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PUBLIC CHARITABLE COLLECTIONS: THE NEW RÉGIME

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Introduction: A Unified Régime for Public Charitable Collections

When the provisions contained in Part III of the Charities Act 1992 are brought into force, English law will for the first time have a unified régime for collections made in the street and from house to house. Schedule 7 of the new Act repeals much of the earlier legislation in this area. Repealed (except in Northern Ireland: s.79(7)) will be the Police, Factories, &c. (Miscellaneous Provisions) Act 1916 s.5 (the 1916 Act) which regulates collections in the street and in public places. Repealed also will be the House to House Collections Act 1939 (the 1939 Act). Also swept away will be the War Charities Act 1940 (the 1940 Act) which provides a special régime affecting collections for war charities and charities for the disabled. The 1940 Act had long fallen into desuetude and its repeal was recommended in the White Paper of 1989, *Charities: A Framework for the Future* (hereafter WP), para 10.04. In accordance with proposals in the White Paper, Part III will establish for England and Wales a single, simplified régime, similar to that in operation in Scotland: see the Civic Government (Scotland) Act 1982 (the 1982 Act). Where appropriate, and as promised in the White Paper (WP para 10.08), an attempt has been made in Part III of the new Act to select the best provisions from each of the earlier statutes; but the most influential is evidently the 1939 Act.

A The Scope of Part III

Part III applies to a "public charitable collection". This is defined as a charitable appeal made in any public place or by means of visits from house to house; and "charitable appeal" means an appeal to members of the public to give money or other property (whether for consideration or otherwise) which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable, benevolent or philanthropic purposes: s.65(1).

1 "Charitable, Benevolent or Philanthropic Purposes"

In extending its reach to benevolent and philanthropic, as well as to charitable, purposes, Part III follows the 1939 Act. Part II of the new Act, which controls fund-raising, is of similar scope. The wider ambit of Parts II and III of the new Act (in contrast with Part I) can be explained on the ground that there is a need to provide

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some regulation of public appeals of an emotive nature, and such appeals are not necessarily charitable in law.

There is a dearth of reported case law on the meaning of the words "benevolent" or " philanthropic" in the context of the 1939 Act. These words, unlike the term "charitable", are not terms of art, and, as is made clear in s.65(5), clearly embrace purposes which would not be charitable within the meaning of any rule of law. Some assistance with the term "benevolent" may be derived from Australia, where some fiscal privileges are accorded to public benevolent institutions. This expression has been construed to mean institutions which promote the relief of poverty, sickness, destitution or helplessness: see *Perpetual Trustee Co. Ltd v FCT* (1931) 45 CLR 224; and *Comr of Pay-roll Tax (Vic.) v Cairnmillar Institute* (1990) 90 ATC 4752. The promotion of such purposes is, of course, not charitable in law unless the public benefit requirement is satisfied. Thus a house to house collection to raise money to send a particular child abroad for a medical operation overseas would rank as a benevolent, not as a charitable, appeal.

"Philanthropic" is a rather nebulous term. A love of mankind may manifest itself in multifarious ways, including the giving of money to a beggar: see Chesterman, *Charities, Trusts and Social Welfare*, 1979, p.2. Nevertheless, although giving to a beggar might be termed a benevolent or philanthropic act, begging for oneself in the street can hardly rank as an appeal for a benevolent or philanthropic purpose.

In the context of collections under the 1916 Act, which applied to collections for charitable "or other" purposes, the law will therefore be slightly narrowed. There has been little consistency, however, in the application of the 1916 Act: some authorities interpret "other purposes" as meaning purposes analogous to charitable purposes; others interpret the words literally: see Home Office Consultation Paper, *The Regulation of Charitable Appeals in England and Wales*, 1988, (hereafter CP), para 21. Presumably a street collection for the families of striking miners, which in *Meadon v Wood* (1985) *The Times* 30 April 1985 was held to fall within the 1916 Act, would also come within the scope of Part III.

In view of the extended application of Parts II and III, it may be fairly noted that the short title of the new statute, the Charities Act 1992, though economical, is somewhat misleading. As suggested by Lord Renton, it might have been more accurate to call it the Charities and Public Collections Act: see *Parliamentary Debates, House of Lords, Committee*, (hereafter Com.) 3 December 1991, cols. 254-5.

2 "Whether for Consideration or Otherwise"

The parenthesised words, "(whether for consideration or otherwise)", are essentially similar to those which formerly appeared in the 1939 Act; and the weight of authority on that provision indicated that sales of goods for charity were included: see *Cooper v Coles* [1986] QB 230, preferring *Carasu Ltd v Smith* [1968] 2 QB 383 to *Murphy v Duke* [1985] QB 905. Part III of the new Act settles the matter: sales of goods and supplies of services are expressly brought within its scope: s.65(7).

3 Exclusions

Excluded from the scope of a public charitable collection is an appeal made in the course of a public meeting, or (in essence) on land within a churchyard, burial ground or place of public worship: s.65(2). It was thought that if a rector or vicar sits outside the church and receives donations from parishioners on the annual gift day, or if there

is a sponsored peal on the bells, such matters should be left to the church authorities: see Com., cols. 250-252.

Also excluded by s.65(2) is an appeal made by way of an unattended receptacle. This exclusion is regrettable. There is, after all, evidence of abuse in the use of static boxes (see *Jones v A-G* (1976) *The Times* 10 November 1976 and *Report of the Charity Comrs for 1976*, paras 26-9; also the NCVO Report, *Malpractice in Fundraising for Charity*, 1986, para 5.35). One of the most common problems appears to be the ease with which money which they contain can be "borrowed" or otherwise removed. This follows from the absence of any requirement that such boxes be sealed or secured - an unsatisfactory state of affairs which the new Act simply ignores. Another common problem is the undue length of time such receptacles may be left unemptied. This follows from the absence of a requirement that such boxes be regularly checked and emptied. The new Act does nothing to remedy this manifest deficiency.

The exclusion of static boxes was raised by Lord Brightman. The reply was that the amounts raised by such boxes is usually relatively small, that such boxes tend to be in place for rather long periods (whereas the thrust of Part III deals with short term collections) and, compared with street or house to house collections, those by way of static boxes are less intrusive to the public. Furthermore, it was explained that where boxes are left unattended for long periods, the Charity Commissioners have been able (where appropriate) to use their powers under the Charities Act 1960 to transfer abandoned funds to the Official Custodian for safekeeping while an inquiry is under way: see Second Reading, (hereafter 2R) *Parliamentary Debates, House of Lords*, 19 November 1991, col. 856; and Com. cols. 252-4. Although the role of the Official Custodian will be considerably reduced under ss.29-31 of the new Act, this particular function will survive: see s.29(2)(b).

Nevertheless, whilst static boxes may not be a threat to public order, the moneys they contain remain unprotected, and the remedial powers of the Charity Commissioners cannot be used to justify the absence of prophylactic controls. The omission of Part III to require static boxes to be properly sealed and numbered, and to be regularly emptied, is surely an opportunity missed.

4 Definition of "Public Place"

Unlike the 1916 Act, Part III of the new Act provides a definition of "public place". It means any highway and (subject to subs.(9)) any other place to which, at the time the appeal is made, members of the public have or are permitted to have access and which either is not within a building or, if within a building, is a public area within any station, airport or shopping precinct or any other similar public area: s.65(8). Under the 1916 Act it was unclear whether, for instance, the forecourt of a supermarket ranked as a public place: under the new Act it clearly does.

The qualification contained in subs.(9) was added in Committee: see Com., col. 254. Many charities were very concerned with the breadth of the definition of "public place" in the Bill: see Lord Richard, 2R, col. 836, and see reply of Earl Ferrers, 2R, cols. 886-7. If a person organised a coffee morning in their own home, any profits to go to charity, and placed a notice about it in the village post office, it looked as though the house would become a public place and a local authority permit would be needed: see Lord Allen of Abbeydale: 2R, col. 851. There was great danger that such over-regulation would seriously undermine the enthusiasm of volunteers: see the comments of Andrew Phillips, *The Guardian*, 3 December 1991.

In view of this furore, subs.(9) was added. It provides that the definition of "public place" does not apply to (a) any place to which members of the public are permitted to have access only if any payment or ticket required as a condition of access has been made or purchased; or (b) any place to which members of the public are permitted to have access only by virtue of permission given for the purposes of the appeal in question. Thus collections made at a ticket-only fund-raising dinner, would be excluded under para (a); and fund-raising coffee mornings at a person's home would be excluded by para (b).

B Permits

1 Application

No public charitable collection may be conducted in the area of a local authority except in accordance with: (a) a permit issued by the authority under s.68; or (b) an order made by the Charity Commissioners under s.72: s.66(1). An application for a permit must be made by the person or persons proposing to promote that collection: s.66(2). Such application must specify the period (not exceeding 12 months) for which it is desired that the permit shall have effect, and must contain such information as may be prescribed by regulations under s.73. It must generally be made between one month and six months before the collection: s.66(3). Under the Bill in its original form, the maximum period was three months: this was increased to six in order to give charities time to plan their campaigns well in advance: see Com., cols. 257-8. A local authority may also allow an application made less than one month in advance: s.66(3). It will be an offence knowingly or recklessly to furnish false information in an application: s.74(3).

2 Determination and Issue

Where an application has been made, a local authority must either issue a permit or refuse the application on one of the grounds mentioned in s.69: s.68(1). Before determining any application, the local authority must consult the chief officer of police for the police area concerned: s.67(4). A permit may be issued subject to conditions (s.69(2)), and these may include specifying the day, time or frequency of the collection, the locality, and the manner in which it is to be conducted: s.68(4). Where a permit is refused, or conditions attached, the local authority must serve on the applicant a written notice of their decision, giving reasons. Such notice must also state the right of appeal conferred by s.71, and the time within which it must be brought: s.68(4).

3 Refusal

A local authority may refuse to issue a permit on any of the grounds specified in s.69(1), paras (a) to (g):

(a) that the collection would cause undue inconvenience to members of the public.

(b) that the collection falls on or within one day of another public charitable collection already authorised. This ground is, however, qualified by subs.(2), which provides that a local authority shall not refuse to issue a permit on this

ground if it appears to them that the collection would be conducted only in one location, which is on land to which members of the public would have access only by virtue of the express or implied permission of the occupier of the land, and that the occupier consents to the collection being conducted there.

(c) that the amount likely to be applied for the charitable, benevolent or philanthropic purposes would be inadequate, having regard to the likely amount of the collection proceeds. This ground is similar to ones contained in the 1939 Act, s.2(3)(a), and in the 1940 Act, s.2(2)(c). In reply to an inquiry in Committee as to the basis on which a judgment might be made, Viscount Astor pointed out that a similar test had been applied by local authorities under the 1939 Act for fifty years and it had not given rise to problems: see Com., cols. 259-260. This is not, however, particularly reassuring, since neither of these provisions appears to have operated effectively. This is partly due to lack of enforcement by many local authorities (understandable in view of the numerous obligations placed upon them by a multitude of statutes) and partly because the criterion of "inadequacy" is notoriously difficult to pin down. There is no reason to be any more optimistic under the new régime.

(d) that the applicant or another person would be likely to receive an excessive amount by way of remuneration. This ground too appeared in the 1939 Act, and can be subjected to the same criticism as that levelled at the predecessors to para (c) supra: see, for instance, *Murphy v Duke* [1985] QB 905.

(e) that the applicant has been convicted (i) under s.5 of the 1916 Act, under the 1939 Act, under s.119 of the 1982 Act or regulations made under it, or under Part III of the Charities Act 1992 or regulations made under s.73; or (ii) of any offence involving dishonesty or of a kind the commission of which would in their opinion be likely to be facilitated by the issuing to him of a permit.

(f) where the applicant is a person other than a charitable, benevolent or philanthropic institution for whose benefit the collection is proposed to be conducted, that they are not satisfied that the applicant is authorised to promote the collection. This paragraph serves a similar function to a provision unique to the 1940 Act. In the context of war charities and charities for the disabled, that Act made it an offence to appeal to the public unless (inter alia) approval in writing had been given by the management committee or person responsible for the administration of the charity. Collections for other purposes could be made without the charity's knowledge or consent. This was not a desirable state of affairs. On the other hand, many charities opposed extending such obligation to collections for all charitable

purposes: their reason was the fear of deterring volunteers. The new provision is therefore a compromise: collecting for a charity without its consent is not itself an offence; but the absence of such consent is a ground for refusing a permit.

(g) that it appears to them that the applicant, in promoting any other authorised collection, failed to exercise due diligence to secure that persons authorised by him to act as collectors were fit and proper persons, to secure that they complied with the regulations, or to prevent badges or certificates of authority being obtained by unauthorised persons.

A further ground for refusal of permission might have been usefully added: namely, that the charitable, benevolent or philanthropic body does not have a committee of management of at least three persons. Under the 1940 Act, s.2(2), a local authority was obliged to refuse registration unless satisfied that a responsible management committee consisting of at least three persons had been appointed.

There are also provisions for the withdrawal, the attaching of conditions, or the varying of existing conditions, of permits already issued: s.70. Appeals from decisions of the local authority may be made to a magistrates' court, and an appeal from the decision of that court lies to the Crown Court: s.71.

C Exemption Orders

Under s.72, where the Charity Commissioners are satisfied, on the application of any charity, that that charity proposes (a) to promote public charitable collections throughout the whole or a substantial part of England and Wales in connection with any charitable purposes pursued by the charity, or (b) to authorise any other persons to promote such public charitable collections, the Commissioners may make an order authorising such collections without the need for a local authority permit: s.72. Several important changes in the law result from s.72.

First, exemption orders will be available in respect of collections made in a public place. No such exemption can be given under the 1916 Act. Thus, a charity which organises a walk across the country, the walkers collecting from persons passed en route, currently needs to obtain a separate permit from each local authority across whose area the walk passes. In such circumstances, an exemption order may be available under Part III.

Secondly, the power to grant the exemption is to be conferred upon the Charity Commissioners. The Home Office will lose its responsibility for granting national exemption orders under the 1939 Act.

Thirdly, the exemption is narrower than that currently available for collections made from house to house. Under the 1939 Act, s.3(1), a national exemption order is available to collections for "charitable purposes", and such purposes are there defined to include benevolent or philanthropic purposes: s.11. The proposal to transfer the power to grant exemption orders to the Charity Commission created a problem: if the Commissioners were given the same jurisdiction in this regard as that formerly enjoyed by the Home Office, they would be making orders in respect of non-charitable bodies. Rather than do this, the government preferred to reduce the availability of exemption orders. The transfer of the power to the Commissioners was designed to ensure that such orders would be subject to the closest possible scrutiny,

and the Commissioners would be able to exercise this only in respect of those bodies which fell within their general jurisdiction: see Earl Ferrers, Report, col. 1225. The Commissioners will therefore be empowered to grant such orders only in respect of charities or charitable purposes within the meaning of the Charities Act 1960: see Charities Act 1992, s.72(5) and Report, cols. 1220-1228.

The body which most clearly stands to lose as a result of the change is Amnesty International, which is not a charity but which has appeals for benevolent or philanthropic purposes. Amnesty International appears to be the only non-charitable body which has enjoyed a national exemption order under the 1939 Act: see Report, col. 1226. Greenpeace may also be concerned.

On the same basis, a non-charitable disaster fund appeal, while no doubt benevolent or philanthropic, will be ineligible for an exemption order. Collections for such appeals in public places and from house to house will therefore need separate permits from each local authority. This may not be too serious a disadvantage, however, since such appeals tend to be made through the medium of television or radio, and are thus outside Part III.

It should be further noted that, although "charity" and "charitable purposes" are stated to have the same meaning in that section as in the Charities Act 1960, there is no restricted meaning given to the expression "public charitable collections" mentioned in s.72(1)(a). Thus, provided a charity satisfies the other criteria of s.72(1), it may obtain an exemption order in connection with collections which are merely benevolent or philanthropic, provided they are made in connection with any of its charitable purposes.

Fourthly, there are significant changes in the grounds upon which such exemption order can be granted. Under the 1939 Act, what had to be pursued throughout a substantial part of England and Wales was the "charitable purpose". Thus an exemption order was not available to a charity which pursued its purposes only overseas - such as a charity for the relief of poverty in the third world. This requirement will disappear; and the expressed criterion will be only that the collections themselves are made through at least a substantial part of England and Wales. Even under the 1939 Act, however, the Home Office exercises its discretion only where the collections are made on a substantial basis across the country. It apparently operates on rule of thumb: namely, that a charity must have made an average of 150 collections per year over the preceding two years. This may provide some guidance as to the manner in which the jurisdiction will be operated in future by the Charity Commissioners.

Fifthly, under the 1939 Act, another form of exemption is available in respect of short term collections. If the chief officer of police for the particular police area was satisfied that the purpose was local in character and likely to be completed in a short period of time, he could grant the promoter a certificate: 1939 Act, s.1(4). This relieved the promoter of the need to obtain a licence within the period specified. This exemption (which was the cause of the dispute in *Murphy v Duke* [1985] QB 905) has now gone and has not been replaced.

Sixthly, although exemption order holders under the 1939 Act are not required to notify relevant local authorities of the dates upon which they intend to collect, they are by convention expected to do so: see CP, para 31. This convention has, however, been breaking down: WP, para 10.10. Although s.72 of the new Act does not lay down an express obligation upon exemption holders to inform relevant local authorities, the Charity Commissioners are empowered to make an order subject to

conditions, and may by order revoke or vary an order previously made: s.72(3). Presumably, such conditions might include an obligation to notify the relevant local authorities; and failure to abide by such condition might be a ground for revocation of an exemption order previously made. Furthermore, the Secretary of State may make regulations regulating the conduct of public collections authorised under orders made by the Commissioners: s.73(1). No doubt an express obligation to inform (and perhaps consult) will be contained in the forthcoming regulations.

Taken as a whole, these changes, particularly the extension of the availability of exemption orders to collections in public places, may lead to an increase in the number of orders granted: as at September 1988, there were only forty holders of exemption orders under the 1939 Act: see CP, para 29.

D Regulations

The Secretary of State is empowered to make regulations under s.73(1) prescribing the information to be contained in applications for permits and for the purpose of regulating the conduct of public charitable collections. Such regulations may provide for the keeping and publication of accounts, for the prevention of annoyance to the public, with respect to the use by collectors of badges and certificates of authority, and for prohibiting persons under a prescribed age from acting as collectors and prohibiting others from causing them to so act: s.73(2). Unauthorised use of badges or certificates of authority is an offence: s.74.

Although Part III establishes a unified régime, it remains to be seen whether the regulations made under it will distinguish between collections made in public and those made from house to house. The White Paper indicates that the general regulations will follow the Scottish provisions: the Public Charitable Collections (Scotland) Regs 1984, SI No. 565 (563) and the Public Charitable Collections (Scotland) Amendment Regs 1988, SI No. 1323 (S126). These include a requirement that collectors be at least fourteen years old for street collections and sixteen for collections house to house. In view of the potential danger to children of collecting at the doorstep, this difference may be understandable: but why not have a minimum age of sixteen in both cases? Exemption order holders will be required to appoint qualified accountants as auditors (see WP, para 10.13) in many instances this will already be required under s.21 of the new Act.

The White Paper anticipates that the regulations will differ from those applicable in Scotland in that (inter alia) the payment of collectors will not be prohibited: WP, para 10.14. There has never been a prohibition on paying house to house collectors; but in the metropolis, regulations made under the 1916 Act forbid such payments: see Street Collections (Metropolitan Police District) Regs 1979, SI 1979 No. 1230, reg 18(1). The change will finally break the association between street collecting and begging which goes back over a century: for an historical analysis, see the writer's book, *Charity Fundraising and the Public Interest*, 1990, chapter 2 and pp. 100-101.

A further substantive change in the law will also result. At present, regulations under the 1916 Act may be made by each local authority; where no regulations have been made, the 1916 Act does not apply: see CP, para 23. By contrast, Part III and the regulations made under it will apply to the whole of England and Wales.