



## 2008 CHAPTER 12

VALID FROM 24/06/2013

### PART 13

#### FUNDING OF CHARITABLE INSTITUTIONS

PROSPECTIVE

#### CHAPTER 1

#### PUBLIC CHARITABLE COLLECTIONS

#### *Preliminary*

#### **Regulation of public charitable collections**

**131.**—(1) This Chapter regulates public charitable collections, which are of the following two types—

- (a) collections in a public place; and
- (b) door to door collections.

(2) For the purposes of this Part—

- (a) “public charitable collection” means (subject to section 132) a charitable appeal which is made—
  - (i) in any public place, or
  - (ii) by means of visits to houses or business premises (or both);

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- (b) “charitable appeal” means an appeal to members of the public which is—
    - (i) an appeal to them to give money or other property, or
    - (ii) an appeal falling within subsection (4),(or both) and which is made in association with a representation that the whole or any part of its proceeds is to be applied for charitable, benevolent or philanthropic purposes;
  - (c) a “collection in a public place” is a public charitable collection that is made in a public place, as mentioned in paragraph (a)(i);
  - (d) a “door to door collection” is a public charitable collection that is made by means of visits to houses or business premises (or both), as mentioned in paragraph (a)(ii).
- (3) For the purposes of subsection (2)(b)—
- (a) the reference to the giving of money is to doing so by whatever means; and
  - (b) it does not matter whether the giving of money or other property is for consideration or otherwise.
- (4) An appeal falls within this subsection if it consists in or includes—
- (a) the making of an offer to sell goods or to supply services, or
  - (b) the exposing of goods for sale,
- to members of the public.
- (5) In this section—
- “business premises” means any premises used for business or other commercial purposes;
- “house” includes any part of a building constituting a separate dwelling;
- “public place” means—
- (a) any road within the meaning of the Road Traffic (Northern Ireland) Order 1995 (NI 18), and
  - (b) (subject to subsection (6)) any other place to which, at any time when the appeal is made, members of the public have or are permitted to have access and which either—
    - (i) is not within a building, or
    - (ii) if within a building, is a public area within any station, airport or shopping precinct or any other similar public area.
- (6) In subsection (5), paragraph (b) of the definition of “public place” does not include—

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- (a) any place to which members of the public are permitted to have access only if any payment or ticket required as a condition of access has been made or purchased; or
- (b) any place to which members of the public are permitted to have access only by virtue of permission given for the purposes of the appeal in question.

### **Charitable appeals that are not public charitable collections**

**132.**—(1) A charitable appeal is not a public charitable collection if the appeal—

- (a) is made in the course of a public meeting; or
- (b) is made—
  - (i) on land within a churchyard or burial ground contiguous or adjacent to a place of public worship, or
  - (ii) on other land occupied for the purposes of a place of public worship and contiguous or adjacent to it, where the land is enclosed or substantially enclosed (whether by any wall or building or otherwise); or
- (c) is made on land to which members of the public have access only—
  - (i) by virtue of the express or implied permission of the occupier of the land, or
  - (ii) by virtue of any statutory provision, and the occupier is the promoter of the collection; or
- (d) is an appeal to members of the public to give money or other property by placing it in an unattended receptacle.

(2) For the purposes of subsection (1)(c) “the occupier”, in relation to unoccupied land, means the person entitled to occupy it.

(3) For the purposes of subsection (1)(d) a receptacle is unattended if it is not in the possession or custody of a person acting as a collector.

### **Other definitions for purposes of this Chapter**

**133** In this Chapter—

“prescribed” means prescribed by regulations under section 148;

“proceeds”, in relation to a public charitable collection, means all money or other property given (whether for consideration or otherwise) in response to the charitable appeal in question;

“promoter”, in relation to a public charitable collection, means—

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- (a) a person who (whether alone or with others and whether for remuneration or otherwise) organises or controls the conduct of the charitable appeal in question, or
- (b) where there is no person acting as mentioned in paragraph (a), any person who acts as a collector in respect of the collection.

#### *Restrictions on conducting collections*

#### **Restrictions on conducting collections in a public place**

**134.**—(1) A collection in a public place shall not be conducted unless—

- (a) the promoters of the collection hold a public collections certificate in force under section 138 in respect of the collection, and
- (b) the collection is conducted in accordance with a permit issued under section 144.

(2) Subsection (1) does not apply to a public charitable collection which is an exempt collection by virtue of section 136 (local, short-term collections).

(3) Where—

- (a) a collection in a public place is conducted in contravention of subsection (1), and
- (b) the circumstances of the case do not fall within section 136(6),

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

#### **Restrictions on conducting door to door collections**

**135.**—(1) A door to door collection shall not be conducted unless—

- (a) the promoters of the collection hold a public collections certificate in force under section 138 in respect of the collection,
- (b) the collection is conducted in accordance with a permit issued under section 144; and
- (c) the promoters of the collection have within the prescribed period falling before the day (or the first of the days) on which the collection takes place—
  - (i) notified the Commission of the matters mentioned in subsection (3), and
  - (ii) provided the Commission with a copy of the certificate mentioned in paragraph (a).

(2) Subsection (1) does not apply to a door to door collection which is an exempt collection by virtue of section 136 (local, short-term collections).

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(3) The matters referred to in subsection (1)(c)(i) are—

- (a) the purpose for which the proceeds of the appeal are to be applied;
- (b) the prescribed particulars of when the collection is to be conducted;
- (c) the locality within which the collection is to be conducted; and
- (d) such other matters as may be prescribed.

(4) Where—

- (a) a door to door collection is conducted in contravention of subsection (1), and
- (b) the circumstances of the case do not fall within section 136(6),

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

This is subject to subsection (5).

(5) Where—

- (a) a door to door collection is conducted in contravention of subsection (1),
- (b) the appeal is for goods only, and
- (c) the circumstances of the case do not fall within section 136(6),

every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(6) In subsection (5) “goods” includes all personal chattels other than things in action and money.

### **Exemption for local, short-term collections**

**136.—**(1) A public charitable collection is an exempt collection if—

- (a) it is a local, short-term collection (see subsection (2)), and
- (b) the promoters notify the Commission of the matters mentioned in subsection (3) within the prescribed period falling before the day (or the first of the days) on which the collection takes place,

unless, within the prescribed period beginning with the date when it is so notified, the Commission serves a notice under subsection (4) on the promoters.

(2) A public charitable collection is a local, short-term collection if—

- (a) the appeal is local in character; and
- (b) the duration of the appeal does not exceed the prescribed period of time.

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

- (a) the purpose for which the proceeds of the appeal are to be applied;

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- (b) the date or dates on which the collection is to be conducted;
- (c) the place at which, or the locality within which, the collection is to be conducted; and
- (d) such other matters as may be prescribed.

(4) Where it appears to the Commission—

- (a) that the collection is not a local, short-term collection, or
- (b) that the promoters or any of them have or has on any occasion—
  - (i) breached any provision of regulations made under section 148, or
  - (ii) been convicted of an offence within section 139(2)(a)(i) to (v),

the Commission shall serve on the promoters written notice of its decision to that effect and the reasons for its decision.

(5) That notice shall also state the right of appeal conferred by section 147(1) and the time within which such an appeal must be brought.

(6) Where—

- (a) a collection in a public place is conducted otherwise than in accordance with section 134(1) or a door to door collection is conducted otherwise than in accordance with section 135(1), and
- (b) the collection is a local, short-term collection but the promoters do not notify the Commission as mentioned in subsection (1)(b),

every promoter of the collection is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Public collections certificates*

**Applications for certificates**

**137.**—(1) A person or persons proposing to promote public charitable collections (other than exempt collections) may apply to the Commission for a public collections certificate in respect of those collections.

(2) The application shall be made—

- (a) within the specified period falling before the first of the collections is to commence, or
- (b) before such later date as the Commission may allow in the case of that application.

(3) The application shall—

- (a) be made in such form as may be specified,
- (b) state the period for which the certificate is sought (which must be no more than 5 years), and

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(c) contain such other information as may be specified.

(4) An application under this section may be made for a public collections certificate in respect of a single collection; and the references in this Chapter, in the context of such certificates, to public charitable collections are to be read accordingly.

(5) In subsections (2) and (3) “specified” means specified in regulations made by the Commission after consulting such persons or bodies of persons as it considers appropriate.

(6) In this section “exempt collection” means a public charitable collection which is an exempt collection by virtue of section 136.

### **Determination of applications and issue of certificates**

**138.**—(1) On receiving an application for a public collections certificate made in accordance with section 137, the Commission may make such inquiries (whether under section 140 or otherwise) as it thinks fit.

(2) The Commission shall, after making any such inquiries, determine the application by either—

- (a) issuing a public collections certificate in respect of the collections, or
- (b) refusing the application on one or more of the grounds specified in section 139(1).

(3) A public collections certificate—

- (a) shall specify such matters as may be prescribed, and
- (b) shall (subject to section 142) be in force for—
  - (i) the period specified in the application in accordance with section 137(3)(b), or
  - (ii) such shorter period as the Commission thinks fit.

(4) The Commission may, at the time of issuing a public collections certificate, attach to the certificate such conditions as it thinks fit.

(5) Conditions attached under subsection (4) may include conditions prescribed for the purposes of that subsection.

(6) The Commission shall secure that the terms of any conditions attached under subsection (4) are consistent with the provisions of any regulations under section 148 (whether or not prescribing conditions for the purposes of that subsection).

(7) Where the Commission—

- (a) refuses to issue a certificate, or
- (b) attaches any condition to it,

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it shall serve on the applicant written notice of its decision and the reasons for its decision.

(8) That notice shall also state the right of appeal conferred by Schedule 3 and the time within which such an appeal must be brought.

#### **Grounds for refusing to issue a certificate**

**139.**—(1) The grounds on which the Commission may refuse an application for a public collections certificate are—

- (a) that the applicant has been convicted of a relevant offence;
- (b) where the applicant is a person other than a charitable institution for whose benefit the collections are proposed to be conducted, that the Commission is not satisfied that the applicant is authorised (whether by any such institution or by any person acting on behalf of any such institution) to promote the collections;
- (c) that it appears to the Commission that the applicant, in promoting any other collection authorised under this Chapter, failed to exercise the required due diligence;
- (d) that the Commission is not satisfied that the applicant will exercise the required due diligence in promoting the proposed collections;
- (e) that it appears to the Commission that the amount likely to be applied for charitable, benevolent or philanthropic purposes in consequence of the proposed collections would be inadequate, having regard to the likely amount of the proceeds of the collections;
- (f) that it appears to the Commission that the applicant or any other person would be likely to receive an amount by way of remuneration in connection with the collections that would be excessive, having regard to all the circumstances;
- (g) that the applicant has failed to provide information—
  - (i) required for the purposes of the application for the certificate or a previous application, or
  - (ii) in response to a request under section 140(1);
- (h) that it appears to the Commission that information so provided to it by the applicant is false or misleading in a material particular;
- (i) that it appears to the Commission that the applicant or any person authorised by the applicant—
  - (i) has breached any conditions attached to a previous public collections certificate, or
  - (ii) has persistently breached any conditions attached to a permit issued under section 144;



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(j) that it appears to the Commission that the applicant or any person authorised by the applicant has on any occasion breached any provision of regulations made under section 148(1)(b).

(2) For the purposes of subsection (1)—

(a) a “relevant offence” is—

- (i) an offence under section 5 of the 1916 Act;
- (ii) an offence under the 1952 Act;
- (iii) an offence under this Chapter;
- (iv) an offence involving dishonesty; or
- (v) an offence of a kind the commission of which would, in the opinion of the Commission, be likely to be facilitated by the issuing to the applicant of a public collections certificate; and

(b) the “required due diligence” is due diligence—

- (i) to secure that persons authorised by the applicant to act as collectors for the purposes of the collection were (or will be) fit and proper persons;
- (ii) to secure that such persons complied (or will comply) with the provisions of regulations under section 148(1)(b); or
- (iii) to prevent badges or certificates of authority being obtained by persons other than those the applicant had so authorised.

(3) Where an application for a certificate is made by more than one person, any reference to the applicant in subsection (1) or (2) is to be construed as a reference to any of the applicants.

(4) Subject to subsections (5) and (6), the reference in subsection (2)(b)(iii) to badges or certificates of authority is a reference to badges or certificates of authority in a form prescribed by regulations under section 148(1)(b).

(5) Subsection (2)(b) applies to the conduct of the applicant (or any of the applicants) in relation to any public charitable collection authorised—

- (a) under regulations made under section 5 of the 1916 Act (collection of money or sale of articles in a street or other public place), or
- (b) under the 1952 Act (collection of money or other property by means of visits from house to house),

as it applies to the conduct of the applicant in relation to a collection authorised under this Chapter, but subject to the modifications set out in subsection (6).

(6) The modifications are—

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- (a) in the case of a collection authorised under regulations made under the 1916 Act—
  - (i) the reference in subsection (2)(b)(ii) to regulations under section 148(1)(b) is to be construed as a reference to the regulations under which the collection in question was authorised, and
  - (ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority is to be construed as a reference to any written authority provided to a collector pursuant to those regulations; and
- (b) in the case of a collection authorised under the 1952 Act—
  - (i) the reference in subsection (2)(b)(ii) to regulations under section 148(1)(b) is to be construed as a reference to regulations under section 4 of that Act, and
  - (ii) the reference in subsection (2)(b)(iii) to badges or certificates of authority is to be construed as a reference to badges or certificates of authority in a form prescribed by such regulations.

(7) In subsections (1)(c) and (5) a reference to a collection authorised under this Chapter is a reference to a public charitable collection that—

- (a) is conducted in accordance with section 134 or 135 (as the case may be), or
- (b) is an exempt collection by virtue of section 136.

(8) In this section—

“the 1916 Act” means the Police, Factories &c. (Miscellaneous Provisions) Act 1916 (c. 31); and

“the 1952 Act” means the House to House Collections Act (Northern Ireland) 1952 (c. 6).

### **Power to call for information and documents**

**140.**—(1) The Commission may request—

- (a) any applicant for a public collections certificate, or
- (b) any person to whom such a certificate has been issued,

to provide it with any information in the possession of that applicant or person, or document in the custody or under the control of that applicant or person, which is relevant to the exercise of any of its functions under this Chapter.

(2) Nothing in this section affects the power conferred on the Commission by section 23.

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### **Transfer of certificate between trustees of unincorporated charity**

**141.**—(1) One or more individuals to whom a public collections certificate has been issued (“the holders”) may apply to the Commission for a direction that the certificate be transferred to one or more other individuals (“the recipients”).

(2) An application under subsection (1) shall—

- (a) be in such form as may be specified, and
- (b) contain such information as may be specified.

(3) The Commission may direct that the certificate be transferred if it is satisfied that—

- (a) each of the holders is or was a trustee of a charity which is not a body corporate;
- (b) each of the recipients is a trustee of that charity and consents to the transfer; and
- (c) the charity trustees consent to the transfer.

(4) Where the Commission refuses to direct that a certificate be transferred, it shall serve on the holders written notice of—

- (a) its decision, and
- (b) the reasons for its decision.

(5) That notice shall also state the right of appeal conferred by Schedule 3 and the time within which such an appeal must be brought.

(6) Subsection (5) of section 137 applies for the purposes of subsection (2) of this section as it applies for the purposes of subsection (3) of that section.

(7) Except as provided by this section, a public collections certificate is not transferable.

### **Withdrawal or variation, etc. of certificates**

**142.**—(1) Where subsection (2), (3) or (4) applies, the Commission may—

- (a) withdraw a public collections certificate,
- (b) suspend such a certificate,
- (c) attach any condition (or further condition) to such a certificate, or
- (d) vary any existing condition of such a certificate.

(2) This subsection applies where the Commission—

- (a) has reason to believe there has been a change in the circumstances which prevailed at the time when it issued the certificate, and

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(b) is of the opinion that, if the application for the certificate had been made in the new circumstances, it would not have issued the certificate or would have issued it subject to different or additional conditions.

(3) This subsection applies where—

(a) the holder of a certificate has unreasonably refused to provide any information or document in response to a request under section 140(1), or

(b) the Commission has reason to believe that information provided to it by the holder of a certificate (or, where there is more than one holder, by any of them) for the purposes of the application for the certificate, or in response to such a request, was false or misleading in a material particular.

(4) This subsection applies where the Commission has reason to believe that there has been or is likely to be a breach of any condition of a certificate, or that a breach of such a condition is continuing.

(5) Any condition imposed at any time by the Commission under subsection (1) (whether by attaching a new condition to the certificate or by varying an existing condition) must be one that it would be appropriate for the Commission to attach to the certificate under section 138(4) if the holder was applying for it in the circumstances prevailing at that time.

(6) The exercise by the Commission of the power conferred by paragraph (b), (c) or (d) of subsection (1) on one occasion does not prevent it from exercising any of the powers conferred by that paragraph on a subsequent occasion; and on any subsequent occasion the reference in subsection (2)(a) to the time when the Commission issued the certificate is a reference to the time when it last exercised any of those powers.

(7) Where the Commission—

(a) withdraws or suspends a certificate,

(b) attaches a condition to a certificate, or

(c) varies an existing condition of a certificate,

it shall serve on the holder written notice of its decision and the reasons for its decision.

(8) That notice shall also state the right of appeal conferred by Schedule 3 and the time within which such an appeal must be brought.

(9) If the Commission—

(a) considers that the interests of the public require a decision by it under this section to have immediate effect, and

(b) includes a statement to that effect and the reasons for it in the notice served under subsection (7),

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the decision takes effect when that notice is served on the holder.

(10) In any other case the certificate shall continue to have effect as if it had not been withdrawn or suspended or (as the case may be) as if the condition had not been attached or varied—

- (a) until the time for bringing an appeal has expired, or
- (b) if such an appeal is duly brought, until the determination or abandonment of the appeal.

(11) A certificate suspended under this section shall (subject to any appeal and any withdrawal of the certificate) remain suspended until—

- (a) such time as the Commission may by notice direct that the certificate is again in force, or
- (b) the end of the period of 6 months beginning with the date on which the suspension takes effect,

whichever is the sooner.

### *Permits*

#### **Applications for permits to conduct public charitable collections**

**143.**—(1) A person or persons proposing to promote a public charitable collection (other than an exempt collection) may apply to the Commission for a permit to conduct that collection.

(2) The application shall be made within the prescribed period falling before the day (or the first of the days) on which the collection is to take place, except as provided in subsection (4).

(3) The application shall—

- (a) specify the date or dates in respect of which it is desired that the permit, if issued, should have effect (which, in the case of two or more dates, must not span a period of more than 12 months);
- (b) be accompanied by a copy of the public collections certificate in force under section 138 in respect of the proposed collection; and
- (c) contain such information as may be prescribed.

(4) Where an application (“the certificate application”) has been made in accordance with section 137 for a public collections certificate in respect of the collection and either—

- (a) the certificate application has not been determined by the end of the period mentioned in subsection (2), or
- (b) the certificate application has been determined by the issue of such a certificate but at a time when there is insufficient time remaining for

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the application mentioned in subsection (2) (“the permit application”) to be made by the end of that period,

the permit application shall be made as early as practicable before the day (or the first of the days) on which the collection is to take place.

(5) In this section “exempt collection” means a collection which is an exempt collection by virtue of section 136.

### **Determination of applications and issue of permits**

**144.**—(1) On receiving an application made in accordance with section 143 for a permit in respect of a collection in a public place, the Commission shall determine the application within the prescribed period by either—

- (a) issuing a permit in respect of the collection, or
- (b) refusing the application on the ground specified in section 145(1).

(2) Where the Commission issues such a permit, it shall (subject to section 146) have effect in respect of the date or dates specified in the application in accordance with section 143(3)(a).

(3) At the time of issuing a permit under this section, the Commission may attach to it such conditions within paragraphs (a) to (d) below as the Commission thinks fit, having regard to the local circumstances of the collection—

- (a) conditions specifying the day of the week, date, time or frequency of the collection;
- (b) conditions specifying the locality or localities in which the collection may be conducted;
- (c) conditions regulating the manner in which the collection is to be conducted;
- (d) such other conditions as may be prescribed for the purposes of this paragraph.

(4) The Commission shall secure that the terms of any conditions attached under subsection (3) are consistent with the provisions of any regulations under section 148 (whether or not prescribing conditions for the purposes of that subsection).

(5) Where the Commission—

- (a) refuses to issue a permit, or
- (b) attaches any condition to it,

the Commission shall serve on the applicant written notice of its decision and the reasons for its decision.

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(6) That notice shall also state the right of appeal conferred by section 147(2) and the time within which such an appeal must be brought.

### **Refusal of permits**

**145.**—(1) The only ground on which the Commission may refuse an application for a permit to conduct a public charitable collection is that it appears to the Commission that the collection would cause undue inconvenience to members of the public or the occupants of houses or business premises (or both) by reason of—

- (a) the day or the week or date on or in which,
- (b) the time at which,
- (c) the frequency with which, or
- (d) the locality or localities in which,

it is proposed to be conducted.

(2) In making a decision under subsection (1), the Commission may have regard to the fact (where it is the case) that the collection is proposed to be conducted—

- (a) wholly or partly in a locality in which another public charitable collection is already authorised to be conducted under this Chapter, and
- (b) on a day on which that other collection is already so authorised, or on the day falling immediately before, or immediately after, any such day.

(3) The Commission shall not, however, have regard to the matters mentioned in subsection (2) if it appears to the Commission—

- (a) that the proposed collection would be a collection in a public place and would be conducted only in one location, which is on land to which members of the public would have access only—
  - (i) by virtue of the express or implied permission of the occupier of the land, or
  - (ii) by virtue of any statutory provision, and
- (b) that the occupier of the land consents to that collection being conducted there;

and for this purpose “the occupier”, in relation to unoccupied land, means the person entitled to occupy it.

(4) In subsection (3) a reference to a collection in a public place authorised under this Chapter is a reference to a collection in a public place that—

- (a) is conducted in accordance with section 134, or
- (b) is an exempt collection by virtue of section 136.



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### **Withdrawal or variation, etc. of permits**

**146.**—(1) Where subsection (2), (3) or (4) applies, the Commission may—

- (a) withdraw the permit,
- (b) attach any condition (or further condition) to the permit, or
- (c) vary any existing condition of the permit.

(2) This subsection applies where the Commission—

- (a) has reason to believe that there has been a change in the circumstances which prevailed at the time when it issued the permit, and
- (b) is of the opinion that, if the application for the permit had been made in the new circumstances, the Commission would not have issued the permit or would have issued it subject to different or additional conditions.

(3) This subsection applies where the Commission has reason to believe that any information provided to it by the holder of a permit (or, where there is more than one holder, by any of them) for the purposes of the application for the permit was false or misleading in a material particular.

(4) This subsection applies where the Commission has reason to believe that there has been or is likely to be a breach of any condition of a permit issued by it, or that a breach of such a condition is continuing.

(5) Any condition imposed at any time by the Commission under subsection (1) (whether by attaching a new condition to the permit or by varying an existing condition) must be one that it would be appropriate for the Commission to attach to the permit under section 144(3) if the holder was applying for it in the circumstances prevailing at that time.

(6) The exercise by the Commission of the power conferred by paragraph (b) or (c) of subsection (1) on one occasion does not prevent the Commission from exercising any of the powers conferred by that paragraph on a subsequent occasion; and on any subsequent occasion the reference in subsection (2)(a) to the time when the Commission issued the permit is a reference to the time when it last exercised any of those powers.

(7) Where under this section the Commission—

- (a) withdraws a permit,
- (b) attaches a condition to a permit, or
- (c) varies an existing condition of a permit,

the Commission shall serve on the holder written notice of its decision and the reasons for its decision.

(8) That notice shall also state the right of appeal conferred by section 147(3) and the time within which such an appeal must be brought.



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(9) Where the Commission under this section withdraws a permit, attaches any condition to a permit, or varies an existing condition of a permit, the permit shall continue to have effect as if it had not been withdrawn or (as the case may be) as if the condition had not been attached or varied—

- (a) until the time for bringing an appeal under section 147(3) has expired, or
- (b) if such an appeal is duly brought, until the determination or abandonment of the appeal.

### **Appeals against decisions of Commission**

**147.**—(1) A person who, in relation to a public charitable collection, has duly notified the Commission of the matters mentioned in section 136(3) may appeal to a court of summary jurisdiction against a decision of the Commission under section 136(4)—

- (a) that the collection is not a local, short-term collection, or
- (b) that the promoters or any of them has breached any such provision, or been convicted of any such offence, as is mentioned in paragraph (b) of that subsection.

(2) A person who has duly applied to the Commission for a permit to conduct a public charitable collection may appeal to a court of summary jurisdiction against a decision of the Commission under section 144—

- (a) to refuse to issue a permit, or
- (b) to attach any condition to it.

(3) A person to whom a permit has been issued may appeal to a court of summary jurisdiction against a decision of the Commission under section 146—

- (a) to withdraw the permit,
- (b) to attach a condition to the permit, or
- (c) to vary an existing condition of the permit.

(4) An appeal under subsection (1), (2) or (3) shall be by way of complaint under Part 8 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26).

(5) Any such appeal shall be brought within 14 days of the date of service on the person in question of the relevant notice under section 136(4), section 144(5) or (as the case may be) section 146(7); and for the purposes of this section an appeal shall be taken to be brought when the complaint is made.

(6) On an appeal under this section, the court may confirm, vary or reverse the Commission's decision and generally give such directions as it thinks

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fit, having regard to the provisions of this Chapter and of any regulations under section 148.

(7) On an appeal against a decision of the Commission under section 136(4), directions under subsection (6) may include a direction that the collection may be conducted—

- (a) on the date or dates notified in accordance with section 136(3)(b), or
- (b) on such other date or dates as may be specified in the direction;

and if so conducted the collection is to be regarded as one that is an exempt collection by virtue of section 136.

(8) It shall be the duty of the Commission to comply with any directions given by the court under subsection (6); but the Commission need not comply with any directions given by a court of summary jurisdiction—

- (a) until the time for bringing an appeal against the court's decision has expired, or
- (b) if such an appeal is duly brought, until the determination or abandonment of the appeal.

### *Supplementary*

## **Regulations**

**148.**—(1) The Department may make regulations—

- (a) prescribing the matters which the Commission is to take into account in determining whether a collection is local in character for the purposes of section 136(2)(a);
- (b) for the purpose of regulating the conduct of public charitable collections;
- (c) prescribing anything falling to be prescribed by virtue of any provision of this Chapter.

(2) The matters which may be prescribed by regulations under subsection (1)(a) include—

- (a) the extent of the area within which the appeal is to be conducted;
- (b) whether the appeal forms part of a series of appeals;
- (c) the number of collectors making the appeal and whether they are acting for remuneration or otherwise;
- (d) the financial resources (of any description) of any charitable institution for whose benefit the appeal is to be conducted;
- (e) where the promoters live or have any place of business.

(3) Regulations under subsection (1)(b) may make provision—

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- (a) about the keeping and publication of accounts;
- (b) for the prevention of annoyance to members of the public;
- (c) with respect to the use by collectors of badges and certificates of authority, or badges incorporating such certificates, including, in particular, provision—
  - (i) prescribing the form of such badges and certificates;
  - (ii) requiring a collector, on request, to permit a badge, or any certificate of authority held by the collector for the purposes of the collection, to be inspected by a constable or a duly authorised officer of the Commission, or by an occupier of any premises visited by the collector in the course of the collection;
- (d) for prohibiting persons under a prescribed age from acting as collectors, and prohibiting others from causing them so to act.

(4) Nothing in subsection (2) or (3) prejudices the generality of subsection (1)(a) or (b).

(5) Regulations under this section may provide that any failure to comply with a specified provision of the regulations is to be an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

(6) Before making regulations under this section the Department must consult such persons or bodies of persons as it considers appropriate.

### **Offences**

**149.**—(1) A person commits an offence if, in connection with any charitable appeal, that person displays or uses—

- (a) a prescribed badge or prescribed certificate of authority which is not for the time being held by that person for the purposes of the appeal pursuant to regulations under section 148, or
- (b) any badge or article, or any certificate or other document, so nearly resembling a prescribed badge or (as the case may be) a prescribed certificate of authority as to be likely to deceive a member of the public.

(2) A person commits an offence if—

- (a) for the purposes of an application made under section 137 or section 143, or
- (b) for the purposes of section 135 or section 136,

that person knowingly or recklessly [<sup>F1</sup>provides] any information which is false or misleading in a material particular.

(3) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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(4) In subsection (1) “prescribed badge” and “prescribed certificate of authority” mean respectively a badge and a certificate of authority in such form as may be prescribed by regulations under section 148.

#### Textual Amendments

- F1** Word in s. 149(2) substituted (19.1.2013) by [Charities Act \(Northern Ireland\) 2013 \(c. 3\)](#), s. 10(1), [Sch. 1 para. 6\(3\)](#)

## 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,

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—

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(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

(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

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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.

(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

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- (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.

(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.



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(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
- (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.



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(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

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application is made not more than 12 months after the date of service of the relevant notice.

(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.

PROSPECTIVE

### *Supplementary*

#### **Regulations about fund-raising**

**157.**—(1) The Department may make such regulations as appear to it to be necessary or desirable for any purposes connected with any of the preceding provisions of this Chapter.

(2) Without prejudice to the generality of subsection (1), any such regulations may—

- (a) prescribe the form and content of—
  - (i) agreements made for the purposes of section 150, and
  - (ii) notices served under section 155(3);
- (b) require professional fund-raisers or commercial participators who are parties to such agreements with charitable institutions to make available to the institutions books, documents or other records (however kept) which relate to the institutions;

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- (c) specify the manner in which money or other property acquired by professional fund-raisers or commercial participators for the benefit of, or otherwise falling to be given to or applied by such persons for the benefit of, charitable institutions is to be transmitted to such institutions;
- (d) provide for any provisions of section 153 or 154 having effect in relation to solicitations or representations made in the course of radio or television programmes to have effect, subject to any modifications specified in the regulations, in relation to solicitations or representations made in the course of such programmes—
  - (i) by charitable institutions, or
  - (ii) by companies connected with such institutions,
 and, in that connection, provide for any other provisions of this Part to have effect for the purposes of the regulations subject to any modifications so specified;
- (e) make other provision regulating the raising of funds for charitable, benevolent or philanthropic purposes (whether by professional fund-raisers or commercial participators or otherwise).

(3) In subsection (2)(c) the reference to such money or other property as is there mentioned includes a reference to money or other property which, in the case of a professional fund-raiser or commercial participator—

- (a) has been acquired by the professional fund-raiser or commercial participator otherwise than in accordance with an agreement with a charitable institution, but
- (b) by reason of any solicitation or representation in consequence of which it has been acquired, is held by the professional fund-raiser or commercial participator on trust for such an institution.

(4) Regulations under this section may provide that any failure to comply with a specified provision of the regulations is an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale.

#### **Reserve power to control fund-raising by charitable institutions**

**158.**—(1) The Department may make such regulations as appear to it to be necessary or desirable for or in connection with regulating charity fund-raising.

(2) In this section “charity fund-raising” means activities which are carried on by—

- (a) charitable institutions,
- (b) persons managing charitable institutions, or
- (c) persons or companies connected with such institutions,



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and involve soliciting or otherwise procuring funds for the benefit of such institutions or companies connected with them, or for general charitable, benevolent or philanthropic purposes.

But “activities” does not include primary purpose trading.

(3) Regulations under this section may, in particular, impose a good practice requirement on the persons managing charitable institutions in circumstances where—

- (a) those institutions,
- (b) the persons managing them, or
- (c) persons or companies connected with such institutions,

are engaged in charity fund-raising.

(4) A “good practice requirement” is a requirement to take all reasonable steps to ensure that the fund-raising is carried out in such a way that—

- (a) it does not unreasonably intrude on the privacy of those from whom funds are being solicited or procured;
- (b) it does not involve the making of unreasonably persistent approaches to persons to donate funds;
- (c) it does not result in undue pressure being placed on persons to donate funds;
- (d) it does not involve the making of any false or misleading representation about any of the matters mentioned in subsection (5).

(5) The matters are—

- (a) the extent or urgency of any need for funds on the part of any charitable institution or company connected with such an institution;
- (b) any use to which funds donated in response to the fund-raising are to be put by such an institution or company;
- (c) the activities, achievements or finances of such an institution or company.

(6) Regulations under this section may provide that a person who persistently fails, without reasonable excuse, to comply with any specified requirement of the regulations is to be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(7) For the purposes of this section—

- (a) “funds” means money or other property;
- (b) “general charitable, benevolent or philanthropic purposes” means charitable, benevolent or philanthropic purposes other than those associated with one or more particular institutions;



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- (c) the persons “managing” a charitable institution are the charity trustees or other persons having the general control and management of the administration of the institution; and
- (d) a person is “connected” with a charitable institution if the person is an employee or agent of—
  - (i) the institution,
  - (ii) the persons managing it, or
  - (iii) a company connected with it,or the person is a volunteer acting on behalf of the institution or such a company.

(8) In this section “primary purpose trading”, in relation to a charitable institution, means any trade carried on by the institution or a company connected with it where—

- (a) the trade is carried on in the course of the actual carrying out of a primary purpose of the institution; or
- (b) the work in connection with the trade is mainly carried out by beneficiaries of the institution.

(9) No regulations shall be made under this section unless a draft of the regulations has been laid before and approved by a resolution of the Assembly.

### *Interpretation*

#### **Interpretation of Chapter 2**

**159.—**(1) In this Chapter—

“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 the commercial participator or other person, or
  - (ii) any proceeds (other than such consideration) of a promotional venture undertaken by the commercial participator or other person, or
- (b) sums given by the commercial participator or other person 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);

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“commercial participator”, in relation to any charitable institution, means any person (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;

“credit card” means a card which is a credit-token within the meaning of the Consumer Credit Act 1974 (c. 39);

“debit card” means a card the use of which by its holder to make a payment results in a current account of the holder 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;

“professional fund-raiser” means—

- (a) any person (apart from a charitable institution 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 that person does so otherwise than in the course of any fund-raising venture undertaken by a person falling within paragraph (a);

“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 Broadcasting Act 1990 (c. 42).

(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 a capacity as such;
- (c) any person acting as a collector in respect of a public charitable collection (apart from a person who is a promoter of such a collection as defined in section 133(1));
- (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

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(ii) a company connected with such an institution,

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

(e) any commercial participator.

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

(a) more than—

(i) £5 per day, or

(ii) £500 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

(b) more than £500 by way of remuneration in connection with any fund-raising venture in the course of which the person solicits money or other property for the benefit of that institution.

(4) In this Chapter 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 as defined in section 2(1).

(5) For the purposes of this Chapter 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 Chapter—

(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 that or those persons are in the presence of the speaker 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

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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 respect to the solicitation,

then (if that person would not be so regarded apart from this subsection) that person shall be regarded for the purposes of this Chapter 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 Chapter “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;

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

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

PROSPECTIVE

## CHAPTER 3

### INTERPRETATION OF PART 13

#### **Interpretation of Part 13**

**160.**—(1) In this Part—

“charitable institution” means—

- (a) a charity, or
- (b) an institution (other than a charity) which is established for charitable, benevolent or philanthropic purposes; and

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“collector”, in relation to a public charitable collection, means any person by whom the appeal in question is made (whether made by that person alone or with others and whether made by that person for remuneration or otherwise).

(2) In this Part, “charitable appeal”, “collection in a public place”, “door to door collection” and “public charitable collection” shall be construed in accordance with section 131(2).

**Status:**

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**Changes to legislation:**

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