



Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

PART 2

FUNDRAISING FOR BENEVOLENT BODIES

Preliminary

79 Interpretation of Part 2

(1) In this Part—

“benevolent body” means a body (including a charity) which is established for charitable, benevolent or philanthropic purposes,

“benevolent contributions”, in relation to a representation made by a commercial participator or other person, means—

(a) the whole or part of—

(i) the consideration given for goods or services sold or supplied by that person,

(ii) any proceeds (other than such consideration) of a promotional venture undertaken by that person,

(b) sums given by that person by way of donation in connection with the sale or supply of such goods or services,

“commercial participator” means a person who—

(a) carries on for profit a business other than a fundraising business, but

(b) in the course of that business, engages in a promotional venture in the course of which it is represented that benevolent contributions are to be—

(i) given to or applied for the benefit of one or more particular benevolent bodies, or

(ii) applied for charitable, benevolent or philanthropic purposes,

“fundraising business” means a business carried on for profit and wholly or primarily engaged in soliciting or otherwise procuring money or promises of

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money for one or more particular benevolent bodies or for charitable, benevolent or philanthropic purposes,

“goods” includes all corporeal moveables except money,

“professional fundraiser” means—

- (a) a person (other than a benevolent body or a company connected with it) who carries on a fundraising business,
- (b) any other person who for reward solicits money or other property for the benefit of a benevolent body or for charitable, benevolent or philanthropic purposes otherwise than in the course of a fundraising venture undertaken by a person falling within paragraph (a),

“promises of money” includes standing orders, direct debits and similar instructions and authorisations for the payment of money,

“promotional venture” means an advertising or sales campaign or any other venture undertaken for promotional purposes,

“radio or television programme” includes any item included in a programme service within the meaning of the Broadcasting Act 1990 (c. 42),

“services” includes facilities, and in particular—

- (a) access to any premises or event,
- (b) membership of any organisation,
- (c) a ticket or other entitlement to participate in a lottery or game of chance,
- (d) the provision of advertising space, and
- (e) the provision of any financial facilities,

and references to the supply of services are to be construed accordingly.

- (2) In subsection (1), the definition of “commercial participator”, in relation to a benevolent body, does not include a company connected with the body.
- (3) The following persons are excluded from paragraph (b) of the definition of “professional fundraiser” in subsection (1)—
 - (a) a benevolent body or a company connected with it,
 - (b) a person concerned in the management or control, or an employee, of any such body or company,
 - (c) a person who in the course of a radio or television programme during which a fundraising venture is undertaken by a benevolent body, or by a company connected with it, makes any solicitation at the instance of the body or company,
 - (d) a commercial participator,
 - (e) a person who receives no more than—
 - (i) such sum as may be specified by regulations under section 83 by way of remuneration in connection with soliciting money or other property for the benefit of the benevolent body, or
 - (ii) such sum as may be so specified by way of remuneration in connection with any fundraising venture in the course of which the person solicits money or other property for the benefit of that body.
- (4) For the purposes of this Part a company is connected with a benevolent body if—
 - (a) the body, or
 - (b) the body and one or more other benevolent bodies, when taken together,

is or are entitled (whether directly or through one or more nominees) to exercise, or control the exercise of, the whole of the voting power at a general meeting of the company.

80 Representation and solicitation

- (1) In this Part, references to representing and soliciting are to representing and soliciting in any manner, whether expressly or impliedly and however the representation or solicitation is communicated, and include representations and solicitations made—
 - (a) orally (whether or not in the presence of the person being spoken to),
 - (b) in writing (whether or not by means of electronic communication), or
 - (c) by means of a statement published in any newspaper, film or radio or television programme.
- (2) In construing references to soliciting or otherwise procuring money or promises of money, it is immaterial whether any consideration by way of goods or services is, or is to be, given in return for the money or promises of money.
- (3) Where—
 - (a) a solicitation of money or a promise of money for the benefit of a benevolent body is made in accordance with arrangements between a person and the body, and
 - (b) under those arrangements the person will be responsible for receiving on behalf of the body money or a promise of money given in response to the solicitation,then (if the person would not be so regarded apart from this subsection) that person is to be regarded for the purposes of this Part as soliciting money or promises of money for the benefit of the body.
- (4) Where a fundraising venture is undertaken by a professional fundraiser in the course of a radio or television programme, a solicitation which is made by a person in the course of the programme at the instance of the fundraiser is to be treated for the purposes of this Part as made by the fundraiser and not by the person (whether or not the solicitation is made by the person for any reward).

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

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- (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

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- (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,

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- (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,
 - (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.

Public benevolent collections

84 Meaning of “public benevolent collection”

- (1) This section applies for the interpretation of sections 85 to 92.
- (2) “Public benevolent collection” means a collection from the public of money or promises of money (whether or not given by them for a consideration by way of goods or services) for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes taken—
 - (a) in a public place, or
 - (b) by means of visits to two or more houses or business premises.
- (3) “Public place”, in relation to a public benevolent collection, means—
 - (a) any road (within the meaning of the Roads (Scotland) Act 1984 (c. 54)), and
 - (b) any other place to which, at any time when the collection is taken, members of the public have access as of right or by virtue of express or implied permission and which—
 - (i) is not within a building, or
 - (ii) if within a building, is a public area within any station, airport or shopping precinct or is any other similar public area.
- (4) But subsection (3)(b) does not apply to any place to which members of the public have access—
 - (a) only on payment or by ticket,
 - (b) only by virtue of permission given for the purpose of the collection in question.
- (5) In relation to a public benevolent collection—
 - “business premises” means any premises used for business or other commercial purposes,
 - “house” includes any part of a building constituting a separate dwelling.

85 Regulation of public benevolent collections

- (1) Where a public benevolent collection is held in the area of a local authority without the consent of the authority under section 86, the organiser of the collection is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (2) Subsection (1) does not apply to a collection—
 - (a) by a designated national collector,
 - (b) which takes place in the course of a public meeting,
 - (c) which—
 - (i) takes place on land to which members of the public have access only by virtue of the express or implied permission of the occupier of the land or by virtue of any enactment, and
 - (ii) is organised by the occupier of the land, or
 - (d) which takes place by means of an unattended receptacle in a public place.
- (3) In subsection (2), “occupier” means, in relation to unoccupied land, the person entitled to occupy it.

86 Local authority consents

- (1) An application for the consent of a local authority to the holding of a public benevolent collection must be made to the authority, in such form as the authority may determine, by the organiser of the collection—
 - (a) no earlier than 18 months, and
 - (b) no later than 2 months (or such shorter period as the organiser and the authority may agree),before the proposed date of the collection.
- (2) Before determining such an application, the local authority must consult the chief constable of the police force for the area and may make other inquiries.
- (3) On such an application the local authority may—
 - (a) grant its consent (whether or not subject to conditions), or
 - (b) refuse its consent on any of the grounds set out in subsection (6).
- (4) Where the application has been made not later than 2 months before the proposed date of the collection, the local authority must give the organiser notice of its decision on the application not later than 14 days before that date.
- (5) The conditions which may be imposed in pursuance of subsection (3)(a) are such conditions as the local authority thinks fit having regard to the local circumstances in which the collection is to be held, including conditions—
 - (a) specifying the date, time or frequency of the collection,
 - (b) specifying where it may take place,
 - (c) regulating its conduct,
 - (d) as to the use by collectors of any badges or certificates of authority which regulations made under section 83(1) require to be provided,
 - (e) specifying the form of collection boxes, other containers and any other articles which may be used for the purposes of the collection,
 - (f) as to any other matter relating to the local circumstances of the collection.
- (6) The grounds of refusal referred to in subsection (3)(b) are—
 - (a) that the date, time or frequency of the collection, or that holding it at the proposed place, would cause undue public inconvenience,
 - (b) that another collection in respect of which consent under this section has been given by the authority or which is organised by a designated national collector is due to take place in the area of the authority on the same day or the day before or after that day,
 - (c) that it appears to the local authority that the amount likely to be applied for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes in consequence of the collection is inadequate having regard to the likely amount of the proceeds of the collection,
 - (d) where the local authority has requested the organiser of the collection to provide it with any supplementary information which it considers necessary for the purposes of determining the application, that the organiser has failed to comply with the request, and
 - (e) that the organiser of the collection has been convicted of—
 - (i) an offence under section 85(1), 90(3) or 91(3) of this Act, or

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- (ii) any other offence which involves dishonesty or the commission of which would be likely to be facilitated by the grant of consent under this section.
- (7) Where a local authority has reason to believe that, since its consent was granted under this section, there has been a change in circumstances such that one or more of the grounds of refusal set out in subsection (6) applies in relation to the public benevolent collection, the authority may, not later than the day before the date of the collection—
- (a) withdraw the consent, or
 - (b) vary the consent by making it subject to conditions or further conditions or varying any condition to which it is subject.
- (8) Where a local authority has reason to believe that there has been, or is likely to be, a breach of any condition imposed on a consent under this section, it may, not later than the day before the date of the collection, withdraw the consent.
- (9) A local authority must give the organiser of a public benevolent collection notice of a decision under this section—
- (a) to grant consent subject to conditions,
 - (b) to refuse consent,
 - (c) to withdraw or vary a consent,
- including the reasons for the authority’s decision and information about the organiser’s right of appeal under section 88.
- (10) The Scottish Ministers may, by regulations, disapply the duty to consult under subsection (2) in relation to applications of such type as they may describe in the regulations.

87 Designated national collectors

- (1) OSCR may specify criteria to be satisfied for the purposes of—
- (a) obtaining, and
 - (b) retaining,
- designation as a designated national collector under this section.
- (2) Before specifying such criteria, OSCR must consult—
- (a) such associations representing local authorities,
 - (b) such persons representing the interests of charities, and
 - (c) such other persons,
- as it thinks fit.
- (3) OSCR must publish any criteria specified under subsection (1).
- (4) OSCR may designate as a designated national collector a charity which appears to it to satisfy such criteria as are for the time being specified under subsection (1)(a).
- (5) OSCR may withdraw a designation under subsection (4) from a charity which appears to it not to satisfy such criteria as are for the time being specified under subsection (1)(b).
- (6) Regulations under section 90 may make provision about the effect of the withdrawal of a designation in relation to public benevolent collections notice of which was, prior to the withdrawal, given under subsection (7).

- (7) A designated national collector which proposes to hold a public benevolent collection in the area of a local authority must—
- (a) no earlier than 18 months, and
 - (b) no later than 3 months,
- before the proposed date of the collection, notify the authority of the proposal.
- (8) The local authority may prohibit the public benevolent collection if it considers that the public benevolent collection would be likely to cause undue public inconvenience (by reason of it being held on the same date and at the same time and place as any other public benevolent collection or for any other reason).
- (9) A decision under subsection (8) must be made not later than one month after the date of the notification under subsection (7).
- (10) A local authority must give the designated national collector notice of a decision under subsection (8) including the reasons for the authority's decision and information about the designated national collector's rights of appeal under section 88.

88 Appeals

- (1) The organiser of a public benevolent collection may, by summary application, appeal to the sheriff against a decision of a local authority under section 86—
- (a) granting consent subject to conditions,
 - (b) refusing consent, or
 - (c) withdrawing or varying a consent.
- (2) But no appeal is competent under subsection (1) against the decision of the local authority so far as the decision, or the reasons for it, relate to the date of the proposed collection.
- (3) A designated national collector may, by summary application, appeal to the sheriff against a decision of a local authority under section 87(8).
- (4) An appeal under this section must be lodged within 14 days of the date of receipt of the notice under section 86(9) or, as the case may be, 87(10).
- (5) In upholding an appeal under this section the sheriff may quash the decision of the local authority and remit the case, together with reasons for the sheriff's decision, to the authority for further consideration.

89 Application of funds

- (1) This section applies where the court, on an application by OSCR, is satisfied that sums collected in a public benevolent collection by or on behalf of any person other than a charity cannot for any reason be applied for the purposes for which they were collected.
- (2) The court may—
- (a) order any person holding such sums not to part with them without the court's consent,
 - (b) approve a scheme prepared by OSCR for the transfer of those sums to a charity specified in the scheme.
- (3) The court may approve a scheme under subsection (2)(b) subject to modifications.

- (4) In this section, “the court” means the sheriff.

90 Regulations relating to public benevolent collections

- (1) The Scottish Ministers may, by regulations, make further provision for the purpose of regulating public benevolent collections.
- (2) Such regulations may, in particular, include provision—
- (a) about keeping and publishing accounts,
 - (b) for preventing public inconvenience,
 - (c) specifying particular provisions of the regulations breach of which is an offence under subsection (3).
- (3) Any person who contravenes a provision of such regulations breach of which is stated in the regulations to be an offence is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

91 Collection of goods

- (1) The Scottish Ministers may, by regulations, make provision about the collection from the public of goods for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes.
- (2) Those regulations may, in particular, include provision—
- (a) requiring the organiser of such a collection to notify the local authority for the area in which it is proposed that the collection be carried out,
 - (b) allowing or requiring the local authority, in such circumstances as may be specified in the regulations, to prohibit the carrying out of such a collection,
 - (c) about the dates, times and places at which, and the frequency with which, such collections may be carried out,
 - (d) about keeping and publishing reports on those collections,
 - (e) for preventing public inconvenience,
 - (f) specifying particular provisions of the regulations breach of which is to be an offence under subsection (3).
- (3) Any person who contravenes a provision of such regulations breach of which is stated in the regulations to be an offence is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

92 Guidance on collections

Local authorities must have regard to any guidance issued by OSCR about the exercise of their functions in relation to—

- (a) public benevolent collections, or
- (b) collections from the public of goods for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes.