

# TONBRIDGE & MALLING BOROUGH COUNCIL

## LICENSING & APPEALS COMMITTEE

20 August 2007

### Report of the Chief Solicitor

#### Part 1- Public

#### Matters for Recommendation to Council

### **1 CHARITIES ACT 2006: CHARITABLE COLLECTIONS**

#### **1.1 Introduction**

- 1.1.1 The Charities Act 2006 introduces a new regime for regulating public charitable collections, replacing the existing legislation relating to street collections and house-to-house collections. As was previously promoted in the Charities Act 1994, these schemes are to be consolidated into a single regime, which is intended to simplify the administration of the licensing regime with increased accountability in respect of the funds collected, although in a more bureaucratic was compared to the existing controls.
- 1.1.2 Promoters of "exempt collections" do not need to apply for a permit. An exempt collection is one that is a local, short-term collection where the promoters notify the local authority of various prescribed matters within a prescribed period before the first day of the proposed collection. However, if the local authority serve a notice on the promoters to the effect that a collection will not be an exempt collection. A notice can be served where it appears to the authority that the proposed collection is not a local, short-term collection, or that the promoter has breached regulations or been convicted of a relevant offence. There is a right of appeal against such a decision is provided.
- 1.1.3 Previously the Home Secretary could issue an exemption certificate to authorise national charities to conduct collections, the most well-known being the sale of poppies by the Royal British Legion for the Haig Fund. This has now been replaced by a "public collections certificate" to be issued by the Charity Commission.
- 1.1.4 A permit is will no longer be required for door to door collections, as it has been assessed that these are less likely to lead to undue inconvenience to members of the public.
- 1.1.5 In all other cases, all charitable collections in a public place will require an application for a permit to the local authority for the area in which the collection is proposed to take place. The application must include certain prescribed

information. The Act is prescriptive about the applications process, the timetable for which will be prescribed in regulations. Special provision is made for urgent permit applications outside the prescribed period in circumstances where either the public collections certificate application has not been determined by the end of the permit application period, or where it has been determined but with insufficient time for a permit application to be made within the prescribed period.

1.1.6 The local authority is required to issue or refuse a permit within a prescribed time period. The Act also enables local authorities to attach conditions to a permit, limited to those:

- specifying the day of the week, date, time or frequency of the collection;
- specifying the locality or localities within their area in which the collection may be conducted;
- regulating the manner in which the collection is to be conducted; and
- such other conditions as may be prescribed by Regulations.

Any condition attached to a permit must be consistent with regulations made under the Act.

1.1.7 The only ground on which a local authority may refuse an application for a permit is that the collection would cause undue inconvenience to members of the public by reason of-

- the day or the week or date on or in which
- the time at which,
- the frequency with which, or
- the locality or localities in which, it is proposed to be conducted.

1.1.8 Section 61 of the Act enables a local authority to withdraw a permit, or attach or vary conditions to a permit, in three circumstances, where the authority

- 1) have reason to believe that there has been a change in the circumstances which prevailed at the time when they issued the permit, and that, if the application for the permit had been made in the new circumstances, they would not have issued the permit or would have issued it subject to different or additional conditions
- 2) have reason to believe that any information provided to them by the holder of a permit (or, where there is more than one holder, by any of them) for the purposes of the application for the permit was false or misleading in a material particular.

- 3) have reason to believe that there has been or is likely to be a breach of any condition of a permit issued by them, or that a breach of such a condition is continuing.

1.1.9 The applicant has the right of appeal to the magistrates' court against the non-determination or refusal of a permit or any conditions imposed or against a decision to withdraw, vary or revoke a permit.

1.1.10 Much of the detail of the scheme will be contained in Regulations, none of which have yet been published.

1.1.11 As before, failure to obtain a permit will be a criminal offence. The maximum penalty is a level 5 fine, currently £5,000 but can be increased by Regulations under the Criminal Justice Act 1985.

## 1.2 Delegations

1.2.1 It will be necessary to update the delegations contained in Part 3 of the Constitution as this legislation is implemented. Under existing delegations CHS 200.03 (house-to-house collections) and CHS 200.08 (street collections) will need to be updated to reflect the new legislation once these parts of the Act have been implemented.

## 1.3 Legal Implications

1.3.1 This Act continues the Council's duties to regulate charitable collections under a consolidated framework.

## 1.4 Financial and Value for Money Considerations

1.4.1 None.

## 1.5 Risk Assessment

1.5.1 The Council is required to implement this legislation.

## 1.6 Recommendations

1.6.1 It is **recommended** that, with effect from the commencement date of the relevant provisions in the Charities Act 2006, Part 3 of the Council's constitution be amended by deleting the existing delegations CHS 200.03 and CHS 200.08 and the insertion of the following new delegation:

CHS 209	To grant applications for licences, registrations, consents and permits and issue notices under Charities Act 2006 (charitable collections).	C
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Background papers:

contact: Duncan Robinson

Charities Act 2006  
Constitution of the Tonbridge and Malling Borough  
Council

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Chief Solicitor