted into police guidelines as per my reply to question 10 with regards to the issuing of certificates.

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#### QUESTION 16

ANSWER NO:

The Pedlars Acts are for pedlars.

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#### QUESTION 17

One of the regular complaints local authorities make is the inability to enforce consumer protection or trace alleged offenders. The Pedlars certificate gives protection to both pedlars and the public and for traders to be allowed to trade in the manner of a pedlar with no certification requirements would be a green light for rogues and criminals to be free to operate on the street . Why do you think the Pedlars Acts were introduced? Pedlars do not sell shoddy goods or are not fly by night traders and would not want to see their certificates removed to facilitate the removal of the Pedlars Acts. With regards to local authorities exercising restrictions I will answer this in question 25.

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#### QUESTION 18

ANSWER: Option A

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#### QUESTION 19

ANSWER NO:

The department uses a figure of 7000 pounds as a typical cost for a prosecution. When asked for evidence as to how this figure was arrived at, it was stated as a figure quoted verbally by a town centre manager during the Trading Standards Institute Conference in Brighton in July of last year. This figure cannot be substantiated with evidence and therefore the entire basis of the argument for FPNs or seizure is flawed. You state a ratio of 10 to 1 was found to be the ratio of costs outweighed in favour of pedlars. Perhaps an increase in fines through the courts could alleviate this. Fixed penalty notices are issued for traffic offences, dropping litter, and dog fouling, but a person if they so choose can go before a court and plead their innocence. They do not have their vehicle seized or dog impounded until the day they prove their innocence. I can only agree to FPNs for pedlars offences such as trading without a certificate, assigning a certificate to another, borrowing a certificate, failure to produce a certificate, or begging. As for charges of not acting as a pedlar it is for the courts to determine whether an offence has been committed not some over-zealous, paid operative working for the local authority.

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QUESTION 20

I have given my views regarding giving further powers to civilians to either issue FPNs or have the power of seizure where even the Police do not have these powers under PACE rules where a photo would suffice as evidence. This is a dangerous path eroding civil liberties, human rights, and contravenes all that has for almost 1000 years been the pillar of our democracy, namely the right to be heard when accused in a court of justice. If a pedlar has had their goods seized on grounds of reasonable suspicion this reverses the burden of proof and they are therefore presumed guilty until they can prove their innocence, and up until that point their goods and equipment have been taken and their ability to continue to work has been terminated.

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QUESTION 21

I have given my answer in the list in reply to question 19

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QUESTION 22

One hundred pounds, and this is only for offences listed by me in reply to question 19

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QUESTION 23

ANSWER NO:

We like pedlars really, they add character and an alternative shopping experience in todays retail environment,we just don't want them in our town! Up to this point most of BIS preferred options would ensure trading as a pedlar would become so restrictive as to make peddling unviable. Come on! Stop being biased towards local authorities, and if you are serious as to your independence and impartiality reflect this in your submissions to the Minister after this local authority directive ( consultation ) has been completed.

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## QUESTION 24

Your question ends “that this would address the issues of concern to some local authorities in relation to unfair trading and competition”. Of course any provisions for more enforcement is certain to meet with local authorities’ approval---what a stupid question! The truth is many local authorities disapprove and resent any pedlars because they are seen as unfair trading and competition in their eyes due to them not getting revenue from pedlars. They also cloud the difference between trading in the street and street trading.

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## QUESTION 25

ANSWER NO:

Pedlars are unique in that they are mobile and instantaneous in their ability to adapt to conditions. Who else is resourceful and adaptable to be able to turn up on a sporting victory parade with the likes of horns flags and whistles at an instants notice? How on earth can the cumbersome machinery of a licensing department at a relevant local authority be expected to even contemplate a day licence scheme for such an event? Her Majesty is visiting a town, our armed forces are holding a homecoming parade, the list is endless and legislation that restricts this flexibility by giving powers to LAs to limit the number of pedlars is a restrictive trading practice.

We cater to public demand and nowhere in this consultation have I seen any evidence of their views or any method to gauge what their views are. All this questionnaire seems to be addressing is the concerns of local authorities that wish to create fiefdoms exercising total control as to what is traded on the street.

I want to refer to a Superintendent Lee of Greater Manchester Police who gave evidence at the Select Committee Hearing in the House of Commons in support of the promoters of the Private Manchester Bill that is still going through Parliament. He gave evidence saying that the large crowds at some events and a large number of pedlars who were using trolleys were a safety issue that was the plank of his argument. Has there ever been any incident where accidents have occurred or even nearly occurred due to numbers of pedlars at any given event using a trolley or otherwise? Its nonsense and a red herring. Pedlars are pedestrians and although I am in favour of limiting the size of permissible trolleys to try to say that a large number of pedlars is a safety issue is poppycock. Are you going to restrict the numbers of

pushchairs at an event, the number of disabled trolleys, or the numbers of people carrying their shopping in their trolley? It's as straightforward and ridiculous as that.

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#### QUESTION 26

Disagree totally; see my response to question 25

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#### QUESTION 27

No observations

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#### QUESTION 28

I am a pedlar and therefore are not concerned with street trading licence appeals

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#### QUESTION 29

I understand what you have done and your reasons given with regards to a pedlar of services. You say pedlars of services will be able to ply their trade anywhere in the UK, except where private legislation has come into force. As previously asked by me, what protection do pedlars of services have "in law" to be able to trade after their protection of a pedlars certificate is removed?

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#### QUESTION 30

ANSWER NO:

The list is misleading and fails to take into account case law. A pedlar does not have to be continuously moving between sales so as to show they are looking for their

customers, and your interpretation relies on one case law, namely Chichester vs Wood. In this case there is confusion because an order 57 rule 1 was not followed up in spite of it being ordered. There are several other case laws where judgements have stated a pedlar can stop other than reasons of a sale which you have not taken into consideration when compiling both the checklist and draft guidance. True a pedlar must travel as they trade but not in perpetual motion and can stop for other reasons other than making a sale. There is also no case law stating you must trade from street to street. The checklist and draft guidance needs to be reconsidered and re-written in accordance with case law, otherwise it is baseless.

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#### QUESTION 31

ANSWER NO:

It does not meet the needs of pedlars because it disregards case law precedents

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#### QUESTION 32

Perhaps a further meeting with BIS representatives can be held with pedlars. Together we can look at case law and perhaps reach agreement on draft guidance that takes into account case law.

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#### QUESTION 33

OTHER COMMENTS: I have given my response to the questionnaire much thought and consideration and I know doubt the department are aware that pedlars desire to continue to trade does create hostility from local authorities. You acknowledge all forms of trade can be argued to take from another but it is all about scale and pro rata what a pedlars pays is relative to scale and is not really unfair competition. If pedlars are restricted so much that their trade would become unviable, who will be next? Would the next target be street traders? Perhaps markets themselves.

In my replies I have given suggestions that I believe with more stringent requirements to obtain a certificate, draft guidelines based on case law and a centralized issuing system, alleged cases of street trading offences would be significantly reduced.