

**TITLE OF REPORT: PROPOSED HOUSE TO HOUSE COLLECTIONS POLICY 2012-17**

**REPORT OF THE HEAD OF HOUSING AND PUBLIC PROTECTION**

**1. PURPOSE OF REPORT**

- 1.1 The purpose of this report is to summarise the responses to the public consultation exercise undertaken in respect of the Council's proposed House to House Collections Policy.
- 1.2 The Licensing and Appeals Committee, having considered this report, can make a recommendation to Cabinet in respect of a policy relating to the licensing of this activity.

**2. FORWARD PLAN**

- 2.1 This report does not contain a recommendation on a key decision and, therefore, it has not been referred to in the Forward Plan.

**3. BACKGROUND**

- 3.1 The House to House Collections Act 1939 requires all house to house collections for a charitable purpose to be licensed by local authorities. The legislation is not adoptive and applies automatically in each local authority area.
- 3.2 The Act defines a charitable purpose as *“any charitable, benevolent or philanthropic purpose, whether or not the purpose is charitable within the meaning of any rule of law”*.
- 3.3 A collection is defined within the Act as *“an appeal to the public, made by means of visits from house to house, to give, whether for consideration or not, money or other property”*.
- 3.4 In order to fall within the remit of this legislation, therefore, the collection must be one that is made wholly or partly for charitable purposes whether it be the collection of money, or any other items that may subsequently be sold for money, where either the money or the items are given for charitable purposes. This would encompass collections where the promoter is collecting items for subsequent sale, such as clothing, where the promoter guarantees to remit a set percentage, or minimum amount, to charitable purposes.
- 3.5 Additionally the collection must be made by going from door to door, not from standing in the street. The collection does not necessarily have to be made by knocking on the door and making personal contact, it can equally be made by leaving envelopes or collection bags for collection on a specified date.
- 3.6 Significantly, the Act also defines a house as *“including a place of business”*.

- 3.7 Given that the collection for charitable purposes also includes all business premises, it would also include collectors going from shop to shop, rose sellers travelling from pub to pub, and similar collections. On reflection, whilst the legislation refers to house to house collections, it would be better referred to as door to door collections.
- 3.8 The purpose of the legislation is to ensure that collectors are properly authorised, that the collections do not cause a nuisance to the public, that donations are receipted and stored in a secure way, and that the total proceeds are properly accounted for and forwarded to the appropriate charitable organisation.
- 3.9 The Secretary of State may issue an Exemption Certificate to the promoter of a collection where collections are to take place throughout the whole, or a substantial part, of England provided he/she is satisfied that the collection pursues a charitable purpose. The holder of an Exemption Certificate does not have to obtain a licence from the local authority to undertake collections, although historically promoters with Exemption Certificates notify the local authority of their planned collection dates out of courtesy.
- 3.10 Some larger charities such as Christian Aid and the RNLI have secured Exemption Certificates, however, most of the smaller charities operating locally do not have Exemption Certificates and, therefore, need to apply to the Council for a licence.
- 3.11 Unless persons who wish to undertake charitable collections hold an Exemption Certificate issued by the Secretary of State, it is an offence for any person to promote or make collections from door to door for charitable purposes without first obtaining a licence from the local authority.
- 3.12 Section 4 of the Act provides for the Secretary of State to prescribe regulations regulating the manner in which collections may be carried out, including the conduct of promoters and collectors. There is no opportunity for local authorities to prescribe additional regulations or attach licence conditions.
- 3.13 The Secretary of State published the House to House Collections Regulations 1947, subsequently amended by the House to House Collections Regulations 1963, which took effect from 29<sup>th</sup> December 1947. These regulations, included as Appendix A to the Policy, apply to all licences issued by the Council under the House to House Collection Act 1939.
- 3.14 There is no right of appeal through the courts against a decision to refuse or revoke an application, however, there is a right of appeal to the Secretary of State whose decision is final. Additionally, any decision must be reasonable as any decision could also be subject to a complaint to the Local Government Ombudsman or through a judicial review.

#### **4. APPROACH TO THE HOUSE TO HOUSE COLLECTION POLICY**

- 4.1 The development of the House to House Collections Policy has been based upon a consultation process undertaken by the Licensing and Enforcement Team, with consideration to the existing legislative requirements and current case law.
- 4.2 The consultation process was undertaken between Monday 7<sup>th</sup> June 2010 and Monday 30<sup>th</sup> August 2010 inclusive. A policy consultation page was

created on the Council's website including the proposed policy and an explanation of the process for making a representation.

4.3 A letter advising of the consultation process was sent to each of the following consultees:

- (i) All existing house to house collection licence holders;
- (ii) Hertfordshire Constabulary;
- (iii) NHDC Councillors (via Members Information Service);
- (iv) NHDC Legal Services;
- (v) All existing licence holders as defined under the Licensing Act 2003;
- (vi) All regular house to house collection licence holders;
- (vii) Neighbouring Authorities in Hertfordshire;
- (viii) Responsible Authorities as defined under the Licensing Act 2003;
- (ix) Hertfordshire Highways; and
- (x) Town Centre Managers

4.4 It was felt that in general terms the existing procedures appeared to be working well, therefore, no significant changes were proposed in respect of policy content.

4.5 Historically, house to house collections have been administered largely based on convention and the prescribed regulations rather than under the control of a formally adopted policy.

4.6 Whilst the Council does not have the opportunity to prescribe regulations or attach licence conditions, clarification needs to be given as to how the Council will determine whether or not it believes a proposed collection is charitable and on what grounds an application may be refused.

4.7 The proposed policy reflects current practice and the prescribed regulations, however, gives further clarification on how the Council will administer applications.

## **5. LEGAL IMPLICATIONS**

5.1 The Licensing and Appeal Committee's terms of reference include 'to consider all licensing matters with the exception of the statements of licensing policy under the Licensing Act 2003 and the Gambling Act 2005 and those matters delegated to the Licensing Sub-Committee and the Strategic Director'. The Licensing and Appeals Committee will therefore consider the draft policy and decide whether to make a recommendation to Cabinet as to its implementation.

5.2 Cabinet's terms of reference include 'to prepare and agree to implement policies and strategies other than those reserved to Council'.

5.3 The other legal implications, such as the relevant legislation, are set out within the body of the report.

## **6. FINANCIAL AND RISK IMPLICATIONS**

6.1 The proposed policy formalises existing informal arrangements, therefore, will not place any new financial resource implications on the Council.

6.2 As the refusal to grant, or revocation of, licences has a right of appeal to the Secretary of State it is essential that the Council exercises its discretion

reasonably and consistently. The provision of a robust Policy will help mitigate the risk of a successful challenge to the Secretary of State or on judicial review

- 6.3 House to house collections and its associated licensing/enforcement activity is not considered to represent a significant risk to the Council and, therefore, there is no corresponding entry on the Council's Risk Register.

## **7. HUMAN RESOURCE AND EQUALITY IMPLICATIONS**

- 7.1 The processing of any additional licences arising from this Policy can be incorporated within the existing staffing resource. The number of additional licences required is likely to be minimal as the policy merely formalises existing arrangements.

- 7.2 The Council incorporates the statutory equalities duties that apply to all its activities into policies and services as appropriate, as set out in the Council's Corporate Equality Strategy. The Council also recognises that in our society, groups and individuals continue to be unfairly discriminated against and acknowledges its responsibilities to actively promote good community relations, equality of opportunity and combat discrimination in all its forms.

## **8. CONSULTATION WITH EXTERNAL AND INTERNAL STAKEHOLDERS**

- 8.1 A full list of consultees is contained in paragraph 4.3 of this report.
- 8.2 The original House to House Collections Policy, as used for the consultation, is available on the Council's website. A hard copy can be forwarded on request.
- 8.3 A schedule of comments received in response to the public consultation and the action taken in respect of these comments is attached as **Appendix A** of this report.
- 8.4 Given that the proposed policy is mainly formalising existing practices, comments during the consultation were understandably minimal.
- 8.5 The proposed House to House Collections Policy is attached as **Appendix B** of this report.

## **9. RECOMMENDATIONS**

- 9.1 That the proposed House to House Collections Policy, as attached at **Appendix B** to the report, incorporating the results of the public consultation exercise, be supported by the Licensing and Appeals Committee.
- 9.2 That the Licensing and Appeals Committee recommend to Cabinet the formal adoption of the House to House Collections Policy as contained within **Appendix B**.

## **10. REASONS FOR RECOMMENDATIONS**

- 10.1 Whilst the regulations governing house to house collections are prescribed and cannot be amended, other aspects of the legislation allow for local discretion, for example, the decision as to whether a proposed organisation meets the charitable definition.

10.2 A clear and transparent policy in respect of the Council's approach to this licensing function would be of benefit to charitable organisations, collectors and the public, as well as ensuring consistency of approach by officers.

## **11. ALTERNATIVE OPTIONS CONSIDERED**

11.1 The regulation of house to house collections could continue without a formal policy, based on the historical approach of the Council.

11.2 That approach would not offer the public or collectors clear and transparent guidance as to the Council's approach to collection licensing and could lead to inconsistency in decision making, potentially leaving the Council more at risk from challenge.

## **12. APPENDICES**

12.1 Appendix A Schedule of comments received during the consultation, including recommendations

12.2 Appendix B Proposed House to House Collections Policy

## **13. CONTACT OFFICERS**

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## **14. BACKGROUND PAPERS**

14.1 House to House Collections Act 1939

14.2 House to House Collections Regulations 1947