

# **Formal Objection to Birmingham City Council's Proposed Public Spaces Protection Order (PSPO) – Unlawful Restriction on Pedlary**

Pedlars formally object to Birmingham City Council's proposed Public Spaces Protection Order (PSPO) prohibiting **peddling** within the designated restricted area of Birmingham City Centre.

The wording of the PSPO is **unlawful** as it directly contradicts national legislation, specifically the **Pedlars Acts 1871 and 1881**, and seeks to prohibit an activity that Parliament has expressly permitted. Additionally, the PSPO violates **Article 1, Protocol 1 (A1P1) of the European Convention on Human Rights (ECHR)** by depriving certificated pedlars of their lawful right to trade under a **Pedlar's Certificate**, which is a private property possession under human rights law.

Furthermore, **the Council has provided no factual evidence that certificated pedlars cause any detriment to the area**, and its justification for the PSPO **contradicts the findings of the latest official government research**.

## **1. The PSPO Unlawfully Conflicts with the Pedlars Acts 1871 and 1881**

The **Pedlars Act 1871** establishes the right of individuals to trade as pedlars upon obtaining a **Pedlar's Certificate** issued by the police. This right is further reinforced by the **Pedlars Act 1881**, which explicitly states that a **certificated pedlar has the legal right 'to trade any place throughout the United Kingdom'**.

By attempting to prohibit pedlary within the restricted area, the Council is directly contravening this statutory right. The PSPO **seeks to override an Act of Parliament** by imposing a blanket prohibition that is inconsistent with national law.

It is a fundamental principle that **secondary legislation, such as a PSPO, cannot override primary legislation**. The High Court confirmed this principle in *R (Boddington) v British Transport Police [1999] 2 AC 143*, where Lord Irvine stated:

*"A public authority may not use subordinate legislation to defeat the intention of Parliament expressed in primary legislation."*

Since the **Pedlars Act 1881 grants pedlars the right to trade anywhere in the UK, including places covered by the PSPO**, the Council's attempt to prohibit pedlary is clearly **ultra vires and unlawful**.

## **2. The PSPO Violates Article 1, Protocol 1 of the ECHR**

A **Pedlar's Certificate is a possession under Article 1, Protocol 1 (A1P1) of the ECHR**, which is incorporated into UK law by the **Human Rights Act 1998**. A1P1 states:

*"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."*

By prohibiting pedlary within the restricted area, the Council is effectively **depriving certificated pedlars of the use of their Pedlar's Certificate**, despite it being a legally recognised possession. This prohibition is neither lawful nor proportionate, as it attempts to **override a statutory right without sufficient justification**.

A restriction imposed via a PSPO must be proportionate to a **legitimate aim**. Given that a **certificated pedlar is lawfully permitted to trade under the Pedlars Acts 1871 and 1881**, an outright prohibition within the restricted area is disproportionate and **renders the PSPO unlawful under human rights law**.

### **3. The Council's Justification for the PSPO is Unsupported by Evidence**

The **2009 UK Government Report on Local Authority Controls and Pedlar Legislation**, commissioned by **Her Majesty's Government (HMG)**, directly contradicts the Council's justification for this PSPO.

The **executive summary (bullet point 6) of the report** states:

*"The scale of pedlary in Great Britain is relatively modest, with an estimated 3,000-4,500 pedlars being granted certificates to trade by police forces. There is little evidence that certificated pedlars present problems in city centres, nor are they in direct competition with shops or street traders. Indeed, consumers valued their presence in town centres and regarded buying from pedlars as a positive experience."*

The report goes on to state:

*"Most complaints come from retailers concerned with competition, rather than, for example, illegal trading per se or obstruction."*

This **official government research provides hard evidence** that certificated pedlars do not cause harm, whereas the Council's claims are **based on anecdotal and unsubstantiated opinion**. The Council has failed to provide any factual evidence that pedlary meets the legal threshold required under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014.

### **4. The PSPO Fails to Meet the Legal Test Under Section 59 of the Anti-Social Behaviour, Crime and Policing Act 2014**

A PSPO can **only** be imposed under Section 59 of the **Anti-Social Behaviour, Crime and Policing Act 2014** if:

- The restricted activity **has a detrimental effect** on the quality of life of those in the locality;
- The effect is **persistent or continuing**;
- The activity is **unreasonable**; and
- The restriction is **justified and proportionate**.

The Council has provided **no factual evidence** that lawful pedlary meets these criteria.

- **The 2009 HMG report contradicts the Council's claim that pedlars cause problems in city centres.**
- **The Council has relied on vague and unverified opinions rather than concrete evidence.**
- **No public consultation has provided proof that pedlars negatively impact the local area.**

If challenged, the lack of proper justification will likely result in the PSPO being struck down as unlawful.

## 5. The Wording of the PSPO is Overbroad and Unenforceable

The use of the term “**peddling**” without distinguishing between **lawful** and **unlawful** activity creates an enforcement problem. Enforcement officers will inevitably **wrongly penalise certificated pedlars**, leading to unnecessary disputes and legal challenges.

A more precise and legally sound alternative would be to restrict **illegal trading**, not lawful pedlary. The Council should consider using **clear and appropriate terminology** such as:

- **Illegal street trading**
- **Unlawful trading**
- **Unauthorised trading**

This would enable enforcement against genuinely problematic trading activities **without breaching the rights of certificated pedlars**.

## 6. The Council Risks Judicial Review and Financial Consequences

If the Council proceeds with the PSPO in its current form, it is highly likely to face a **judicial review** on the basis of:

- **Ultra vires (acting beyond its legal powers),**
- **Unlawful interference with statutory rights,**
- **Breach of human rights under A1P1, and**
- **Failure to meet the legal threshold under Section 59.**

Given that the Council **already lost a Judicial Review in *Logie v Birmingham City Council (2024)* on the issue of wrongful interpretation and application by council officers of Schedule 4 - Street Trading within the Local Government (Miscellaneous Provision) Act** any further unlawful actions will likely result in further **litigation, financial losses, and reputational damage**.

## Conclusion: The PSPO Must Be Amended

To ensure the PSPO is lawful and enforceable, the Council must remove any prohibition on **acting as a pedlar** or engaging in **pedlary**, and must replace the term “**peddling**” with more accurate and legally appropriate terminology such as “**illegal trading**” or “**unauthorised trading**”. A clarifying note should also be included to confirm that **pedlary and/or acting as a pedlar, conducted under a valid Pedlar’s Certificate, is not subject to local authority consent and is outside the remit of local licensing controls**.

Should this PSPO be formally adopted then pedlars reserve the right to initiate **Judicial Review proceedings** to challenge its legality.

**Pedlars.info**

1 April 2025

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