Regulation of charitable house to house collections

Introduction
Generally, anyone wishing to carry out a house to house collection for charity – cash donations, direct debit sign ups or in the case of CRA members, clothing to sell in shops – must apply for a licence under the provisions of the House to House Collections Act 1939 and the House to House Collections Regulations 1947.

The application is made to the local authority, except in London where the application is made to the Metropolitan Police.

Proposals to reform the system have been on the table for some time, with the Charities Act 2006 giving each of the UK's Parliaments and Assemblies powers to further regulate house to house collections.

This is highlighted on page 26 of the Waste & Resources Action Programme's (WRAP) Textiles Collection Guide, which is aimed at Local Authorities and Textile Collectors states that:

“The Charities Act 2006 introduced new regulations for house to house collections in England and Wales. However, these have not yet been implemented.

“Similarly, the Charities and Trustee Investment (Scotland) Act 2005 and the Charities Act (Northern Ireland) 2008 plan to introduce new regulations for house to house collections in Scotland and Northern Ireland.

“As a result, it is anticipated that there will be changes to the current regime, and organisations should routinely check the status of these.”

Some members have therefore raised questions about the status of these Acts, and whether or not the new powers have been used, and if changes have been implemented. This brief is designed to clarify the current situation for all our members.
England and Wales

The CRA is actively involved with a coalition of organisations representing the charity and voluntary sectors to ensure that changes in this area do not adversely affect our members.

Background

The Charities Act 2011 consolidated much of earlier charities legislation in England and Wales, including much of the Charities Act 2006. However the provisions in the 2006 Act relating to public charitable collections were not included in the 2011 Act.

At second reading of the Bill which became the 2011 Act, Baroness Verma, then Government Spokesperson for the Cabinet Office, set out why the provisions in the Charities Act 2006 relating to public charitable collections had not been included in the Bill:

“there is some doubt about when the public charitable collections provisions of the Charities Act 2006 will be implemented. The provisions create a new regime for licensing and regulating charitable collections conducted in the street or house-to-house, replacing existing legislation that dates back almost 100 years. It has not been possible to implement the new regime for several reasons. Questions have been raised about whether the regime, instead of being deregulatory as intended, will add to the regulatory burden of charities—something that we are very keen to avoid. There is also the issue of cost-effectiveness. The new regime would give the Charity Commission a major new role, but with no new funding to deliver it, at a time when pressure on resources means that the commission has to focus on its core regulatory functions. Finally, the new regime would remove decision-making powers from local authorities, running counter to our plans to devolve more power to local communities. We now believe that the most sensible course of action will be to consider the regulation of public charitable collections as part of the wider review of the Charities Act 2006, which is due to begin later this year.”

The review alluded to above was Lord Hodgson of Astley Abbots’ report - Trusted and independent: giving charity back to charities – published in 2012. This included information about the regulation of public charitable collections and states:

“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 Charity Commission estimated that it would require an additional £4 million to set up the new scheme and £1.5m per year to run the new system, which is not a practical answer.”

Lord Hodgson made a number of recommendations relating to public charitable collections, including that the Government should explore the appetite and options for licensing all types of house to house textile collections, to equalise the position between commercial and charitable collections.
Local collections

In its response to Lord Hodgson's review, the Government said that it had accepted the need to reform the licensing system for public charitable collections and supported most of Lord Hodgson's recommendations in this area.

The Government said they believed that the existing rules for licensing charity collections were outdated and said that it was working with the charity fundraising sector and other stakeholders to explore options for change, adding:

> “Any proposals for change must be affordable and proportionate, and balance the interests of different stakeholders including the general public”.

The government have not yet brought forward any proposals to update the 1939 Act and small charities operating in specific local authorities should be unaffected.

National Exemption Orders

Some charities which undertake house to house collections across a large number of local authorities on a regular basis can apply to the Cabinet Office for a National Exemption Order (NEO), which exempts them from the need to apply for individual licenses in each local authority.

In early January 2016 the Cabinet Office published a general guidance for the operation of the NEO scheme. The charity retail sector raised several concerns about the new general guidance, in particular about definitions and terminology contained within it.

As the voice of the charity retail sector, the CRA have joined several other organisations who have NEOs, or represent those who do, to lobby for improvements in the guidance.

We have met with government officials and relayed these concerns directly, and they have promised to amend the guidance in light of our reservations.

The tables below outline the key issues we have been campaigning on in these meetings. It is not intended to be exhaustive and if members have further issues they would like to raise on this subject they should contact the CRA as soon as possible.

### Reasonableness

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| There is much confusion over the definition of “excessive remuneration” and a return to the charity which is “inadequate”, as... | - A specific calculation or percentage to define these terms will not be provided to charities by the Cabinet Office. Interpretation is at the Minister's discretion but he/she is accountable to Parliament for these decision and must be able to justify every one.  
- The government understand the high costs and potential rewards of clothes collections as opposed to... |
included in the general guidance.

Page 7 of the general guidance seems to offer reassurances that the particular high costs of collecting clothes will be taken into account, but this is still very vague.

Charities would like a clearer definition.

other forms of door-to-door fundraising and as a result will assess the costs of these more leniently.

- The contract between the charity and collecting agent will needed to be provided along with an application for an NEO and will be held on file so the Cabinet Office can assess it.
- This will not be FOI-able as it relates to commercial sensitive data.
- Additionally, there will be some space on the form for the charity to give additional contextual information (e.g. why collection costs might be higher in year one, but improvements are expected on returns in the following year etc) to explain any large costs or low returns.

Costs

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| There is further confusion over what counts as a cost when calculating the “expenses incurred ... for the purpose of converting property in to cash”. Specifically, is this the balancing figure between the value of property collected or should charities allocate a percentage of their total shop costs (or certain shops costs)? |  - A clear list of costs which “must” and “could” be added into the final figure will be provided in the final guidance which should clear up this question for all charities.  
- This list will include overheads like rent, utilities, staff etc and therefore some of the costs of operating the shop (which not everyone with an NEO does) will be included. |

Partners

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<td>Are self employed drivers commercial partners and if so do</td>
<td>- There will be some distinction made on the final form between commercial participants and contractors who do limited work on behalf of a charity in a specific area.</td>
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they need to be listed on the contacts form?  
Is there any more clarification on the test of a “fit and proper person” to help charities when hiring these self-employed drivers?  

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| In this case all forms would be completed and returned by the charities who hold the NEO.  
- Where a commercial organisation holds the NEO, the royalties paid to charities should be counted as a cost against their operation.  
- On the fit and proper person, the liability rests with the charity and trustees so it's up to them to define and stand by the definition/tests they set if something goes wrong.  
- However, the kinds of tests they might have in place include a self-declaration form to account for previous criminal convictions. |

**Materials**

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| There were complaints about the vague guidance on the information which must be included on the bag.  
For example the requirement for the “charitable purpose” to be included; how specific does this have to be, could it be as short as the charity’s slogan? |  
- Information which must be provided on the bag will be listed in full on the final guidance.  
- This means collectors can design and make their own bag; as long as it includes all of the information required on the list it will be deemed to be compliant.  
- No specific clarification on the definition of “charitable cause” has yet been offered.  
- A similar principle applies to badges used by collectors, that they must include everything on a list which will be in the final guidance to be compliant, but do not necessarily have to use the same design or buy their badges centrally. |

**Accounting**

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| A common theme was the difficult of identifying the exact proceeds which arise from particular collections.  
Donated clothes of different sources |  
- The Cabinet Office understands the difficult which would arise for charity shops in calculating the precise income generated by doorstep collections.  
- It will be acceptable for charities to follow an internal audit procedure to make the best estimate per tonne of the value of clothing collected at the doorstep and use this figure in their calculations – so long as this process is clearly stated in the submission this will be acceptable. |
(brought into the shop, textile bank, door to door, house clearance) will all go into the shop to be sorted and mixed together, it is difficult to track any single item until profit is extracted from it.

**Time**

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| The one month deadline outlined in the general guidance could cause issues for shops who need to work flexibly to generate stock at short notice when shops are running low. | • The Cabinet Office do not want to impose anything which is “unreasonable” on the sector.  
• They will therefore be looking for a flexible option which allows NEO holders to report easily on their upcoming collection plans, but also for local authorities to request further information where they wish to have it. |

There have been long delays in the process of implementing these suggested clarifications and improvements due to a change of staff at the Cabinet Office and the purdah process during May’s elections and June’s referendum.

**As of 6 July there was no new version of the guidance published.**

However, with a new civil servant in place to oversee the operation conversations have begun again and we will continue to lobby for improvement in the revised guidance. We will update members when we have news.

**Scotland**

We have received the following confirmation, through officials in the Scottish government that no changes have yet been implemented:

> “I can confirm that the substantive provisions relating to public benevolent collections and designated national collectors contained in sections 84-92 are not yet in force and The Scottish Government currently has no plans to bring these provisions into force.”
“Sections 86, 90 and 91 are partially in force, for the purpose of enabling regulations to be made only. No regulations have been made under these sections to date.”

Northern Ireland

The Department for Communities website currently indicates that:

“The Charities Act (Northern Ireland) 2008 contains provision for a new regulatory regime for public charitable collections, though no date has been set for bringing the new regulatory regime into operation”.