

*Status: Point in time view as at 24/06/2013. This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Charities Act (Northern Ireland) 2008, Cross Heading: Control of fund-raising. (See end of Document for details)*



## 2008 CHAPTER 12

### PART 13

#### FUNDING OF CHARITABLE INSTITUTIONS

##### CHAPTER 2

##### CONTROL OF FUND-RAISING FOR CHARITABLE INSTITUTIONS

##### *Control of fund-raising*

PROSPECTIVE

#### **Prohibition on professional fund-raiser, etc. raising funds for charitable institution without an agreement in prescribed form**

**150.**—(1) It shall be unlawful for a professional fund-raiser to solicit money or other property for the benefit of a charitable institution except in accordance with an agreement with the institution satisfying the prescribed requirements.

(2) It shall be unlawful for a commercial participator to represent that charitable contributions are to be given to or applied for the benefit of a charitable institution except in accordance with an agreement with the institution satisfying the prescribed requirements.

(3) Where on the application of a charitable institution the Court is satisfied—

- (a) that any person has contravened or is contravening subsection (1) or (2) in relation to the institution, and
- (b) that, unless restrained, any such contravention is likely to continue or be repeated,

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the Court may grant an injunction restraining the contravention; and compliance with subsection (1) or (2) shall not be enforceable otherwise than in accordance with this subsection.

(4) Where—

(a) a charitable institution makes any agreement with a professional fund-raiser or a commercial participator by virtue of which—

(i) the professional fund-raiser is authorised to solicit money or other property for the benefit of the institution, or

(ii) the commercial participator is authorised to represent that charitable contributions are to be given to or applied for the benefit of the institution,

as the case may be, but

(b) the agreement does not satisfy the prescribed requirements in any respect, the agreement shall not be enforceable against the institution except to such extent (if any) as may be provided by an order of the Court.

(5) A professional fund-raiser or commercial participator who is a party to such an agreement as is mentioned in subsection (4)(a) shall not be entitled to receive any amount by way of remuneration or expenses in respect of anything done in pursuance of the agreement unless—

(a) the professional fund-raiser or commercial participator is so entitled under any provision of the agreement, and

(b) either—

(i) the agreement satisfies the prescribed requirements, or

(ii) any such provision has effect by virtue of an order of the Court under subsection (4).

(6) In this section “the prescribed requirements” means such requirements as are prescribed by regulations made by virtue of section 157.

PROSPECTIVE

### **Professional fund-raisers, etc. required to indicate institutions benefiting and arrangements for remuneration**

**151.**—(1) Where a professional fund-raiser solicits money or other property for the benefit of one or more particular charitable institutions, the solicitation shall be accompanied by a statement clearly indicating—

(a) the name or names of the institution or institutions concerned;

(b) if there is more than one institution concerned, the proportions in which the institutions are respectively to benefit; and

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(c) the method by which the fund-raiser's remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.

(2) Where a professional fund-raiser solicits money or other property for charitable, benevolent or philanthropic purposes of any description (rather than for the benefit of one or more particular charitable institutions), the solicitation shall be accompanied by a statement clearly indicating—

- (a) the fact that the professional fund-raiser is soliciting money or other property for those purposes and not for the benefit of any particular charitable institution or institutions;
- (b) the method by which it is to be determined how the proceeds of the appeal are to be distributed between different charitable institutions; and
- (c) the method by which the professional fund-raiser's remuneration in connection with the appeal is to be determined and the notifiable amount of that remuneration.

(3) Where any representation is made by a commercial participator to the effect that charitable contributions are to be given to or applied for the benefit of one or more particular charitable institutions, the representation shall be accompanied by a statement clearly indicating—

- (a) the name or names of the institution or institutions concerned;
- (b) if there is more than one institution concerned, the proportions in which the institutions are respectively to benefit; and
- (c) 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 goods or services sold or supplied by the commercial participator as is to be given to or applied for the benefit of the institution or institutions concerned,
  - (ii) the sum representing so much of any other proceeds of a promotional venture undertaken by the commercial participator as is to be so given or applied, or
  - (iii) the sum of the donations by the commercial participator in connection with the sale or supply of any such goods or services which are to be so given or supplied.

(4) In subsections (1) to (3) a reference to the “notifiable amount” of any remuneration or other sum is a reference—

- (a) to the actual amount of the remuneration or sum, if that is known at the time when the statement is made; and
- (b) otherwise to the estimated amount of the remuneration or sum, calculated as accurately as is reasonably possible in the circumstances.

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(5) If any such solicitation or representation as is mentioned in any of subsections (1) to (3) is made—

- (a) in the course of a radio or television programme, and
- (b) in association with an announcement to the effect that payment may be made, in response to the solicitation or representation, by means of a credit or debit card,

the statement required by virtue of subsection (1), (2) or (3) (as the case may be) shall include full details of the right to have refunded under section 154(1) any payment of £50 or more which is so made.

(6) If any such solicitation or representation as is mentioned in any of subsections (1) to (3) is made orally but is not made—

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

the professional fund-raiser or commercial participator concerned shall, within 7 days of any payment of £50 or more being made to the professional fund-raiser or commercial participator in response to the solicitation or representation, give to the person making the payment a written statement—

- (i) of the matters specified in paragraphs (a) to (c) of that subsection; and
- (ii) including full details of the right to cancel under section 154(2) an agreement made in response to the solicitation or representation, and the right to have refunded under section 154(2) or (3) any payment of £50 or more made in response thereto.

(7) In subsection (6) the reference to the making of a payment is a reference to the making of a payment of whatever nature and by whatever means, including a payment made by means of a credit card or a debit card; and for the purposes of that subsection—

- (a) where the person making any such payment makes it in person, it shall be regarded as made at the time when it is so made;
- (b) where the person making any such payment sends it by post, it shall be regarded as made at the time when it is posted; and
- (c) where the person making any such payment makes it by giving, by telephone or by means of any other electronic communications apparatus, authority for an account to be debited with the payment, it shall be regarded as made at the time when any such authority is given.

(8) Where any requirement of subsections (1) to (6) is not complied with in relation to any solicitation or representation, the professional fund-raiser or commercial participator concerned is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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(9) It shall be a defence for a person charged with any such offence to prove that that person took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

(10) Where the commission by any person of an offence under subsection (8) is due to the act or default of some other person, that other person is guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this subsection whether or not proceedings are taken against the first-mentioned person.

(11) In this section “the appeal”, in relation to any solicitation by a professional fund-raiser, means the campaign or other fund-raising venture in the course of which the solicitation is made.

PROSPECTIVE

### **Other persons making appeals required to indicate institutions benefiting and arrangements for remuneration**

**152.**—(1) Subsections (1) and (2) of section 151 apply to a person acting for reward as a collector in respect of a public charitable collection as they apply to a professional fund-raiser.

(2) But those subsections do not so apply to a person excluded by virtue of—

- (a) subsection (3), or
- (b) section 153(1) (exclusion of lower-paid collectors).

(3) Those subsections do not so apply to a person if—

- (a) section 151(1) or (2) applies apart from subsection (1) (by virtue of the exception in section 159(2)(c) for persons treated as promoters), or
- (b) subsection (4) or (5) applies,

in relation to that person acting for reward as a collector in respect of the collection mentioned in subsection (1) above.

(4) Where a person within subsection (6) solicits money or other property for the benefit of one or more particular charitable institutions, the solicitation shall be accompanied by a statement clearly indicating—

- (a) the name or names of the institution or institutions for whose benefit the solicitation is being made;
- (b) if there is more than one such institution, the proportions in which the institutions are respectively to benefit;
- (c) the fact that the person is an officer, employee or trustee of the institution or company mentioned in subsection (6); and

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(d) the fact that the person is receiving remuneration as an officer, employee or trustee or (as the case may be) for acting as a collector.

(5) Where a person within subsection (6) solicits money or other property for charitable, benevolent or philanthropic purposes of any description (rather than for the benefit of one or more particular charitable institutions), the solicitation shall be accompanied by a statement clearly indicating—

(a) the fact that the person is soliciting money or other property for those purposes and not for the benefit of any particular charitable institution or institutions;

(b) the method by which it is to be determined how the proceeds of the appeal are to be distributed between different charitable institutions;

(c) the fact that the person is an officer, employee or trustee of the institution or company mentioned in subsection (6); and

(d) the fact that the person is receiving remuneration as an officer, employee or trustee or (as the case may be) for acting as a collector.

(6) A person is within this subsection if—

(a) the person is an officer or employee of a charitable institution or a company connected with any such institution, or a trustee of any such institution,

(b) the person is acting as a collector in that capacity, and

(c) the person receives remuneration either in a capacity as officer, employee or trustee or for acting as a collector.

(7) But a person is not within subsection (6) if that person is excluded by virtue of section 153(4).

(8) Where any requirement of—

(a) subsection (1) or (2) of section 151, as it applies by virtue of subsection (1) above, or

(b) subsection (4) or (5) above,

is not complied with in relation to any solicitation, the collector concerned is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(9) Section 151(9) and (10) apply in relation to an offence under subsection (8) above as they apply in relation to an offence under section 151(8).

(10) In this section “the appeal”, in relation to any solicitation by a collector, means the campaign or other fund-raising venture in the course of which the solicitation is made.

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## PROSPECTIVE

**Exclusion of lower-paid collectors from provisions of section 152**

**153.**—(1) Section 151(1) and (2) do not apply (by virtue of section 152(1)) to a person who is under the earnings limit in subsection (2).

(2) A person is under the earnings limit in this subsection if the person does not receive—

(a) more than—

(i) £5 per day, or

(ii) £500 per year,

by way of remuneration for acting as a collector in relation to relevant collections, or

(b) more than £500 by way of remuneration for acting as a collector in relation to the collection mentioned in section 152(1).

(3) In subsection (2) “relevant collections” means public charitable collections conducted for the benefit of—

(a) the charitable institution or institutions, or

(b) the charitable, benevolent or philanthropic purposes,

for whose benefit the collection mentioned in section 152(1) is conducted.

(4) A person is not within section 152(6) if that person is under the earnings limit in subsection (5) below.

(5) A person is under the earnings limit in this subsection if the remuneration received by that person as mentioned in section 152(6)(c)—

(a) is not more than—

(i) £5 per day, or

(ii) £500 per year, or

(b) if a lump sum, is not more than £500.

(6) The Department may by order amend subsections (2) and (5) by substituting a different sum for any sum for the time being specified there.

## PROSPECTIVE

**Cancellation of payments and agreements made in response to appeals**

**154.**—(1) Where—

(a) a person (“the donor”), in response to any such solicitation or representation as is mentioned in any of subsections (1) to (3) of

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section 152 which is made in the course of a radio or television programme, makes any payment of £50 or more to the relevant fund-raiser by means of a credit card or a debit card, but

- (b) before the end of the period of 7 days beginning with the date of the solicitation or representation, the donor serves on the relevant fund-raiser a notice in writing which, however expressed, indicates the donor's intention to cancel the payment,

the donor shall (subject to subsection (4)) be entitled to have the payment refunded forthwith by the relevant fund-raiser.

(2) Where—

- (a) a person (“the donor”), in response to any solicitation or representation falling within subsection (6) of section 151, enters into an agreement with the relevant fund-raiser under which the donor is, or may be, liable to make any payment or payments to the relevant fund-raiser, and the amount or aggregate amount which the donor is, or may be, liable to pay to that person under the agreement is £50 or more, but
- (b) before the end of the period of 7 days beginning with the date when the donor is given any such written statement as is referred to in that subsection, the donor serves on the relevant fund-raiser a notice in writing which, however expressed, indicates the donor's intention to cancel the agreement,

the notice shall operate, as from the time when it is so served, to cancel the agreement and any liability of any person other than the donor in connection with the making of any such payment or payments, and the donor shall (subject to subsection (4)) be entitled to have any payment of £50 or more made by the donor under the agreement refunded forthwith by the relevant fund-raiser.

(3) Where, in response to any solicitation or representation falling within subsection (6) of section 151, a person (“the donor”)—

- (a) makes any payment of £50 or more to the relevant fund-raiser, but
- (b) does not enter into any such agreement as is mentioned in subsection (2) above,

then, if before the end of the period of 7 days beginning with the date when the donor is given any such written statement as is referred to in subsection (6) of that section, the donor serves on the relevant fund-raiser a notice in writing which, however expressed, indicates the donor's intention to cancel the payment, the donor shall (subject to subsection (4)) be entitled to have the payment refunded forthwith by the relevant fund-raiser.

(4) The right of any person to have a payment refunded under any of subsections (1) to (3)—



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(a) is a right to have refunded the amount of the payment less than administrative expenses reasonably incurred by the relevant fund-raiser in connection with—

(i) the making of the refund, or

(ii) (in the case of a refund under subsection (2)) dealing with the notice of cancellation served by that person; and

(b) shall, in the case of a payment for goods already received, be conditional upon restitution being made by that person of the goods in question.

(5) Nothing in subsections (1) to (3) has effect in relation to any payment made or to be made in respect of services which have been supplied at the time when the relevant notice is served.

(6) In this section any reference to the making of a payment is a reference to the making of a payment of whatever nature and (in the case of subsection (2) or (3)) a payment made by whatever means, including a payment made by means of a credit card or a debit card; and subsection (7) of section 151 shall have effect for determining when a payment is made for the purposes of this section as it has effect for determining when a payment is made for the purposes of subsection (6) of that section.

(7) In this section, “the relevant fund-raiser”, in relation to any solicitation or representation, means the professional fund-raiser or commercial participator by whom it is made.

(8) The Department may by order—

(a) amend any provision of this section by substituting a different sum for the sum for the time being specified there; and

(b) make such consequential amendments in section 151 as it considers appropriate.

PROSPECTIVE

### **Right of charitable institution to prevent unauthorised fund-raising**

**155.—**(1) Where on the application of any charitable institution—

(a) the Court is satisfied that any person has done or is doing either of the following, namely—

(i) soliciting money or other property for the benefit of the institution,  
or

(ii) representing that charitable contributions are to be given to or applied for the benefit of the institution,

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and that, unless restrained, that person is likely to do further acts of that nature, and

(b) the Court is also satisfied as to one or more of the matters specified in subsection (2),

then (subject to subsection (3)) the Court may grant an injunction restraining the doing of any such acts.

(2) The matters referred to in subsection (1)(b) are—

(a) that the person in question is using methods of fund-raising to which the institution objects;

(b) that that person is not a fit and proper person to raise funds for the institution; and

(c) where the conduct complained of is the making of such representations as are mentioned in subsection (1)(a)(ii), that the institution does not wish to be associated with the particular promotional or other fund-raising venture in which that person is engaged.

(3) The power to grant an injunction under subsection (1) shall not be exercisable on the application of a charitable institution unless the institution has, not less than 28 days before making the application, served on the person in question a notice in writing—

(a) requesting that person to cease forthwith—

(i) soliciting money or other property for the benefit of the institution, or

(ii) representing that charitable contributions are to be given to or applied for the benefit of the institution,

as the case may be; and

(b) stating that, if that person does not comply with the notice, the institution will make an application under this section for an injunction.

(4) Where—

(a) a charitable institution has served on any person a notice under subsection (3) (“the relevant notice”) and that person has complied with the notice, but

(b) that person has subsequently begun to carry on activities which are the same, or substantially the same, as those in respect of which the relevant notice was served,

the institution shall not, in connection with an application made by it under this section in respect of the activities carried on by that person, be required by virtue of that subsection to serve a further notice on that person, if the application is made not more than 12 months after the date of service of the relevant notice.

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(5) This section shall not have the effect of authorising a charitable institution to make an application under this section in respect of anything done by a professional fund-raiser or commercial participator in relation to the institution.

### **False statements relating to institutions which are not registered charities**

**156.—(1)** Where—

- (a) a person solicits money or other property for the benefit of an institution in association with a representation that the institution is a registered charity, and
- (b) the institution is not such a charity,

that person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) In any proceedings for an offence under subsection (1), it shall be a defence for the accused to prove that the accused believed on reasonable grounds that the institution was a registered charity.

(3) In this section “registered charity” means a charity which is for the time being registered in the register of charities kept under section 16.

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#### **Commencement Information**

**II** S. 156 in operation at 24.6.2013 by S.R. 2013/145, art. 2, Sch.

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