



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## PART 2

### FUNDRAISING FOR BENEVOLENT BODIES

#### *Control of fundraising*

#### **81 Prohibition on professional fundraising without formal agreement**

- (1) It is unlawful—
- (a) for a professional fundraiser to solicit money or promises of money for the benefit of a benevolent body, or
  - (b) for a commercial participator to represent that benevolent contributions are to be given to, or applied for the benefit of, a benevolent body,
- except in accordance with an agreement between the professional fundraiser or commercial participator and the body which satisfies the prescribed requirements.
- (2) Where on the application of a benevolent body (whether or not a charity), or of OSCR in relation to a benevolent body which is a charity, the sheriff is satisfied—
- (a) that a person has contravened or is contravening subsection (1) in relation to the body, and
  - (b) that the contravention is likely to continue or be repeated,
- the sheriff may grant an interdict.
- (3) Compliance with subsection (1) is enforceable only under subsection (2).
- (4) Subsections (5) and (6) apply where a benevolent body makes an agreement with a professional fundraiser or a commercial participator authorising—
- (a) the professional fundraiser to solicit money or promises of money, or
  - (b) the commercial participator to represent that benevolent contributions are to be given to or applied,
- for the benefit of the body.

- (5) If the agreement does not satisfy the prescribed requirements, it is not enforceable against the benevolent body except to such extent (if any) as may be provided by an order of the sheriff.
- (6) The professional fundraiser or commercial participator is not entitled to receive remuneration or expenses in respect of anything done in pursuance of the agreement unless the agreement provides for such remuneration or expenses and—
  - (a) the agreement satisfies the prescribed requirements, or
  - (b) any such provision has effect by virtue of an order under subsection (5).
- (7) In this section “the prescribed requirements” means such requirements as are prescribed by regulations made under section 83.

## **82 Prevention of unauthorised fundraising**

- (1) Where on the application of a benevolent body, the sheriff is satisfied—
  - (a) that the body has complied with subsection (3),
  - (b) that any person is or has been—
    - (i) soliciting money or promises of money for the benefit of the body, or
    - (ii) representing that benevolent contributions are to be given to or applied for the benefit of the body,
  - (c) that the person is likely to continue to do so or do so again, and
  - (d) as to one or more of the matters specified in subsection (2),the sheriff may grant an interdict.
- (2) Those matters are—
  - (a) that the person in question is using methods of fundraising to which the body objects,
  - (b) that that person is not a fit and proper person to raise funds for the body,
  - (c) where the conduct complained of is the making of such representations as are mentioned in subsection (1)(b)(ii), that the body does not wish to be associated with the particular promotional or other fundraising venture in which that person is engaged.
- (3) Not less than 28 days before making an application under subsection (1) the benevolent body must serve on the person in question a notice—
  - (a) requesting the person immediately to cease—
    - (i) soliciting money or promises of money for the benefit of the body, or
    - (ii) representing that benevolent contributions are to be given to or applied for the benefit of the body,as the case may be, and
  - (b) stating that, if the person does not comply with the notice, the body will apply for an interdict under this section.
- (4) Where a person to whom a benevolent body gives such a notice—
  - (a) complies with the notice, but
  - (b) subsequently begins to carry on activities which are the same, or substantially the same, as those in respect of which the notice was given,

the body need not, for the purposes of an application under subsection (1) made by it, serve a further notice on the person in respect of any such activities carried on within 12 months of giving the notice.

- (5) No application may be made under subsection (1) by a benevolent body in respect of anything done by a professional fundraiser or commercial participator in relation to the body.

### **83 Regulations about fundraising**

- (1) The Scottish Ministers may, after consulting such persons as they think fit, make regulations—
- (a) about the solicitation by professional fundraisers of money or promises of money for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes,
  - (b) about representations made by commercial participators in relation to benevolent contributions,
  - (c) generally for or in connection with regulating benevolent fundraising by benevolent fundraisers.
- (2) Such regulations may, in particular, make provision—
- (a) specifying sums for the purposes of section 79(3)(e),
  - (b) about the form and content of—
    - (i) agreements for the purposes of section 81,
    - (ii) notices under section 82(3),
  - (c) about the information and identification to be provided by professional fundraisers or commercial participators in soliciting money or promises of money or making representations in relation to benevolent contributions,
  - (d) about the information and identification to be provided by benevolent fundraisers in carrying on benevolent fundraising,
  - (e) about circumstances in which payments or agreements made in response to—
    - (i) solicitations or representations of the type described in paragraph (c),
    - or
    - (ii) benevolent fundraising,may be refunded or, as the case may be, cancelled,
  - (f) requiring professional fundraisers or commercial participators to make available to benevolent bodies with whom they have agreements for the purposes of section 81 books, documents or other records (however kept) which relate to the bodies,
  - (g) about the manner in which money or promises of money acquired by professional fundraisers or commercial participators for the benefit of, or otherwise falling to be given to or applied by them for the benefit of, benevolent bodies is or are to be transmitted to the bodies,
  - (h) requiring benevolent fundraisers, in carrying on benevolent fundraising, to take all reasonable steps to ensure that it is carried on in such a way that it does not—
    - (i) unreasonably intrude on the privacy of those from whom funds are being solicited or procured,
    - (ii) involve the making of unreasonably persistent approaches to persons to donate funds,

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*Status: This is the original version (as it was originally enacted).*

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- (iii) result in undue pressure being placed on persons to donate funds,
  - (iv) involve the making of any false or misleading representation about any of the matters mentioned in subsection (3).
- (3) Those matters are—
  - (a) the extent or urgency of any need for funds on the part of any benevolent body or company connected with such a body,
  - (b) any use to which funds donated in response to the fundraising are to be put by such a body or company, and
  - (c) the activities, achievements or finances of such a body or company.
- (4) In subsection (2)(g) the reference to money or promises of money includes a reference to money or promises of money which, in the case of a professional fundraiser or commercial participator—
  - (a) has or have been acquired by the fundraiser or commercial participator otherwise than in accordance with an agreement with a benevolent body, but
  - (b) by reason of any solicitation or representation in consequence of which it has or they have been acquired, is or are held by the fundraiser or commercial participator on trust for such a body.
- (5) Regulations under this section may provide that a person who, without reasonable excuse, fails to comply with a specified requirement of the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (6) In this section—
  - “benevolent fundraising” means soliciting or otherwise procuring money or promises of money for—
    - (a) the benefit of benevolent bodies or companies connected with them, or
    - (b) charitable, benevolent or philanthropic purposes,
  - “benevolent fundraisers” are—
    - (a) benevolent bodies and companies connected with them,
    - (b) persons concerned in the management or control of such bodies or companies,
    - (c) employees or agents of—
      - (i) such bodies or companies,
      - (ii) persons concerned in the management or control of such bodies or companies, and
    - (d) volunteers acting for or on behalf of such bodies or companies.