

STREET TRADING AND PEDLAR LAWS

A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime.

6 NOVEMBER 2009

STREET TRADING AND PEDLAR LAWS: A consultation on modernising street trading and pedlar legislation, and on draft guidance

Introduction

The UK and Scottish Governments are consulting on the case for amending and modernising the law as it applies to the control of street trading and the certification of pedlars.

In February 2009, the UK Government published research from Durham University into the application and perception of street trading controls and pedlar legislation (<http://www.berr.gov.uk/files/file49664.pdf>), which gave us a better understanding of how stakeholders view the current framework and what changes they would like to see.

Pedlars are regulated by the Pedlars Act 1871 (as amended) (*please see Annexes C and D*), which requires pedlars to apply for a certificate from the police in order to trade anywhere in the country.

The Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A) (*please see Annex E*) provides local authorities in England and Wales with the option to adopt powers to regulate street trading. Those councils which do adopt the powers can designate streets in their area as prohibited, consent or licence streets for street trading purposes. They can then require street traders, but not certified pedlars, to apply for licences in order to trade in designated streets for trading in those streets. In addition there are some private Acts of Parliament which provide some local authorities with enhanced powers to tackle illegal street trading.

In Scotland, the Civic Government (Scotland) Act 1982 gives local authorities powers to regulate street trading by requiring persons selling or offering to sell goods and services in a public place, whether from a kiosk, vehicle, moveable stall or otherwise, to hold a licence. Licences are not required for any activity in respect of which a pedlars certificate has been granted.

Devolved Administration Issues

This consultation discusses among other things the relationship between the UK-wide pedlars' certification provisions and local authority powers to licence street trading. In Scotland, street trading is regulated under the Civic Government (Scotland) Act 1982 (*please see Annex F*). In Northern Ireland, street trading is regulated under the Street Trading (Northern Ireland) Act 2001.

At this stage, in discussing possible options which impact on the relationship between local government licensing of street traders and national certification of pedlars this document generally makes reference to the provisions of the Pedlars Act 1871 which apply nationally and the Local Government (Miscellaneous Provisions) Act 1982 which apply in England and Wales. Nevertheless, the possible options for change are clearly relevant to and may impact on the regimes in Scotland and Northern Ireland. As work continues with a view to further developing any of these options in the light of the response to this consultation the UK and Scottish Governments will explore fully with the devolved administrations the implications for the regulation of street trading within the respective jurisdictions.

This consultation also seeks views on draft guidance for local authorities, the police, and pedlars in England and Wales.

The main areas this consultation seeks views on are:

- Ways of making the street trading and pedlary regulatory regime more proportionate and effective. This includes consideration of whether to provide an alternative appeal body in place of the Secretary of State in relation to some street trading appeals in London.
- Providing local authorities with additional enforcement options in respect of illegal street trading.
- Updating the Pedlars Act 1871 to modernise the certification scheme and the definition of a pedlar, including consideration of whether responsibility for issuing certificates should be transferred from the police to local authorities, and, if so, what options there are for maintaining the current position whereby a certificate authorises trading throughout the UK.
- Consider introducing a means by which, local authorities might exert proportionate limits on certified pedlar activity in designated areas.
- Options for revoking the Pedlars Acts and providing for adequate regulation of itinerant traders within the street trading regime.
- Draft guidance on the application of the current regime in England and Wales for enforcement officers, street traders and pedlars looking at what constitutes acceptable street trading and pedlary practice.

Issued: 6 November 2009

Respond by: 12 February 2010

Enquiries in relation to England and Wales to:

Deba Hussain or Roger Dennison
Consumer and Competition Policy Directorate
Department for Business, Innovation & Skills
Bay 416
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 2115 or 020 7215 6893

Fax: 020 7215 2837

E-mail: streettradingandpedlaryconsultation@bis.gsi.gov.uk

Enquiries in relation to Scotland to :

Walter Drummond-Murray
Criminal Law & Licensing Division
Scottish Government
GW.15, St Andrew's House
Regent Road
EDINBURGH EH1 3DG.
E-mail: mailto:Walter.Drummond-Murray@scotland.gsi.gov.uk

This consultation is relevant to certified Pedlars, Street Traders, Local Authorities, Police, consumers, Trading Standards officials, Town Centre Managers.

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1 Executive summary

1. There are approximately 4000 pedlars in the UK who operate by moving around to customers carrying their goods. They are usually sole sellers e.g. selling balloons, etc. Whereas street traders are static traders and usually operate in a specific location with a stall selling fruit, clothes, etc. Many street traders operate in street markets.
2. Our overall approach to this consultation is to seek solutions to:
 - Modernise and streamline the framework for enforcement.
 - Standardise operations nationally across the local authorities.
 - Clarify operations and reduce burdens for pedlars, street traders, and enforcing authorities.
 - Provide assurance to consumers that illegal traders will be dealt with appropriately.
3. A summary of each of the main policy issues, which are considered in the consultation, is provided below.

Pedlars & the Pedlars Act

4. This consultation addresses the issue of updating the Pedlars Act 1871 (as amended) to modernise the definition of a pedlar and clarify lawful pedlar activity. We are considering whether a pedlar's possible means of transporting goods i.e. trolley size should be included in the Act.

The pedlar's certificate

5. There is no standardised format for pedlars' certificates and they may vary depending on where they are issued. Currently licences are paper based. The consultation considers the introduction of an identity card type licence which includes name, address, photo, where the licence was obtained, and expiry date, etc, with a view to looking at options for a valid certificate to be easily recognisable to enforcement officers nationwide.

National Database of Pedlars

6. At present, there is no centrally-held information on pedlars, so there is no means by which the validity of certificates can be verified quickly. Also, the findings in the Durham report indicated that a national database of pedlars would be welcomed by most people including pedlars themselves. This consultation is seeking views on establishing and maintaining a national database for pedlars, and also the type of information this system will hold e.g. name, address, etc.

Grant of certificate

7. We would like respondents to consider whether the term 'being of good character' should be removed from the certifying requirements, so the licensing authority issues certificates based on the suitability of the applicant. This would include considering the applicant's trading history and previous offences related to pedlary and other offences that would deem a person unsuitable to trade as a pedlar.

Issuing Authority for Pedlar's Certificates

8. This consultation raises the option of transferring the responsibility for issuing of pedlar certificates from the police to local authorities, which may be better placed to certify pedlars, as they licence other traders. However, it is necessary to consider how such a system might operate, given the UK-wide nature of the pedlar certificate, and whether the police can still carry out a security check when contacted by a local authority.

Other options or possible outcomes in the light of establishing the shape of a future regime

9. We would like to receive your views on options which revoke the Pedlars Acts and either substantially replace the provisions of the Act, including the need for a certificate within the street trading regime, or remove the requirement for certification while maintaining the right of itinerant traders to trade throughout the UK, subject to their mode of trading and possible local restrictions which can be properly justified by local authorities.

Enforcement of current Street Trading & Pedlary laws

10. This consultation considers the need to empower local authority enforcement officers to issue fixed penalty notices or on the spot fines in respect of street trading. It also considers giving them powers of seizure from suspected offenders with forfeiture by order of the courts. This would bring the rest of the UK in line with London Councils who already have access to these powers under the London Local Authorities Acts, the City of Westminster Act 1999 and other Councils with private Acts.

Power to impose local restrictions on certified pedlar activities

11. This consultation discusses the case for restricting pedlar activity in specific circumstances, and exploring the conditions under which local authorities might be enabled to restrict the number of pedlars in designated areas. For example, at peak periods of trading activity or congestion, such as Christmas, summer festivals, historic town centres, etc.

Final Point of Appeal for Street Trading Appeals (London only)

12. This consultation considers the removal of the Secretary of State (SoS) as the final point of appeal in respect of street trading licences in London, to bring the appellate body in line with rest of the UK i.e. the Magistrates Court.

Services Directive

13. In order to comply with the proper implementation of the Services Directive requirements by 31 December 2009, the Government intends to amend the Pedlars Act by removing pedlars who provide services from the regime. Therefore, pedlars of services will no longer need a certificate after 31 December 2009. We are seeking respondents' views on our interpretation of the Directive's requirements, and further evidence if they feel we have misinterpreted our obligations in anyway.

Draft Guidance

14. Draft guidance for pedlars, street traders and enforcers in England and Wales has been produced on the current regime (please see Annex B). This consultation is seeking stakeholder views on the draft guidance to ensure that it is clear and concise, and meets the needs of the target audience as necessary.

The Scottish Government propose parallel guidance for Scotland, reflecting the different case law in Scotland.

2 How to respond

15. This consultation opened on 6 November 2009. The last date for responses is 12 February 2010.
16. When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.
17. **We would prefer responses by e-mail**, but hard copy is also acceptable:

E-mail: streettradingandpedlaryconsultation@bis.gsi.gov.uk

18. Please send your hard copy to:

Deba Hussain or Roger Dennison

Consumer and Competition Policy Directorate
Department for Business, Innovation and Skills
Bay 416
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 2115 or 020 7215 6893

Fax: 020 7215 2837

19. An electronic version of this consultation document, including its annexes, is available in PDF format at <http://www.berr.gov.uk/consultations/open-consultations/index.html>
20. You can order a hard copy of the consultation document online (<http://www.berr.gov.uk/publications/reports/>), or if you would prefer to request a copy by telephone, phone 0845 015 0010.
21. A list of those organisations and individuals to whom this consultation has been sent direct is at Annex F. We would welcome suggestions of others who you think may wish to be involved in this consultation process.

Confidentiality & Data Protection

22. Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

Responses will also be shared with the Scottish Government and the Northern Ireland Government.

23. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information

we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

24. The Department will process your personal data in accordance with the DPA and, in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Help with queries

25. Questions about the policy issues raised in the document can be addressed to Deba Hussain or Roger Dennison at the above address.

Complaints

26. If you have any comments or complaints about the way this consultation has been conducted, these should be sent to:

Tunde Idowu
Consultation Coordinator
Department for Business, Innovation and Skills
Bay 562
1 Victoria Street
London SW1H 0ET

Tel: 020 7215 0412

E-mail: babatunde.idowu@bis.gsi.gov.uk

Code of Practice on Consultations

27. The principles of the Code of Practice on Consultations are set out in Annex G.

3. Background

28. The UK and Scottish Governments are consulting on the case for amending the law as it applies to the control of street trading and the certification of pedlars.
29. In 2008, the UK Government commissioned research from Durham University into the application and perception of street trading controls and pedlar legislation. This was in response to an increasing number of local authorities seeking to extend their enforcement options in relation to street trading, and to limit the activities of certified pedlars within their areas, and in the light of a number of private Acts with similar provision already having achieved Royal Assent. The report of the research, which was published in February this year, was the first of its kind, and has put us in a much better position to consider options for change. We now have a better understanding of how stakeholders view the current framework and what changes they would like to see. However, we are aware that this report may not represent the whole picture. We are, therefore, conducting this consultation so that all interested persons will have a further opportunity to make their views known.
30. The Durham report has attracted significant attention from those closely involved with the current Parliamentary process in respect of the private Bills and wider. On publication of the research, the Consumer Minister announced that the Department would then begin work towards a full public consultation on national guidance and options for possible legislative change to ensure that the right balance was being struck between the interests of business, consumers, pedlars and street traders.
31. In this document, we have identified some possible options for change and have expressed a preference based on the evidence and views gathered so far. We shall use the responses to this consultation to further refine the possible way forward, including work on the costs and benefits of the options and identifying suitable legislative vehicles. We will, no doubt, need to obtain further input from key stakeholders in the course of this work, in order that the Government is in the best position to be able to decide its preferred way forward. We intend to conduct a further round of consultation before final decisions are made.

Current legislation

32. Pedlars are regulated by the Pedlars Act 1871 (as amended), which requires pedlars to apply for a certificate from the police in order to trade anywhere in the country. The Pedlars Act 1871 defines a pedlar as any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft.
33. The Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A) provides local authorities with the option to adopt powers to regulate street trading. Those councils which do adopt the powers can designate streets in their area as prohibited, consent or licence streets for street trading purposes. They can then require street traders, but not pedlars, to apply for licences in order to trade in designated streets (and apply the consequent penalties for not being licensed) for trading in those streets. A person guilty of an offence under the Act is liable to prosecution in the magistrates court and to a fine. Street trading for the purposes of the LG(MP)A is defined as the selling or exposing or offering for sale of any article (including a living thing) in a street. Thus, street trading under the LG(MP)A regulates the sale of goods only.

34. The LG(MP)A contains an exclusion so that trading by a certified pedlar acting as a pedlar does not constitute street trading. If pedlars move away from these trading activities into other methods of trading on the street (e.g. static trading from a stall) then they would be subject to any street trading controls the local authority has implemented under the LG(MP)A.
35. Some local authorities have obtained private Acts of Parliament and others are promoting private Bills. These contain provisions to extend their regulation of street trading to the provisions of services as well as trade in goods. They have also sought additional powers in relation to enforcement against illegal street trading (fixed penalties and seizure of goods). In addition, there are provisions that restrict the exemption for certified pedlars from having to obtain a street trader's licence under the LG(MP)A to pedlars who trade door to door only in designated streets (in some cases this means entire boroughs). This means that a certified pedlar wishing to trade in goods or provide services in designated streets (other than door to door) even while acting as a pedlar, would need a licence from the local authority to do so.
36. In Scotland, street trading is regulated under the Civic Government (Scotland) Act 1982. It provides for a "street trader's licence" to be required for street trading by a person, whether on his own account or as an employee. In the Act, street trading means hawking, selling or offering or exposing for sale any article, or offering to carry out or carrying out for money or money's worth any service, in a public place. There are exemptions for the sale of goods such as newspapers, milk and coal, and for any activity in respect of which a pedlar's certificate has been granted. Local authorities may resolve to apply the licensing scheme in their area, and can choose to restrict it to particular forms of street trading or particular geographical areas

Report Recommendations

37. While the research conducted by Durham University found no evidence that trading activities by pedlars pose a problem on a national scale, it suggested that current laws regulating street trading and pedlary could potentially be improved by:
- National guidance on the meaning and application of the current legislation, which varies across the UK;
 - Modernising the Pedlars Act, (e.g. updating and standardising the pedlars' certificate to enable easier identification of genuine certificates and clarifying the definition of a pedlar); and
 - A more flexible enforcement regime, including less burdensome alternatives to criminal prosecution (e.g. fixed penalty notices).
38. Further information and the report itself can be found on the BIS website at:
<http://www.berr.gov.uk/whatwedo/consumers/business/market-trading/index.html>
39. The report also acknowledged that while the findings could not support legislation to limit the activities of pedlars nationally, it was nevertheless possible that a case could be made on a local basis for local restrictions.

The Consultation

40. The main areas this consultation will look at:
- Ways of making the street trading and the pedlary regulatory regime more proportionate and effective. This includes consideration of whether to provide an alternative appeal body in place of the Secretary of State in relation to some street trading appeals in London.
 - Providing local authorities with additional enforcement options in respect of illegal street trading.

- Updating the Pedlars Act 1871 to modernise the certification scheme and the definition of a pedlar, including consideration of whether responsibility for issuing certificates should be transferred from the police to local authorities, and, if so, what options there are for maintaining the current position whereby a certificate authorises trading throughout the UK.
- Consider introducing a means by which, local authorities might exert proportionate limits on certified pedlar activity in designated areas.
- Options for revoking the Pedlars Acts and providing for adequate regulation of itinerant traders within the street trading regime.
- Draft guidance on the application of the current regime.

41. This consultation is accompanied by a consultation stage Impact Assessment, which gives the Government an opportunity to indicate and explain its preferred options based on the evidence to date. We would stress, however, that no decisions have been taken, nor will be, until we can properly consider the responses to this consultation. Subject to the outcome of this consultation and Ministerial agreement, we intend to publish a further consultation and a final stage impact assessment, setting out the costs and benefits of any future action alongside the response to this consultation. We will also identify possible legislative vehicles for any proposals we intend to take forward including a timetable for this.

4. Certification Process

4.1 Pedlars and the Pedlars Act

What is the issue?

42. Pedlars are regulated by the Pedlars Acts 1871 and 1881. The Acts have not been significantly updated since they were passed and it seems likely that the fact that they are over 100 years old has led to some confusion over time about their intended meaning and how they translate to pedlars activities today. We are therefore seeking to modernise and streamline the relevant elements in the Act, as outlined below.

The definition of ‘pedlar’

43. Section 3 of the Pedlars Act 1871, which makes provisions for the issue of certificates, defines a pedlar as:

.....”any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men’s houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft.”

44. The definition uses terms and phrases that are not used today and may not accurately reflect the activities of the modern-day pedlar. The lack of clarity around the definition of a pedlar has led to difficulties for both enforcement officers and pedlars, where their respective interpretations of lawful or unlawful behaviour often differ.

45. The situation is further complicated as the definition of a pedlar and what is or is not permitted has been the subject of subsequent case law. The draft guidance at Annex B sets out what appears to be the current position in England and Wales.

46. The definition is generally understood to mean that a pedlar is an itinerant trader who travels and trades on foot. A person who travels by car from town to town and then proceeds to trade on foot could be a pedlar because he is trading on foot. However, an individual who sells goods from a fixed position would appear not to be trading as a pedlar as envisaged in the definition. A certified pedlar cannot lawfully trade from a fixed position without a street trading licence in areas designated as licensing areas by local authorities.

What does the evidence say?

47. Nearly all MPs who have commented have used the definition of a pedlar as an indication that the legislation is woefully out of date. We are not aware of any stakeholder who does not agree that there is a strong case for clarifying what a pedlar is entitled to do under the Act.

The Options

Option A: Do nothing. (*Option (i) in the Impact Assessment*)

Option B: Update definition of a pedlar to clarify what lawful activities are permitted. (*Option (iii) in the Impact Assessment*)

The UK and Scottish Governments' Preferred Option *

Option B

48. It seems clear that the outdated language used to define a pedlar in the Pedlars Act is leading to some confusion around what a pedlar's lawful activities are. It is a general principle of better regulation that legislation should be clear and transparent for those subject to the legislation, and those charged with enforcing it. It is on this basis that we would propose to update the definition.

Question 1: Do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons.

Possible new definition(s)

49. In the event that the UK and Scottish Governments do decide to update the definition of a pedlar, or pedlary, we have drafted a list of elements which could be reflected in a new definition, for comment. To an extent, these reflect the case law on the issue further details of which are set out in the draft guidance at Annex B:

A pedlar:

- Must be a pedestrian.
- Must move around to trade – keeping a reasonable distance from their last sales position, moving on until another sale is made.
- Should avoid standing still between sales when trading.
- Should only pause to make a sale when trading.
- May use a small means of transporting goods e.g. trolley to carry stock.

Question 2: Do you think anything should be taken out or added to the list and why?

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

Question 4: Do you have alternative suggestions? Please provide them.

4.2 The Pedlars' Certificate

What is the issue?

50. Currently, pedlars' certificates are issued by the pedlar's local police station. A pedlar must provide proof that they have lived in the area for the preceding month. Certificates cost £12.25 and are valid across UK unless there is private legislation limiting a pedlar's

* This is currently the Government's preferred option based on our assessment of the evidence to date. It is not established policy.

activities, for example to door to door trading, in areas designated by local authorities under street trading legislation.

51. While the Pedlars Act requires a certificate to be in the form specified in schedule 2 or as near to the form as circumstances permit¹, it appears that there is no standardised format for certificates so they vary across UK, and the information required to be given in the application and on the certificate has not changed since it was originally specified in the Act.

What does the evidence say?

52. The Durham report found widespread support from all stakeholder groups for updating the pedlar's certificate.

53. Local authority enforcement officers felt that the lack of standardisation and the inadequacy of the information provided on some certificates meant that verifying valid certificates was difficult and time-consuming.

54. Pedlars held the view that updating and modernising the certificate would offer them increased protection from enforcement officers failing to recognise valid certificates and minimise the time required to verify certificates.

55. It was suggested that the pedlars' certificate should include the following information:

- photograph of holder
- National Insurance number (or equivalent for foreign nationals)
- Address
- Issuing authority name & contact details
- Expiry date
- Unique certificate number

56. There is also a link to proposals in the enforcement options in section 5, as these options if taken forward following consultation, will only be viable if the enforcement officer can be confident of the offender's details.

The Options

Option A: Do nothing. (*Option (i) in the Impact Assessment*)

Option B: Update the pedlars' certificate and application form to standardise the format and include:

- photograph of holder
- National Insurance number (or equivalent for foreign nationals)
- Address
- Issuing authority name & contact details
- Expiry date
- Unique certificate number

(*Option (iii) in the Impact Assessment*)

The UK and Scottish Governments' Preferred Option*

Option B

¹ Pedlars Act 1871, section 5(4) and Schedule 2, Form B

* This is currently the Government's preferred option based on our assessment of the evidence to date. It is not established policy.

57. We believe that this will make it easier for enforcement officers to identify lawful pedlars and verify valid certificates. There is also an implication for the fixed penalty notices (FPNs) proposals in the enforcement section, as these cannot be issued if the enforcement officer cannot establish the address of the offender. Having this information on the face of the certificate will therefore increase the effectiveness of FPNs.
58. A standardised format will increase confidence in the certificate as enforcement officers will be more familiar with it. This will benefit certificate holders as well, as increased confidence in the certificate would mean they are less likely to encounter problems of enforcement officers not accepting certificates, or having to go through time-consuming verification procedures. Including a photograph should also limit the use of a certificate by someone other than the certified pedlar.
59. The cost of issuing the updated and standardised certificates is likely to be higher than the current cost of issuing certificates (which has not been up rated since 1985). It is suggested that the additional money would be recouped from the fee for the certificate. Currently £12.25 per annum, the fee would need to rise to reflect the costs associated with the new system. The costs associated with a new system will be dependent on whether the issuing authority should change. It is worth noting, however, that most public authorities already have the means of producing such identification documents for security reasons, for example producing their staff identity passes.

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

4.3 National Database of Pedlars

What is the issue?

60. Currently there is no centrally-held information on pedlars and there appears to be a need for a national database. Police stations issue pedlars' certificates and store data as they choose with no formal means of data-sharing. This means that information on pedlars is not easily accessible and even obtaining basic information, such as the number of pedlars' certificates issued in a year, requires the significant effort of contacting each police station to request individual figures. Even if all police stations were contacted, it is likely that a high number of them would only hold paper records, which would make information extraction and collation difficult and time-consuming.

What does the evidence say?

61. The Durham report found general agreement that some type of central computerised collection of data on pedlars' certificates would be helpful. For enforcement officers, this would aid the process of verifying certificates as they could simply check the details from their location rather than contacting the issuing authority.
62. The Durham report also found that, in general, pedlars were in favour of electronic storage of data and would welcome a central storage facility that could be checked, such as a national database. Again, they viewed this as a means of reassuring enforcement officers as to the validity of their certificates and activities.

63. There is also a consumer protection and enforcement angle to consider. Although the Durham report did not find significant numbers of consumer complaints about pedlars, some stakeholders have expressed concern that the mobile nature of pedlars trading activities means that consumer complaints are difficult to follow up. A central database will increase the capability of information sharing between Local Authorities, and might also aid complaint handling and providing information to the police if necessary. Local Authorities have used shared databases to track retail enforcement and trading standards offences. For example the retail enforcement pilot which is hosted by one Local Authority, but accessible to all.

The Options

- Option A: Do nothing – continue with no database. (*Option (i) in the Impact Assessment*)
- Option B: Legislate for a national database for pedlars, holding the following information on each certified pedlar in UK:
- all the information displayed on the pedlar's certificate, including name, address, issuing authority and certificate number.
 - an indication as to whether street trading and pedlary offences have been committed previously.
 - details of sanctioning authority where offences have been committed.
- (*Option (iii) in the Impact Assessment*)

The UK and Scottish Governments' Preferred Option*

Option B

64. We feel that a national database for pedlars will make it easier to verify pedlar's certificates and would facilitate more efficient enforcement. For example, under the current system there is no way for an enforcement officer to authenticate a pedlar's certificate unless they contact the issuing police station directly. This may be time-consuming on the part of both enforcement officers and the police. A national database would allow all enforcement officers and issuing authorities to have direct access to all relevant information about a pedlar, such as their certificate issuing authority and any previous offences. (*Subject to rules on spent convictions*)
65. The cost of setting up and maintaining the database would be recouped from the certificate fee. Currently £12.25 per annum, the fee would rise depending on the costs associated with the new system.
66. If a National database is set up, any access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004 and the Scottish equivalents) will be addressed as necessary.

* This is currently the Government's preferred option based on our assessment of the evidence to date. It is not established policy.

Question 7: Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification?

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

Question 9: With reference to section 6 of this document would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

4.4 Grant of Certificate – “person of good character”

What is the issue?

67. Section 5 of the Pedlars Act 1871 sets out the terms on which a pedlar's certificate is granted. Section 5 (1) specifies that an issuing officer must grant a certificate where the applicant has resided in the local area for one month prior to the application and is “above seventeen years of age, is a person of good character, and in good faith intends to carry on the trade of a pedlar.”

What does the evidence say?

68. The Durham Report found variation in the level of checks currently carried out by the Police. For example, some do local intelligence report checks, others carried out a Police National Computer (PNC) check to find out if the applicant has been recently convicted, cautioned or arrested. However, Police stations responding to the Durham researchers stated that although relevant convictions were considered there is no national guidance on how they were considered or what ‘good character’ is.

The Options

Option A: Do nothing. (*Option (i) in the impact Assessment*)

Option B: Replace ‘good character’ with criteria that can be more objectively determined. (*Option (iii) in the Impact Assessment*)

Government's Preferred Option *

Option B

69. We suggest the requirement in the Act that a pedlar be ‘of good character’ in the view of the chief officer of police should be replaced with a provision for the issuing authority to be able to refuse an application where it is considered that the applicant is unsuitable to hold the certificate by reason of misconduct or other sufficient reason. This would establish that applicants do not have to prove they are suitable for holding a pedlar's certificate but that if their previous history establishes their unsuitability, this will be grounds for refusing a certificate. We consider this will increase understanding on the part of both prospective pedlars and certificate issuing officers on the basis for grant of a certificate. The wording in the LG(MP)A 1982 on street trading licences (paragraph 3(6)(d) of Sch. 4) refers to an applicant being unsuitable “by reason of having been convicted of an offence or for any

* This is currently the Government's preferred option based on our assessment of the evidence to date. It is not established policy.

other reason". Paragraph 5 (3) (a) of Schedule 1 to the CG(S)A provides for refusal of applications for street traders on the grounds that the applicant is "not a fit and proper person to be the holder of the licence." We consider the proposed criteria a reasonable extension of current provisions. There will continue to be a right of appeal against a refusal of the application.

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Question 11: Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?

4.5 Issuing Authority for Pedlar's Certificates

What is the issue?

70. Currently, pedlars' certificates are issued by the local police for the area in which the pedlar resides. A pedlar must prove he has resided in the area for 1 month prior to the application. We are considering whether the police are the most appropriate authority to issue certificates taking into account views that have been expressed in respect of this issue and the other questions in this consultation document.

71. Should we decide, for example, that local authorities are better placed to certify pedlars, as they licence other traders, we then need to consider how such a system might operate, given the national nature of the pedlar certificate. We also need to consider the position of those local authorities who have chosen not to adopt the street trading provisions of the LG(MP) Act and Civic Government (Scotland) Act 1982 and who therefore currently appear to have no interest in regulating street trading locally.

What does the evidence say?

72. Where street trading provisions have been adopted, street trader licences are issued by the local authority in which the street trading pitch is situated. The police also have a role to play, in that they may be asked to conduct criminal checks on licence applicants for the local authority, as they do for applications they receive for pedlars certificates in the course of assuring themselves that the applicant is "a person of good character".

The Options

Option A: Do Nothing. Issuing certificates remains the function of the police. (*Option (i) in the Impact Assessment*)

Option B: Transfer the responsibility from issuing certificates from the police to local authorities, (with the police still conducting the criminal checks as they do for street trader applications if this is required by the local authorities). Certificate still to be valid across UK. (*Option (iii) in the Impact Assessment*)

Government's Preferred Option*

Option B

* This is currently the Government's preferred option based on our assessment of the evidence to date. It is not established policy.

73. Responsibility for issuing pedlars' certificates is transferred from the police to local authorities. The police are not responsible for issuing any other trading licences and therefore lack the wide-ranging expertise and dedicated resource of local authority licensing divisions.
74. Certificates would still be valid for a year throughout the UK.
75. In 2005, the policing bureaucracy taskforce recommended that responsibility for issuing pedlars' certificates should be taken away from the police, in line with the wider government objective of reducing police bureaucracy. Transferring the issuing of licences to local authorities would free up valuable police time to enable them to deliver their other objectives.
76. We understand that some stakeholders hold concerns about how this would work in practice. Police are largely seen to be neutral on the issue of pedlars, whereas local authorities have a particular interest in controlling and monitoring trade in their streets. Some stakeholders believe that some local authorities might have difficulty in reconciling their desire to promote the prosperity of local businesses, shops and static street traders, with a duty to ensure that legitimate traders who choose to trade as itinerant pedlars are able to ply their trade. We do not currently consider these concerns to be sufficient reason not to transfer responsibility. This is on the basis that the areas of doubt and uncertainty about what constitutes legitimate pedlary, as opposed to illegal street trading, will be clarified.
77. However, as mentioned above, we will need to consider further how this might work in practice. In particular, we will need to consider stakeholders' views on a national database, covered earlier in this consultation. We recognise the difficulty of balancing the possible need to manage pedlars' activities in designated areas with the underlying freedom of pedlars to trade on a national basis under the authority of the certificate. We note that the terms for granting a certificate are clearly laid out in the Pedlars Act 1871 (s5) and so too is the route of appeal against a decision to refuse an application.

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

4.6 Other options or possible outcomes in the light of establishing the shape of a future regime.

78. We would value your views on the following possible options which would result in repealing the Pedlars Acts.

Revoking Pedlars Act and licensing Pedlars under the Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A) and Civic Government (Scotland) Act 1982

79. The LG(MP)A (and Civic Government (Scotland) Act 1982) provides local authorities with the option to adopt powers to regulate street trading. Where the powers are adopted, local councils may designate streets in their area as prohibited, consent or licence streets for street trading purposes. As mentioned previously the Pedlars Act has not been updated for

well over 100 years, and appears to be in need of modernising and updating to bring it in line with current times and trading in the 21st century.

80. If the certification function in relation to pedlars was to be passed to local authorities, even though the national nature of the pedlar's certificate was retained (see Section 7) it would seem simpler to revoke the Pedlars Act and ensure that all of the relevant provisions were incorporated into the LG(MP)A and Civic Government (Scotland) Act 1982. All regulation of trading in the street would then effectively be covered by the same regime.
81. However, the street trading provisions in the LG(MP)A and CG(S)A are currently optional for local authorities. We would need to consider further how this might be reconciled with a desire to retain national access to pedlar certificates. It might, for example, be appropriate to require all local authorities to participate in the certification of pedlars, irrespective of whether they adopt the street trading provisions of the Act. This would maintain the current position whereby pedlars are able to obtain certificates locally but the certificates would have effect nationwide.
82. For Scotland, this could be achieved by use of the power in section 44 of the Civic Government (Scotland) Act 1982 to licence additional activities and to repeal or modify enactments. This power has already been used to bring licensing of various activities within the ambit of the 1982 Act.

Question 14: What are your views on the above option, and how this might affect street trading or pedlar activity?

Question 15: With further work do you think this option is viable? Please give reasons for your answer.

Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act ?

Revoking the Pedlars Act and excluding pedlar activity from street trading regulation except in specific, defined, circumstances.

83. We have been considering an option where the Pedlars Act could simply be revoked. Pedlars would not be required to obtain a certificate but could trade as pedlars provided they did so within any local restrictions decided by individual local authorities.
84. The adoptive street trading provisions would be amended to exempt defined modes of trading (i.e. a definition which reflects the current trading practices of legitimate pedlars). The legislation would also set out the specific conditions under which a local authority could modify the exemption in specific circumstances so as to provide for, say, restrictions on numbers of non-licensed traders in designated streets at particular times or for particular events.
85. This option would:
- overcome any difficulties in relation to setting up a new national certification regime for pedlars
 - meet the desire of pedlars to be able to trade freely in the street as pedlars currently do.
 - avoid the need for instituting a new administrative procedure to regulate pedlars.
 - be capable of addressing the difficulties experienced by some local authorities of traders misusing the pedlars' certificate to make street trading enforcement more difficult.
 - would enable local authorities to exert some control over the level of itinerant trading activity where it was justifiable and proportionate to do so.

Question 17: What are your views on the above option? Please give reasons for your answer.

5 Enforcement

5.1 Enforcement options for street trading and pedlary offences

What is the issue?

86. Currently, the only option available in England and Wales for addressing street trading offences is prosecution through the Courts with liability to pay a fine of up to £1,000. It has been suggested that local authority enforcement officers should have powers to use civil sanctions. These include Fixed Penalty Notices (FPNs) and a power to seize goods from suspected offenders with forfeiture of such goods by order of the Courts. In Scotland, there are already powers for prosecutors to issue “fiscal fines” of up to £300 as an alternative to prosecution.
87. Scottish courts can make forfeiture orders in relation to property which was at the time of the offence or of the accused’s apprehension in his ownership or possession or under his control and — (a) has been used for the purpose of committing, or facilitating the commission of, any offence; or (b) was intended to be used for that purpose.

What does the evidence say?

88. The Durham report found that the significant time and financial cost of prosecution may, in some cases, be deterring local authorities from pursuing illegal traders. The report found that costs to local authorities typically outweighed the costs to defendants by more than 10:1. Coupled with the relatively small fines typically imposed by the Courts, some local authority respondents felt that prosecution was therefore a disproportionate and ineffective deterrent for street trading offences. FPNs are a quicker and less costly route of dealing with street trading offences. However, this view was not shared by all local authorities, with some reporting no desire for further powers².
89. Local authorities indicate that that on average it costs them up to £7000 to take a street trading case to court. Successful cases result in average fines for offenders of £150-200, with legal costs awarded by the courts of around £350.

The Options

- Option A: Do nothing (*Option (i) in the Impact Assessment*)
Prosecution through the Courts will continue to be the only sanction available for street trading offences for those authorities without Private Acts.
- Option B: Provide local authority enforcement officers in England and Wales with powers to issue FPNs in respect of street trading offences.
- Option C: Provide local authority enforcement officers with powers of seizure, with forfeiture by order of the courts.
- Option D: Provide local authority enforcement officers in England and Wales with powers to issue FPNs and powers of seizure, with forfeiture by order of the Courts (i.e. a combination of options 2 and 3). (*Option (iii) in the Impact Assessment*)

² <http://www.berr.gov.uk/whatwedo/consumers/business/market-trading/page46738.html>

Government's Preferred Option *

Option D

90. Fixed Penalty Notices offer an alternative civil sanction for lesser street trading offences and should reduce the number of costly and resource-intensive court cases, as well as saving the burden of reaching criminal prosecution. It will also allow swifter action against offenders (immediate action as against the time taken to set a court date and hold a hearing), which could be of particular use for tackling repeat offenders, who having received a warning offend again. Making action easier, notwithstanding that any action must be properly justified and proportionate, might also mean that local authorities who choose to adopt these powers are able to devote their resources to other priorities. Pedlar offences would also be subject to these sanctions.

91. Depending on the outcome of this consultation, we will consider the actual levels of the FPNs later. However, we envisage that they would be set between £100 - £300 depending on the nature of the offence. We envisage that the following offences would attract FPNs:

Street Trading Offences

- Contravention of condition of street trading licence or temporary licence.
- Failure to produce street trading licence on demand.
- Unlicensed street trading.

Pedlars Act Offences

- Acting as a pedlar without having obtained a certificate
- Lending, transferring or assigning of certificate to another.
- Borrowing or making use of a certificate from another.
- Failure to produce certificate on demand.

92. In respect of seizure of goods, this will bring the rest of the UK in line with London Councils, which already have such powers under the London Local Authorities Act 2004 and the City of Westminster Act 1999.

93. Seizure of goods ensures an immediate stop to illegal trading while a court case is pending. This addresses the issue of offenders receiving fines that are so low as to be seen as an acceptable 'overhead' to unlawful trading. Provisions for compensation in the case of unlawful seizure would be introduced to ensure that this sanction is only applied where enforcement officers are very confident of their grounds for prosecution.

* This is currently the Government's preferred option based on our assessment of the evidence to date. It is not established policy.

Question 18: Which of the above options do you favour?

Question 19: Should Local Authority Enforcement Officers be given powers to:

- i) issue fixed penalty notices**
- ii) seize goods, with forfeiture by order of the Court?**

Please give reasons for your answer.

Question 20: If you favour introducing new powers for local authority enforcement officers, can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this or other areas? If you do not support further powers, can you provide evidence to support this view?

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer.

5.2 Power to impose local restrictions on certified pedlar activities

Unfair competition

94. Pedlars have operated for centuries. The research suggests that pedlars are not for the most part the cause of the problems experienced by some local authorities, but that more clarity and more flexible enforcement against illegal street traders may provide the key to tackling unfair trading by those who seek to benefit from the current uncertainties around what a certified pedlar is entitled to do.
95. We are aware that some local authorities view restrictions on pedlar activities as a way of supporting local established businesses by restricting the competition which pedlars might represent. We understand that some local businesses object to itinerant traders on the grounds that they undercut their prices by supplying inferior products of the same type. We fully appreciate this argument in relation to the types of trading which have been described to us. For example, we have been informed of cases of essentially static or barely mobile large stalls which are set up outside of retail outlets and which sell the same or similar products where the trader seeks to maintain that a pedlar's certificate provides permission to trade in this way when otherwise he would be subject to local street trading controls. We would not argue with the view that such practices represent unfair trading and should not be permitted where a local authority has chosen to regulate street trading.
96. While the Government is committed to tackling unfair trading wherever it occurs, it also supports diversity as a means of achieving competitive markets. It is true that pedlars do not have the same overheads in terms of fees and local taxes to pay, but the same could be said of licensed street traders in comparison to retail shop outlets. No-one argues for restrictions on street markets, or for that matter, online sellers, because they offer cheaper goods than other retail outlets. Indeed, street markets are widely supported as providing for diversity in products and shopping experience, yet they are clearly in competition with other local traders. The Government believes that consumers should be able to choose on quality, convenience and value for money, irrespective of the route to market.
97. Nevertheless, we also appreciate the difficulties faced by some local enforcement officers in gathering evidence of illegal street trading under the current regime. Even so, we are not convinced that pedlars who trade as pedlars (i.e. within the terms of the Pedlars' Act or within the possible alternative definitions discussed elsewhere in this document) are the

cause of these problems. We would contend that in respect of the problems which have been described to us, and which have been mentioned in the course of the progress of private Bills in Parliament, the introduction of a package of measures along the lines of those discussed in this document would have the effect of enabling local authorities to deal effectively with all illegal street trading. The desired outcome is that in addition to properly licensed, or consented, street traders, only those certified pedlars who trade legitimately would be trading in the streets.

Question 23: Do you agree with the Department's general perception, as set out above? If not, please explain.

Restricting Certified Pedlars in Private Acts

98. It is clear from the comments of those supporting some of the private Bills currently before the UK Parliament that some of those local authorities do not wish to restrict pedlars' opportunities to trade. However, it is also clear that there are traders holding pedlars certificates who are taking advantage of the uncertainties in the current regime, and that local authorities faced with these problems feel they have little alternative but to seek to tackle these traders by bringing them firmly within the street trading regime (by amending the exemption for all pedlars). In so doing, by default, they restrict the trading activities of law abiding pedlars. The evidence and other views we have received suggests that, to a considerable degree, this is a regrettable consequence of seeking to tackle unfair trading.
99. The Department is therefore working to identify solutions which make it easier for enforcement authorities to deal with illegal street trading while not unduly restricting pedlars from carrying out their legitimate trade in the street.

Providing for restrictions on pedlar activities

100. As the Durham researchers made clear, while there was no substantive evidence to suggest that pedlars' activities should be restricted nationally, they did acknowledge that there may be circumstances in which some local restrictions could be considered appropriate. They suggested these restrictions might be the subject of local acts with a heavy burden of proof attached to establish genuine evidence of a local problem.
101. However, if the Government were to amend the current regime we would be minded to also consider providing for a system whereby a local authority could implement local restrictions on pedlar activities under specific conditions. This would clearly be more efficient than the ad hoc promotion of local bills and the resources that takes from local authorities.
102. Given the evidence and what we would intend to be the effect of a package of measures of the type discussed in this document we would be wary of providing powers whereby general restrictions on pedlary could be introduced in any given area. The assumption would likely be that pedlary is permitted anywhere and that restrictions should apply only in exceptional circumstances. We envisage that restrictions would generally take the form of a limit on numbers as opposed to seeking to limit modes of trading (e.g. to trading from door to door) or completely banning pedlars, and that any new regulation would set out the circumstances and the conditions under which a local authority could apply restrictions.
103. We would suggest that the exceptional circumstances which might justify restrictions on pedlar numbers would be, for example:

- At peak periods of seasonal activity at specific locations which have a history of attracting unreasonable numbers of pedlars – summer season on sea fronts for example.
- Areas of pedestrian congestion where street trading is already prohibited – historic town centres during tourist season.
- Special annual or occasional local events with a history of attracting unreasonable numbers of pedlars – fairs – County shows – large sporting events – local festivals etc.
- Streets in which static street trading is already prohibited, assuming the rationale for prohibiting static street trading applies equally to trading as a pedlar.

104. Precisely how a limit on numbers could be managed in a fair way should we believe be for local authorities to consider, perhaps by issuing day licences during periods of restriction, but consistency of approach and methodology would be important. It would also be important that restrictions were properly communicated to pedlars a reasonable time in advance of them taking effect in order that pedlars can properly plan their activities and have time to apply for any licence, possibly on the day they intend to trade in a given location. We understand that pedlars often take factors such as the weather into consideration when deciding where to trade on a given day. Clearly, this would require further work in the light of the outcomes of this consultation.

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

Question 27: Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice?

Position of private Acts of Parliament

105. To the extent that any new provisions had the same effect as provisions in private Acts of Parliament, or provided for alternative means of addressing the issues addressed by those Acts, the Government would seek to repeal those Acts in consultation with the local authorities concerned.

5.3 Final Point of Appeal for Street Trading Appeals (London only)

106. Under the London Local Authorities Acts and City of Westminster Acts, the Secretary of State is the final office of appeal in respect of some of the decisions of a local authority as regards street trading. These are set out below. In the rest of the UK, the Magistrates' Court is the usual path to appeal for street trading matters.

107. Appeals to Secretary of State

Section 19 of the City of Westminster Act 1999

Any person aggrieved –

- (a) by a resolution varying or rescinding a designating resolution;
- (b) by a specifying resolution or a resolution varying such a resolution;
- (c) by a standard condition; or
- (d) by the amount of a fee or charge under section 22 (Fees and charges) of this Act;

may appeal to the Secretary of State whose decision shall be final.

Section 30 (11) of the London Local Authorities Act 1994

Any person aggrieved –

- (a) by a resolution varying or rescinding a designating resolution;
- (b) by a resolution under subsection (1)(b) of section 24 (Designation of licence streets) of this Act;
- (c) by a standard condition prescribed by regulations under subsection (3) of section 27 (Conditions of street trading licences) of this Act; or
- (d) by the amount of a fee or charge under section 32 (Fees and charges) of this Act;

may appeal to the Secretary of State whose decision shall be final.

The Options

Option A: Do nothing. (*Option (i) in the Impact Assessment*)

Option B: Remove the Secretary of State (SoS) as office of appeal and replace with Magistrates' Court. (*Option (iii) in the Impact Assessment*)

Government's Preferred Option*

Option B

108. We see no reason why the SoS should be the office of appeal for local street trading matters in London. It is a general principle of better regulation that the route of appeals should be proportionate to the issue at hand. In our view, it is not proportionate to require the SoS to determine street trading appeals and that magistrates are the more appropriate body as they already entertain some appeals in this subject area.

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

* This is currently the Government's preferred option based on our assessment of the evidence to date. It is not established policy.

6. Services Directive

109. In order to ensure proper implementation of the Services Directive on 31 December 2009, the UK and Scottish Governments intend to amend the Pedlars Act by removing service providers from its scope. The Services Directive requires member States to remove any authorisation schemes which might act as a deterrent or a barrier to service providers from other member States operating in the UK. In the UK and Scottish Government's view the pedlar certification scheme amounts to an authorisation scheme which cannot easily be justified on the criteria set out in the Services Directive.
110. To meet the deadline for implementation the Department has decided to remove pedlars who provide only services from the regime. The implementing legislation is due to come into force on 28 December 2009. After that date, pedlars of services only will no longer need a pedlar's certificate. Certificates obtained by pedlars of services before the changes come into effect will continue to apply until they expire.
111. Pedlars who just provide a services (as opposed to supplying any goods) will be able to ply their trade anywhere in the UK, except those areas in which the local authorities have obtained private legislation which has the effect of extending the street trading provisions of the Local Government (Miscellaneous Provisions) Act 1982 (which only apply to trading in goods) to providing services in the street.
112. In those designated areas, any service provider would be subject to the local authority regime and would need to apply for whatever licence or consent was required. Given that the current position is that it is only a pedlar of services operating exclusively door to door who is exempt from having to obtain a street trader licence to operate in a designated street subject to private local authority legislation, this is a very limited category of pedlars affected by the changes. The Durham report found very little evidence of pedlars who provide only services and the effect of the removal of the certification of pedlars of services will, in our view, therefore have marginal effect.
113. Incidentally, we understand that those local authorities who apply street trading licensing to service providers are required to justify that those regimes operate within the requirements of the services directive. If they are unable to do so those authorisation schemes will need to be removed insofar as they apply to service providers.
114. It may be possible to institute a national system of authorisation for service providers within the requirements of the Services Directive although we are conscious that our justification for imposing such a scheme may be challenged in respect of the qualifying criteria. However, we are of the view that attempting to introduce such a system in respect of a small number of pedlars of services only, would not be a proportionate response to any perceived detriment which may result from the situation where no certification or authorisation scheme exists. We are aware of no evidence to suggest that the public interest or consumer protection would benefit from such a system for pedlars of services given that they would be subject to other applicable legislation.
115. Furthermore, the Services Directive applies stricter tests in relation to authorisation schemes in respect of temporary providers of services in the UK to the extent that any scheme which might be capable of applying to established pedlars of services could not apply to temporary pedlars of services visiting the UK. This inconsistency of application would be unfair to established pedlars and would introduce significant enforcement difficulties.

Question 29: If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. *Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.*

7. Draft Guidance

116. The Durham research findings reflected widespread support from stakeholders for information and guidance on the application of the current regime. This draft guidance therefore seeks to provide clarification to stakeholders including local authorities, police and retailers involved in trading in the street, or enforcing the regulatory regime on street trading and pedlary in England and Wales.
117. The Scottish Government propose parallel guidance for Scotland, reflecting the different case law in Scotland, based on different legislation. UK-wide guidance would be possible but would be lengthier and would include information irrelevant to most users.
118. The draft guidance is aimed at achieving a degree of consistency of interpretation of the current regime, particularly in respect of what constitutes acceptable street trading and pedlary practice. Subject to the consultation, we hope to make this available on the BIS website shortly after the closing date.
119. The draft guidance is attached at annex B. (Option (ii) in the Impact Assessment)

Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

Question 32: Do you have suggestions for amendments to the guidance? If so please specify how the guidance might be reformatted, added to or subtracted from, and why.

8. General Comments

Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

9 Next steps

120. The results of this consultation exercise, including a summary of the views expressed, and the Government's response will be published no more than three months after the close of the exercise. The results may be viewed on the BIS consultations home page at: <http://www.bis.gov.uk/consultations>.
121. Subject to the response to this consultation, it is intended to publish a second consultation outlining the way forward in Spring 2010, including a full impact assessment on the costs and benefits of the Government's preferred options and possibly identifying suitable legislative vehicles.

10 Annex A - Summary of Questions

Certification Process

Question 1: Do you agree that the definition is in need of updating and clarifying? If not, please provide your reasons.

Question 2: Do you think anything should be taken out or added to the list and why?

Question 3: Do you think the permitted size of a trolley should be set out in the definition. Please provide reasons for your answer and an indication of any size you think appropriate.

Question 4: Do you have alternative suggestions? Please provide them.

Question 5: In your view, will updating the certificate as described above make verification and identification of lawful pedlars easier for enforcement officers? Please give reasons for your answer.

Question 6: In your view, is the list of information to be included in a modified certificate complete? If not, please state what information you believe should be added/removed and why.

Question 7: Do you think that a national database of pedlars' certificates will improve the current system of enforcement and certification?

Question 8: Do you agree that the list of information to be held on the database is complete and correct? If not, please state what information you would remove/add and why.

Question 9: Would you support the reintroduction of certification for pedlar service providers? If so, please say why and provide any evidence in support of your view. If not, please say why.

Question 10: Do you think the proposed criteria will offer greater clarity of what is expected of a pedlar in terms of their suitability to hold a certificate?

Question 11: Do you think the proposed criteria will lead to a more consistent approach to refusal of applications from issuing authorities?

Question 12: In your view, should responsibility for issuing pedlars' certificates be transferred from the police to local authorities? Please give reasons for your answer.

Question 13: Do you think that clear terms for refusal of applications in the legislation, coupled with a right of appeal, are sufficient safeguards to ensure a fair and non-discriminatory certification regime? If not, what alternative or additional safeguards do you think are required?

Question 14: What are your views on the above option, and how this might affect street trading or pedlar activity?

Question 15: With further work, do you think this option is viable? Please give reasons for your answer.

Question 16: Are there other ways of maintaining the national access to pedlar certificates other than under the Pedlars Act ?

Question 17: What are your views on the above option? Please give reasons for your answer.

Enforcement

Question 18: Which of the above options do you favour?

Question 19: Should Local Authority Enforcement Officers be given powers to:

- i) issue fixed penalty notices**
- ii) seize goods, with forfeiture by order of the Court?**

Please give reasons for your answer.

Question 20: If you favour introducing new powers for local authority enforcement officers, can you provide evidence to support this view, particularly in terms of increasing the effectiveness of enforcement in this or other areas? If you do not support further powers, can you provide evidence to support this view?

Question 21: Is the list of offences in respect of FPNs complete and correct? If not, please state which offences you would add or take away, and why.

Question 22: At what levels do you think the fixed penalties should be set? Please give reasons for your answer.

Question 23: Do you agree with the Department's general perception, as set out above? If not, please explain.

Question 24: Do you agree that if provision for more enforcement options against illegal street trading and a sufficient demarcation between legitimate pedlary and other street trading was established (along the lines discussed elsewhere in this document) that this would address the issues of concern to some local authorities in relation to unfair trading and competition? If not, please explain.

Question 25: Do you agree that, in some circumstances, restrictions on the number of legitimate pedlars in specified areas and at specified times are justifiable? If not please explain why you do not agree.

Question 26: Do you agree that the list above illustrates the circumstances under which restriction on numbers is justifiable? Do you disagree with any of the listed circumstances, if so why? Would you add any circumstances to the list, if so, which and why?

Question 27: Do you have any observations in relation to the ideas aired in the final paragraph above on methodology and notice?

Question 28: Should street trading appeals in London be determined by the Magistrates' Court or the Secretary of State? Please give reasons for your answer.

Services Directive

Question 29: If you are aware of any evidence to suggest that the conclusions set out above do not reflect the actual position either in respect of our perceptions of numbers

of pedlars of services only or in respect of our understanding of the requirements of the services directive, please provide it. *Note that a pedlar of goods and services will need to be certified in order to trade as a pedlar of goods.*

Draft Guidance

Question 30: Is the checklist at the front of the guidance an adequate one-page summary detailing what legal street selling looks like? Please give reasons for your answer including anything you would like to see added or removed.

Question 31: Do you think the draft guidance meets the needs of the target audience, i.e. enforcers and traders, including pedlars? Please give reasons for your answer.

Question 32: Do you have suggestions for amendments to the guidance? If so, please specify how the guidance might be reformatted, added to or subtracted from, and why.

Question 33: If you have any other comments or observations, in particular any information on possible costs relating to the options (see Impact Assessment), we are happy to receive them as well.

Department for Business, Innovation & Skills

Street trading and pedlary: Draft guidance for local authorities, police, and pedlars in England, Wales and Northern Ireland

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1. Pedlary Checklist - Guidance from the Department for Business, Innovation & Skills (BIS) (take legal advice if you have any doubts about how you propose to trade)

Lawful Pedlary & Good Practice

You must have a current pedlar certificate.

You must move around to trade – keeping a reasonable distance from your last sales position, and moving on until you make another sale.

You must trade on foot

You can use a trolley to carry stock – but keep it reasonably sized, (what is reasonable depends on the circumstances) .

It is good practice to include your contact details on your goods or receipts so your customers can get in touch with you if need be.

Unlawful Pedlary

You should not use a fixed stall to sell from – this is street trading and subject to local authority control, for example licensing or prohibition.

Do not use large ‘trolleys’ to carry or display your goods even if they are mobile - the Pedlars Act envisages a pedlar carrying his goods.

Avoid standing still between sales if you are trading – you need to move from street to street while offering your goods for sale.

You should not wait in one place for customers to approach you, you should offer your goods while on the move.

More information online at (TBC) NB. This information represents the department’s view of current relevant legislation and should not be taken as a definitive statement of the law, as the interpretation of the law is reserved for the Courts

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2. Summary

This note provides guidance on street trading and pedlary in the UK, specifically England and Wales, to pedlars, local authorities, the police and anyone else with an interest in the issue. It is directed at clarifying the conducting of street trading and pedlar activities.

The guidance is designed to help enforcement authorities decide where in the regulatory regime particular trading activities, carried out by those who trade in the street, fall. It is also designed to help certified pedlars and prospective certified pedlars to understand what constitutes legitimate pedlar trading activity and to explain any controls on those activities, for example, as the result of local Acts of Parliament.

In England and Wales national law on street trading and pedlary is the responsibility of the Department for Business, Innovation and Skills (separate legislation applies in Scotland and in Northern Ireland – please see section 6 below). There are also private or local Acts of Parliament which have additional effect in some local authority areas. These are not the responsibility of the Department.

This note contains web links to further information and points of contact (BIS does not endorse the content of external web sites). This guidance note is available online via the BIS web site at this address (TBC)

3. Why has this Guidance note been produced?

3.1 In spring 2008, the former Department for Business, Enterprise and Regulatory Reform (BERR) commissioned Durham University to conduct research across Great Britain to provide the Government with evidence on the effectiveness and perceptions of street trading and pedlary legislation. The project's Terms of Reference are set out on the BIS web site <http://www.berr.gov.uk/whatwedo/consumers/business/market-trading/page46738.html> and the project report can be found at <http://www.berr.gov.uk/files/file49664.pdf>

3.2 During the research, Durham made contact with a variety of consultees (including street traders, pedlars, local authorities, police districts and consumers). One of the conclusions of the report was that there is a 'considerable amount of confusion in the minds of some stakeholders around permitted pedlary and illegal street trading'. As a consequence, and in the knowledge that there was widespread support for guidance on the application of current legislation to trading in the street, we have produced this Guidance.

4. Does this Guidance have legal status?

4.1 No, although every effort has been made to produce accurate and useful information, this Guidance should not be interpreted as being legally definitive and should not be relied on as a statement of the law.

4.2 The application of the law in any particular case will depend on the individual circumstances of each case. Ultimately, only the Courts can decide whether and how the law applies in any case. It is for each enforcement authority to decide, with the benefit of legal advice as appropriate, on how it applies relevant legislation in the course of carrying out its duties.

5 What is the audience for this Guidance?

5.1 This material is intended for all those with an interest in street trading and pedlary, in particular, pedlars and those who enforce local authority controls on street trading. It has been produced in response to requests for such material from a wide range of people who responded to Durham University's research project in 2008. This Guidance includes a checklist on the lawful activity of pedlars trading with a certificate in accordance with the Pedlars Act. You may find it useful as a quick reference source. This Guidance is available on the BIS web site at:[to be confirmed].

6. What is the law regulating street trading and pedlary?

6.1 **Pedlars Act 1871 (as amended)** sets out the regime which regulates pedlar activity.

Certification

6.2 A pedlar must obtain a certificate in order to trade as a pedlar throughout the UK. The police are the authority responsible for issuing certificates to pedlars in accordance with the Act. In order to issue a certificate the police must be satisfied that the applicant has resided in their police area for a month, is over 17 years of age, of good character and intends to carry out legitimate trading activities as a pedlar under the Act, The certificate is issued for the period of a year and may be renewed on expiry. A refusal to issue a certificate may be taken to a magistrates' court on appeal. There is a fee for issue of the certificate, currently £12.25. The police are required to maintain a register of certificates issued in their area and to provide application forms for certificates on request. If a person is convicted of an offence under the Pedlars Act, the court will endorse a record of the offence on his certificate.

Under the Act, a pedlar is defined as:

6.3 'any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft'

Offences

6.4 It is an offence under the Act for a person to :

- lend, transfer or assign his certificate to another person;
- borrow or make use of a certificate granted to another;
- act as a pedlar without having obtained a certificate;
- refuse to produce and show, on request, his certificate to any justice of the peace, or police officer, or any person to whom he offers his goods for sale or to any person in whose private grounds or premises he is found.

6.5 (The above are subject to fines not exceeding Level 1 (£200) on the standard scale)

6.6 It is also an offence to make false representation with a view to obtaining a certificate. This offence is subject to a fine of up to level 2 (£500) on the standard scale, or to imprisonment for a term of up to 6 months, or both.

Removal of certificate

6.7

- A pedlar's certificate may be removed by the Court if a pedlar is convicted of any offence (whether under this Act or another).
- The Court is obliged to remove a certificate from any person convicted of begging.
- A magistrates' court may require a pedlar to appear before it and remove a certificate if the pedlar fails to appear or fails to satisfy the court that he is in good faith carrying on the business of a pedlar

6.8 **Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A)**

This Act extends in the main to England and Wales. Section 3 and Schedule 4 provide local authorities with powers to regulate street trading. Local authorities may designate their streets as:

- prohibited streets (where street trading is prohibited);
 - consent streets (where street trading is prohibited without local authority consent); and
 - licence streets – (where street trading is prohibited without a local authority licence).
- The Schedule also sets down the rules for issuing licenses and consents and on setting fees.

6.9 The Act creates offences which apply to

- trading in prohibited streets
- trading in consent or licence streets without the necessary authority
- contravening terms of a licence
- contravening conditions imposed on permissions to trade
- making false statements in connection with an application for a licence or consent.

A person guilty of such an offence may be liable on conviction to a fine up to level 3 (£1000).

6.10 For the purposes of the Act, street trading is defined as “the selling or exposing or offering for sale any article (including a living thing) in a street”. The regulation thus applies only to the sale of goods. There are several trading activities that are not street trading for the purposes of the Act. These include “trading by a person acting as a pedlar under the authority of a pedlar's certificate granted under the Pedlars Act 1871”.

6.11 This means that a certified pedlar trading as a pedlar in a street designated and regulated under the LG(MP)A does not need to hold a street trading licence. If however, a certified pedlar trades from a static position with or without a stall or a big trolley, then he will be acting as an illegal street trader unless he has the necessary consents or licence to trade in that street. He would then be liable for offences under the LG (MP) A.

6.12 **Civic Government (Scotland) Act 1982.** In Scotland the Civic Government (Scotland) Act 1982 sets out provisions for the licensing and regulation of certain activities. Section 39 (1) and (2) provide that a licence is required for street trading in a public place by a person:

“a) hawking, selling or offering or exposing for sale any article;

b) offering to carry out or carrying out for money or money's worth any service, to any person in the public place and includes doing any of these things there in or from a vehicle or in or from a kiosk or moveable stall not entered in the valuation roll except where it is done in conjunction with or as part of a retail business being carried on in premises abutting the public place.”

6.13 The section goes on to provide that a street trader's licence is not required for "any activity in respect of which a certificate under the Pedlars Act 1871 has been granted".

6.14 This means that when acting as a pedlar, therefore, a certified pedlar is not subject to the street trading provisions of the Civic Government (Scotland) Act 1982.

Private Acts of Parliament

6.15 As detailed later, some local authorities have obtained private Acts of Parliament which have amended the exemption from the street trading provisions of the Local Government (Miscellaneous Provisions) Act 1982, so that it only applies to certified pedlars who trade from door to door. Thus, if a pedlar wishes to trade in the street they must obtain any relevant licence or consent from the local authority.

6.16 In these areas, unless the local authority has powers to grant temporary, short term or daily street trading permissions which enable traders to trade on a daily basis, the restriction to trading door to door trading prohibits any trading in the street by certified pedlars.

6.17 **Street Trading (Northern Ireland) Act 2001.** Northern Ireland has its own street trading legislation in the Street Trading (Northern Ireland) Act 2001. This is administered at local council level. Street trading is defined as

- "a) selling any article or thing; or
 - b) supplying a service,
- in a street, whether or not from a stationary position."

Activities which are not street trading include "trading as a person under the authority of a pedlar's certificate granted under the Pedlars Act 1871 (c.96), if the trading is carried out only by means of visits from house to house."

6.18 For more information on the situation in Northern Ireland, please contact the local council whose arrangements you wish to learn about.

6.19 This means that in all areas **not** covered by private Acts, pedlars are entitled to trade within the terms of their certificate, except in Northern Ireland, where all pedlar activity is restricted to door to door trading.

7. What is a pedlar?

7.1 The definition of a pedlar under the Pedlars Act 1871 (see 6.3 above) is very descriptive of the activities of a pedlar. In essence, it means that a pedlar must trade on the move and not from a static location and carry their goods with them.

7.2 The Act is to be amended by Regulations implementing the Services Directive (Directive 2006/123/EC) so that it only regulates the activities of pedlars of goods. On expiry of their current certificates, pedlars of services are free to continue their activities and do not need a certificate to authorise them to do so. They will however need to comply with street trading legislation applicable in the areas in which they propose to trade and this may mean that they have to obtain street trading licences from local authorities.

8. What does the Case Law indicate?

8.1 The law affecting street trading has developed through case law. The English Courts have provided helpful additional guidance on what has been acceptable and what has not when considering the point at which trading as a certified pedlar ceases to fall within the exemption

from requirements to hold a licence and becomes street trading for the purposes of legislation and subject to holding a street trading licence or consent.

8.2 The case of Chichester District Council v Wood [Divisional Court CO/2738/96] contains a review of the authorities by the court which then set out the criteria stated in them relating to when a pedlar is acting as a street trader:

- (1) Each case depends on its own facts
- (2) A pedlar goes to his customers rather than allowing them to come to him
- (3) A pedlar trades as he travels rather than travels to trade
- (4) A pedlar is a pedestrian
- (5) If a pedlar is a seller, rather than a mender, he sells reasonably small goods
- (6) He is entitled to have some small means of assisting his transport of goods, such as a trolley
- (7) It is necessary to consider his whole apparatus of trading and decide if it is of such a scale to take the person concerned out of the definition of “pedlar”
- (8) The use of a stall, or stand, or barrow, may indicate an intention to remain in one place or in a succession of different places for longer than is necessary to effect the particular sale or sales indicating that he is a street trader and not a pedlar
- (9) If he sets up a stall or barrow and waits for people to approach him, rather than approaching them, that is an indication that he is a street trader and not a pedlar.

8.3 We would suggest that this criteria is comprehensive and useful as a guide to when a person is acting as a pedlar or a street trader,

8.4 **Use of Trolleys** – Case law has suggested that it is not unreasonable for a pedlar to have some means of assisting him to transport his stock while on the move, even though the Pedlars Act definition refers to a pedlar “...carrying to sell...” his goods. (See for example *London Borough of Croydon v William Burdon* CO/259/2002). Some local authorities have offered views about reasonable dimensions for trolleys, but what is reasonable would depend on the circumstances.

8.5 We consider that the use of any kind of trolley and its dimensions should fall within the general intention underlying the statutory definition of a pedlar. Clearly anything which is unwieldy and cannot be moved around with ease or without causing obstruction or which is not primarily for transporting goods (as opposed to displaying goods) would not be appropriate in terms of what is envisaged by acting as a pedlar. It is unlikely, for example, that a full sized supermarket stock cage would be considered a reasonable means of aiding the constant movement inherent in a certified pedlar’s permitted activities. The Wood case mentioned above concerned what was described as “a barrow with a canopy and on the barrow were buckets of flowers. The respondent used handles to push the cart, which was on wheels”. These facts among others were held to indicate that the respondent was carrying out a street trader type of trading rather than a pedlar type of trading.

8.6 **Stationary trading** – Case law (including the decisions in *London Borough of Croydon v William Burdon* and *Watson v Malloy* [1988] 3 All E R 459) suggests that the pedlar should be stationary only when making sales, otherwise she or he should move about. Simply moving a

few paces either side of or around a single point would not be within the spirit of this decision, nor we would contend, within the spirit of the Pedlars Act. We take the view that movement should generally be from street to street, or in the case of a long street or stretch of sea-front, for example, perhaps constant movement along that street.

8.7 Frequency of visits to particular local authorities – this is not covered in the legislation and has not, to our knowledge, been the subject of case law. In the absence of any restrictions or precedents therefore it is our view that a pedlar is entitled to trade anywhere in the UK and that would include trading in the same town from day to day.

9. Trade in local authority areas which have private Acts regulating street trading.

9.1 A number of local authorities have obtained private Acts of Parliament which in addition to providing more enforcement options to control illegal street trading also have the effect of prohibiting certified pedlary except for sales made or, in some cases, services provided door to door. Pedlars who trade other than from door to door in designated areas without the required licence or consent will be subject to enforcement action in the following areas:

- City of Westminster
- London Local Authorities
- Leicester
- Liverpool
- Maidstone
- Medway
- Newcastle upon Tyne

9.2 The following local authorities were (during Summer 2009) pursuing private Bills which, if passed, will have substantially the same effect on pedlars in their areas:

- Bournemouth Borough
- Manchester City
- Canterbury City Council
- Leeds City Council
- Nottingham City Council
- Reading Borough Council

10. Enforcement

10.1 Legislation which addresses trading in the street is enforced by several agencies including local authority street trading officers, and the police.

10.2 A pedlar is required on demand to show his certificate to the police, to a justice of the peace, to any person to whom he offers his goods for sale and to any person on whose private property the pedlar is found. It is an offence not to produce the certificate in these circumstances. It is also an offence to lend or to borrow a certificate (further details above).

10.3 Where a pedlar operating under a valid certificate ceases to trade in accordance with the definition of pedlar under the Pedlars Act 1871, the exemption in respect of street trading regulation will cease to apply. That person will be subject to the normal street trading controls which apply in the area in which he is trading if the relevant local authority has adopted the street trading provisions of the Local Government (Miscellaneous Provisions) Act 1982 or a licensing authority under the Civic Government (Scotland) Act 1982 has designated that area.

10.4 Clearly, there will be cases where the activities of a particular trader will give rise to genuine uncertainty over whether the trader is subject to street trading controls as enforced by the local authorities. It is the Department's view that any enforcement action should be properly targeted, proportionate and generally in accordance with precedent. Enforcement authorities should bear in mind when taking action in each case that they should be able to satisfy a court that, in pursuing enforcement action, they do so in a way which is in accordance with the Human Rights Act 1998.

10.5. Although a pedlar's certificate grants the right to trade, it does not affect the application of the general law which places obligations on all traders, for example in relation to obstruction, consumer rights, consumer safety, unfair trading practices, doorstep sales and copyright law. The BIS website contains information on many of these provisions.

11. What enforcement powers do local authorities have?

Fines

11.1 Under schedule 4 to the Local Government (Miscellaneous Provisions) Act offences resulting from unlawful trading in designated streets can result in a level 3 fine of up to £1000. Under section 7(1) of the Civic Government (Scotland) Act 1982 trading without holding a licence where required is an offence and liable on summary conviction to a level 4 fine of up to £2,500.

Seizure

11.2 In areas in which private Acts apply the local authority may authorise officers of the Council to seize goods in respect of street trading offences. They may seize any article being offered or exposed for sale or displayed; or any receptacle or equipment being used by that person.

11.3 Seizure may only be on condition that the article, receptacle or equipment may be required to be used in evidence, may be the subject of forfeiture under the relevant Act; or is not of a perishable nature. There is provision for compensation where seizure is unlawful.

Forfeiture of seized items

11.4 A court may order any article, receptacle or equipment shown to relate to an offence to be forfeited and dealt with in a prescribed manner.

12. Unsafe or Counterfeit Goods

12.1 Trading Standards and their enforcement partners also have general powers to tackle trading in unsafe or counterfeit goods. There are various offences related to breach of provisions contained in the:

- Trade Marks Act 1994
- Copyright, Designs and Patents Act 1998
- Video Recordings Act 1989
- Fraud Act 2006 (England, Wales) and Common Law Fraud in Scotland
- Consumer Protection from Unfair Trading Regulations Act 2008
- Consumer Protection Act 1987

13. Other Sources of Information

13.1 Individual sellers can contact their local Council's Licensing team

13.2 Licensed street traders can contact - National Market Traders Federation:
<http://www.nmtf.co.uk/>

13.3 To learn more about pedlars views visit: www.pedlars.info

13.4 For general consumer related information please visit
<http://www.tradingstandards.gov.uk/>

14. How can I offer views to BIS about this Guidance?

14.1 BIS has set up an email address to which you can send your views:
streettradingandpedlaryconsultation@bis.gsi.gov.uk

15. Will BIS review the contents of this Guidance in future?

15.1 Yes, BIS will review the structure and content of this Guidance when the Bills referred to in section 9 come into force.

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12 Annex C – Pedlars Act 1871

Revised Statute from The UK Statute Law Database

Pedlars Act 1871 (c.96)

This version of this statute is extracted from the UK Statute Law Database (SLD). It is not in the form in which it was originally enacted but is a revised version, which means that subsequent amendments to the text and other effects are incorporated with annotations.



Pedlars Act 1871 1871 CHAPTER 96 34_and_35_Vict Contents

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Form A

An Act for granting Certificates to Pedlars.

[21st August 1871] X1

Annotations:

Modifications etc. (not altering text)

- C1** Preamble omitted under authority of Statute Law Revision (No. 2) Act 1893 (c. 54)
- C2** References to Ireland to be construed as exclusive of Republic of Ireland: S.R. & O. 1923/405 (Rev. X, p. 298: 1923, p. 400), art. 2
- C3** This Act is not necessarily in the form in which it has effect in Northern Ireland

Editorial Information

- X1** This Act is not necessarily in the form in which it has effect in Northern Ireland.

Preliminary

1 Short title

This Act may be cited as “The Pedlars Act 1871.”

2 **F1**

Annotations:

Amendments (Textual)

- F1** S. 2 repealed by Statute Law Revision (No. 2) Act 1893 (c. 54)

3 Interpretation of certain terms in this Act. “Pedlar”

In this Act, if not inconsistent with the context, the following terms have the meanings hereinafter respectively assigned to them; that is to say,—

The term “pedlar” means any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men’s houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft;

. . . **F1**

F2 . . .

Annotations:

Amendments (Textual)

- F1** Definitions repealed by Statute Law Revision (No. 2) Act 1893 (c. 54), Police Act 1964 (c. 48), Sch. 10 Pt. I and Police (Scotland) Act 1967 (c. 77), Sch. 5 Pts. I, II
- F2** Definition in s. 3 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. I Group 1.

Certificates to be obtained by Pedlars

4 No one to act as a pedlar without certificate

No person shall act as a pedlar without such certificate as in this Act mentioned, or in any district where he is not authorized by his certificate so to act.

Any person who—

- (1) acts as a pedlar without having obtained a certificate under this Act authorizing him so to act;

... F1

shall be liable for a first offence to a penalty not exceeding [F2level 1 on the standard scale], and for any subsequent offence to a penalty not exceeding [F2level 1 on the standard scale].

Annotations:

Amendments (Textual)

F1 Words repealed by Pedlars Act 1881 (c. 45), Sch.

F2 Words substituted by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G

5 Grant of certificate

The following regulations shall be made with respect to the grant of pedlar certificates:

(1) Subject as in this Act mentioned, a pedlar's certificate shall be granted to any person by the chief officer of police [F1for the police area]in which the person applying for a certificate has, during one month previous to such application, resided, on such officer being satisfied that the applicant is above seventeen years of age, is a person of good character, and in good faith intends to carry on the trade of a pedlar:

(2) An application for a pedlar's certificate shall be in the form specified in schedule two to this Act, or as near thereto as circumstances admit:

(3) There shall be paid for a pedlar's certificate previously to the delivery thereof to the applicant a fee of [F2£12.25]

(4) A pedlar's certificate shall be in the form specified in schedule two to this Act, or as near thereto as circumstances admit:

(5) A pedlar's certificate shall remain in force for one year from the date of issue thereof, and no longer:

(6) On the delivery up of the old certificate, or on sufficient evidence being produced to the satisfaction of the chief officer of police that the old certificate has been lost, that officer may, either at the expiration of the current year, or during the currency of any year, grant a new certificate in the same manner as upon a first application for a pedlar's certificate. In Great Britain one of Her Majesty's Principal Secretaries of State, and in Ireland the Lord Lieutenant may from time to time provide for the expiration of all pedlars certificates at the same period of each year, and in doing so shall provide for the apportionment of the fees payable in respect of any such certificate.

Annotations:

Amendments (Textual)

F1 Words in s. 5(1) substituted (22.8.1996) by 1996 c. 16, ss. 103(1), 104(1), Sch. 7 Pt. II para. 2

F2 Words substituted (E.W.) by virtue of S.I 1985/2027. art. 2 and (S.) by virtue of S.I. 1985/2054, art. 2

Modifications etc. (not altering text)

C1 Power to amend s. 5 (E.W.) conferred by Local Government Act 1966 (c. 42), s. 35(2), Sch. 3 Pt. II para. 8

C2 Power to amend s. 5(3) conferred (S.) by Local Government (Scotland) Act 1966 (c. 51, SIF 81:2), s. 42(2), Sch. 4 Pt. II (as amended by Local Government (Miscellaneous Provisions) (Scotland) Act 1981 (c. 23, SIF 81:2), s. 40, Sch. 3 para. 12)

Extent Information

E1 This version of this provision extends to England, Wales and Scotland only; a separate version has been created for Northern Ireland only

5 Grant of certificate

The following regulations shall be made with respect to the grant of pedlar certificates:

(1) Subject as in this Act mentioned, a pedlar's certificate shall be granted to any person by the chief officer of police of the police district in which the person applying for a certificate has, during one month previous to such application, resided, on such officer being satisfied that the applicant is above seventeen years of age, is a person of good character, and in good faith intends to carry on the trade of a pedlar:

(2) An application for a pedlar's certificate shall be in the form specified in schedule two to this Act, or as near thereto as circumstances admit:

(3) There shall be paid for a pedlar's certificate previously to the delivery thereof to the applicant a fee of [F1£12.25]

(4) A pedlar's certificate shall be in the form specified in schedule two to this Act, or as near thereto as circumstances admit:

(5) A pedlar's certificate shall remain in force for one year from the date of issue thereof, and no longer:

(6) On the delivery up of the old certificate, or on sufficient evidence being produced to the satisfaction of the chief officer of police that the old certificate has been lost, that officer may, either at the expiration of the current year, or during the currency of any year, grant a new certificate in the same manner as upon a first application for a pedlar's certificate. In Great Britain one of Her Majesty's Principal Secretaries of State, and in Ireland the [F2Department for Social Development may by order provide] for the expiration of all pedlars certificates at the same period of each year, and in doing so shall provide for the apportionment of the fees payable in respect of any such certificate.

Annotations:

Amendments (Textual)

F1 Words substituted (N.I.) by virtue of S.R. 1985/350. art. 2(1)

F2 Words in s. 5(6) substituted (2.12.1999) by S.I. 1999/663, arts. 1(2), 2(1), Sch. 1 para. 6(1) (with art. 5)

Extent Information

E1 This version of this provision extends to Northern Ireland only; a separate version has been created for England, Wales and Scotland only

6 Effect of certificate

. . . **F1**

For the purpose of the **M1**Markets and Fairs Clauses Act 1847, and any Act incorporating the same, a certificate under this Act shall have the same effect, within the district for which it is granted, as a hawkers license, and the term "licensed hawker" in the first-mentioned Act shall be construed to include a pedlar holding such a certificate.

Annotations:

Amendments (Textual)

F1 Words repealed by Pedlars Act 1881 (c. 45), Sch.

Marginal Citations

M1 1847 c. 14.

7 F1

Annotations:

Amendments (Textual)

F1 S. 7 repealed by Pedlars Act 1881 (c. 45), Sch.

8 Register of certificates to be kept in each district

There shall be kept in each [F1police area] a register of the certificates . . . **F2** granted . . . **F2** in [F3the area]under this Act, in such form and with such particulars as may from time to time be directed in Great Britain by one of Her Majesty's Principal Secretaries of State, and in Ireland by the Lord Lieutenant.

The entries in such register, and any copy of any of such entries, certified by the chief officer of police to be a true copy, shall be evidence of the facts stated therein.

Annotations:

Amendments (Textual)

F1 Words in s. 8 substituted (22.8.1996) by 1996 c. 16, ss. 103(1), 104(1), Sch. 7 Pt. II para. 3(a)

F2 Words repealed by Pedlars Act 1881 (c. 45), Sch.

F3 Words in s. 8 substituted (22.8.1996) by 1996 c. 16, ss. 103(1), 104(1), Sch. 7 Pt. II para. 3(b)

Extent Information

E1 This version of this provision extends to England, Wales and Scotland only; a separate version has been created for Northern Ireland only

8 Register of certificates to be kept in each district

There shall be kept in each police district a register of the certificates . . . **F1** granted . . . **F1** in such district under this Act, in such form and with such particulars as may from time to time be directed in Great Britain by one of Her Majesty's Principal Secretaries of State, and in Ireland by the [F2Department for Social Development].

The entries in such register, and any copy of any of such entries, certified by the chief officer of police to be a true copy, shall be evidence of the facts stated therein.

Annotations:

Amendments (Textual)

F1 Words repealed by Pedlars Act 1881 (c. 45), Sch.

F2 Words in s. 8 substituted (2.12.1999) by S.I. 1999/663, arts. 1(2), 2(1), Sch. 1 para. 6(2) (with art. 5)

Extent Information

E1 This version of this provision extends to Northern Ireland only; a separate version has been created for England, Wales and Scotland only

9 Forms of application to be kept at chief police office

Forms of applications for certificates shall be kept at every police office in every [F1police area], and shall be given gratis to any person applying for the same; and all applications for certificates shall be delivered at the police office of the division or subdivision of the [F1police area] within which the applicant resides, and certificates, when duly signed by the chief officer of police, shall be issued at such office.

Annotations:

Amendments (Textual)

F1 Words in s. 9 substituted (22.8.1996) by 1996 c. 16, ss. 103(1), 104(1), Sch. 7 Pt. II para. 4

Extent Information

E1 This version of this provision extends to England, Wales and Scotland only; a separate version has been created for Northern Ireland only

9 Forms of application to be kept at chief police office

Forms of applications for certificates shall be kept at every police office in every police district, and shall be given gratis to any person applying for the same; and all applications for certificates shall be delivered at the police office of the division or subdivision of the police district within which the applicant resides, and certificates, when duly signed by the chief officer of police, shall be issued at such office.

Annotations:

Extent Information

E1 This version of this provision extends to Northern Ireland only; a separate version has been created for England, Wales and Scotland only

10 Certificate not to be assigned

A person to whom a pedlar's certificate is granted under this Act shall not lend, transfer, or assign the same to any other person, and any person who lends, transfers, or assigns such certificate to any other person shall for each offence be liable to a penalty not exceeding [F1level 1 on the standard scale].

Annotations:

Amendments (Textual)

F1 Words substituted (E.W.S.) by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G

11 Certificate not to be borrowed

No person shall borrow or make use of a pedlar's certificate granted to any other person, and any person who borrows or makes use of such certificate shall for each offence be liable to a penalty not exceeding [F1level 1 on the standard scale].

Annotations:

Amendments (Textual)

F1 Words substituted (E.W.S.) by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G

12 Penalty for forging certificate

Any person who commits any of the following offences; (that is to say,)

(1) Makes false representations with a view to obtain a pedlar's certificate under this Act:

[F1(2) Forges or counterfeits a pedlar's certificate granted under this Act:]

(3) . . . F2

[F1(4) Aids in making or procures to be made such forged or counterfeited certificate . . . F2]

[F1(5) Travels with, produces, or shows any such forged or counterfeited certificate . . . F2]

shall for the first offence be liable to a penalty not exceeding [F3level 2 on the standard scale], and for any subsequent offence, either instead of or in addition to such penalty, to be imprisoned for any term not exceeding six months, . . . F4

Annotations:

Amendments (Textual)

F1 S. 12, paras. (2), (4) and (5) repealed (E.W.N.I.) by Forgery and Counterfeiting Act 1981 (c. 45, SIF 39:7), s. 30, Sch. Pt. I

F2 Words repealed by Pedlars Act 1881 (c. 45), Sch.

F3 Words substituted (E.W.S.) by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G

F4 Words omitted by virtue of (E.W.) Criminal Justice Act 1948 (c. 58), s. 1(2) and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21), s. 221(2)

Modifications etc. (not altering text)

C1 Criminal Justice Act 1982 (c. 48, SIF 39:1), ss. 35 (in relation to liability on first and subsequent convictions), applies (E.W.)

C2 Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289E (in relation to liability on first and subsequent convictions), applies (S.)

[F113 No exemption from vagrant law

A person shall not be exempt from the provisions of any Act relative to idle and disorderly persons, rogues, and vagabonds, by reason only that he holds a certificate under this Act, or assists or is accompanying a pedlar holding a certificate under this Act.]

Annotations:

Amendments (Textual)

F1 S. 13 as it applies to England and Wales repealed by Statute Law (Repeals) Act 1989 (c. 43), s. 1(1), Sch. 1 Pt. I Gp. 4

14 Convictions to be indorsed on certificate

If any pedlar is convicted of any offence under this Act, the court, before which he is convicted shall indorse or cause to be indorsed on his certificate a record of such conviction.

The indorsements made under this Act on a pedlar's certificate shall be evidence of the facts stated therein.

15 Appeal against refusal of certificate by chief officer of police

If the chief officer of police refuses to grant . . . **F1** a certificate, the applicant may appeal to a court of summary jurisdiction having jurisdiction in the place where such grant . . . **F1** was refused, in accordance with the following provisions:

(1) The applicant shall, within one week after the refusal, give to the chief officer of police notice in writing of the appeal:

(2) The appeal shall be heard at the sitting of the court which happens next after the expiration of the said week, but the court may, on the application of either party, adjourn the case:

(3) The court shall hear and determine the matter of the appeal, and make such order thereon, with or without costs to either party, as to the court seems just:

(4) An appeal under this Act to a court of summary jurisdiction in England or Ireland shall be deemed to be a matter on which that court has authority by law to make an order in pursuance of the Summary Jurisdiction Acts, and in Scotland the court may adjudicate on matters arising under this section, in accordance with the enactments relating to the exercise of their ordinary jurisdiction:

(5) Any certificate, . . . **F1** granted . . . **F1** in pursuance of an order of the court, shall have the same effect as if it had been originally granted . . . **F1** by the chief officer of police.

Annotations:

Amendments (Textual)

F1 Words repealed by Pedlars Act 1881 (c. 45), Sch.

16 Deprivation of pedlars of certificates by court

Any court before which any pedlar is convicted of any offence, whether under this or any other Act, or otherwise, may, if he or they think fit, deprive such pedlar of his certificate; and any such court shall deprive such pedlar of his certificate if he is convicted of begging.

Any court of summary jurisdiction may summon a pedlar holding a certificate under this Act to appear before them, and if he fail to appear, or on appearance to satisfy the court that he is in good faith carrying on the business of a pedlar, shall deprive him of his certificate.

Duties of Pedlars

17 Pedlar to show certificate to certain persons on demand

Any pedlar shall at all times, on demand, produce and show his certificate to any of the following persons; (that is to say,)

- (1) Any justice of the peace; or
(2) Any constable or officer of police; or
(3) Any person to whom such pedlar offers his goods for sale; or
(4) Any person in whose private grounds or premises such pedlar is found:

And any pedlar who refuses, on demand, to show his certificate to, and allow it to be read and a copy thereof to be taken by, any of the persons hereby authorized to demand it, shall for each offence be liable to a penalty not exceeding [F1level 1 on the standard scale] .

Annotations:

Amendments (Textual)

F1 Words substituted (E.W.S.) by virtue of (E.W.) Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 46 and (S.) Criminal Procedure (Scotland) Act 1975 (c. 21, SIF 39:1), s. 289G

18 F1

Annotations:

Amendments (Textual)

F1 S. 18 repealed (E.W.) by Police and Criminal Evidence Act 1984 (c. 60, SIF 95), s. 119(2), Sch. 7 Pt. I and repealed by S.I. 1989/1341 (N.I. 12), art. 90(2)(3), Sch. 7 Pt. I

19 F1

Annotations:

Amendments (Textual)

F1 S. 19 repealed by Police and Criminal Evidence Act 1984 (c. 60, SIF 95), ss. 7(1)(d), 119(2), Sch. 7 Pt. I and by S.I.1989/1341 (N.I. 12), art. 90(2)(3), Sch. 7 Pt. I

Legal Proceedings

20 Summary proceedings for offences, &c

In England and Ireland all offences and penalties under this Act may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts, before a court of summary jurisdiction.

In Scotland all offences and penalties under this Act shall be prosecuted and recovered before a court of summary jurisdiction under the provisions of [F1Part II of the M1Criminal Procedure (Scotland) Act 1975], and all necessary powers are hereby conferred on such court.

F2. . .

Annotations:

Amendments (Textual)

F1 Words substituted by virtue of Criminal Procedure (Scotland) Act 1975 (c. 21), s. 460(1)(b)

F2 Words in s. 20 repealed (5.11.1993) by 1993 c. 50, s. 1(1), Sch. 1 Pt. I Group1.

Marginal Citations

M1 1975 c. 21.

21 Application of fees

All fees received under this Act in England and Ireland shall be applied in manner in which penalties recoverable under this Act are applicable.

All fees received under this Act in Scotland shall be accounted for and paid to the collector of the . . . [F2 F1 police area] in which they are received, . . . F1

Annotations:

Amendments (Textual)

F1 Words repealed by Local Government (Scotland) Act 1947 (c. 43), Sch. 14

Extent Information

E1 This version extends to England, Wales and Scotland only; a separate version has been created for Northern Ireland only

21 Application of fees

All fees received under this Act in England and Ireland shall be applied in manner in which penalties recoverable under this Act are applicable.

All fees received under this Act in Scotland shall be accounted for and paid to the collector of the . . . F1 district in which they are received, . . . F1

Annotations:

Amendments (Textual)

F1 Words repealed by Local Government (Scotland) Act 1947 (c. 43), Sch. 14

Extent Information

E1 This version of this provision extends to Northern Ireland only; a separate version has been created for England, Wales and Scotland only

Miscellaneous

22 Deputy of chief officer of police

Any act or thing by this Act authorized to be done by the chief officer of police may be done by any police officer under his command authorized by him in that behalf, and the term "chief officer of police" in this Act includes, in relation to any such act or thing, the police officer so authorized.

23 Certificate not required by commercial travellers, sellers of fish, or sellers in fairs

Nothing in this Act shall render it necessary for a certificate to be obtained by the following persons as such; (that is to say,)

- (1) Commercial travellers or other persons selling or seeking orders for goods, wares, or merchandise to or from persons who are dealers therein and who buy to sell again, or selling or seeking orders for books as agents authorized in writing by the publishers of such books:
- (2) Sellers of vegetables, fish, fruit, or victuals:
- (3) Persons selling or exposing to sale goods, wares, or merchandise in any public mart, market, or fair legally established.

24 Reservation of powers of local authority

Nothing in this Act shall take away or diminish any of the powers vested in any local authority by any general or local Act in force in the district of such local authority.

25 F1

Annotations:

Amendments (Textual)

F1 S. 25 repealed by Statute Law Revision Act 1883 (c. 39)

SCHEDULES

SCHEDULE ONE

. F1

Annotations:

Amendments (Textual)

F1 Sch. 1 repealed by (E.W.) Police Act 1964 (c. 48), Sch. 10 Pt. I and (S.) Police (Scotland) Act 1967 (c. 77), Sch. 5 Pts. I, II

Section 5.

SCHEDULE TWO FORM A

Form of Application for Pedlar's Certificate.

1 I, A.B. [*Christian and surname of applicant in full*] have during the last calendar month resided at in the parish of in the county of

2 I am by trade and occupation a [*here state trade and occupation of applicant, e.g., that he is a hawker, pedlar, &c.*]

3 I am years of age.

4 I apply for a certificate under the Pedlars Act 1871, authorizing me to act as a pedlar within the [F1police area].

Dated this day of (Signed)A.B.

Form B.

Form of Pedlar's Certificate

In pursuance of the Pedlars Act 1871, I certify thatA.B. [*name of applicant*] of in the county of aged years, is hereby authorized to act as a pedlar within the [F1police area] for a year from the date of this certificate. [*To be altered, if necessary, to correspond to any order of the Secretary of State or Lord Lieutenant of Ireland as to time of expiration of licenses.*]

Certified this day of A.D. (Signed)

The certificate will expire on the day of A.D.

Form C.

. . . F2

Annotations:

Amendments (Textual)

F1 Words in the Second Schedule substituted (22.8.1996) by 1996 c. 16, ss. 103(1), 104(1), Sch. 7 Pt. II para. 6

F2 Form C repealed by Statute Law Revision Act 1883 (c. 39)

Extent Information

E1 This version of this provision extends to England, Wales and Scotland only; a separate version has been created for Northern Ireland only

4 I apply for a certificate under the Pedlars Act 1871, authorizing me to act as a pedlar within the police district.

Dated this day of (Signed)A.B.

Form B.

Form of Pedlar's Certificate

In pursuance of the Pedlars Act 1871, I certify thatA.B. [*name of applicant*] of in the county of aged years, is hereby authorized to act as a pedlar within the police district for a year from the date of this certificate. [*To be altered, if necessary, to correspond to any order of the Secretary of State or [F1Department for Social Development] as to time of expiration of licenses.*]

Certified this day of A.D. (Signed)

The certificate will expire on the day of A.D.

Form C.

. . . F2

Annotations:

Amendments (Textual)

F1 Words in Sch. 2 para. 4 substituted (2.12.1999) by S.I. 1999/663, arts. 1(2), 2(1), Sch. 1 para. 6(3) (with art. 5)

F2 Form C repealed by Statute Law Revision Act 1883 (c. 39)

Extent Information

E1 This version of this provision extends to Northern Ireland only; a separate version has been created for England, Wales and Scotland only

13 Annex D – Pedlars Act 1881

Pedlars Act 1881 (c.45)

This version of this statute is extracted from the UK Statute Law Database (SLD). It is not in the form in which it was originally enacted but is a revised version, which means that subsequent amendments to the text and other effects are incorporated with annotations.



Pedlars Act 1881 1881 CHAPTER 45 44_and_45_Vict

An Act to amend the Pedlars Act 1871, as regards the district within which a certificate authorises a person to act as Pedlar.

[22nd August 1881]

Annotations:

Modifications etc. (not altering text)

C1Preamble omitted under authority of Statute Law Revision Act 1894 (c. 56)

C2This Act is not necessarily in the form in which it has effect in Northern Ireland

1 Short title

This Act may be cited as the Pedlars Act 1881.

This Act and the M1Pedlars Act 1871, may be cited together as the Pedlars Acts 1871 and 1881.

Annotations:

Marginal Citations

M11871 c. 96.

2 Alteration of 34 & 35 Vict.c. 96 so far as regards requiring indorsement of a pedlar's certificate

A pedlar's certificate granted under the Pedlars Act 1871, shall during the time for which it continues in force authorise the person to whom it is granted to act as a pedlar within any part of the United Kingdom.

... F1

Annotations:

Amendments (Textual)

F1Words repealed by Statute Law Revision Act 1894 (c. 56)

SCHEDULE

..... F1

Annotations:

Amendments (Textual)

F1Sch. repealed by Statute Law Revision Act 1894 (c. 56)

14 Annex E - Local Government (Miscellaneous Provisions) Act 1982

SCHEDULE 4 Street Trading

Annotations:

Modifications etc. (not altering text)

C1Sch.4: functions of local authority not to be responsibility of an executive of the authority (E.) (16.11.2000) by virtue of S.I. 2000/2853, reg. 2(1), Sch. 4 applied (with modifications) *prosp* by 2000 c. viii, ss. 3, 4

Interpretation

1(1)In this Schedule—

“consent street” means a street in which street trading is prohibited without the consent of the district council;

“licence street” means a street in which street trading is prohibited without a licence granted by the district council;

“principal terms”, in relation to a street trading licence, has the meaning assigned to it by paragraph 4(3) below;

“prohibited street” means a street in which street trading is prohibited;

“street” includes—

(a)

any road, footway, beach or other area to which the public have access without payment; and

(b)

a service area as defined in section 329 of the **M1**Highways Act 1980,

and also includes any part of a street;

“street trading” means, subject to sub-paragraph (2) below, the selling or exposing or offering for sale of any article (including a living thing) in a street; and

“subsidiary terms”, in relation to a street trading licence, has the meaning assigned to it by paragraph 4(4) below.

(2)The following are not street trading for the purposes of this Schedule—

(a)trading by a person acting as a pedlar under the authority of a pedlar’s certificate granted under the **M2**Pedlars Act 1871;

(b)anything done in a market or fair the right to hold which was acquired by virtue of a grant (including a presumed grant) or acquired or established by virtue of an enactment or order.

(c)trading in a trunk road picnic area provided by the Secretary of State under section 112 of the **M3**Highways Act 1980;

(d)trading as a news vendor;

(e)trading which—

(i)is carried on at premises used as a petrol filling station; or

(ii)is carried on at premises used as a shop or in a street adjoining premises so used and as part of the business of the shop;

(f)selling things, or offering or exposing them for sale, as a roundsman;

(g)the use for trading under Part VIIA of the Highways Act 1980 of an object or structure placed on, in or over a highway;

(h)the operation of facilities for recreation or refreshment under Part VIIA of the Highways Act 1980;

(j)the doing of anything authorised by regulations made under section 5 of the **M4**Police, Factories, etc. (Miscellaneous Provisions) Act 1916.

(3)The reference to trading as a news vendor in sub-paragraph (2)(d) above is a reference to trading where—

(a)the only articles sold or exposed or offered for sale are newspapers or periodicals; and

(b)they are sold or exposed or offered for sale without a stall or receptacle for them or with a stall or receptacle for them which does not—

(i)exceed one metre in length or width or two metres in height;

- (ii) occupy a ground area exceeding 0.25 square metres; or
- (iii) stand on the carriageway of a street.

Annotations:

Marginal Citations

M1 1980 c. 66.

M2 1871 c. 96.

M3 1980 c. 66.

M4 1916 c. 31.

Designation of streets

2(1) A district council may by resolution designate any street in their district as—

- (a) a prohibited street;
- (b) a licence street; or
- (c) a consent street.

(2) If a district council pass such a resolution as is mentioned in sub-paragraph (1) above, the designation of the street shall take effect on the day specified in that behalf in the resolution (which must not be before the expiration of the period of one month beginning with the day on which the resolution is passed).

(3) A council shall not pass such a resolution unless—

- (a) they have published notice of their intention to pass such a resolution in a local newspaper circulating in their area;
- (b) they have served a copy of the notice—
 - (i) on the chief officer of police for the area in which the street to be designated by the resolution is situated; and
 - (ii) on any highway authority responsible for that street; and
- (c) where sub-paragraph (4) below applies, they have obtained the necessary consent.

(4) This sub-paragraph applies—

- (a) where the resolution relates to a street which is owned or maintainable by a relevant corporation; and
- (b) where the resolution designates as a licence street any street maintained by a highway authority;

and in sub-paragraph (3) above “necessary consent” means—

- (i) in the case mentioned in paragraph (a) above, the consent of the relevant corporation; and
- (ii) in the case mentioned in paragraph (b) above, the consent of the highway authority.

(5) The following are relevant corporations for the purposes of this paragraph—

- (a) the British Railways Board;
- (b) the Commission for the New Towns;
- (c) a development corporation for a new town; [F1and]
- (d) an urban development corporation established under the **M1** Local Government, Planning and Land Act 1980; . . .

F2(e).

(6) The notice referred to in sub-paragraph (3) above—

- (a) shall contain a draft of the resolution; and
- (b) shall state that representations relating to it may be made in writing to the council within such period, not less than 28 days after publication of the notice, as may be specified in the notice.

(7) As soon as practicable after the expiry of the period specified under sub-paragraph (6) above, the council shall consider any representations relating to the proposed resolution which they have received before the expiry of that period.

(8) After the council have considered those representations, they may, if they think fit, pass such a resolution relating to the street as is mentioned in sub-paragraph (1) above.

(9) The council shall publish notice that they have passed such a resolution in two consecutive weeks in a local newspaper circulating in their area.

(10) The first publication shall not be later than 28 days before the day specified in the resolution for the coming into force of the designation.

(11) Where a street is designated as a licence street, the council may resolve—

(a) in the resolution which so designates the street; or

(b) subject to sub-paragraph (12) below, by a separate resolution at any time,

that a street trading licence is not to be granted to any person who proposes to trade in the street for a number of days in every week less than a number specified in the resolution.

(12) Sub-paragraphs (3)(a) and (6) to (10) above shall apply in relation to a resolution under sub-paragraph (11)(b) above as they apply in relation to a resolution under sub-paragraph (1) above.

(13) Any resolution passed under this paragraph may be varied or rescinded by a subsequent resolution so passed.

Annotations:

Amendments (Textual)

F1 Word in Sch. 4 para. 2(5)(c) inserted (1.10.1998) by 1998 c. 38, s. 29, Sch. 15 para. 5 (with ss. 131(1), 137(1), 139(2), 143(2)); S.I. 1998/2244, art. 4

F2 Sch. 4 para. 2(5)(e) and word "and" immediately preceding repealed (1.10.1998) by 1998 c. 38, s. 152, Sch. 18 Pt. IV (with ss. 137(1), 139(2), 143(2)); S.I. 1998/2244, art. 4

Marginal Citations

M1 1980 c. 65.

Street trading licences

3(1) An application for a street trading licence or the renewal of such a licence shall be made in writing to the district council.

(2) The applicant shall state—

(a) his full name and address;

(b) the street in which, days on which and times between which he desires to trade;

(c) the description of articles in which he desires to trade and the description of any stall or container which he desires to use in connection with his trade in those articles; and

(d) such other particulars as the council may reasonably require.

(3) If the council so require, the applicant shall submit two photographs of himself with his application.

(4) A street trading licence shall not be granted—

(a) to a person under the age of 17 years; or

(b) for any trading in a highway in relation to which a control order under section 7 of the **M1** Local Government (Miscellaneous Provisions) Act 1976 (road-side sales) is in force, other than trading to which the control order does not apply.

(5) Subject to sub-paragraph (4) above, it shall be the duty of the council to grant an application for a street trading licence or the renewal of such a licence unless they consider that the application ought to be refused on one or more of the grounds specified in sub-paragraph (6) below.

(6) Subject to sub-paragraph (8) below, the council may refuse an application on any of the following grounds—

(a) that there is not enough space in the street for the applicant to engage in the trading in which he desires to engage without causing undue interference or inconvenience to persons using the street;

(b) that there are already enough traders trading in the street from shops or otherwise in the goods in which the applicant desires to trade;

(c) that the applicant desires to trade on fewer days than the minimum number specified in a resolution under paragraph 2(11) above;

(d) that the applicant is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;

(e) that the applicant has at any time been granted a street trading licence by the council and has persistently refused or neglected to pay fees due to them for it or charges due to them under paragraph 9(6) below for services rendered by them to him in his capacity as licence-holder;

(f) that the applicant has at any time been granted a street trading consent by the council and has persistently refused or neglected to pay fees due to them for it;

(g) that the applicant has without reasonable excuse failed to avail himself to a reasonable extent of a previous street trading licence.

(7) If the council consider that grounds for refusal exist under sub-paragraph (6)(a), (b) or (g) above, they may grant the applicant a licence which permits him—

(a) to trade on fewer days or during a shorter period in each day than specified in the application; or

(b) to trade only in one or more of the descriptions of goods specified in the application.

(8) If—

(a) a person is licensed or otherwise authorised to trade in a street under the provisions of any local Act; and

(b) the street becomes a licence street; and

(c) he was trading from a fixed position in the street immediately before it became a licence street; and

(d) he applied for a street trading licence to trade in the street, his application shall not be refused on any of the grounds mentioned in sub-paragraph (6)(a) to (c) above.

Annotations:

Marginal Citations

M1 1976 c. 57.

4(1) A street trading licence shall specify—

(a) the street in which, days on which and times between which the licence-holder is permitted to trade; and

(b) the description of articles in which he is permitted to trade.

(2) If the district council determine that a licence-holder is to confine his trading to a particular place in the street, his street trading licence shall specify that place.

(3) Matters that fall to be specified in a street trading licence by virtue of sub-paragraph (1) or (2) above are referred to in this Schedule as the “principal terms” of the licence.

(4) When granting or renewing a street trading licence, the council may attach such further conditions (in this Schedule referred to as the “subsidiary terms” of the licence) as appear to them to be reasonable.

(5) Without prejudice to the generality of sub-paragraph (4) above, the subsidiary terms of a licence may include conditions—

(a) specifying the size and type of any stall or container which the licence-holder may use for trading;

(b) requiring that any stall or container so used shall carry the name of the licence-holder or the number of his licence or both; and

(c) prohibiting the leaving of refuse by the licence-holder or restricting the amount of refuse which he may leave or the places in which he may leave it.

(6) A street trading licence shall, unless previously revoked or surrendered, remain valid for a period of 12 months from the date on which it is granted or, if a shorter period is specified in the licence, for that period.

(7) If a district council resolve that the whole or part of a licence street shall be designated a prohibited street, then, on the designation taking effect, any street trading licence issued for trading in that street shall cease to be valid so far as it relates to the prohibited street.

5(1) A district council may at any time revoke a street trading licence if they consider—

(a) that, owing to circumstances which have arisen since the grant or renewal of the licence, there is not enough space in the street for the licence-holder to engage in the trading permitted by the licence without causing undue interference or inconvenience to persons using the street;

(b) that the licence-holder is unsuitable to hold the licence by reason of having been convicted of an offence or for any other reason;

(c) that, since the grant or renewal of the licence, the licence-holder has persistently refused or neglected to pay fees due to the council for it or charges due to them under paragraph 9(6) below for services rendered by them to him in his capacity as licence-holder; or

(d) that, since the grant or renewal of the licence, the licence-holder has without reasonable excuse failed to avail himself of the licence to a reasonable extent.

(2) If the council consider that they have ground for revoking a licence by virtue of sub-paragraph (1)(a) or (d) above, they may, instead of revoking it, vary its principal terms—

(a) by reducing the number of days or the period in any one day during which the licence-holder is permitted to trade; or

(b) by restricting the descriptions of goods in which he is permitted to trade.

(3) A licence-holder may at any time surrender his licence to the council and it shall then cease to be valid.

6(1) When a district council receive an application for the grant or renewal of a street trading licence, they shall within a reasonable time—

(a) grant a licence in the terms applied for; or

(b) serve notice on the applicant under sub-paragraph (2) below.

(2) If the council propose—

- (a) to refuse an application for the grant or renewal of a licence; or
- (b) to grant a licence on principal terms different from those specified in the application; or
- (c) to grant a licence confining the applicant's trading to a particular place in a street; or
- (d) to vary the principal terms of a licence; or
- (e) to revoke a licence,

they shall first serve a notice on the applicant or, as the case may be, the licence-holder—

- (i) specifying the ground or grounds on which their decision would be based; and
- (ii) stating that within 7 days of receiving the notice he may in writing require them to give him an opportunity to make representations to them concerning it.

(3) Where a notice has been served under sub-paragraph (2) above, the council shall not determine the matter until either—

- (a) the person on whom it was served has made representations to them concerning their decision; or
- (b) the period during which he could have required them to give him an opportunity to make representations has elapsed without his requiring them to give him such an opportunity; or
- (c) the conditions specified in sub-paragraph (4) below are satisfied.

(4) The conditions mentioned in sub-paragraph (3)(c) above are—

- (a) that the person on whom the notice under sub-paragraph (2) above was served has required the council to give him an opportunity to make representations to them concerning it, as provided by sub-paragraph (2)(ii) above;
- (b) that the council have allowed him a reasonable period for making his representations; and
- (c) that he has failed to make them within that period.

(5) A person aggrieved—

(a) by the refusal of a council to grant or renew a licence, where—

- (i) they specified in their notice under sub-paragraph (2) above one of the grounds mentioned in paragraph 3(6)(d) to (g) above as the only ground on which their decision would be based; or
- (ii) they specified more than one ground in that notice but all the specified grounds were grounds mentioned in those paragraphs; or

(b) by a decision of a council to grant him a licence with principal terms different from those of a licence which he previously held, where they specified in their notice under sub-paragraph (2) above the ground mentioned in paragraph 3(6)(g) above as the only ground on which their decision would be based; or

(c) by a decision of a council—

- (i) to vary the principal terms of a licence; or
- (ii) to revoke a licence,

in a case where they specified in their notice under sub-paragraph (2) above one of the grounds mentioned in paragraph 5(1)(b) to (d) above as the only ground on which their decision would be based or they specified more than one ground in that notice but all the specified grounds were grounds mentioned in those paragraphs,

may, at any time before the expiration of the period of 21 days beginning with the date upon which he is notified of the refusal or decision, appeal to the magistrates' court acting for the petty sessions area in which the street is situated.

(6) An appeal against the decisions of a magistrates' court under this paragraph may be brought to the Crown Court.

(7) On an appeal to the magistrates' court or the Crown Court under this paragraph, the court may make such order as it thinks fit.

(8) Subject to sub-paragraphs (9) to (11) below, it shall be the duty of the council to give effect to an order of the magistrates' court or the Crown Court.

(9) The council need not give effect to the order of the magistrates' court until the time for bringing an appeal under sub-paragraph (6) above has expired and, if such an appeal is duly brought, until the determination or abandonment of the appeal.

(10) If a licence-holder applies for renewal of his licence before the date of its expiry, it shall remain valid—

- (a) until the grant by the council of a new licence with the same principal terms; or
- (b) if—

(i) the council refuse renewal of the licence or decide to grant a licence with principal terms different from those of the existing licence, and

(ii) he has a right of appeal under this paragraph,

until the time for bringing an appeal has expired or, where an appeal is duly brought, until the determination or abandonment of the appeal; or

(c) if he has no right of appeal under this paragraph, until the council either grant him a new licence with principal terms different from those of the existing licence or notify him of their decision to refuse his application.

(11) Where—

(a) a council decide—

(i) to vary the principal terms of a licence; or

(ii) to revoke a licence; and

(b) a right of appeal is available to the licence-holder under this paragraph,

the variation or revocation shall not take effect until the time for bringing an appeal has expired or, where an appeal is duly brought, until the determination or abandonment of the appeal.

Street trading consents

7(1) An application for a street trading consent or the renewal of such a consent shall be made in writing to the district council.

(2) Subject to sub-paragraph (3) below, the council may grant a consent if they think fit.

(3) A street trading consent shall not be granted—

(a) to a person under the age of 17 years; or

(b) for any trading in a highway to which a control order under section 7 of the **M1** Local Government (Miscellaneous Provisions) Act 1976 is in force, other than trading to which the control order does not apply.

(4) When granting or renewing a street trading consent the council may attach such conditions to it as they consider reasonably necessary.

(5) Without prejudice to the generality of sub-paragraph (4) above, the conditions that may be attached to a street trading consent by virtue of that sub-paragraph include conditions to prevent—

(a) obstruction of the street or danger to persons using it; or

(b) nuisance or annoyance (whether to persons using the street or otherwise).

(6) The council may at any time vary the conditions of a street trading consent.

(7) Subject to sub-paragraph (8) below, the holder of a street trading consent shall not trade in a consent street from a van or other vehicle or from a stall, barrow or cart.

(8) The council may include in a street trading consent permission for its holder to trade in a consent street—

(a) from a stationary van, cart, barrow or other vehicle; or

(b) from a portable stall.

(9) If they include such a permission, they may make the consent subject to conditions—

(a) as to where the holder of the street trading consent may trade by virtue of the permission; and

(b) as to the times between which or periods for which he may so trade.

(10) A street trading consent may be granted for any period not exceeding 12 months but may be revoked at any time.

(11) The holder of a street trading consent may at any time surrender his consent to the council and it shall then cease to be valid.

Annotations:

Marginal Citations

M1 1976 c. 57.

General

8 The holder of a street trading licence or a street trading consent may employ any other person to assist him in his trading without a further licence or consent being required.

9(1) A district council may charge such fees as they consider reasonable for the grant or renewal of a street trading licence or a street trading consent.

(2) A council may determine different fees for different types of licence or consent and, in particular, but without prejudice to the generality of this sub-paragraph, may determine fees differing according—

(a) to the duration of the licence or consent;

(b)to the street in which it authorises trading; and

(c)to the descriptions of articles in which the holder is authorised to trade.

(3)A council may require that applications for the grant or renewal of licences or consents shall be accompanied by so much of the fee as the council may require, by way of a deposit to be repaid by the council to the applicant if the application is refused.

(4)A council may determine that fees may be paid by instalments.

(5)Where a consent is surrendered or revoked, the council shall remit or refund, as they consider appropriate, the whole or a part of any fee paid for the grant or renewal of the consent.

(6)A council may recover from a licence-holder such reasonable charges as they may determine for the collection of refuse, the cleansing of streets and other services rendered by them to him in his capacity as licence-holder.

(7)Where a licence—

(a)is surrendered or revoked; or

(b)ceases to be valid by virtue of paragraph 4(7) above,

the council may remit or refund, as they consider appropriate, the whole or a part—

(i)of any fee paid for the grant or renewal of the licence; or

(ii)of any charges recoverable under sub-paragraph (6) above.

(8)The council may determine—

(a)that charges under sub-paragraph (6) above shall be included in a fee payable under sub-paragraph (1) above; or

(b)that they shall be separately recoverable.

(9)Before determining charges to be made under sub-paragraph (6) above or varying the amount of such charges the council—

(a)shall give notice of the proposed charges to licence-holders; and

(b)shall publish notice of the proposed charges in a local newspaper circulating in their area.

(10)A notice under sub-paragraph (9) above shall specify a reasonable period within which representations concerning the proposed charges may be made to the council.

(11)It shall be the duty of a council to consider any such representations which are made to them within the period specified in the notice.

Offences

10(1)A person who—

(a)engages in street trading in a prohibited street; or

(b)engages in street trading in a licence street or a consent street without being authorised to do so under this Schedule;
or

(c)contravenes any of the principal terms of a street trading licence; or

(d)being authorised by a street trading consent to trade in a consent street, trades in that street—

(i)from a stationary van, cart, barrow or other vehicle; or

(ii)from a portable stall,

without first having been granted permission to do so under paragraph 7(8) above; or

(e)contravenes a condition imposed under paragraph 7(9) above, shall be guilty of an offence.

(2)It shall be a defence for a person charged with an offence under sub-paragraph (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid commission of the offence.

(3)Any person who, in connection with an application for a street trading licence or for a street trading consent, makes a false statement which he knows to be false in any material respect, or which he does not believe to be true, shall be guilty of an offence.

(4)A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine not exceeding [F1level 3 on the standard scale].

Annotations:

Amendments (Textual)

F1Words substituted by virtue of Criminal Justice Act 1982 (c. 48, SIF 39:1), s. 46

Savings

11 Nothing in this Schedule shall affect—

(a) section 13 of the **M1** Markets and Fairs Clauses Act 1847 (prohibition of sales elsewhere than in market or in shops etc.) as applied by any other Act; (4 & 5 Eliz. 2).

(b) **F1** section 56 of the Food Act 1984 (prohibition of certain sales during market hours).

Annotations:

Amendments (Textual)

F1 Words substituted by Food Act 1984 (c. 30, SIF 53:1), s. 134, Sch. 10 para. 34

Marginal Citations

M1 1847 c. 14.

15 Annex F – Civic Government Scotland Act

Civic Government (Scotland) Act 1982 c. 45

Section 39

39.—(1) Subject to subsection (3) below, a licence, to be Street traders' known as a "Street trader's licence ", shall be required for Street licences. trading by a person, whether on his own account or as an employee.

(2) In this section "street trading" means doing any of the following things in a public place—

- (a) hawking, selling or offering or exposing for sale any article;
- (b) offering to carry out or carrying out for money or money's worth any service,

to any person in the public place and includes doing any of these things there in or from a vehicle or in or from a kiosk or moveable stall not entered in the valuation roll except where it is done in conjunction with or as part of a retail business being carried on in premises abutting the public place.

(3) A street trader's licence shall not be required for—

- (a) the sale of newspaper only;
- (b) the sale of milk by or on behalf of a person registered under section 7 of the Milk and Dairies (Scotland) Act 1914;
- (c) the sale of coal, coke or any solid fuel derived from coal or of which coal or coke is a constituent;
- (d) any activity in respect of which a certificate under the Pedlars Act 1871 has been granted; 1871 c. 96.
- (e) any activity in respect of which a licence is required under this Act apart from this section; or
- (f) organising or participating in a public charitable collection within the meaning of subsection (16) of section 119 of this Act in accordance with permission granted under that section.

(4) Where an application for a street trader's licence is made in respect of an activity which—

- (a) consists of or includes food business within the meaning of regulations made under sections 13 and 56 of the Food and Drugs (Scotland) Act 1956; and
- (b) involves the use of a vehicle, kiosk or moveable stall,

the licensing authority shall, without prejudice to paragraph 5(3) of Schedule 1 to this Act, refuse the application unless there is produced to them a certificate by the islands or district council stating that the vehicle, kiosk or moveable stall complies with the requirements of any relevant regulations made under sections 13 and 56 of the Food and Drugs (Scotland) Act 1956.

16 Annex G - Consultation Code of Practice Criteria

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-into the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

17 Annex H - List of organisations consulted

Age Concern (AC)

Alliance Against IP Theft (AAIPT)

Accessible Retail (AR)

Assist UK (AUK)

Association of Convenience Stores (AoCS)

Association of Chief Police Officers (ACPO)

Association of Chief Police Officers in Scotland (ACPOS)

Association of Town Centre Managers (ATCM) including distribution to Business Improvement Districts (BIDs) through the ATCM network

British Chambers of Commerce (BCC)

British Council of Shopping Centres (BCSC)

British Hardware Federation (BHF)

British Retail Consortium (BRC)

Scottish Retail Consortium (SRC)

British Shops and Stores Association (BSSA)

Citizens Advice (CA), CA Scotland (CAS), Northern Ireland CAB (NICAB)

Confederation of British Industry (CBI)

Confederation of British Industry – Scotland (CBI Scotland)

Consumer Focus (CF) & CF Scotland, Wales and Northern Ireland

Convention of Scottish Local Authorities (COSLA)

The Society of Local Authority Lawyers and Administrators in Scotland (SOLAR)

Department for Communities and Local Government (DCLG) - including distribution through departmental stakeholder networks to Gypsy Organisations & Travellers Organisations

Department for the Environment Food Rural Affairs (DEFRA)

Direct Selling Association (DSA)

Federation Against Copyright Theft (FACT)

Federation of Small Business (FSB)

Her Majesty's Revenue and Customs (HMRC)

Home Office (HO)

Independent Retailers Federation (IRF)

Institute of Directors (IoD)

Institute of Licensing (IoL)

Intellectual Property Office (IPO)

Individual Pedlars

Law Society (LS)

Law Society of Scotland (LSoS)

Law Society of Northern Ireland (LSoNI)

Local Authorities who have adopted powers under the Local Government (Miscellaneous Provisions) Act 1982 (LAs)
Scottish Licensing Authorities

Local Authorities Coordinators of Regulatory Services (LACORS)

Local Government Association (LGA)

London Metropolitan Police (LMP)

Magistrates Association (MA)

Ministry of Justice (MoJ)
Sheriffs' Association
Justices' Association

National Association of British Markets Authorities (NABMA)

National Consumer Federation (NCF)

National Market Traders Federation (NMTF)

National Retail Planning Forum (NRPF)

Northern Ireland Local Government Association (NILGA)

Office of Fair Trading (OFT)

Retail Markets Alliance (RMA)

Ricability (Rby)

Sharpe Pritchard (SP)

Town and Country Planning Association (TaCPA)

Trading Standards Institute (TSI)

Trading Standards Institute Northern Ireland (TSINI)

Welsh Local Government Association (WLGA)

Which?

NB: Non definitive list of potential consultees. This is a public consultation, and can be found on the BIS website.

18 Annex I - Glossary of Terms

BIS	Department of Business, Innovation and Skills
CCP	Consumer and Competition Policy
CLG	Department of Communities
DPA	Data Protection Act
FOIA	Freedom of Information Act
FPN	Fixed Penalty
HO	Home Office
HMRC	Her Majesty's Revenue and Customs
IA	Impact Assessment
LA	Local Authority
LG(MP)A	Local Government (Miscellaneous Provisions) Act
MoJ	Ministry of Justice
MP	Member of Parliament
OFT	Office of Fair Trading
PNC	Police National Check
SoS	Secretary of State
UK	United Kingdom

19 Impact Assessment

Department /Agency: Department for Business Innovation and Skills			Title: Impact Assessment of modernisation of Street Trading and Pedlar Legislation		
Stage: Consultation		Version: 1		Date: 14 July 2009	
Related Publications: Street trading and Pedlary in Great Britain http://www.berr.gov.uk/files/file49664.pdf					

Available to view or download at:

<http://www.berr.gov.uk/whatwedo/consumers/business/market-trading/page>

Contact for enquiries: Deba Hussain or Roger Dennison

Telephone: 020 7215 2115 / 6893

What is the problem under consideration? Why is government intervention necessary?

The definition of pedlars is set out in old legislation, leading to confusion about its interpretation over time. This has created problems of incomplete information, compounded by uncertainty, in relation to the activity, enforcement and certification of pedlary. For example, certificated pedlars may be trading as 'street traders'. Currently, Local Authorities (LAs) can make a provision for the licensing of street traders, but responsibilities for certification of pedlars (and therefore enforcement) is undertaken by the police. However, limited resources mean such pedlars are rarely prosecuted. Potential solutions include amending the relevant laws to provide LAs with wider enforcement options and modernising the outdated act to provide greater clarity and clearly delineate these activities.

What are the policy objectives and the intended effects?

Depending on the outcome of consultation, to provide for more effective enforcement powers to deal with illegal street trading. To clarify regulation ensuring illegal street trading can be easily identified, while maintaining the position that certified pedlars should be able to trade in the streets. To rationalise the circumstances under which Local Authorities might exert limits on certified pedlar activity in designated areas. Issuing draft guidance on the application of the current regimes to promote a clear understanding of the current position for enforcers, street traders and pedlars.

What policy options have been considered? Please justify any preferred option.

Under each section we have considered:

- (i) Do nothing i.e. not making the changes recommended in the consultation.
- (ii) Self-regulatory option (i.e. the issuance of guidelines)
- (iii) Revisions to definitional, enforcement and certification issues, as identified in the Durham report.

However, we feel it worth stressing that no decisions have been nor will be taken until we can properly consider the responses to the consultation.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

Further consultation (including a final impact assessment) identifying suitable legislative vehicles will be published in Spring 2010. This will be followed by a Post Implementation Review in Spring 2013/15

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:

.....Date:

Summary: Analysis & Evidence

Policy Option: Non-regulatory	Description: Non-regulatory approach, guidance documents
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups'	
	One-off (Transition) Yrs		
	£ N/A		
	Average Annual Cost (excluding one-off)		
£ Unknown	Total Cost (PV)	£ Unknown	
Other key non-monetised costs by 'main affected groups' Costs expected to be minimal, as pedlary does not involve many costs associated with other industries (e.g. legal, marketing or equipment costs). Expected that guidance would be primarily web-based, reducing printing and distribution costs.			

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups'	
	One-off Yrs		
	£ N/A		
	Average Annual Benefit (excluding one-off)		
£ Unknown	Total Benefit (PV)	£ Unknown	
Other key non-monetised benefits by 'main affected groups' Clarity and certainty on the scope of the Act for pedlars, Local Authorities and Police, which would reduce inconsistencies in enforcement and provide pedlars with better protection against harassment.			

Key Assumptions/Sensitivities/Risks

Some issues of harmonisation will not be dealt with through guidance (e.g. inclusion of photograph); doubts remain over to what extent guidance would address Local Authority public safety concerns; pedlar enforcement would remain with Police, diverting valuable resources from other activities.

Price Base Year N/A	Time Period Years N/A	Net Benefit Range (NPV) £ Unknown	NET BENEFIT (NPV Best estimate) £ Unknown
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What is the geographic coverage of the policy/option?	UK				
On what date will the policy be implemented?	Immediately				
Which organisation(s) will enforce the policy?	Police				
What is the total annual cost of enforcement for these organisations?	£ not quantified				
Does enforcement comply with Hampton principles?	Yes				
Will implementation go beyond minimum EU requirements?	No				
What is the value of the proposed offsetting measure per year?	£ 0				
What is the value of changes in greenhouse gas emissions?	£ 0				
Will the proposal have a significant impact on competition?	No				
Annual cost (£-£) per organisation (excluding one-off)	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">Micro 0</td> <td style="width: 25%; text-align: center;">Small 0</td> <td style="width: 25%; text-align: center;">Medium 0</td> <td style="width: 25%; text-align: center;">Large 0</td> </tr> </table>	Micro 0	Small 0	Medium 0	Large 0
Micro 0	Small 0	Medium 0	Large 0		
Are any of these organisations exempt?	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">No</td> <td style="width: 25%; text-align: center;">N/A</td> <td style="width: 25%; text-align: center;">N/A</td> </tr> </table>	No	No	N/A	N/A
No	No	N/A	N/A		

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)
Increase of	£ Unknown	Decrease of
	£ Unknown	Net Impact
	£ Unknown	£ Unknown

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Summary: Analysis & Evidence

Policy Option: Regulatory	Description: Revisions to definitional, enforcement and certification issues.
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COSTS	ANNUAL COSTS	Description and scale of key monetised costs by 'main affected groups' Pedlars to pay for the pedlars certificate which will fund the introduction and maintenance of a National database		
	One-off (Transition) Yrs			
	£ N/A			
	Average Annual Cost (excluding one-off)			
	£ £263k-£394k	Total Cost (PV)	£ £2.4m -£3.7m	
Other key non-monetised costs by 'main affected groups'				

BENEFITS	ANNUAL BENEFITS	Description and scale of key monetised benefits by 'main affected groups' Saving in legal costs of enforcement associated with illegal street trading to both Local Authorities and Pedlars; savings in administrative costs to Local Authorities of fines to non-compliant traders		
	One-off Yrs			
	£ N/A			
	Average Annual Benefit (excluding one-off)			
	£ 1.4m	Total Benefit (PV)	£ 13m	
Other key non-monetised benefits by 'main affected groups' Time saving to Local Authorities in validating pedlar's certificate. Effective enforcement and deterrence effect to rogue traders that would benefit legitimate pedlars and consumers. Clarity and certainty on the scope of the Act for pedlars, Local Authorities and Police.				

Key Assumptions/Sensitivities/Risks

Price Base Year 2009	Time Period Years 10	Net Benefit Range (NPV) £ 9.3m-10.6m	NET BENEFIT (NPV Best estimate) £ 10m
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What is the geographic coverage of the policy/option?	UK			
On what date will the policy be implemented?	2011			
Which organisation(s) will enforce the policy?	Local Authorities			
What is the total annual cost of enforcement for these organisations?	£ not quantified			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ 0			
What is the value of changes in greenhouse gas emissions?	£ 0			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro £87.75	Small 0	Medium 0	Large 0
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £ 513	Decrease of £ 0	Net Impact	£ 513

Key: Annual costs and benefits: Constant Prices (Net) Present Value

Evidence Base (for summary sheets)

BACKGROUND

Legislative framework

Street trading is an ancient tradition, with a long and varied history, and one which continues to have a place in modern society. Although such trading has its own culture and identity, the law differentiates between various types of activity and, in doing so, distinguishes between different types of trader.

Pedlars

Pedlars are regulated by the Pedlars Acts 1871 and 1881 (as amended). The Acts have not been significantly updated since they were originally passed. It seems likely that the fact that they are over 100 years old has led to some confusion about their intended meaning and how they translate to pedlars' activities at present.

Section 3 of the Pedlars Act 1871, which makes provisions for the issue of certificates, defines a pedlar as *“any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men’s houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft.”*

The definition uses terms and phrases that are not used today and may not accurately reflect the activities of the modern-day pedlar. The lack of clarity around the definition of a pedlar has led to difficulties for both enforcement officers and pedlars, where their respective interpretations of lawful or unlawful behaviour often differ. Furthermore, the definition of a pedlar and what is or is not permitted has been the subject of subsequent case law.

The definition is generally understood to mean that a pedlar is an itinerant trader who travels and trades on foot. A person who travels by car from town to town and then proceeds to trade on foot would be a pedlar because he is trading on foot. However, an individual who sells goods from a fixed position would not be considered a pedlar under the definition. A certified pedlar cannot lawfully trade from a fixed position in an area designated for street trading purposes by the Local Authority without the required permission or license.

Currently, Police forces (rather than Local Authorities) are charged with vetting applications and issuing pedlar's certificates. A pedlar must provide proof that he has lived in the area for the preceding month. Certificates cost £12.25 and are valid across the UK unless there is private legislation limiting a pedlar's activities to door-to-door trading in designated areas as licensed by the Local Authorities.

While the Pedlars Act requires a certificate to be in a specific form (as specified in schedule 2 or as near to the form as circumstances permit³), it appears that there is no standardised format for certificates. This means that certificates vary across the UK and the information required to be given in the application and on the certificate has not changed since it was originally specified in the Act.

In 2005, the Policing Bureaucracy Taskforce recommended that responsibility for issuing pedlar's certificates should be taken away from the Police, in line with the wider government objective of reducing Police bureaucracy⁴. Transferring the issuing of licences to Local Authorities would free up valuable Police time to enable them to deliver their other objectives.

³ Pedlars Act 1871, section 5(4) and Schedule 2, Form B

⁴ <http://police.homeoffice.gov.uk/publications/police-reform/traffilightsummary.pdf?view=Binary>

Street traders

The main legislation relating to street trading is the Local Government (Miscellaneous Provisions) Act 1982 (LG(MP)A) which provides Local Authorities with the option to adopt powers to regulate street trading. Street trading in England and Wales is defined as *'the selling or exposing or offering for sale any article or the supplying or offering to supply any service in a street for gain or reward'*. Those councils who do adopt the powers to regulate street trading can designate streets in their area to be prohibited, consented or licensed for street trading purposes.

Local Authorities can therefore require street traders, but not pedlars, to apply for licenses in order to trade in designated streets (and apply the consequent penalties for not being licensed or for trading on a prohibited street). A person guilty of an offence under the Act is liable to prosecution in the magistrates court and to a fine.

Illegal street traders

The LG(MP)A contains an exclusion so that trading by a certified pedlar, acting as a pedlar, does not constitute street trading. If pedlars move away from these trading activities into other methods of trading on the street (e.g. static trading from a stall) they would be subject to any street trading controls the Local Authority had implemented under the LG(MP)A.

The above issues pose a problem to some Local Authorities, with an increasing number of them seeking to extend their enforcement options in relation to street trading, and to limit the activities of certified pedlars within their areas. To that aim, some Local Authorities have obtained Private Acts of Parliament or promoted Private Bills to ensure these provisions are achieved. They have sought additional powers in relation to enforcement against illegal street trading (seizure of goods and, latterly, fixed penalties). In addition, there are provisions that restrict the exemption for certified pedlars from having to obtain a street trader's licence under the LG(MP)A to pedlars who trade door-to-door only in designated streets (in some cases involving entire boroughs). This means that a certified pedlar wishing to trade in goods or provide services in designated streets, even while acting as a pedlar, would need a licence from the Local Authority to do so, or is effectively prohibited.

However, the process of Private Bills is relatively resource-intensive for Local Authorities, in terms of both financial cost (generally estimated as between £40,000 and £70,000, with these costs liable to rise with the volume of objections⁵) and the time of officers involved, as well as for Parliament. Accordingly, since many Local Authorities have requested private legislation, there is a case to be made for providing for access to similar provisions more widely, in the form of national legislation that would render further Private Bills unnecessary (and which would repeal part of or the entirety of those already passed).

Research

In June 2008, BIS (then BERR) launched a summer-long research project to gather stakeholders' views on the legislation currently regulating street trading and pedlary. The project ended in November 2008.

The Department commissioned St Chad's College, University of Durham to conduct research⁶ into the application and perception of Local Authority controls and legislation. Researchers contacted local councils, the Police, street traders, certified pedlars, and consumer organisations in England, Wales and Scotland to learn more about their views.

⁵ <http://www.berr.gov.uk/files/file49664.pdf>

⁶ <http://www.berr.gov.uk/files/file49664.pdf>

While the research conducted by Durham University found no evidence that trading activities by pedlars pose a problem on a national scale, it suggested that current laws regulating street trading and pedlary could potentially be improved by:

- National guidance on the meaning and application of the current legislation, which varies across the UK;
- Modernising the Pedlars Act, (e.g. updating and standardising the pedlar's certificate to enable easier identification of genuine certificates and clarifying the definition of a pedlar); and
- A more flexible enforcement regime, including less burdensome alternatives to criminal prosecution (e.g. fixed penalty notices).

Pedlars and Police respondents to the Durham research recognised a need to modernise and standardise – rather than repealing or replacing – the Pedlars Acts 1871 and 1881. The inadequacies of the current system led to inconsistency in enforcement practice between areas, exacerbated by a degree of ignorance among enforcement officers.

Possible changes to procedures relating to pedlars include: (a) a more concrete and nationally applicable set of definitions and guidelines relating to the issuing of the certificate and their activities (based on statute and case law); (b) a redesign and standardisation of the pedlars certificate and (c) a greater burden on the pedlar to prove him/herself to be a legitimate trader (e.g. presentation of proof of insurance and eligibility to work in the UK, registration as self-employed with HMRC).

The report also acknowledged that while the findings could not support legislation to limit the activities of pedlars nationally, it was nevertheless possible that a case could be made on a local basis for local restrictions.

SCALE AND SCOPE

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 forces⁷. There is little evidence to date that certificated pedlars trading in accordance with the definition of a pedlar present problems in city centres, nor are they generally in direct competition with shops or street traders. Indeed, consumers valued their presence in town centres and regarded buying from pedlars as a positive experience⁸.

The scale of *illegal* street trading is hard to quantify, since such lawbreakers are often simply moved on rather than prosecuted due to the high legal costs, the relatively low chance of success in prosecution, and the relatively low fines imposed by courts. Little concrete evidence was presented relating to the amount of nuisance caused by illegal trading - most complaints come from retailers concerned with competition, rather than, for example, illegal trading *per se* or obstruction.

The most clearly evident concern was related to issues of obstruction or public safety caused by large numbers of street traders gathering in small areas – for example, around football grounds or in city centres in the run-up to Christmas.

Other aspects of the control of itinerant trading include the inability of Local Authorities to impose reasonable quotas, as they can with street trading due to ownership of the licensing regime, and to enforce the laws themselves, having to rely on Police officers to seize goods and arrest suspects. Allied to this is the fact that the legal process is costly, yet often results in relatively small fines and low costs for offenders. Many illegal traders may view these costs as

⁷ <http://www.berr.gov.uk/files/file49664.pdf>

⁸ <http://www.berr.gov.uk/files/file49664.pdf>

more of an overhead than a punishment or deterrent, while itinerants that are unknown to the authorities often provide false addresses and so fail to respond to summons.

Local Authorities indicate that on average it costs them up to £7,000 to take a street trading case to court. Successful cases result in average fines for offenders of £150-200, with legal costs awarded by the courts of around £350. Local Authorities in London, who can already issue seize the goods and apparatus of illegal street traders report this as being far more effective. This could be an alternative more economic way of dealing with illegal street traders for other authorities in the future.

According to statistics on the number of complaints received by Local Authorities in 2007/08, a total of 989 complaints, 63 court cases and 48 convictions were received on a sample of 87 Local Authorities relating to street selling (street traders, pedlars and illegal sellers) of which 85% were related to pedlars and other street traders operating without a licence. Arising from these figures, we can estimate that around 9 complaints are filed by Local Authorities per year with around 1 case going to court per Local Authority. According to research, slightly more than one-third of authorities had prosecuted traders in their area, often choosing to warn traders of infringements and mediate in a dispute, using court action only as a last resort. Several authorities did not prosecute precisely because they did not believe that the cost to the public purse could be justified in terms of the low level of penalties and costs the courts imposed.

A recent survey of Local Authorities by the Local Government Association found that 90 per cent of Local Authorities (51 out of 57 surveyed) consider pedlars to be a problem⁹. However, the Durham report did not find significant numbers of consumer complaints about pedlars. These two pieces of evidence may not be contradictory however, as some stakeholders have expressed concern that the mobile nature of pedlars' trading activities means that consumer complaints are difficult to follow up.

Evidence from Durham University study suggests that authorities with Private Acts were not especially overzealous in their cases of prosecution, bringing few cases and applying limited resources to secure convictions (although this may be because of their greater summary powers, or that illegal traders avoid these areas, knowing of the existence of these powers and the more restrictive environment for trading). Trading in prohibited streets, or in consent or licence streets without the necessary permission, are offences under the Acts, carrying a maximum penalty of a 'level three fine' (currently defined as a maximum of £1,000) although evidence from the Durham report seems to indicate that fines are usually lower.

The measures outlined in this impact assessment could go some way to preventing the cost of dealing with these complaints.

RATIONALE FOR GOVERNMENT INTERVENTION

A revision of the Pedlars Acts 1871 and 1881 is desirable because as the act is over a hundred years old and the language and some of the criteria referred to do not reflect modern pedlar practice.

The market failure rationale behind the revision of the Pedlars Act is that of incomplete information, whereby the different agents involved in the activity, enforcement and certification of pedlary – namely pedlars, Police and Local Authorities – have a limited knowledge of their rights and responsibilities. As a consequence of this fact, there is uncertainty and no harmonised application of the law in this area which might entail detriment for the agents involved as well as the general public.

Moreover, it has been acknowledged that there is a lack of clarity on the scope of the act that could be remedied by Government intervention.

⁹ <http://www.lga.gov.uk/lga/core/page.do?pageId=874442>

An underlying assumption of basic economic theory is that consumers and agents have enough information to allow them to make efficient choices in the market place however; when this is not the case there is scope for Government intervention. The likely outcome of the legislative option outlined below is to remedy the informational problems arising from the Act and ensure more effective street trading practices.

ISSUES UNDER CONSIDERATION

The issues under consideration in this Impact Assessment have been divided into two broad categories and are explained below:

Definitional issues

- **Pedlar's definition and the Pedlars Act** - The Pedlars Act defines pedlar as *any hawker, pedlar, petty chapman, tinker, caster of metals, mender of chairs, or other person who, without any horse or other beast bearing or drawing burden, travels and trades on foot and goes from town to town or to other men's houses, carrying to sell or exposing for sale any goods, wares, or merchandise, or procuring orders for goods, wares, or merchandise immediately to be delivered, or selling or offering for sale his skill in handicraft.* The outdated language used to define a pedlar is leading to some confusion around what a pedlar's lawful activities are. Moreover, it is considered necessary that other issues around means of transporting goods (i.e. trolley size) could usefully be included in any definition.
- **Grant of Certificate** - Section 5 of the Pedlars Act 1871 sets out the terms on which a pedlar's certificate is granted. Section 5 (1) specifies that an issuing officer must grant a certificate where the applicant has resided in the local area for one month prior to the application and is "above seventeen years of age, is a person of good character, and in good faith intends to carry on the trade of a pedlar." This test of "good character" appears to have given rise to some variance in interpretation. The Durham Report found variation in the level of checks currently carried out by the Police. For example, some do local intelligence report checks, others carried out Police National Computer (PNC) check to find out if the applicant has been recently convicted, cautioned or arrested. However, Police stations responding to the Durham researchers stated that although relevant convictions were considered there is no national guidance on what these would be or what 'good character' is.

Enforcement and certification

- **FPNs and powers of seizure** - Currently, the only option available for addressing street trading offences is prosecution through the Courts with liability to pay a fine of up to £1,000. It has been suggested that Local Authority enforcement officers should have in addition power to use civil sanctions. These include Fixed Penalty Notices (FPNs) and a power to seize goods from suspected offenders with forfeiture of such goods by order of the Courts. The Durham report found that the significant time and financial cost of prosecution may, in some cases, be deterring Local Authorities from pursuing illegal traders. Costs to Local Authorities typically outweighed the costs to defendants by more than 10:1. Coupled with the relatively small fines typically imposed by the Courts, some Local Authority respondents felt that prosecution was therefore a disproportionate and ineffective deterrent for street trading offences. Those currently seeking the powers to issue FPNs in relation to street trading offence maintain that they offer a quicker and less costly route of dealing with the problem..
- **The Pedlar's Certificate** - Currently, pedlar's certificates are issued by the pedlar's local Police station. A pedlar must provide proof that they have lived in the area for the preceding month. Certificates cost £12.25 and are valid across GB unless private legislation is in place to limit a pedlar's activities to door-to-door trading. While the

Pedlars Act requires a certificate to be in the form specified in schedule 2 or as near to the form as circumstances permit¹⁰, it appears that there is no standardised format for certificates so they vary across the UK, and the information required to be given in the application and on the certificate has not changed since it was originally specified in the Act. The Durham report found widespread support from all stakeholder groups for updating the pedlar's certificate. Local Authority enforcement officers felt that the lack of standardisation and the inadequacy of the information provided on some certificates meant that verifying valid certificates was difficult and time-consuming. Pedlars held the view that updating and modernising the certificate would offer them increased protection from enforcement officers failing to recognise valid certificates and minimise the time required to verify certificates.

- **National Database of Pedlar's Certificates-** Police stations issue pedlar's certificates and store data as they choose with no formal means of data-sharing. This means that information on pedlars is not easily accessible and even obtaining basic information, such as the number of pedlar's certificates issued in a year, requires the significant effort of contacting each Police station to request individual figures. Even if all Police stations were contacted, it is likely that a high number of them would only hold paper records at present. Although updating police record keeping in this respect, for example through computerisation might make information extraction and collation less difficult and time-consuming. The Durham report found general agreement that some type of central computerised collection of data on pedlar's certificates would be helpful. For enforcement officers, this would aid the process of verifying certificates as they could simply check the details from their location rather than contacting the issuing authority. The Durham report also found that, in general, pedlars were in favour of electronic storage of data and would welcome a central storage facility that could be checked, such as a national database. Again, they viewed this as a means of reassuring enforcement officers as to the validity of their certificates and activities. There is also a consumer protection and enforcement angle to consider. Although the Durham report did not find significant numbers of consumer complaints about pedlars, some stakeholders have expressed concern that the mobile nature of pedlars trading activities means that consumer complaints are difficult to follow up. A central database might aid complaint handling. Local Authorities have used shared databases to track enforcement and trading standards offences - for example, the retail enforcement pilot utilises a database which is hosted by one main Local Authorities, but accessible to all.

IDENTIFICATION OF OPTIONS

There are three main options under consideration in this Impact Assessment:

- | | |
|---------------------|--|
| Option (i) | Do-nothing |
| Option (ii) | Non-regulatory approach, guidance documents |
| Option (iii) | Revisions to definition, enforcement and certification issues |

We now proceed to develop arguments for these three options:

(i) Do-nothing option:

The first option to consider is to do nothing, which would imply no change to the Pedlars Acts 1871 and 1881 and would maintain the *status quo* on enforcement and certification. The do-nothing approach is used in this Impact Assessment (as is common practice) as the baseline to our analysis.

Key issues if the UK and Scottish Governments were to maintain the *status quo*:

¹⁰ Pedlars Act 1871, section 5(4) and Schedule 2, Form B

Definitional issues

- **Pedlar's definition and the Pedlars Act** - the do-nothing approach would not help clarify the definitional issues that have been identified by the different agents involved in street pedlaring. The lack of a consistent approach with regards to pedlars also hampers the issuing of a statement to applicants on the rights and responsibilities as a pedlar, with forces either (a) designing their own statements to hand out along with the certificate; (b) giving pedlars advice verbally or (c) in a small minority of cases, not providing any detailed guidance at all.
- **Grant of Certificate** - The do-nothing approach would not help achieve a harmonised approach for assessing the 'good character' of the applicant.

Enforcement and certification

- **FPNs and powers of seizure** - Under the do-nothing option, enforcement powers would remain with the Police in respect of offences under the Pedlars Acts. According to the Durham report, the operational side of relations between pedlars and Police on the streets are generally cordial, but enforcement is subject to local 'interpretation'. Difficulties around prosecution would still remain under the do-nothing option.
- **The Pedlar's Certificate** - Procedures by which a pedlar's certificate is issued are inconsistent. Certified pedlars would not be able to easily distinguish themselves from uncertified pedlars, leading to increased time costs for enforcement authorities and distress for associated parties. These issues would remain a problem under the do-nothing option.
- **National Database of Pedlar's Certificates** - A national database would not be set up under this option. Problems associated with the identification and verification of certified pedlars would persist, leading to increased time costs for enforcement authorities.

(ii) Non-regulatory approach, guidance documents

One of the options under consideration in this impact assessment is the issuance of guidance which would include Government guidelines on the legitimate trading practices of pedlars for circulation to Police, Local Authority enforcement officers and pedlars. The guidelines should provide sufficient information to aid officers in differentiating between genuine pedlars and rogues. Through these means the widespread deficiencies, such as stating the certificate applies throughout the UK, should be corrected to reflect the areas where door-to-door trading is the only legal form of pedlary.

The Durham study revealed the broad agreement, amongst the parties involved, that if the law remained much as it stands, guidance and procedures relating to pedlary could be much improved, including clarification of points of ambiguity in law. For example, the permissible size of trolleys, or how long a pedlar is allowed to remain stationary could usefully be clarified, which would reduce the level of inconsistency of enforcement around the country, and provide pedlars with a better protection against perceived harassment. Legitimate pedlars, in particular, would welcome a standardisation of information and guidance, in order that a consistent message was presented across the country, to inform both pedlars and Police and Local Authority staff in the day-to-day conduct of their duties and the rights and responsibilities of pedlars.

This measure would improve some of the problems around incomplete information present now amongst the different parties.

According to OFT guidance on the Review of impact on business of the Consumer Codes Approval Scheme¹¹ the issuance of guidance has reputational consequences - both to the

¹¹ http://www.offt.gov.uk/shared_offt/Approvedcodesofpractice/offt870.pdf

business and of the industry - as the main benefit that businesses expect from a code of practice. This was reinforced by interviewees from trade associations and consumer watchdogs.

The costs of attempting to set standard modes of practice are believed to be minimal in this area mainly because the very nature of the pedlar activity does not involve the standard costs expected in other industries, such as legal, marketing or equipment costs. The issuance of guidance would primarily be undertaken through the BIS website so it is anticipated it would entail minimal additional cost from engagement with stakeholders and familiarisation by the different parties.

We now approach the different areas identified as presenting difficulty when dealing with issues related to pedlars:

Definitional issues

- **Pedlar's definition and the Pedlars Act** - Through the issuance of guidance the definition of pedlar would remain the same, however and as explained above, clarification of some points of ambiguity will go some way to ensure the different agents involved - pedlars, Police and Local Authorities - would be more aware of duties and responsibilities.
- **Grant of Certificate** - Granting of certificates is subject to the requirement for the pedlar to be of 'good character'. The issuance of guidance could seek to provide guidelines to ensure the Police have a consistent way of assessing the 'good character' of the applicant. However, guidance cannot alter legislation so granting of certificates would still remain at the specific Police unit's discretion. We consider the issuance of guidance might increase understanding on the part of both prospective pedlars and certificate issuing officers on the basis for grant of a certificate.

Enforcement and certification

- **FPNs and powers of seizure** - Currently, pedlar's certificates are issued by the pedlar's local Police station. A pedlar must provide proof that they have lived in the area for the preceding month. Certificates cost £12.25 and are valid across the UK unless there is private legislation limiting a pedlar's activities to door-to-door trading in areas designated by Local Authorities under street trading legislation. Although through the issuance of guidance, Police, as well as pedlars would have a clearer outline of responsibilities and powers, doubts remain over to what extent these guidelines would be optimal for Local Authorities seeking to address potential public safety issues. Moreover, issuance and policing of pedlars would remain within the Police remit, diverting valuable Police resources from other activities.
- **The Pedlar's Certificate** - The issuance of guidance could tackle some of the issues around the information contained in the pedlars certificate, it could therefore be a step towards harmonisation of certificates amongst the different issuing authorities (Police forces at command level). However, some issues of harmonisation are unlikely to be dealt with through guidance, like the inclusion of a photograph, since some Police units may not have the facility or desire to issue photographic 'identity cards'.
- **National Database of Pedlar's Certificates** - A non-regulatory approach (guidance document) would not fully harmonise the issuance of certificates and would not lead to the creation of a unique national database although it could encourage more standardisation and modernisation of record keeping across Police forces. The Police would therefore need to follow the procedure of ensuring the certificate is still valid, which has proven difficult in some instances. Also, the interests of the Local Authorities seeking to confirm a certificate would might only be addressed in a minimal way.

(iii) Revisions to definition, enforcement and certification issues

Definitional issues

- **Pedlar's definition and the Pedlars Act** - The legislative option will ensure that the out-of-date definition of a pedlar is updated with an aim to clarify what lawful activities are permitted. The outdated language used to define a pedlar in the Pedlars Act is leading to some confusion around what a pedlar's lawful activities are. This approach will provide clarity and certainty to all parties involved and will lead to a reduction in the number of disputes by making the parties involved more aware of their duties and responsibilities. It is a general principle of better regulation that legislation should be clear and transparent for those subject to the legislation, and those charged with enforcing it. It is on this basis that the regulatory approach will seek to update the definition.
- **Grant of Certificate** - The legislative option would involve a provision that the issuing authority could refuse an application where it is considered that the applicant is unsuitable to hold the certificate by reason of misconduct or other sufficient reason. This would establish that applicants do not have to prove they are suitable for holding a pedlar's certificate but that if their previous history establishes their unsuitability, this will be grounds for refusing a certificate. We consider this will increase understanding on the part of both prospective pedlars and certificate issuing officers on the basis for grant of a certificate. This would be in line with the wording in the Local Government (Miscellaneous Provisions) Act 1982 on street trading licenses. There will continue to be a right of appeal against a refusal of the application. Currently, the stringency of vetting which an applicant must undergo through the Police is variable across the country, a consequence of specific requirements not being laid down in any form at a national level, and priorities and resources available at the local level. In addition, some Police commands indicated that not all checks were undertaken for every applicant. In fact, few applications are turned down. Most respondents indicated that there were a maximum of 1-2 refusals in an average year although the low level of rejections might be due to the fact that most applicants are considered suitable rather than insufficient checking from the part of the authority.

Enforcement and certification

- **FPNs and powers of seizure**- To provide Local Authority enforcement officers with powers to issue FPNs and powers of seizure, with forfeiture by order of the Courts. Local Authorities indicate that that on average it costs them up to £7,000 to take a street trading case to court. Successful cases result in average fines for offenders of £150-200, with legal costs awarded by the courts of around £350. Fixed Penalty Notices offer an alternative civil sanction for lesser street trading offences and should reduce the number of costly and resource-intensive court cases. It will also allow swifter action against offenders (immediate action as against the time taken to set a court date and hold a hearing), which could be of particular use for tackling repeat offenders. Making action easier, notwithstanding that any action must be properly justified and proportionate, might also mean that Local Authorities who choose to adopt these powers are able to use their resources to better or wider effect. Pedlar offences would also be subject to these sanctions.

Considering the evidence available, we proceed to calculate the costs that the transfer of enforcement powers would have in this area. Assuming that there is on average, one street trading offence per Local Authority per year that goes to court and that approximately 200 Local Authorities could exercise this power, the cost of enforcement would be of **around £13 million over a 10-year period** discounted at a standard rate of 3.5%¹². The cost to the street trader brought through by court fines and legal costs over the same period and using the same assumptions would be **around £1 million**

¹² Page 26, HM Treasury, Green Book http://www.hm-treasury.gov.uk/d/green_book_complete.pdf

(assuming fines range from £150-£200 and legal costs of £350). There is therefore a very considerable cost to bringing street traders to justice. If all enforcement powers were to be transferred to Local Authorities and they had the capacity to issue FPN to non-compliant traders, we can assume that more cases would be brought to justice (300) we also assume that the administrative cost of issuing a Fixed Penalty Notice is £300. The total administrative cost of enforcement to Local Authorities under these assumptions over a 10-year period would be **around £560,000** with fines to non-compliant traders ranging from £280,000 and £420,000 over the same period. This would imply a net benefit (through savings on enforcement) of **around £13 million over a 10-year period**. The assumption is that the increase in enforcement options would result in a more efficient system in place and that deterrence from operating without a licence would be higher than it is now, however these benefits have not been quantified.

Moreover, the costs to some Local Authorities that might decide to pursue a Private Act or Bill to deal with street trading would not be incurred. It has been mentioned in Parliament that some 50 or so Local Authorities are considering the need for more powers along these lines. This exercise would involve both financial cost (generally estimated as between £40,000 and £70,000, with these costs liable to rise with the volume of objections¹³) and the time of officers involved, as well as for Parliament. The likely cost savings to those Authorities that would not need to pursue a Private Act or Bill as a consequence of national legislation have not been quantified for the purpose of this exercise.

- **The Pedlar's Certificate** - To update the pedlar's certificate and application form by standardising the format to include, for example:
 - photograph of holder
 - National Insurance number (or equivalent for foreign nationals)
 - Address
 - Issuing authority name & contact details
 - Expiry date
 - Unique certificate number

We believe that this will make it easier for enforcement officers to identify legitimate pedlars and verify valid certificates. There is also an implication for fixed penalty notices option as these cannot be issued if the enforcement officer cannot establish the address of the offender. Having this information on the face of the certificate will therefore increase the effectiveness of FPNs in relation to pedlar offences. A standardised format will increase confidence in the certificate as enforcement officers will be more familiar with it. This will benefit certificate holders as well, as increased confidence in the certificate would mean they are less likely to encounter problems of enforcement officers not accepting certificates, or having to go through time-consuming verification procedures. Including a photograph should also limit the use of certificates by someone other than the certified pedlar.

It was this feeling of needing to protect 'genuine' pedlary even more stringently against rogue traders, and improve the image of pedlars, that led two-thirds of respondents to the Durham research to agree that more stringent vetting should be in place. Because they would have no problem meeting more stringent criteria - such as the presentation of NI details or a certificate confirming registration with HMRC as a self-employed taxpayer – they see no extra burden, and some positive benefits, in their introduction. This would significantly improve on the current system, whereby certificate numbers are allocated at either force, command or station level, with no centralised storage. While a minority of

¹³ <http://www.berr.gov.uk/files/file49664.pdf>

forces did process certificates and collate data centrally, at most this function was devolved to command level or even to individual stations, without any central collection of data. Several explicitly stated that their system was paper-based only, making the extraction and collation of data difficult and time-consuming. Relatively few commands had an officer specifically appointed to deal with pedlars, since the number of applications was usually too low to justify the resource cost; in most cases, pedlary applications were dealt with by the licensing office.

Responses indicated that pedlary – both applications and policing thereof – is regarded as a low priority.

The legislative option might involve transferring the responsibility for issuing certificates from the Police to Local Authorities, (with the Police still conducting the criminal checks as they do for street trader applications if this is required by the Local Authorities). Certificates would still need to be valid across UK. The Police are not responsible for issuing any other trading licenses and therefore lack the wide-ranging expertise and dedicated resource of Local Authority licensing divisions. In 2005, the Policing Bureaucracy Taskforce recommended that responsibility for issuing pedlar's certificates should be taken away from the Police, in line with the wider government objective of reducing Police bureaucracy. Transferring the issuing of licences to Local Authorities would free up valuable Police time to enable them to deliver their other objectives.

- **National Database of Pedlar's Certificates** – under this option, a national database for pedlars would be created, holding the following information on each certified pedlar in the UK, for example:
 - Information displayed on the pedlar's certificate, including name, address, issuing authority and certificate number.
 - Indication as to whether street trading and pedlary offences have been committed previously.
 - Details of sanctioning authority where offences have been committed.

We feel that a national database for pedlars will make it easier to verify pedlar's certificates and would facilitate more efficient enforcement. For example, under the current system there is no way for an enforcement officer to authenticate a pedlar's certificate unless they contact the issuing Police station directly. This may be time-consuming on the part of both enforcement officers and the Police. A national database would allow all enforcement officers and issuing authorities to have direct access to all relevant information about a pedlar, such as their certificate issuing authority and any previous offences.

The Durham report found general agreement that some type of central computerised collection of data on pedlar's certificates would be helpful. For enforcement officers, this would aid the process of verifying certificates as they could simply check the details from their location rather than contacting the issuing authority. Moreover, pedlars were in favour of electronic storage of data and would welcome a central storage facility that could be checked, such as a national database. Again, they viewed this as a means of reassuring enforcement officers as to the validity of their certificates and activities.

There is also a consumer protection and enforcement angle to consider. Although the Durham report did not find significant numbers of consumer complaints about pedlars, some stakeholders have expressed concern that the mobile nature of pedlars trading activities means that consumer complaints are difficult to follow up. A central database might aid complaint handling. Local Authorities have used shared databases to track enforcement and trading standards offences. For example the retail enforcement pilot which is hosted by one main Local Authority, but accessible to all.

Costs to set up and maintain a database is likely to be considerably higher than could be met by the pedlar fee charged at the moment (£12.25 per annum). The assumption is

made that the cost of setting up and maintaining the database would be recouped from the certificate fee, although we do not have an indication of what the cost of setting up such database might be. The majority of the pedlars interviewed for the Durham stated that they would be happy for the pedlar's certificate to increase by £100 to recognise the additional costs of administration and serve as deterrence for rogues to apply. Assuming the difference between the cost of the certificate now and what the pedlar would be willing to pay (£87.75) as a cost to pedlars over a 10-year period discounted at the standard rate (3.5%), the total cost to pedlars of having a certificate would be **between £2.5 million and £3.7 million**. The time savings to authorities achieved through reduced time to trace the validity of certificates, or the deterrence effect to rogue traders which would benefit pedlars has not been quantified.

SPECIFIC IMPACT TESTS

COMPETITION ASSESSMENT

Research suggests that legitimate pedlars are not for the most part the cause of the problems experienced by some Local Authorities, but that more clarity and more flexible enforcement against illegal street traders may provide the key to tackling unfair trading by those who seek to benefit from the current uncertainties around what a certified pedlar is entitled to do.

We are aware that some Local Authorities view restrictions on pedlar activities as a way of supporting local established businesses by restricting the competition which pedlars might represent. Moreover, some local businesses object to itinerant traders on the grounds that they undercut their prices by supplying inferior products of the same type. For example, cases of essentially static or barely mobile large stalls which are set up outside of retail outlets and which sell the same or similar products while the trader claims not to be subject to local street trading controls. It is clear that such practices represent unfair illegal trading and should not be permitted where a Local Authority has chosen to regulate street trading.

While the Government is committed to tackling unfair trading wherever it occurs, it also supports product diversity as a means of achieving competitive markets. Pedlars or street traders do not have the same overheads in terms of fees and local taxes to pay when compared to retail shop outlets so they can sell at a lower price. However, we do not believe there are any grounds for restrictions on street markets, or for that matter, online sellers, because they offer cheaper goods than other retail outlets. The Government believes that consumers should be able to choose on quality, convenience and value for money, irrespective of the route to market. It is therefore the case that the revision of definitional, enforcement and certification issues dealing with street pedlary would not affect competition, rather it would improve it.

SMALL FIRMS IMPACT TEST

Street pedlaring is usually carried out by sole traders and in some instances micro/small businesses. It is therefore the case that the revisions to the act will affect these agents. However, the only cost that will be incurred by these businesses will be that of applying for a certificate. Furthermore, it could be argued that in resolving some of the issues which give rise to conflict between pedlars and Local Authorities for example, the proposals will favour these small traders since the clarity and certainty arising from the proposed legislative measures is likely to improve market conditions. The main cost that the pedlar would have to incur as a consequence of the legislative option would involve payment for the issuance of an annual certificate. However, the majority of the pedlars interviewed for the Durham report stated that they would be happy for the pedlar's certificate to increase by £100 to recognise the additional costs of administration and serve as deterrence for rogues to apply.

IMPACT ON THE PUBLIC SECTOR- ENFORCEMENT AND SANCTIONS

The revisions of the Pedlars Act (if the legislative option were to be implemented) would involve the transferral of enforcement powers from the Police to Local Authorities. It is likely that this method would be most effective in dealing with illegal traders as explained above. Moreover, the imposition of sanctions is likely to be less onerous since the only alternative available at the moment is taking the illegal traders to court. Fixed Penalty Notices offer an alternative civil sanction for lesser street trading offences and should reduce the number of costly and resource-intensive court cases.

HEALTH IMPACT ASSESSMENT

This has been considered and it is not thought that there will be any possibility of the revision of the act to have any harmful health ramifications.

GENDER EQUALITY IMPACT TEST

This has been considered and it is not thought that there will be any possibility of consumers, pedlars or authorities to be excluded from benefiting from any potential changes on the ground of their gender. In terms of costs, it has not been possible to ascertain the extent to which any revision to the act or enforcement authority would fall disproportionately on a particular gender.

DISABILITY EQUALITY IMPACT TEST

This has been considered and it is not thought that there will be any possibility of consumers, pedlars or authorities to be excluded from benefiting from any potential changes on the ground of any disability. In terms of costs, it has not been possible to ascertain the extent to which any revision to the act or enforcement authority would fall disproportionately on those with disabilities.

RACE EQUALITY IMPACT TEST

This has been considered and it is not thought that there will be any possibility of consumers, pedlars or authorities to be excluded from benefiting from any potential changes on the ground of their ethnicity. In terms of costs, it has not been possible to ascertain the extent to which any revision to the act or enforcement authority would fall disproportionately on a particular ethnicity.

ENVIRONMENTAL IMPACT TEST/ SUSTAINABLE DEVELOPMENT/ CARBON ASSESSMENT/ OTHER ENVIRONMENT

Consideration of the effect of the revision of the act and enforcement authority in the environment has been considered. Environmental protection is not within the objectives of the act therefore no direct environmental impacts are expected from this proposal.

LEGAL AID

Consideration of the effect of the revision of the act and enforcement authority in Legal Aid issues has been considered. Legal Aid remedies are not within the objectives of the act therefore no direct Legal Aid impacts are expected from this proposal.

RURAL PROOFING

Rural areas have limited resource, monetary or in terms of administrative time, to ensure enforcement of the Act or to take Private Bill action. The legislative measures proposed would have cost saving implication to small Local Authorities.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	Yes	No
Small Firms Impact Test	Yes	No
Legal Aid	Yes	No
Sustainable Development	Yes	No
Carbon Assessment	Yes	No
Other Environment	Yes	No
Health Impact Assessment	Yes	No
Race Equality	Yes	No
Disability Equality	Yes	No
Gender Equality	Yes	No
Human Rights	Yes	No
Rural Proofing	Yes	No