

THE REGULATION OF PUBLIC COLLECTIONS

1 SUMMARY

- 1.1 This report relates to a Government consultation paper which contains proposals for a new local authority licensing scheme for public charitable collections conducted both house to house and in the street.
- 1.2 A response is required by 2 December 2003. A copy of the full consultation paper and its companion document has been placed on deposit in the Members' Library. Suggested responses to the applicable questions, developed in consultation with the licensing officers of other Essex authorities and reflecting current practice, are set out at Appendix 1.

2 INTRODUCTION

- 2.1 Under the two-tier system of local government the responsibility for licensing falls to the district councils. There are no proposals to make any changes.
- 2.2 Legislation currently exists in respect of house to house and street collections, but it is inconsistent, fragmented, outdated and complex.
- 2.3 The latest proposals aim to overcome the difficulties which are known to exist within the current system.
- 2.4 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.

3 PRINCIPAL ELEMENTS OF THE PROPOSED SCHEME

- 3.1 Under the new scheme, it is proposed that local authorities would be required to license all public charitable collections, apart from the very small and local, such as collections of goods for church bazaars and carol singing, which could be exempt. It would extend to include direct debit solicitation, sometimes called face to face fundraising.
- 3.2 Currently, the law is not clear as to whether face to face fundraising requires a licence. In common with most other local authorities within the County, this authority has sought, wherever possible, to require such fundraisers to apply for a licence. There is a concern, however, that unless the situation is clarified by adequate legislation, there is a

danger that such collections could give rise to public nuisance or “collection fatigue”.

3.3 The Definition of Public Place

At present, in common with most other local authorities, this Council does not license charitable collections on private property, such as supermarket forecourts. The consultation paper proposes that such 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, such as supermarket forecourts and station car parks, on the basis that the owners of such property are not capable of easily controlling the activity.

3.4 Replacing national exemption orders with a ‘lead authority’ system

Currently national charities, with a record of large scale fundraising, can apply to the Home Office for an exemption order, which removes the need for them to apply for a local licence when undertaking house to house collections. The perception is that this gives an unfair advantage to the larger organisations. It is proposed that this should be replaced by a new ‘lead’ local authority system. Collection organisers would nominate a lead local authority from amongst those in whose areas they wish to collect and they would be required to make the appropriate checks.

3.5 Appeals against the refusal of licences

At present there is a right of appeal to the Home Secretary against the refusal or revocation of a licence to hold a house to house collection, but not of a street collection. The proposal is that there should be a right of appeal in respect of both types of collection in the Magistrates’ Court.

4 LOCAL AUTHORITY OPERATION OF THE SCHEME

4.1 Local authorities would require clear central guidance on the operation of any new scheme and it is proposed that this would expand on the following features.

4.2 The scope of charitable, philanthropic and benevolent purposes/causes

It is proposed that the new scheme would cover such collections and that the central guidance would address this.

4.3 Capacity

Local authorities vary in their levels of ability to sustain collecting activity. However, a principle of the proposed scheme is that maximum opportunity for eligible and well conducted collections should be provided, consistent with local capacity and the avoidance of public nuisance.

4.4 Providing fair access

It is proposed that local authorities would have a duty to provide fair access to collecting opportunities to all eligible organisations.

4.5 Other aspects

The consultation paper also asks questions around accounting for collections and returns and the requirements placed on the organisers of collections.

5 LEGAL IMPLICATIONS

- 5.1 The proposals will assist in addressing existing shortcomings and create a more effective licensing system.

6 PARISH IMPLICATIONS

- 6.1 Collections are held throughout the district.

7 RECOMMENDATION

- 7.1 It is proposed that the Committee **RESOLVES**

That, subject to any additional observations, the comments set out at Appendix 1 of this report be forwarded as this Council's comments on the consultation paper on proposals for a new local authority licensing scheme.

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Background Papers:

None

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Appendix 1

Public Collections for Charitable, Philanthropic and Benevolent Purposes – A consultation paper on proposals for a new local authority licensing scheme

Section 1 The Structure of the scheme

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

Yes, in particular the fact that street and house to house collections would be linked together under the same legislation. Currently there are many inconsistencies between the separate legislation under which street and house to house collections are controlled.

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

Yes. Whilst it has been argued that the decision regarding the appropriate level of deductions should be left to individual charities, under the monitoring of the Charity Commission, there are concerns that this particular method of fundraising often has relatively high costs which might not be apparent in the context of the total fundraising budget. The public perception is still that most collectors are unpaid volunteers and, despite the legislative requirements relating to paid fundraisers, public awareness and acceptance of the costs of fundraising are low.

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

There could be a potential for this type of fundraising to increase. However, it is desirable that the charities themselves should also take a firmer stance on monitoring expenditure on fundraising which the licensing requirements would encourage. Local authorities would be faced with a greater workload. Guidance on the appropriate level of expenses in relation to different methods of collection would be welcomed by local authorities. Authorities would be in a better position to monitor the conduct of the collections, particular from the aspect of intimidation on the doorstep.

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

Yes, this should extend to include such areas. It is important that locations to which members of the public have unrestricted access are included within licensing requirements so as to prevent public nuisance, avoid excessive fundraising and combat bogus collections. A clear and unambiguous definition of the locations to which the legislation applies is therefore essential.

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 proposals offer the right type of distinction in that a public place includes the public highway or land commonly used by the public as a highway and conducted by visits house to house; to include pub to pub and office to office.

6. Should small local collections be exempt?

No. The term is misleading as the value of many local collections can be quite significant. It would be difficult to define the collecting activity adequately for this differentiation and the proposal would also create a loophole which could be exploited.

7. 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?

No. Many charities have argued that abolishing national exemption orders altogether would increase their administrative costs. However, the suggested alternative of a 'lead authority' model, where the charity can choose which local authority to nominate could result in licensing departments being inundated with applications and consequential enquires from other local authorities. At the very least, an authority should have the option to turn down being a 'lead authority'. Major charities could be advised to apply to the authority within whose area the Head Office is based.

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

It does give the ability for checking clashes of dates for collections, but puts more pressure on the local authority as no income is generated for the authority by this form of licensing. The definition of 'lead authority' would need to be a robust one.

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

It would make it possible for the less scrupulous fundraiser to trawl the country until a sympathetic 'lead authority' was found. An alternative

would be for the lead authority to be able to levy a charge to the charity. Under the present system, abuses can be reported to the Home Office and the Charity Commission would need to be required to play a greater role in providing assistance to local authorities in respect of fundraising.

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

Yes, although local authorities do still need to be able monitor the activities of such collectors, as there is evidence to suggest that some organisations do collect for purely commercial purposes. It is considered that there is no reason why organisations should not be required to provide exact details of location and frequency of collections, as with cash collections.

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

The proposal to introduce appeal procedures in line with other licensing regimes is welcomed.

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

Referral to the authority's Appeals and Licensing Committee in the first instance could be considered, with the Magistrates' Court being the avenue of appeal following an unsuccessful claim.

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

No, the list is adequate.

14. 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?

Numbers and type of collection applications received and corresponding numbers of permits issued.

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

This is directly related to the numbers of applications received.

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

Additional officer time would be required in processing applications, for example, for face to face fundraising or a request to take a 'lead authority' role.

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

At present the council subsidises the system, rather than the charitable purpose which benefits financially from undertaking the collection. A charge to the small local collector for providing a licence could increase the resources available.

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.

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

Any collection which does not benefit an organisation which is registered with the Charity Commission.

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

It is considered that collections of this nature should not be permitted and would need to be severely regulated if they were to require a local authority licence.

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

This authority has not had any problems regarding "collection fatigue". Council agreed a policy of limiting collections to only one per town or street on any one day. One solution in other authorities has been to "zone", eg by electoral ward. Limiting to one day a week only seems unnecessary as in reality most would probably choose to collect on a Saturday to maximise returns.

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

Collectors could be asked to choose an alternative site, once the authority's agreed capacity has been reached.

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

It is suggested that Criminal Records Bureau checks should be undertaken and a central record kept with reports of convictions, which could be viewed by other authorities.

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

A central index could be held, to which all parties would have access. Local authorities should inform the police of the planned collecting activity within the area.

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

The number of collectors is of paramount importance and a reason why the face to face type of fundraising would need to be closely monitored. The regulations need to draw up clear guidelines, particularly around the use, for example, of music and singing.

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

Yes, both. Costs can be estimated, but the proceeds are more difficult to assess before a collection. There could be a problem with direct debit solicitations in that it is frequently difficult for a local authority to determine either from the professional fundraiser or the charity concerned what costs will be involved and the returns are usually made as a projected income over a number of years. However, people may make an initial pledge under duress at the doorstep and then choose to terminate their pledge earlier than planned.

24. 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, this is an added security.

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

Yes, but the problem for local authorities at present is that many registered charities are reluctant to comment on their levels of expenditure on fundraising.

Section 3 The requirement placed on the organisers of collections

- 26. 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?**

‘Another responsible person’ should be a person of professional standing, such as a bank official.

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

The safeguards suggested are adequate, but need close monitoring. In particular, there would need to be a mechanism to ensure that bank details when provided to those soliciting direct debit commitments are kept safe.

- 28. 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’?**

This requirement is probably the most achievable. A central database would enable authorities to undertake further checks.

- 29. 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)?**

Yes, 14. Collectors between the ages of 14 and 16 should be accompanied by an adult.

- 30. Are the record keeping requirements suggested sufficient/reasonable?**

Yes, provided that everything can be easily checked.

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

Yes, but this should only be used in exceptional specified circumstances and in accordance with some guidance.