

BIS URN 09/1074 – Reply to questions 1 – 38

Respondents:

listed at the end of this document submitted by administrators at <http://www.pedlars.info>
12 February 2010

Pedlars have responded to the title and first 7 pages of this consultation to remove misleading and confusing concepts, language and information. The edited document is online at <http://www.pedlars.info/bis-consultation/71-making-it-read-clearly.html> and should be read as an introduction to the following replies.

Question 1: Do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons.

Answer:	Reason:
<p>NO</p> <p>Evidence in Durham Report that LA's do not understand the law as it presently stands:</p> <p>Para 69 <i>There was also a degree of ignorance or misinterpretation of the law. As noted above, a relatively large number of respondents (27) suggested that door-to-door trading was the only permissible activity for pedlars; just two of this group were in authorities which had passed Private Acts. The following quote was typical of this group of respondents: 'I understand the law on Pedlars, travelling from town to town and door to door. If pedlars were to sell in the street, I would determine this as unlawful, in my opinion that is not door to door and not within the spirit of the act'. Some 23</i></p>	<p>On page 13 point 42 the allegation of confusion because of the age of the Pedlars Act is unacceptable.</p> <p>Pedlars have relied on the Pedlars Act for 138 years because it is good law and should not be sullied by the fact of its age - such logic undermines Parliament itself.</p> <p>The description of a pedlar should not be altered because it gives by example some of the trades that existed in 1871 but was never intended to be an exhaustive list. The insertion of "or other person" makes allowance for any other person such as, in contemporary life, a balloon twister, an artist etc. It grants a liberty and the freedom to do anything by way of a chosen trade or a 'yet to be evolved' trade.</p> <p>The difficulty created by the LG(MP)A concerns not the <u>definition</u> of a pedlar but the <u>allowable activities of a pedlar</u>. This is so because the LG(MP)A exempts persons <u>acting as a pedlar</u> being answerable to LA's. In Court the LA is obliged to prove that the person was not <u>acting as a pedlar</u> if they are to succeed in an allegation of illegal street trading. The essential yardstick for measuring is not some intellectual abstraction but is grounded in the regulation of a Licensed Static Trader whose fixed pitch is outlined on the street, who occupies that pitch for 365 days a year up to 10 hours a day, and receives services provided by the local authority in exchange for a licence fee.</p> <p>The document at Annex B page 38 fails to adequately disclose and scrutinise Case Law [11 in all, whereas this document only makes reference to 4 in part page 42 -43] and at point 45 gives no indication whatever about the position in Scotland. Without this no reader can make an intelligent response.</p> <p>Pedlars have supplied BIS with a full schedule of Case Law indicating allowable activities. BIS say they have read this but are unwilling to respond and unwilling to amend the misleading information on page 38 and pedlars would ask again how any reader can intelligently respond without full disclosure.</p>

<p><i>respondents contended that a pedlar had to carry their goods on their person, ignoring case law that a small trolley is permissible (as acknowledged by nine respondents). One local authority went as far as to suggest that they issued pedlars certificates, rather than the police.</i></p>	
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Question 2: Do you think anything should be taken out or added to the list and why?

<p>Answer:</p> <p>The list is anecdotal & not fit for purpose; does not reflect the intentions of Parliament when the Act was written; is not based on law.</p> <p>BIS p42-3 clause 8.1-3 is misleading as it overlooks the fact that the justices were not happy with the 9 points especially given different findings by different justices – they ordered an Order 57 Rule 1 on a point of law.</p> <p>BIS p43 clause 8.6 has no basis in law and is factually misleading.</p>	<p>Reason:</p> <p>Nowhere in the document is there reference to the historic origins of certified pedlary legislation, nor of local authority street trading regulation for licensed traders and without this context the reader is unable to compare nor reasonably consider the allowable activities of pedlars.</p> <p>The following scrutiny of Statute and case law summarizes the lawful activities of pedlars:</p> <p style="text-align: center;"><u>Statute</u></p> <p>Pedlars Act 1871</p> <ol style="list-style-type: none"> 1. any person who, as a pedestrian, travels and trades on foot [clause 3] 2. goes from town to town or to other men’s houses [clause 3] 3. carries to sell or exposes for sale any goods [clause 3] 4. procures orders for goods [clause 3] 5. sells or offers for sale skill in handicraft [clause 3] 6. does not trade without certificate as per Form B, Pedlars Act [clause 3] 7. is above age 17 [clause 5(1)] 8. in good faith intends to carry out the trade of a pedlar [clause 5(1)] 9. may freely trade in markets & fairs [clause 6 & 23] 10. shall not lend, transfer or assign a certificate [Clause 10] 11. shall not be disorderly [Clause 13] 12. may apply to the court for refusal to grant certificate [Clause 15] 13. may be deprived of certificate if begging [Clause 16] 14. on demand shall show certificate [Clause 17] 15. shall allow inspection of goods and apparatus [Clause 18] <p>Pedlars Act 1881</p> <ol style="list-style-type: none"> 16. act as a pedlar within any part of the United Kingdom [Clause
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<p>*NOTE: open to challenge on HRA Article 1 Protocol 1 and in association with Article 14</p> <p>*NOTE: open to challenge on HRA Article 1 Protocol 1 and in association with Article 14</p> <p>*NOTE: open to challenge on HRA Article 1 Protocol 1 and in association with Article 14</p>	<p>2]</p> <p>Hawkers Act 1888 repealed but definition persists under the term pedlar</p> <p>17. travels <u>with</u> beast of burden [Clause 2]</p> <p>18. exposing goods or samples to be afterwards delivered [Clause 2]</p> <p>19. travels by any means of locomotion to any place [Clause 2]</p> <p>20. sells or exposes in or at any house, shop, room, booth, stall or other place whatever hired or used for that purpose [Clause 2]</p> <p>*Cheshire County Council Act 1980</p> <p>21. any person who hawks, sells or offers or exposes for sale any thing without consent of council shall be guilty of an offence [c.XIII Part VI 30(2)(b)]</p> <p>Local Government (Miscellaneous Provisions) Act 1982</p> <p>22. sell or offer for sale food in sealed containers – food does not include water, milk or cream [Part IX 19(11)(e)&(12)]</p> <p>23. ‘street trading’ means, subject to exemptions, the selling or exposing or offering for sale of any article (or living thing) in a street [Schedule 4 1(1)]</p> <p>24. acting as a pedlar is not ‘street trading’ under the LG(MP)A [Schedule 4 (1)(2)(a)]</p> <p>25. selling as a roundsman is not ‘street trading’ under LG(MP)A [Schedule 4 (1)(2)(f)]</p> <p>26. designation of streets; operating days & times; description of articles by LA’s applicable only to licensed pitches and not applicable to pedlars [Schedule 4 (2)(1)]</p> <p>27. take reasonable precautions of obtaining a certificate and exercise due diligence to avoid a street trading offence [Schedule 4 (10)(2)]</p> <p>Civic Government Scotland Act 1982</p> <p>28. any activity as a pedlar shall not require a street trader’s licence [chapter 45 (39) (2)(a) & (3)(d)]</p> <p>*Hampshire Act 1983</p> <p>29. any person who hawks, sells or offers or exposes for sale any thing without consent of council shall be guilty of an offence [c.V Part III 7(2)(b)]</p> <p>Police & Criminal Evidence Act 1984</p> <p>30. anything may be seized for use as evidence at a trial but nothing may be retained if a photograph or copy would suffice [Part II (22)(1),(2)&(4)]</p> <p>*Essex Act 1987</p> <p>31. any person who hawks, sells or offers or exposes for sale any thing without consent of council shall be guilty of an offence [c.XX Part V 11(2)(c)]</p> <p>London Local Authorities Act 1990 & 1994</p> <p>32. trading by a person acting as a pedlar is not ‘street trading’ for this Act [Schedule 19 Part III 21(2)(a)]</p>
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33. selling articles or things to occupiers of premises adjoining any street [hawkers] are not ‘street trading’ for the purposes of this Act [21(2)(e)]

Case Law

Watson-v-Malloy 1988

34. the definition of a pedlar states “travels and trades” but this case introduced a dubious [Stevenage-v-Wright] aphorism “a pedlar is one who trades as he travels as distinct from one who merely travels to trade”

35. the popular conception of a pedlar is someone who goes around selling things or services, who sells on the move; an itinerant seller

Manchester-v-Taylor 1989

36. reference to 15-20 minutes

Normand-v-Alexander 1993

37. the principle of English law applies in Scottish law

Prentice-v-Normand 1993

38. as above

Shepway-v-Vincent 1994

39. a pedlar is one who goes about carrying small goods for sale, a travelling chapman or vendor of small wares

40. may use small means of assisting the transport of goods

41. consider whether the whole apparatus is of such a scale as to be outside the definition of the term pedlar – the yardstick to measure is the scale and proportion of a licensed static trader

42. the ‘right test’ is whether or not the person did travel and trade on foot and go from town to town carrying to sell or exposing for sale any goods

Westminster-v-Elmasoglu 1996

Tunbridge Wells-v-Dunn 1996

43. may move up and down a busy shopping street [designated as a prohibited street] selling and offering to sell

44. may stop and wait for periods up to 20 minutes for members of the public to approach

45. does not have to remain in perpetual motion

Stevenage-v-Wright 1996

46. the aphorism about ‘travelling to trade’ in Watson-v-Malloy does not assist the court in its appraisal of the seller’s conduct, the only significance of the words is that to be a pedlar a person must travel as well as trade but he does not have to do them both simultaneously, nor be in motion whilst effecting sales

47. a pedlar is travelling when not trading

48. the length is important of those periods during which he is

<p>*NOTE: Instructing solicitors were London based Sharpe Pritchard who failed to Certify a Point of Public Importance directed by the justices. Sharpe Pritchard have been Roll A Parliamentary Agents for all promoters of Private bills 1999-2010. Following Chichester –v-Wood a lucrative opportunity in City of Westminster began the plethora of private interest business.</p>	<p>stationary and not selling but is prepared to do so</p> <p>49. the use of a stall or stand may indicate an intention to remain in one place or in a succession of different places for longer than is necessary to effect a particular sales or sales</p> <p>Wrexham-v-Roberts 1997</p> <p>50. the issue is whether the prosecution can prove, to the criminal standard of proof, that the pedlar was conducting his actions as a pedlar as defined in Statute</p> <p>51. a pedlar does not have to demonstrate that he was going somewhere in particular</p> <p>52. a pedlar may walk up and down a busy shopping street</p> <p>53. entitlement to stop to trade is not limited to a pause for the purpose of effecting an individual sale nor so narrowly prescribed that all other forms of pausing are automatically outside the conduct of a pedlar</p> <p>54. it is the nature of the activities of the trader that must be considered to determine if they fall within the definition of a pedlar</p> <p>55. a pedlar is to be and be seen to be a peripatetic trader</p> <p>56. he may stop in order to trade but there may be other reasons why he may pause, the purpose of those pauses is important</p> <p>Chichester-v-Wood 1997</p> <p>57. each case depends on its own facts</p> <p>58. the words of an Act of parliament are to be interpreted in the context of the Act in question at the time it was passed</p> <p>59. a point of *public importance is defining the distinction between ‘pedlar’ and ‘street trader’</p> <ol style="list-style-type: none"> a. there are 2 lawful categories of street trading – ‘Certified’ and ‘Licensed’ b. by definition ‘street trading’ includes ‘selling or offering or exposing for sale any article’ and applies to both Certified and Licensed ‘trading in the street’ commonly known as ‘street trading’ c. a Licensed street trader is restricted to a fixed pitch and calls upon provision of local authority services d. a Certified street trader is unrestricted and exempt from local authority street trading regime and services e. 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 f. 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
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<p>*NOTE: Promoters rely on lack of definition of the words 'house to house' and prosecuting councils rely on literal interpretation as in 'door-to-door' but OBC Bournemouth & Manchester found that the words carry a liberal interpretation as with the original text within the Pedlars Act ie that pedlars also go 'other than from house to house' eg the public highway, the street.</p>	<p>services provided</p> <p>g. 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</p> <p>Croydon-v-Burdon 2002</p> <p>60. a pedlar does not actually have to stop solely for a sale or particular sales; he may stop to expose his goods; he may stop for the purpose of procuring orders</p> <p style="text-align: center;"><u>Private Acts</u></p> <p>*City of Westminster Act 1999</p> <p>61. trading by a person acting as a pedlar is not street trading for the purposes of the Act 'if the trading is carried out only by means of visits from house to house' [Section 3 (e)]</p> <p>62. selling by a hawker to occupiers of premises adjoining any street is not street trading for the purposes of the Act [Section 3 (b)]</p> <p>City of Newcastle upon Tyne 2000</p> <p>63. trading by a person acting as a pedlar is not street trading for the purposes of the Act 'if the trading is carried out only by means of visits from house to house' [Part 2 Clause 4]</p> <p>Medway City Council Act 2004</p> <p>64. trading by a person acting as a pedlar is not street trading for the purposes of the Act 'if the trading is carried out only by means of visits from house to house' [Clause 4]</p> <p>London Local Authorities Act 2004</p> <p>65. trading by a person acting as a pedlar is not street trading for the purposes of the Act 'if the trading is carried out only by means of visits from house to house' [Schedule 4 Section 21 (2)(a)]</p> <p>Leicester Liverpool & Maidstone Act 2006</p> <p>66. trading by a person acting as a pedlar is not street trading for the purposes of the Act 'if the trading is carried out only by means of visits from house to house' [Clause 4]</p> <p style="text-align: center;"><u>Private Bills in current Session</u></p> <p>Bournemouth Borough Council and Manchester City Council bills HL 2009</p> <p>67. trading by a person acting as a pedlar is not street trading for the purposes of the Act 'if the trading is carried out only by means of visits from house to house' [Clause 5]</p>
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<p>*NOTE: this finding amongst others overturns the literal interpretation of pedlars being only door-to-door sellers and provides conditions when in the street.</p> <p>*NOTE: introduces inconsistency with other legislation by prohibiting hawkers who are by definition also pedlars – open to HRA challenge A1P1 & A14</p> <p>NOTE: It is an abhorrence to all pedlars that government presumes to meddle with statute so casually – the definition of pedlary is the Pedlars Act in its entirety of which clause 3 gives indicative descriptions of those activities in 1871 <u>but includes the possibility of the Act evolving in time</u> to accommodate “or other person”</p>	<p>68. Clause 5 needs amendment [Opposed Bill Committee 1 July 2009]</p> <ol style="list-style-type: none"> a. the pedlar trading house to house survives b. *for those <u>not</u> trading house to house:- c. their goods or tools of handicraft must be carried on foot on the person or in a trolley pushed or pulled by the person with carrying capacity of no more than 1 cubic meter – subject to the next point d. they must not stop on one place for more than 5 minutes e. they must then move on at least 200 meters interrupted only by stops for a specific sale f. they cannot return to within 5 meters of any of their previous spots in a 12 hour period g. they cannot move to a position within 50 meters of another pedlar with the same authority h. they must display their certificate prominently i. the exception for pedlars is to be qualified to the effect that nothing in it shall be taken to extend the range of activities comprising acting as a pedlar” <p>*Reading Borough Council Bill</p> <p>69. trading by a person acting as a pedlar is not street trading for the purposes of the Act ‘if the trading is carried out only by means of visits from house to house or without any other means of support and does not include the trading of tickets’^[Clause 5]</p> <p>Leeds Borough Council Bill</p> <p>70. trading by a person acting as a pedlar is not street trading for the purposes of the Act ‘if the trading is carried out only by means of visits from house to house or without any other means of support’^[Clause 5]</p> <p>Nottingham City Council & Canterbury City Council Bills</p> <p>71. trading by a person acting as a pedlar is not street trading for the purposes of the Act ‘if the trading is carried out only by means of visits from house to house’^[Clause 5]</p>
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Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

<p>Answer:</p> <p>NO</p> <p>NOTE: Any qualification for how a pedlar may act has precedent in amendments to LG(MP)A – see all private bills since 1999</p>	<p>Reason:</p> <p>The Statute <u>definition</u> [Pedlars Act] of a pedlar is fit for purpose as per answer to Question 1.</p> <p>Precedent exists [as amended by OBC on Bournemouth & Manchester bills] to regulate the <u>activities</u> of a pedlar under LG(MP)A 1982 to include <i>“a pedlar’s goods or tools of handicraft must be carried on the person or in a trolley with a carrying capacity not exceeding one cubic metre which is pushed or pulled by the person, subject to the following points...”</i></p> <p>A certified trader with 1 cubic metre capacity is proportionately different to a licensed trader with up to 24 cubic metre capacity. The certified trader is mobile and the licensed trader static.</p> <p>This Question 3 indicates the authors lack of historical understanding of evolving legislation over past decade which acknowledges no public support for repealing the Pedlars Act and instead promoters have sought conditionality of pedlary in LG(MP)A. As all private Acts and current bills seek this route then the focus of this consultative process should shift away from amendments to Primary Statute to modifying /amending Secondary legislation only. Prior to this URN09/1074 pedlar.info submitted 12 Aug 09 a 40 page research document to assist policy available at http://www.pedlars.info/bis-consultation/59-bis-stakeholder-consultation-12-aug-2009.html</p>
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Question 4: Do you have alternative suggestions? Please provide them.

<p>Answer:</p> <p>YES – see above</p> <p>BIS should not prejudice this consultation by selecting some case law and ignoring other.</p> <p>Question 2 provides a full schedule of lawful activities of pedlars.</p>	<p>Reason:</p> <p>The definition of a pedlar includes the term hawker which by definition [Hawkers Act 1888] includes entitlement to use apparatus of any scale and proportion. The notion of a licensed pitch originated in the Hawkens Act and the 1982 LG(MP)A provided regulation for static pitches but did not restrict mobile hawking. This has led to confusion about scale and proportion of pedlars apparatus and it was the OBC on Bournemouth & Manchester 1 July 2009 that resolved the issue by regulating a carrying capacity of 1 cubic metre.</p>
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Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

<p>Answer:</p>	<p>Reason:</p>
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<p>NO: it is the training of enforcement officers about lawful pedlary that will most assist. Verification is a minor aspect of the greater issue of prejudice & harassment.</p>	<p>A database of pedlars would enable verification. Any doubt about identity already has legislation to detain for the purpose [Police & Criminal Evidence Act c.60 Part V] clause 54A (3) “An officer may... search or examine to ascertain identity ... if—(a) the person in question has refused to identify himself; or (b) the officer has reasonable grounds for suspecting that that person is not who he claims to be” Consultation clause 56 reveals the real purpose behind this question to enable the issuing of FPN’s which pedlars and Magistrates [see later questions concerning FPN’s] reject as unjust.</p> <p>Verification can be done with simple amendments to Form A and B of the Pedlars Act 1871, but the purpose should not be for the stated reason of increasing effectiveness of FPN's (para 57), which we object to later in this response. The addition of this statement confuses the issue and is leading the reader (LA's) into thinking that this is one of the main reasons for the updating of certificates, and which is of course the current government preferred option (iii) the issue of FPN's for offences, see our responses to questions relating to FPN's later on.</p> <p>Additional Costs: these can be met by pedlars no doubt, as the consultation states in para 59, and it is worth noting that police forces as public authorities have vast experience in issuing pedlars certificates and have been doing so for the last 138 years.</p> <p>In recent discussions with ACPO there is recognition that registration of pedlars certificates would be similar to registration of Firearms Licence.</p>
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Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

<p>Answer:</p> <p>NO</p>	<p>Reason:</p> <p>The additional requirement that all Non-EEC foreign nationals provide passport details with visa's to prove eligibility to work in the UK.</p>
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Question 7: Do you think that a national database of pedlars’ certificates will improve the current system of enforcement and certification?

<p>Answer:</p> <p>YES & NO</p> <p>Pedlars.info have begun consultation</p>	<p>Reason:</p> <p>The original Form A and Form B are adequate for the purpose provided that enforcement officers can access the data information. Pedlars contend that only the police have national competency. The consultation gives no indication of costs.</p>
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<p>with Inspector Carl Widdison at ACPO who is identifying a lead person on the issues of logistics and costs.</p>	<p>If implemented in the future the consistent criteria (Ref: Q5, Q6 above) required for certificates to be issued to persons nationwide can then be incorporated into a national database with the same consistent criteria being recorded on the database. This would lead to the possibility of a single point of contact since logically the database would need to be managed by a single contact point for all concerned (with relevance to Q9 below), in such a form the database would allow certificates to be verified quickly to the advantage of Pedlars and enforcement officers.</p> <p>It is worth noting that in para 63, Local Authorities have used shared databases to track retail enforcement and trading standards offences, but no doubt the same could equally be said of police to track criminals, an example would be the shared database of the DVLA and for police to enable instant verification of the registered keeper of a vehicle, which can be accessed on board police vehicles.</p> <p>Police could administer this database, and this could be drawn into statute by amendment of Clause 9 of the Pedlars Act 1871, which under Clause 21 of the Act would be recoverable.</p>
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Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

<p>Answer:</p> <p>NO</p>	<p>Reason:</p> <p>Remove all except name & number to protect privacy & data protection + add photograph & bar code.</p>
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Question 9: Would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

<p>Answer:</p> <p>YES</p>	<p>Reason:</p> <p>Pedlars believe that government failed them in hurrying a concession to the EU Services Directive in Nov 2009 for all the reasons then stated and should have sought ‘derogation and transition procedure’ as the matters were under current consultation by the Minister.</p> <p>Undetermined numbers of pedlars of services are now unprotected in law: The solution was as we proposed quite simple to bring the Pedlars Act 1871 into line with the services directive: A single point of contact could be established since this could be tied in with</p>
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	<p>the national database (see Q7 above), the system can be administered by a single UK government department in association with other agencies to include requirements such as residency extended to the EC and other nation states?</p> <p>The solution to conformity of the Pedlars Act 1871 with the services directive is not to cut away at those rights but to amend the statute to enable those rights to continue, as with pedlars' suggestions [Durham Report] with minor alterations to the Act itself and by incorporating data base proposals under the umbrella of a single point of contact.</p>
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Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

<p>Answer:</p> <p>NO</p>	<p>Reason:</p> <p>This question is considered derisory and irrelevant. Proving good character is as difficult as proving intent to act in good faith. Neither is relevant until judging the actions of a person after an incident. The question presumes guilt before innocence.</p> <p>The Pedlars Act of 1871 states that a pedlar must be “of good character”. Police database check is sufficient to determine suitability because there is or is not evidence available. No judgment is required and if it is that certificates should only be issued by LAs as the context of this question indicates: then there has to be consistency with applications for street traders licences, which is in itself not practical, as local licenses are only local and cannot apply to a national certificate.</p> <p>The applicant pedlar is self-assertive by way of credentials and assessment of own good character and the certificate is a testament to that.</p> <p>Point 68 - There is no national judge of morality and there is no stipulation in law for anything other than to be in one's own “recognizance”.</p> <p>BIS suggest in para 69, that the words “good character” be replaced by the use of the words “by reason of misconduct or other sufficient reason” for refusal of an application but the word “misconduct” is not defined. Misconduct can only be determined through law to allow for appeals against decisions not to issue certificates or</p>
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	<p>licenses. The words “or other sufficient reason” are so broad that these reasons could not be defined in law. These terms require clarity and definition in statute and as presented in this document do not further the clarification of who is suitable for a certificate any more than the term “good character” used at present in the 1871 Act.</p> <p>It has to be noted that the LG(MP)A states quite clearly (Street Trading Licenses 6(d)) that licenses can be refused to the person by reason of having been convicted of an offence, so the presumption is that those checks are carried out by LA's, <u>but the statute does not make this a legal requirement</u>. There is a very strong possibility that many licensed street traders may have been convicted of an offence, whether these are spent convictions or not, is beside the point.</p> <p>The Pedlars Act in contrast at 5(1), makes it a statute requirement that the person must be of “good character” and that “in good faith he intends to carry on the trade of a pedlar” for the issue a certificate.</p> <p>Notice also that convictions under the Pedlars Act, such as vagrancy (section 13) forgery (section 12), borrowing of certificate (section 11), certificate not to be assigned (section 10) are endorsed on the certificate, under Section 14 of the Act. The LG(MP)A does not have such safeguards.</p>
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Question 11: Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?

Answer:	Reason:
NO	As in Question 10 above... the criteria will not be consistent, but rather it will be ambiguous and undefined in law, therefore open to interpretation and without the safeguard of definition and clarity.

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

Answer:	Reason:
NO	Pedlars acting as such are exempt from street trading regulations

<p>Evidence in Durham Report that it would be very difficult to manage local authorities issuing pedlars certificates and achieve consistency:</p> <p>Durham Report Para 28: last sentence <i>The 'home' of the administrative function varied widely across authorities, complicating the process of identifying the correct person or department to which enquiries had to be addressed.</i></p> <p>Para 40: <i>Responsibility for street trading usually resided in licensing departments but some replies were also received from environmental health. The job titles of respondents also varied considerably, from different grades of licensing officers, licensing enforcement officers, town centre managers, environmental health officers, commercial managers and trading standards managers.</i></p>	<p>under Schedule 4 Section 2(a) of the Local Government (Miscellaneous Provisions) Act 1982. It is therefore not the remit of this Act to confer any power on local authorities to control or certify pedlars, the latter being the remit of the police under Pedlars Act 1871; this has been so since the 1871 Act received Royal Assent. Any arbitrary meddling with the Pedlars is considered abhorrent.</p> <p>On page 83 BIS raise a throw-away comment about public safety issues without substantiating what they are. Circulation patterns, placement of seats, bollards and other fixtures and fittings is a duty of the LA to consult with the Highways Department concerned with public safety and has nothing whatever to do with this consultation about pedlary and its control.</p> <p>Point 71 BIS identifies difficulty with altering the status quo but provides no indication of how such arbitrary disassembling of the Pedlars Act could work – it is simply not sufficient to make this proposal without thinking it through. BIS is very much aware of the powerful lobby group that seeks to get rid of pedlars and how their negative propaganda has influenced councils – this makes pedlars fearful that control of issuing certificates by councils will be heavily prejudiced and they will simply make up reasons not to issue with a simple “oh we’ve already issued enough”.</p> <p>Most councils have not adopted LG(MP)A and actually express a liking for pedlars but government’s preferred option B is unsubstantiated and follows the wishes of the few disproportionate lobbying councils. The consequences have not been properly considered.</p> <p>Amendment to the LG(MP)A will not impose on councils who have no desire to regulate street trading and who have not adopted the LGMPA and such force is likely to be construed to have no basis in law. This also applies to the various Local London Authority Acts, and appears impractical considering that the useful 1871 Pedlars Act already has a workable system in place.</p> <p>As evidence BIS in para 72 states that street trading licenses may be vetted by local police, but this is not a legal requirement under the LG(MP)A, only something councils may choose to do and no doubt BIS are aware of this fact by the use of the words “may be asked to conduct criminal checks”. The LG(MP)A states quite clearly (Street Trading Licenses 6(d)) that licenses can be refused to the person by reason of having been convicted of an offence, so the presumption is that those checks are carried out by LA's in conjunction with the local police, but the statute does not make this a legal requirement. There is a very strong possibility that many licensed street traders may have been convicted of an offence, whether or not these are spent convictions or not – these details have to be considered in</p>
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	<p>legislative changes to the LGMPA and not to the Pedlars Act which in contrast at 5(1), makes the issuance of a certificate a statutory requirement in that the person must be of “good character” and that “in good faith.. intends to carry on the trade of a pedlar”.</p> <p>Section 5(1) of the Pedlars Act has always been the remit of police forces. They have the dedicated expertise and resource to fulfill this requirement. Some clarification of the meaning of “good character” might be needed as was the findings of the Durham Report (Ref: para 68), which could be laid out in statute within the Pedlars Act as an amendment. It is doubtful that additional costs incurred for checks could be met, rather like the national database by an increase in the fees which are nonetheless recoverable under clause 21 of the Pedlars Act 1871.</p> <p>Besides costs, and to reiterate it is stated by BIS para 72: police <u>may</u> be asked to conduct criminal checks under the LG(MP)A, but it is not a requirement under statute. If for example the LA had the power to issue the Pedlars Certificate, they might not have a statutory duty to check the person either, depending on the wording of the statute which granted this power - as with licensed street traders at present. This would be wholly unacceptable in our opinion.</p> <p>Furthermore if the LA had a statutory duty to check with police about the persons conviction status, this would in effect not relieve police of any duty or as stated by BIS para 75 “free up valuable police time to enable them to deliver other objectives”, - that statement is pure conjecture, illogical and with unfounded reasoning.</p> <p>Finally the BIS statement in para 75, concerning the recommendation by “the policing bureaucracy taskforce” in 2005 to remove responsibility for issuing pedlars certificates from the police, has been found to be anecdotal, without any evidential substance or basis on how such a conclusion could have been made or to allow for any intelligent response on this point.</p> <p>Despite repeated requests by pedlars’ Roll B Parliamentary Agents for access to the Report by Alan Brown in the traffilightsummary.pdf referred to at footnote 4 page 76: - neither BIS nor ACPO have yet provided access and without it the recommendation cannot be considered and should be dismissed.</p>
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Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Answer:	Reason:
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Yes	See answers above to Q10, Q11, Q12...
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Question 14: What are your views on the above option, and how this might affect street trading or pedlar activity?

<p>Answer:</p> <p>No</p>	<p>Reason:</p> <p>BIS stating at para 80 that if the Pedlars Acts were to be repealed as a result of the certification function being transferred to LA's and the relevant provisions of the Pedlars Act being incorporated into LG(MP)A and Civic Government (Scotland) Act 1982, in para 81 comes to the same conclusion as pedlars do: - that this would not be possible unless all authorities were required under statute to have to adopt the LG(MP)A.</p> <p>A great deal of effort and thought was obviously put in the drafting of the Pedlars Act, as is evident from the numerous clauses and safeguards incorporated into the Act. It appears to us that if the Act was repealed and the relevant provisions incorporated into other Acts, this would be a pointless exercise, a waste of time, since as it stands, the Pedlars Act it is good law, but may need some tweaks to incorporate a proposed national database and extended requirements of criteria for certification. That would remove the complication of including those authorities that have not adopted the LG(MP)A, which BIS has also identified as a problem.</p>
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Question 15: With further work, do you think this option is viable? Please give reasons for your answer.

<p>Answer:</p> <p>No</p>	<p>Reason:</p> <p>We oppose the very principle of the notion, and maintain that the Pedlars Act is fit for purpose, and they can be amended to incorporate the improvements found within our other responses to this document.</p>
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Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act ?

<p>Answer:</p> <p>No</p>	<p>Reason:</p> <p>The Pedlars Act is as it states for Pedlars, anything else would not be for Pedlars, just other forms of licensed traders with different</p>
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	lawful rights to those of pedlars.
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Question 17: What are your views on the above option? Please give reasons for your answer.

Answer: Revoking the Pedlars Act is rejected	Reason: The Pedlars Act is fit for purpose and maintains legitimacy for a separate cultural identity for those who consider the profession a worthy one. Pedlars are not ONLY street traders and cannot survive by over-regulation from those who zealously seek absolute control but have only a limited perspective.
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Question 18: Which of the above options do you favour?

Answer: Option A Point 93	Reason: We oppose the notion of FPNs – see responses below for reasons why. NOTE: A driver does not have the car seized for a speeding offence so why does this document propose the seizure of a pedlar's goods before being proved guilty in court. Whether or not there is guilt, the loss of income for the period up to a hearing is substantial and ill-afforded by one who relies on his goods and apparatus to trade. Reply about failure in compensation is covered in Q19.
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**Question 19: Should Local Authority Enforcement Officers be given powers to:
issue fixed penalty notices
seize goods, with forfeiture by order of the Court?
Please give reasons for your answer.**

Answer:	Reason:
<p>NO</p>	<p>The consultation does not give an evidential basis to the need for FPNs apart from one reference to the “up to on average” cost of £7000 per prosecution, (UPTO ON AVERAGE - WHAT A VERY CURIOUS USE OF LANGUAGE) This forms the basis of a very dubious impact assessment cost benefit. (Q33. <u>Response</u> covers this in detail with additional research as to costs of prosecution)</p> <p>The consultation point 93 page 24 states “Seizure of goods ensures an immediate stop to illegal trading while a court case is pending” but the trading is not deemed to be illegal until a judgment is made. This BIS stated purpose does not strike a fair balance and is open to abuse – pedlars have evidence of cases where no proceedings have been instigated or are withdrawn at the last minute. One can only presume that this is modelled on private business as stated in point 92 of the consultation, which would be for items being used as evidence in a court, but it must be noted that retention of goods is unlawful under section 22 of PACE 1984 if a photograph or copy would be sufficient, which in the private business law adopted by some LA’s also conflicts with PACE. A person may also apply for goods to be returned under the Police Property Act 1847. This raises issues of <u>A1-P1 rights to property</u> and this proposition could be found to be disproportionate to the aim pursued - which at present is undeclared by BIS and can not strike a fair balance of interests. Without the stated purpose for seizure being declared by BIS it is very difficult to know why this is being proposed.</p> <p>As most of this consultation is modelled on private business the following applies: BIS is consulting on whether or not Fixed Penalty Notices (FPNs) or Seizure of goods should be applied to offences relating to Pedlary on the basis of “reasonable grounds for suspicion”. Private Acts (local laws) such as The City of Westminster Act 1999 have clauses relating to FPN's and Seizure.</p> <p>As government is using similar if not identical wording to those Acts and applying it to national legislation, it is useful to look at the text of those local laws:</p> <p>Section 6 Seizure: [extract from Bournemouth B C bill]</p> <p>(1) Subject to the following provisions of this section, if an authorised officer or a constable has reasonable grounds for <u>suspecting</u> that a person has committed a relevant offence, the authorised officer or constable may seize—</p> <p>(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</p>

- (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, or police who "has reasonable grounds for suspicion" may, if they think an offence has been committed, seize goods to be retained (unless perishable) until used in evidence in court.

The claim for suspicion is itself suspect and reflects on the now discredited use of those commonly known as "suss laws".

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 – and why these private business 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**.

For compensation to be eligible proof is required that the officer did not have "reasonable grounds for suspicion".

What does "Reasonable Grounds for Suspicion" mean?

This legal term has it's origins in American law and found it's 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 exists 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 of Craighead:

"My Lords, the test which section 12(1) of the Act of 1984 has laid down is a simple but practical one. It relates entirely to what is in the mind of the arresting officer when the power is exercised. In part it is a subjective test, because he must have formed a genuine suspicion in his own mind that the person has been concerned in acts of terrorism. In part also it is an objective one, because there must also be reasonable grounds for the suspicion which he has formed. But the application of the objective test does not require the court to look beyond what was in the mind of the arresting officer. It is the grounds which were in his mind at the time which must be found to be reasonable grounds for the suspicion which he has formed.. All that the objective test requires is that these grounds be examined objectively and that they be judged at the time when the power was exercised.

This means that the point does not depend on whether the arresting officer himself thought at that time that they were reasonable. The question is whether a reasonable man would be of that opinion, having regard to the information which was in the mind of the arresting officer. It is the arresting officer's own account of the information which he had which matters, not what was observed by or known to anyone else. The information acted on by the arresting officer need not be based on his own observations, as he is entitled to form a suspicion based on what he has been told. His reasonable suspicion may be based on information which has been given to him anonymously or it may be based on information, perhaps in the course of an emergency, which turns out later to be wrong. As it is the information which is in his mind alone which is relevant however, it is not necessary to go on to prove what was known to his informant or that any facts on which he based his suspicion were in fact true. The question whether it provided reasonable grounds for the suspicion depends on the source of his information and its context, seen in the light of the whole surrounding circumstances."

Lord Steryn:

"Certain general propositions about the powers of constables under a section such as section 12(1) can now be summarised. (1) In order to have a reasonable suspicion the constable need not have evidence amounting to a prima facie case. Ex hypothesi one is considering a preliminary stage of the investigation and information from an informer or a tip-off from a member of the public may be enough: Hussien v. Chong Fook Kam [1970] A.C. 942, 949. (2) Hearsay information may therefore afford a constable a reasonable grounds to arrest. Such information may come from other officers: Hussien's case, ibid. (3) The information which causes the constable to be suspicious of the individual must be in existence to the knowledge of the police officer at the time he makes the arrest. (4) The executive "discretion" to arrest or not as Lord Diplock described it in Mohammed-Holgate v. Duke [1984] A.C. 437, 446, vests in the constable, who is engaged on the decision to arrest or not, and not in his superior officers".

- This may look like more legal jargon but essentially what is said is that any authorised officer having only scanty evidence rather than absolute facts and thinks an offense is being or could be committed is within the law, and when scanty evidence is proved to be false it makes no difference to an appeal.
- Relating this to Pedlars imposes an insurmountable burden: with nothing more than goods seized due to suspicion; goods taken away with no right to compensation for unlawful seizure because of the near impossibility of proving an officer did not have "reasonable suspicion" in his mind when he thought of an offense.
- A log is required for every movement.
- Goods can be seized not only for evidence but also to be destroyed under a Forfeiture Order.
- None of the above is mentioned in the BIS consultation although there is mention of some Private Acts by name only appearing to be approved, point 92, which indicates more intention towards pedlars in further law.
- The use of this term "suspicion" does not allow for a fair trial and appears to engage ECHR article 6.

Fixed Penalty Notices FPN's

The numerous Private Acts that government seem intent on following also contain clauses relating to Fixed Penalty Notices (FPNs) as an additional option for authorised officers along with seizing goods.

An example relating to this is in one of the clauses in these Acts:

"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."

any liability to conviction for that offence by payment of a fixed penalty."

- The text 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 the word "grounds" has not been used in the Private Acts)
- So if the officer decides not to Seize goods as evidence for a court case or for a Forfeiture Order, the officer may also give an FPN instead.
- The option to pay rather than having goods seized, may prevent seizure, but refusal to accept an FPN gets goods seized.
- There are no clauses in these Private Acts that enable a pedlar to challenge an FPN in court, unlike the national proviso for car parking; Court proceedings will take place if these FPNs are not paid within 14 days and there is no definitive list of any "reasons" within the legislation.

Here is the dilemma for a pedlar confronted by an officer with these powers

- to pay an FPN and keep goods necessary for trade **or** try to prove in court that the officer did not have "reason to believe" an offence was being committed.

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

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Pedlars.info Press Release on FPNs:

Pedlars vehemently oppose BIS proposal for fixed penalty notices.

There is every indication that the government is preparing to follow the urging of police and local authorities to make pedlary a fixed penalty offence, carrying a penalty of £300. Stakeholder pedlars in consultation with BIS strongly oppose this proposal.

Penalties for illegal street trading, which pedlars support, are for black and white matters of objective fact. A person trading without a valid Certificate or Licence or was acting disorderly as a beggar, rogue or vagabond.

Not acting as a pedlar is entirely different; it is a subjective matter of judgment whether a person's actions are so removed from those of a lawful pedlar that the protection from interference granted by the Pedlars Act is removed and as a consequence there is an offence of illegal trading. The Magistrates' Association believes strongly that matters that require a judgment to be made, are matters that should be brought to court for that purpose.

The administrators of www.pedlars.info write:

“Enforcement officers may have seen the incident themselves, in which case they will be acting as witness, prosecutor, judge and jury, deciding on guilt and then sentencing the offence. Alternatively, they will be relying on the evidence of others, which the pedlar may not have the opportunity to challenge properly, and they may be deciding whether or not to issue a fixed penalty in the highly charged atmosphere of the immediate aftermath of observing the activities of the person. The Magistrates Association believe that such a decision should be made in the calmer conditions of a court hearing, when the evidence for each side can be presented and considered by those trained and experienced in judgment.”

Pedlars who choose to appeal against the fixed penalty by going to court would risk deprivation of their Certificate and a very much higher fine, so there would be quite disproportionate pressure not to dispute the penalty notice, regardless of whether they really accept their guilt. Pedlars who may have a reasonable defence should not be coerced in this way; it is simply unjust.

Perception of ‘failing to act as a pedlar’ and therefore ‘acting as an illegal trader’ covers a wide range of behaviour from minor lack of attention to remaining in one place whilst involved in conversation to that of flagrantly setting up a static pitch for the day, and the penalties available in court reflect this, having a wider range than those for any other trading offence.

The Government itself has said that that prosecuting pedlars involves a heavy burden of paperwork and is resource-intensive for the police and local authority officers, resulting in an unwillingness to prosecute. Faced with the choice between the heavy burden of taking the matter to court and the simplicity of issuing a fixed penalty, it is certain that many enforcement officers will opt for a fixed penalty, however bad the alleged offense may be.

This penalty and more seriously the offense will not see the light of day as there is no appeal structure and if the “offender” has elected to pay the penalty it is unlikely that publicity will also be sought or welcome. This procedure indicates an insidious cash gathering regime made more onerous by the only appeal allowed which is to the Secretary of State for determination about the level of charge.

Recent experience is regrettable with out-of-court disposals showing that enforcement officers cannot be relied upon to use them appropriately.

Once given these powers, enforcement agents misuse them with the certainty that pedlary is treated as a perceived offence.

This proposal places the convenience of councils and police above what is right in principle, may coerce innocent pedlars into accepting a fixed penalty, and is certain generally to target lawful pedlars.

<p>*Evidence from Durham Report states:</p> <p>Para 71: <i>Overall, less than one third of the respondents noted problems with pedlars in general (see table 12).</i></p> <p>Page 79 para 3: See answer to Q23</p>	<p>The Department for Business Innovation and Skills is well aware of pedlars often repeated and consistent view that the allegation of ‘failing to act as a pedlar’ is an unsuitable offence for the offer of a fixed penalty. It is therefore very disappointing that BIS rely on an LGA statement that “a recent survey* found that 51 out of 57 LA’s surveyed consider pedlars to be a problem”.</p> <p>BIS reliance upon a heavily prejudiced LGA media press release without any supporting evidence is not clearly stated, is not clearly referenced, is meaningful to an organisation representing only those whose expressed aim is to prohibit pedlary such as NABMA, and it seriously misleads readers of the document as it is difficult to regard it as anything other than deliberate.</p> <p>(This article was based on a Press Release 17 August 2009 by The Magistrates Association on the subject of “Careless Driving as a fixed penalty offence”)</p> <p>.....</p> <p>Note that forfeit is a concept which also engages A1-P1 rights of the individual as it does not appear to pursue a legitimate aim, which appears to be additional punishment for an offence: such measures are subject to scrutiny under terms of the ECHR and whether or not such measures strike a fair balance of interests, is a matter for Judicial Review.</p>
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	<p>Ascertaining identity of person holding a Pedlars Certificate</p> <p>BIS presume with promoters of private bills that enforcement officers have difficulty verifying that a pedlar’s certificate is authentic or that it belongs to the pedlar in question and they therefore want powers to seize goods from suspect illegal traders.</p> <p>Powers of investigation already exist under the Police & Criminal Evidence Act 1984 c.60 Part 3 clause 24 a constable may arrest</p>
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	<p>without warrant: “Anyone who he has reasonable grounds for suspecting to be committing an offence in order to ascertain the name of the person in question (in the case where the constable does not know, cannot readily ascertain, the persons name, or has reasonable grounds for doubting whether a name given by person as his name is his real name) and to ascertain the persons address, for the purpose of preventing the person in question, causing an unlawful obstruction of the highway, to allow the prompt and effective investigation of the offence or of the conduct of the person in question and to prevent any prosecution for the offence from being hindered by the disappearance of the person in question”.</p> <p>Part 5 clause 54A (3) “An officer may... search or examine to ascertain identity ... if—(a) the person in question has refused to identify himself; or (b) the officer has reasonable grounds for suspecting that that person is not who he claims to be”.</p> <p>Conflict exists between seizure in private acts where the goods are retained for up to 56 days and 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”.</p> <p>The rationale supporting seizure only applies to illegal traders but the promoters bills catch innocent genuine pedlars whose ability to continue trading is terminated for the period between seizure and return of goods following a magistrate’s hearing – a period of several months. The promoters submit that the bills contain a compensation clause for wrongful seizure but a pedlar’s challenge to an officer’s “reasonable grounds of suspicion” is irrelevant [O’Hara-v-Chief Constable RUC 1997] and therefore any claim for compensation insurmountable.</p> <p>Pedlars contend that adequate powers already exist under PACE and that loss of goods for the shorter period of obtaining a photograph or the taking of a sample is already a heavy burden on their innocence. Any greater powers are disproportionate in what should be a civil matter and amounts to a serious infringement of First Protocol Article 1 HRA 1998 – Protection of property.</p>
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Question 20: If you favour introducing new powers for local authority enforcement officers, can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this

or other areas? If you do not support further powers, can you provide evidence to support this view?

Answer:	Reason:
NO	Yes see above – will be open to abuse, this is not a question of evidence to justify the proposals which so far has been scanty to say the least (£7000 figure), but a matter of ECHR compatibility which appears to have been ignored so far in the consultation.

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

Answer:	Reason:
No	Do not agree with FPN's in principle for the reasons outlined above in Q19 and Q20 responses.

Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer.

Answer:	Reason:
No	Do not agree with FPN's in principle for the reasons outlined above in Q19 and Q20 responses.

Question 23: Do you agree with the Department's general perception, as set out above? If not, please explain.

Answer:	Reason:
Yes & No	<p>Para 94 – Pedlars agree with the department's view that genuine pedlars are not the cause of problems experienced by some local authorities, which concurs with the findings in the Durham Report. Illegal street traders are another matter and the two should not be confused.</p> <p>Following on from the above:</p>
Evidence in Durham Report of the intent of local authorities to control pedlars for the	<p>Para 95 – Pedlars agree with the department's view aside from those places with private Acts, which may become the subject of judicial challenge in the near future, and comparable only to the</p>

<p>control pedlars for the benefit of others.</p> <p>Para 48: - partial quote <i>Town centres represent areas where potential conflict between rate-paying shops and street traders may occur, leading local authorities to exercise their powers to protect the businesses that are most highly valued, by either banning trading or restricting the type of goods sold: 'We protect the town centre shops'.</i></p> <p>Para 64: <i>In conjunction with these responses, it should be noted that some local authorities showed a tendency to conflate rogues, illegal street traders and pedlars into a single group, and/or use inflammatory or pejorative language in association with pedlars: 'Pedlars regard themselves as untouchable and are often quite rude if challenged'; 'These traders are 'hit and run merchants' who come from nowhere and disappear again into the night. They may be selling counterfeit goods, or non CE marked goods'.</i></p>	<p>understanding that some local authorities want restrictions on pedlars to protect their client's local business arguing that the Pedlar represents an unfair competitive element within society because of the low cost of being able to trade anywhere - but this has not been assessed neither is it a fact.</p> <p>It must be stressed as fact that many LA's are unlimited companies (Ref: Duport.co.uk) and as such reckon they have an obligation to their clients, local retail business, to protect them from competition. We view this as being wholly unconstitutional and unlawful restraint of trade.</p> <p>Local Authorities may also reckon that a lawful pedlar on a street threatens their clients and therefore potentially the local purse, but the subject of this consultation should concern itself only about lawfulness of activities: - para's 94 & 97 "illegal trading", and avoid such terms as "unfair trading": - para's 94 & 96 which are purely emotive terms which encourage emotive response.</p> <p>Para 96 contains ideas that we agree with. Pedlars are small scale and do not have the same overheads as other business, this is so because they are itinerant traders, and by that they have no need to enter into contract for the services offered by the Local Authority Unlimited Company.</p> <p>Para 97, the department's view, concurs with the pedlars' view that pedlars are not convinced that they cause any of the problems being faced by local enforcement officers; add the difficulty faced by local enforcement officers in gathering evidence of illegal street trading under the current regime is more to do with the fact that LA's have a very restrictive view of lawful activities of a pedlar, do not understand case law with the lawful activities allowed, and choose to ignore precedents (see attached various council guidelines which do not concur with case law). The personal experience of pedlars in court concurs with this view, with numerous Crown Court appeals allowed there is a growing amount of useful interpretation of pedlars' activities by courts of law in the UK.</p>
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On-line spurious information from sample councils:

It has come to the attention of pedlars.info that some local authorities are producing spurious information to spike the legal process concerning pedlary, whilst ignoring the findings of government and Parliament.

Two examples are herewith considered; firstly Nottingham City Council:

click this link to the page: <http://www.nottinghamcity.gov.uk/index.aspx?articleid=1449>

The screenshot shows the Nottingham City Council website. The header features the 'My Nottingham' logo and the council's name. A navigation menu includes links for Home, Services, Where I live, Jobs, Planning, Councillors, Council Tax, and Contact us. A search bar is present. Below the navigation, a breadcrumb trail reads: 'You are here: My Nottingham Homepage | My Services | Business | Business and street trading licences | Street trading'. The main content area is titled 'Street trading' and contains the following text: 'Nottingham City Council controls street trading under the Local Government (Miscellaneous Provisions) Act 1982. Under this Act streets within the City Centre and some outside of the centre are designated as either "prohibited" or "consent". Street trading is not allowed on "prohibited" streets. On "consent" streets trading is only allowed with the consent of the council and consent agreements are issued for set positions. There is currently an on-going review of street trading and until this is complete, there are no street trading opportunities available. If you have a query regarding street trading please call 0115 9156970. Page last updated: 15 April 2009 2:01PM'. A sidebar on the left contains 'My Services' (Business and street trading licences, Street trading), 'Contacts' (Contact the Licensing Section, Email: general.licensing@no..., Tel: 0115 9156771), and 'Share this page' (On this site).

This page makes a false and misleading claim by inferring that the council controls all street trading. Under the quoted Act Council controls only those fixed pitches which it Licences. The Act clearly states that pedlars are exempt from street trading controls. The Council is causing undue harassment and intimidation of law-abiding pedlars by issuing them with a letter in which it is stated that:

- 1 It is a **CRIMINAL OFFENCE** to engage in street trading
- 2 Pedlars will have to prove that they are acting lawfully
- 3 Remaining stationary is an indication of illegal street trading
- 4 If prosecuted, Council will attempt to revoke the pedlar's Certificate

Firstly a pedlar is lawfully entitled to trade in the street.

In legal proceedings it is the prosecution that must prove that a pedlar, beyond reasonable doubt, was not acting as a pedlar.

There are many lawful reasons why a pedlar can be "remaining stationary": to trade, to exhibit, to discuss or to demonstrate skill in handicraft etc.

If prosecuted pedlars are entitled to seek an immediate Appeal of the decision.

The second example is Oxford City Council:

click this link to the page: <http://www.oxford.gov.uk/business/street-trading.cfm>

The screenshot shows the Oxford City Council website. At the top left is the council's logo, a lion on a shield with waves below it, and the text 'OXFORD CITY COUNCIL'. To the right of the logo is a search bar and a 'Search' button. Further right are links for 'Contact us', 'A to Z', 'FAQs', and the date '15.10.09'. An orange button says 'click to listen' with a speaker icon and the text 'oxford text to speech' below it. A dark blue banner across the top contains the text 'Welcome to Oxford' and 'Text only | A | A | A'. Below this is a light blue navigation bar with links for 'Business', 'Council', 'Environment', 'Housing', 'Leisure', 'Planning', 'Parking', 'Tax & Benefits', 'Community', and 'Youth'. The main content area has a breadcrumb trail: 'You are here: Home page > Business > Street Trading'. On the left is a sidebar with 'Home page' and 'Business' links. The main heading is 'Street Trading'. The text below reads: 'There are controls on Street Trading in Central Oxford in an effort to improve the environment. Please see the following links for further information:'. A table of links follows, including 'Local Government (Miscellaneous Provisions) Act 1982 (61kB PDF)', 'General Conditions Annual Consents and Fees (58kB PDF)', 'General Conditions Weekly Consents and Fees (57kB PDF)', 'Street Trading Fees (10kB PDF)', 'Consent Streets (93kB PDF)', 'Prohibited Streets (107kB PDF)', 'Map of City Centre', 'Consents Application Form', 'Peddling and the Peddler's Act 1871 (96kB PDF)', 'Leafleting The Local Government Act 1972 (61kB PDF)', and 'Leafleting The Clean Neighbourhoods and Environment Act 2005 (58kB PDF)'. On the right, there is a section titled 'Where you live' with a photo of a street and text about leafleting the Clean Neighbourhoods and Environment Act 2005 (58kB PDF), 'Street Trading Fees 2009-10 (10 kB PDF)', and 'Help with PDFs'. Below that is a 'See also' section with links to 'Where To Find Our Offices', 'Consents Application Form', 'Premises Licences', and 'New Premises Licence'. At the bottom right is a 'News' section with a link to 'Business news'.

This 2 page .pdf document selects case law to suit without indicating any case law which found the pedlar innocent. The Pedlar's Advice given includes:

- 1 You must not frequent Oxford City Centre every day
- 2 A pedlar using a portable stall in a street is not classed as a pedlar
- 3 You must remain in perpetual motion and not remain in one street
- 4 Other Councils rely on private Acts to alter the definition of pedlary

Firstly, no law exists that prevents a pedlar trading in Oxford every day.

A pedlar and a hawker are defined as the same – a pedlar carries goods and a hawker has a means of carrying goods. The definition and case law provides for a pedlar to use a small means.

Recent Select Committee Hearing on Bournemouth Borough Council bill found the notion of perpetual motion a nonsense and no law supports the claim that a pedlar may not remain in one street.

Other Councils have introduced private Acts to restrict pedlars but the two most recent being Bournemouth and Manchester have been blocked from proceeding on the grounds that pedlars activities include “other than only door-to-door” – i.e. in support of the Pedlars Act 1881 they “may act within any part of the United Kingdom”.

The third example is being handed to pedlars by Middlesbrough Council:

Middlesbrough Council

www.middlesbrough.gov.uk

COMMUNITY PROTECTION SERVICES

Licensing

PO Box 65, Vancouver House, Gurney Street,
Middlesbrough TS1 1QP
Tel: (01642) 245432



12 November 2009

Direct Line : (01642) 728011

Switchboard: (01642) 245432

Fax: 728902

Our Ref:

Your Ref:

When telephoning please ask for:

Licensing

Dear Sir/Madam

Pedlar's Certificate

8. If a person keeps 'resting' while displaying goods for sale, he is likely to lose the status of 'pedlar'.

The Council has taken the view that if you visit Middlesbrough on a regular basis you are not 'going from town to town'. In addition, if you are not constantly moving but frequently creating a pitch at which people approach you, rather than only stopping to sell, you will be deemed as acting as a street trader.

If any 'stall' is found to be of such construction which indicates it is designed for displaying wares rather than for the transport of goods, the Council's view will be that there is an intention by the stall holder to set up for business as a street trader.

If you are prosecuted under any of the above opinions (they are not statements of law) then you have very good grounds for Appeal.

Spurious Press Release from LGA:

Modern day Del Boys force call for law change

LGA press release - 4 August 2008

Changes to the law governing the activity of pedlars are needed to protect the public from fly by night traders and unsafe products, council leaders said today. The call follows a survey in which 90 percent of local authorities reported that pedlars were a problem and in some areas were linked to local gangs.

Councils are reporting that trading by pedlars is a growing problem on local high streets due to outdated and confusing regulations, which offer little protection to consumers.

The LGA surveyed councils and found that 51 out of 57 local authorities reported that pedlars were a problem in their area, while three councils already had local legislation in place to improve the way pedlars were regulated. Fifty-four of the 57 councils supported new national legislation, which is favoured by the LGA to give councils the powers they need to regulate pedlars across the country.

The 1871 and 1881 Pedlars Acts established the rules for pedlars, who would traditionally go door-to-door selling their wares or skills. However, those applying for pedlar permits today trade mainly in busy shopping streets or at fairs and resorts, but are exempt from local street trading regimes in place to protect consumers.

Their activity can also impact on established street traders, local businesses and markets, particularly during the summer. Thirteen councils, including Manchester City Council are currently seeking private bills from Parliament to bring local pedlars under the same rules that apply to licensed street traders, while the government announced a review of street trade and pedlary in July.

Hazel Harding, Chair of the Safer Communities Board of the Local Government Association, which represents more than 400 councils in England and Wales, said:

"The view of pedlars as harmless rogue Del Boy types is long gone. Pedlars can be here today but gone tomorrow, which makes it hard to stop them from selling faulty or unsafe products, while consumers have little chance of getting their money back for substandard goods.

"Their products are often poor in quality and even dangerous. Councils report that they operate in packs, sometimes linked to local criminal gangs, obstructing passers by and using intimidating and threatening behaviour.

"Like any traders, there are good and bad pedlars, however the rules that govern the way they operate are out of step with consumer protection law generally and in desperate need of updating. Prosecution of pedlars caught breaking the existing law can be costly and difficult, while the fines are often paltry.

"Councils are reporting that this is a problem across the country, so much so that a number of local authorities are seeking their own private bills from Parliament to change the way pedlars are regulated.

"The scale of this problem is such that there must be new national legislation to give councils in all areas the power to regulate pedlars properly, rather than relying on councils promoting numerous local bills. The LGA is calling on the government to reform the law through national legislation to protect the public and small businesses across the country."

ENDS

Author: LGA Media Office
Contact: Kallion Basham, 0207 664 3333

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines

discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Answer:	Reason:
No	<p>The issue of enforcement options has been dealt with above, FPN's, Seizure etc. Demarcation between street traders and pedlars exists within case law and the Pedlars Act. It is the local authorities who find it difficult to interpret the law, and so it is advisable that more complete and comprehensive guidance based on case law be raised for local authorities as recommended by the House rather than a greater increase in the scope for unlimited prosecution of pedlars.</p> <p>Neither this consultation, nor the Durham Report, provide evidence about the issue in relation to unfair trading and competition which without any backing to these claims makes an intelligent impossible.</p> <p>This, however can be added: - the concept of unfair trading and competition has been created by BIS taken from Sharpe Pritchards' submission to the UBC minutes of the City of Westminster bill 1999; - part of a modern commercial society is competitive by the very nature of business.</p> <p>BIS should be concerning itself with fairness through law, which under EU law concerns monopolies, which pedlars are not. BIS is confusing law with competition and being unfair. Unfair is an emotive term and reading this BIS document leads into thinking pedlars practices are unfair and set out to compete unlawfully with other business. BIS is there for the important understanding that business is by it's very nature competitive, leads to consumer choice and a fair market price.</p> <p>Para 100, states that there was no substantive evidence to suggest that pedlars activities should be restricted nationally, pedlars agree with this view, but fail to comprehend when told by BIS that the commons, ministers and the Lords seek to stop this procession of private bills that the government merely adopts private bill measures into binding national legislation.</p>

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

Answer:	Reason:
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<p>No</p> <p>*Durham Evidence: Point 117 confirms that during events there is no need to restrict pedlars as they abide by the instructions of police should they be found to be causing an obstruction as a result of their trading activities – and did not pre-empt the trade of a licensed street trader.</p> <p>*Point 127 <i>Altogether the pedlars in the sample spent less than 28% of their working time at festivals and 68% in town centres and just 4% of their time in other places and never worked door-to-door.</i></p>	<p>There is a leading presumption in this question, but without any substantiation for readers to agree with the notion.</p> <p>BIS at point 92 cannot justify using a private business model to restrict the statutory application of the Pedlars Act.</p> <p>JCHR has commented on this: Medway (private bill) Act, but since then no determination has been made by JCHR or Parliament about Article 1 Protocol 1 – interference with the rights of pedlars; judicial review is an option to be considered as to whether restricting a pedlar’s activities strikes a fair balance between that of possession of an economic benefit provided by a work instrument, the Pedlars Certificate or that of the general interest.</p> <p>Other places with current private bills, Reading, Leeds, Manchester and Bournemouth have realised this, so now there are no restrictions on where a pedlar may trade since the evidence presented by the promoters of the Bills was not sufficient to justify such restrictions. The bills have subsequently been amended to save the expense of any such judicial action. Acts based on the model are now currently pending scrutiny by the judiciary.</p> <p>There is simply no *evidence in support of restrictions.</p> <p>*28% of the time pedlars work at special events or festivals and any restriction is considered an A1P1 violation.</p>
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Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

<p>Answer:</p> <p>NO</p>	<p>Reason:</p> <p>see response to question 25</p>
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Question 27: Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice?

<p>Answer:</p> <p>YES</p>	<p>Reason:</p> <p>Point 104, highlights the many problems in trying to prohibit pedlars at certain events and or places or times of year. The idea does not appear to have a basis found in evidence that a problem actually exists and anecdotal claims by local authorities or others should not suffice and cannot be relied on.</p>
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<p>*NOTE: Pedlars require reassurance that BIS intends to fulfill this Services Directive obligation.</p>	<p>The issue of a single point of contact can be tied in with the national data base resolution with on-line certification.</p> <p>Pedlars of services expect BIS to fulfill the obligation of Article 16 “Freedom to Provide Services 1. Member States shall respect the right of providers to provide services in a Member State other than that in which they are established*” which for UK pedlars extends their rights throughout EC. The consultation fails to provide any indication about how this will be achieved.</p> <p>BIS have indicated the necessity for public security, and potentially public health, under Article 16(1)(b) and of proportionality under Article 16(1)(c).</p>
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Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

<p>Answer:</p> <p>NO</p>	<p>Reason:</p> <p>The checklist misses many key points of case law. BIS should review all the case law precedents and incorporate the current lawful activities of pedlars into the guidance.</p> <p>The draft contains many errors and is misleading to LA's and Pedlars alike as to what those current lawful activities are. It also does not make any reference to those places with Private Bills, or other local Acts of Parliament which effect a pedlar's lawful rights.</p> <p>See detailed reply to Q2</p>
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Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

<p>Answer:</p> <p>NO</p>	<p>Reason:</p> <p>Does not cover the many lawful activities of a pedlar in sufficient detail and contains errors at present - see answer to Q30.</p>
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Question 32: Do you have suggestions for amendments to the guidance? If so, please specify how the guidance might be reformatted, added to or subtracted from, and why.

<p>Answer:</p> <p>YES</p>	<p>Reason:</p> <p>Guidance has to be re-written and reformatted with the co-operation of pedlars with legal opinion. Reference to Annex B point 1 shows precisely the incompetence of this entire consultation which reserves itself excused by addenda such as this here under “Unlawful Pedlary”: “should not be taken as a definitive statement of the law..”</p> <p>Throughout this document there is perverse direction, incomplete case law, a lack of understanding about the lawful activities of a pedlar, and all as derived from answer to Q30.</p>
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Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

<p>Answer:</p> <p>YES</p> <p>Para 77: Evidence from Durham Report Table12 indicates that only 30% of issues related to pedlars. Table 13 includes officer costs but fails to take account of pedlars costs for legal representation and loss of earnings for downtime. Fair balance demands account of court costs only and which dramatically alters the 10:1 ratio.</p> <p>Av court costs to council alone £1648-£423=£1225 actual cost. Av court cost to pedlar £976 actual cost. True ratio is 1.25:1 and not 10:1</p> <p>Table 15: Of 456 obscure issues related</p>	<p>Reason:</p> <p>Pedlars are “happy” to be able to have this opportunity to exemplify their <i>bon fide</i> “good character” by supplying <i>pro bono</i> to the well financed sector of government regulation their information about how their activities have been and are misrepresented by this consultation, its authors, and by those undeclared promoters of attack on the unique and special law that safeguards pedlars, people, and the nation it serves. With reference to Regulatory Cost Analysis pages 74 & 85 BIS have calculated a 10 year benefit of £13 on one single anecdotal premise from a council officer at a meeting in Brighton with BIS mentioning £7000 figure on legal costs per case.</p> <p>Pedlars.info submitted 19 Nov the following question to BIS – “URN 09/1074 average costs £7000: 19 Nov</p> <p>please provides access to statistical information and calculation of the figures in your point 89 page 23 and whether any of those cases related to small scale genuine pedlary or as indicated they relate to large scale static trading/hawking</p> <p>BIS reply:</p> <p>The cost to local authorities of £7000 as an average to bring street trading cases to court was outlined by a local authority representative attending the session we held at the Trading Standards Institute in July. The precise nature of the offences or offenders was not clear. Other representations by or on behalf of local authorities to us and in the House, for example a Mr Scraggs’ input to day two of the Opposed Bills Committee on Manchester and Bournemouth, have described similar sums [disputed – see evidence in left hand margin] and a variety of circumstances (mostly as you know revealing illegal street trading as opposed to wrong doing by genuine pedlars). However, it seems the chief issue identified by local authorities is the cost of enforcement where they are presented with a trader not acting in accordance with a pedlar’s certificate. They claim that evidence gathering involving prolonged periods of observation, to the point at which they</p>
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<p>to pedlars only 3.2% end in conviction and 2.77% of street trader issues end in conviction.</p> <p>Evidence: extracts from minutes Bournemouth & Manchester -</p> <p>587. MR MALINS: You said it is £9,000 a year on street trading cases? (Mr Scragg) Yes.</p> <p>588. So that is people trading without a street trader's licence, so it includes them? (Mr Scragg) That encompasses people who are pedlars who have been found not to be peddling and people who have set up burger stalls or other street trading, ice-cream salesmen.</p> <p>589. So it includes many other aspects of illegality, apart from pedlars? (Mr Scragg) Yes.</p> <p>590. So why do I need to know about your costs on issues which I do not think are troubling this Committee? I thought we were talking about the pedlars. (Mr Scragg) A substantial amount of those costs will be down to the people who are claiming to be peddling.</p> <p>591. You tell me that</p>	<p>gathering, involving prolonged periods of observation, to the point at which they can prosecute for illegal street trading, is costly. In these circumstances total costs of up to £7,000 do not seem unreasonable. We look forward to receiving any responses which can either confirm this as being a reasonable estimate, or refute it. The remaining figures in paragraph 89 are sourced from the Association of London Government and relate to street trading prosecutions under the London Local Authorities Act and date from 2003/4."</p> <p>Pedlars.info submitted a further question 26 Nov to BIS – “ 12 URN 09/1074 average costs £7000: 19 Nov & 26 Nov</p> <p>In summary and factually your figure relies on a single anecdotal comment without substantiation and you have failed to indicate the nature of the offense or the types of offenders whether Licensed or Certified or neither.</p> <p>Please provide details of "other representations" made.</p> <p>As evidence in support you rely on Mr Scragg [Hansard] "757 (Mr Scragg) <u>It is difficult to quantify the exact costs</u> to the City Council. I can point to some legal costs of our Legal Department between 2006 and 2009 when the legal costs which were incurred in taking street trading cases amounted to £9,657. Of that figure, £3,187 was awarded in costs by the court which left a deficit of £6,500, and that is purely just legal costs and it does not take account of the costs of the time of my officers, the GMP officers and CCTV operators as well. On top of that, I also have to pay officers overtime to come out on Saturdays and Sundays when these traders are trading on a regular basis, and those are additional costs as well."</p> <p>We have prima facie evidence that the average over 3 years costs for 9 cases in Bournemouth & 11 cases in Manchester is £1105.</p> <p>We have further prima facie evidence that average income from fines amount to £547 with average loss of £558.</p> <p>In making your case at page 84 you calculate an unjustified $200 \times 7000 \times 10^{-3.5\%} = £13m$ but the above evidence calculates $200 \times 1105 \times 10^{-3.5\%} = £2.13m$</p> <p>Income from fines $200 \times 547 \times 10^{-3.5\%} = £1.055m$. Your claim of net benefit of £13m over a ten year period is a gross mis-calculation.</p> <p>Your reliance on anecdotal evidence from 1 individual and "others" unsubstantiated is unacceptable.</p> <p>Your cost analysis evidence on page 73/4, 80, 84/5 is flawed to the extent that readers are misled and incapable of forming an intelligent response about FPN's.</p> <p>The entire document URN09/1074 should be withdrawn as misleading.</p> <p>BIS reply:</p> <p>BIS will take your views on Average Costs and LGA Survey into consideration as the Impact Assessment is developed in light of responses to the consultation. BIS will not be withdrawing the consultation."</p> <p>Calculating with <i>prima facie</i> evidence: the average cost over 3 years for a case in Bournemouth & Manchester is £1105, and that</p>
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<p>now, but what was the point of telling me about the £9,000 when presumably five, six or seven, four or three were to do with something else different? Have you got a breakdown? (Mr Scragg) Well, I mentioned those figures to show that there is a substantial deficit and, if we broke down the cases, you would probably find that ----</p> <p>592. But have you broken them down? (Mr Scragg) No.</p> <p>593. So you have not? (Mr Scragg) No.</p>	<p>years for a case in Bournemouth & Manchester is £1105, and that average income from fines amounts to £547 with an average loss of £558.</p> <p>BIS at page 84 attempts to make a case by calculating an unjustified $200 \times 7000 \times 10 - 3.5\% = £13m$ but the above evidence calculates $200 \times 558 \times 10 - 3.5\% = £1m$.</p> <p>The BIS claim of a £13m net benefit over ten years is a gross miscalculation.</p> <p>BIS reliance on anecdotal evidence from 1 individual and unsubstantiated "others" is unacceptable.</p> <p>Pedlar.info has further evidence from its own research that councils do not have a system of differential accounting between officer time spent in the course of general duties and that specifically dedicated to pursuing cases.</p> <p>The Durham Report Table 15 reveals that issues ending in convictions for both street traders and pedlars are the same average 3%. See Table 15 in left margin</p> <p>The Durham Report point 69 page 23 reinforces the above figure in recognising that “There was also a degree of ignorance or misinterpretation [by councils] of the law ”.</p>
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Freedom of Information Act: Evidence from Manchester City Council:

	Please ask for: Matthew Lockett e-mail: m.lockett@manchester.gov.uk Tel: 0161 234 3756 Fax: 0161 274 0041
Date: 17 th June 2009	

Mr R Campbell-Lloyd
By e-mail

Dear Mr Cambell-Lloyd

Request for Information – Illegal street trading prosecutions

Thank you for your request for information, which was received by Manchester City Council on 8th June 2009 and has been considered under the provisions of the Freedom of Information Act 2000.

In response to your request, I have summarised the information as follows:

Please give full legal costs that Manchester City Council incurred in legal costs against illegal street traders in the past 3 years:	£9,657.98
Please state how many prosecutions:	11
Please state how many successful prosecutions:	11
Please state how many prosecutions are currently being processed in the Courts:	0

Freedom of Information Act: Evidence from Bournemouth Borough Council:

Public Protection
Town Hall
St. Stephen's Road
Bournemouth BH2 6LL



Telephone: (01202) 451451
Fax No: (01202) 451011

www.bournemouth.gov.uk

MIKE EDWARDS
Head of Public Protection

Direct line: (01202) 454674
Date: 17 June 2009

This matter is being dealt with by: Mrs L Hayler
Out ref: OFEW: Requests: 109662: LJH00757
e-mail: leigh.hayler@bournemouth.gov.uk

R Campbell-Lloyd
robert.admin1@gmail.com

Dear Campbell-Lloyd

Information Request – Freedom of Information Act

Further to your request for information received on 8th June 2009 please find below the material that you asked for.

Please give full legal costs that Bournemouth Borough Council incurred in legal costs against illegal street traders in the past 3 years. £12,000 approx.
Please state how many prosecutions. Nine
Please state how many successful prosecutions. Six
Please state how many prosecutions are currently being processed in the Courts. Nil

<p>*Durham Evidence: point 87</p>	<p>The Durham Report *point 87 stated that a case could be made that <u>new national legislation is not needed</u>: <i>instead local authorities and police could be encouraged to implement existing laws more effectively by clearer guidance</i> but BIS has ignored this recommendation in favour of more draconian measures.</p>
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<p>*Durham Evidence: Point 116</p>	<p>The Durham Report *found that there was widespread ignorance about pedlary by the police but also found that when officers checked legislation they often returned to assure the pedlar that he was acting within the law, sometimes going against the stated wishes of the local town centre manager.</p>
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<p>*Durham Evidence: Point 118</p>	<p>The Durham Report *states “<i>However, the same police officer also provided independent confirmation of a situation which had frequently been the subject of allegations by pedlars, whereby the council requested that police prevent pedlars from trading in prohibited or consent streets. This was accomplished either by (mis)informing the police that all trading was banned in such streets without council consent, or that it was ‘in the public interest’ (or words to that effect) that pedlars be removed. In this particular case, the request was politely refused after the officer had researched the appropriate laws. This lends some credence to the allegations made by pedlars, although we cannot estimate how widespread attempts by local authorities to influence the police may be</i>”.</p>
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<p>*Durham Evidence: Point 150</p>	<p>The Durham Report *states “<i>Two thirds of pedlars believed that there was no way to report individual harassment or systemic malpractice. Some indicated that superiors in the management chain or councillors could respond to complaints, but there was suspicion that these higher authorities would be complicit in the process and defend their own staff</i>”.</p> <p>Pedlars have no access to an Ombudsman or Tribunal to complain about harassment by council officers and the cost of legal action is prohibitive.</p>
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<p>*Durham Evidence: Point 154</p>	<p>Evidence of court costs to pedlars is about the same as court costs to councils and relatively few prosecutions that do go to court are successful - indicating that LA's do not know what they are doing or choose to ignore the facts of case law and statute law.</p> <p><i>“There were relatively few court cases among our sample: pedlars were successfully moved on, the threatened case never materialised, or pedlars were able to defend themselves adequately</i></p>
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<p>Durham Evidence: Point 155</p>	<p><i>materialised, or pedlars were able to defend themselves adequately such that no further proceedings occurred. Slightly fewer than one in three pedlars had been to court, but only two were found guilty and in one of these cases the interviewee admitted they were contravening the law ‘I was done under the Westminster Act – bang to rights’. The fines were £750 and £50 (plus £100 costs)”.</i></p> <p>“The reasons for acquittal usually involved there being no case to hear, such as where the Pedlars Act had been wrongly or too strictly interpreted by the relevant enforcement officer. One case sought to set a precedent in terms of the number of days traders were allowed in the same town. The pedlar had traded in the town for 7 out of 10 days, which was deemed to be excessive and not in the spirit of the law. Although the pedlar was found guilty by magistrates, the judgement was appealed, and the verdict overturned at crown court”.</p>
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<p>Durham Evidence: Point 159</p>	<p><i>“The research team personally conducted some small-scale fieldwork in Edinburgh and Manchester interviewing members of the public making purchases from pedlars. In addition to these short interviews a further 108 replies were received to a citizen’s questionnaire designed by pedlar stakeholders. The citizen’s questionnaire was generally handed out to customers by pedlars and then forwarded on to the research team through the post. All [120] the responses shown below relate to this questionnaire and the answers to postal questionnaires were consistent with the findings of short interviews carried out by the research team”.</i></p>
<p>Durham Evidence: Point 160</p>	<p>“Of these, the vast majority reported that their (usually limited) experience with pedlars had been positive – comments ranged from ‘fine’, ‘OK’ and ‘no problems’ to ‘excellent’ and ‘a great experience’. A few had had no dealings with pedlars, but could see no harm in letting them continue trading. No respondent indicated that they thought pedlars should be banned from trading in the streets, while 22 respondents specifically mentioned that they were opposed to traders working door to door. Typical comments on the potential removal of pedlars from town centres included: ‘It would be a shame to ban them’; ‘Sad’; ‘What’s the point?’”.</p>

<p>Durham Evidence: Summary page 66 re Street Traders</p>	<p>The Durham Report provides evidence from Street Traders that pedlars do not cause them problems.</p> <p><i>“Street traders on the whole do not sell the same goods as pedlars, nor do they compete directly for customers. One Street trader did express a view of lost earnings to illegal street traders selling</i></p>
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interviews	<i>inferior goods, but overall levels of competition were low”.</i>
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Durham Evidence: Point 207	<p>The Durham Report provides a general summary</p> <p><i>“There was broad agreement that, if the law remained much as it stands, guidance and procedures relating to pedlary could be much improved, including clarification of points of ambiguity in law – for example, the permissible size of trolleys, or how long a pedlar is allowed to remain stationary – which would reduce the level of inconsistency of enforcement around the country, and provide pedlars with a better defence against harassment”.</i></p>
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Question 34: Can you propose alternatives to bringing forward new statutory instruments as a legislative vehicle? Please provide evidence to support your proposals.

<p>Answer:</p> <p>YES</p>	<p>Reason:</p> <p>Primary legislation exists in the Pedlars Acts. Secondary legislation exists in the LG(MP)A which is adoptive and not compulsory and this is also evidence that not all LA’s seek greater powers to control pedlary. The Legislative and Regulatory Reform Act 2006 makes provision for the Minister to intervene as follows:</p> <p>1. Power to remove or reduce burdens</p> <p>1) A Minister of the Crown may by order under this section make <u>any provision which he considers would</u> serve the purpose in subsection (2). 2) That purpose is removing or <u>reducing any burden</u>, or the overall burdens, resulting directly or indirectly <u>for any person from any legislation</u>. 3) In this section “burden” means any of the following— (a) a financial cost; (b) <u>an administrative inconvenience</u>; (c) an obstacle to efficiency, productivity or profitability; or (d) a sanction, criminal or otherwise, which affects the carrying on of any lawful activity. 4) ... 5) For the purposes of subsection (2), a financial cost or administrative inconvenience may result from the form of any legislation (for example, <u>where the legislation is hard to understand</u>). 6) In this section “legislation” means any of the following or a provision of any of the following— (a) a public general Act or local Act (whether passed before or after the commencement of this section), or (b) any Order in Council, order, rules, regulations, scheme, warrant, byelaw or other subordinate instrument made at any time under an Act</p>
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referred to in paragraph (a),
but does not include any instrument which is, or is made under, Northern
Ireland legislation.

- 7) ...
- 8) ...
- 9) ...
- 10) ...

2. Power to promote regulatory principles

- 1) A Minister of the Crown may by order under this section make any provision which he considers would serve the purpose in subsection (2).
- 2) That purpose is securing that regulatory functions are exercised so as to comply with the principles in subsection (3).
- 3) Those principles are that—
 - (a) regulatory activities should be carried out in a way which is transparent, accountable, proportionate and consistent;
 - (b) regulatory activities should be targeted only at cases in which action is needed.
- 4) Subject to this Part, the provision that may be made under subsection (1) for the purpose in subsection (2) includes—
 - (a) provision modifying the way in which a regulatory function is exercised by any person
 - (b) provision amending the constitution of a body exercising regulatory functions which is established by or under an enactment,
 - (c) provision transferring, or providing for the delegation of, the regulatory functions conferred on any person, and provision made by amending or repealing any enactment.
- 5) ...
- 6) ...
- 7) ...
- 8) ...
- 9) An order under this section must be made in accordance with this Part.

Restrictions

3. Preconditions

- 1) A Minister may not make provision under section 1(1) or 2(1), other than provision which merely restates an enactment, unless he considers that the conditions in subsection (2), where relevant, are satisfied in relation to that provision.
- 2) Those conditions are that—
 - (a) the policy objective intended to be secured by the provision could not be satisfactorily secured by non-legislative means;**
 - (b) the effect of the provision is proportionate to the policy objective;**
 - (c) the provision, taken as a whole, strikes a fair balance between the public interest and the interests of any person adversely affected by it;**
 - (d) the provision does not remove any necessary protection;**
 - (e) the provision does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;**
 - (f) the provision is not of constitutional significance.**

	<p>3) ...</p> <p>4) That condition is that the provision made would make the law <u>more accessible or more easily understood</u>.</p> <p>5) ...</p> <p>13. Consultation</p> <p>1) If a Minister proposes to make an order under this Part he must—</p> <p style="padding-left: 20px;">(a) consult such organisations as appear to him to be representative of interests substantially affected by the proposals;</p>
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Question 35: Do you consider that a Reform Order attached to the LG(MP)A & LLAA would satisfy expedient amendment to legislation? If not please state why and what alternatives you would propose. If you agree please state the textual provisions in the form of amendment to the LG(MP)A.

Answer:	Reason:
YES	<p>Since 1999 Private Bills have attempted to restrict pedlary to house to house visits by modifying the adoptive LG(MP)A but the OBC on the Bournemouth & Manchester bills amended the misnomer relied on by the promoters that: <i>pedlars are only door-to-door sellers and must remain in perpetual motion whilst trading on the street</i>. The amendment clarifies that pedlars are not only door-to-door sellers and that they can trade “other than from door-to-door” i.e. anywhere as per the 1881 Act. Whilst trading in the street their allowable activities are conditioned.</p> <p>The London Local Authorities Act 1990 clause 2(e) extended clause (2)(f) LG(MP)A’82 to include hawking door-to-door.</p> <p>It is to no good law for BIS, this consultation or government to take up the private bill purposes to ban pedlars from the street, nor is it good law to impose on householders and those persons with a right of privacy in doors, by amendment to an adoptive public statute regulating public facility on the street by forcing interference onto the private domain.</p> <p>It is to no good law for BIS, this consultation or government to take up the private bill purpose of interfering with the LGMPA in order to alter the primary statute of the Pedlars Act, however, it is possible and expedient to amend the LGMPA to reflect Parliament’s most recent findings in committee and debate:</p> <p>Local Government (Miscellaneous Provisions) Act 1982 C.30 Schedule 4 Street Trading</p>

	<p><i>“Clause (2) The following are not street trading for the purposes of this Schedule –</i></p> <p><i>(a) trading by a person acting as a pedlar under the authority of a pedlar’s certificate granted under the Pedlars Act 1871;</i></p> <p><i>(f) selling things, or offering or exposing them for sale, as a roundsman;”</i></p> <p>Proposed amendments to clause 2(a) & clause 2(f):</p> <p><i>Clause (2) The following are not street trading for the purposes of this Schedule –</i></p> <p><i>(a) trading by a person acting as a pedlar under the authority of a pedlar’s certificate granted under the Pedlars Act 1871 subject to the following:</i></p> <ul style="list-style-type: none"> <i>i. a pedlar’s trade includes trading by means of visits from house to house</i> <i>ii. a pedlar’s trade also includes other than trading only by means of visits from house to house and includes trading whilst in the street</i> <i>iii. trading “town to town or to other men’s houses” and “only by means of visits from house to house” mean that pedlars are pedestrian and mobile in comparison with static licensed traders</i> <i>iv. a pedlar’s goods or tools of handicraft must be carried on the person or in a trolley with a carrying capacity not exceeding one cubic metre which is pushed or pulled by the person, subject to the following points:</i> <ul style="list-style-type: none"> <i>1. a pedlar may not stop in one static position for more than fifteen [15] minutes unless engaged in displaying skill in handicraft, trading or stopped with just cause by an officer</i> <i>2. a pedlar must then move on at least twenty [20] metres from that static position interrupted only by stops to trade, display, to engage with an officer or in compliance with rights granted by the HRA</i> <i>3. a pedlar cannot move to a position within five [5] metres of any previous position within a one [1] hour period</i> <i>4. a pedlar must display a Pedlar’s Certificate prominently</i> <i>5. the exception for pedlars is to be qualified to the effect that nothing in it shall be taken to extend the range of activities comprising acting as a pedlar</i> <p><i>(f) selling things, or offering or exposing them for sale, as a roundsman or:</i></p> <ul style="list-style-type: none"> <i>i. a hawker selling articles or things to occupiers of premises adjoining any street</i>
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Question 36: Do you consider that a Reform Order attached to the Pedlars Act would satisfy expedient amendment to legislation? If not please state why and what alternatives you would propose. If you agree please state the textual provisions in the form of amendment to the Pedlars Act.

Answer:	Reason:
YES	The Durham Report provides evidence that Form A and Form B of the Pedlars Act can be strengthened and that minor alteration to clauses imposes no substantial change.

	<p>AMENDMENT to Pedlars Act 1871 Clause 3 shall survive Clause 5 alter the fee to £12.50 or £25.00 or £50.00 or £100.00 to take account of current reasonable administrative costs. Clause 8 add third paragraph: <i>“The entry in such register shall also be entered onto a national police database and a public database [to be determined] where name, current certificate number, and issue date can be verified.”</i></p> <p>Schedule TWO - Form A – Form of Application for a Pedlar’s Certificate Clause 4. delete <i>“within the ... police area”</i>. Clause 5. My National Insurance number is ... Clause 6. I accept that my application will undergo a police criminal record check. Clause 7. Attached are 2 certified recent passport photographs. Clause 8. I accept that if this application is successful my name, my certificate number and its date when issued will be entered on a national database for public scrutiny.</p> <p>Schedule TWO - Form B – Form of Pedlar’s Certificate Delete the words <i>“within the ... police area”</i> Add: national database certificate number, photograph, name, date issued</p>
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Question 37: Do you consider that there may be consequential effects on other existing legislation if amendments are made to Pedlars Act and LG(MP)A? If so please say what legislation is affected and what amendments could be made.

Answer:	Reason:
<p>YES</p> <p>Evidence in Durham Report Point 20: These Acts do not make specific</p>	<p>Privately introduced Acts and bills are inconsistent and will be superseded by national Reform Order to the LG(MP)A.,LLAA and the Pedlars Act.</p> <p>REPEALS: City of Westminster Act 1999, City of Newcastle upon Tyne Act 2000, Royal Parks (Trading) Act 2000, London Local Authority Act 2004, Medway City Council Act 2004, Leicester, Liverpool & Maidstone Borough Council Act 2006, Northern Ireland Assembly Act 2006, Bournemouth Borough Council bill, Manchester City Council bill, Canterbury City Council bill, Nottingham City Council bill, Reading Borough Council bill, Leeds City Council bill.</p> <p>AMENDMENT to Essex Act 1987 Part V Clause 11 (2) Any person “[insert] <i>with the exception of a pedlar acting under the authority of a pedlars certificate issued under the Pedlars Act 1871</i>” who ...etc</p> <p>AMENDMENT to Hampshire Act 1983 c.V Part III Clause 7(2) Any person “[insert] <i>with the exception of a pedlar acting under</i></p>

<p>ref to the Pedlars Act and therefore do not apply to pedlars. Argument untested.</p>	<p><i>the authority of a pedlars certificate issued under the Pedlars Act 1871” who ...etc</i></p> <p>AMENDMENT to Cheshire County Council Act 1980 Sect 30 Clause 30 (2) Any person “[insert] <i>with the exception of a pedlar acting under the authority of a pedlars certificate issued under the Pedlars Act 1871” who ...etc</i></p>
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Question 38: Are there any other outstanding issues in relation to a proposed Reform Order?

Answer:	Reason:
YES	<p>a) There are certain issues in specific legislations to do with devolved government such as in Northern Ireland & Scotland that require further attention. In particular at point 45 vague reference to “what appears to be the current position in England & Wales” completely omits reference to Scotland without acknowledging the facts that case law in Scotland relies on case law in England recognizing that principles of law extend beyond jurisdiction. No mention is made about Scotland at point 89 option B & D. Point 117 proposes parallel guidance in Scotland but fails to provide legal differentiation in case law. Readers of this document are unable to make an informed decision or reply to any, if there are any, Scottish issues.</p> <p>b) The Olympic Delivery Authority (ODA) intend to take over “<i>a wide range of trading types, including trading taking place on private land and by certificated pedlars as well as street trading presently licensed by local authorities</i>”. Pedlars concerns are herewith notified.</p> <p>c) Hawkers (pedlars) of food require clarification by government (more than the Food Safety Act) as to whether any workable regime exists and if so what conditions exist for such as chestnut roasters, sellers of peanuts, candy-floss, coffee & croissants, ice-cream, drinks & water, sealed or unsealed food etc.</p> <p>d) Clarification is required on the outstanding principle of previous legislations such as the 1847 right of access without charge for pedlars and hawkers to any market, fair, or festival open for public use whether organised by local authority or private contractor.</p> <p>e) Guidance is required by government on the issue of doorstep sales and about publicity circulated by Trading Standards authorities and consumer advice organisations to be plain and purposeful with information for householders to understand the law and not to be scared by unnecessary fear.</p> <p>f) Pedlars of services are adversely affected by the government’s decision to remove the protection of a Pedlars Certificate in response to the Services Directive and an alternative remedy is required.</p> <p>g) Pedlars have been given (9 December 2009) an undertaking that all</p>

responses will be published on the BIS website and that should be the consultation result in proposals for statutory change BIS will have another round of consultation on the details of those proposals.

h) Pedlars contend that BIS Option of ‘do nothing’ is a nonsense reply to most questions and that ‘regulatory guidance’, having no teeth, will have little effect on changing the status quo in which pedlars consider that LA’s treat them unfairly. The Legislative amendment route is the only way to strike a fair balance between the aim of problem solving with a proportionate response. Two issues dominate all others – size of trolleys and certification.

Limiting the size of trolleys can be achieved by amendment to the LG(MP)A as proposed and would have immediate effect. Further it would address the problem that legislation failed to consider in 1966 when hawking licences were discontinued and remained unresolved in 1982 when the LG(MP)A on Street Trading was introduced – a legislative failure that caused 28 years of problems.

Tightening the Pedlars Certification procedure could have immediate effect of removing those without work permits, rogues, and vagabonds abusing the easy access system - but it may take some few years to gather the evidence of good effect and so pedlars seek in any Reform Order a period of adjustment to the new regime.

Pedlars live by an oral tradition and three years is a reasonable period during which most would be informed about the amendments proposed in this reply. Only then should BIS consider evidentially if more stringent measures need be introduced.

i) The Durham Report Research Group has now produced a reflective Policy Report titled “Selling in the Streets: Pedlary as an Entry Route to Entrepreneurship”. The document informs readers of the very real advantages in supporting the tradition of pedlary especially in these hard times. A link to the full report is at:

<http://www.pedlars.info/images/stories/roberts/braidford-2.pdf>

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