

Briefing and Questions to HMG / BIS

Re: BIS Consultations URN 09/1074, 11/542, 12/605 & 12/606

Date: 11 January 2013

From: Stakeholder pedlars

Update on [Briefing to Secretary of State](#)¹ 29 September 2012

Stakeholders ask BIS to address fundamental Principles of Pedlary and respond to pedlars' genuine concerns

1 What is a pedlar?

A pedlar in modern parlance is "*any person*" eligible to vote who, by sworn affidavit to the Crown, declares "*I will act in good faith as a pedestrian trader in any part of the UK*".

The *Pedlars Act* (the *PA*) provides a **national** certificate that is fundamentally different from a **local** licence to trade in the street.

The Crown provides a **certificate** for a pedlar to have unfettered "discretion" whereas a local authority **licence** provides regulated "restraints".

A pedlar's trade is categorised **pedestrian** whilst the other is **static** requiring approval of fixed trading locations by the Highways Department for public safety.

A pedlar is more akin to any other pedestrian who goes shopping in public.

Some carry their goods and others use pedestrian means.

Any trading person found without a certificate or licence is categorized under street trading legislation as unlicensed and unlawful unless **exempted**. There are several other categories of exempted activities and many jurisdictions where no street trading legislation exists.

2 How many people are affected by government consultation on street trading and pedlary?

The voting public of some 48 million people have a right of access to this **unique British civil liberty** that provides total **entrepreneurial freedom** to enter into private contract with any other person in public without interference.

BIS does not know how many persons are practicing or are considering trading as pedlars but in such difficult times the numbers are increasing.

BIS has **not** consulted widely but has limited circulation of the URN to 0.35% of pedlars known by Durham University [research](#)²; 14% of councils including 9 that sought to get rid of pedlars through private Acts with numerous lobby organisations promoting negative agendas against pedlars; 2.5% of police jurisdictions and 3 members of the public of which there are some 48 million.

BIS has not provided stakeholders with data about how many Local Authorities (LA's) have adopted the *LGMPA*.

BIS whilst ignoring serious correspondence with pedlars.info has the impertinence to ask administrators at pedlars.info to inform pedlars about their consultation.

3 Has government policy changed without public consultation?

Two previous BIS consultations [2009 & 2011](#)³ proposed **updating** and/or **amending** the *Pedlars Act* & the Street Trading exemption for pedlary in the local adoptive street trading legislation of the *Local Government (Miscellaneous Provisions) Act* (the *LGMPA*), but the recent 2012 proposal seeks **repeal** of the *PA*.

BIS has disregarded its own policy analysis in 2009 of the *Services Directive* (the *SD*) that justifies retention of the *Pedlars Act*:

"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

1 <http://www.pedlars.info/bis-consultation/126-29-september-2012-briefing-to-minister-re-urn.html>

2 <http://www.pedlars.info/bis-consultation/60-durham-report-sept-2008.html>

3 <http://www.pedlars.info/bis-consultation/109-7-june-2012-pedlars-act-proposed-amendments.html>

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".

The most recent and third URN from BIS is an *a priori* shift in fundamental policy lacking the necessary protocol of a comprehensive public consultation required for a radically **new** policy that is driving **new** legislation.

4 What does government propose as Options?

Government, through BIS has proposed 2 Options:

Firstly **do nothing**;

Secondly **repeal** the *Pedlars Act* as an effective social contract and franchise.

Government has refused to consider the **Third Option** proposed by [pedlars](#)⁴ submitted on the basis of ongoing expectation to **retain and amend** the *Pedlars Act* that is now overshadowed by this latest BIS "so-called" consultation.

BIS propose abolishing the *Pedlars Act* and regulating the activity of people trading in public places (including the street) without any form of documented Authority or Identity.

Although HMG/BIS present this as proposed "national legislation" it does not extend to jurisdictions with private Acts nor to jurisdictions with no interest in regulating how people behave in public and do not share HMG's enthusiasm.

BIS wrongly submit the *LGMPA* as **national** legislation but it is more correctly an **adoptive** legislation for less than half of all major economic jurisdictions.

Fair and proportionate consideration about potential impact on the social fabric of the public franchise makes it appropriate for a minister to only proceed by means of a Public Bill and not to write-off the statute of the *Pedlars Act* using a hasty and ill-conceived Statutory Instrument without any proper alert to the public and without proper debate in parliament.

5 Why will BIS no longer consider amending the *Pedlars Act*?

Repeal of this liberty is considered by BIS to be a Final Solution to a decade long battle between **private Parliamentary business -v- pedlars' common law rights**.

BIS has doggedly refused to read, consider, reply or inform ministers about stakeholder's proposed amendments dated July 2012.

6 Why is repeal of the *Pedlars Act* a mischief?

BIS has a flawed [interpretation](#)⁵ of the *SD* and about its transposition into UK law because of the *PA* application criteria of "residency" and "good character". BIS consider these qualifications as an "Authorisation Scheme" that discriminates against members of other EU states making them ineligible.

BIS has failed to appreciate the fact that both the UK & EU states have a variety of complex forms of qualification for licensing such as for fire-arms and amateur radio including terms of residency and qualitative professional qualifications.

Pedlars propose simple amendments to cover legislative anomalies with the simple understanding of the need for a residential address to include references to fit professional and common sense requirements.

Government proposes that the **status quo of the national common right of civil law** be replaced by a system of introduced **codified restraints** made into local adoptive law that carry burdensome **criminal sanctions**.

This proposal in itself infringes [Article 1.5](#)⁶ of the *Services Directive*.

BIS seeks to expunge the *SD* recognised **profession** of pedlary as a British Cultural Identity.

Pedlars have warned BIS against forcing through this social engineering policy that introduces criminal sanction because BIS will directly infringe protections defined by the *SD* under "*social policy objectives and cultural policy objectives*".

4 www.pedlars.info/images/stories/roberts/pa-amendments4.pdf

5 another example is found in the *Provision of Services Regulation Act Section 45*

6 <http://www.pedlars.info/images/stories/roberts/sd.pdf>

BIS has not made public either of these policies nor any evidence basis for scrutiny. BIS has not justified repeal by any "overriding reasons related to the public interest" under **Article 4.8** of the *SD*.

7 What does BIS consider is the impact on pedlary?

Government claims the proposals will:

*"continue to protect the **rights** of genuine pedlars to operate... and... be free to trade with the **minimum of restrictions**".*

The draft regulations introduce an abhorrent implicit notion of pedlars being perceived only as **potential victims** by local authority unwarranted enforcement agents uninformed by the full extent of the law.

The Magistrates Association warned in 2009 that "*once given such powers, enforcement agents misuse them with the **certainty** that [pedlary] is treated as a perceived offence*".

8 What rights & restrictions is government referring to?

Pedlars *rights* currently extend to **any lawful activity** as is the case with any other person subject to common law.

Certified pedlars have no **restrictions** whatsoever except that they act "*in good faith*" as a pedestrian trader as compared to a stationary licensed trader required to be licensed under the Highways Act for causing obstruction on the highway.

9 Will pedlars be better off under the new BIS proposals?

The BIS proposals give no rights that pedlars don't already have.

BIS intends stripping away all rights and replacing them with draconian restrictions.

Here's what the government thinks is going to make good law!

BIS draft legislation - acting as a pedlar will not allow:

the trader to stop in 1 location for longer than 10 minutes

the trader must then move 50 metres to next location

the trader may not return to any previous location within 3 hours

Given that most shopping streets are less than 150 metres long this means that the trader will have only 30 minutes trading time as compared currently to 24 hours 7 days a week. It is doubtful that such a mischief is justiciable.

Gathering evidence will increase the burden of existing requirements on Local

Authorities and pedlars in any defence may require a GPS logging system to record their every move... pure mischief!

So let's consider the status quo...

Pedlars Act - acting as a pedlar allows:

a person to trade in any goods

to trade in any place

to trade any time

to trade without interference

It may seem a joke to ask if a pedlar will be **better off** trading under what BIS proposes as new law - but pedlars are aware that this Final Solution is no joke.

BIS reveals its ultimate intent & method to prohibit pedlary in draft Clause 5 giving powers to LA's to designate streets against **all persons** with a final insult being **except traders from other EEA States** who will have freedoms denied to UK nationals.

10 Is BIS draft legislation really national?

The major centres of economic activity that have introduced private Acts to discriminate against pedlary include 33 jurisdictions in London and 15 other cities.

So-called national legislation is therefore **not national** but represents about 30% of the nation that has adopted the *LGMPA*.

BIS proposals will have no effect whatsoever on those boroughs, towns & cities where **private law** denies competition and consumer support for pedlary.

11 Why has HMG / BIS not understood the pending Constitutional Crisis?

The House of Lords *Special Report Paper 242* on 4 private bills warns of the **impending conflict** between different exemptions for pedlary in national legislation and private legislation jurisdictions being "*wholly unacceptable*" because it is a continuation of a piecemeal approach.

BIS has no powers of enforcement to make private Acts consistent with national legislation or the *SD*.

BIS simply **invites** changes as parliamentary protocol prohibits government comment on private business.

BIS Branton warned parliament that all street trading legislation is currently illegal because they infringe the *SD*.

12 Why was the first private bill to restrain pedlary granted Parliamentary Ascent in 1999?

The City of Westminster Council's internal minutes confirmed in 1997 that "*genuine pedlars have never caused a problem in Westminster*" and in 1999 the promoters Roll A Parliamentary Agents *Sharpe Pritchard* informed parliament that "*genuine pedlars would not be affected by the CoW bill*".

By 2007 pedlars realised that the CoW Act made genuine pedlars potential victims to face criminal sanction.

Pedlars have since been defending their rights against each tranche of private business seeking to restrict pedlars liberty.

13 What are the problems with private Acts?

Private Acts rely on identical amended text for a pedlar's exemption from street trading legislation originating with the CoW Act, namely that the exemption applies "*if the trading is carried out only by means of visits from house to house*".

Pedlars interpret this text to be consistent with the *PA* description of "*town to town or to other men's houses*" meaning "*ambulant pedestrian trading in any public place*" as compared to "*static trading from an allocated fixed pitch*".

LA's interpret the exemption to mean pedlars may trade "**only** at houses".

BIS has failed to address the heinous inconsistency in this problem of interpretation.

14 What can parliament do to resolve this anomaly?

Pedlars cannot accept the financial burden of seeking Judicial Review on proper interpretation despite considering their arguments legally sound.

Pedlars have proposed amendments to BIS to **make compatible all legislation** including adoptive legislation, the national *PA*, and all private Acts through proper judicial interpretation transposed into legislation.

15 Has a Third Policy Option been considered by BIS?

Pedlars submitted pro-active proposals to BIS in July 2012 but BIS Onikosi wrote indicating she had *not read... will not read... don't know what's contained in the proposals... therefore cannot inform ministers... until after repeal is achieved*.

Norman Lamb, the then Minister at BIS was sent copy and asked to include pedlars' proposals in this current consultation. Neither have responded.

The proposals were made public by pedlars.info together with the BIS refusal to engage.

Pedlars then had no options other than to provide a [Briefing](#)⁷ to the Secretary of State listing Problem & Solution.

16 So what is the solution?

Pedlars ask that the Secretary of State **call-in** the consultation and begin the missing procedural step of publishing an unbiased evidence-based consultation on a revised understanding of the *SD* in the light of other European legislation such as *The Small Business Act for Europe* that anchors the *Think Small First* principle in national policy-making enabling Member States to disregard the *SD* for any policy contradictory towards

⁷ <http://www.pedlars.info/bis-consultation/126-29-september-2012-briefing-to-minister-re-urn.html>

micro-enterprises.

BIS should not overlook pedlary as a grass-roots micro-business.

British people including pedlars should not have to defend the people's liberty... that is a paid civil servant's job, elected MP's job and the job of Lords.
Parliament exists to serve the General Interest and not only the Private Interest.

Written Questions to HMG

to assist stakeholder's analysis of relevance in responding to URN 12/605 & 606

A government response to this list of 14 Questions asked by stakeholders was received on 21 March 2013. The BIS replies are [in blue](#).

- There has been no reply or challenge to the validity of the 16 background points.*
- There has been no response to pedlars [Briefing 29 September 2012](#) to the Secretary of State on "Problem/Solution".*
- There has been no response to [Simon Casey's legal question](#) as to why HMG has not applied the same powers to amend/repeal private Acts as per its policy re the Pedlars Act.*
- There has been no response by minister Jo Swinson to pedlars direct concerns – 10, 13, 18, 18 & 19 March regarding discrimination & malfeasance by BIS.*
- There has been no response from the BIS formal complaints contact.*
- There has been no response to pedlar's [Third Option proposals](#) submitted June 2012, updated 14 February 2013 in support of previous BIS policy to amend the Pedlars Act.*
- There has been no comment on pedlars analysis of [problems with BIS policy](#) notified to BIS 10 February 2013.*

Q1: HMG to confirm that the profession of Pedlary is recognised under EU law [*Services Directive [Recital 31](#) & Article 4.11*] and that the BIS URN 12/605 proposes to expunge a Crown authorised profession without a full public consultation?

A. It is true that pedlary is identified as a recognised activity in EU legislation. However, the citations above refer to professional qualifications for people working in regulated sectors such as the medical profession.

Repealing the Pedlars Acts would not abolish pedlary or prevent pedlars from operating. In fact the opposite is true - removing the certification process would reduce the bureaucracy in operating as a pedlar.

However, we understand that pedlars greatly value the recognition that is given to them as a profession by having specific UK legislation on pedlary. We are happy to consider as part of the consultation other options to achieve similar recognition whilst achieving the aim of making UK legislation compliant with the Services Directive.

The current consultation is a full public consultation.

Q2: To confirm that HMG is aware that repealing the civil right of pedlary and imposing, through a different route, regulations with criminal sanctions on pedestrians trading in public infringes *Article 1.5* of the *Services Directive*?

A. Article 1(5) says: "This Directive does not affect Member States' rules of criminal law. However, Member States may not restrict the freedom to provide services by

applying criminal law provisions which specifically regulate or affect access to or exercise of a service activity in circumvention of the rules laid down in this Directive.” Under our proposals, trading as a pedlar will still be an activity which legislation (the Local Government (Miscellaneous Provisions) Act 1982; LGMPA) recognises is not a form of street trading and is therefore exempt from the street trading licensing regime. The offences relating to street trading (set out in section 10 of the LGMPA) will not apply to pedlars that trade lawfully. They will apply, as they do now, to pedlars that trade in a manner which constitute illegal street trading activities - for example, pedlars that do not keep on the move but trade in a static position for a significant amount of time.

Q3: To confirm that HMG is aware that a Pedlars Certificate provides a pedestrian trader with unfettered access to the public as a common law Social Contract whereas the URN proposes to instigate a system of codified law that is inconsistent with the British constitution and diminishes the aegis of the Crown?

A. Repealing the Pedlars Acts would not deny or weaken pedlars’ access to operate. In fact the opposite is true - removing the certification process would reduce the bureaucracy in operating as a pedlar.

However, we understand that pedlars greatly value the recognition that is given to them as a profession by having specific UK legislation on pedlary. We are happy to consider as part of the consultation other options to achieve similar recognition whilst achieving the aim of making UK legislation compliant with the Services Directive.

The proposed new definition of pedlars has been designed to ensure that pedlars, street traders, local authorities and police are clear about the rights given to pedlars to trade in a variety of locations for specified periods of time. However, the definition is part of the consultation process and we welcome views from pedlars on this.

Q4: To confirm that HMG is aware that the last decade of private Acts has made pedlars in those jurisdictions potential victims for 2 reasons:

*“only by means of visits from house to house” is **ambiguous** in **interpretation** and pedlars trading between houses suffer seizure of goods without judicial process; BIS propose legislation that is a similar mischief devoid of clear interpretation?*

A. The Pedlars Act definition speaks of a pedlar being a person who “goes from town to town or to other men’s houses ...” We are aware that the Pedlars Act definition has been the subject of litigation. BIS is therefore proposing to clarify the definition of a pedlary so that in future there will be less litigation regarding the activity of pedlars. We hope that both pedlars and Local Authorities will give their views on the proposed new definition of pedlary to help achieve something that is as clear as possible.

Q5: To confirm that HMG is aware that regardless of interpretation of draft proposals a pedestrian trader carrying no licence is automatically guilty of an offence under the *Local Government (Miscellaneous Provisions) Act 1982 Schedule 4 paragraph 10* for trading without a licence and that this is the evidence that is currently relied upon in private Act jurisdictions to secure convictions by denying factual judicial scrutiny of the pedlar’s activity and rights?

A. Under our proposals, pedlars will be defined in the LGMPA and a pedestrian trader operating in accordance with the definition will be exempt from Schedule 4.

They will not need a licence to operate and so will not be committing an offence by not having one.

Q6: To confirm that HMG is aware of the constitutional crisis caused by the conflict of interest between private parliamentary business and the General Interest when considering the national civil liberty of pedlars' common law rights?

Q7: To confirm that HMG is aware that the *Pedlars Act* has primacy over local adoptive and private subordinate street trading legislation and that private Act sanctions against pedlary are ultra vires in using a private statutory power for a collateral purpose alien to the purpose for which it was granted namely the prohibition of unauthorised street trading?

Answer to Questions 6 & 7. There are practical limits to the Government's ability to change legislation such as finding sufficient Parliamentary time alongside other priorities. The Government therefore has no plans at this time to change legislation relating to the powers of local authorities to bring Local Acts.

BIS has alerted local authorities to the fact that that Local Acts are also subject to the Services Directive and that we believe that some of these Local Acts contain provisions which may not comply. It is for Local Authorities to respond accordingly by modifying or removing those provisions so that they do comply.

Q8: To confirm that HMG is aware that the BIS policy change from URN09/542 & URN 11/1074 to URN 12/605 & 606 on the basis that **pedlars will be better off** is **irrational** and defies the logic and moral standard that any sensible person could hope to reach?

Q9: To ask if HMG considers that BIS has acted **reasonably** by denying pedlars proposals for the Third Option to amend the *Pedlars Act* instead of only two Options limited to "do nothing" or "repeal"?

Q10: To ask HMG if refusal by BIS to read, consider, and report stakeholder alternative policy proposals to others in BIS constitutes **bias, procedural impropriety with failure to give pedlars an opportunity to be heard, failure to conduct a consultation properly and failure to give adequate reasons for refusal to engage?**

Q11: To ask HMG if BIS has failed stakeholder's **legitimate expectations** following consultations URN 09/542 & URN 11/1074 in that they could reasonably expect URN 12/605 & 606 to have proposed amendments to the *Pedlars Act* and Street Trading Regulation: this failure is on the clear ground that unequivocal assurances were previously made to pedlars as evidenced by pedlars' submissions in June 2012 - six months prior to the latest URN?

*Answer to Questions 9, 10 & 11. BIS did consider the proposal sent by pedlars.info. We decided not to include it as one of the options in the consultation but **all** submissions to the consultation, including alternative proposals, will be considered carefully and will be described in the Government's response.*

Q12: To confirm that HMG is aware that BIS has confirmed to parliament that all adoptive and private street trading Acts are incompatible with the European Convention rendering them currently illegal and that pedlars in those jurisdictions are currently unlawfully penalized as potential victims under the Human Rights Convention?

A. BIS has alerted local authorities to the fact that that Local Acts are also subject to the Services Directive and that we believe that some of these Local Acts contain provisions which may not comply. It is for local authorities to respond accordingly by modifying or removing those provisions so that they do comply.

Q13: To confirm that HMG endorse the Secretary of State for BIS to **call-in / withdraw** the current URN 12/605 and to then consult on *the Option* to retain and amend the *Pedlars Act*; amend the *LGMPA* exemption for pedlary and consider how such amendments impact on private *Acts* – this prior to any further consideration of **new** policy or **new** legislation?

Q14: To confirm that HMG will provide individual responses to each of these 14 questions by the end of January 2013 to enable the possibility for stakeholders to consider such response and assess the relevance of any reply to the URN consultation prior to the deadline for return that pedlars have notified BIS Onikosi should be extended for 3 months?

Answers to Q13 & 14. The consultation is genuinely seeking views on the best way forward – no decisions have yet been taken. We will read carefully all the responses and take them into account in preparing the Government’s response. This will aim to balance the views of the different stakeholders as well as delivering the Government’s obligations and objectives.

The consultation document has been available on the BIS website from 15 November 2012. BIS officials contacted previous consultation respondents and used all the channels available to communicate about the consultation to pedlars. BIS was not obliged to contact individually every pedlar in the country and it would have been a disproportionate cost [taxpayers’ money]] to do so. The consultation has been covered in the press and pedlars.info has extensively covered this and previous consultations. The consultation was scheduled for 12 weeks which is in the maximum time recommended in the Government’s code of practice on public consultations. Recently, BIS has extended the consultation period for a further 4 weeks to allow more time for pedlars and others to consider the proposals. We have also offered to meet pedlars and their representatives.

END
pedlars.info⁸

⁸ Pedlars launched a website in 2007 dedicated to not-for-profit publishing of information, resources and communications about pedlary. It provides a resource centre for all concerned with pedlary. It regularly provides “update alerts” to its readership and recognises severe limitations for those pedlars who neither read nor write because pedlary for them remains an oral tradition. The several researchers at pedlars.info prepare contributions and articles in response to issues arising whilst acknowledging the fundamental principle of pedlary being “individual” unfettered by any membership or organisation claiming to be the voice of pedlars. Sensitivities about pedlary and any proposal to repeal the Pedlars Act, though dismissed as “emotive” by adversaries to pedlary, are supported by the many pedlars who endorse in writing the work of pedlars.info. Errors and Omissions are inevitable and we welcome contributions that correct or challenge any text.

