

11 May 2011 by email attachment to Roger Dennison, Senior Policy Advisor, BIS

Roger

I note that you have not responded to our pre-legislative scrutiny correspondence concerning potential victim status of pedlary dated 11 April... I understood the policy of BIS was to respond within 15 days?

There is now the need for you to respond to these further questions, comments and concerns that have been raised concerning your URN11/542 by various contributors to pedlars.info about the report.

Pedlars are concerned that your department has not taken the initiative offered it by pedlars' participation with the consultation of URN 09/1074 and how points of principle raised by pedlars have been ignored alongside matters about process such as pedlars' recommendations about certification which are able to be applied simply and in conformity to European Directives.

The concept that somehow a plethora of Local Authorities will be able to make up for the overall compass of a national statute appears to a majority view to be unworkable, and can be seen as a means to avoid the consequences of HMG being held to account in a European Court for unfair or maladroit procedure.

The questions should be read in conjunction with the numerical sequence in the report points 1-16.

We expect individual reply to each.

Executive Summary:

1.0 Please explain what aspect of licensed street trading legislation will be modernised? Does this refer only to Appeals to the Secretary of State in point 16?

Pedlars perceive that BIS intent has been to force pedlary under local controls with the fallacious reasoning of modernising.

2.0 Please explain how pedlary being recognised as *a legitimate business activity... subject to minimum restrictions* has in this Report been associated with *illegal street trading* and consequentially de-regulated with the effect that the said *legitimate business activity* has no longer any protection or differentiation from illegals?

Pedlars perceive that BIS are failing the conditions of the 1647 Social Charter and its continuation through the Pedlars Act of 1871.

3.0 Please explain why you mention the anecdotal figure of 4000 when a

more accurate figure of 48 million eligible persons will be affected?

Pedlars perceive that BIS is supporting the NABMA agenda but is seeking to avoid the implications of *proportionality* by diminishing the magnitude of effect.

4.0 Please explain why BIS does not explain historically that de-regulation of Licensed Hawkers in 1966 (LGA) was the primary cause for the 1982 (LGMPA) legislation to control large-scale static street trading and that certification under pedlary was the loop-hole that government policy, with obvious consequences, failed to appreciate?

Pedlars.info provided this historical context that BIS has decided to withhold from readers.

4.1 Please explain why BIS does not identify "obstruction of the highway" as the main reason why large-scale static street trading requires licensing and why any approved obstruction can cause a public liability concern for local authorities?

Pedlars perceive that BIS are covering up their predecessor's failings.

4.2 Please explain why this report has not drawn on and referred to the 71 point summary of the legitimate trading activities of pedlary provided by 17 contributors to the Pedlars.info response to the consultation?

Pedlars perceive your authors textual use of *efficient enforcement of street trading licensing* is misleading when it is obvious throughout the consultation that "efficient disabling of pedlary" was the intent?

5.0 Please explain why the Report did not refer to the grave decision of the Grand Committee in 2009, on the recommendation of BIS, to expunge pedlars with skill in handicraft from the Pedlars Act, over-ruling warnings from Pedlars.info?

Pedlars perceive that such cover-up shows deceitful intent.

5.1 Please explain why BIS accepts no responsibility for *this change in interpretation* when BIS is wholly to blame for its inability to read plain English in the words any self-employed activity...?

Pedlars perceive that BIS interpretation of all matters is therefore suspect and questionable.

6.0 i) Please explain why URN09/1074 led pedlars to await BIS proposals for amending the Pedlars Act to conform to the Services Directive and now in URN11/542 are met with the bland proclamation that *the certification system for pedlars is untenable... it is too restrictive...?*

Pedlars perceive this BIS mischief to be untenable. If it is too restrictive

then BIS in consultation is obliged to provide considered solutions - as described by Pedlars.info previously and again as follows...

Firstly: BIS submitted to Pedlars.info that: *We think that the requirement to have a pedlar certificate is a proportionate measure justified by the need to ensure that those with a criminal record are not allowed to sell services on the street and that consumers are able to know who it is that is selling the service so they can seek redress if something goes wrong.* This safeguard remains and BIS is obliged in the public interest to explain why there should be any reversal of this policy or any diminished concern.

Secondly: the "residency" restriction solution is simple... replace the restriction in the Pedlars Act 1871 Section 5 (1) and extend the allowance to all persons throughout the EU. This is justified in the context of the first point as made above and upholds the EU/GB policy of trade without barriers. BIS by review has the opportunity to widen UK trade with Europe rather than satisfying only narrow domestic demands and self appointing interests such as those expressed by NABMA.

Thirdly: BIS create difficulties in its use of English and its means of interpretation. This statement that BIS has *no evidence to support the need to impose an authorisation regime based on a test of "good character"* is fallacious as the question was never posed by research in the consultation thus evidence cannot be deduced. It is reasonable that any scheme of authorisation has means of establishing compatibility and such schemes as the CRB or the DVLA, as recognised and allowed in Europe are widespread in UKGB and are easily adaptable to any other authorisation scheme.

To simply remove text in Section 5 (1) of the Pedlars Act, at any other part of the Pedlars Act or as you recommend - to abolish the Pedlars Act, appears to allow for the spread of unlawful and unregulated activity. Please explain how you have come to these conclusions.

Fourthly: if a requirement for "modernisation" was required by the Directive (and it is not) then the nonsense "anachronistic" argument can be met with the following textual amendment to the Pedlars Act Section 3: *The term pedlar means any person who as a pedestrian travels and trades carrying to sell or exposing for sale any goods in any part of the United Kingdom - or words to that effect and which already exists in the Act.*

6.1 ii) your report *believes pedlars should not... be regulated under other schemes...(!)*. Please explain why currently you allow/endorse/provide-for-passage-through-Parliament with exactly the opposite contention supporting the notion of local council enforcement and control of pedlary?

Pedlars perceive a fundamental deception by BIS to benefit its own preference to remove statutory protection from pedlary.

6.2 iii) Please explain exactly what *elements of street trader licensing regimes are also not... compatible with the Directive...?*

Please explain why you believe that the 314 year old United Kingdom principle of pedlary should be compromised instead of promoted and strengthened under this current BIS watch?

Pedlars perceive a mischief by BIS in having *two separate street trading licensing regimes: one for temporary traders (registered in other EU countries) and one for all other traders (established in the UK)...*

BIS fails to understand why pedlary was ever an exempted activity. It is because it has nothing whatsoever to do with council approved obstacles/liabilities in the streets, that's why!

6.3 iv) Please explain the legal advice relied on to show that pedlars' proposed amendments to the Pedlars Act fail a compatibility test within the Directive?

Pedlars are concerned that the 108 page report lacks any real attempt to consider how to maintain the integrity of the Pedlars Act and instead has taken the most draconian policy measure without due consideration of less restrictive measures to achieve the stated aim. That aim was originally to **remove illegal traders** but has now turned into *meeting the Directive*.

6.4 v) Please explain the mechanism suggested by BIS to restrict pedlary from an activity open to the public to that *via a temporary local authorisation scheme...?* Please ensure your justification is in accordance with the Directive.

Pedlars perceive that BIS is being led by lobbyists NABMA et al whose decade long public agenda has been and remains "repeal of the Pedlars Act" and are fumbling to justify repression of pedlary on fallacious Health & Safety/Public Safety grounds. This paragraph in the Report indicates clearly the hidden agenda of BIS to assist powerful vested interests by guiding them in ways that can close off access to financially viable trading routes for pedlars.

Please confirm what body or organisation will evaluate the justification put forward by local authorities, and what will be the Appeal mechanism for pedlars from outside a jurisdiction?

7.0 Please explain why BIS is promoting the notions of *temporary local authorisation schemes* and *prior authorisation measures* and *other restrictive measures* against pedlars instead of promoting pedlar accommodation?

Pedlars expected the BIS report to offer 48 million eligible people a balanced approach rather than a series of repressive measures. This scheme by BIS has to be challenged as it has not sought sufficient justification on its effect on more than 48 million persons in the UKGB, neither does it sufficiently have

regard to Europe.

8.0 Please explain why this report has failed to provide government with any explanation as to how the Pedlars Act could be modified in accordance with the Directive?

Pedlars contend that BIS has fabricated changes not required by the *Directive* but which have origination outside the Directive but within BIS et al.

Pedlars.info identified the *alternative legislative vehicle* to BIS in August 2009 in a Reform Order under 2006 legislation - see page 11
<http://www.pedlars.info/images/stories/roberts/bis11.pdf>

9.0 Please explain how BIS thinks it can achieve a collaborative attempt to hoodwink the EU by intent in the words *must be made (to) mean... are no longer tenable, or practical...* when such a blatant propaganda campaign is so repressive to pedlars?

Pedlars perceive a disgraceful deception by the author(s) of this report and wish identity to be made known.

10.0 i) Please provide an impact assessment about how this policy will have effect on pedlars?

Pedlars know full well the consequences of losing the protection of a certificate and how this will place them alongside what the 1871 Act sought to remedy in contrast to rogues, vagabonds, beggars and criminals who will now as before 1871 be given free-range upon the highways. Consider where your policy will lead: criminals will be set to use hoards of child labour or illegal immigrants; differentiation between legal and illegal will become impossible; redress on person and products impossible with chaos inevitable.

Your policy is a replay of the repeal of the Hawkers License in 1966. BIS is deluded if this policy is believed to be workable. It merely repeats the sequence as noted since 1966 but now aided and abetted by BIS of councils who, with intent, do nothing about control of illegals until there exists sufficient evidence that a problem exists and then use that evidence to justify a private Act across its whole jurisdiction eg Leicester and others.

10.1 ii) Please explain, in the light of the paper "A Short History of Pedlary" by Pedlars.info why BIS fails to respond to the issue of mis-interpretation of text in the amendments to the exemption for pedlary in Local Authority Acts which is consistent in meaning in both the Pedlars Act and the private bill / Acts but with which BIS fails to address.

Pedlars contend that acting as a pedlar *within any part of the UK [1881]* is an exempt activity in all Acts including private Acts. BIS misguided interpretation has not been tested and places conflict between local and national Acts. The BIS reference to certain pedlars (meaning those trading in the street)

should not be caught by private or local Acts if they are interpreted in the proper context of the Pedlars Act.

10.2 iii) Please explain why BIS is exemplary in saying one thing and doing another for example by acknowledging that local and private acts exempt regulation of pedlary but then allowing *re-regulation through* the LGMPA, LLAA, COW etc. by another route.

Pedlars' mode of trade is a "travelling mode" as compared to a "static mode" and if BIS after years of having this explained to them still bury their heads in the sand of misunderstanding then who is competent in BIS to re-invent or *clearly define the exempted mode of trade..?*

Pedlars suspicion is that BIS is searching for a palatable yellow symbol (circa 1933) to imprint on the forehead of all genuine pedlars to assist easy recognition... BIS failed miserably to identify the lawful activities of a pedlar in the earlier URN and as far as local authorities are concerned all but licensed traders will be seen to be potential victims.

10.3 iv) Please specify what *parts of the street trading regimes* are required by the Directive to be amended?

Pedlars perceive that it is BIS shortsightedness that has brought on any need for urgent amendment.

11.0 Please provide reasons why BIS have not outlined possible amendment to the Pedlars Act to satisfy the Directive? BIS has not been able to clearly identify the Lords stipulation about requirements for a "*genuine pedlar*". It is therefore spurious of BIS to apply the same use of "*genuine*" to the term for "*genuine public safety reasons*".

Pedlars consider that the public itself may cause greater public safety concerns by its very number rather than by the presence of a small numbers of pedlars.

12.0 Please explain why BIS perpetuates the notion that there is any confusion whatsoever about *when the exemption for pedlars from street trader licensing applied*.

Pedlars are not at all confused because they can read plain English that does not require interpretation. Pedlary is an exempt activity in all street trading legislation... full stop! Pedlary is a different trading activity to static trading... full stop! Pedlars are itinerant, ambulant, mobile, moving, random, opportunistic, non-conformist, self-regulating, etc... that's it! It's called entrepreneurship... full stop! The BIS website has links and interviews with young entrepreneurs endorsed by BIS propaganda – a doctrine or policy that in itself does not entail results, but there are no interviews with young entrepreneur pedlars...why?

Unless there has been an undisclosed memo or remit that encourages BIS not to promote pedlary, it must be in the favour of BIS to commission Lord Sugar to spell out his message about pedlary that he's put out on his Apprentice program that "*when you are mobile the world's your oyster*" which of course also applies to the streets of London.

13.0 BIS / HMG now recommends that it is only the courts that can make definitive interpretation of the law, which in itself is part of tautology but is also a serious renegeing of responsibility for government to provide effective and reasonable guidance when setting down provisions in law.

Pedlars are aware, as must be those authorities that raise summons against pedlars that those summons are being issued erroneously. Summons for offences for example under the London Local Authorities Act of "*selling or exposing for sale any goods*" are being issued in spite of the provisions of the Pedlars Act granting the right to carry out that precise activity and in spite of explicit exemption in the Act for pedlars from regulatory provisions.

BIS has to explain to pedlars about any intention to *ensure the continued freedom of pedlars to trade and to prevent re-regulation by another route...?*

By reply please provide textual alternatives for consideration by those directly affected.

13.1 The exemption from street trading regulation for *acting as a pedlar* can be addressed by BIS by issuing guidance to local authorities that any alleged offence, in the first instance, should rest on proving beyond reasonable doubt that the said activity was or was not the lawful *actions of a pedlar* and the Summons should be issued for the civil offence of *not acting as a pedlar* within the terms of Pedlars Act.

Penalties can be increased to reflect a street trading offence but there is no justification to criminalise a person who is then disbarred through such as the CRB, and will then have the burden of a continual punishment that is disproportionate to the fair administration of justice that allows for reform and rehabilitation. Criminalisation denies opportunity for a potential lifetime of work with others such as the vulnerable or the official.

Please indicate how de-regulation of pedlary by the BIS preferred policy will avoid automatic implied criminal offence to over-zealous enforcers?

14.0 In this section of the Response to "A joint consultation on modernising Street Trading and Pedlar Legislation there is a fleeting moment of unexpected clarity. There is understanding that the chief identifiable problem for local authorities is educating enforcement officers to have *clarity about pedlars' mode of trading*.

Pedlars.info's "A Short History of Pedlary" (available online at <http://www.pedlars.info/pedlar-research/87-histyory-of-pedlary-foodstuffs.html>)

discusses *pedlars means or mode of trading* in detail and is able to provide BIS with a simple "in the field" check box so as to avoid the requirement of the preferred BIS option of forcing all pedlars to justify their actions in Court. It is also worth a mention that although the Response suggests that somehow the Pedlars Act, a national statute can or should be "modernised", there is little or no determination about how BIS as a national government agency is able to alter the LG(MP)A, which is in effect an adoptive Act, to be able to suit all the individual requirements of more than 480 local authorities, who in themselves as "private" bodies have their own constitutional independence. This quandary more than emphasises why it is that BIS has decided to not touch those "private" Acts such as the CoW and others currently in force. Please be aware that due to "alleged" government savings, pedlars no longer have the safeguard of Legal Aid, rarely have the means to pay for representation, and must defend themselves against formidable court orators without any likely success in a Magistrates Court and little chance on Appeal. Please confirm that this is not the intention of BIS to thrust this burden on to pedlars *that all pedlar issues be settled in Court..?*

14.1 Please confirm to pedlars why it is that BIS/HMG *do not intend to remove additional enforcement powers already obtained..?* Does BIS not understand that it is those unreasonable powers of seizure, confiscation and FPN's that are being so abused by some jurisdictions? Is such unfair privilege endorsed by BIS when the rationale and propaganda for BIS is for "***fair markets***" and is it not the duty of a national governing body to provide a national level playing field?

For those who don't understand the current unfair mechanism to disable pedlars here is a reality check so you know about "seizure": - law abiding pedlars are having goods and equipment seized under the provisions of seizure law for alleged offence of selling or exposing for sale their goods. From that bullying moment to the time of being entitled to enter a defence at Court can take several months. Those are intolerable months of loss of ability to work and no income, just preparation of a defence for wanting to work within the law. An innocent verdict does not compensate for months of loss of income whilst enforcers hide from prosecution using the provision of "reasonable suspicion that the person was committing an offence". That is what is unfair, disproportionate and makes pedlars potential victims of the law.

15.0 Please be aware that pedlars do not accept the BIS proposal to expunge & re-invent a meaning of the term "pedlar" especially given its appalling and controversial first attempt in Annex B of URN09/1074 and in the blatant lack of any indication in this "Response" 11/542.

The words *our forthcoming work* strikes fear and anxiety into all potential victim pedlars. It appears that there is intention without further consultation with those most vulnerable and directly affected by BIS and collaborators in

other departments such as the DCMS and the Ministry of Justice, to disrupt and destroy cultural, social and economic arrangements that have existed throughout many years and which form the context to and the reality of a national constitution and identity.

That a government department charged with coalescing international obligations with domestic arrangements should then use that charge to effectively dismember the domestic environment by wrongly interpolating the intent of international convention is not simply paradoxical but absurd, dangerous and liable to bring government into disrepute.

Outside of the UK pedlars have been prominent in averting catastrophe – in NY city USA, a pedlar gave warning to prevent the destruction in Times Square; the protest of a single pedlar in Tunisia has brought about civil revolution in North Africa and further to near neighbours in the Gulf and Middle East.

How is it that BIS/HMG on the presumption of a general interest has decided to ravage the simple livelihoods of ordinary self-employed persons known as pedlars who have satisfied the public need for centuries?

16.0 Pedlars involved in the consultation were not made aware of implications about removing *the right of appeal to the Secretary of State* as it seemed only to apply to the one aspect of the entire consultation that had relevance to *licensed street trading*.

What is now understood is the intent of BIS is to dismantle the existing legal framework from government responsibility and place all liability for decisions upon local authorities.

This not only removes the legal responsibility from HMG about fair administration it also places the financial burden on local authorities and the fiduciary burden upon local charge payers.

This ploy is being conducted under the assumption of the European indication of "subsidiarity" which has become translated in domestic terms as "localism", which with the existing legal framework of government responsibility dismantled, and all liability for decisions "locally" resting upon local authorities, controversial matters will only be resolved in courts where only the most wealthy with the most expensive of representation will have any remote chance of succeeding.

The twist to the terminology: so subsidiarity becomes "localism", and with HMG's secretary of state removed from the "decision making" process it will not be possible for any individual of this the UKGB "member state" to take the government to court on any basis of government liability.. it will all be down to squalid little courtroom tussles with squalid little local administrators enforcing the law as they the squalid little interpreters interpret it.. wanting justice is going to be a very expensive item.

BIS is headed towards the American way, but without any Bill of Rights.

Awaiting your prompt reply
sincerely

Robert et al at pedlars.info

Note: This initial response to the Executive Summary points 1-16 will be followed by further requests for greater clarification on 17-49, 50-233. We caution your further work on Next Steps 235-240 until this work is done.