



Regulation of street traders and pedlars

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The *Local Government (Miscellaneous Provisions) Act 1982* requires street traders to apply for a licence to trade in certain designated areas. Section 4 of the *Pedlar's Act 1871*, requires pedlars to apply for a certificate from the police in order to trade anywhere in the country. This note provides an overview of the current regulation of street trading and highlights legal differences between the treatment of street traders and pedlars.

This note also considers in detail the perceived problems with the current regulation. It considers the argument that the current law is unclear in its treatment of street traders and pedlars and is inconsistent with the street trading code. In effect, the argument that since certificated pedlars are exempt from the regulatory scheme of the street trading code set up under the *Local Government (Miscellaneous Provisions) Act 1982*, they enjoy significantly greater privileges than other street traders. This note also considers the fact that private legislation is being introduced by councils on a piecemeal basis to introduce 'location specific' laws to strengthen their powers to tackle street traders (including pedlars) and to remedy perceived problems in national legislation.

This note looks at the previous Labour Government's consultation in 2009 on the case for amending and modernising the law as it applies to the control of street trading and the certification of pedlars. It also looks at the position of the new Coalition Government.

For completeness, the final section of this note provides a brief outline of two Private Member's Bills, both introduced in the House of Commons in 2007 by Dr Brian Iddon MP, to confer powers on local authorities for the regulation of street trading by pedlars. Both Bills failed to obtain a Second Reading.

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1 Current legislation

1.1 Overview

Street traders are treated differently from pedlars.

In England and Wales, Schedule 4 of the *Local Government (Miscellaneous Provisions) Act 1982* requires street traders to apply for a licence to trade in certain designated areas. In Scotland, the *Civic Government (Scotland) Act 1982* gives local authorities powers to regulate street trading by requiring persons selling or offering to sell goods and services in a public place (whether from a kiosk, vehicle, moveable stall or otherwise) to hold a licence.

In contrast, section 4 of the *Pedlar's Act 1871* (as amended), requires pedlars in England and Wales to apply for a certificate from the police in order to trade anywhere in the country. In Scotland, licences are not required for any activity in respect of which a pedlar's certificate has been granted.¹

The Department for Business, Innovation and Skills (BIS) is responsible for policy concerning the street trading provisions within the *Local Government (Miscellaneous Provisions) Act 1982*. The *Pedlars Acts of 1871* and *1881* also fall within the responsibilities of BIS.

¹ Street trading and pedlary in Northern Ireland are covered by different statutes

1.2 Regulation of street traders

The *Local Government (Miscellaneous Provisions) Act 1982* provides local authorities in England and Wales with the option to adopt powers to regulate street trading. Street trading for the purposes of the Act is defined as "the selling or exposing or offering for sale of any article (including a living thing) in a street." This means that the Act regulates street trading in respect of the sale of goods only (not services).

It is important to note that the Act contains an exemption so that trading by a certified pedlar acting as a pedlar does not constitute street trading. If pedlars move away from these trading activities into other methods of trading on the street (e.g. static trading from a stall) then they would be subject to any street trading controls the local authority has implemented under the *Local Government (Miscellaneous Provisions) Act 1982*.

Those councils which do adopt the powers contained in the *Local Government (Miscellaneous Provisions) Act 1982* can designate streets in their area as:

- licence streets - where street trading may take place only under a licence issued by the local authority;
- consent streets - where street trading may take place only with the consent of the local authority;
- prohibited streets - where no street trading may take place

The local authority can then require street traders (but not certified pedlars) to apply for licences in order to trade in those streets. Under the Act, it is an offence to:

- engage in street trading in a prohibited street;
- engage in street trading in a licence or consent street without being authorised to do so; or
- contravene any of the principal terms of the street trading licence

A person guilty of an offence under this Act is liable to prosecution in the Magistrates Court and to a fine. However, street trading is lawful in any undesignated streets unless it offends against the provisions of the general law, for example, obstruction.

Since street trading consents are granted at the discretion of the district council, it may impose conditions to prevent obstruction of the street, danger to people using it, or nuisance and annoyance to people or otherwise. Alternatively, district councils may refuse to grant or renew street trading licenses if, amongst other reasons specified in the Act, there is not enough space in the street for the trade without causing interference or inconvenience to people in the street. A council may also take into account the character and experience of the applicant; the commodities to be sold; and the arrangements for the stall after trading hours.

Certain types of trading are exempt from control under paragraph 1(2) of schedule 4 to the Act, either because they are regulated in some other way, or because no controls over them were considered to be necessary. The following are not street trading for the purpose of the Act:

- trading by a person acting as a pedlar with a pedlar's certificate granted under the *Pedlar's Act 1871*;
- anything done in a market or fair, the right of which was acquired by virtue of a grant or established by virtue of an enactment order;

- trading in a trunk road picnic area provided by the Secretary of State under section 112 of the *Highways Act 1980*;
- trading as a news vendor;
- trading which is (i) carried on at premises used as a petrol filling station; or (ii) is carried on at premises used as a shop adjoining premises so used and as part of the business of the shop;
- selling things, or offering, or exposing them for sale as a roundsman;
- the use for trading, under Part VII(A) of the *Highways Act 1980*, of an object or structure placed on, in or over a highway;
- the operation of facilities for recreation or refreshment under Part VII(A) of the *Highways Act 1980*;
- the doing of anything authorised by regulations made under Section 5 of the *Police, Factories etc (Miscellaneous Provisions) Act 1916*

Importantly, some local authorities have passed Private Acts which modifies their powers relating to street trading and pedlary – these are dealt with in section 2 below.

1.3 Regulation of pedlars

Pedlars are exempt from street trading regulation.² Instead they are regulated by the *Pedlar's Act 1871* (as amended), which requires pedlars to apply for a certificate from the police in order to trade anywhere in the country.

Specifically, under section 4 of the *Pedlar's Act 1871*, no person may lawfully act as a pedlar without a pedlar's certificate granted by the police.³ Section 3 of the Act, which makes provision for the issue of certificates, defines a pedlar as:

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

In other words, a pedlar is defined as an itinerant trader. He travels and trades on foot. However, case law has established that a trader may act as a pedlar even if he is not travelling from town to town on foot.⁴ Accordingly, a person who travels from town to town by car and then proceeds to trade from house to house on foot is a pedlar, because in passing along each street he is held to be 'travelling'.

However, if an individual tries to sell goods from a fixed position he may not be classified as a pedlar. It has been established that a certificated pedlar cannot lawfully trade from a fixed position without a street trading licence. The two cases of *Watson v Malloy* and *Watson v Oldrey* [1988 1 WLR 1026], heard together by the Divisional Court, qualified the statutory definition of a pedlar. In *Oldrey* the trader, who held a pedlar's certificate, sold wrapping

² *Local Government (Miscellaneous Provisions) Act 1982*, paragraph 1(2) of schedule 4

³ Punishable on summary conviction with a fine of up to £200

⁴ *Sample v Hulme* [1956] 1WLR 1319

paper from a portable stand as she travelled by car from town to town. In the case of *Malloy* the trader had also been travelling from town to town and also operated from a portable stand. The court came to the conclusion that the activities of the two traders were not, at the relevant time, those of pedlars. The 1871 Act required the pedlar to "trade whilst on the move". Hutchison J observed: "...a pedlar is one who trades as he travels as distinct from one who merely travels to trade. I do not mean that he must not stop...the chair mender stops in order to mend chairs: but the feature which makes him a pedlar is that he goes from place to place, mending a chair here and a chair there. He comes to the owners of distressed chairs, rather than setting up his pitch and allowing them to come to him."⁵

In effect, the court's decision prevents the pedlar from operating from a pitch – he must move. A pedlar is required to go to his customers. He is permitted to stop and then to trade, but he is not permitted to set up a stall in a pre-selected location inviting customers to come to him. This view appears to be supported by the Metropolitan Police, who indicate that:

A pedlar is a person who travels and trades on foot and goes from town to town or house-to-house selling goods or offering their skills in handicrafts. These are the doorknockers selling such things as, pictures, dusters etc. A person who acts without a pedlar's certificate commits an offence. A pedlar's certificate does not entitle you to undertake Street-trading activities. A pedlar must hold a certificate granted by the Commissioner of Police. The certificate is valid for one year and applies throughout the United Kingdom. Certificates cannot be issued to persons under 17.⁶

2 Piecemeal private legislation by local authorities

A number of local authorities have obtained Private Acts of Parliament and others are promoting private Bills to extend their enforcement options in relation to street trading. In effect, Private Acts of Parliament are being introduced by councils on a piecemeal basis to remedy perceived problems in national legislation. The pattern seems to be that one council will introduce 'location specific' laws to strengthen their powers to tackle street traders and then the neighbouring council will seek a similar law because the problem has simply migrated over the border (e.g. Medway and Maidstone).

The Private Acts tend to be identical in scope and have five main purposes:

- to extend the scope of Schedule 4 to the *Local Government (Miscellaneous Provisions) Act 1982* so that it enables each Council to regulate the provision of services on the street as well as the sale of articles;
- to alter the exemption enjoyed by pedlars from the street trading regime contained in the 1982 Act (in effect, a certified pedlar wishing to trade in goods or services in designated streets, other than door to door, even while acting as a pedlar, would need a licence from the local authority to do so);
- to empower council officers or police constables to seize articles, receptacles or equipment, in cases where they believe a street trading offence has been committed;
- to allow the court to order the forfeiture of any article, receptacle or equipment which is shown to the satisfaction of the court to relate to the offence; and
- to enable council officers to serve fixed penalty notices in cases where they have reason to believe that street trading offences have been committed

⁵ Ibid at p.1032

⁶ <http://www.met.police.uk/askthemet/pedlar.htm>

By way of example, the following local authorities have successfully obtained Private Acts of Parliament: Westminster (1999); Newcastle-Upon-Tyne (2000); Medway Councils (2004); London Local Authorities (2004); Leicester, Liverpool and Maidstone Councils (all 2006); Bournemouth Borough Council and Manchester City Council (2010); and Birmingham, Derby and Sheffield. As private legislation, the Acts have no direct significance outside of their respective boroughs. In practice this means that a pedlar operating in, say, Newcastle will be subject to the provisions imposed by the Private Act but if he wanders into another borough he will be subject only to the provisions of the *Pedlars' Act 1871*. In effect, there is now inconsistency in the way in which pedlars are treated in different parts of the country. Various local authorities have also complained that private legislation is both time-consuming and costly. For instance, Newcastle-Upon-Tyne's legislative action cost nearly £200,000.

On considering the *Bournemouth Borough Council Bill* [HL] and the *Manchester City Council Bill* [HL], both introduced into the House of Lords on 22 January 2007, the House of Lords Select Committee concluded that the Bills should proceed without amendment in respect of those provisions which will enable the local authorities to introduce a new licensing regime to regulate all street trading.⁷ However, the Committee had strong reservations about the use of such piecemeal private legislation and made the following recommendation:

It [the Committee] considers that the Government should undertake an urgent review of the law on trading in the streets and selling from door to door with a view to producing national legislation which reflects current conditions.⁸

3 Other perceived problems with the current regulation

3.1 Unclear legislation

It is argued that the current regulation of street traders and pedlars is not clear. As can be seen from the Minutes of Evidence to the Unopposed Bill Committee on Leicester City, Liverpool City and Maidstone Borough Council Bills:

[T]he superior courts have come to a number of different and somewhat conflicting decisions as to what [the definition of a pedlar] means, each based on the particular circumstances of each case. These decisions have left an unsatisfactory situation for the councils, who have to make a judgment, based on these High Court authorities, as to whether or not prosecute. In effect what this means is that the councils' officers, in order to assess whether a person with a pedlar's certificate is acting under its authority *bona fide*, have to watch to ensure that the pedlar moves around now and again. There is authority to say that, like a street trader, a pedlar can operate from a stall and that he is entitled to trade for as long as he likes in the same street as long as he moves around occasionally. Those with certificates soon learn what they can get away with and carry out what is effectively street trading without fear of prosecution. This is illustrated in a recent case in Leicester which Mr Broster has told me about. A pedlar appealed against his conviction to the Crown Court and his appeal was allowed on the basis that he had only been stationary for a period of 20 minutes. Bearing in mind the cost of carrying out a prosecution, the councils are reluctant to take enforcement action, not just because of the absence of any deterrent effect in the fines handed out,

⁷ The Bills can be viewed at: The Bills can be viewed at:
<http://www.parliament.the-stationery-office.com/pa/ld200607/ldprbill/003/003.htm>
<http://www.publications.parliament.uk/pa/ld200607/ldprbill/002/002.htm>

⁸ Select Committee on the Bournemouth Borough Council Bill [HL] and the Manchester City Council Bill [HL], "Special Report", 10 July 2007, HL Paper 148

but also because of the inconsistency between courts and the unpredictability of their decisions.⁹

The Committee (considering a Bill that would *inter alia* increase powers to prosecute for unlawful street trading in those particular areas) took evidence from a Mr Lewis who presented the Committee with an overview of the law. During the course of that evidence he set out the differences between the pedlar and street trader regime:

I will describe in seven short points the differences between the pedlars' and street traders' regimes. First, a street trading licence or consent is not transportable from one district to another. In most cases a street trader would be given a licence or consent to trade in one particular pitch or area, although there may be consents for itinerant traders, most notably ice cream vans. Secondly, the councils can conduct a thorough "fit and proper person" assessment of the applicant, including checks with the local police and checks on the council's own prosecution records for unlawful street trading and other trading standards offences. That is an important point because if, for example, the prospective pedlar applies for his certificate in Liverpool, the police in Liverpool - and I am sure I will be corrected if I am wrong - cannot check with Maidstone Borough Council's records on prosecutions for street trading, or it would be very difficult for them to do so, so it is very difficult to establish a proper picture of whether a pedlar actually has a number of criminal convictions against him in the area in which he actually wishes to trade because not all pedlars, as you will hear from Mr Lyons' evidence, trade in the area from where they obtain their pedlar's certificate. The third point is that the councils charge much greater annual fees than the £12.25 for the pedlar's certificate. For example, in Liverpool, the annual fee for a licence is £173.40 per square metre, with a surcharge of £408 for those selling food and other commodities. The councils' fees are calculated to meet in part the costs of running the street trading regime, including the costs of enforcement for unlawful street trading, so the legitimate traders are paying higher fees potentially because of the problem which the council has with unlawful street traders. You have already heard the figures for Leicester in 2003/04, where there was a deficit of £13,000-odd as regards the costs of prosecutions. The council received £10,773 in fees for the street trading consents it granted. In Maidstone there is a consent fee of £275 per year, with lower fees for farmers' markets of £21 per stall for up to 12 events per year. The same fee of £21 is charged for consent at the Maidstone River Festival which is held over three days in July each year. The fourth point is that the council has the ability to revoke or refuse to renew a street trading licence or consent in cases where the trader has fallen below the standards expected by the council. A pedlar can only be deprived of his certificate by a court on conviction for an offence or if the pedlar fails to satisfy the court that he is in good faith carrying on the business of a pedlar. Fifth is consultation. The councils consult the Highway Authority when granting consents and licences in order to obtain the authority's views as regards potential highway obstructions and safety. In Liverpool, for example, before licensed pitches are determined consultation takes place with nearby shops and businesses to take into consideration their views about potential nuisance and unfair competition in goods. None of this is possible with itinerant traders who turn up in a street on an ad hoc basis purporting to be acting as pedlars. Sixthly, the council is able to keep a proper check on the quality of goods being sold. It cannot do so readily with the holder of a pedlar's certificate, and there are real issues about counterfeit goods. The trading standards officer knows who the licensed traders are and how to get hold of them on receipt of complaints from the public. Lastly, the council is able to designate what goods may be sold by any particular trader in any particular

⁹ <http://www.publications.parliament.uk/pa/cm200506/cmselect/cmubcll0506/6042603.htm>

area in order to provide a fair balance and so as not to adversely affect existing street traders and shop owners.¹⁰

The Bills have now become Acts and place further restrictions on the activities of pedlars in relevant areas, restricting them to selling from house to house. Specifically, section 4 of each Act provides that:

In their application to the City, the provisions of Schedule 4 to the Act of 1982 shall on and from the appointed day apply as if in paragraph 1(2)(a) of that Schedule there were inserted, after the reference to the Pedlars Act 1871 (c. 96), the words ", if the trading is carried out only by means of visits from house to house".

These Bills were also considered by the Joint Committee on Human Rights, who concluded that the restrictions would probably not amount to an interference with pedlars' Convention rights.¹¹

3.2 Inconsistencies with the street trading code

It is argued that since certificated pedlars are exempt from the regulatory scheme of the street trading code set up under the *Local Government (Miscellaneous Provisions) Act 1982*, they enjoy significantly greater privileges than other street traders. The Association of District Councils [the ADC] has argued that the *Pedlars Act 1871* undermines the street trading code as pedlars are free, for example, to trade even in a prohibited street.

3.3 Maintaining the status-quo

There are supporters of the current regulatory system. For example, in past debates arguments were made against the introduction of tighter regulation for pedlars on the basis that it would restrict competition and free enterprise.¹² It has also been argued that all pedlars should not be penalised simply because of a few 'rogue traders'; most pedlars act legally, provide consumers with greater choice and are simply trying to earn a living.

4 Government review of pedlars and street trading law

4.1 Background to consultation

In 2008 the previous Labour Government commissioned Durham University to look at the way that licensing and enforcement practices were applied in respect of street traders and pedlars. This was in response to an increasing number of local authorities seeking to extend their enforcement options in relation to street trading, and to limit the activities of certified pedlars within their areas, and in the light of a number of Private Acts with similar provision already having achieved Royal Assent. During its research, Durham University contacted local councils, the police, street traders, certified pedlars, and consumer organisations in England, Wales and Scotland. A report was published in 2009.¹³ It can be viewed in full at: <http://www.bis.gov.uk/files/file49664.pdf>

On publication of the research, BIS announced that it would begin work towards a full public consultation on national guidance and options for possible legislative change to ensure that the right balance was being struck between the interests of business, consumers, pedlars and street traders. On 6 November 2009, BIS published its consultation document on the

¹⁰ Ibid

¹¹ Joint Committee on Human Rights, 21st Report Session 2005-6, paragraphs 8.5 to 8.8

¹² HC Debate, 21 February 2007, c. 285-286

¹³ 'Street trading and pedlary in Great Britain: a report of research into the application and perception of local authority controls and pedlar legislation', Policy Research Group, St...Chad's College, University of Durham, 2009

case for amending and modernising the law as it applies to the control of street trading and the certification of pedlars.¹⁴

This consultation discussed, among other things, the relationship between the UK-wide pedlars' certification provisions and local authority powers to licence street trading. Specifically, it sought views on the following options:

- Ways of making the street trading and pedlary regulatory regime more proportionate and effective.
- Providing local authorities with additional enforcement options in respect of illegal street trading.
- Updating the Pedlars Act 1871 to modernise the certification scheme and the definition of a pedlar.
- Consider introducing a means by which, local authorities might exert proportionate limits on certified pedlar activity in designated areas.
- Options for revoking the Pedlars Acts and providing for adequate regulation of itinerant traders within the street trading regime.
- Draft guidance on the application of the current regime in England and Wales for enforcement officers, street traders and pedlars looking at what constitutes acceptable street trading and pedlary practice.

The consultation document can be viewed in full at:

<http://www.bis.gov.uk/Consultations/street-trading-and-pedlary-laws>

The consultation closed on 12 February 2010.

4.2 Current position

The new Coalition Government has not made any formal announcement about the regulation of street traders and pedlars. However, on the 20 July 2010 Lord Lucas asked a PQ about the future regulation of pedlars in the context of the European Union Services Directive. The following written answer was given by Baroness Wilcox:

Lord Lucas: To ask Her Majesty's Government whether, as all certified pedlars have the right to trade anywhere in the European Union under the European Union services directive, they have asked the other member states about their proposals to implement domestic legislation to allow the free access by certified pedlars from the United Kingdom.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): The services directive provides that any requirements imposed on service providers must be proportionate, non-discriminatory and justified based on one of a limited number of grounds. They must be transparent

¹⁴ Street Trading and Pedlary Laws: A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime'

and able to be met electronically. UK pedlars should be able to learn quickly, via a member state's point of single contact, an electronic portal describing all requirements to be met in order to deliver a particular service in that member state, what it is they need to do to trade in that market.

Member states are now engaged in a process of mutual evaluation, reviewing together those remaining requirements on service providers. The aim of the mutual evaluation process is to enhance understanding among member states, increase transparency of requirements and encourage rigorous implementation of the directive by allowing inquiry and challenge between member states. The UK has been actively involved in this process, questioning remaining barriers which seem overly burdensome.

Member states have notified a number of requirements with regard to ambulant traders, and the UK did indeed take the opportunity, at the most recent mutual evaluation meeting, which looked at retail services, to explore further the requirements by other member states with regard to pedlars. Although requirements varied between member states, there was no suggestion that pedlars should not benefit from the liberalising aims of the directive, and we would wish to hear from UK pedlars who continue to face barriers in other member states, and which conflict with the terms of the services directive.¹⁵

Baroness Wilcox's written answer to a second PQ on the regulation of pedlars asked on 21 July 2010 is reproduced below:

Lord Lucas: To ask Her Majesty's Government whether they will consider amending the Pedlars Act 1871 to remove the four-week residency requirement and so satisfy the European Union Services Directive by removing the restriction on eligibility for European Union residents seeking access to the profession of pedlary in the United Kingdom.

To ask her Majesty's Government how they propose to introduce a single point of contact for the issuing of pedlars certificates to comply with the European Union Services Directive; and whether the single point of contact will meet the validation requirement by local authorities of certified pedlars in their jurisdiction.

To ask Her Majesty's Government how they propose to amend Schedule 4 to the Local Government (miscellaneous Provisions) Act 1982 to bring it into compliance with the requirements of the European Union Services Directive relating to authorisation schemes.

To ask Her Majesty's Government whether they intend to reverse the amendment to the Pedlars Act 1871 made by the Provision of Services Regulations 2009 (SI 2009/2999) on the bases that the amendment imperfectly transposed the European Union Services Directive.

The Parliamentary Under-Secretary of State, Department for Business, Innovation and Skills (Baroness Wilcox): the Government are currently considering a variety of options concerning the future of street trader licensing and pedlar certification. Any proposals for change will take into account the UK's obligation to ensure that the services directive is correctly applied in this area.¹⁶

¹⁵ HL Deb 20 July 2010 c WA201-202

¹⁶ HL debate 21 July 2010 c226-7WA

5 Previous Private Members' Bills

5.1 Pedlars (Street Trading Regulation) Bill [HC Bill 64] 2006/07 session - failed

On 21 February 2007, Dr Brian Iddon MP introduced in the House of Commons a Private Members' Bill to significantly update the *Pedlars Act 1871*.

Introducing the Bill, Dr Iddon argued that rather than 'travel on foot' from home to home to sell their goods, pedlars are actually occupying fixed positions in town and city centres. In effect, they operate as unlicensed street traders.¹⁷

The aim of the Bill was to transfer responsibility for the regulation of pedlars from the police to local authorities, bringing them under the jurisdiction of trading standards officers. It would have conferred powers on the local authorities to take action against unlawful pedlars and to seize goods.¹⁸ Leaving legitimate pedlars (defined in the Bill as selling their goods 'from door to door' outside of town centres) free to operate.¹⁹ The Bill was challenged by Christopher Chope MP, who argued that Pedlars were already regulated and that the Bill would restrict choice, competition and free enterprise.

The Bill failed to achieve Second Reading.

5.2 Pedlars (Street Trading Regulation) Bill 2007-2008 Session - failed

On 10 December 2007, Dr Iddon introduced the *Pedlars (Street Trading Regulation) Bill*. This Private Members' Bill was identical to the failed *Pedlars Bill* of last session. It had the support of a number of local authorities and the National Association of British Market Authorities (NABMA).

This Bill also failed to achieve a Second Reading.

¹⁷ *ibid*

¹⁸ Section 5 of the Bill deals with the seizure of goods from a 'rogue trader' by the local authority enforcement officer, Section 6 deals with the return and disposal of seized items and section 7 with the forfeiture of seized items. Section 8 of the Bill provides compensation where the seizure of goods is held to be unlawful under the provisions of the Bill.

¹⁹ *ibid*