

LICENSING AND REGULATION COMMITTEE

5 November 2003

PUBLIC COLLECTIONS - CONSULTATION REPORT

REPORT OF CITY SECRETARY AND SOLICITOR

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RECENT REFERENCES:

1. None

EXECUTIVE SUMMARY:

The Home Office is conducting a consultation exercise on proposals for a new licensing scheme for public charitable collections conducted both house to house and in the street. The proposals will consolidate and update the legislation which governs these collections, and will bring under local authority control modern forms of collection including face to face fundraising.

This report outlines the proposals, and sets out a proposed response to the proposals.

RECOMMENDATIONS:

- 1 That the City Council responds to the consultation paper in the terms set out in Appendix 2.

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### PUBLIC COLLECTIONS - CONSULTATION REPORT

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##### DETAIL:

#### 1 Introduction

- 1.1 This report gives details of a consultation paper issued by the Home Office, entitled "Public Collections for Charitable, Philanthropic and Benevolent Purposes – a Consultation Paper". The consultation paper proposes a new local authority licensing scheme for public charitable collections. At present, there are several pieces of legislation covering some (but not all) forms of collections, and as a result the existing controls are inconsistent.
- 1.2 The consultation paper sets out details of the proposed scheme, and invites comments by 2 December 2003. Appendix 1 is the Executive Summary of the Consultation Paper, and Appendix 2 is a suggested response.
- 1.3 The full Consultation Paper is available on the Internet at <http://www.homeoffice.gov.uk/docs2/fundraisingintro.html>. A copy has also been placed in the Members' Room.

#### 2 Main Issues

- 2.1 In general terms, the overall approach of the consultation paper is to be welcomed. The objectives of the proposals are to:-
  - Create a fair and cost effective licensing system;
  - Facilitate responsible fundraising;
  - Deter bogus collections;
  - Prevent nuisance to the public
- 2.2 A new single licensing system would be introduced, at district council level, covering all but very minor collections. The controls could be extended to private areas such as supermarket car parks and station forecourts where owners may find it hard to police collections, although collections within shops would remain solely under the control of the shop owner, and no licence from the local authority would be required.
- 2.3 The new system would bring fully into control "face to face" fundraising, which has been a particular issue in Winchester. This method involves employees of companies contracted to, but not part of, charities, who approach the public in the street, and seek to persuade them to sign up to a direct debit arrangement to make regular payments to the charity in question. Under current legislation, such "collections" do not require a licence, as only collections of cash in the street are controlled.

- 2.4 In Winchester, an informal agreement with companies operating direct debit collections has been reached, whereby the Council is notified in advance when visits to Winchester are to take place, so that conflict with other collectors can be minimised. However, it is clear from recent campaigns in the press that this type of collecting is not universally welcomed by the public, and the informal arrangement could not be enforced in the event of problems arising.
- 2.5 Some large charities are exempt from current controls, due to the volume of collections which they operate. However, this exemption is perceived to give such organisations an unfair advantage. The new scheme would replace this system with a new "lead authority" system, whereby one local authority would carry out a general check, which would allow a charity to operate in other local authority areas without the need for a further detailed application. Instead, other local authorities would only be able to refuse permission to collect in their area on the grounds that there was insufficient capacity in the area in question for the collection to take place.

### 3 Suggested Response

- 3.1 The consultation paper asks a series of questions on the suggestions included in the paper. Appendix 2 sets out a draft response. Responses must be submitted by 2 December 2003.

### OTHER CONSIDERATIONS:

#### 4 CORPORATE STRATEGY (RELEVANCE TO):

- 4.1 The licensing function affects the objectives of promotion of a thriving local economy, and promoting a healthier, safer, and more caring community.

#### 5 RESOURCE IMPLICATIONS:

- 5.1 The current licensing arrangements are a relatively small element of the Council's licensing function. The consultation paper suggests that the new scheme should produce some savings. Overall, it is not expected that the changes suggested would have significant resource implications.

### BACKGROUND DOCUMENTS:

Public Collections for Charitable, Philanthropic and Benevolent Purposes – Consultation paper.

### APPENDICES:

Appendix 1 – Executive Summary from Consultation Paper

Appendix 2 – draft response to proposals

Draft response to consultation.

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## 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 **2 December 2003**.

### 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?

*Yes, in principle. Clarification of the law will be helpful, and taking the opportunity to update the legislation and bring into control modern methods of collection is welcome. The current system which regulates some forms of collection but not others is unfair, liable to confuse the public, and potentially affect the amount of money collected by more established means.*

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

*Yes. The Council receives numerous complaints from members of the public, which have been echoed by a campaign in a local newspaper which has attracted strong public support. As the current law has less control over face to face fundraising than cash collections, the respective levels of regulation should be equalised.*

*At present, there are very limited controls on face to face fundraisers seeking to sign up donors by going from house to house, instead of approaching people in the street. Although the House to House Collections Act 1939 requires such activities to be licensed, the Council has limited powers to refuse a licence, and realistically can only do so where it can show that the organisation is retaining a disproportionate amount of the funds raised. The possibility of vulnerable people being pressurised into giving their bank details to a stranger on the doorstep, and the potential for abuse of such a system, is of concern to the Council.*

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

*At present, the Council has informal agreements with various face to face fundraising organisations, whereby it is notified of dates when the organisations intend to visit the City, so any increase in administration for either local authority or organisation is unlikely to be minimal. The changes would restore balance between this modern form of collecting, and more traditional methods, and the advantages of this outweigh the limited impact on face to face fundraisers which licensing would have.*

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

*Yes. The Council agrees that site owners may be unable to exercise sufficient control in such places, and the inclusion of such private areas is welcomed.*

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)?

*The exceptions proposed (collections in shops, on charitable organisations' premises, and during events run primarily to raise funds for charitable purposes) are sensible exemptions to the proposed arrangements.*

6. Should small local collections be exempt?

*Yes. Carol singers and other small collections should not be subject to the full licensing requirements, provided that the money is being raised for appropriate charitable or other benevolent causes.*

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

*If the justification for a "light touch" on small collections is that the people collecting and donating are likely to know each other, and the cause which is the subject of the collection, the collection would have to be conducted in a very localised area. A collection in a pub will normally meet these criteria, although this would not normally be the case for a collection limited to premises in a single local authority ward.*

*The Council agrees that:-*

- Collecting goods for a church bazaar; and*
- A single collection in a pub*

*would be suitable for exemption as "small collections".*

*It may be appropriate to exempt organised carol singers on the same basis, but individuals and smaller groups may collect money for their own private benefit, rather than charitable or other benevolent causes.*

*Rather than attempting to define "small collections", a notice procedure, and a power for the Council to be able to require a full licence application in appropriate circumstances, may be a way of achieving a light touch whilst maintaining controls where this is warranted.*

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?

*Yes. The impact would be minimal for local authorities, as the increased work on national lead authorities may be offset by the reduced administration on collections which do not currently benefit from national exemption, and must therefore apply individually at present.*

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

*More scope for organisations to have the benefits of a single main application for the whole country. There would be minimal or reduced impact on local authorities.*

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

*No specific disadvantages for the proposal are perceived.*

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

*It would be sensible for the local authority to be made aware of goods collections. It is not considered that a scheme requiring notification would be particularly onerous on organisations, but this would go some way to avoiding potential abuse by collectors for commercial purposes, etc.*

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

*No.*

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

*No.*

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

*No comments.*

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

*If a notification scheme is brought in, it should be an offence to arrange or carry out a collection without notifying the local authority.*

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?

*The Council does not have specific information on the breakdown of actual costs for administering the current scheme.*

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

*It is estimated that these collections presently cost approximately £4,000 per annum to administer.*

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

*Some additional administration may arise than at present. The increase is unlikely to exceed £2,000.*

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

Yes.

**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)?

*The Council has not had any difficulties with interpreting the current definition, although it is accepted that if enforcement was required, this could be a potential defence which might prevent a conviction being secured, unless a clear definition is available.*

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

*Where there is an element of doubt (e.g., where an organisation is not a registered charity), potential donors should be able to understand easily the object of the collection and the proposed use of the collected funds. They can then make an informed choice on whether or not to give, knowing that authorities will be checking to ensure that the funds raised are so applied. It is better to have collections controlled, with authorities being able to take action against unauthorised collectors, than for such collections to be unregulated (thus allowing collectors to give less information to donors).*

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

- *Monitoring of amounts collected*
- *Frequency of collections by similar collecting methods (e.g. face to face/cash street collections, etc).*
- *Number of suitable collecting points*
- *Numbers of people moving through an area.*
- *Complaints received*
- *Feedback from organisations*

*The Council agrees that House to House collections pose few problems in terms of capacity, as they are generally spread across a wider area and do not target the same people (compared to a High Street collection on a Saturday morning, etc.).*

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

- *Organisations' preferences, especially for traditional collections which have a connection with a particular time of year e.g. Poppy appeal, Battle of Britain Day, etc.*
- *Where preferences cannot be met, spreading "good" collection days fairly amongst organisations*

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

Yes

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

*Local Licensing Officers in Hampshire already meet regularly, and these meetings are attended by a representative of the Charity Commission. Liaison with the police is perhaps best done at a local divisional level.*

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

*Factors identified in the Consultation Paper are agreed:-*

- *harassing members of the public who choose not to give or converse with a collector;*
- *setting up tables or displays on the highway which obstruct free passage;*
- *using PA systems*

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?

*It is considered that except for large national campaigns, estimates before and returns after should be submitted. This allows the local authority to monitor the results and manage conflicts between capacity and demand from collectors.*



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?

*No, as this would reduce the overall picture of collecting which would otherwise be obtained (see response to 25 above).*

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

Yes

### **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?

*The person should be capable of understanding why they are present, and what they are being asked to verify. Provided the name, address, and occupation of the person is submitted with the return, and he/she signs to confirm they are unconnected with the organisation, further definition would seem to be unnecessary.*

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

*A copy of the licence which can be shown to the public on demand is essential to monitor breaches of the requirements.*

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'?

*Where cash is being collected in sealed containers which are checked in and out, this test is sufficient. Given the potential for abuse, collectors engaged in direct debit collections might need further checks, such as a Criminal Records Bureau check at least once every two years, as well as an undertaking each year.*

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)?

*The City Council considers that 14 should be a minimum age, and agrees that collectors up to the age of 16 should be accompanied by an adult.*

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

Yes.

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

*Yes – suspension is a far more effective method of control than prosecution, in terms of immediacy of effect. There could be a right of appeal if the suspension continues for more than two months, with the proviso that magistrates could either lift the suspension, or confirm it for a further period.*

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

## Partial Regulatory Impact Assessment

### Risk assessment

1. How much do public charitable collections raise each year?

*Figures not readily available*

2. 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?

*No specific comments.*

### Specific risks

3. 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?

*The Council is not aware of any specific cases in its area, but the potential for abuse is clearly present.*

4. 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.

*See above.*

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

*See above.*

6. 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?

*Not applicable.*

7. Please provide any evidence either in support of or refuting the view 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?

*No comments.*

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

*No comments.*

Requirements placed on the organisers of collections

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

*Not applicable.*

10. 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?

*It is considered that there should be little overall impact on local authorities.*

11. 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?

*As above, it is considered that there should be little overall impact on local authorities.*

12. The proposed scheme should 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?

*Not applicable.*

13. The proposed scheme should 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?

*Not applicable.*

14. The proposed scheme should 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?

*As outlined earlier in this submission, it is considered that monitoring of returns will provide a valuable tool for local authorities to ensure that collections achieve the best possible results, whilst avoiding problems with capacity or nuisance.*

### Issues of equity and fairness

15. 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?

*The Council agrees and strongly supports the objective and the general approach as set out in the Consultation Paper.*

### Costs for businesses, charities and voluntary organisations

#### **Compliance costs**

16. 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?

*Not applicable*

17. 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?

*Not applicable*

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

*Not applicable*

#### **Other costs**

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

*Some training costs will be incurred, estimated to be approximately 1 day for each officer involved in the management of the function.*

20. 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?

*It is not envisaged that the new system would have a significant increase in costs required to operate it.*

21. 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?

*It should not cost much more than dealing with applications under the current scheme.*

22. 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?

*Estimates not readily available.*

23. That a licensing requirement would dissuade people from engaging in small scale ad hoc fundraising activity which is low risk, eg carol singing or a one-off spontaneous local appeal. Would this be the case?

*It is not considered that this would be the case.*

#### Competition Assessment

24. 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.

*No comments.*

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

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