

CHARITIES ACT 1993

The Charities (Failed Appeals) Regulations 2008

Made 12 March 2008
Coming into force 18 March 2008

In exercise of the powers conferred on it by sections 14(8) and (9) and 14A(9) of the Charities Act 1993 the Charity Commission for England and Wales makes the following Regulations:

Part I - General Provisions

1. These regulations may be cited as the Charities (Failed Appeals) Regulations 2008 and come into force on 18 March 2008.

2. In these regulations:

"the Act" means the Charities Act 1993;

"advertisement" means an advertisement published in pursuance of section 14(1)(a)(i) of the Act;

"appeal" means an invitation to the public or a section of the public whether in writing, by means of television or radio or otherwise;

"solicitation" means a solicitation as defined by section 14A(8)(a) of the Act that is within section 14A(2) of the Act;

"property" and "donor" have the same meaning as in section 14(10) of the Act;

"trustees" means the trustees holding the property;

"relevant declaration" has the same meaning as in section 14A(3) of the Act;

"written record" may include information stored electronically;

"in writing" may include electronic forms of written communication;

Part II – Application cy-près of gifts of donors unknown or disclaiming: Regulations under s.14 of the Charities Act 1993

3. Advertisements shall be in the form specified in Schedule 1 to these Regulations or in a form equivalent to that form in any other language required or permitted by paragraph 4 of these Regulations.

4. Advertisements shall be published;

(a) in English in every case; and

(b) where the appeal was published in another language, in that language;

and may, in addition, be published in Welsh in any case where the appeal was not made in Welsh.

5. Any advertisement published in pursuance of section 14(1)(a)(i) of the Act shall be published in the manner specified in Schedule 2 to these Regulations.
6. Any inquiry made in pursuance of section 14(1)(a)(i) of the Act shall:
 - (a) be made in writing;
 - (b) be sent by post to the address of each donor recorded in the records of the trustees of the property; and
 - (c) contain at least the information specified in Schedule 3 to these Regulations.
7. The period prescribed for the purposes of section 14(1)(a)(ii) of the Act shall be three months.
8. Any disclaimer executed for the purposes of section 14(1)(b) of the Act shall either:
 - (a) be executed in English in the form specified in Schedule 4 to these Regulations; or
 - (b) be executed in Welsh in the form equivalent in that language to the form specified in Schedule 4 to these Regulations.

**Part III – Application cy-près of gifts made in response to certain solicitations:
Regulations under s.14A of the Charities Act 1993**

9. The trustees must maintain a written record of every relevant declaration made by a donor giving property for specific charitable purposes in response to a solicitation;
10. The trustees must update the written record to include any change of address notified to the trustees by or on behalf of a donor who has completed a relevant declaration.
11. In the event of the failure of the specific charitable purposes for which property subject to a relevant declaration was given:
 - (1) the trustees must send written notification to the donor at the address in the charity's records:
 - (a) stating the nature or value of the property (as applicable) and the specific charitable purpose for which it was given;
 - (b) informing the donor that the specific charitable purpose has failed;
 - (c) enquiring whether, in accordance with the declaration which he made, the donor wishes to request the return of the property (or a sum equal to its value);
 - (d) advising the donor that if he wishes to exercise his right to request the return of the property, he must do so within the period specified in paragraph 13 of these regulations; and

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- (e) advising the donor that if he does not reclaim the property, the Charity Commission may make a Scheme to apply it for other similar charitable purposes.
 - (2) the trustees must return to each donor who so requests under section 14A(5) of the Act, the property (or a sum equal to its value) to the address in the charity's records or in such other manner or by such other means as the donor requests and the trustees agree.
12. The trustees must retain the written record of each relevant declaration for at least six years from the date:
- (1) the property was applied for the specific charitable purposes for which it was given; or
 - (2) the property was returned to the donor in accordance with s.14A(5) of the Act; or
 - (3) the Commission or the court made a scheme allowing the property to be applied cy-près.
13. The prescribed period for the purposes of section 14A(5)(c) and 14A(6)(b) of the Act is three calendar months from the date on which the trustees send written notification to the donor as prescribed by these Regulations.
14. A written record for the purposes of these regulations must contain such information as the trustees consider sufficient to enable them to comply with section 14A(5) of the Act, and in particular:
- (a) to identify the property to which a relevant declaration applies;
 - (b) to identify the specific charitable purpose for which the property was given;
 - (c) to identify and contact the donor.

SCHEDULE 1

Form of advertisement prescribed for the purposes of section 14(1)(a)(i) of the Charities Act 1960

ADVERTISEMENT

Name of charity (if applicable):

Registered charity number (if applicable):

Purpose for which money or other property was given:

NOTICE is given that money and other property given for this purpose can not be used for that purpose because [state reasons].

If you gave money or other property for that purpose you are entitled to claim it back. If you wish to do so you must tell [insert name] of [insert address] within 3 months of [specify date: see note below]. If you wish the money or other property to go to a similar charitable purpose and to disclaim your right to the return of the money or other property, you must ask the person named above for a form of disclaimer.

If you do not either make a claim within the three months or sign a disclaimer, the Charity Commission may make a Scheme applying the property to other charitable purposes. You will still be able to claim the return of your money or other property (less expenses), but **only if you do so within 6 months from the date of any Scheme made by the Commissioners.**

Date of this notice: [specify date: see note below]

[Note: **This Note does not form part of the prescribed advertisement** If this advertisement is to be published in a newspaper or other periodical, the words "the date of this publication" should be inserted in paragraphs 2 and 4 above.

If this advertisement is to be published on a public notice board, the date inserted here should be the date on which the advertisement was fixed to the public notice board.]

SCHEDULE

Manner of Act

1. Every ad is:

(a) written

(b) sold or

2. Where wholly or in London, a published

SCHEDULE 2

Manner of publishing advertisements in pursuance of section 14(1)(a)(i) of the Act

1. Every advertisement must be published in a newspaper or other periodical which is:

(a) written in the same language as the advertisement; and

(b) sold or distributed throughout the area in which the appeal was made.

2. Where the purposes of the appeal were directed towards the benefit of an area wholly or mainly within a local authority district or a London Borough, or the City of London, a copy of every advertisement published under paragraph 1 must also be published by fixing copies of it to two public notice boards in the relevant area.

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SCHEDULE 3

Information to be contained in inquiries to be made in pursuance of section 14(1)(a)(i) of the Act

1. The name and address of the charity to which the property was given by the donor;
2. A description of the specific charitable purpose for which the property was given by the donor;
3. The reasons why the purpose has failed;
4. A description of the property (including the amount of any money) given for that purpose by the donor;
5. A statement of the donor's right to have the property returned;
6. A statement that the donor may disclaim the right to have the property described in paragraph 4 above returned by executing a disclaimer in the prescribed form;
7. A statement that, where the donor disclaims his right in respect of such property, the property may be applied for other charitable purposes similar to those for which it was given by a Scheme established by the Commissioners or by the court; and
8. A statement that, where the donor has not replied in writing to the inquiry within three months from the date of service of the inquiry, he will be treated for the purposes of section 14(1)(a) as a donor who cannot be identified or found, but that he will be able to claim the property, less expenses, within six months from the date of any Scheme made by the Commissioners or the court.

SCHEDULE

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Signed:

Name in c

Address:

Date:

#Signed:

Name in

Address:

Date:

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SCHEDULE 4

of section

I HEREBY DISCLAIM my right to the return of *the sum of £...../ the property consisting of (insert description of property)** given by me for (insert name of charity to which, or descriptions of purposes for which, the money or property was given).

by the

Signed:

was given by

Name in capitals:

Address:

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Date:

#Signed:

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Name in capitals

Address:

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Date:

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This paragraph may be repeated if further signatures are required.

EXPLANATORY NOTE

(This Note is not part of the Regulations)

Donors who give property for a specific charitable purpose which then cannot be carried out may be entitled to the return of that property. This issue is most likely to arise in the context of a charitable fund-raising appeal for a specific purpose.

Sections 14 and 14A of the Charities Act 1993 (as amended by the Charities Act 2006) enable the Commission to deal with property given for specific charitable purposes that cannot be carried out and which belongs to donors who cannot be traced or do not reclaim their donation. They also empower the Commission to make regulations prescribing the steps that charities must take to contact donors.

Section 14 provides that the property may, in some circumstances, be applied to other similar charitable purposes by Scheme (a legal document made by the Commission or the Courts). These circumstances are:

(a) where

- (i) the donor cannot be found or identified after the charity has published and made the prescribed advertisements and inquiries; and
- (ii) the prescribed period from the date of the advertisements has expired; or

(b) where the donor has executed the prescribed form of disclaimer of his right to have the property returned.

Part II of these Regulations prescribes the form of advertisement the charity must use, the method of publishing them, the nature of the inquiries to be made, the period from the date of the advertisements within which claims must be made, and the form of disclaimer to be used.

Section 14A can help charities avoid the need to advertise and make inquiries in order to trace or contact donors who may or may not want their donation returned:

- Donors can be advised at the time they make their donation that if the specific purposes of the appeal fail, their gift may be applicable for similar charitable purposes (by Scheme), unless the donor makes a "relevant declaration";
- A "relevant declaration" must be in writing, and states that if the specific charitable purpose cannot be carried out, the donor would like to be given the opportunity to request the return of their donation;

If the charity conducts an appeal in this way and the specific charitable purposes cannot be carried out, Section 14A provides that the trustees only need to contact those donors who have made a "relevant declaration".

Part III of these Regulations prescribes the steps charities must take to contact and inform donors who have made a "relevant declaration", and the length of time they must allow these donors to exercise their right to request the return of their donation.

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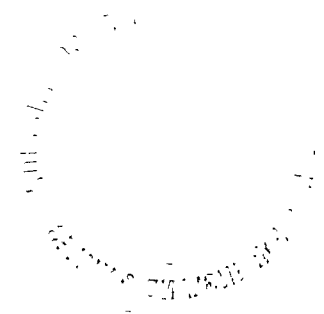
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Charities can, of course, reduce the likelihood of an appeal failing, and avoid the need to use Section 14 or Section 14A by including in the wording of an appeal for specific charitable purposes a provision that if the appeal either fails or exceeds its target, any funds that cannot be used for the specific purposes will be applied for a secondary (usually wider) purpose, for example:

"We are raising funds to buy a scanner for the hospital. If for any reason we can't buy the scanner, or there are surplus funds following the purchase of the scanner, we will use the money to buy other equipment that the hospital could not otherwise have."

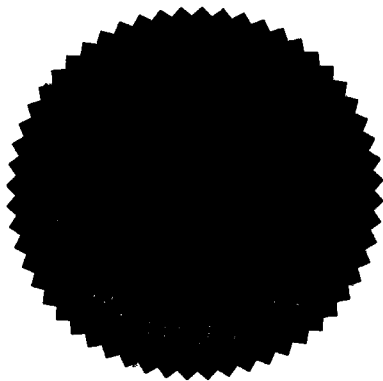
Alternatively, charities can make the appeal for the general purposes of the charity, for example:

"Here is an example of one of our projects. To support this and other projects that we run, please give a donation to our charity."



The seal of the Commission was affixed hereto by order of the Commission

Dated the 12 March 2008



A. Hind

AUTHORISED OFFICER

Sealing No: 56/2008