



# Charities Act 1992

## 1992 CHAPTER 41

### PART II

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

##### Commencement Information

- II** [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. 1994/3023](#), [art. 2](#).

##### *Preliminary*

VALID FROM 01/03/1995

#### **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;

*Status: Point in time view as at 28/11/1994. This version of this part contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Charities Act 1992, Part II. (See end of Document for details)*

“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];

“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;

“professional fund-raiser” means—

- (a) any person (apart from a charitable institution [<sup>F3</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 to be treated as a promoter of such a collection by virtue of section 65(3));
- (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

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- (e) any commercial participator;  
and for this purpose “collector” and “public charitable collection” have the same meaning as in Part III of this Act.
- (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) £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 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 whether or not the purposes are charitable within the meaning of any rule of law.
- (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,

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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;
- and references to the supply of services shall be construed accordingly.
- (10) The Secretary of State 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 (3.11.1994) by 1994 c. 40, **ss. 25(3), 82(2)**

#### Commencement Information

- I2** 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.

### *Control of fund-raising*

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

- (1) It shall be unlawful for a professional fund-raiser to solicit money or other property for the benefit of a charitable institution unless he does so 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 unless he does so 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

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- (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—
- (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 by him in pursuance of the agreement unless—
- (a) he 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 64(2)(a).

#### Commencement Information

**I3** 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

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

- (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) (in general terms) the method by which the fund-raiser’s remuneration in connection with the appeal is to be determined.

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- (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 he 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) (in general terms) the method by which his remuneration in connection with the appeal is to be determined.
- (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) (in general terms) the method by which it is to be determined—
    - (i) what proportion of the consideration given for goods or services sold or supplied by him, or of any other proceeds of a promotional venture undertaken by him, is to be given to or applied for the benefit of the institution or institutions concerned, or
    - (ii) what sums by way of donations by him in connection with the sale or supply of any such goods or services are to be so given or applied, as the case may require.
- (4) 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 61(1) any payment of £50 or more which is so made.

- (5) 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 his or their presence, or
  - (b) in the course of any radio or television programme,
- the professional fund-raiser or commercial participator concerned shall, within seven days of any payment of £50 or more being made to him 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 61(2) an agreement made in response to the solicitation or representation, and the right to have refunded under section 61(2) or (3) any payment of £50 or more made in response thereto.

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- (6) In subsection (5) above 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 telecommunication 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.
- (7) Where any requirement of subsections (1) to (5) is not complied with in relation to any solicitation or representation, the professional fund-raiser or commercial participator concerned shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.
- (8) It shall be a defence for a person charged with any such offence to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.
- (9) Where the commission by any person of an offence under subsection (7) is due to the act or default of some other person, that other person shall be 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.
- (10) 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;
- “telecommunication apparatus” has the same meaning as in the <sup>M3</sup>Telecommunications Act 1984.

#### Commencement Information

**I4** 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

**M3** 1984 c.12.

## 61 Cancellation of payments and agreements made in response to appeals.

- (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 section 60 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 seven days beginning with the date of the solicitation or representation, the donor serves on the relevant fund-raiser a

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notice in writing which, however expressed, indicates the donor's intention to cancel the payment,

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

(2) Where—

- (a) a person (“the donor”), in response to any solicitation or representation falling within subsection (5) of section 60, 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 him under the agreement is £50 or more, but
- (b) before the end of the period of seven days beginning with the date when he 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) below) be entitled to have any payment of £50 or more made by him under the agreement refunded to him forthwith by the relevant fund-raiser.

(3) Where, in response to any solicitation or representation falling within subsection (5) of section 60, 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 seven days beginning with the date when the donor is given any such written statement as is referred to in subsection (5) 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) below) be entitled to have the payment refunded to him forthwith by the relevant fund-raiser.

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

- (a) is a right to have refunded to him the amount of the payment less any 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 him of the goods in question.

(5) Nothing in subsections (1) to (3) above 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



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debit card; and subsection (6) of section 60 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 (5) 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 Secretary of State 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 60 as he considers appropriate.

#### Commencement Information

**I5** 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

## 62 Right of charitable institution to prevent unauthorised fund-raising.

- (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,
 and that, unless restrained, he 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 him 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,

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- as the case may be; and
- (b) stating that, if he 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 him, if the 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 fundraiser or commercial participator in relation to the institution.

#### Commencement Information

- I6** 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

VALID FROM 01/03/1995

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

- (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,
- he shall be guilty of an offence and liable on summary conviction to a fine not exceeding the fifth level on the standard scale.

[<sup>F4</sup>(1A) In any proceedings for an offence under subsection (1), it shall be a defence for the accused to prove that he believed on reasonable grounds that the institution was a registered charity.]

- (2) In [<sup>F5</sup>this section]“registered charity” means a charity which is for the time being registered in the register of charities kept under [<sup>F6</sup>section 3 of the Charities Act 1993].

#### Textual Amendments

- F4** S. 63(1)(A) inserted (3.11.1994) by 1994 c. 40, ss. 26(2), 82(2)
- F5** Words in s. 63(2) substituted (3.11.1994) by 1994 c. 40, ss. 26(3), 82(2)
- F6** Words in s. 63(2) substituted (1.8.1993) by 1993 c. 10, s. 98(1), Sch. 6 para. 29(6)

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- I7** 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

## Supplementary

### 64 Regulations about fund-raising.

- (1) The Secretary of State may make such regulations as appear to him to be necessary or desirable for any purposes connected with any of the preceding provisions of this Part.
- (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 59, and
    - (ii) notices served under section 62(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;
  - (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 60 or 61 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 him 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 him 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 shall be an offence punishable on summary conviction by a fine not exceeding the second level on the standard scale.

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- 18** [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](#)

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