

Why a PSPO Cannot Lawfully Circumvent the Pedlars Act 1871

1. Primary legislation grants certificated pedlars national trading rights

- The **Pedlars Act 1871** and **Pedlars Act 1881** are **Acts of Parliament** (primary legislation) giving certificated pedlars the **statutory right** to trade "in any place throughout the United Kingdom."
- A **Pedlar's Certificate** is issued by the police after a character check and grants a **lawful licence** to trade as a pedlar.
- **Local authorities** have no inherent right to ban or restrict pedlary **unless Parliament has expressly empowered them to do so**.

2. PSPOs are secondary powers and cannot override statutory rights

- A **Public Spaces Protection Order (PSPO)** is made under **secondary legislation** — the **Anti-Social Behaviour, Crime and Policing Act 2014** — and is subject to strict legal limits.
- **Secondary legislation cannot override or diminish rights given by primary legislation**, unless Parliament **explicitly** says so — and the 2014 Act does **not** authorise PSPOs to override the Pedlars Acts.

3. What Section 24 of the Pedlars Act actually means

- **Section 24** of the Pedlars Act **preserves** existing powers of local authorities under **other general or local Acts** already in force in 1871 or later.
- It **does not** create **new powers** for local authorities to **ban or criminalise** certificated pedlars generally.
- It simply ensures that if a local authority had **other, lawful powers** (for example, to regulate traffic, prevent obstruction, or control markets), they keep those powers — **but it does not authorise direct conflict** with the rights given under the Pedlars Act.
- Importantly, **new laws** such as PSPOs **must still respect the primacy of Parliament's original intent** — which was to allow honest pedlary everywhere, with national consistency.

4. PSPO bans are ultra vires if they prohibit lawful pedlary

- A PSPO must only target **specific antisocial behaviour** that meets the legal threshold of being **persistent, unreasonable, and detrimental to the quality of life** (*2014 Act, Section 59*).
- Certificated pedlary, recognised and protected by the Pedlars Acts, is a lawful and reasonable activity unless specific evidence proves otherwise.
- A **blanket PSPO ban** on all peddling — without separating unlawful trading from lawful pedlary — is **disproportionate, unreasonable, and unlawful**.
- Therefore, PSPO clauses that **purport to criminalise lawful pedlary are invalid and challengeable by Judicial Review**.

5. Human Rights protections strengthen this position

- The possession of a Pedlar's Certificate is a "**possession**" protected by **Article 1, Protocol 1** of the **European Convention on Human Rights**.
- A PSPO that effectively **deprives** a pedlar of the ability to use their Certificate **without lawful justification or compensation** breaches the Human Rights Act 1998.
- Any interference must be **proportionate, necessary, and prescribed by law** — which blanket prohibitions are not.