

34. Sale of Goods in Village Halls

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Introduction

Charities are not generally permitted to trade on a regular basis as this would infringe their charitable status. Consequently they are largely unaffected by the statutory provisions which govern shops and other 'traders'. Bazaars, sales of work, fetes for charitable or other purposes, or any fair which is lawfully held and from which no private profit is derived, are not bound by the 1950 Shops Act Legislation concerning closing hours. Nevertheless there are restrictions on Sunday Trading and the types of goods which can be sold on this day. Advice is available from your local district council or unitary authority.

1. Regular Trading/Community Shops

If it is desirable for the community to have a facility available in which permanent trading e.g. village shop, post office, etcetera takes place then the village hall could provide the answer. However, great care needs to be taken to ensure that the charity does not commit a breach of trust. Any space that is to be used by such a facility would have to be surplus to requirements and needs of the charity. Then, and only then, could it be used for trading activities.

The village hall management committee should not itself become directly responsible for **any trading** on a permanent and commercial basis. Where a shop, post office, or a social club is required it should be organised by either a separate trading arm of the charity or an independent body. This provides protection for the charity's assets and ensures the charity stays within the bounds of charity law as well as keeping on the right side of the Inland Revenue.

Any village hall considering taking such a step should, in addition, at the very earliest stages inform the Charity Commission of their intention and seek their advice and guidance on the matter especially if it is the committee's intention to grant a lease or a licence. The committee should however, firstly check that their governing instrument (and lease, if they have one,) permits such a course of action and that there are no covenants on the land preventing such activity from taking place. If permanent trading is permitted in a village hall, or similar charitable community building, it could require a change in the planning permission for that part of the property. It may also result in the rating authority wishing to withhold the 80% mandatory rate relief for that part of the premises. It is important to remember that when commercial use of the property is taking place that a commercial rent must be charged. Charity law requires that charitable funds are not used to subsidise commercial activities.

2. Second Hand Toys and Electrical Goods

The sale of second hand toys and electrical equipment are subject to regulatory controls, which are designed to bring British practices into line with the rest of Europe. The regulations apply to a person(s) who supplies the product 'in the course of a business' and may therefore apply to a village hall or community centre.

There is no clear cut legal definition of the term 'in the course of a business' thus the decision as to whether a village hall or other organisation is trading will depend on a variety of factors such as the frequency of any sales and whether there is any commercial intent. A charity shop which is open regularly, employs staff and sells items for profit will be considered to be trading, whereas a one-off sale or bazaar would not.

(i) Toys

The sale of toys is governed by the Toy (Safety) Regulations 1995, which came into force on 1 January 1990. From this date, toys which are sold in the course of a business must comply with the new safety standards or bear the CE mark. Whilst secondhand toys do not have to bear the CE mark and name and address of the manufacturer/importer it is advisable that they do at least carry the appropriate CE mark.

The toys must also bear the appropriate instructions warnings, etc as applied by the manufacturer/importer. **Note:** this information may not necessarily appear on the toy, it may be on the packaging. This must also be supplied with the toy.

A toy is defined as 'any product or material designed or clearly intended for use in play by children under 14 years of age'. There are certain items which are **not** regarded as toys for the purposes of these regulations and they are listed in Annex A of the DTi Toy Safety Booklet.

The following are some simple steps, as a retailer, that a management committee can take:

Soft toys

- check whether the eyes, nose, or other small parts are secure
- check that hair will not pull out, as this could be a choking hazard
- feel around the head and limbs for any spikes or sharp points
- check seams to ensure they cannot come apart. Access to stuffing could be a choking hazard

Cars/trains

- look for sharp edges especially at seams and joints
- look for spikes and sharp points

Rattles

- check that the rattle mechanism is not accessible to the child
- look for any parts which could become detached or make a sharp edge

Folding toys

- use a pencil to check whether fingers could be trapped, especially where the folding mechanism is spring loaded
- check that there is a safety stop or locking device and that it works properly

Toys intended to be pulled by a child

- check that cords do not have slip knots or fastenings likely to form slip knots
- cords for children under 36 months should be greater than 15mm thick

Electrical toys

These must not plug straight into the main power supply instead they should have a transformer. Better still, for younger children, only sell toys powered by batteries but ensure that the batteries are not accessible to the child.

Note: This is not an exhaustive list further details can be found in the DTi Toy Safety Booklet

Pedal Bicycles (Safety) Regulations 1984

The regulations apply to new bicycles whose saddle height is greater than, or equal to 635mm from the ground when fully raised and the tyres inflated. The regulations require that all such bicycles should meet the requirements of British Standard 6102

(ii) Electrical Equipment

The sale of electrical equipment is subject to statutory control including the Consumer Protection Legislation and the Low Voltage Electrical Equipment (Safety) Regulations 1989 which came into force on 1 June 1990. People who sell electrical equipment, new or second-hand, in the course of their business (whether or not their business is one of supplying electrical goods) will be bound by these regulations. It is important therefore, that charitable or voluntary organisations who might be deemed to be traders comply with the regulations. Even if a charity is not 'trading' the management committee should be aware of the legislation and it is advisable not to sell second-hand electrical goods unless they have first been tested by a competent person. Full details on testing can be obtained from your local Trading Standards Department, however some simple points are noted below:

- plugs should be 3 pin and have neutral and live pins sheathed. Plugs must also have an approval body 'stamp' and licence number
- whether or not the appliance has a plug attached, wiring instructions for the plug must be attached to the cable if it is the 3 core type, i.e 'Important: The wires in this mains lead are coloured in accordance with the following codes: Green and Yellow - Earth; Blue - neutral; Brown - live'
- all cable must be double-sheathed type
- all wiring must be correctly connected and no basic insulation must be exposed
- cord grips on appliances must be effective (a knot in the cable is **not** sufficient)
- access to live parts must not be accessible without the use of tools
- items should be marked with the rated voltage of 240v covering use in the UK

3. One-Day Sales

If a village hall is to be let for a one-day sale (an occasional letting of this kind, unless prohibited by the trust deed) will not infringe charitable status or jeopardise rate relief. Village hall management committees are advised to check with their local Trading Standards Departments to see if there is a local code of practice for such sales. If there is, then it should be incorporated into the Special Conditions of the village halls' hire agreement. If not, then ACRE's Model Hiring Agreement has suggested clauses that can be used instead. Copies are available from your local Rural Community Council or direct from ACRE.

Set out below are some areas of legislation that **all** village hall committees need to comply with:

(i) Trade Descriptions Act 1968

The door bills that are circulated **before** the sales usually contain a number of 'trade descriptions' e.g. ALL STOCK IS BRAND NEW - EVERYTHING SOLD IS UNDER GUARANTEE. To prevent breaching this Act care must be taken to ensure that descriptions are accurate and that this applies to any descriptions either verbally, or in writing, of goods during the sale. It is also suggested that a statement such as 'subject to availability' is included on any circulars if it cannot be guaranteed that all the advertised merchandise will be available to prospective customers.

(ii) Price Marking Order 1999

The Price Marking Order requires that where a person indicates that any goods are, or may be, for sale by retail s/he shall indicate in **writing**, the selling price of these goods. The price indication shall be unambiguous and **easily** identifiable by a prospective purchaser as referring to the goods in question and **clearly legible**. The indication of the selling price shall be marked on the goods or on a ticket or notice displayed on or in close proximity to the goods or grouped together with other prices on a list in close proximity to the goods. Where VAT is charged it should be included in the price of any goods. (e.g. one day sale traders who are VAT registered)

(iii) Business Names Act

A limited or public company partnership or a sole trader who uses a business name which is not his/her own surname with or without forenames or initials must comply with this Act by disclosing the owner's name and business address or address at which legal documents can be served legibly on all business letters, written orders for the supply of goods or services, invoices and receipts issued in the course of the business and written demands for payment of debt arising in the course of business. The Act also obliges you to display **prominently** those details so that they can be easily read on the premises where you carry on business or on to which customers or suppliers have access

iv) Mock Auctions 1961

This Act outlaws the promoting or conduction of a mock auction; it also creates an offence of 'to assist in the conduct of a Mock Auction'

To prevent committing an offence against the Act you should ensure that during the sale of goods by way of competitive bidding, whether by way of increasing or decreasing bids, you must not:

- lower the price below the highest bid for a lot or repay or credit to the bidder part of the price below the highest bid received for a lot or repay a credit to the bidder part of price offered for that lot
- restrict the right to bid for lots to persons who have bought or agreed to buy one or more articles
- give away or offer as gifts any articles

4. Car Boot Sales

These are very popular methods of raising money as they are easy to organise and not expensive. For many they are preferable to jumble sales. As with all fundraising, it is important that the management committee take note of all the relevant legislation. Most legislation applies to the vendors, so if the management committee restricts itself to providing a venue in return for charging sellers a fee, it is unlikely to be affected by legislation. A village hall management committee does however, have a duty of care to ensure that **all** the organisers are aware of **their** responsibilities.

When car boot sales were infrequent and very informal local authorities were not greatly concerned with their activities. However, the growth in the popularity and size in some instances, has led many local authorities to look again at car boot sales to ensure that legislation is complied with where relevant. The following regulations/legislation may therefore apply:

- (i) **Statutory or common law restrictions** - e.g. in areas where there is a Charter Market it may be prohibited to hold another market within 6.4 miles of the original market. This is to prevent undue competition for the market traders. However, where the car boot sale is an occasional event this may not be enforced.
- (ii) **Bye-laws** - many local authorities have local bye-laws regulating such sales or markets within their area. It is always advisable to check, before organising an event.
- (iii) **Planning legislation** - Article 4 of the General Development Order 1988 permits a market to be held on land for up to 14 days per annum without requiring planning permission. If it is to be held regularly, or on more than the 14 days, planning permission must be obtained. It is possible for a local authority to withdraw article 4 of the General Development order and this will mean that specific planning permission will be needed in any case.

The Local Government (Miscellaneous Provisions) Act 1982 enables local authorities to require the market operator and the site occupier to give not less than one month's notice of a forthcoming market. This is to give the local authority time to make any necessary provision to avoid disturbance. The notice must state:

- the full name and address of the person holding the temporary market
 - the date, including opening and closing times
 - the address of the site of the proposed temporary market
 - the full name and address of the occupier of the site (if different from bullet point 1 above)
- (iv) **Consumer Legislation** Most consumer protection legislation applies only to a trader i.e. a person who sells in the course of a business. It will not apply, therefore, to someone who is selling unwanted/outgrown items on a casual basis. Where the village hall management committee only provide the land in return for a pitch fee, they need not be concerned with this legislation, which, where relevant, will apply only to the stall holder. As a matter of good practice though, the management committee should be aware of the legislation and, where necessary, issue guidelines to the organisers.
 - (v) **The General Product Safety Regulations 1994** These apply to all second-hand goods not regulated by their own specific set of safety regulations and cover the safety of all consumer products supplied in the course of a trade or business. Basically nobody must supply any product other than a safe product, and a safe product is defined as any product, which when used in a reasonably foreseeable way, presents
 - no risk
 - or the minimum risk having regard to the products use, characteristics and foreseeable lifecycle

Examples of second-hand products which would be prohibited by these regulations would be glass topped tables not fitted with safety glass or pushchairs made to a now obsolete standard or in which the parking brake is ineffective.

A booklet about the General Product Safety Regulations is available from your local trading standards office.

It is not unusual to provide food and drink at a car boot sale and many local authorities do not permit it. However, if this **is** done the organiser must comply with the following where applicable:

- Food Hygiene (Amendments) Regulations 1990
- Food Safety Act 1990
- Registration of Premises Regulations 1991

If alcohol is to be provided, an application for an off-licence will need to be made to the licensing authority well in advance. Further details of any restrictions, or specific requirements, concerning one day sales or car boot sales within a defined area can be obtained from the local district council, unitary authority or Trading Standards Department.

Sources of Advice

- Rural Community Councils (see telephone directory)
- Local District Council or Unitary Authority (see telephone directory)
- Trading Standards Department (see telephone directory)
- DTi - 1 Victoria Street, London SW1H 0ET
Tel: 020 7222 0612 E-mail dti.enquiries@dti.gsi.gov.uk
Website - www.dti.gov.uk

Useful Publications

ACRE - Model Hiring Agreement
Consumer Protection Act Booklet
DTi Toy Safety Booklet

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