

CHARITIES

THE CHARITIES (NORTHERN IRELAND) ACT 2008

The Charity (Failed Appeals and Disclaimers) Regulations (Northern Ireland) 2013

Made - - - - 25 June 2013

Coming into operation 1 July 2013

The Charity Commission for Northern Ireland makes the following Regulations in exercise of the powers conferred on it by sections 27(8) and 28(9) of the Charities Act (Northern Ireland) 2008.

PART 1

Introduction

Citation and commencement

1. These Regulations may be cited as the Charity (Failed Appeals and Disclaimers) Regulations (Northern Ireland) 2013 and shall come into operation on 1 July 2013.

Interpretation

2. In these Regulations, unless the context requires otherwise—

“the Act” means the Charities Act (Northern Ireland) 2008;

“advertisement” means an advertisement published in pursuance of section 27(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;

“the Commission” means the Charity Commission for Northern Ireland;

“donor” has the same meaning as in section 27(9) of the Act;

“property” has the same meaning as in section 27(9) of the Act;

“relevant declaration” has the same meaning as in section 28(3) of the Act;

“solicitation” means a solicitation as defined by section 28(8)(a) of the Act that is within section 28(2) of the Act;

“trustees” means the trustees holding or responsible at law for the property;

“in writing” may include electronic forms of written communication;

“written record” may include information stored electronically.

PART 2

Application cy-près of gifts of donors unknown or disclaiming

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 regulation 4.

4. Advertisements shall be published;

(a) in English in every case; and

(b) where any appeal for donations was published in another language, in that language.

5. Any advertisement published in pursuance of section 27(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 27(1)(a)(i) of the Act shall:

(a) be made in writing;

(b) be sent by post, or by electronic means, to the last known 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 27(1)(a)(ii) of the Act shall be three months.

8. Any disclaimer executed for the purposes of section 27(1)(b) of the Act shall be executed in the form specified in Schedule 4 to these Regulations.

PART 3

Application cy-près of gifts made in response to certain solicitations

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, the prescribed steps for the purposes of section 28(5) of the Act are that the trustees must:

(a) send written notification to the donor, by post or by electronic means, to the last known address in the charity's records:

(i) stating the nature or value of the property (as applicable) and the specific charitable purpose for which it was given,

- (ii) informing the donor that the specific charitable purpose has failed,
 - (iii) enquiring whether, in accordance with the declaration which he or she made, the donor wishes to request the return of the property (or a sum equal to its value),
 - (iv) advising the donor that the right to request the return of the property must be exercised within the period specified in regulation 13,
 - (v) advising the donor that if the property is not reclaimed, the Commission may make a scheme to apply it for other similar charitable purposes; and
- (b) return to each donor who so requests within the period prescribed by regulation 13, the property (or a sum equal to its value) to the last known 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:

- (a) the property was applied for the specific charitable purposes for which it was given; or
- (b) the property was returned to the donor in accordance with section 28(5)(c) of the Act; or
- (c) 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 28(5)(c) and 28(6)(b) of the Act is three months from the date of the trustees' 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 28(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.

Sealed with the official seal of the Charity Commission for Northern Ireland on 25 June 2013

Frances McCandless

Chief Executive

Schedule 1

Form of advertisement prescribed for the purposes of section 27(1)(a)(i) of the Charities Act (Northern Ireland) 2008

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 cannot be used for that purpose because [*state reasons*]

If you have given money or other property for the purpose cited above, you are entitled to claim it back. If you wish to do so, you must tell [*insert name*] of [*insert address*] within three 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 for Northern Ireland or the Court may make a scheme applying the property to other similar charitable purposes, where possible. You will still be able to claim the return of your money or other property (less expenses), but only if you do so within six months from the date of any scheme made by the Commission.

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

[The following notes do not form part of the prescribed advertisement].

[Note: If this advertisement is to be published in a newspaper or other periodical, the words "the date of this publication" should be inserted where the date is to be specified.

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

If the advertisement is to be published electronically, the date to be inserted should be the date on which the electronic notice was published].

Schedule 2

Manner of publishing advertisements in pursuance of section 27(1)(a)(i) of the Charities Act (Northern Ireland) 2008

1. Every advertisement must be published in one of, or a combination of, the following formats:
 - (a) a newspaper or other periodical;
 - (b) by electronic means.
2. An advertisement which is published in a newspaper or other periodical must be:
 - (a) written in the same language as the newspaper or periodical; and
 - (b) sold, or distributed, throughout the area in which the appeal was made.
3. Where the purposes of the appeal were directed towards the benefit of a particular area, a copy of every advertisement published in a newspaper or other periodical must also be published by fixing copies of it to two public notice boards in the particular area.

Schedule 3

Information to be contained in inquiries to be made in pursuance of section 27(1)(a)(i) of the Charities Act (Northern Ireland) 2008

The following information shall be contained in an inquiry made under section 27(1)(a) of the Act:

- (a) the name and address of the charity to which the property was given by the donor;
- (b) a description of the specific charitable purpose for which the property was given by the donor;
- (c) the reasons why the purpose has failed;
- (d) a description of the property (including the amount of any money) given for that purpose by the donor;
- (e) a statement of the donor's right to have the property returned;
- (f) a statement that the donor may disclaim the right to have the property described in (d) above returned by executing a disclaimer in the prescribed form;
- (g) a statement that, where the donor disclaims his or her 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 Commission or by the Court; and
- (h) a statement that, where the donor has not replied in writing to the inquiry within three months from the date of making the inquiry, he or she will be treated for the purposes of section 27(1)(a) as a donor who cannot be identified or found, but that

he or she will be able to claim the property, less expenses, within six months from the date of any scheme made by the Commission or the Court.

Schedule 4

**Form of disclaimer of a donor's right to have property returned,
under section 27(1)(b) of the Charities Act (Northern Ireland)
2008**

I HEREBY DISCLAIM my right to the return of [*insert description of property, such as "the sum of" or "property consisting of"*] given by me for [*insert name of charity to which, or a description of the purposes for which, the money or property was given*].

Name (in capitals):

Address:

Date:

Signature:

EXPLANATORY NOTE

(This note is not part of the Rules)

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 27 and 28 of the Charities Act (Northern Ireland) 2008 ("the Act") enable the Charity Commission for Northern Ireland ("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 donations. They also empower the Commission to make regulations prescribing the steps that charities must take to contact donors.

Section 27 of the Act provides that the property may, in some circumstances, be applied to other similar charitable purposes by a 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 or her right to have the property returned.

Part 2 of these regulations prescribes the form of advertisement the charity must use, the method of publishing the advertisement, 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 28 of the Act 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 a scheme made by the Commission or the Courts, unless the donor makes a relevant declaration.

A relevant declaration must be in writing, and state that if the specific charitable purpose cannot be carried out, the donors would like to be given the opportunity to request the return of their donations.

If the charity conducts an appeal in this way, and the specific charitable purposes cannot be carried out, section 28 provides that the trustees only need to contact those donors who have made a relevant declaration.

Part 3 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.

Charities can reduce the likelihood of an appeal failing, and avoid the need to use section 27 or section 28, 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 of the appeal, will be applied for a secondary purpose. An example of such a provision is:

"We are raising funds to buy a scanner for the hospital. If for any reason we cannot 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."