

Public Collections

FOR CHARITABLE, PHILANTHROPIC AND BENEVOLENT PURPOSES

a consultation paper on
proposals for a new local authority licensing scheme

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Foreword

The maintenance of public trust and confidence in the charitable sector is essential if the sector is to realise its full potential as a force for good in society. Charities are perceived as value driven and as a result the public tends to have particularly high expectations of them. Overall levels of trust in the sector is high. However, the Strategy Unit Review “Private Action, Public Benefit” identified that one of the areas around which the public had some concerns was fundraising. The Government in its response to the Review “Charities and Not-for-Profits: A Modern Legal Framework” recognised that those concerns should be addressed. Voluntary income represents a major element of the funds of many charities. Any significant reduction in the level of public giving would have a negative impact on the vital work that charities do.

A transparent and proportionate system of regulation of public collection would play an important part in maintaining public trust in the sector. Our objective is to create a new regulatory framework, which will command public confidence and which will at the same time prove practicable for those who have to operate the system. A previous attempt to devise a framework foundered on the operational detail. This time round we are consulting widely with our stakeholders on the detail of the scheme. The consultation paper follows up on recommendations contained in “Private Action, Public Benefit”. It sets out our proposals in detail and invites your comments on them. I would be grateful if you would take the time to consider the proposals carefully and to let us have your views on them. I am confident that with the help and input of a wide range of stakeholders we can devise a workable and proportionate scheme, which will also maintain and possibly increase levels of public trust and confidence in the sector.



FIONA MACTAGGART
Parliamentary Under Secretary for Race Equality, Community Policy, and Civil Renewal

Executive summary

Purpose of the consultation

This consultation paper contains proposals for a new local authority licensing scheme for public charitable collections conducted both house to house and in the street.¹ It follows up on a recommendation in the Strategy Unit paper 'Private Action, Public Benefit'.² The closing date for responses to the consultation is 2 December.

Background

There is at present legislation in respect of house to house and street collections. The legislation is inconsistent, fragmented, outdated and complex. It is difficult both for collection organisers to understand and for local authorities to implement effectively. Proposals for the new scheme aim to overcome difficulties which are known to exist within the current system.

Objective of the proposed new licensing scheme

The overall objective of the proposed new scheme is to create a fair and cost effective system of licensing which facilitates responsible fundraising but deters bogus collections and prevents nuisance to the public.

The principal elements of the proposed scheme

In the new scheme local authorities will be required to license all public charitable collections apart from the very small and local, which will be exempt. The licensing requirement will extend to direct debit solicitation, sometimes called face to face fundraising.

Currently, the law is not clear as to whether face to face fundraising conducted on the street requires a licence. That means that in general it is unlicensed and there is concern that activity in some local authority areas may be excessive and give rise to public nuisance.

¹ Charitable is used as a short hand for charitable, philanthropic and benevolent – see discussion of the definition of this term in section 2.1.
² See the main report at: <http://www.cabinet-office.gov.uk/innovation/2002/charity/report/download/strat-data.pdf>
And, the background paper on the regulation of fundraising at: <http://www.cabineoffice.gov.uk/innovation/2002/charity/background/RegulationofFundraising.pdf>

The definition of public place

Generally, local authorities do not license charitable collections on private property such as supermarket forecourts. That provides a potential loop hole for those who wish to avoid the checks and controls of the licensing system.

This consultation paper proposes that collections should in future be licensed if they take place on the public highway or on land commonly used by the public as a highway (e.g. supermarket forecourts and station concourses). That is on the basis that the owners of such property are not capable of easily controlling the activity.

Replacing national exemption orders with a 'lead authority' system

Currently, national organisations can apply for exemption orders which remove the need for them to apply for a local licence when undertaking house to house collections. However, these are available only to national organisations with a record of large scale house to house fundraising. The perception is that exemption orders give such organisations an unfair advantage.

The proposal is that national exemption orders should be replaced by a new 'lead' local authority system. That would reduce the overall administrative burden for those wishing to collect both house to house and in the street in more than one local authority area.

Appeals against the refusal of licences

There is at present a right of appeal against the refusal or revocation of a licence to hold a house to house collection but not of a street collection. The current avenue of appeal against a decision to refuse an application for a house to house collection licence is to the Home Secretary. The consultation document proposes that there should be a right of appeal in respect of both types of collection and that the appeals should be heard in the Magistrates' Court.

Responsibility for licensing in London

Currently, in London the Metropolitan Police and the City of London Police are responsible for the licensing of both street collections and house to house collections. The consultation paper asks whether responsibility for licensing in London should be transferred from the police to local authorities.

Local authority operation of the scheme

Local government in England and Wales is structured in two different ways. In Wales and parts of England, a single tier "all purpose council" is responsible for all local authority functions. The remainder of England has a two-tier system, in which two separate councils divide responsibilities between district and county councils. Where a single tier system operates responsibility for licensing would fall with them. Where a two-tier system operates responsibility would fall to the district councils.³

³ Taken from Local Government Associations factsheet on Local Government Structure.

There is a need for clear central guidance for local authorities on the operation of the new scheme in order to secure consistency in that implementation. It is proposed that its guidance would expand on the features described below.

The scope of charitable, philanthropic and benevolent purposes/causes

It is proposed that the new scheme would cover collections for charitable, philanthropic and benevolent purposes. Local authorities often have difficulty determining whether particular non charitable causes qualify as philanthropic and benevolent. The proposed central guidance would address that question.

Capacity

Local areas because of their differing circumstances can sustain different levels of collecting activity. The level at which collections will generate a viable return will be referred to as the capacity of an area throughout this paper.

A principle of the proposed scheme is that licences should not be denied on the basis of arbitrary criteria. Local authorities should provide maximum opportunity for eligible and well conducted collections consistent with local capacity and with the avoidance of public nuisance.

Local authorities would need to review their policies on the granting of licences in the light of that new requirement. The proposed guidance would help to steer those reviews.

Providing fair access

The proposal is that a duty would be placed on local authorities to provide fair access to collecting opportunities to all eligible organisations, that is, they should not favour local over national causes or particular collecting methods. The guidance would set out the factors which would have to be taken into account when allocation decisions were made.

Accounting for collections and returns

Many public collections are organised by registered charities. Those organisations already report and account to the Charity Commission. The consultation paper therefore asks whether charities should be required to submit returns to local authorities on their public collecting activity.

The proposed guidance would set out the form of returns required from non charitable organisations and how they might be validated.

The proposed guidance would also consider:

- how local authorities might ensure that collections do not constitute a public nuisance;
- what checks local authorities should make on the eligibility of applicants;
- what arrangements should be put in place to provide effective liaison between local authorities and other bodies including the police and the Charity Commission to ensure that appropriate checks were made on applicants and that enforcement was effective.

The requirements placed on the organisers of collections

The consultation paper also considers:

- the information collection organisers would be required to submit when they make an application for eligibility to collect;
- the basic safeguards needed to secure collection proceeds;
- how collection organisers might ensure that collectors are fit and proper;
- record keeping and local authority monitoring.

Partial Regulatory Impact Assessment

Annex A to this paper contains a Partial Regulatory Impact Assessment (PRIA). It is important that respondents consider the matters raised by the PRIA. Separate questions are raised in the PRIA which we would appreciate you taking the time to consider.

Responding to the consultation and the PRIA.

Please respond by Tuesday 2 December 2003 using the following postal address, email address or telephone number:

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The deadline for responses is 2 December 2003.

Introduction

The purpose of this consultation paper

This consultation paper contains proposals for a new integrated licensing scheme for public charitable collections conducted both house to house and in the street. The scheme would operate in England and Wales and would be introduced through legislation.

The Strategy Unit report 'Private Action, Public Benefit', published in September 2002, suggested a framework for such a licensing scheme. This paper both:

- addresses issues raised by respondents to the consultation on the Strategy Unit report; and
- takes the Strategy Unit proposals on licensing further, filling in some of the missing detail.

It is designed to be a focus for further discussion with interested parties.

The Strategy Unit report considered other issues relevant to the regulation of fundraising. For example, it proposed the setting up of a new voluntary scheme to promote good practice in fundraising. This paper does not address that proposal which is being considered separately.

Objectives of the new licensing scheme

Many different groups have an interest in the licensing of public collections including donors and the general public, fundraising charities and voluntary organisations, local authorities, the police, the Charity Commission and the Home Office. Each has a different perspective on, and therefore a different attitude to, the licensing of collections.

However, one objective is shared: to create a fair and cost-effective system of licensing which strikes an appropriate balance between facilitating responsible fundraising for charitable work while deterring bogus collections and avoiding public nuisance. Regulation should, however, be proportionate and it is proposed that the smallest local collections should be exempt from the licensing scheme.

Charities and voluntary organisations understandably want increased access to fundraising opportunities. But controls are needed to ensure that the volume of requests does not irritate potential donors and depress collecting revenues and to reassure the public that funds reach the charitable causes for which they are donated.

Existing legislation

The existing legislation and main regulations dealing with public collections are:

Street collections – the Police, Factories Etc (Miscellaneous Provisions) Act 1916: a model of local regulations is contained in the Charitable Collections (Transitional Provisions) Order 1974, though local authorities are not obliged to introduce such a system of licensing in their area; and

House to house collections – the House to House Collections Act 1939 and the House to House Collections Regulations 1947 established a central licensing regime for such collections.

The Local Government Act 1972 transferred responsibility for both forms of licensing to local authorities from the police, except in London where responsibility remains with the Metropolitan Police and the City of London Police.

The issue of reform of the licensing of public charitable collections was previously considered in the early 1990s. The 1992 Charities Act dealt with the control of fund raising, professional fundraisers and commercial participators. Part III of the Act set out a new regime for the licensing of collections covering both house to house and street collections. Part III has never been brought into force because concerns were raised about whether it would work in practice.

The structure of this paper

Section 1, discusses a possible structure for a new scheme.

Section 2 considers how local authorities might administer it.

Local government in England and Wales is structured in two different ways. In Wales and parts of England, a single tier “all purpose council” is responsible for all local authority functions. The remainder of England has a two-tier system, in which two separate councils divide responsibilities between district and county councils. Where a single tier system operates, responsibility for licensing would fall to them. Where a two-tier system operates responsibility would fall to the district council. Both licensing bodies are referred to as “local authorities” throughout this document.⁴

It is proposed that the Home Office should issue guidance to local authorities, developed in consultation with key stakeholders, on the operation of the scheme. Clear central guidance would be required to secure appropriate consistency in implementation.

Section 3 discusses the requirements which might be placed on those organising collections.

A questionnaire for respondents, at the end of the document, brings together the main questions raised in the consultation paper. It is designed with the aim of making it easier for you to respond.

⁴ Taken from Local Government Associations factsheet on Local Government Structure.

A Partial Regulatory Impact Assessment is contained in Annex A to the this document. It raises further questions about the impact of regulation and we would appreciate it, if respondents could also provide responses to these questions.

Responding to the consultation and the PRIA

Your comments on this consultation paper and the PRIA attached at Annex A are very important. They will help to ensure that a workable scheme is developed.

Please respond using the following postal address, email address or telephone number:

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The deadline for responses is Tuesday 2 December 2003.

SECTION 1:

The structure of the scheme

This section examines the principal elements of the structure of the proposed scheme.

1. The status of the licensing regime

Separate legislation currently governs house to house and street collections (see introduction). This legislation is inconsistent. One major difference is that while local authorities are required to license house to house collections, they are not required to license street collections. Although it is estimated that approximately 80% of local authorities do license street collections, that difference is one of several which make the system complex and difficult for collection organisers or potential organisers to understand.

Other important inconsistencies between the house to house and street collections legislation include:

- differences in interpretation about the need for licensing of the solicitation of direct debit commitments (explained further in 2. below);
- national exemption orders which remove the need for local assessments of eligibility to collect are available only for house to house collections (explained further in 5. below);
- there is a formal right of appeal only against local authority decisions to refuse or revoke a house to house collections licence;
- each street collection must be individually licensed and a return made in respect of the collection which creates a heavy administrative burden for organisations which collect frequently.

The Strategy Unit recommended a new integrated licensing scheme for public collections for charitable purposes to address the main problems which arise with the current system. Under the proposed new scheme no public charitable collection (apart from the small and local which might be exempt – see 4. below) could lawfully be conducted without a licence from a local authority.

Is the proposal for a new integrated licensing scheme in principle a good one?

2. The activities covered by the proposed new scheme

The house to house legislation defines a collection as an appeal to give whether for consideration or not, money or other property.¹ The street collection legislation applies to collections of money or the sale of articles for the benefit of charitable or

¹ House to House Collections Act 1939, Section 11.

other purposes not in the ordinary course of trade.² So while it is generally agreed that the collection of direct debit commitments carried out on a house to house basis requires a licence, there is some doubt as to whether the same activity does when it is conducted on the street.

The Strategy Unit report proposed a single licensing scheme covering public collections where a representation is made that some or all of the proceeds will go to a charitable cause. Only the smallest local collections should be exempt. The scheme would apply whether the proceeds consisted of:-

- cash or cash equivalents, for example, possibly in future electronic transfers;
- goods; and/or
- direct debit commitments.

The Strategy Unit intended that the licensing scheme should also apply where goods are being sold and the same representation is made.

This proposal aims to secure, in the interests of fairness, greater consistency in the treatment of different collecting methods. It also aims to avoid excessive collecting which could cause annoyance to members of the public.

Fundraising methods change and develop over time. For example, direct debit solicitation (or face-to-face fundraising) was not envisaged when the current legislation governing house to house and street collections was drafted. It will therefore be important to frame the legislation in such a way that new forms of pledge are covered.

Should a licence be needed to carry out face-to-face fundraising? What would be the main consequences of such a change for local authorities and fundraising organisations?

3. The definition of public place

The existing legislation covers collections in public places but public place is not defined in the legislation. Case law defines a public place as any place to which any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission.³ That definition would include not only shopping centres and railway stations but also ticketed events such as concerts or garden parties. It is understood that generally, local authorities have not required collections on such premises or in such circumstances to be licensed.

Part III of the 1992 Act would have covered collections in stations, airports, shopping precincts or any other similar property.⁴ The Strategy Unit report proposed that the licensing scheme should not apply to collections on such premises but that proposal has proved controversial.

² Police, Factories etc (Misc Prov) Act 1916 Section 5.

³ Cf DPP v Vivier (1991).

⁴ Section 65(2)(b) and section 65 (9)(b).

The new proposal therefore is that public place should be defined as a place to which the public has unrestricted access, which means for example, that they are not required to have a ticket for entry. In order to avoid public nuisance and guard against bogus fundraising, collections for charitable purposes should be licensed if they are:

- on the public highway or on land commonly used by the public as a highway;
- conducted by visits house to house (including pub to pub, office to office or shop to shop).

That suggests a broad definition of public place encompassing privately owned sections of the highway, the common parts of shopping centres, supermarket forecourts and railway station concourses, that is, private property where it is not clear that the owner would know about collecting activity/be capable of easily controlling it.

Licensing would not extend to collections:

- in shops;
- on the premises of charitable organisations (including churches and schools);
- during events primarily aimed at raising money for charitable purposes.

Those collections should be easily capable of control by those in charge of the property or event. And, licensing them would be burdensome for local authorities.

Collections on private property to which the public has unrestricted access would, as now, require the permission of the owner.

Should the definition of public place include private property to which the public has unrestricted access? If that definition is accepted should exceptions be made and if so are the ones proposed the right ones?

4. Should very small local collections be exempt?

The legislation covering house to house collections allows the police to approve a temporary local collection outside the normal licensing controls.⁵ In practice that is most commonly used to provide an exemption for collections by carol singers at Christmas.

Frequently, the organisers of such collections already approach their local authority in the first instance and are referred by them to the police.

The Strategy Unit proposed that under the new scheme the local authority would give permission for very small local collections outside the normal licensing controls. The fear is that a licensing requirement would dissuade people from engaging in small scale or ad hoc fundraising activity and would prove unduly burdensome for local authorities. Such activity is low risk because it is generally conducted amongst

⁵ House to House Collections Act 1939, section 1 (4).

people who know both each other and the cause for which they are collecting. Regulation should be proportionate to risk.

A small, local collection might be defined as a one off collection of goods or money over a small geographical area (for example, house to house in one local authority ward) or a small ad hoc collection on one set of premises. The intention is to exclude the smallest collections including:

- the collection of goods for church bazaars;
- carol singing;
- a single small ad hoc collection for example, in one pub.

The proposal is that the organisers of such collections would be required to contact the local authority but would not be subject to the usual requirements of the licensing scheme. The local authority could advise on appropriate controls given the nature and scale of the collection.

Should small local collections be exempt? How should they best be defined?

5. Replacing national exemption orders with a 'lead authority' model

Currently, national exemption orders which remove the need for local assessments of eligibility to collect are available for house to house collections:

“Where the Secretary of State is satisfied that the person pursues a charitable purpose throughout the whole of England or Wales or a substantial part thereof and is desirous of promoting collections for that purpose”.⁶

43 fundraising organisations currently hold national exemption orders. These are generally available to organisations which have obtained house to house collection licences in at least 70-100 local authority licensing areas for the two preceding years.

The Strategy Unit report proposed the abolition of national exemption orders. They are perceived as giving national organisations an unfair advantage over smaller, local ones. The report argued that given the existing requirement for liaison with individual local authorities about collection dates and locations, abolition should not impose an undue burden on collection organisers or local authorities.⁷

The proposal to abolish national exemption orders does not command universal acceptance. Some charities and voluntary organisations who currently have orders have argued that abolition will increase their administration costs. Any change to the system would have to aim to minimise the overall administrative burden for collection organisers and local authorities.

⁶ House to House Collections Act 1939, section 3 (1).

⁷ The guidance for applicants for national exemption orders says that organisations with orders should liaise with local authorities about collecting dates and sites. It explains that organisations that persistently breach the guidance may not be allowed to collect under the order. The Institute of Fundraising code on house to house collecting, which is binding to their members, also specifies that organisers with exemption orders must tell local authorities when and where they plan to collect.

The proposal is to replace national exemption orders with a new 'lead authority' system. The collection organiser would nominate a lead local authority from amongst those in whose areas he/she wishes to collect. This lead local authority would make the necessary checks and determine whether the proposed activity requires/is eligible for a licence (see also 4. in the next section). If the proposed collection was eligible, the only basis on which any local authority would be able to refuse a licence would be that their area did not have the capacity to accommodate the proposed collecting activity (see also 2. in the next section).

This "lead authority" proposal has major advantages over the current system of national exemption orders. The option of nominating a lead authority would be available to all organisations/individuals who wished to collect in more than one local authority area rather than being limited to national organisations with a record in large scale house to house fundraising.

*Is the proposal for lead authorities welcome and what would the impact be on district councils?
What are the advantages and disadvantages of the proposal?*

6. Licence applications and accommodating the collection of goods

In essence the proposal set out above is that lead authorities would provide collection organisers with a certificate of eligibility for the collecting activity proposed in the application. But, organisers would still need to confirm with each individual local authority that their area had the capacity to accommodate the activity. A licence to collect, lasting between a year and eighteen months, would be issued when a local authority gave the organisation permission to collect on particular days and in particular locations in their area. The collection of goods might however, be treated differently.

Those organising street collections of cash generally plan them well in advance and should therefore be able to specify in licence requests the locations and times at which the activity would take place. However, collections of goods for charity shops are often undertaken at short notice when stocks have run down. The proposal is that licences for collections of goods might be granted without the need for the organiser to specify collecting dates and locations. That proposal is made on the basis that such collections (in contrast with collections for cash and direct debit commitments either house to house or in the street) do not appear to raise capacity issues. That is to say, we have seen no evidence that the public feel pestered by multiple requests to donate goods.

Nonetheless those collections require regulation. There is evidence of abuse by commercial participators who represent that they are raising money for charitable causes by collecting goods and do not declare that only a tiny proportion of the proceeds are donated to such causes (see 7. of section 2 of this paper). There is also evidence that some unscrupulous organisations collect purely for commercial purposes while implying that there will be some charitable or philanthropic benefit. Local authorities do need to be able to monitor the activity. Organisations requesting licences to collect goods might, therefore, be required to provide information about the scale of their proposed collecting activity including

approximate locations and likely frequency. And, they might be required to inform the local authority periodically if they were to deviate markedly from these plans.

Is the proposal to differentiate between administrative arrangements for the collection of goods a sensible one? Is it true that the collection of goods does not raise capacity issues (even when taken alongside door to door collections of cash and direct debit commitment)?

Appeals against the refusal of licences

Under current legislation there is a right of appeal against the decision of a local authority to refuse an organisation a licence to hold a house to house collection or to revoke such a licence. There is no equivalent right of appeal in the case of street collections. That is one of the major inconsistencies in the current legislation. The consultation document addresses that inconsistency and proposes a right of appeal in respect of both types of collection.

The current avenue of appeal in the case of house to house collections is to the Home Secretary. The consultation document proposes that the right of appeal in the case of both house to house and street collections should be transferred to the Magistrates' Court. That would align the appeal process with what happens in respect of other licence applications.

Is there any reason why the appeal process should not be the same for both types of collection?

Are there any arguments for not making the Magistrates' Court the avenue of appeal?

7. Responsibility for licensing public charitable collections in London

Currently in London the Metropolitan Police and the City of London Police are responsible for both the licensing of house to house and street collections. The Strategy Unit paper did not specifically consider transferring responsibility from the police to local authorities in London but that would be an option.

Part III of the 1992 Act proposed such a transfer of responsibility. However, that was controversial because of the large number of organisations who organise street collections across a number of London boroughs. The lead authority proposal however, should overcome the major difficulties associated with such a change (see 5. above).

Should responsibility for licensing public collections in London be transferred from the police to local authorities?

8. Penalties for non-compliance

It is proposed that the new scheme would provide sanctions for non-compliance. The sanctions build on those currently provided by the House to House Collections Act 1939 and Part III of the Charities Act 1992,⁸ with the exception of number 6 below which would be a new offence.

⁸ Part III of the Charities Act 1992 has not been brought into force.

Any person found guilty of an offence would be liable on summary conviction to a fine. The offences and related maximum penalties would be:

1. Organising a collection without a licence/permission from the local authority (Section 1 (2) of the 1939 Act and Section 66 of the 1992 Act).
A fine not exceeding level 5 on the standard scale (max £5,000).
2. Collecting without a licence/permission from the local authority (Section 1(3) of the 1939).
A fine not exceeding level 3 on the standard scale (max £1,000).
3. Unauthorised use of documents/badges ((Section 5 of the 1939 Act and Section 74(1) of the 1992 Act).
A fine not exceeding level 5 on the standard scale (max £5,000).
4. Giving false information for the purposes of the Act (Section 8(6) of the 1939 Act and Section 74(3) of the 1992 Act).
A fine not exceeding level 5 on the standard scale (max £5,000).
5. Breaching the requirements on: use of badges in the prescribed form; presentation of badges, certificates on request; not allowing people under a certain age to collect (Section 73(2) & (3) of the 1992 Act).
A fine not exceeding level 2 on the standard scale (max £500).
6. Breaching the requirements on the record keeping of specified records/the submitting of returns (this would be a new offence).
A fine not exceeding level 3 on the standard scale (max £1,000).

In general, it is proposed that the maximum fine levels would increase from the levels provided by the Charities Act 1992. The maximum fine levels should act as a deterrent to non-compliance, but it would be for the courts to pass sentence according to the circumstances of the case, including any aggravating or mitigating factors.

It is not proposed that there would be a specific offence concerning the falsification of documents/and or badges. An offence of that nature would be covered by the law on forgery provided by the Forgery and Counterfeiting Act 1981.

*Do you consider that any offences should be added to or removed from the list above?
Please give your reasons.*

9. Current costs of administering the system

There is little up to date information available centrally on the costs to charities or to local authorities, and in London the Police, of administering the present systems. It would be helpful to have more information on both the present and proposed systems.

What information do charities and local authorities have which they could without disproportionate effort make available to us?

What are the costs of administering the present system?

What additional costs/savings are envisaged under the proposed system?

Estimates of the financial costs/savings would be welcomed.

10. Charging for issuing licences

It is the case in some other areas of licensing by local authorities that a charge is levied. Currently local authorities do not have a power to charge organisations for issuing licences in respect of charitable collections. Representations have been received occasionally in the past that authorities should have such a power. More recent discussions have indicated that to be worthwhile charges would have to be set at a level which would be unacceptable to charities and so the matter has not been pursued. This document does not propose charging for licences.

Does it remain the general view that no charges should be levied?

SECTION 2:

Local authority operation of the new scheme

The proposal is that the Home Office should issue clear guidance on how local authorities should operate the scheme. The guidance, which would be informed by the responses to this consultation, would seek to:

- address issues/questions which local authorities find difficult;
- encourage efficient operation of the scheme;
- secure greater consistency in practice.

This section of the paper considers issues which the proposed guidance should cover:

1. The scope of 'charitable, philanthropic and benevolent' purposes/causes

The current legislation covers collections for charitable, philanthropic and benevolent purposes. It is proposed that the new scheme would use the same definition of eligible purposes. However, some local authorities report that they have difficulty determining whether licences are required for particular collections because they are unclear about the scope of the definition.

Collections made for organisations which are registered with the Charity Commission, or recognised as charitable by the Inland Revenue, are clearly within scope. However, collections for non charitable purposes are more difficult. For example, is a collection to enable a child to access innovative medical treatment overseas philanthropic or benevolent? There is also some doubt about whether sponsorship requests conducted house to house, for charitable causes or organisations, fall within scope. Similarly, is a collection towards the costs of a school trip charitable, philanthropic or benevolent? Those questions, and others like them would be considered in the proposed guidance for local authorities.

How should philanthropic and benevolent best be defined? Are collections which benefit an individual or in which there is a significant element of private benefit either philanthropic or benevolent?

2. Capacity

Because circumstances in local authority areas vary greatly, different areas are capable of sustaining different levels of collecting activity. If too much activity is allowed, collections would not generate a viable return and in addition could cause public nuisance.

Different local authorities take a very different approach to allowing collections, for example in relation to the number of days per week on which street collections are allowed (ranging from one to six or seven). In part this could be explained by differences in capacity locally. However, in some areas arrangements may have been settled by historic precedent without scrutiny or review. They may concentrate on one objective (eg avoiding nuisance) without giving equal weight to other objectives (eg maximising charitable income, consistent with acceptable conduct).

A fundamental principle of the proposed scheme is that licence requests would not be denied on the basis of arbitrary criteria. For example, local authorities should not limit collecting activity to one day or location, simply on the grounds that that is administratively convenient, if it is the case that the area has a greater capacity.

Local authorities would therefore need to review their policies on the granting of licences to ensure that they provided maximum opportunity for eligible and well conducted collections, consistent with local capacity. Clear central guidance would need to be developed to steer those reviews.

How might local authorities best determine local capacity to collect? What criteria/evidence should they consider in assessing capacity (see also 6. in the previous section which suggests that the collection of goods house to house does not raise capacity issues)?

3. Providing fair access to both national and local collections and to the broad range of charitable causes

One of the principles of the proposed new scheme is that all eligible licence applications would be granted, provided capacity exists. The proposal therefore is that a duty should be placed on local authorities to provide fair access to collecting opportunities to all eligible organisers, that being so, they should not favour:

- particular charitable, philanthropic or benevolent causes;
- particular public collecting methods; or
- local causes over national causes.

Again, the proposed guidance for local authorities would consider this issue in greater detail. It might helpfully propose factors that should be taken into account when making allocation decisions. It might for example, suggest that one such factor should be the likely yield from particular collecting slots. Some, because of their location and timing would be likely to generate a high yield, for example weekend slots on the busiest shopping streets.

What factors should the proposed guidance say that local authorities should take into account when allocating collection slots?

4. Checks on the eligibility of applicants

The proposed guidance would set out the aspects that local authorities would consider when assessing eligibility for a licence. Those would be:-

- a) eligibility of the organisation or cause collected for;
- b) eligibility of the organiser of the collection;
- c) nature of the collection proposed.

The lead authority proposal (discussed in the previous section in 5.) would enable one local authority, where a collection is to take place over a number of local authority areas, to make the checks relevant to a), b) and c) above.

It is proposed that the local authority would check that:

- the collection is genuinely for charitable, philanthropic or benevolent purposes (see 1. above);
- if the collection is being made on behalf of a particular named charity or voluntary organisation the organiser has a letter authorising the activity;
- the organiser is not an individual who has an unspent conviction for an offence involving deception or dishonesty;
- the organiser is not an individual who has an unspent conviction for a breach of the public collections legislation, or other relevant legislation, particularly that covering professional fundraisers and commercial participators.
- an organiser is not collecting for a charity, and does not have a formal relationship with a charity (i.e. he/she is a member of staff/board member, regular volunteer), in respect of which a Charity Commission order prohibiting fundraising generally or just by means of public collections is still in force;
- the organiser gives an assurance that he or she has proper systems in place to check that collectors are fit and proper (see 3. in the next section);
- the organiser gives an assurance that he or she understands and agrees to abide by the basic requirements designed to guarantee the security of the collection (for example the use of sealed collecting boxes for cash collections, the use of badges in a specified format – see 2. in next section);
- the organiser undertakes to keep and to provide local authorities, on request, with specified records of collecting activity (see 4. in the next section);
- the organiser gives an undertaking that the collection would not cause public annoyance taken by itself or in combination with others because, for example, it would cause an obstruction or involve noise pollution (see 6. below).

Are the checks on eligibility which are proposed the right checks? Are there other checks which should be included?

5. Liaison with other bodies including the police and the Charity Commission

The Strategy Unit report recommended that liaison arrangements between local authorities, the police and the Charity Commission should be improved in order to secure effective implementation and enforcement of the proposed new scheme.

Local authorities would need to work closely with the police and the Charity Commission on licensing. Effective liaison arrangements would be necessary to:

- secure the relevant checks on eligibility (see above);
- ensure a swift, effective response to unlicensed collections, licensed collections which do not comply with the legislation and/or the reported abuse of collected funds.

Liaison of that nature is important to ensure that the system is not abused and to guard against bogus collections.

In many local areas effective liaison arrangements have been put in place between local authorities, the Charity Commission and the police. Such liaison arrangements should be developed in every local authority area. The proposed guidance for local authorities would make recommendations as to how they might best operate.

How might liaison arrangements between local authorities, the police and the Charity Commission be improved?

6. Public nuisance

Local authorities are responsible for regulating the use of space in town centres. It is therefore legitimate for them to determine how many collectors the local area can reasonably accommodate and for what periods (and to allocate licences accordingly). The presence of too many collectors on the street can itself constitute a nuisance.

Local authorities should also seek to ensure that collectors are not proposing to cause/do not cause a nuisance by, for example:

- harassing members of the public who have declined a request to give or to engage in conversation with the collector;
- setting up tables which obstruct the pavement;
- using PA systems.

Such controls are likely to be in the best interests of fundraising taken as a whole.

Again, the proposed guidance for local authorities on the operation of the scheme should clearly define what type of behaviour would constitute a public nuisance. The definition used should reflect public concerns.

Are the factors suggested above the right ones for local authorities to take into account when assessing whether a collection is likely to be/will be a public nuisance? What other factors should be taken into account?

7. Accounting for collections

Local authorities are currently able to deny a licence for house to house collections if they consider that the costs associated with a particular collection are too high.⁹ Payments cannot be made to collectors under the street collections regulations and payments to organisers, or any other person, for services connected with the collection have to be approved by the licensing authority.¹⁰

The Strategy Unit concluded that local authorities should not be concerned with costs except in extreme cases. That is, excessive costs might be taken as evidence of an intention to defraud the organisation or cause on whose behalf the collection was organised and/or to mislead the public about the nature of the activity.

It is not universally accepted that local authorities should pay any regard to the costs of collecting activity. A number of arguments have been made against their doing so.

Firstly, the majority of cash collections are organised by the staff or regular volunteers of registered charities and all the costs and proceeds of such collections go through the charity's accounts. Those accounts are monitored by the Charity Commission. It does not currently examine the costs of public collections in isolation (either individually or collectively) but if it considered that fundraising costs were high overall it would raise the matter with a charity.¹¹ The costs shown in the accounts would also include those attributable to paid third party fundraisers contracted to the charity (see below).

Secondly, there is a legislative requirement that paid third party fundraisers or commercial organisations should have a written agreement with charitable organisations on whose behalf they are fundraising. Those agreements are designed to protect the charity's interests.

The same legislation seeks to ensure that the public is not misled but is informed if fundraisers are paid or, where a commercial arrangement exists, what part of the proceeds from transactions goes to a charitable, philanthropic or benevolent cause. Many collections of direct debt commitments are undertaken by paid third party fundraisers. They are required to explain when they make a solicitation that they are paid. They must also explain the basis on which their remuneration is calculated.¹² Some collections of goods, where a representation is made that some or all the proceeds go to a charitable, philanthropic or benevolent cause, are made by commercial second hand clothing exporters. In such cases, collection material should state how the return to the good cause is calculated (for example, a proportion of the annual profit made on the sale of the goods or a set payment per week).¹³

⁹ House to House Collections Act, 1939 2 (3) (a) and (b).

¹⁰ Model street collection regulations 15 (1) and (2).

¹¹ Charities Act 1992, Part II, section 59 (1) and (2).

¹² Charities Act 1992, Part II, section 60 (1) and (2).

¹³ Charities Act 1992, Part II, section 60 (3). The Strategy Unit report recommended that this clause should be amended to require a specific statement of the return made to charitable purposes from commercial participation of this kind. The proposal was that the Home Office would issue guidance, building on that already available in its publication 'Charitable Fundraising: Professional and Commercial Involvement' setting out the form of statement appropriate to the particular circumstances of the case.

Thirdly, it is suggested that assessing the costs associated with particular collection methods can be difficult, particularly those with complex cost structures such as direct debit solicitation. It would therefore be unreasonable to expect every local authority to have the requisite expertise.

Fourthly, any assessment of the acceptability of costs would need either to take the form of an assessment of estimates at the time of application for eligibility or scrutiny of annual returns (detailing the costs of, and proceeds from the licensed activity) or both. Depending on the nature of the returns required, that could place a heavy administrative burden on collecting organisations and local authorities.

So far as they go, those arguments are reasonable. However, there is no mechanism for checking the fundraising costs of non charitable voluntary organisations (including the overall costs associated with contracting paid third party fundraisers).

The solution might be to require collection organisers for non charitable organisations or causes to prepare and submit estimates of and/or annual returns detailing the costs of and proceeds from their collecting activity.

The proposed guidance for local authorities could consider what form those returns should take and how they might be validated. The intention would be to introduce a proportionate system, for example, auditing only of large national campaigns.

In order to provide extra security, every collection organiser would be required to keep detailed records of collecting activity which the local authority could inspect if they had concerns about any aspect of the licensed activity (see 4. in the next section for further detail).

Should all collection organisers be required to submit estimates before and/or returns after the collection detailing the costs of and proceeds from the activity? Should collection organisers who are employees, trustees or regular volunteers for a registered charity be exempt from the requirement to submit such returns?

SECTION 3:

The requirements placed on the organisers of collections

1. Making an application for eligibility

In order for their eligibility to collect to be assessed, collection organisers would be required to:

- describe the cause on whose behalf they were collecting (specifying, if relevant, the name of the organisation and providing a letter confirming that it consents to the collection, including the method proposed);
- describe the formal relationship, if any, which they had with the body collected for, e.g. member of staff of that body, trustee or board member or member of staff of a commercial fundraising organisation contracted by that body;
- describe the nature of the collection they wished to undertake, for example, the collection of direct debit commitments in the street or house to house;
- make a statement that they did not have a relevant unspent conviction (see 4. in the last section);
- give permission for the local authority to make the necessary checks on their eligibility (see 4. in the last section);
- provide a list of collectors and undertake to check that collectors were fit and proper (see 3. below);
- give an assurance that they understood and agreed to abide by the requirements of the public collections legislation and other relevant legislation including that covering professional fundraisers and commercial participators;
- give a specific assurance that they agreed to abide by the information requirements described in 4. below;
- give a specific assurance that the collection would not be conducted in a manner that created a public nuisance (see 6. in the previous section which explains that the interpretation of public nuisance would be covered in guidance);

And, assuming the organiser wished to collect in more than one local authority area, to:

- provide a list of the other local authority areas in which they wished to collect;
- (if they are deemed eligible by the lead authority – see 4. in the last section) make contact with each local authority in whose area they wished to collect and obtain a licence to collect on specific dates and in specific locations (however, see 6 in the first section).

It is proposed that application forms for eligibility should have guidance notes attached which explain to organisers:

- the requirements of the legislation and the penalties for breach;
- the process for appealing against a local authority eligibility/licensing decision including a decision to revoke a licence;
- that failure to comply with the conditions of the scheme might result in the licence being revoked and that a new licence application (either from that particular organiser or on behalf of that particular organisation or cause or both) might not be considered until a specific period had elapsed (perhaps a 1 year period).

The application for an assessment of eligibility and the licence request could be combined where the proposal was to limit a collection to one local authority area.

Is this list comprehensive or are there other issues that should be covered in the application for eligibility/in the guidance notes?

2. Basic safeguards for collections

The public needs to have confidence that the money that they put in collection tins reaches the cause to which they have donated. That means that the organisers of collections should be required to put basic systems in place to secure the proceeds of cash collections including:

- the use of sealed and consecutively numbered collection boxes (collecting envelopes when filled should be placed in such boxes) clearly marked with the name of the charity or voluntary organisation or fund being collected for;
- securing the return of and accounting for all collection material issued including badges and collection boxes that have not been used (but not including envelopes);
- the organiser and another responsible person not connected with the cause on whose behalf funds are being raised (or two responsible people) being present at the opening of collection boxes and both signing a statement on the proceeds of each numbered box;
- the proceeds to be banked by the organiser and one other responsible person (or two responsible people) and a receipt obtained on the day or the next working day after the boxes have been opened;
- all collection proceeds to be paid into bank accounts controlled by the organisation on whose behalf they were raised;
- official badges to be used by all collectors (provided by the charity according to a specified format and signed by the collector);
- all collectors to be furnished with a copy of the licence giving permission to collect which they should show on request.

The public also needs to be confident that when they provide their bank details to those soliciting direct debit commitments, that information is kept safe.

Are those the right basic safeguards needed to secure the proceeds of any type of collection? Are there omissions? How should 'another responsible person' be defined in this context?

3. Determining that collectors are fit and proper

The organisers of public collections would be required to ensure that collectors are 'fit and proper'. As a basic minimum they might be expected to ask all their collectors to sign an undertaking that they do not have a relevant unspent conviction (see 4. in the previous section).

Is this requirement sufficient/reasonable? Might the issue be tackled in a better way?

In a number of areas, street collections regulations provide the licensing authority with discretion to permit the use of collectors between the ages of 14 and 16. Before granting permission the licensing authority would need to be satisfied that the use of collectors from that age group was justified and that an adult would accompany them. There is an anomaly here in that the regulations governing house to house collections specify that the minimum age for a collector should be 16.

Should the minimum age of street and house to house collectors be set at 14 (or lower), provided that the collectors up to the age of 16 are accompanied by an adult or should the minimum age for all collectors be set at 16 (or higher)?

4. Record keeping and monitoring

The proposal is that organisers should be required to keep detailed records of their collecting activity, including:

- an account of the proceeds of each numbered collecting tin (and of the location and day and time on which the tin was used);
- an account of the direct debit commitments made (and of the location and day and time on which the commitment was given);
- if a third party is undertaking cash collections – confirmation that the proceeds, before any expenses have been paid, have reached the organisation or fund on whose behalf they were collected;
- an account of the expenses associated with each collection, national or local;
- if a third party is undertaking the collection of goods and is representing that a proportion of the proceeds go to charitable causes – confirmation of the total revenue generated by the activity and of the amounts paid over to the cause over specified periods (quarterly and annually).

Local authorities should have the power to require organisers to provide that information at their discretion. They might require it to be presented if complaints were made about the conduct of particular collections and/or they might make random checks.

Local authorities should be able to take further action on the strength of information provided where there was suspicion of:

- fraud or theft;
- undisclosed participation by commercial organisations or paid fundraisers;
- inaccurate statements about the payment of paid fundraisers or the return from commercial participation;
- accounting irregularities concerning expenses.

They might for example, suspend licences while such concerns were being investigated. If concerns were found to be well founded, licences would be revoked. Criminal offences would be referred to the police. Concerns about misuse or mismanagement of charitable funds would be referred to the Charity Commission.

Are the record keeping requirements proposed the right ones? Should local authorities be able to suspend licences while they investigate any concerns?

QUESTIONNAIRE FOR RESPONDENTS:

Proposals for consultation

Your comments on this consultation paper are very important. They will help to ensure that a workable scheme is developed.

This section brings together the main questions raised in the consultation paper. It is designed to help you respond. You are not required to answer all the questions, only those relevant to you. If you are working from a hard copy and need more space for your answers please attach additional sheets.

The deadline for responses is Tuesday 2 December 2003.

Please note that we may refer publicly to views expressed by those who we consult unless the person concerned has asked that their views are treated in confidence. A standard confidentiality statement in an e-mail will not be regarded as a request for non-disclosure.

Section 1 The structure of the scheme

This section examines key features of the structure of the proposed scheme.

1. Is the proposal for a new integrated licensing scheme in principle a good one?

2. Should a licence be needed to carry out face-to-face fundraising?

3. What would be the main consequences of licensing face-to-face fundraising for local authorities and fundraising organisations?

4. Should the definition of 'public place' include private property to which the public has unrestricted access (for example, supermarket forecourts)?

5. Should some types of property and types of collection be explicitly excluded? If so, are the right exceptions proposed (for example, collections in shops)?

6. Should small local collections be exempt?

7. How should a small local collection be defined (for example, collections conducted only in one local authority ward)?

8. Is the proposal for 'lead authorities' (to assess the eligibility of collections where the proposed activity spans a number of local authority areas) a good one? What would the impact be for district councils?

9. What are the advantages of the 'lead authority' proposal?

10. What are the disadvantages of the 'lead authority' proposal?

11. Is the proposal to differentiate between administrative arrangements for the collection of goods a sensible one?

12. Is there any reason why the appeal process should not be the same for both types of collection?

13. Are there any arguments for not making the Magistrates' Court the avenue of appeal?

14. Should responsibility for licensing public collections in London be transferred from the police to local authorities?

15. Do you consider that any offences should be added to or removed from the list above? Please give your reasons.

16. Cost of administering the licensing scheme:

(a) What information do charities and local authorities have which they could without disproportionate effort make available to us?

(b) What are the cost of administering the present system?

(c) What additional costs/saving are envisaged under the proposed system? Estimates of the financial costs/savings would be welcomed.

17. Does it remain the general view that no charges should be levied for a licence?

Section 2 Local authority operation of the new scheme

Responses to this section will inform the proposed guidance for local authorities on the operation of the new scheme.

18. How should philanthropic and benevolent best be defined (for example, by analogy with local authority rating decisions)?

19. Are collections where there is a significant element of private benefit (for example, sponsorship for challenge events) philanthropic or benevolent?

20. What factors should local authorities consider when assessing the capacity of a local area to accommodate collecting activity?

21. What factors should local authorities take into account when allocating collection slots (for example, the quality of different sites)?

22. Are the checks on eligibility suggested the right ones?

23. How might liaison arrangements between local authorities, the police and the Charity Commission be improved?

24. What factors should local authorities take into account when assessing whether a collection is likely to be/is a public nuisance?

25. Should all collection organisers be required to submit estimates before and/or returns after the collection detailing the costs of and proceeds from the activity?

26. Should collection organisers who are employees, trustees or regular volunteers for a registered charity be exempt from the requirement to submit returns on their collecting activity?

27. Is the information which it is proposed organisers should submit sufficiently comprehensive (see section on Accounting for Collections)?

Section 3 The requirements placed on the organisers of collections

28. This paper proposes that the collection organiser and another responsible person or two other responsible people should be present at the opening of collection boxes? How should 'another responsible person' be defined in this context?

29. Collection organisers should have basic safeguards in place to secure the proceeds of collections? Are other safeguards, in addition to those suggested needed?

30. The organisers of public collections might require all their collectors to sign an undertaking that they do not have a relevant unspent conviction. Is this requirement sufficient to ensure that collectors are 'fit and proper'?

31. Should the minimum age of street and house to house collectors be set at 14 (or lower), provided that the collectors up to the age of 16 are accompanied by an adult or should the minimum age for all collectors be set at 16 (or higher)?

32. Are the record keeping requirements suggested sufficient/reasonable?

33. Should local authorities be able to suspend licences while they investigate any concerns about collecting activity?

34. If you have other comments to make in response to the consultation please use this space.

Please respond using the following postal address, email address or telephone number:

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Partial Regulatory Impact Assessment

1. Title of proposal

Public Charitable Collection Regulation – the reform of public charitable collection legislation.

2. Purpose and intended effect of measure

(i) The objective

To create a fair and cost effective system of local authority licensing of public charitable collections which strikes an appropriate balance between facilitating responsible fundraising for charitable work, removing the existing confusion for charities and fundraising organisations, and restricting inappropriate fundraising, for example, excessive or bogus appeals and limiting public nuisance.

Devolution

The scheme, if implemented, would apply in England and Wales only.

(ii) The background

In September 2002 the Strategy Unit (SU) issued for consultation a report, *“Private Action, Public Benefit – A Review of Charities and the Wider Not-For-Profit Sector”* in response to a request from the Prime Minister to look at the law and regulatory structures which govern the whole sector. One of the issues the report considered was the regulation of public charitable collections. It concluded that the existing legislation covering public collections in the street and house to house is inconsistent, outdated and unnecessarily complex. It therefore recommended that legislation be brought forward to establish a new integrated local authority licensing scheme.

Almost 1,100 responses were received to the SU consultation. A small number commented on the proposal for a new integrated licensing scheme. The majority of respondents agreed that there should be a unified statutory licensing scheme, administered by local authorities, for all public collections.

The Government is aware that the last attempt to introduce a similar scheme through Part III of the Charities Act 1992 was unsuccessful. Part III was enacted but never brought into force because it was believed that the licensing scheme had flaws in the detail of its procedures. Therefore, to ensure that the new scheme is practicable, further detailed consultation with the sector, local authorities and other interested parties is required.

As at 31 March 2003 there were 187,316 charities on the Charity Commission's Register (of which 163,013 were "main" charities; the remainder were subsidiaries or branches of other charities). There is an estimated similar number of charities which are currently either exempt or excepted from registration with the Commission. In addition, there are voluntary organisations which would qualify as benevolent or philanthropic but because most of them are informally constituted and not registered with any authority, their numbers are unknown but they could run into several tens of thousands.

(iii) Risk assessment

Main risk

The main risk that the scheme is designed to guard against is the possibility of a depression of collection revenues through a decline in public trust and confidence in this form of fundraising.

How much do public charitable collections raise each year?

Because no records are kept centrally of the total amount of revenue raised by house to house and street collections it is impossible to state how much income is raised by these methods of fundraising and none of the research breaks it down in this way. However, NCVO/NOP surveys indicate that individual charitable giving in general was well over £11 per person per month from over 70% of the population in 1995, which equated to £5.7 billion worth of donations, but that by 1997 this total figure had fallen by about £1 billion from fewer donors and smaller monthly donations. By 2000 the average monthly donation had surpassed its 1995 level to almost £12 per person but the proportion of the population giving to charity had fallen to 67.5%, although that equated to £6.58 billion worth of donations, an increase of 10% since 1995 (*NCVO UK Voluntary Sector Almanac 2002*).

Please provide specific examples of how this affects your organisation and practices. Have collection revenues from these types of cash collections declined/increased in recent years? Have face to face collections (direct debit solicitations) increased income received? Are there any other factors influencing collection revenues of which we should be aware/take into account when drawing up any new regulations?

Specific risks

That bogus street collection activity is not being tackled in some areas.

To what extent is this a problem at the moment? How many incidents are there of bogus street collections in licensing authority areas each year? How much is it estimated is lost to charities through fraudulent collections each year?

A decline in public trust and confidence in this form of fundraising because of 'saturation' in some areas with some popular collection sites being over-used.

Please provide any examples to demonstrate the extent of this problem and any evidence that fundraising has declined in certain areas because of over-use of some sites.

To evade licensing, bogus fundraisers could make collections on types of private property such as supermarket forecourts and railway stations, where the owners would be unlikely to know about the activity/be capable of controlling it.

Is there any evidence of such bogus collections taking place? On what scale are these carried out?

National exemption orders granted by the Home Office to organisations collecting in a significant number of local licensing authority areas throughout England and Wales provide an unfair advantage to national organisations engaged in large-scale house to house fundraising activity over smaller organisations which do not collect so extensively.

Do you have any evidence to suggest that this contention is correct? Has your organisation been disadvantaged because it does not hold an exemption order? Has that caused you to incur extra costs?

That implementation of the existing legislation is inconsistent and that, as a result, collecting revenues are depressed because local authorities do not provide maximum opportunity for eligible, well conducted collections consistent with local capacity.

Please provide any evidence either in support of or refuting this view.

That specific accounting and reporting requirements for licensing do not add value by for example, achieving greater transparency about the costs of collecting activity.

Do charities, fundraisers and local authorities find the current system supportive of their work?

3. Options

- Option 1: Do nothing
- Option 2: Get the sector to impose a voluntary code of practice/
self-regulation
- Option 3: Local authorities should licence all public charitable collections under a new integrated licensing system.

4. Benefits

- Option 1: None. The current legislation is hopelessly out of date (although the sector and local authorities should be familiar with it) and the extent of its application is not clear.
- Option 2: None. Total self-regulation would be impractical and onerous for the sector to administer. Existing charitable collection law provides a level of protection against bogus collections, fraud and public nuisance and a total absence of regulation would harm public confidence in charitable giving through the risk of non-compliance especially by those motivated by self-interest and/or personal gain.

- Option 3: For the most part, the proposals build on existing provision, simplifying and rationalising it to provide a single regime which should be easier to understand than the current legislation. This would entail removing, so far as is possible, the current confusion which exists for charities, local authorities, professional fundraising organisations and the public.

Principal elements of the proposed scheme

Licences

In the new scheme authorities will be required to license all public charitable collections apart from the very small and local which will be exempt. The licensing requirement will extend to direct debit solicitation, sometimes called face to face fundraising. It is envisaged that licences will be a standard licence for all public charitable collections, valid for a year to eighteen months and that existing licences should be allowed to expire and new licences granted under the new scheme. The proposal at present is that there should be no charge for licences.

The definition of public place

Generally, local authorities do not license charitable collections on private property such as supermarket forecourts and railway stations. This provides a potential loophole for those who wish to avoid the checks and controls of the licensing system. It is proposed that collections should in the future be licensed if they take place on the public highway or land commonly used by the public as a highway or to which they have regular access.

Replacing national Exemption Orders with a 'lead authority' system

National Exemption Orders issued by the Home Office to large organisations conducting house to house collections in a significant area of England and Wales will be replaced by a new 'lead authority' system. It is intended that the system would reduce the overall burden for those wishing to collect both house to house and in the street in more than one local authority area.

Appeals against the refusal of licences

At present there is a right of appeal to the Home Secretary against the refusal of a house to house collection licence but not against the refusal of a street collection licence. The new proposal is for a right of appeal against refusal of both. It is proposed that appeals should be to the magistrate's court.

Responsibility for licensing in London

Currently in London the Metropolitan Police and the City of London Police are responsible for the licensing of both street and house to house collections. Consideration is given to the transfer of this function to local authorities in London.

Local Authority operation of the scheme

The need for clear central published guidance on the operation of any new scheme is accepted.

The scope of charitable, philanthropic and benevolent purposes/causes

It is proposed that the new scheme would as at present cover collections for charitable, philanthropic and benevolent purposes. Local authorities often have difficulty determining whether particular non charitable causes qualify as philanthropic and benevolent. The proposed central guidance will address this question.

Capacity

Local areas, because of their differing circumstances, can sustain different levels of collecting activity. The level at which collections will generate a viable return, referred to as the capacity of an area, should not be decided on the basis of an arbitrary criteria.

Providing fair access

It is proposed that a duty should be placed on local authorities to provide fair access to collecting opportunities to all eligible organisations. The guidance will set out the factors to be addressed when allocation decisions are made.

Accounting for collections and returns

Many public collections are organised by registered charities. Those organisations already report and account to the Charity Commission and the requirement to submit returns to local authorities on their public collecting activity could be seen as over regulation.

The proposed guidance will set out the form of returns required from non-charitable organisations and how they might be validated.

The guidance will also consider how local authorities might ensure that collections do not constitute a public nuisance, what checks local authorities should make on the eligibility of applicants and what arrangements should be put in place to provide effective liaison between local authorities and other bodies, including the police and the Charity Commission, to ensure the appropriate checks are made and to secure effective enforcement.

Requirements placed on the organisers of collections

Consideration is being given to the information collectors will be required to submit when an application for eligibility to collect is made, the basic safeguards needed to secure collection proceeds, how collection organisers might ensure collectors are fit and proper and record keeping and local authority monitoring.

The proposed system should:

- increase public trust and confidence in public charitable collections.
Do you consider that the proposed new scheme will have the desired effect?

- cut the administrative burden associated with many licensing requests for potential collection organisers and local authorities as the need for individual licence applications to each local authority where collections are to take place will be replaced by the proposed 'lead authority' proposal.
What estimates do you have of the savings which might accrue to charities and local authorities or do you envisage that there will be increased costs/burdens?
- make the system easier for promoters and potential promoters to understand and will thus encourage legitimate collecting activity through a consistent approach to the regulation of charitable collections.
- help local authorities, the police and the Charity Commission to work effectively together to tackle bogus fundraising through consistent licensing.
- reduce the administrative burden for those organising small ad hoc collections such as carol singing or one-off spontaneous appeals in the street. At present, such activity has to be licensed as no local exemption is currently available for such collections in the street in the way that there is for house to house collections.
- reduce the administrative burden for organisations as the option of nominating a 'lead authority' will be available to all those wishing to collect in more than one local authority area.
- reduce the overall administrative burden that licensing places on local authorities because eligibility checks will not be duplicated due to the 'lead authority' proposal.
- reduce the time that individual local authorities spend on the administration of the scheme through greater clarity on some of the issues/questions that local authorities find difficult.
How much time do licensing departments currently spend on charitable collection licensing work? How much time is it envisaged that the new scheme will entail? Are you able to translate this into an additional cost or saving?
- reduce the administrative burden on professional fundraising organisations which run street collections on behalf of charities and other voluntary organisations as they will no longer be required to make a return to the local authority for each collection. It may be that because of the nature of the collection, e.g. direct debits, clear accounts cannot be provided and organisers might be required to prepare and submit annual estimates and/or returns detailing the costs and proceeds from their collecting activity.
How much of a saving is it thought this will be for fundraising organisations in both time and monetary terms?
- reduce the administrative burden on charities which run public charitable collections as they will no longer be required to submit returns on collecting activity to local authorities. However, as a matter of good practice they should keep detailed accounts of collecting activity which the local authority could request for inspection in the event of concern.
How much of a saving is it thought this will be for charities in both time and monetary terms?
- significantly reduce the burden on local authorities of assessing returns.
How much of a saving is it thought this will be for local authorities in both time and monetary terms? What are the advantages/disadvantages of the returns being considered by the local authorities? On balance do you agree that returns should not be made and should not be considered by local authorities?

Business sectors affected

The standardisation of the licensing system for charitable fundraising will impact primarily on the charitable sector. Secondary sectors affected will be professional fundraisers and commercial participators undertaking clothing/household goods collections for redistribution and/or recycling whereby it is represented that a portion of the proceeds will go to charity.

More effective regulatory controls will be welcomed by businesses some of whom complain that saturation cover by face to face collectors adversely impacts on their businesses.

Issues of equity and fairness

The objective of the new local authority licensing scheme for public charitable collections is to correct the current inconsistent, outdated and unnecessarily complicated legislation governing such collections. The aim is to create a fair and cost effective system to replace the existing system.

Do you agree with this objective and is the way forward suggested well suited to achieving the objective?

5. Costs for businesses, charities and voluntary organisations

(i) Compliance costs

Option 1: No additional costs.

*How much does it cost charities and fundraising organisations to comply with existing legislation?
How much does the absence of modern, fit for purpose legislation cost charities and local authorities each year?*

Option 2: Likely to be significant additional costs for the sector.

Any self-regulation would have to be financed through what, in effect, would amount to a levy on donations and may lead to a further loss in income more generally through an increase in bogus fundraising and poor practice.

Option 3: There will be the cost of organisations familiarising themselves with the requirements of the new licensing scheme. There may also be increased administration costs to regulated organisations associated with applying for licences for activities which currently may not require licensing e.g. face to face fundraising (solicitation for direct debit commitments to give to charities on a regular basis) and public collections on private property to which the public has unrestricted access. Costs will vary depending upon the nature and extent of the collecting activity because of the requirement for liaison with individual local authorities about collection dates and sites. The consultation document touches on charging a standard fee for licences but the proposal is to maintain the current position of not charging for licences.

How much additional expenditure do organisations envisage they will incur through compliance with the proposed new licensing system?

How many organisations is it thought will be affected by the proposed licensing scheme?

The 43 organisations currently holding Home Office Exemption Orders for house to house collections throughout England and Wales will need to adapt their policies to ensure compliance with the new system as Home Office Exemption Orders will be abolished.

How much do Exemption Order holding organisations think the proposal to abolish the current system will cost them?

The organisers of small local collections such as carol singing or one-off spontaneous local appeals will be required to inform the local authority of the activity and obtain its permission. Permission, as opposed to a formal licence application, will alert the local authority to the nature and location of such a collection. Organisers of such collections are currently required to obtain similar permissions from their local police so the cost of the transfer of this function to the local authority should be negligible for organisers.

(ii) Other costs

There will be a cost to local authorities in as far as familiarising themselves with the requirements of the new licensing scheme – staff time in the development of new policies and procedures to secure compliance with the new system.

How much do local authorities think it will cost to familiarise staff with a new system?

There will be an increase in the number of licensing requests because of the requirement for the licensing of street collections, including face to face fundraising, and house to house collections because Home Office Exemption Orders will no longer exist. Collections on private property to which the public has unrestricted access will also be licensed for the first time and local authority permission for small local collections will be required although most organisers seeking an exemption contact their local authority in the first instance and the burden should be negligible. However, the impact on different local authorities will vary.

How much do local authorities envisage it will cost to administer the new system? How much of a new burden is it perceived the new requirements will be on resources?

Fundraising organisations will be able to nominate a ‘lead authority’ from amongst those in whose areas they wish to fundraise. This should spread the burden. But, this makes it difficult to estimate the cost to a particular local authority.

How much do local authorities think it will cost? What are the perceived benefits/drawbacks of the proposed new system?

Fundraising organisations will no longer have to make a return to each local authority for each collection they hold. For their own use and as a matter of good practice, detailed accounts of collecting activity should be kept and the local authority should be able to request these for inspection if concerns arise.

How much of a saving will this be for local authorities?

That a licensing requirement would dissuade people from engaging in small scale ad hoc fundraising activity which is low risk, e.g. carol singing or a one-off spontaneous local appeal.

Would this be the case?

(iii) Costs for a typical business

The standardisation of the licensing system for charitable fundraising will impact primarily on the charitable sector and the professional fundraisers and commercial participators they have agreements with. It aims to create a fair and cost effective system for the licensing of all public charitable collections.

6. Consultation with small businesses: the “Litmus Test”

We have spoken to three businesses, which the Small Business Service is satisfied represents a cross-section of small businesses for the purposes of this Regulatory Impact Assessment, to confirm that nothing in these proposals would represent a burden to them. They said that they would welcome clearer regulation of charitable fundraising because of their concerns about collectors who position themselves outside their retail outlets and have a negative impact on their trade. That view was endorsed by written representations received from other small businesses.

7. Competition Assessment

We have applied the competition filter test in accordance with the Office of Fair Trading’s guidelines for competition assessment. In doing so we have considered the effect of the proposed regulatory framework across business sectors in England and Wales.

The proposal will impact primarily on the charities sector. At this stage, we do not expect that the proposal will have any significant effect on competition in any related commercial sector.

We would welcome views from stakeholders on this conclusion.

Whilst charities do compete with each other for revenue from the general public in the ‘traditional’ sense of the meaning of the word competition, such competition arguably differs from that between commercial businesses which compete on products and services. It is the latter form of competition which the competition filter seeks to determine in considering market shares, entry barriers and whether the effect of a proposal is proportionate on the size of a business.

8. Enforcement and Sanctions

Local authorities will be responsible for administering the new unified licensing scheme, but the Home Office will provide clear guidance on how it should be operated. The guidance will be published and will therefore be available to charities.

A representative from the Local Government Licensing Forum is on the Fundraising Advisory Group set up by the Home Office to consider this matter.

As all local authorities are currently required to licence house to house collections and have the power (but not the duty) to create licensing schemes for street collections the extra costs of administering the unified scheme should be minimal on most local authorities. At present it is estimated that 80% of the 410 local licensing authorities have street collection regulations in place. Indeed, in some local authorities, where there is confusion about the operation of the current scheme, the introduction of a unified scheme might be more cost effective. However, as part of the consultation exercise we are asking local authorities to provide an estimate as to the extra costs they would incur in setting up and administering the scheme.

The proposed legislation will impose sanctions for non compliance – the sanctions build on those already provided by the House to House Collections Act 1939 and Part III of the Charities Act 1992,¹ with the exception of (VI) below, which would be a new offence.

The offences and related penalties are:

- (i). Organising a collection without a licence/permission from the local authority (Section 1(2) of the 1939 Act and Section 66 of the 1992 Act).
A fine not exceeding level 5 on the standard scale (max £5,000).
- (ii). Collecting without a licence/permission from the local authority (Section 1(3) of the 1939 Act).
A fine not exceeding level 3 on the standard scale (max £1,000).
- (iii). Unauthorised use of documents/badges (Section 5 of the 1939 Act and Section 74(1) of the 1992 Act).
A fine not exceeding level 5 (max £5,000).
- (iv). Giving false information for the purposes of the Act (Section 8(6) of the 1939 Act and Section 74(3) of the 1992 Act).
A fine not exceeding level 5 (max £5,000).
- (v). Breaching the requirements on: use of badges in the prescribed form; presentation of badges, certificates on request; not allowing people under a certain age to collect (Section 73(2)&(3) of the 1992 Act).
A fine not exceeding level 2 on the standard scale (max £500).
- (vi). Breaching the requirements on the keeping of specified records/the submitting of returns (this is a new proposed offence).
A fine not exceeding level 3 on the standard scale (max £1,000).

¹ Part III of the Charities Act 1992 has not been brought into force.

The introduction of a unified licensing scheme would go some way to establishing better fundraising practice. However, the Strategy Unit review found that where fundraising organisations did not comply with the current system that was largely because of a lack of awareness of their duties. The review concluded that it would be of benefit to have a single point of contact for information about the regulatory requirements for fundraising. It recommended, therefore, that a self-regulatory initiative should be established based on a new voluntary Code of Practice which would promote and raise awareness of good practice in fundraising. The Institute of Fundraising has sponsored an independent project to explore different models for a system of self-regulation and to recommend a preferred model. The project aims to report with its recommendations by the end of the year.

9. Monitoring and Review

It is the Government's intention that the Charity Commission, with advice from the Cabinet Office's Regulatory Impact Unit, will quantify the impact of regulation on charities and other not-for-profit organisations, monitor it over time, publish the results and highlight areas where regulation appears excessive. That would include the impact of the regulation of fundraising.

10. Consultation

(i) Departmental consultation

The proposals for reform have been developed in conjunction with the Fundraising Advisory Group set up by the Home Office. The group included representatives from the Charity Commission, Home Office, Institute of Fundraising, National Council for Voluntary Organisations, Public Fundraising Regulatory Authority, Charity Law Association, National Consumer Council, Welsh Assembly and Local Government Licensing Forum. We have also been in contact with the Office of the Deputy Prime Minister and the Department for Constitutional Affairs.

(ii) Public Consultation

The Government intends to consult with charities and other not-for-profit organisations, local authorities and others affected by the regulation of public charitable collections. This consultation document has been published on the Home Office website and copies of it will be sent to representatives from the charitable sector as well as all local authorities. The document will be translated into Welsh and copies will be sent to the Welsh Assembly for onward distribution.

It is intended that there will also be at least six consultation events – in London, Taunton, Cambridge, Manchester, Newcastle and Wales. Those will help to ensure that the proposals are brought to the attention of a wide group of organisations with an interest.

11. Summary and recommendation

Option 3 maximises the benefit to charities and local authorities. It builds on existing provision, but simplifies and rationalises it to provide a unified scheme, which should be easier to understand than the current system. It should also be more consistent and so fairer than the current regime.

It also maximises the benefits to small businesses in terms of their concerns about excessive fundraising. The new licensing scheme for public collections, including face to face fundraising, would deter excessive appeals and prevent nuisance to the public.

Option 3 represents the recommendation of the Home Office in conjunction with the working group on public collections, which was established to look specifically at the licensing of public charitable collections. The aim of the consultation exercise is to formulate the practical details of the new licensing scheme.

Contact point

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