

**BIS** | Department for Business  
Innovation & Skills

## 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A joint consultation on modernising Street Trading and Pedlar Legislation, and on draft guidance on the current regime.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# **STREET TRADING AND PEDLAR LAWS: A consultation on modernising street trading and pedlar legislation, and on draft guidance**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

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### **Enquiries in relation to Scotland to :**

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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 pedlars 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](mailto: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](mailto: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

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\* 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 permit<sup>1</sup>, 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

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<sup>1</sup> 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.

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\* 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

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\* 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

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\* 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 21<sup>st</sup> 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 powers<sup>2</sup>.

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*)

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<sup>2</sup> <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.

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\* 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.**

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\* 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](http://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](mailto: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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