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SCOTTISH STATUTORY INSTRUMENTS

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**2009 No. 121**

**CHARITIES**

**The Charities and Benevolent  
Fundraising (Scotland) Regulations 2009**

<i>Made</i>	- - - -	<i>24th March 2009</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>25th March 2009</i>
<i>Coming into force</i>	- -	<i>1st July 2009</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 83 of the Charities and Trustee Investment (Scotland) Act 2005<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 83(1) of that Act the Scottish Ministers have consulted with such persons as they think fit.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Charities and Benevolent Fundraising (Scotland) Regulations 2009 and come into force on 1st July 2009.

(2) In these Regulations—

“the 2005 Act” means the Charities and Trustee Investment (Scotland) Act 2005;

“credit card” means a credit-token within the meaning of section 14 of the Consumer Credit Act 1974<sup>(2)</sup>; and

“debit card” means a card enabling payment to be debited against a person’s banking account, and which is not a credit card.

(3) A reference in these Regulations to anything done in writing or produced in written form includes a reference to an electronic communication, as defined in the Electronic Communications Act 2000<sup>(3)</sup>, which has been recorded and is consequently capable of being reproduced.

(4) In these Regulations, a reference to the making of a payment includes the making of a payment of whatever nature and by whatever means, including by credit or debit card.

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(1) 2005 asp 10.

(2) 1974 c. 39.

(3) 2000 c. 7 as amended by paragraph 158 of Schedule 17 to the Communications Act 2003 (c. 21).

### **Agreement between fundraisers and benevolent bodies**

2.—(1) For the purposes of section 81(1) of the 2005 Act, an agreement between a professional fundraiser or a commercial participator and a benevolent body must be in writing and signed by or on behalf of the professional fundraiser or commercial participator and the benevolent body.

(2) Such an agreement must include—

- (a) the name and address of each of the parties to the agreement;
- (b) the date on which the agreement was signed by or on behalf of each of those parties;
- (c) the period for which the agreement is to subsist;
- (d) any terms relating to the termination of the agreement prior to the date on which that period expires;
- (e) any terms relating to the variation of the agreement during that period;
- (f) a statement of the principal objectives of the agreement and the methods to be used in pursuit of those objectives;
- (g) if there is more than one benevolent body party to the agreement, provision as to the manner of determining the proportion in which each benevolent body is to benefit;
- (h) if the professional fundraiser or commercial participator is to be entitled to receive remuneration or expenses, provision as to the amount which they are entitled to receive and the manner of determining that amount; and
- (i) if the agreement is between a commercial participator and a benevolent body, provision as to the manner of determining, in respect of either or both of—
  - (i) the proportion of the consideration given for goods or services sold or supplied by the commercial participator, or of any other proceeds of a promotional venture undertaken by them, which is to be given to or applied for the benefit of the benevolent body;
  - (ii) the sums by way of donations by the commercial participator in connection with the sale or supply of any goods or services sold or supplied by the commercial participator which are to be so given or applied.

### **Information to be provided by fundraisers**

3.—(1) A professional fundraiser soliciting, a commercial participator making representations or a benevolent fundraiser benevolent fundraising, must accompany the solicitation, representation or benevolent fundraising with a statement in writing indicating—

- (a) where it is for the benefit of a benevolent body—
  - (i) the name of the benevolent body concerned;
  - (ii) if there is more than one body, the proportions in which each is to benefit; and
  - (iii) whether the professional fundraiser, commercial participator or benevolent fundraiser is to receive remuneration;
- (b) where it is for charitable, benevolent or philanthropic purposes, but not for the benefit of a benevolent body—
  - (i) that it is for those purposes and not for the benefit of a benevolent body;
  - (ii) the manner of determining how the fundraising proceeds are to be distributed or applied; and
  - (iii) whether the professional fundraiser, commercial participator or benevolent fundraiser is to receive remuneration.

(2) Where the solicitation, representation or benevolent fundraising is made orally, the information required by paragraph (1)(a) or (b) may be provided orally.

(3) Paragraph (1) does not apply to a benevolent fundraiser who is a volunteer.

(4) Paragraph (1)(a)(iii) and (b)(iii) does not apply to a benevolent fundraiser who is an employee or agent of a benevolent body or a company connected with a benevolent body, if the benevolent fundraiser is fundraising on behalf of that body in writing.

(5) If a solicitation by a professional fundraiser or a representation by a commercial participator is made in the course of a radio or television programme, the professional fundraiser or commercial participator must also state that any person making a payment of £100 or more by credit or debit card in response to the solicitation or representation has a right to have that payment refunded, provided they exercise that right within 7 days of the date of solicitation or representation.

(6) If a solicitation by a professional fundraiser or representation by a commercial participator is made orally but is not made—

(a) by speaking directly to the particular person to whom it is addressed and in the presence of that person; or

(b) in the course of a radio or television programme,

the professional fundraiser or commercial participator must also state that any person making a payment of £100 or more or entering into an agreement with the professional fundraiser or commercial participator where they agree to make a payment of £100 or more at a later date, in response to the solicitation or representation, has a right to have that payment refunded, or to cancel that agreement, provided they exercise that right within 7 days of the date of solicitation or representation.

#### **Further information regarding remuneration**

4.—(1) A professional fundraiser soliciting money or promises of money—

(a) for the benefit of a benevolent body; or

(b) for charitable, benevolent or philanthropic purposes,

must include in the statement referred to in regulation 3(1) an indication of the manner of determining the professional fundraiser's remuneration and the notifiable amount of the remuneration.

(2) Where the solicitation is made—

(a) orally in person, the professional fundraiser must inform the person making the payment that they have this information available in writing with them should the person wish to see it and immediately provide the information if requested; or

(b) orally but not in person, the professional fundraiser must inform the person making the payment that this information is available in writing and send that person a copy as soon as reasonably possible if requested.

(3) A commercial participator making representations in relation to benevolent contributions which are to be given to or applied—

(a) for the benefit of a benevolent body; or

(b) for charitable, benevolent or philanthropic purposes,

must include in the statement referred to in regulation 3(1) an indication of the method by which the commercial participator's remuneration is to be determined and the notifiable amount of whichever of the following sums is applicable in the circumstances—

(i) the sum representing so much of the consideration given for the goods or services sold or supplied by the commercial participator;

- (ii) the sum representing so much of any other proceeds of a promotional venture undertaken by the commercial participator; or
  - (iii) the sum of the donations by the commercial participator in connection with the sale or supply of such goods or services.
- (4) Where the representation is made—
- (a) orally in person, the commercial participator must inform the person making the payment that they have this information available in writing with them should the person wish to see it and immediately provide the information if requested; or
  - (b) orally but not in person, the commercial participator must inform the person making the payment that this information is available in writing and send that person a copy as soon as reasonably possible, if requested.
- (5) In paragraphs (1) and (3) the “notifiable amount” of any remuneration or other sum is the actual amount of the remuneration or sum if known when the statement is made, or in any other case, the estimated amount of the remuneration or sum.

#### **Rights to a refund or to cancel agreements**

5.—(1) A person making a payment of £100 or more by credit or debit card in response to a solicitation by a professional fundraiser or a representation made by a commercial participator in the course of a radio or television programme, has a right to have that payment refunded.

(2) A person making a payment, or entering into an agreement to make a payment at a later date, of £100 or more in response to a solicitation by a professional fundraiser or a representation by a commercial participator which is made orally but which is not made—

- (a) by speaking directly to the particular person to whom it is addressed and in the presence of that person; or
- (b) in the course of a radio or television programme,

has a right to have that payment refunded or to cancel that agreement.

(3) A person wishing to exercise their right to a refund or to cancel an agreement must serve a notice in writing on the professional fundraiser or commercial participator within 7 days of the date of the solicitation or representation requesting a refund or cancelling the agreement.

(4) A notice referred to in paragraph (3) cancelling an agreement operates, from the time it is served, to cancel the agreement and any liability of any person other than the person making the payment in connection with the making of any such payment.

(5) A professional fundraiser or commercial participator served with a notice requesting a refund referred to in paragraph (3) must refund the payment as soon as reasonably possible.

(6) The right of any person to have a payment refunded under this regulation—

- (a) is a right to have refunded the amount of the payment less any administrative expenses reasonably incurred by the professional fundraiser or commercial participator in connection with the making of the refund or dealing with the notice of cancellation served by that person; and
- (b) is, in the case of a payment for goods already received, conditional upon restitution being made by the person of the goods in question.

(7) This regulation does not apply in relation to any payment made or to be made in respect of services which have already been supplied by a professional fundraiser or commercial participator.

### **Transmission of money or promises of money to benevolent bodies**

6. A professional fundraiser or commercial participator holding any money, promises of money or other benevolent contributions acquired, or otherwise falling to be given to or applied by the professional fundraiser or commercial participator for the benefit of a benevolent body must, as soon as reasonably practicable after its receipt and in any event not later than 28 days after that receipt—

- (a) transfer it to the persons concerned in the management or control of the benevolent body or a company connected with the body; or
- (b) pay any money into an account held by a bank or building society in the name of or on behalf of the benevolent body or a company connected with the body, which is under the control of the persons referred to in paragraph (a).

### **Availability of books, documents or other records**

7.—(1) A professional fundraiser or commercial participator who is a party to an agreement made for the purposes of section 81(1) of the 2005 Act must, on request and at all reasonable times, make available to any benevolent body which is party to that agreement any book, document or other record (however kept) which relates to that benevolent body and which is kept for the purposes of the agreement.

(2) In the case of any record which is kept otherwise than in legible form, the reference in paragraph (1) to making that record available is a reference to making a copy of it available in legible form.

### **Offences and penalties**

8.—(1) A person who fails, without reasonable excuse, to comply with the regulations referred to in paragraph (2) commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale<sup>(4)</sup>.

(2) The regulations referred to in paragraph (1) are—

- (a) regulation 2(1);
- (b) regulation 3(1), (5) and (6);
- (c) regulation 4(1) to (4);
- (d) regulation 5(5);
- (e) regulation 6; or
- (f) regulation 7(1).

St Andrew's House, Edinburgh  
24th March 2009

*FERGUS EWING*  
Authorised to sign by the Scottish Ministers

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(4) Section 101 (“offences by bodies corporate etc.”) of the 2005 Act is relevant.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations make provision for the regulation of fundraising by professional fundraisers, commercial participators and benevolent fundraisers.

Regulation 2 sets out the requirements as to the form and content of the agreements required by section 81(1) of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”), between professional fundraisers or commercial participators and the benevolent bodies they fundraise for.

Regulation 3(1) provides that professional fundraisers, commercial participators and benevolent fundraisers must accompany their fundraising with a written statement including information on the benevolent body or on the charitable, benevolent or philanthropic purposes which they are fundraising for, how the fundraising proceeds are to be distributed and whether or not the fundraiser is to be remunerated. This information may be provided orally if the fundraising is in person. Benevolent fundraisers who are volunteers are not required to provide this information when fundraising.

Regulation 3(4) provides that benevolent fundraisers who are employees of benevolent bodies or companies connected with benevolent bodies are not required to state whether or not they receive remuneration, if they are fundraising on behalf of benevolent bodies in writing.

Regulation 3(5) provides that if a professional fundraiser or commercial participator fundraises on radio or on television, they must also state that any person making a payment of £100 or more by credit or debit card, has a right to have that payment refunded, provided they exercise that right within 7 days of the fundraising. Regulation 3(6) provides that if a professional fundraiser or commercial participator fundraises orally but not by speaking directly to the person to whom it is addressed and in that person’s presence or on radio or television (for example by telephone), they must also state that any person making a payment of £100, or entering an agreement to make a payment of £100 or more has a right to have that payment refunded or to cancel that agreement, provided they exercise that right within 7 days of the fundraising.

Regulation 4 requires professional fundraisers and commercial participators to provide further information in relation to their remuneration, in the written statements provided under regulation 3. Where the solicitation or representation is made orally the professional fundraiser or commercial participator must inform the person making the payment that this further information on remuneration is available in writing and provide them with a written copy, if requested. Benevolent fundraisers are not required to provide further information about any remuneration they receive.

Regulation 5 gives persons making a payment of £100 or more by debit or credit card, in response to fundraising on TV or radio, or persons making a payment of £100 or more or entering into an agreement to make a payment of £100 or more, in response to fundraising in person but not on TV or radio (eg by telephone), a right to a refund or to cancel any agreement.

Regulation 6 requires professional fundraisers and commercial participators to pay money, promises of money or other benevolent contributions to the benevolent body as soon as reasonably practicable after its receipt and not later than 28 days after its receipt.

Regulation 7 requires professional fundraisers and commercial participators to make available any book, document or other record which relates to the benevolent body and which are kept for the purposes of the agreement required by section 81(1) of the 2005 Act, to any benevolent body they are party to an agreement with.

Regulation 8 provides that it is an offence, liable on summary conviction to a fine not exceeding level 5, to fail without reasonable excuse to comply with the requirements of regulations 2(1), 3(1), (5) and (6), 4(1) to (4), 5(5), 6 or 7(1).