



23 April 2012

Our ref: ICAEW Rep 61/12

Charities Act 2006 Review
C/O Office for Civil Society
4/16, HM Treasury
1 Horse Guards Road
London SW1A 2HQ

By email charitiesactreview@cabinet-office.gsi.gov.uk

Dear Sirs

Charities Act 2006 Review – Call for Evidence: Future regulation of public charitable collections

ICAEW welcomes the opportunity to comment on the *Charities Act 2006 Review – Call for evidence: Future regulation of public charitable collections* published by the Cabinet Office in February, a copy of which is attached as an Appendix.

ICAEW is a world-leading professional accountancy body. We operate under a Royal Charter, working in the public interest. ICAEW's regulation of its members, in particular its responsibilities in respect of auditors, is overseen by the UK Financial Reporting Council. We provide leadership and practical support to over 138,000 member chartered accountants in more than 160 countries, working with governments, regulators and industry in order to ensure that the highest standards are maintained.

ICAEW has a Charities Technical Sub-Committee and a Charities & Voluntary Sector Group with over 3,000 members. Many ICAEW members are active in charities and the voluntary sector; approximately 30,000 are charity trustees, treasurers, school governor and in other voluntary roles.

We should be happy to discuss any aspect of our comments and to take part in all further consultations on this area.

Yours sincerely

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APPENDIX

Charities Act 2006 Review – Call for Evidence

Future regulation of public charitable collections

Issue

The existing legislation regulating public charitable collections (that is, collections made house-to-house or in the street) dates from 1916 and has been widely criticised as not being fit for purpose in the 21st Century. Provision was made in the Charities Act 2006 for a new licensing regime, but this has not been implemented due to concerns about effectiveness and affordability. The Charities Act 2006 Review is considering whether, and how, to license public charitable collections in the future.

Background

Under existing legislation dating from 1916 and 1939, charity street collections and house to house collections are licensed by local authorities, except in London where the licensing authorities are the Metropolitan Police and the Common Council of the City of London.

The legislation was intended to offer the public a degree of protection against dishonest appeals and to prevent public nuisance, at a time when most charity collections were for cash. There are thought to be a number of problems with the existing licensing regime, including:

- 1) Uncertainty over whether street collections of future commitments to donate through direct debits (often referred to as “chugging”) require a licence.
- 2) Inconsistent application of the licensing rules by different local licensing authorities (e.g. licensing local vs national collections, collections carried out by professional fundraisers or commercial participators on behalf of charities).
- 3) Uncertainty over what public places require a street collection licence.
- 4) Perceived unfairness in that charities that hold a house-to-house national exemption order do not require a license from a local licensing authority.
- 5) Public confusion about whether or not collections are legitimate and licensed, and the rise in the number of bogus collections.

The new regime in Part III of the Charities Act 2006 aimed to ensure that all public charitable collections, whether conducted in a public place or door-to-door, would be regulated apart from small-scale local, short-term collections. Licensing under the 2006 Act scheme would entail a two stage process requiring organisers first to apply to the Charity Commission for a Public Collections Certificate, which would be valid for up to 5 years. In the case of a house-to-house collection, the organiser would then simply inform the local authority when and where the collection was to be conducted; the organiser of a collection in a public place would have to apply to the local authorities in whose area they wished to operate for a permit which would allow collections at certain times in certain places.

However, these provisions have not been implemented as several stakeholders raised doubts about their effectiveness and affordability. Affordability is now even more of an issue, given the reduced resources available to both the Charity Commission and local licensing authorities. The 2006 Act regime would also remove certain powers from local licensing authorities, which may run counter to the Government’s localism agenda.

As a result of these concerns the review will consider whether the 2006 Act provisions are workable and affordable, or whether there is an alternative approach (which might require legislation) that could meet the objective of a licensing scheme that is proportionate and affordable, that facilitates responsible fundraising whilst deterring bogus collections and preventing public nuisance. In examining these questions, the review will consider whether self-regulation could have a more significant role. For example, the Public Fundraising Regulatory Association (PFRA) has, in the absence of comprehensive

statutory regulation, established site agreements with over 100 local authorities to enable self-regulated face to face fundraising to take place in public places.

The Charities Act 2006 has also led to the creation a self-regulatory body to promote best practice in all types of fundraising across the charitable and voluntary sector, the Fundraising Standards Board (FRSB) and more information can be found at: www.frsb.org.uk/. Demonstrating high standards of fundraising practice should strengthen public trust and confidence, and ultimately should lead to increased giving, (there is a separate call for evidence on the self-regulation of fundraising).

Who should respond?

Anyone can respond, and all responses will be considered.

However, we are particularly interested to hear from charities and their staff who are involved in public charitable collections, as well as professional fundraisers and commercial collectors. We would also like to hear from local licensing authorities and enforcement officers.

Deadline for responses:

The deadline for receiving responses to this call for evidence is 16 April 2012.

How to submit your response:

Please send your response by e-mail to charitiesactreview@cabinet-office.gsi.gov.uk

Alternatively you can write to:

Charities Act 2006 Review
c/o Office for Civil Society
4/16, HM Treasury
1 Horse Guards Road
London SW1A 2HQ

Question 1: If you are a charity, what problems have you experienced with the present regime for licensing public charitable collections? (please give examples where possible)

Not applicable.

Question 2: As a member of the public, do you think that the present regime is working?

The present regime does not appear to be joined up and co-ordinated. Our members have cited examples of receiving various collection bags from different charities on their steps in the same week and then having a quiet spell with no door step collections. Similar comments have been received regarding street collections. This suggests that local authorities are granting permits or licenses to charities for door step collections and street collections but not necessarily co-ordinating these initiatives in order to prevent clashes. In our view a central policy led by a principal regulator and delivered at a local level by local authorities would provide a more co-ordinated and consistent framework.

Question 3: Do public charitable collections need to be subject to a licensing regime at all? If so, why? If not, why not?

We believe that there needs to be a central set of rules governing licensing procedures and reporting that are proportionate. Therefore, we would support the implementation of the provisions contained in the Charities Act 2006 (please see question 4 below). As noted in question 3, a central policy led by a principal regulator and delivered at a local level by local authorities would provide a better framework.

Question 4: If a new regulatory framework is required, what should it look like? Who should be responsible? (Please bear in mind: affordability, the need for charities to fundraise responsibly without burdensome regulation, the need to protect the public from nuisance and bogus collections).

We would support the implementation of the regulatory framework contained in the provisions for collections in public places in the Charities Act 2006.

The Charities Act 2006 (applicable in England and Wales) contains important provisions for collections in 'public places'. This is a change from the term 'street' collections used in previous legislation, so that some privately owned land, such as railway station ticket halls and supermarket forecourts, are now covered.

The provisions of the Charities Act 2006 are not yet in place but if they are introduced, they will transfer responsibility for licensing all collections (including face-to-face fundraising, involving requests for direct debits) to the Charity Commission. The Act also introduces a new concept of 'local, short-term collections'. Collections falling within this category will be exempt from licensing and will require neither a certificate nor permit, but organisers will be required to notify the local authority that the collection is taking place.

As noted in our call for evidence on the Charity Commission, we would like a single set of rules to be developed and overseen by the Charity Commission (so that for example, the Charity Commission receives the reports on the conduct/proceeds of the collection from the fundraising entity) but the local authority determines whether a collection can be held in a given location, to avoid multiple collections on the same day. If this is not possible due to resource or skills constraints in the Commission, a possible contender for the role of principal regulator might be the Institute of Fundraising (IOF).

Question 5: Could self-regulation play a greater role in the licensing of charity collections? If so, how? What would be the advantages and disadvantages?

Please see question 4.

Question 6: Should there be different rules for different types of collections (e.g. cash, goods, direct debits, street vs. house to house)? If so, what should the different rules be?

We do not believe that there should be different rules for different types of collections, since this would unnecessarily complicate the process and would lead to confusion.

Question 7: What measures could be included in a new licensing regime that would help the public distinguish between legitimate collections and bogus collections?

We do not think that additional measures are required to help distinguish between legitimate collections and bogus collections since a lot of measures exist but they are not very well publicised.

Therefore, we would support and encourage the Charity Commission, Institute of Fundraising, Fundraising Standards Boards and other organisations to provide greater guidance and publicity to the general public on how they can donate safely to charities. This should also help to educate the public on how to report collections which appear not to be legitimate. The guidance should include online giving as well as giving on the door step and on the street.

By way of example, publicity on giving on the doorstep, might include some of the following:

- Check that the charity collection bags include the charity name, number and that it states clearly what the charity is raising funds for.
- Check with the local licensing authority or the charity that the collection is authorised.
- Look for the Fundraising Standards Board's tick logo, which demonstrates that the charity is signed up to industry standards.
- If the individual thinks the collection is not legitimate, they should call the Action Fraud.

One of the measures which helps makes sure that street collections are legitimate is the accountant's report. The current licensing regime for street collections requires an accountant to report a statement of collection of proceeds. The wording in the accountant's statement (sometimes called 'certificate') regarding proceeds of collection and expenses has caused concern to our members.

The expression "we certify" contained in the statement implies complete accuracy. Some of our members believe that signing such a statement presents unacceptable risk to them and therefore will not volunteer for this role. Some licensing authorities have accepted the alternative wording suggested for the report in *ICAEW's Collections in Public Places – The Reporting Accountant's Role* helpsheet which better reflects the checks and procedures being undertaken by the reporting accountant. If this alternative wording was standardised and adopted by other licensing authorities, this would help to encourage more of our members and other professionally qualified accountants to sign the accountant's report for street collections (see attached helpsheet).

Question 8: What new measures could be considered to tackle bogus collections?

No further comments.

Question 9: What is your view of the current Exemption Order system that exempts some charities that collect house to house widely throughout England and Wales from the licensing regime? Is it right that such decisions are taken centrally or should this be a local decision?

As noted in question 6, we would support the Charity Commission being responsible for licensing all collections, including those charities that hold house-to-house national collections. This may help to eliminate the nuisance factor of having multiple door collections in one week, if the Charity Commission then liaised with the relevant local authorities in order to avoid clashes. However, we recognise that the Charity Commission needs to be properly resourced in order to undertake these responsibilities.

Respondent details:

Name:	Anne Davis
Position:	Head of Charity and Voluntary Sector
Organisation Name:	ICAEW
Organisation size (income)	Not applicable
What is your interest in charity collections	

If your organisation is a charity (or you collect on behalf of a charity), please indicate the types of collections you undertake.	Street – cash	
	Street – direct debit	
	House to House – cash	
	House to House – direct debit	
	House to House - goods	

What happens next?

- We will acknowledge receipt of all responses, although we cannot provide a detailed response to each individual submission.
- All responses will be considered in forming the report of the review.
- The aim is for the report of the review to be laid in Parliament and published in July 2012.

The small print:

All information in responses, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want your response to remain confidential, you should explain why confidentiality is necessary and your request will be acceded to only if it is appropriate in the circumstances. An automatic confidentiality disclaimer by your IT system will not, of itself, be regarded as binding on the department. Contributions to the review report will be anonymised if they are quoted, unless we contact you and you give us your permission to use a particular quote.

Individual contributions will not be acknowledged unless specifically requested.