



2008 CHAPTER 12

PART 13

FUNDING OF CHARITABLE INSTITUTIONS

CHAPTER 1

PUBLIC CHARITABLE COLLECTIONS

*Public collections certificates*

**Applications for certificates**

**137.**—(1) A person or persons proposing to promote public charitable collections (other than exempt collections) may apply to the Commission for a public collections certificate in respect of those collections.

(2) The application shall be made—

- (a) within the specified period falling before the first of the collections is to commence, or
- (b) before such later date as the Commission may allow in the case of that application.

(3) The application shall—

- (a) be made in such form as may be specified,
- (b) state the period for which the certificate is sought (which must be no more than 5 years), and
- (c) contain such other information as may be specified.

(4) An application under this section may be made for a public collections certificate in respect of a single collection; and the references in this Chapter,

in the context of such certificates, to public charitable collections are to be read accordingly.

(5) In subsections (2) and (3) “specified” means specified in regulations made by the Commission after consulting such persons or bodies of persons as it considers appropriate.

(6) In this section “exempt collection” means a public charitable collection which is an exempt collection by virtue of section 136.

### **Determination of applications and issue of certificates**

**138.**—(1) On receiving an application for a public collections certificate made in accordance with section 137, the Commission may make such inquiries (whether under section 140 or otherwise) as it thinks fit.

(2) The Commission shall, after making any such inquiries, determine the application by either—

- (a) issuing a public collections certificate in respect of the collections, or
- (b) refusing the application on one or more of the grounds specified in section 139(1).

(3) A public collections certificate—

- (a) shall specify such matters as may be prescribed, and
- (b) shall (subject to section 142) be in force for—
  - (i) the period specified in the application in accordance with section 137(3)(b), or
  - (ii) such shorter period as the Commission thinks fit.

(4) The Commission may, at the time of issuing a public collections certificate, attach to the certificate such conditions as it thinks fit.

(5) Conditions attached under subsection (4) may include conditions prescribed for the purposes of that subsection.

(6) The Commission shall secure that the terms of any conditions attached under subsection (4) are consistent with the provisions of any regulations under section 148 (whether or not prescribing conditions for the purposes of that subsection).

(7) Where the Commission—

- (a) refuses to issue a certificate, or
- (b) attaches any condition to it,

it shall serve on the applicant written notice of its decision and the reasons for its decision.

(8) That notice shall also state the right of appeal conferred by Schedule 3 and the time within which such an appeal must be brought.

**Grounds for refusing to issue a certificate**

**139.**—(1) The grounds on which the Commission may refuse an application for a public collections certificate are—

- (a) that the applicant has been convicted of a relevant offence;
  - (b) where the applicant is a person other than a charitable institution for whose benefit the collections are proposed to be conducted, that the Commission is not satisfied that the applicant is authorised (whether by any such institution or by any person acting on behalf of any such institution) to promote the collections;
  - (c) that it appears to the Commission that the applicant, in promoting any other collection authorised under this Chapter, failed to exercise the required due diligence;
  - (d) that the Commission is not satisfied that the applicant will exercise the required due diligence in promoting the proposed collections;
  - (e) that it appears to the Commission that the amount likely to be applied for charitable, benevolent or philanthropic purposes in consequence of the proposed collections would be inadequate, having regard to the likely amount of the proceeds of the collections;
  - (f) that it appears to the Commission that the applicant or any other person would be likely to receive an amount by way of remuneration in connection with the collections that would be excessive, having regard to all the circumstances;
  - (g) that the applicant has failed to provide information—
    - (i) required for the purposes of the application for the certificate or a previous application, or
    - (ii) in response to a request under section 140(1);
  - (h) that it appears to the Commission that information so provided to it by the applicant is false or misleading in a material particular;
  - (i) that it appears to the Commission that the applicant or any person authorised by the applicant—
    - (i) has breached any conditions attached to a previous public collections certificate, or
    - (ii) has persistently breached any conditions attached to a permit issued under section 144;
  - (j) that it appears to the Commission that the applicant or any person authorised by the applicant has on any occasion breached any provision of regulations made under section 148(1)(b).
- (2) For the purposes of subsection (1)—
- (a) a “relevant offence” is—

- (i) an offence under section 5 of the 1916 Act;
  - (ii) an offence under the 1952 Act;
  - (iii) an offence under this Chapter;
  - (iv) an offence involving dishonesty; or
  - (v) an offence of a kind the commission of which would, in the opinion of the Commission, be likely to be facilitated by the issuing to the applicant of a public collections certificate; and
- (b) the “required due diligence” is due diligence—
- (i) to secure that persons authorised by the applicant to act as collectors for the purposes of the collection were (or will be) fit and proper persons;
  - (ii) to secure that such persons complied (or will comply) with the provisions of regulations under section 148(1)(b); or
  - (iii) to prevent badges or certificates of authority being obtained by persons other than those the applicant had so authorised.

(3) Where an application for a certificate is made by more than one person, any reference to the applicant in subsection (1) or (2) is to be construed as a reference to any of the applicants.

(4) Subject to subsections (5) and (6), the reference in subsection (2)(b)(iii) to badges or certificates of authority is a reference to badges or certificates of authority in a form prescribed by regulations under section 148(1)(b).

(5) Subsection (2)(b) applies to the conduct of the applicant (or any of the applicants) in relation to any public charitable collection authorised—

- (a) under regulations made under section 5 of the 1916 Act (collection of money or sale of articles in a street or other public place), or
- (b) under the 1952 Act (collection of money or other property by means of visits from house to house),

as it applies to the conduct of the applicant in relation to a collection authorised under this Chapter, but subject to the modifications set out in subsection (6).

(6) The modifications are—

- (a) in the case of a collection authorised under regulations made under the 1916 Act—
  - (i) the reference in subsection (2)(b)(ii) to regulations under section 148(1)(b) is to be construed as a reference to the regulations under which the collection in question was authorised, and
  - (ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority is to be construed as a reference to any written authority provided to a collector pursuant to those regulations; and

- (b) in the case of a collection authorised under the 1952 Act—
  - (i) the reference in subsection (2)(b)(ii) to regulations under section 148(1)(b) is to be construed as a reference to regulations under section 4 of that Act, and
  - (ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority is to be construed as a reference to badges or certificates of authority in a form prescribed by such regulations.

(7) In subsections (1)(c) and (5) a reference to a collection authorised under this Chapter is a reference to a public charitable collection that—

- (a) is conducted in accordance with section 134 or 135 (as the case may be), or
- (b) is an exempt collection by virtue of section 136.

(8) In this section—

“the 1916 Act” means the Police, Factories &c. (Miscellaneous Provisions) Act 1916 (c. 31); and

“the 1952 Act” means the House to House Collections Act (Northern Ireland) 1952 (c. 6).

#### **Power to call for information and documents**

**140.**—(1) The Commission may request—

- (a) any applicant for a public collections certificate, or
- (b) any person to whom such a certificate has been issued,

to provide it with any information in the possession of that applicant or person, or document in the custody or under the control of that applicant or person, which is relevant to the exercise of any of its functions under this Chapter.

(2) Nothing in this section affects the power conferred on the Commission by section 23.

#### **Transfer of certificate between trustees of unincorporated charity**

**141.**—(1) One or more individuals to whom a public collections certificate has been issued (“the holders”) may apply to the Commission for a direction that the certificate be transferred to one or more other individuals (“the recipients”).

(2) An application under subsection (1) shall—

- (a) be in such form as may be specified, and
- (b) contain such information as may be specified.

(3) The Commission may direct that the certificate be transferred if it is satisfied that—

- (a) each of the holders is or was a trustee of a charity which is not a body corporate;

- (b) each of the recipients is a trustee of that charity and consents to the transfer; and
  - (c) the charity trustees consent to the transfer.
- (4) Where the Commission refuses to direct that a certificate be transferred, it shall serve on the holders written notice of—
- (a) its decision, and
  - (b) the reasons for its decision.
- (5) That notice shall also state the right of appeal conferred by Schedule 3 and the time within which such an appeal must be brought.
- (6) Subsection (5) of section 137 applies for the purposes of subsection (2) of this section as it applies for the purposes of subsection (3) of that section.
- (7) Except as provided by this section, a public collections certificate is not transferable.

#### **Withdrawal or variation, etc. of certificates**

- 142.**—(1) Where subsection (2), (3) or (4) applies, the Commission may—
- (a) withdraw a public collections certificate,
  - (b) suspend such a certificate,
  - (c) attach any condition (or further condition) to such a certificate, or
  - (d) vary any existing condition of such a certificate.
- (2) This subsection applies where the Commission—
- (a) has reason to believe there has been a change in the circumstances which prevailed at the time when it issued the certificate, and
  - (b) is of the opinion that, if the application for the certificate had been made in the new circumstances, it would not have issued the certificate or would have issued it subject to different or additional conditions.
- (3) This subsection applies where—
- (a) the holder of a certificate has unreasonably refused to provide any information or document in response to a request under section 140(1), or
  - (b) the Commission has reason to believe that information provided to it by the holder of a certificate (or, where there is more than one holder, by any of them) for the purposes of the application for the certificate, or in response to such a request, was false or misleading in a material particular.
- (4) This subsection applies where the Commission has reason to believe that there has been or is likely to be a breach of any condition of a certificate, or that a breach of such a condition is continuing.
- (5) Any condition imposed at any time by the Commission under subsection (1) (whether by attaching a new condition to the certificate or by

varying an existing condition) must be one that it would be appropriate for the Commission to attach to the certificate under section 138(4) if the holder was applying for it in the circumstances prevailing at that time.

(6) The exercise by the Commission of the power conferred by paragraph (b), (c) or (d) of subsection (1) on one occasion does not prevent it from exercising any of the powers conferred by that paragraph on a subsequent occasion; and on any subsequent occasion the reference in subsection (2)(a) to the time when the Commission issued the certificate is a reference to the time when it last exercised any of those powers.

(7) Where the Commission—

- (a) withdraws or suspends a certificate,
- (b) attaches a condition to a certificate, or
- (c) varies an existing condition of a certificate,

it shall serve on the holder written notice of its decision and the reasons for its decision.

(8) That notice shall also state the right of appeal conferred by Schedule 3 and the time within which such an appeal must be brought.

(9) If the Commission—

- (a) considers that the interests of the public require a decision by it under this section to have immediate effect, and
- (b) includes a statement to that effect and the reasons for it in the notice served under subsection (7),

the decision takes effect when that notice is served on the holder.

(10) In any other case the certificate shall continue to have effect as if it had not been withdrawn or suspended or (as the case may be) as if the condition had not been attached or varied—

- (a) until the time for bringing an appeal has expired, or
- (b) if such an appeal is duly brought, until the determination or abandonment of the appeal.

(11) A certificate suspended under this section shall (subject to any appeal and any withdrawal of the certificate) remain suspended until—

- (a) such time as the Commission may by notice direct that the certificate is again in force, or
- (b) the end of the period of 6 months beginning with the date on which the suspension takes effect,

whichever is the sooner.