

This unpublished "Notice to Pedlar" guidance document (avon and somerset N#135252D.doc in black text) was sent to Mr Nic McGerr 4 August 2014 as email attachment by Mike Cox Licensing Manager, Avon & Somerset police who invited comment before he sought to roll it out across the constabulary. Mr McGerr invited comment/critique from the pedlar information portal www.pedlars.info herewith in pink text.

A29d

Notice To Pedlar

The title "Notice to Pedlar" makes no sense as a pedlar is a person to whom a certificate has already been issued. The purpose of this document is as guidance to applicants for a pedlar's certificate.

Dear Sir/Madam

We are in receipt of your recent application for a pedlar's certificate, which will be considered by the Licensing Department .

A pedlars certificate does NOT authorise you to sell foodstuffs *this unreferenced opinion is not supported in law... the Pedlars Act Section 23 provides that "Nothing in this Act shall render it necessary for a certificate to be obtained by (2) sellers of vegetables, fish fruit or victuals..."* it is not stated in law that a seller of victuals [foodstuffs] is prohibited from selling foodstuffs, nor is it stated in law that a seller of victuals is prohibited from obtaining a pedlars certificate. The Pedlars Act does not provide for police to deny or qualify a pedlar's certificate on the basis of what goods a pedlar may intend to trade. A pedlar may trade "*any goods*" and retains discretion to change what goods are traded at any time. If you intend to sell foodstuffs, you must seek advice from the relevant Local Environmental Health Authority before doing so. *Two helpful research articles are published on line at [article 7](#)¹ with an update at [article 3](#)².*

A pedlar is defined as '**someone who travels and trades on foot, going from town to town or house to house selling goods or offering their skill in handicraft**'. *This unreferenced opinion is not supported in law. The Pedlars Act was amended by Statutory Instrument - Provision of Services Regulation Act 2009 that removed chair-menders and handicraft persons. The amendment is considered by stakeholders to be an erroneous provision because pedlars, under the Services Directive, are also "service providers" but they were not removed under PSRA Part 10 Section 45. This legislative anomaly remains an embarrassing misinterpretation of the European Services Directive by the government department BIS mandated in 2009 to consult and modernise pedlar legislation.*

A recent court case (London Borough of Croydon v William Burden 2002) described a pedlar as

"someone carrying and selling goods as they move around, stopping for the limited purpose of conducting a sale and then moving on, rather than someone who is

¹ <http://pedlars.info/pedlar-research.html> click article 7

² <http://pedlars.info/pedlar-research.html> click article 3

stationary in a succession of different places for longer than is necessary to effect a particular sale or sales".

Therefore you must not be stationary except whilst making a sale. Between sales you must keep moving until a customer stops you. This narrowly selected extract from case law fails to provide an applicant the full context and description of the lawful activities of a certified pedlar. This recent on-line [publication](#)³ was produced to rebut a House of Commons Library Note and reviews all statutory legislation, all case law, all private Acts, most recent private bills enacted and current government policy proposals to modify pedlary legislation. Applicants for a pedlar's certificate would be assisted by this more substantive reference information. What *Croydon-v-Burden* fails to acknowledge is that the Pedlars Act provides that a pedlar may be engaged in "*carrying to sell or exposing for sale any goods*". This provision enables the trade of a pedlar to include more activities than just selling – for example by demonstrating to effect a particular sale or sequence of sales to an audience taking time to reach a decision. The author of this document will be aware that case law can be and often is overturned on Judicial Review.

Another case (*Watson v Malloy* 1988) prohibits pedlars from setting up a 'pitch'. **This includes setting yourself up at a fixed point or a series of fixed points, with or without a stall.** This is another selective extract from case law that fails to provide fulsome information to potential applicants. The person in question was not at the time a certified pedlar and whether or not the person moved was of no consequence in determining a guilty verdict. In *Tunbridge Wells-v-Dunn* the notion of a pedlar remaining in perpetual motion was dismissed. Parliament examined the promoters same claim in the Bournemouth and Manchester bills finding the notion had no foundation in law. The statement is a mischief without merit.

Each application will be considered on its merits, but if you intend to sell items which require a stall, albeit on wheels, you are advised that it is likely your application will be refused. This mischievous statement is not supported in law and is likely to misinform applicants. The Pedlars Act provides in the description of a pedlar the trade of a hawker in the same terms. A hawker is described in the [Hawkers Act 1888](#)⁴ [repealed but description persists in the Pedlars Act] as a person who may use a means of transporting and exposing goods for sale. *Shepway-v-Vincent* found that a pedlar may use a small means of assisting the transport of goods. The threat of "*refusal*" to issue a pedlar's certificate for the use of a means of transporting and displaying goods is *ultra vires*.

If you do not move around between sales, or if you set up a pitch or stall, you will be liable to prosecution and seizure of your goods. This opinion carries no reference in law to assist an applicant in understanding what constitutes an evidential assessment of a pedlars activity. The threat of prosecution and seizure for a pedlar's use of a pedestrian means of carrying and displaying the trade is a mischief without merit.

You are advised that you should always approach each Unitary Authority for each area you intend to trade in to establish if there are any areas they have deemed as prohibited for street trading. A local authority's designation of streets as consent, licensed or prohibited streets concern the regulation of static street trading stalls that cause licensed or authorised obstruction of the highways. Designations have no effect on acting as a pedlar because a pedlar is ambulant. As a pedestrian, a pedlar, as any other pedestrian is able to move and

³ <http://pedlars.info/bis-consultation.html> click article 3

⁴ <http://pedlars.info/statutes-bills-case-law/15-pedlar-legislation.html> click article 6

not cause an obstruction. The Pedlars Act 1881 provides that a pedlar may “act as a pedlar within any part of the United Kingdom”. If you fail to comply with the conditions of your pedlars certificate in one of these areas you will be liable to prosecution as an illegal street trader as well as an illegal pedlar. This unreferenced opinion is not based on law. The only conditions for acting as a pedlar are contained in the Pedlars Act. The Pedlars Act provides civil liberty of allowance and should not be confused with static street trading proscriptive regulation conditioned by criminal sanctions.

Please take note that the grant of a pedlar’s certificate is made on the understanding that you have read (or had read to you) and understood the legal definition of a pedlar and how a pedlar may lawfully trade. The applicant is, by this document, given inadequate information to understand how a pedlar may lawfully trade. An applicant who signs a Form B Application for a Pedlars Certificate does so “in good faith” with the intention “to carry on the trade of a pedlar”. No further conditionality or provision is lawful under the Pedlars Act and any such requirement demanded by police may be *ultra vires*.

You are liable to prosecution if you trade other than in accordance with the Pedlars Act 1871. This is the only valid and lawful statement in this A29d document.

Signed..... pp licensing bureau dated

I have read /had read to me this notice and fully understand how I may lawfully trade as a pedlar It is not possible from this document for an applicant to understand how to act/lawfully trade as a pedlar. The document is not fit for purpose, menacing and at worst an invidious invitation for self-incrimination.

Signed by applicant: Dated

- Copy to be given to applicant
- Original to be attached to application form

Administrators at pedlars.info consider this document unlawful and *ultra vires* and will be subject to legal challenge if published.

6 August 2014 pedlars.info

Note: The author of this document is anonymous other than it is circulated by Mike Cox, Licensing Manager, Avon and Somerset Constabulary, mike.cox@avonandsomerset.police.uk

The authors of commentary in pink text are Roll B Parliamentary Agents and administrators at pedlars.info and all enquiries should be addressed to Robert Campbell-Lloyd, robert@pedlars.info

Please request further substantiation/references/clarification to any points.

Information prepared by pedlars.info is published as ongoing consultation with government.

E&OE