



BRIEFING DOCUMENT - Pedlars.info Written Questions to Her Majesty's government

To assist stakeholder's analysis of relevance in responding to URN 12/605 & 606.

Q1: HM government to confirm that the profession of Pedlary is recognised under EU Law [Services Directive Recital 31 & Article 4.11] and that the BIS URN 12/605 proposes to expunge a Crown authorised profession without a full public consultation?

A. It is true that pedlary is identified as a recognised activity in EU legislation. However, the citations above refer to professional qualifications for people working in regulated sectors such as the medical profession. Repealing the Pedlars Acts would not abolish pedlary or prevent pedlars from operating. In fact the opposite is true - removing the certification process would reduce the bureaucracy in operating as a pedlar.

However, we understand that pedlars greatly value the recognition that is given to them as a profession by having specific UK legislation on pedlary. We are happy to consider as part of the consultation other options to achieve similar recognition whilst achieving the aim of making UK legislation compliant with the Services Directive. The current consultation is a full public consultation.

Q2: To confirm that HM government is aware that repealing the civil right of pedlary and imposing, through a different route, regulations with criminal sanctions on pedestrians trading in public infringes Article 1(5) of the Services Directive?

A. Article 1(5) says: "This Directive does not affect Member States' rules of criminal law. However, Member States may not restrict the freedom to provide services 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." Under our proposals, trading as a pedlar will still be an activity which legislation (the Local government (Miscellaneous Provisions) Act 1982; LGMPA) recognises is not a form of street trading and is therefore exempt from the street trading licensing regime. The offences relating to street trading (set out in section 10 of the LGMPA) will not apply to pedlars that trade lawfully. They will apply, as they do now, to pedlars that trade in a manner which constitute illegal street trading activities - for example, pedlars that do not keep on the move but trade in a static position for a significant amount of time.

Q3: To confirm that HM government is aware that a Pedlars Certificate provides a pedestrian trader with unfettered access to the public as a common law Social Contract whereas the URN proposes to instigate a system of codified law that is inconsistent with the British constitution and diminishes the aegis of the Crown?

A. Repealing the Pedlars Acts would not deny or weaken pedlars' access to operate. In fact the opposite is true - removing the certification process would reduce the bureaucracy in operating as a pedlar.



However, we understand that pedlars greatly value the recognition that is given to them as a profession by having specific UK legislation on pedlary. We are happy to consider as part of the consultation other options to achieve similar recognition whilst achieving the aim of making UK legislation compliant with the Services Directive.

The proposed new definition of pedlars has been designed to ensure that pedlars, street traders, local authorities and police are clear about the rights given to pedlars to trade in a variety of locations for specified periods of time. However, the definition is part of the consultation process and we welcome views from pedlars on this.

Q4: To confirm that HM government is aware that the last decade of private Acts has made pedlars in those jurisdictions potential victims for 2 reasons: “only by means of visits from house to house” is ambiguous in interpretation and pedlars trading between houses suffer seizure of goods without judicial process; BIS propose legislation that is a similar mischief devoid of clear interpretation?

A. The Pedlars Act definition speaks of a pedlar being a person who “goes from town to town or to other men’s houses” We are aware that the Pedlars Act definition has been the subject of litigation. BIS is therefore proposing to clarify the definition of a pedlary so that in future there will be less litigation regarding the activity of pedlars. We hope that both pedlars and Local Authorities will give their views on the proposed new definition of pedlary to help achieve something that is as clear as possible.

Q5: To confirm that HM government is aware that regardless of interpretation of draft proposals a pedestrian trader carrying no licence is automatically guilty of an offence under the Local government (Miscellaneous Provisions) Act 1982 Schedule 4 paragraph 10 for trading without a licence and that this is the evidence that is currently relied upon in private Act jurisdictions to secure convictions by denying factual judicial scrutiny of the pedlar’s activity and rights?

A. Under our proposals, pedlars will be defined in the LGMPA and a pedestrian trader operating in accordance with the definition will be exempt from Schedule 4. They will not need a licence to operate and so will not be committing an offence by not having one.

Q6: To confirm that HM government is aware of the constitutional crisis caused by the conflict of interest between private parliamentary business and the General Interest when considering the national civil liberty of pedlars’ common law rights?

Q7: To confirm that HM government is aware that the Pedlars Act has primacy over local adoptive and private subordinate Street trading legislation and that private Act sanctions against pedlary are ultra vires in using a private statutory power for a collateral purpose alien to the purpose for which it was granted namely the prohibition of unauthorised street trading?

Answer to Questions 6 & 7. There are practical limits to the government’s ability to change legislation such as finding sufficient Parliamentary time alongside other priorities.



The government therefore has no plans at this time to change legislation relating to the powers of local authorities to bring Local Acts.

BIS has alerted local authorities to the fact that that Local Acts are also subject to the Services Directive and that we believe that some of these Local Acts contain provisions which may not comply. It is for Local Authorities to respond accordingly by modifying or removing those provisions so that they do comply.

Q8: To confirm that HM government is aware that the BIS policy change from URNO9/542 & URN 11/1074 to URN 12/605 & 606 on the basis that pedlars will be better off is irrational and defies the logic and moral standard that any sensible person could hope to reach?

The government's position changed because the interpretation of the scope of the Services Directive changed across the EU so that the retail sale of goods was included a service activity within scope of the Directive. This was referred to in the government's response to the 2009 consultation¹

Q9: To ask if HM government considers that BIS has acted reasonably by denying pedlars proposals for the Third Option to amend the Pedlars Act instead of only two Options limited to "do nothing" or "repeal"?

Q10: To ask HM government if refusal by BIS to read, consider, and report stakeholder alternative policy proposals to others in BIS constitutes bias, procedural impropriety with failure to give pedlars an opportunity to be heard, failure to conduct a consultation properly and failure to give adequate reasons for refusal to engage?

Q11: To ask HM government if BIS has failed stakeholder's legitimate expectations following consultations URN 09/542 & URN 11/1074 in that they could reasonably expect URN 12/605 & 606 to have proposed amendments to the Pedlars Act and Street Trading Regulation: this failure is on the clear ground that unequivocal assurances were previously made to pedlars as evidenced by pedlars' submissions in June 2012 - six months prior to the latest URN?

Answer to Questions 9, 10 & 11. BIS did consider the proposal sent by pedlars.info. We decided not to include it as one of the options in the consultation but **all** submissions to the consultation, including alternative proposals, will be considered carefully and will be described in the government's response.

Q12: To confirm that HM government is aware that BIS has confirmed to parliament that all adoptive and private Street trading Acts are incompatible with the European Convention rendering them currently illegal and that pedlars in those jurisdictions are currently unlawfully penalized as potential victims under the Human Rights Convention?

¹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/31470/11-542-street-trading-pedlar-laws-government-response.pdf



A. BIS has alerted local authorities to the fact that that Local Acts are also subject to the Services Directive and that we believe that some of these Local Acts contain provisions

which may not comply. It is for local authorities to respond accordingly by modifying or removing those provisions so that they do comply.

Q13: To confirm that HM government endorse the Secretary of State for BIS to call-in / withdraw the current URN 12/605 and to then consult on the Option to retain and amend the Pedlars Act; amend the LGMPA exemption for pedlary and consider how such amendments impact on private Acts — this prior to any further consideration of new policy or new legislation?

Q14: To confirm that HM government will provide individual responses to each of these 14 questions by the end of January 2013 to enable the possibility for stakeholders to consider such response and assess the relevance of any reply to the URN consultation prior to the deadline for return that pedlars have notified BIS Onikosi should be extended for 3 months?

Answers to Q13 & 14. The consultation is genuinely seeking views on the best way forward – no decisions have yet been taken. We will read carefully all the responses and take them into account in preparing the government's response. This will aim to balance the views of the different stakeholders as well as delivering the government's obligations and objectives.

The consultation document has been available on the BIS website from 15 November 2012. BIS officials contacted previous consultation respondents and used all the channels available to communicate about the consultation to pedlars. BIS was not obliged to contact individually every pedlar in the country and it would have been a disproportionate cost [taxpayers' money] to do so. The consultation has been covered in the press and pedlars.info has extensively covered this and previous consultations. The consultation was scheduled for 12 weeks which is in the maximum time recommended in the government's code of practice on public consultations. Recently, BIS has extended the consultation period for a further 4 weeks to allow more time for pedlars and others to consider the proposals. We have also offered to meet pedlars and their representatives.

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