



# Charities Act 1992

## 1992 CHAPTER 41

### PART II

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

##### *Preliminary*

#### **58 Interpretation of Part II.**

(1) In this Part—

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

- (a) the whole or part of—
  - (i) the consideration given for goods or services sold or supplied by him, or
  - (ii) any proceeds (other than such consideration) of a promotional venture undertaken by him, or
- (b) sums given by him by way of donation in connection with the sale or supply of any such goods or services (whether the amount of such sums is determined by reference to the value of any such goods or services or otherwise);

“charitable institution” means a charity or an institution (other than a charity) which is established for charitable, benevolent or philanthropic purposes;

“charity” means a charity within the meaning of [<sup>F1</sup>the Charities Act 1993];

“commercial participator”, in relation to any charitable institution, means any person [<sup>F2</sup>(apart from a company connected with the institution)]who—

- (a) carries on for gain a business other than a fund-raising business, but
- (b) in the course of that business, engages in any promotional venture in the course of which it is represented that charitable contributions are to be given to or applied for the benefit of the institution;

“company” has the meaning given by section [<sup>F1</sup>97 of the Charities Act 1993];

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“the court” means the High Court or a county court;

“credit card” means a card which is a credit-token within the meaning of the <sup>M1</sup>Consumer Credit Act 1974;

“debit card” means a card the use of which by its holder to make a payment results in a current account of his at a bank, or at any other institution providing banking services, being debited with the payment;

“fund-raising business” means any business carried on for gain and wholly or primarily engaged in soliciting or otherwise procuring money or other property for charitable, benevolent or philanthropic purposes;

“institution” includes any trust or undertaking;

[<sup>F3</sup> “ the Minister ” means the Minister for the Cabinet Office; ]

“professional fund-raiser” means—

- (a) any person (apart from a charitable institution [<sup>F4</sup> or a company connected with such an institution]) who carries on a fund-raising business, or
- (b) any other person (apart from a person excluded by virtue of subsection (2) or (3)) who for reward solicits money or other property for the benefit of a charitable institution, if he does so otherwise than in the course of any fund-raising venture undertaken by a person falling within paragraph (a) above;

“promotional venture” means any 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 <sup>M2</sup>Broadcasting Act 1990.

(2) In subsection (1), paragraph (b) of the definition of “professional fund-raiser” does not apply to any of the following, namely—

- (a) any charitable institution or any company connected with any such institution;
- (b) any officer or employee of any such institution or company, or any trustee of any such institution, acting (in each case) in his capacity as such;
- (c) any person acting as a collector in respect of a public charitable collection (apart from a person who is [<sup>F5</sup> a promoter of such a collection as defined in section 47(1) of the Charities Act 2006]);
- (d) any person who in the course of a relevant programme, that is to say a radio or television programme in the course of which a fund-raising venture is undertaken by—

(i) a charitable institution, or

(ii) a company connected with such an institution,

makes any solicitation at the instance of that institution or company; or

- (e) any commercial participator;

and for this purpose “collector” and “public charitable collection” have the same meaning as in [<sup>F6</sup> Chapter 1 of Part 3 of the Charities Act 2006].

(3) In addition, paragraph (b) of the definition of “professional fund-raiser” does not apply to a person if he does not receive—

- (a) more than—
  - (i) [<sup>F7</sup> £10] per day, or
  - (ii) [<sup>F8</sup> £1,000] per year,

by way of remuneration in connection with soliciting money or other property for the benefit of the charitable institution referred to in that paragraph; or

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- (b) more than [<sup>F9</sup>£1,000] by way of remuneration in connection with any fund-raising venture in the course of which he solicits money or other property for the benefit of that institution.
- (4) In this Part any reference to charitable purposes, where occurring in the context of a reference to charitable, benevolent or philanthropic purposes, is a reference to charitable purposes [<sup>F10</sup>as defined by section 2(1) of the Charities Act 2006].
- (5) For the purposes of this Part a company is connected with a charitable institution if—
- (a) the institution, or
  - (b) the institution and one or more other charitable institutions, 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 any general meeting of the company.
- (6) In this Part—
- (a) “represent” and “solicit” mean respectively represent and solicit in any manner whatever, whether expressly or impliedly and whether done—
    - (i) by speaking directly to the person or persons to whom the representation or solicitation is addressed (whether when in his or their presence or not), or
    - (ii) by means of a statement published in any newspaper, film or radio or television programme,or otherwise, and references to a representation or solicitation shall be construed accordingly; and
  - (b) any reference to soliciting or otherwise procuring money or other property is a reference to soliciting or otherwise procuring money or other property whether any consideration is, or is to be, given in return for the money or other property or not.
- (7) Where—
- (a) any solicitation of money or other property for the benefit of a charitable institution is made in accordance with arrangements between any person and that institution, and
  - (b) under those arrangements that person will be responsible for receiving on behalf of the institution money or other property given in response to the solicitation,
- then (if he would not be so regarded apart from this subsection) that person shall be regarded for the purposes of this Part as soliciting money or other property for the benefit of the institution.
- (8) Where any fund-raising venture is undertaken by a professional fund-raiser in the course of a radio or television programme, any solicitation which is made by a person in the course of the programme at the instance of the fund-raiser shall be regarded for the purposes of this Part as made by the fund-raiser and not by that person (and shall be so regarded whether or not the solicitation is made by that person for any reward).
- (9) In this Part “services” includes facilities, and in particular—
- (a) access to any premises or event;
  - (b) membership of any organisation;
  - (c) the provision of advertising space; and
  - (d) the provision of any financial facilities;

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

- (10) The [F11Minister] may by order amend subsection (3) by substituting a different sum for any sum for the time being specified there.

#### Textual Amendments

- F1** Words in s. 58(1) substituted (1.8.1993) by 1993 c. 10, s. 98(1), **Sch. 6 para. 29(5)**
- F2** Words in s. 58(1) inserted (3.11.1994) by 1994 c. 40, **ss. 25(2)**, 82(2)
- F3** Words in s. 58(1) inserted (8.11.2006) by Charities Act 2006 (c. 50), s. 79(1)(g), **Sch. 8 para. 90(2)**
- F4** Words in s. 58(1) inserted (3.11.1994) by 1994 c. 40, **ss. 25(3)**, 82(2)
- F5** Words in s. 58(2)(c) substituted (1.4.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 90(3)(a)**; S.I. 2007/3286, art. 3, **Sch. 2** (with art. 4)
- F6** Words in s. 58(2) substituted (1.4.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 90(3)(b)**; S.I. 2007/3286, art. 3, **Sch. 2** (with art. 4)
- F7** Sum in s. 58(3)(a)(i) substituted (1.4.2009) by Charities Acts 1992 and 1993 (Substitution of Sums) Order 2009 (S.I. 2009/508), arts. 1(1), **3(a)** (with art. 12)
- F8** Sum in s. 58(3)(a)(ii) substituted (1.4.2009) by Charities Acts 1992 and 1993 (Substitution of Sums) Order 2009 (S.I. 2009/508), arts. 1(1), **3(b)** (with art. 12)
- F9** Sum in s. 58(3)(b) substituted (1.4.2009) by Charities Acts 1992 and 1993 (Substitution of Sums) Order 2009 (S.I. 2009/508), arts. 1(1), **3(c)** (with art. 12)
- F10** Words in s. 58(4) substituted (1.4.2008) by Charities Act 2006 (c. 50), s. 79(2), **Sch. 8 para. 90(4)**; S.I. 2008/945, art. 2, **Sch. 1**
- F11** Word in s. 58(10) substituted (13.12.2006) by Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951), art. 1(2), **Sch. para. 3(a)**

#### Commencement Information

- I1** Pt. II (ss. 58-64) wholly in force at 1.3.1995; Pt. II not in force at Royal Assent see s. 79(2); Pt. II in force for certain purposes at 28.11.1994 and wholly in force at 1.3.1995 by S.I. 1999/3023, **art. 2**

#### Marginal Citations

- M1** 1974 c.39.
- M2** 1990 c.42.

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