



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## PART 2

### FUNDRAISING FOR BENEVOLENT BODIES

#### *Public benevolent collections*

#### **84 Meaning of “public benevolent collection”**

- (1) This section applies for the interpretation of sections 85 to 92.
- (2) “Public benevolent collection” means a collection from the public of money or promises of money (whether or not given by them for a consideration by way of goods or services) for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes taken—
  - (a) in a public place, or
  - (b) by means of visits to two or more houses or business premises.
- (3) “Public place”, in relation to a public benevolent collection, means—
  - (a) any road (within the meaning of the Roads (Scotland) Act 1984 (c. 54)), and
  - (b) any other place to which, at any time when the collection is taken, members of the public have access as of right or by virtue of express or implied permission and which—
    - (i) is not within a building, or
    - (ii) if within a building, is a public area within any station, airport or shopping precinct or is any other similar public area.
- (4) But subsection (3)(b) does not apply to any place to which members of the public have access—
  - (a) only on payment or by ticket,
  - (b) only by virtue of permission given for the purpose of the collection in question.
- (5) In relation to a public benevolent collection—

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“business premises” means any premises used for business or other commercial purposes,

“house” includes any part of a building constituting a separate dwelling.

## **85 Regulation of public benevolent collections**

- (1) Where a public benevolent collection is held in the area of a local authority without the consent of the authority under section 86, the organiser of the collection is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (2) Subsection (1) does not apply to a collection—
  - (a) by a designated national collector,
  - (b) which takes place in the course of a public meeting,
  - (c) which—
    - (i) takes place on land to which members of the public have access only by virtue of the express or implied permission of the occupier of the land or by virtue of any enactment, and
    - (ii) is organised by the occupier of the land, or
  - (d) which takes place by means of an unattended receptacle in a public place.
- (3) In subsection (2), “occupier” means, in relation to unoccupied land, the person entitled to occupy it.

## **86 Local authority consents**

- (1) An application for the consent of a local authority to the holding of a public benevolent collection must be made to the authority, in such form as the authority may determine, by the organiser of the collection—
  - (a) no earlier than 18 months, and
  - (b) no later than 2 months (or such shorter period as the organiser and the authority may agree),
 before the proposed date of the collection.
- (2) Before determining such an application, the local authority must consult the chief constable of the police force for the area and may make other inquiries.
- (3) On such an application the local authority may—
  - (a) grant its consent (whether or not subject to conditions), or
  - (b) refuse its consent on any of the grounds set out in subsection (6).
- (4) Where the application has been made not later than 2 months before the proposed date of the collection, the local authority must give the organiser notice of its decision on the application not later than 14 days before that date.
- (5) The conditions which may be imposed in pursuance of subsection (3)(a) are such conditions as the local authority thinks fit having regard to the local circumstances in which the collection is to be held, including conditions—
  - (a) specifying the date, time or frequency of the collection,
  - (b) specifying where it may take place,
  - (c) regulating its conduct,

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- (d) as to the use by collectors of any badges or certificates of authority which regulations made under section 83(1) require to be provided,
  - (e) specifying the form of collection boxes, other containers and any other articles which may be used for the purposes of the collection,
  - (f) as to any other matter relating to the local circumstances of the collection.
- (6) The grounds of refusal referred to in subsection (3)(b) are—
- (a) that the date, time or frequency of the collection, or that holding it at the proposed place, would cause undue public inconvenience,
  - (b) that another collection in respect of which consent under this section has been given by the authority or which is organised by a designated national collector is due to take place in the area of the authority on the same day or the day before or after that day,
  - (c) that it appears to the local authority that the amount likely to be applied for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes in consequence of the collection is inadequate having regard to the likely amount of the proceeds of the collection,
  - (d) where the local authority has requested the organiser of the collection to provide it with any supplementary information which it considers necessary for the purposes of determining the application, that the organiser has failed to comply with the request, and
  - (e) that the organiser of the collection has been convicted of—
    - (i) an offence under section 85(1), 90(3) or 91(3) of this Act, or
    - (ii) any other offence which involves dishonesty or the commission of which would be likely to be facilitated by the grant of consent under this section.
- (7) Where a local authority has reason to believe that, since its consent was granted under this section, there has been a change in circumstances such that one or more of the grounds of refusal set out in subsection (6) applies in relation to the public benevolent collection, the authority may, not later than the day before the date of the collection—
- (a) withdraw the consent, or
  - (b) vary the consent by making it subject to conditions or further conditions or varying any condition to which it is subject.
- (8) Where a local authority has reason to believe that there has been, or is likely to be, a breach of any condition imposed on a consent under this section, it may, not later than the day before the date of the collection, withdraw the consent.
- (9) A local authority must give the organiser of a public benevolent collection notice of a decision under this section—
- (a) to grant consent subject to conditions,
  - (b) to refuse consent,
  - (c) to withdraw or vary a consent,
- including the reasons for the authority's decision and information about the organiser's right of appeal under section 88.
- (10) The Scottish Ministers may, by regulations, disapply the duty to consult under subsection (2) in relation to applications of such type as they may describe in the regulations.

## **87 Designated national collectors**

- (1) OSCR may specify criteria to be satisfied for the purposes of—
  - (a) obtaining, and
  - (b) retaining,designation as a designated national collector under this section.
- (2) Before specifying such criteria, OSCR must consult—
  - (a) such associations representing local authorities,
  - (b) such persons representing the interests of charities, and
  - (c) such other persons,as it thinks fit.
- (3) OSCR must publish any criteria specified under subsection (1).
- (4) OSCR may designate as a designated national collector a charity which appears to it to satisfy such criteria as are for the time being specified under subsection (1)(a).
- (5) OSCR may withdraw a designation under subsection (4) from a charity which appears to it not to satisfy such criteria as are for the time being specified under subsection (1)(b).
- (6) Regulations under section 90 may make provision about the effect of the withdrawal of a designation in relation to public benevolent collections notice of which was, prior to the withdrawal, given under subsection (7).
- (7) A designated national collector which proposes to hold a public benevolent collection in the area of a local authority must—
  - (a) no earlier than 18 months, and
  - (b) no later than 3 months,before the proposed date of the collection, notify the authority of the proposal.
- (8) The local authority may prohibit the public benevolent collection if it considers that the public benevolent collection would be likely to cause undue public inconvenience (by reason of it being held on the same date and at the same time and place as any other public benevolent collection or for any other reason).
- (9) A decision under subsection (8) must be made not later than one month after the date of the notification under subsection (7).
- (10) A local authority must give the designated national collector notice of a decision under subsection (8) including the reasons for the authority's decision and information about the designated national collector's rights of appeal under section 88.

## **88 Appeals**

- (1) The organiser of a public benevolent collection may, by summary application, appeal to the sheriff against a decision of a local authority under section 86—
  - (a) granting consent subject to conditions,
  - (b) refusing consent, or
  - (c) withdrawing or varying a consent.

- (2) But no appeal is competent under subsection (1) against the decision of the local authority so far as the decision, or the reasons for it, relate to the date of the proposed collection.
- (3) A designated national collector may, by summary application, appeal to the sheriff against a decision of a local authority under section 87(8).
- (4) An appeal under this section must be lodged within 14 days of the date of receipt of the notice under section 86(9) or, as the case may be, 87(10).
- (5) In upholding an appeal under this section the sheriff may quash the decision of the local authority and remit the case, together with reasons for the sheriff's decision, to the authority for further consideration.

## **89 Application of funds**

- (1) This section applies where the court, on an application by OSCR, is satisfied that sums collected in a public benevolent collection by or on behalf of any person other than a charity cannot for any reason be applied for the purposes for which they were collected.
- (2) The court may—
  - (a) order any person holding such sums not to part with them without the court's consent,
  - (b) approve a scheme prepared by OSCR for the transfer of those sums to a charity specified in the scheme.
- (3) The court may approve a scheme under subsection (2)(b) subject to modifications.
- (4) In this section, "the court" means the sheriff.

## **90 Regulations relating to public benevolent collections**

- (1) The Scottish Ministers may, by regulations, make further provision for the purpose of regulating public benevolent collections.
- (2) Such regulations may, in particular, include provision—
  - (a) about keeping and publishing accounts,
  - (b) for preventing public inconvenience,
  - (c) specifying particular provisions of the regulations breach of which is an offence under subsection (3).
- (3) Any person who contravenes a provision of such regulations breach of which is stated in the regulations to be an offence is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

## **91 Collection of goods**

- (1) The Scottish Ministers may, by regulations, make provision about the collection from the public of goods for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes.
- (2) Those regulations may, in particular, include provision—
  - (a) requiring the organiser of such a collection to notify the local authority for the area in which it is proposed that the collection be carried out,

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- (b) allowing or requiring the local authority, in such circumstances as may be specified in the regulations, to prohibit the carrying out of such a collection,
  - (c) about the dates, times and places at which, and the frequency with which, such collections may be carried out,
  - (d) about keeping and publishing reports on those collections,
  - (e) for preventing public inconvenience,
  - (f) specifying particular provisions of the regulations breach of which is to be an offence under subsection (3).
- (3) Any person who contravenes a provision of such regulations breach of which is stated in the regulations to be an offence is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

## **92 Guidance on collections**

Local authorities must have regard to any guidance issued by OSCR about the exercise of their functions in relation to—

- (a) public benevolent collections, or
- (b) collections from the public of goods for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes.