



**Martin Donnelly**  
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Department for Business, Innovation and Skills  
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Mr Donnelly

**The potential to fail informing Parliament about a matter of Principle.**

This concerns my letter to you of 15 November 2013 about **Official Conduct at BIS**.  
By November 29 I wrote to Adrian Bailey MP, Chair of the BIS Committee in Parliament about the lack of appropriate prevailing conditions for proper **Oversight at BIS**.

This is an issue raised by pedlars requiring to be addressed by you on behalf of all people subject to the constitution of the United Kingdom and for it to be made clear to Parliament. It is a matter that is in the General Interest and as such I am obliged to inform the public.

The central concern of those letters was a House of Commons *Standard Note* SN/HA/5693 that pedlars consider misleads the Commons depending on such briefings to assist them and their constituents.

Pedlars decided as stakeholders in consultation with the BIS CCP directorate to inquire about the relevance of the *Note* and were invited to write a robust rebuttal by Paul Bland, CCP team leader - this was published 5 November 2013.

A pedlar constituent of Alun Cairns MP requested an update from the author of SN/HA/5693 and he received a *Note* ref: 2013/12/55-HAS dated 18 December 2013 entitled "*Pedlars*" - now relevant to what follows and how it impacts on your position and your department.

It is apparent that Adrian Bailey either failed to refer the rebuttal to Lorraine Conway author of both *Notes* or that he did but that her research is not competent to provide the Commons with understanding the Principle governing pedlars.

It is apparent that Lorraine's research is garnered from instruction by CCP BIS as the update is no more than regurgitation of selected extracts from the blatantly flawed policy proposals of the BIS CCP "Street Trading and Pedlar Law" consultancy URN12/605-606.

The effect of these proposals is to meddle with the social, cultural and economic life of a significant majority of people, to obliterate the social franchise of the *Pedlars Act* and makes pedlary a new offence under local street trading regulation.

Your department, your CCP team, intend that people and pedlars will no longer have the safety of the Crown's prerogative and pedlars will no longer have statutory protection from any aggression or disproportionate and repressive enforcement.

In that respect it is apposite and salutary for you and your department to review the causes of the Tunisian street trader Bouazzi's fate relevant to how you scope future policy.

Your department's influence on the December *Note* sent to Alun Cairns fails to assist Alun or any other MP to understand the Principle that continues to be ignored by BIS and it is his constituent's concern that councils will abuse enforcement powers to prohibit his social right to engage in a lawful activity of pedlary.

### **BIS has to clarify why Parliament has legislated that Pedlary is not "street trading".**

The latest *Note* recognises that Parliament has legislated that pedlary is not street trading in terms of local authority designation and description of licensed street trading but it fails to explain why parliament came to that clear provision.

The Principle is explained in the 'rebuttal' and is here distilled once again:

Pedlary is not 'street trading' for the purposes of local authority regulation

Pedlary is therefore something else:

It is a civil private contractual activity within general law.

The activity is authorised with a national certificate by application to police.

Static obstacles/stalls in a street occasion public liability:

- therefore local authorities avoid responsibility by shifting all burden onto the trader with Regulation necessary for "Street Trading".

This regulation of trading under local licence carries criminal sanction for the offence of trading without a licence or consent in designated streets.

Persons/pedlars acting under civil law are not subject to criminal sanction.

Legislative proposals by BIS to repeal the *Pedlars Act* automatically makes pedlary an offence because the authority of a certificate will no longer exist and the draconian regulations placed on ambulant traders will inevitably be abused by local councils who have been and will obviously then be continuing their campaign to favour their appointed local authority licencees and to rid pedlar competition. This contravenes the principle of free enterprise and is also against EU trade convention.

### **BIS has no remit to affect the Social Contract**

Pedlars submit that legislation to amend the law of pedlary falls more within the remit of the Home Office as a provision of national general law - whereas the business of regulating local street trading may fall within the remit of BIS.

Pedlars contend that BIS is outside its remit with its proposals to alter general law about civil rights and BIS should therefore revoke responsibility for determining change to pedlary legislation.

### **BIS has failed to implement the European Services Directive into pedlary law**

Political popularism has driven a mischievous wedge between those who seek UK implementation of European law and those who seek UK independence from European law. BIS in 2009 was warned about failure to properly interpret European law in respect of pedlary. Pedlars saw themselves to be the potential victims of bad legislation and referred Section 45 of the *Provision of Services Regulations Act 2009* to BIS and the Grand Committee of the House of Lords.

The clearest example of this failure is not to understand that '*service means any self-employed economic activity*' and includes all descriptions of pedlary whether of goods or of services.

Government dislike of admitting failure has led to a contrived cover-up by BIS shifting policy of “amending the *Pedlars Act*” in 2009 to “Repeal of the *Pedlars Act*” in 2011. That harmful shift in policy has never been put to full public consultation and has been introduced by a BIS dictat that sets out only “do nothing” or “repeal” whilst ignoring pedlars’ *Third Option* to resolve all legislation through simple amendment to the *Pedlars Act*.

As BIS Permanent Secretary pedlars urge you to question why your department denies public consultation on alternative solutions and why it does not disentangle pedlary from an unprincipled and confused view of street trading and very poor understanding of the principles of the Services Directive.

The time-line of departmental confusion began in 2009 when BIS maintained its 2007 public consultation to retain and amend the *Pedlars Act*:

...Ministers decided that the *Pedlars Act* should be amended as the Government has proposed in order to implement the Services Directive.

Pedlars agreed that amendment was in order and consulted at length but in 2011 with no public policy consultation and without clearly stated reasons BIS determined instead to repeal the *Pedlars Act*:

... The certification system for pedlars is untenable ... We do not therefore think that continuing the certification regime can be justified as acceptable under the Directive.

It went on again without argument or clearly stated reasons:

... Further, we do not believe pedlars should in general be regulated under other schemes.

But that is precisely what the 2011 BIS consultation paper proposes: - that pedlars be proscriptively regulated under street trading schemes that carry criminal sanction for offences regardless of Article 1.5 of the EU Services Directive that states:

... Member States may not restrict the freedom to provide services [pedlary] 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.

BIS misleads all stakeholders with the following vulgar spin:

... we should deregulate pedlary and help pedlars be freer to trade across the UK

Such spin is without any test of a peer reviewed statistically based Impact Assessment to validate the statement. BIS produces no evidence that a single pedlar in the UK believes in nonsense to be “freer”. The Rt Hon Vince Cable MP Secretary of State for BIS noted in a pre-Christmas interview with Andrew Marr that:

... responsibility of a politician is to state the facts

The facts are as stated in HL Paper 242 that:

local authorities desire to remove pedlars from city centres

That same HL Committee also warned BIS prior to publication of URN12/605 in November 2011 that:

It is not the remit of local authorities to decide what is or is not unfair competition

BIS ignored Paper 242 and proposed increasing local authority powers to:

designate a street as a licence or consent street and may provide that the designation is to take effect in relation to -  
(a) all persons; or  
(b) all persons except service providers from another EEA state

Without the statutory defence of pedlary provided by the *Pedlars Act* such disproportionate and unfair powers allow councils to prohibit pedlars and add insult to injury by giving to other than UK “ambulant traders” from EEA & ENP states an exemption to the designation rule. Such erroneous mischief is ground enough to call in the URN consultation as not fit for purpose.

Even if UK nationals [as ambulant traders] are not caught by those increased powers then they will be caught as potential victims under existing street trading regulation offences - a fact in law that BIS continues to ignore:

A person who engages in trading in a designated street without a consent or licence shall be guilty of an offence.

The consequence of this is a CRB listing that prevents applicants for employment with children: - as evidenced in an unreported London “street trading” prosecution in 2011. It is as the Magistrates Association has stated:

Once authorities have been given increased powers, the enforcement agent will misuse them, that is a certainty

Pedlars contend that greatly empowered councils will abuse those powers to ensure that:  
... pedlary will generally be treated as a perceived offence

Your responsibility for oversight of departmental process and policy cannot be ignored by the continued deafening silence that has infected every operative that has been delegated responsibility as BIS point of contact for consultation stakeholders. I trust that this is not a top down policy and that you will respond urgently to this letter.

### **BIS response to proposed agenda for a pedlar meeting**

The 2011 consultation was formulated and processed by a CCP Team who adopted a policy to ignore all concerns raised by pedlars. The BIS response to having a pedlar meeting was the disappearance of the entire CCP policy team under the continuing and perhaps uncomfortable scrutiny by pedlars about how BIS develops and processes policy. The result intended or not is viewed by pedlars as an attempt to disconnect stakeholders’ discontent as part listed in an agenda proposed by pedlars for a meeting promised by CCP prior to December 2013:

1 To address pedlars' concern that your predecessors erred in transposing the European Services Directive into UK law, in particular Sect 45 PSRA.

2 To address BIS failure to read, circulate and include pedlars' draft proposals in URN 12/605-606 publication.

3 To address BIS refusal to discuss pedlars' Third Option proposals to reform the Pedlars Act towards resolution of all street trading and pedlary legislation.

4 To address pedlars' contention that the notion to repeal the Pedlars Act is an attempt to cover-up past negligence by BIS operatives.

5 To address failure of the formal complaints procedure within

the URN and the department.

6 To address pedlars rebuttal of SN/HA/5692.

7 To call-in as contentious the URN 12/605-606 consultation understood to be unfit for purpose.

8 To form a Working Group that develops pedlars' Third Option proposals.

9 To consult with all public media on Reform of the Pedlars Act.

10 To agree attendees for the Working Group.

11 To backcast the preferred outcome to 'Amend and preserve the Social Franchise of the Pedlars Act'.

Paul Bland the latest appointment to respond to this agenda has failed recently to address these 11 points in any substantive detail stating:

I am not in a position to take a view on complaints around how the Department has handled the earlier consultation phase. I understand that you have approached the BIS complaints unit directly on this and if there are outstanding issues I suggest that you refer the matter back to them.

There is currently no other consultation phase and both the Consultation Complaints Officer and the Departmental Complaints Officer ignore pedlars' concerns and refuse to engage.

The 57 signatories to this letter will not be distracted from the proposed agenda.

Pedlars wrote to Paul Bland that:

Pedlars contend that working through the consultation evidence is a **redundant** waste of time unless your motive is to concoct a response that supports only a perverse 'backcasted' outcome.

The purpose hidden within the objective of the URN 12/605-606 is to shift pedlary out of Crown protection and to subject it to a restraint of trade sanction by those who seek to remove pedlars from without the safety of law.

Martin, as Permanent Secretary you are urged for the reasons outlined here to intervene and agree with pedlars that to call in the consultation is recommended to be in the general interest.

**Pedlary is not only about a definition of street trading - it is a vital component part from the 19<sup>th</sup> century social franchise of the vote, education, health, and freely found enterprise.**

Pedlars contend that sinister motives and effects emerged when local authorities promoted private bills in Parliament to restrict pedlary but did not consider the effect on the general interest. How these promotions have adversely affected the General Interest [more than 50 million people and only a few certified pedlars] has been exposed in HL Paper 242 and illustrates the conflict between national and local interests when pedlary is confused with designated street trading.

Parliament has evidence that local authorities seek removal/repression of pedlary and civil society has the right to ask government why local authorities are to be considered as the prime stakeholders in matters of general law in the General Interest.

Pedlars have requested your oversight to resolve whether or not your department has been mandated properly and has been given the correct remit to consult on the social franchise of the *Pedlars Act* - or not.

If you have responsibility to engage with pedlars and the pedlars' agenda then call for a meeting at the earliest opportunity and if it is that you abnegate that authority then it is that the Secretary of State for BIS requires to call in the direction of the entire policy and process underwriting the consultation URN 12/605-606.

According to information recently received, in consideration of all the above and until a defining and prescriptive meeting is arranged - it is urgent that you intervene with the Secretary of State to pre-empt or delay views of the Cabinet Write-In about pedlars.

Yours sincerely

**Robert Campbell-Lloyd & Nicholas John McGerr**

Administrators at [pedlars.info](http://pedlars.info)

Roll B Agents at Parliament

Please email [robert@pedlars.info](mailto:robert@pedlars.info) for substantiation by way of links to any or all references cited in this letter

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