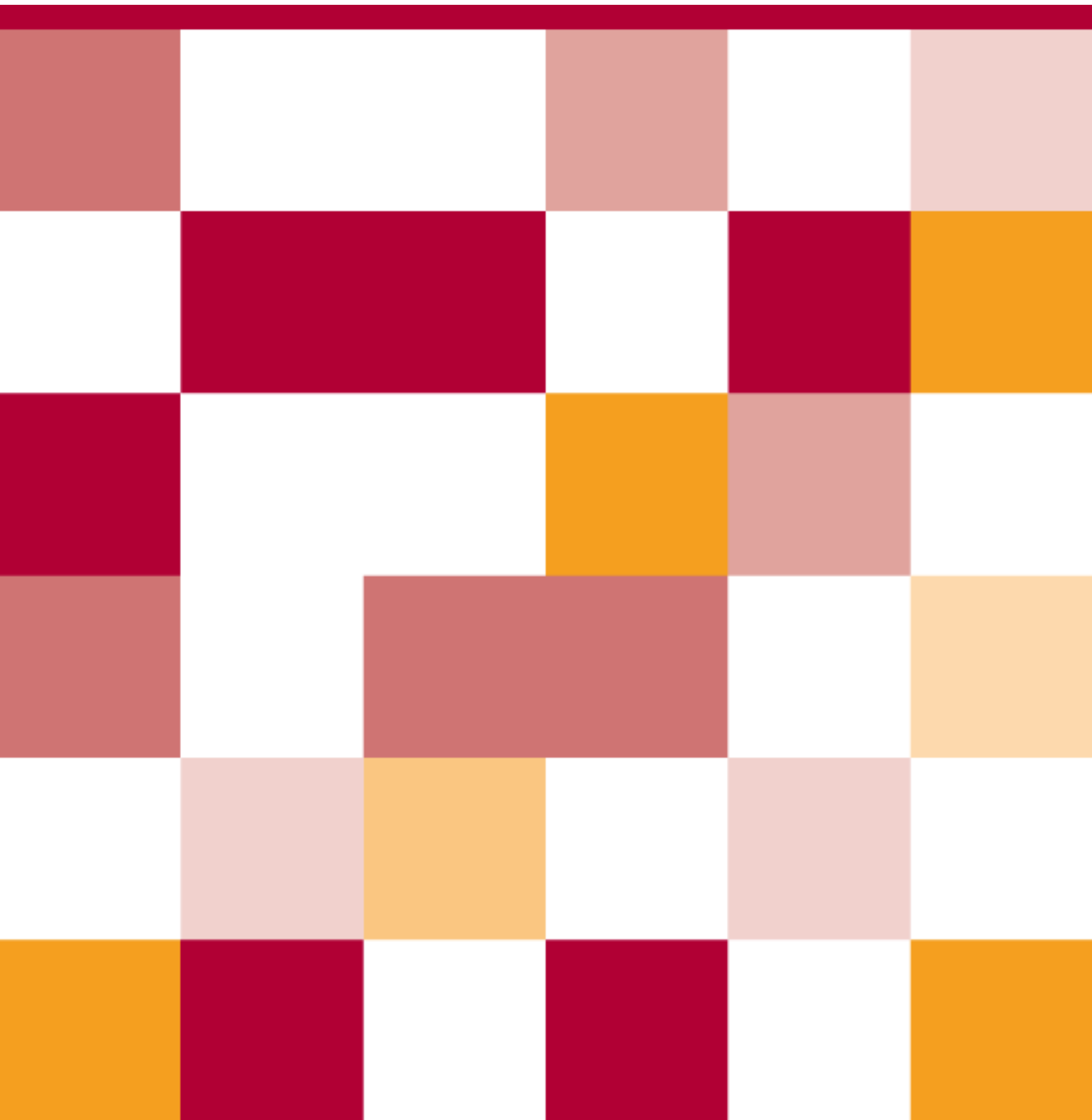




Draft Guidance on Professional Fund-Raising and Commercial Participation



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Purpose of this Guidance

Why this guidance?

Currently, professional fund-raisers and commercial participators are required to make statements (referred to in this guidance as “solicitation statements”) when fund-raising for charitable institutions or charitable, benevolent or philanthropic purposes. These statements must comply with the requirements of Part 2 of the Charities Act 1992. The Charities Act 2006 has amended [Part 2 of the 1992 Act](#) to introduce some new requirements about what these statements must contain. These new requirements come into force on 1 April 2008.

The purpose of this guidance is to explain to charities, professional fund-raisers and commercial participators involved in fund-raising ventures what changes have been made to the requirements of Part 2 of the 1992 Act, to highlight key provisions and to provide some examples of fund-raising statements that in our view would satisfy the new requirements.

This guidance replaces and updates guidance published by the Home Office in 1995 (“Charitable Fund-Raising: Professional and commercial involvement”). It is intended to assist in the understanding of the law and is not a substitute for the 1992 Act or any regulations made under that Act. **Interpretation of the law is a matter for the courts: this guidance cannot, therefore, give definitive advice on the requirements of the legislation. Nor is the guidance intended to constitute legal advice. If you are in any doubt about the law, you should seek appropriate legal advice before the relevant fund-raising starts.**

The Charities Act 2006 has also amended Part 2 of the 1992 Act to introduce a requirement that certain employees and officers of charitable institutions (or a company connected to such an institution) and trustees of charitable institutions make a simple statement when collecting in public for a charitable institution or for charitable, benevolent or philanthropic (“charitable etc.”) purposes. This new requirement also comes into force on 1 April 2008.



Who is this guidance for?

This guidance is aimed at professional fund-raisers, commercial participators and the charitable institutions that work with them.

Who has written the guidance?

This guidance has been prepared by the Office of the Third Sector. It has been written in consultation with the Charity Commission, Institute of Fundraising, the Public Fundraising Regulatory Association, Charity Law Association, The Fundraising Standards Board, The Association of Fundraising Consultants and representatives from the telephone fund-raising services.

The Office of the Third Sector is part of the Cabinet Office. It advances and develops the role of the third sector, and its responsibilities include charity law and regulation.

Introduction

The current law provides a framework in which fund-raising takes place. [Part 2 of the Charities Act 1992, as amended](#)¹, (“the 1992 Act”) and the [Charitable Institutions \(Fund-Raising\) Regulations 1994, as amended](#)², (“the 1994 Regulations”) set out requirements in relation to professional fund-raising, commercial participation and certain other forms of fund-raising in England and Wales. Part 2 applies to fund-raising for the benefit of particular charitable institutions or for charitable, benevolent or philanthropic (“charitable etc.”) purposes.

The term “charitable institution” covers charities and any other institutions which are established for charitable etc. purposes. “Professional fund-raisers” include persons carrying on fund-raising businesses (as defined in section 58(1) of the 1992 Act). A person may be a “commercial participator” if he carries on a business other than a fund-raising business but in the course of carrying on his normal business activities engages in a promotional venture (defined in section 58(1)) with a charitable institution to raise money for it. These terms are addressed in more detail later in the guidance.

Under the 1992 Act, professional fund-raisers and commercial participators involved in fund-raising for the benefit of particular charitable institutions must have an agreement in place with the relevant charitable institution(s). This agreement must comply with the requirements prescribed in the 1994 Regulations (regulations 2 (professional fund-raisers) and 3 (commercial participators)).

Among the other controls that Part 2 of the 1992 Act imposes on professional fund-raisers and commercial participators are requirements intended to ensure that:

- potential donors to whom professional fund-raisers make appeals; and

¹ [Part 2 of the Charities Act 1992](#) has been amended by The Charities Act 1993, The Deregulation and Contracting Out Act 1994, The Communications Act 2003, The Charities Act 2006 and The Transfer of Functions (Third Sector, Communities and Equality) Order 2006 (S.I. 2006/2951).

² The [1994 Regulations](#) have been amended by The Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001 (S.I. 2001/3649).

- potential purchasers of commercial participators' goods or services, are given, before they make their decision whether or not to donate or purchase, a fair indication of the extent to which charitable institutions or charitable etc. purpose will benefit from the transaction. The relevant requirements are set out:
 - in relation to professional fund-raisers, in sections 60(1)(c) and 60(2)(c); and
 - in relation to commercial participators, in section 60(3)(c).

These provisions operate by requiring professional fund-raisers, and commercial participators to make statements to potential donors. In the case of professional fund-raisers the statement in part concerns their remuneration in relation to the appeal and was originally intended to give potential donors some idea of the amount or proportion of their donation that would go towards paying for the services of the professional fund-raiser. In the case of commercial participators the statement in part concerns the amount that the charity or charitable cause is likely to receive from the promotional venture (defined in section 58(1)).

However, it was found (see Strategy Unit Report '*Private Action, Public benefit- A review of Charities and the Wider Not-For-Profit Sector*, September 2002) that the statements that were required to be made about the extent to which a particular cause would benefit from a promotion were not specific enough. The SU took the view that Part 2 of the 1992 Act as it stood appeared to allow very general statements. This meant that there was a lack of transparency. The report recommended that the legislation be amended to require a more specific statement of the return that would be made for charitable etc purposes from promotional ventures. The government accepted this recommendation.

The Charities Act 2006 ("the 2006 Act"), therefore, introduces some important changes to the relevant provisions of the 1992 Act. The 2006 Act amends the requirements relating to the "solicitation statements" that must be made by professional fund-raisers or commercial participators to ensure that they are sufficiently informative for the public to make informed decisions. The relevant provisions of the 2006 Act come into force on 1 April 2008. Any solicitation statement made on or after that date by a professional fund-raiser or commercial participator must comply with the amended requirements.

A similar requirement to provide a solicitation statement is imposed on persons who are not professional fund-raisers or commercial participators but who in the course of their normal business activity engage in a promotional venture in the course of which it is represented that charitable contributions (defined in section 58(1)) are to be applied for charitable etc. purposes rather than for the benefit of particular charitable institutions. These requirements are to be found in regulation 7 of the [1994 Regulations](#).


We are planning to amend regulation 7 of the 1994 Regulation to bring it into line with the changes that have been made to section 60 of the Charities Act 1992 which are coming into force on 1 April 2008. We will be consulting on this amendment soon.

The relevant parts of the 1992 Act and the 1994 Regulations are appended to this guidance.

Fund-raising by persons other than professional fund-raisers and commercial participators

The 2006 Act also amends the 1992 Act to require certain employees or officers of a charitable institution or a company connected to a charitable institution and certain trustees of charitable institutions to make a simple statement while making appeals (defined in [section 60A\(10\) of the 1992 Act](#)), when fund-raising in a public place or door-to-door as a collector in that capacity. This statement must state:

- for whom they are fund-raising or, if relevant, that they are fund-raising for charitable etc. purposes and not for the benefit of specific institutions;
- if they are fund-raising for more than one institution, the proportions in which the institutions are respectively to benefit or if they are fund raising charitable etc purposes, how the proceeds of the appeal will be distributed to different charitable institutions;
- the fact that they are an officer or employee of a charitable institution or connected company or trustee of such an institution and are acting as a collector in that capacity; and
- that they are paid for acting as an officer, employee or trustee or for acting as a collector.



The 1992 Act does not require fund-raisers who are not paid in respect of their fund-raising activity to make a solicitation statement when collecting in public.

Guidance


i) What is a 'professional fund-raiser'?

1. The terms 'professional fund-raiser' and 'fund-raising business' are defined in section [58\(1\) of the 1992 Act](#) and relate to the solicitation for reward of money or other property for charitable etc. purposes.
2. A **professional fund-raiser** is:
 - a. any person (apart from the charitable institution or company connected with such an institution) who carries on a fund-raising business (that is, a business carried on for gain and wholly or primarily engaged in soliciting or otherwise procuring money or other property for charitable purposes); or
 - b. any other person who solicits for reward money or other property for the benefit of a charitable institution otherwise than in the course of a fund-raising venture undertaken by a person mentioned in (a) apart from:
 - any charitable institution or company connected with such an institution;
 - any officer or employee of a charitable institution or company connected with such an institution and acting in his capacity as such;
 - any trustee of a charitable institution acting in his capacity as such;
 - any person acting as a collector in respect of a public charitable collection (other than a person treated as a promoter of such a collection);
 - any person who solicit funds during the course of a relevant programme (that is, a TV or radio programme during which a fund-raising venture is undertaken by a charitable institution or company connected with that institution) at the instance of the relevant institution or company; or
 - any commercial participator.
3. In addition, the definition of a professional fund-raiser does not apply to a person falling within (b) if that person:
 - is paid £500 or less by way of remuneration in connection with any fund-raising venture; or
 - is paid not more than £5 per day or £500 per year (these figures are currently under review) in connection with fund-raising for the relevant charitable institution.

4. The most common examples of professional fund-raisers are companies carrying on a fund-raising business that are engaged and paid by a Charitable Institution as its agent to raise funds on its behalf by appealing to the public generally, or to people or organisations individually, to donate money or property to the Charitable Institution. Most “face-to-face” fund-raising (the practice of asking passers-by in the street to sign a direct debit mandate for monthly payments to a particular charitable institution) is carried out not by charitable institutions themselves but by professional fund-raisers engaged as their agents.

What is a ‘professional fund-raiser’ required to do?

5. Where a professional fund-raiser makes a solicitation for money or other property for the benefit of one or more particular charitable institutions, that solicitation must be accompanied by a statement that meets the requirements in section 60(1), as amended by the 2006 Act. Section 60(1) now provides that this statement must clearly indicate:
 - for whom they are fund-raising;
 - if there is more than one charitable institution that will benefit from the appeal, the proportions in which the institutions are respectively to benefit;
 - how their remuneration is calculated;
 - the “notifiable amount” (this is a new requirement. The **notifiable amount** is the amount of remuneration they will receive in connection with the appeal, or if the actual amount is not known at the time the statement is made, as accurate an estimate of that remuneration as is reasonably possible in the circumstances)(section 60(3A)).
6. **Appeal**, in relation to any solicitation made by a professional fund-raiser, is defined in section [60\(10\) of the 1992 Act](#). Section 60(10) provides that such an appeal is the “campaign or other fund-raising venture in the course of which the solicitation is made.”
7. When soliciting for donations employees of a professional fund-raiser would have to provide a statement about the remuneration of their employer in connection with the appeal, not their own personal remuneration.

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8. Under Part 2 of the 1992 Act, where a professional fund-raiser makes a relevant solicitation, there must already be in existence a written agreement, meeting the requirements in regulation 2 of the [1994 Regulations](#), between the professional fund-raiser and the charitable institution(s) concerned (s59(1)).
 9. Further details are set out in the sections on written agreements and statements.
 10. Part 2 of the 1992 Act also applies where a professional fund-raiser solicits money or other property not for the benefit of particular charitable institutions but for charitable etc. purposes. In such cases, the provisions on agreements do not apply but different provisions on fund-raising statements do apply (section 60(2), as amended by the 2006 Act). It must be made clear in this statement that the solicitation is made for charitable etc purposes, rather than for the benefit of particular institution(s). For further guidance, see the sections on general charitable collections.

ii) What is a 'commercial participator'?

11. "Commercial Participator" is defined in section [58\(1\) of the 1992 Act](#). The definition has not been changed by the 2006 Act.
12. A **commercial participator** is any person (other than a company connected with the charitable institution for whom the fund-raising venture is being carried out) who carries on a business for gain which is not a fundraising business, but who in the course of that business engages in any promotional venture (i.e. any advertising or sales campaign or any other venture undertaken for promotional purposes) in the course of which it is represented that contributions are to be given to or applied for the benefit of a charitable institution.
13. A high-street card shop would, for example, likely be a commercial participator when it sells its own brand of Christmas card with a statement on the pack that a charitable Institution - say, a particular children's charity - will receive a proportion of the profit, or a specific amount, from the sale of each pack of cards.
14. The definition of commercial participator does not cover a person who carries on for gain a business other than a fund-raising business and engages in a promotional venture (defined in section 58(1)) in the course of which it is represented that charitable contributions (defined in section 58(1)) will be applied for charitable, benevolent or philanthropic purposes, as opposed to for the benefit of particular charitable institution(s). Thus, in the example just given, the high-street card shop would not be a commercial participator if it promised to give profits from the cards "to help needy children" rather than to the particular children's charity.
15. Specific provision is, however, made for such persons in the 1994 Regulations. The 1994 Regulations effectively extended the requirement to provide a fund-raising statement to such persons.

What is a 'commercial participator' required to do?

16. Where a commercial participator represents that charitable contributions will be given to or applied for the benefit of one or more particular charitable institutions, that representation must be accompanied by a statement satisfying the requirements in section 60(3), as amended by the 2006 Act. This statement must clearly indicate:

- Which charities or charitable cause(s) will benefit from the promotional venture;
- If there is more than one institution concerned, the proportions in which the institutions are respectively to benefit; and
- the **notifiable amount** of the relevant sum (section 60(3)(c)). The notifiable amount is the actual amount of the relevant sum if it is known at the time the statement is made or, if the actual sum is not known at that time, as accurate an estimate of that sum as is reasonably possible in the circumstances (section 60(3A)).

17. Under [Part 2 of the Charities Act 1992 \(section 59\(2\)\)](#), a commercial participator must have a prior written agreement with the Charitable Institution for whom it is represented that charitable contributions are to be given or applied. The written statement must meet the requirements in regulation 3 of the [1994 Regulations](#).

iii) Are charitable institutions and companies connected to them covered by these requirements?

18. Fund-raising by a *charitable institution* (defined in section 58(1)) is not controlled by the provisions of Part 2 of the 1992 Act. Nor, for most purposes, is fund-raising by a connected company, i.e. one wholly controlled by one or more charitable institutions (see section [58\(5\) of the 1992 Act](#)). The 1992 Act, excludes any connected company (as a charitable institution) from being a professional fund-raiser. A connected company is also excluded from being a commercial participator when the company is acting in respect of the charitable institution(s) wholly controlling them but may be a commercial participator if acting in respect of other charitable institutions (section 58(1) and (2), as amended).

19. However, the need for good practice in fund-raising by charities, other charitable institutions and connected companies is just as strong as it is for those subject to Part 2 of the 1992 Act, including the need to have full regard to professional codes and other recommended practice. Although some regard has to be made for the different circumstances where a charitable institution or its connected company undertakes direct fund-raising, as far as is applicable the Office of the Third Sector and (in relation to charities) the Charity Commission strongly recommend, as a matter of good practice, that these bodies follow the same requirements, for example in terms of agreement between the charitable Institution and connected companies (see agreements and statements, below) as for others who are subject to the requirements of Part 2. Note, also, the important advice to charitable institutions about written agreements they are considering entering into with professional fund-raisers, commercial participators or others.

iv) Do the rules cover fund-raising for general charitable purposes rather than specific charitable institutions?

20. Fund-raising for general charitable, benevolent or philanthropic purposes, rather than for specific institutions, includes professional fund-raising subject to section 60(2) of the 1992 Act and activities subject to regulation 7 of the [1994 Regulations](#).
21. It is recommended that charitable fund-raising is undertaken for specific charitable institutions rather than general charitable etc purposes. The public are warned to be more cautious in responding to appeals for general charitable purposes. Nevertheless, appeals for such purposes are not prohibited, and regulation 7 of the 1994 Regulations and section [60\(2\) of the 1992 Act](#) set requirements that must be met in certain cases, including disclosure that the fund-raising is intended to benefit general causes rather than specific institutions: it is important to try to avoid confusion between the two. In addition, those holding money given in response to such appeals may have a duty in law as trustees of charitable funds, and may be subject to the supervision and control of the Charity Commission.

v) What are the legal requirements relating to written agreements between a charitable institution and a professional fund-raiser or commercial participator?

22. [Section 59 of the 1992 Act](#) prohibits professional fund-raising or fund-raising by commercial participators for the benefit of particular charitable institution otherwise than in accordance with a written agreement with the charitable institution(s) concerned. Regulations 2 and 3 of the [1994 Regulations](#) set out the minimum legal requirements that the agreement between the charitable institution(s) and the professional fund-raiser or commercial participator must satisfy.

23. Regulation 2 of the 1994 Regulations provides that the minimum requirements that an agreement between a charitable institution and a professional fund-raiser must satisfy are:

- it must be in writing;
- it must be signed by or on behalf of the charitable institution and the professional fund-raiser;
- it must specify: the name and address of each of the parties to it; the date on which it was signed by or on behalf of those parties; the period for which it will subsist; any terms relating to its termination or variation before the date on which that period is due to expire; and
- it must contain a statement of its principal objectives and methods to be used in pursuit of those objectives;
- if more than one charitable institution is a party to the agreement, it must contain provision setting out how the proportion in which each of the institutions is to benefit under the agreement is to be determined;
- it must contain provision relating to the amount of remuneration or expenses that the professional fund-raiser is entitled to receive in respect of the things he does in pursuance of the agreement and how that amount is to be determined.


24. Regulation 3 of the 1994 Regulations provides that the minimum requirements that an agreement between a charitable institution and a commercial participator must satisfy are:

- it must be in writing;
- it must be signed by or on behalf of the charitable institution and the commercial participator;
- it must specify: the name and address of each of the parties to it; the date on which it was signed by or on behalf of those parties; the period for which it will subsist; any terms relating to its termination or variation before the date on which that period is due to expire; and
- it must contain a statement of its principal objectives and methods to be used in pursuit of those objectives;
- it must contain provision to clarify the manner in which the following are to be determined:
 - a. if more than one charitable institution is party to the agreement, the proportion in which the institutions are to benefit under the agreement; This provision must set out the types of charitable contributions that are to be given or applied for the benefit of the charitable institutions and the circumstances in which they are to be given or applied; and
 - b. as relevant either:
 - (a) the proportion of the consideration for goods or services sold or supplied by the commercial participator, or any other proceeds of the promotional venture undertaken by the commercial participator, to be applied for the benefit of the charitable institution; or
 - (b) the sums by way of donations by the commercial participator in connection with the sale or supply of any goods or services supplied by him are to be given or applied for the benefit of the charitable institution;
- if required, it must contain provision relating to the amount of remuneration or expenses that the commercial participator is entitled to receive in respect of the things he does in pursuance of the agreement and how that amount is to be determined.

25. Consideration should always be given to what further detail it may be appropriate to specify in either type of agreement. Agreements are also subject to the general provisions of contract law, and other relevant law. The institution should ensure that

agreements are signed only by trustees, or those suitably authorised to do so on their behalf, whether at the main office of the institution or its local branches.

26. Association with charity can offer a powerful commercial advantage to a business: responsibility rests with the institution to safeguard its best interests by negotiating a sufficiently favourable and comprehensive agreement (or refusing one which is insufficiently favourable), and to consider with care the type of commercial venture it is associated with. It may also be advisable to seek suitable advice, for example from others with relevant business experience, or from lawyers, accountants or other professionals.
27. This guidance contains a list of organisations issuing guidance or codes of practice which may be relevant.
28. Charitable appeals can be very successful, or they can generate less income and more expense than is projected. Before making any such agreement charitable institutions should therefore ask themselves: what is the balance of financial benefit for each of the parties (charitable and commercial)? Is a sufficiently competitive price being obtained for the use of this institution's name in this arrangement? What is the full extent of the possible risks, obligations, costs and other adverse consequences? Have commercial rights (e.g. copyright, trade marks, etc) to the institution's property been safeguarded? Do the proposed arrangements represent prudent use of the institution's name and resources? In summary, would the arrangements secure a fair deal for this institution and its beneficiaries? Would they enhance the reputation of this institution and of charitable fund-raising? If not, it may well be better not to agree to the proposed terms.
29. According to section 59(4), any agreement between a charitable institution and a commercial participator or a professional fundraiser shall not be enforceable unless provided by an order of the Court if the agreement does not satisfy the prescribed requirements. The court order would have to be obtained by the professional fundraiser or commercial participator before he could receive any remuneration or expenses.



30. Section 59(5) prevents a professional fund-raiser or commercial participator from receiving from a charitable institution with which they have an agreement any money as remuneration or expenses, unless the agreement provides for such remuneration or expenses and it is in the form prescribed by regulations or, if it is not, the court has ordered (by virtue of section 59(4)) that the provision in the agreement should have effect.

What is a solicitation statement (for professional fund-raisers and commercial participators)?

31. Under the 1992 Act, professional fund-raisers and commercial participators must make 'solicitation statements' when raising money for charities. This statement must include information about for whom they are collecting money or donations and how much their organisation is being paid for the appeal.
32. The 2006 Act changes the requirements in relation to the content of these statements to ensure that they are sufficiently informative for the public to make informed decisions.
33. Section 67 of the 2006 Act amends the requirements in [section 60\(1\) and \(2\) of the 1992 Act](#) so as to require professional fund-raisers to state, when making a solicitation for money or other property for a charitable institution or charitable etc purposes,
 - the "notifiable amount" of their remuneration in connection to the appeal and,
 - the method by which their remuneration in connection with the appeal is to be calculated.
34. Similarly, the requirements for statements to be made by commercial participators have been amended so that the commercial participator will be required clearly to indicate the "notifiable amount" of whichever of the following is applicable in the circumstances:
 - How much (% or precise amount e.g. 10p) of the price paid for each product or service by consumers will be given to or applied for the benefit of the charitable institution(s) concerned;
 - How much of any other proceeds from a promotional venture will be given to or applied for the benefit of the charitable institution(s) concerned; or
 - The sum of the donations given by the commercial participator to the charitable institution in connection with the sale or supply of the relevant goods or services. (section 68 of the Charities Act 2006)

What is a “notifiable amount”?

35. From 1 April 2008, professional fund-raisers and commercial participators will be required to set out in their fund-raising statements the notifiable amount of their remuneration or the sum of proceeds or donations to be given or applied for the benefit of the relevant institutions respectively.

36. The notifiable amount is:

- a) the actual amount of remuneration or sum if it is known at the time the statement is made; or
- b) where the actual amount is not known at the time the statement is made, an estimated amount of the remuneration or sum. This estimate must be calculated as accurately as is reasonably possible in the circumstances (section 60(3A) of the Charities Act 1992).

37. This means that where there is a fixed fee and this is known at the time the statement is made, the professional fund-raiser has to state this **as well as** stating the method by which his/her remuneration has been calculated. The statutory requirements will not be met if the fund-raiser makes a statement simply to provide his/her hourly or daily rate.


38. However, if the fund-raiser is being paid on daily or hourly rate and the time the person is likely to work on this campaign is variable depending on the requirement of the campaign (i.e. it is not known at the outset exactly how many days or hours the fund-raiser will be required to work) then the fund-raiser must state his daily or hourly rate as well as provide an estimate of the amount of time he/she is likely to remunerated in total. This estimate should be as accurate as possible.

How should a solicitation statement be made?

39. The statement must **accompany** each solicitation or representation made by a professional fund-raiser or commercial participator respectively. If, for example, the representation is made on a general notice by a cash till, that notice should also contain the required statement.
40. That means it must be made prior, for example, to the donation being given or relevant purchase being made.
41. There is generally no statutory requirement as to the form the statement must take. For example, the statement does not have to be made in writing.
42. However, specific statutory requirements do apply to statement required to be made under section [60\(5\) of the 1992 Act](#). Such statement must be made in writing. A statement is required under section 60(5) where the solicitation or representation has been made orally but not made by speaking directly to the person to whom it is addressed and in that person's presence or not made in the course of a radio or television programme.

What is 'solicitation'?

43. An advertisement placed in a newspaper asking for donations in support of a particular campaign or a person standing in the street asking passers-by to donate money in support of a particular charity are examples of 'solicitation' for the purposes of [Part 2 of the 1992 Act](#).
44. The term **solicit** - is broadly defined (section 58(6)). In particular, section 58(7) means that someone will be regarded as soliciting money or other property for the purposes of Part 2 of the 1992 Act, and therefore possibly be a professional fund-raiser, if receiving money or other property given in response to a solicitation (section 58(7)(b)), and the solicitation is made in accordance with arrangements between that person and the charitable institution (section 58(7)(a)). For example, if a charity makes arrangements with 'A' to receive donations from an appeal, crediting cheques temporarily to 'A's' account; and the charity then invites (e.g. by



direct mail, press or television appeal) donations to be made via that route, 'A' may be a professional fund-raiser.

45. If A is in fact a professional fund-raiser, Part 2 of 1992 Act and the [1994 Regulations](#) (e.g. on agreements, transmission of money and rights of access) would apply. The requirements in section 60 in relation to statements will also apply. However, since 'A' would not directly control the material reaching potential donors, 'A' must ensure that the agreement it has with the charitable institution ensures that a suitable statement will accompany any relevant solicitation.

Do employees and paid officers or trustees of a charity have to make a solicitation statement?

46. Under the [1992 Act](#), as amended by the 2006 Act, officers and employees of charitable institutions and companies connected with any such institution and trustees of charitable institutions who:

- act in their capacity as officer, employee or trustee as a collector (defined in section 60(10); and
- are remunerated for acting as an employee, officer or trustee or for acting as a collector,

47. will for the first time be required to make solicitation statements when soliciting money or other property for the benefit of particular institutions or charitable etc purposes. This requirement will only apply to such officers, employees and trustees whose remuneration is over the earnings limit set out in section 60B(5) (section 60B(4)). Employees, officers and trustees earning less than £5 per day or £500 per annum or, if paid in a lump sum, a lump sum of not more than £500 will fall outside of the rules relating to fund-raising statements. These limits may be varied by the Minister in the future, and is reviewed as a part of the review of Charities Act thresholds that is being undertaken by the Office of the Third Sector and the Charity Commission.

48. The exact content of the solicitation statements will vary slightly, depending on whether the collection is for named charitable institutions or for particular charitable etc purposes. Section 60A(4) and (5) set out the content of statements where collections are for named institutions and for charitable etc purposes respectively. Relevant officers, employees and trustees should check the specific requirements of these provisions. However, broadly speaking, the statements will need to clarify;

- The collector's position in the charitable institution or connected company and that he is acting as a collector in that capacity;
- The fact that he or she is paid for acting in that position or as a collector; and
- For whom/which charitable institution he or she is collecting;

49. Any other person being paid to fund-raise will also be required to make a statement similar to that made by professional fund-raisers

What about telephone fund-raising and broadcast appeals?

50. Attention is drawn particularly to sections 60 and 61 which contain some special requirements about fund-raising statements and refunds in relation to telephone fund-raising and broadcast appeals, where the donor makes a payment of £50 or more to the professional fund-raiser or commercial participator (irrespective of the amount received by the charitable institution).

51. In such cases the 1992 Act gives the donor the right to a refund if that is requested within 7 days of either receiving the written statement from the telephone fund-raiser (as is required) or of the solicitation or representation made during the course of the broadcast appeal. This is in addition to the general requirement for a fund-raising statement described earlier.

52. Where the relevant solicitation or representation is made in the course of a broadcast appeal (i.e. a television or radio programme), the right to request a refund of any payment of £50 or more under section 61(1) must be made clear in the fund-raising statement made under section 60(1), (2) or (3) (section 60(4)).

53. Where a payment of £50 or more is made in response to a relevant solicitation or representation made by telephone, the professional fund-raiser or commercial participator concerned must, within seven days of receiving that payment, give written notice to the donor satisfying the requirements set out in section 60(5).

54. This £50 threshold is being considered as part of the review of Charities Act financial thresholds currently being undertaken by the Office of the Third Sector and the Charity Commission.

55. These provisions apply to telephone fund-raising in relation to payment made to the professional fund-raiser or commercial participator by any means; or to broadcast appeals in relation to payment by debit or credit card only. In each case any refund

to which a donor is entitled is subject to a deduction for reasonable costs incurred by the fund-raiser in making the refund; and is dependent on the restitution of any goods received in return for the payment.

56. There is no right to a refund where any payment made or to be made in respect of services which have been supplied at the time when the relevant notice is served.

57. Note also that section 58(2)(d) and section 58(8) limit the effect of Part II in relation to solicitations made by someone during a television or radio programme at the instigation of a charitable institution, connected company or professional fund-raiser who is undertaking the relevant fund-raising venture.

What do the 1994 Regulations say about availability of books, documents or other records?

58. Professional fund-raisers or commercial participators who are parties to agreements with charitable institutions are required to keep and to make available to the institution concerned, on request and at all reasonable times, any books, documents or records (however kept) which relate to that institution and that are relevant to the agreement (regulation 5 of the [1994 regulations](#)). Making available may include giving the charitable institution the ability to copy documents if desired, though not necessarily to remove them from the premises if this option is available. The right of access does not necessarily end when the agreement itself expires - provided the material is relevant to the agreement it may be requested within a reasonable period after the end of the agreement. Institutions should consider who should be authorised to make such a request, e.g. trustees only, or certain officers employed by the institution.

How should the money or other property be given to the Charitable Institution?

59. Any money (including cheques and other negotiable instruments) acquired by the professional fund-raiser or commercial participator for the benefit of the charitable institution is to be paid gross (without deduction of fees or expenses). It must be paid either to the person managing the institution, or into a bank or building society

account under the control of that person and in the name or held on behalf of the institution, as soon as reasonably practicable after its receipt and in any event within 28 days or such other period as may be agreed. Property other than money must be dealt with in accordance with the institution's instructions and meanwhile must be kept securely. The proceeds of sale of property are treated as money received on behalf of the institution (regulation 6 of the [1994 Regulations](#)).

60. These provisions apply not only to property acquired in pursuance of an agreement with the charitable institution but also, by virtue of section 64(3), to property held on trust as a result of the solicitation or representation made by the professional fundraiser or commercial participator.

Does the status of registered charity need to appear on documents?

61. Section 5 of the Charities Act 1993 states that it will be necessary for the status of a registered charity (other than a charity whose gross income in its last financial year did not exceed £10,000) to appear in all notices, advertisements and other documents issued by or on behalf of the charity and soliciting money or other property for the benefit of the charity. Failure to do so may be an offence.

What are the offences and penalties for non compliance?

62. Failure to comply with any of the provisions of the 1994 Regulations specified below is an offence punishable on summary conviction by a fine not exceeding level 2 on the standard scale (the present sum at this level is £500) (regulation 8):

- Regulation 5(1): making available at all reasonable times any books or records which relate to the charitable institution.
- Regulation 6(2): the transmission of money or other property.
- Regulation 7(2): the statement required to be made by those who are not professional fund-raisers or commercial participators but who are nevertheless fund-raising for charitable, benevolent or philanthropic purposes.

63. Other offences are contained in Part 2 itself, which are punishable on summary conviction by a fine not exceeding level 5 on the standard scale (the present sum at this level is £5,000):

- Section 60: failure to make certain statements required to be made by professional fund-raisers and commercial participators.
- Section 63: soliciting funds or other property for an institution with a representation that it is a registered charity when it is not, unless the person can prove that he or she believed, on reasonable grounds, that the institution was a registered charity.

Can injunctions be taken out to prevent unauthorised fund-raising?

64. Part 2 contains provisions enabling charitable institutions to seek injunctions preventing unauthorised fund-raising on their behalf:

- Section 59 provides that where on the application of a charitable institution the court is satisfied that a commercial participator or professional fund-raiser is contravening subsection (1) or (2) by making a solicitation or representation, otherwise than in accordance with an agreement which satisfies the prescribed requirements (i.e. those set out in regulations 2 and 3 of the [1994 Regulations](#)) and that such a contravention is likely to continue unless the person is prevented from so doing, the court may grant an injunction to restrain the action in question. No notice is required before an injunction is applied for under this section; and
- Section 62 makes similar provision in relation to any other person who is raising money etc for the benefit of a charitable institution. It enables the institution to seek an injunction where the person is using methods to which they object, where the person is not a fit and proper person to raise funds for the institution or where representations are made that charitable contributions will be applied for the benefit of the institution, the charitable institution does not wish to be involved in the promotional or other fund-raising venture. At least 28 days before seeking an injunction the charitable institution must give notice in writing to the person who is raising funds stating that they object to their raising funds on the institution's behalf, giving details of their objection, requesting them to cease forthwith and advising them that an injunction will be sought to prevent them undertaking further fund-raising activities on their behalf ([section 62\(3\) of the 1992 Act](#) and regulation 4 of the [1994 Regulations](#)).

What about arrangements in Scotland and Northern Ireland?

The [1992 Act](#) and the [1994 Regulations](#) extend only to England and Wales. Please see information below about arrangements in Scotland and Northern Ireland.


Arrangements in Scotland

The Charities and Trustee Investment (Scotland) Act 2005 came into force in April 2006. The 2005 Act aims to provide a modern, proportionate regulatory framework designed to support and encourage charitable activity in Scotland, while reassuring the public that their money is being well used.

There are various provisions relating to fundraising although the regulations under them have yet to be implemented. Sections 79-83 of the 2005 Act contain provisions about fundraising for benevolent bodies, including fundraising by professional fundraisers and commercial participators. Benevolent bodies are defined as any bodies “established for charitable, benevolent or philanthropic purposes”. This is a wider concept than charity, and means that it can regulate any fundraising for a good cause, whether or not the body raising funds is a registered charity. This means that many bodies which may have charitable purposes, but do not provide a sufficient level of public benefit or may have chosen not to be restricted by the added regulation which falls upon charities, will be regulated in order to maximise public confidence in donating.

The 2005 Act regulates benevolent fundraising in a number of ways. The Office of the Scottish Charity Regulator (OSCR) will have powers to investigate individuals purporting to be a charity or to be collecting on behalf of one when they are not, and to protect any funds raised in this way. OSCR will have a general power to protect charity assets or money raised, even if they are not held by a charity.

Section 81 of the 2005 Act requires professional fundraisers and commercial participators (a normal business which undertakes a promotion from which a good cause will benefit) who solicit money or other goods on behalf of a named charity or benevolent body to have an agreement with that body to do so. Charities, benevolent bodies and OSCR (on behalf of charities only) will have the right to seek an interdict to stop professional fundraisers and commercial participators who are fundraising in a body’s name without an agreement or out with an agreement in the required form.



Section 82 of the 2005 Act gives benevolent bodies (and hence also charities) the right to seek an interdict preventing unauthorised fundraising by anyone who uses fundraising methods in their name which the body objects to, who is not a fit and proper person to fundraise or if the body does not wish to be associated with that venture.

In the interests of openness and transparency, the Scottish Government intend to make Regulations containing a requirement for fundraisers to make a statement advising whether or not they are receiving remuneration. Members of the public should be aware, when they are being solicited for donations, whether the person asking them to donate is being paid to do so.

These Regulations under Sections 79 - 83 of the 2005 Act are expected to be laid before the Scottish Parliament by the end of 2007.

Sections 84-92 of the 2005 Act, covering fundraising by means of public benevolent collections are not yet in force, however a scheme relating to the licensing of public charitable collections is still in operation under the existing regime set out in section 119 of the Civic Government (Scotland) Act 1982. Public benevolent collections are collections from the public of money or promises of money (whether or not given by them for a consideration by way of goods or services) for the benefit of benevolent bodies or for charitable, benevolent or philanthropic purposes taken in a public place or by means of visits to two or more houses or business premises. There is widespread support in the charity sector for the new regime but also recognition of its complexity, and we will therefore be working through these new Regulations carefully.

You can obtain more information about arrangements in Scotland from the Office of the Scottish Charity Regulator at the address below.

2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY
Tele: 01382 220446
E-mail: info@oscr.org.uk
www.oscr.org.uk

Arrangements in Northern Ireland

The Department for Social Development is the charity authority for Northern Ireland: Charities Branch of its Voluntary & Community Unit handles the normal day-to-day work. Most of its functions are carried out under the Charities Act (Northern Ireland) 1964 and the Charities (Northern Ireland) Order 1987, but it has no statutory role in connection with the setting up of new charities. Its main functions concern giving consent to the disposal of land or buildings by charity trustees, who usually cannot sell or otherwise dispose of property without specific consent, and making Schemes to change the objects of charities whose original functions can no longer be carried out effectively.

Apart from its specific functions under the legislation a major part of the Branch's work consists of giving informal advice to trustees and their solicitors. Charities Branch is always prepared to discuss any problem that a charity or would-be charity faces, and even if the matter is outside their area of responsibility. They can often suggest approaches that have proved successful for other charities, or refer trustees to other sources of advice or assistance.

Anyone with questions or problems relating to charity matters is welcome to contact them at the address below.

Charities Branch

Voluntary and Community unit

Department for Social Development

3rd Floor

Lighthouse Building

1 Cromac Place

Gasworks Business Park

Ormeau Road

Belfast

BT 7 2JB

Tel: 028 90 829427

Fax: 028 90 829431

e-mail: kieran.doyle@dsdni.gov.uk

Annex A - Examples of professional fund-raiser and commercial participator arrangements

Professional fund-raising

- (i) a charity engages a company that carries on a fund-raising business and which is not connected to it, to recruit new donors for the charity by stopping people on the high street and persuading them to sign direct debit mandates for monthly donations to the charity. The charity agrees to pay the company £50 for each new donor recruited in this way, regardless of the monthly amount each donor agrees to give.
- (ii) a charitable institution engages a professional fund-raiser to raise a target amount for the charitable institution within a year by applying to grant-making trusts, appealing to corporate donors etc. The charitable institution agrees to pay the person £5,000 plus 10% of the amount he raises;
- (iii) a charitable institution engages a consultant to prepare a strategy for raising money for the charitable institution from corporate donors, and to help the charity to implement the strategy. The charity agrees to pay the consultant a fee of £10,000 for the work, in the course of which the consultant forms part of the charity's team making presentations to corporate executives with a view to persuading them to donate to the charity.
- (iv) A charitable institution engages an agency to sign-up 500 new supporters over the telephone to regular committed giving through direct-debit. The charitable institution agrees to pay the agency £50 per new supporter.

Commercial participation

- (v) a charitable institution allows its name and logo to be used by a manufacturer of breakfast cereal to promote a particular cereal. The manufacturer agrees to give the charitable institution 1p for every packet of endorsed cereal sold. The manufacturer represents in advertisements and on the cereal packets that 1p from the sale of each packet of the cereal will be donated to the charitable institution;

- (vi) a charitable institution allows its name and logo to be used by a manufacturer of breakfast cereal to promote a particular cereal. The cereal manufacturer agrees to pay the charitable institution nothing in respect of the first 100,000 packets sold but then 2p for every packet sold in excess of 100,000 packets; 3p in excess of 300,000; 4p in excess of 500,000; etc. The manufacturer represents in advertisements and on the cereal packets that it will make donations to the charitable institution in connection with the sale of the cereal.
- (vii) a charitable institution allows a stationery retailer to use its name and logo on Christmas cards. The retailer pays all the production costs of the cards and agrees to pay the charitable institution 25% of its profits on total sales of the cards. The retailer represents that a proportion of the proceeds from the sales of the cards will be given to the charitable institution;
- (viii) a company collects old clothes by going from house to house. It intends to sell collected clothes in bulk for profit and agrees with a charitable institution that, in return for permission to use the charitable institution's name on its leaflets as an incentive to householders to contribute, it will pay the charitable institution £30 per tonne of clothes collected. The company represents on its leaflets that it will donate £30 per tonne of clothes collected to the charitable institution;
- (ix) an event-organising company agrees to stage a ball for a charitable institution. The company agrees to pay all the expenses of organising the ball and to give all the profits – ticket sales less expenses - to the charitable institution. The event organising company makes representations to members of the public that all profits of the event will be donated to the charitable institution;
- (x) a bank enters into an agreement with a charitable institution for an “affinity” credit card. The bank uses the charitable institution's name and logo in its marketing of the credit card and agrees to pay the charitable institution £3 for every card account opened by a consumer plus £1 for every £100 spent by the consumer using the card. The bank tells customers who are considering applying for a credit card about the affinity card and of the donations it will make to the charitable institution if the card account is opened and for money spent using the card;

Annex B – Examples of how Part II may apply to fund-raising practice

As already stated, this guidance is intended as no more than an aid to understanding the law. How the law applies in practice must be decided with reference to the Charities Act 1992, as amended by the Charities Act 2006 and the 1994 Regulations, in relation to *the individual circumstances of each case*.

Nevertheless, it may be helpful to offer some general remarks in relation to some examples of current forms of fund-raising. In relation to all of these it is (again) important to examine exactly what is actually to take place - not to rely on general descriptions (such as 'fund-raising consultant') to decide how the law applies.

Professional fundraisers would have to comply with the requirements of [Part 2 of the 1992 Act \(as amended by the 2006 Act\)](#) when submitting a grant application on behalf of a charitable institutions. They will need to accompany the application for the grant with a statement complying with the requirements of section 60(1), as amended.

However, when the professional fund-raisers has helped with the preparation of the application but does not actually make the application on behalf of the charitable institution it would not come under the requirements of Part 2 of the 1992 Act.

Example 1: Fund-raising Consultancy

In many cases, fund-raising consultants undertake work which may not fall within the definition of soliciting. This may include providing strategic advice to a charity, drafting fundraising plans and promotional materials, preparing submissions to grant making organisations which are to be signed and submitted by representative of a charity, and briefing trustees, staff and volunteers on the implementation of an appeal.

Key questions here are:

Whether the consultant falls within the definition of "professional fund-raiser" or "commercial participator" or falls within regulation 7 of the [1994 Regulations](#); and

whether the activity to be carried on by the consultant is advising the charitable institution, or whether it is or includes soliciting money or other property within the fairly broad definition in the 1992 Act (see particularly section 58(6) to (8), and the earlier note on

'solicitation' in this guidance) or representing that charitable contributions are to be applied for the benefit of charitable institutions or for charitable etc purposes.

Fund-raising advice on its own may well not come within the controls in Part 2 even if the person giving that advice is a professional fund-raiser.

Example 2: Direct Mail

Particular attention should be paid to the definition of soliciting. A direct mail company or promotional agent, for example, may be within that definition if writing in its own name in support of an appeal. However, if it is doing no more than printing, photocopying, filling envelopes and posting letters as from the charity, it might not be within the relevant provisions. Check the details relevant to the particular case.

Example 3: Fulfilment House

The term 'fulfilment house' is often used for a company employed specifically to handle responses to a promotion, e.g. to send information packs, or process catalogue sales, donations or membership applications.

Even if the fulfilment house does not send out an appeal for funds, it may come within the definition of professional fund-raiser because of the wide definition of soliciting in section 58(7): see notes on solicitation described earlier, including the need to ensure that suitable statements are made.

Similarly, where products are sold as if by a charity itself or its connected company (e.g. through a catalogue entirely in the charity's name, with cheques being made payable to the charity or its connected company), but with orders in fact being fulfilled by a separate commercial company under some arrangement to pay a proportion of sales or profits to the charity, that company might, depending on the exact circumstances, be a commercial participator as defined in [Part 2 of the 1992 Act](#), if a representation is made by that company.

It is good practice when contracting with another party to process incoming payments to a charitable institution, for the institution to ensure such monies are paid into a separate account specific to the institution so that they can be properly accounted for (or, better still, direct to an account fully under the institution's control).

Example 4: Telephone Fund-raising

Much depends on the nature of each telephone call, but where employees of a fund-raising business are telephoning members of the public to encourage them to give - or

pledge - donations to a charitable institution, the activity may well be professional fund-raising.

Where professional fund-raising requirements apply, each solicitation should be accompanied by the necessary statement - in other words, the statement should be made during the telephone call.

See also the notes on provisions in the 1992 Act relating specifically to telephone fund-raising.

Incoming telephone services: if a company answers telephone calls, simply to record credit card details for people who have decided to make a donation, e.g. in response to an appeal by direct mail or newspaper or television advertisement, and the donations are credited direct to the institution's (not the company's) bank account, the company may not be a professional fund-raiser. However, the distinction is a narrow one and care is needed if, for example, the operator repeats or explains details about the appeal, even in response to a request for clarification from the caller, this may well amount to professional fund-raising, and operators must therefore be able to recognise this distinction and respond appropriately in each case.

Where incoming telephone services are provided by automated (e.g. computer-based) answering equipment owned by a service provider and rented to an institution, then even when a solicitation is made by the person whose voice is recorded, provided that person is from the institution, the service provider may not be regarded as a professional fund-raiser.

Example 5: Company Connected to a Charitable Institution (e.g. A Trading Subsidiary)

See note, earlier, on connected companies (page 11), which do not come within the controls in Part 2, unless acting as a commercial participator in relation to a charitable institution not wholly controlling the company (alone or with other charitable institutions).

Nevertheless, whether within Part 2 or not, we would as a matter of good practice and of setting a good example, strongly recommend connected companies wherever possible to

operate on a similar basis, i.e. to formalise arrangements through a written agreement with the parent charity/institution, and to make appropriate statements.

Compliance with such arrangements may be straightforward in many cases: for example, in a charity shop it may be possible to make the appropriate statement by a notice displayed prominently by the till saying that all profits are covenanted to the charity.

Example 6: Retail Promotions

The clearest example may perhaps be when a retailer her/himself enters directly into an agreement with a charitable institution that a product will be sold with a representation that part of the proceeds will go to the institution. As in other examples this depends on the circumstances of the case, but the retailer may well be a commercial participator in relation to that institution under section 58(1), and when selling the product will be subject to the requirements of e.g. Sections 59(2) and 60(3) and regulation 3.

The situation may be more complex, and more likely to vary with individual circumstances where a *manufacturer or producer* initiates the principal agreement with the charitable institution and then supplies the product to many different retailers. In this case it may be helpful to ensure that any statement included on the product clearly identifies the producer (as opposed to the retailer) as the person having the arrangement with the institution, to avoid drawing the retailer in, unnecessarily, as an additional commercial participator.

It may also be helpful for such a producer, as commercial participator, to provide straightforward advice to retailers pointing out the need to avoid making additional representations of their own. However, statements *declaring* retailers not to be commercial participators should be approached with caution: the producer is unable to prevent the retailer making himself a commercial participator by making a relevant representation, and such a declaration may give unjustified reassurance.

As is clear from the above, this type of situation requires particularly careful consideration in relation to the facts of the case, and the provisions of the 1992 Act and the 1994 Regulations.

Example 7: Charity Christmas Cards

This description encompasses many possible types of activity, including some already described above - see examples 5 and 6 (connected companies and retail promotions).

Where Christmas cards (or other products) are sold directly to the public by a charitable institution or its connected company, the provisions relating to professional fund-raising and commercial participation may not apply. Even so, it is recommended that a similar statement to that required under Part II is made, for reasons of consistency, clarity and transparency.

Example 8: Prize Competitions

Again, this can encompass more than one type of activity.

A prize competition may be subject to control under [Part 2 of the 1992 Act](#) if representations are made, for example, that part of the proceeds will benefit a charitable institution or charitable etc purposes.

Where a particular charitable institution is named, provisions on commercial participation may apply - see, e.g. sections 59(2) and 60(3), regulation 3, and the notes on commercial participation, written agreements and statements.

Where general charitable purposes (as opposed to specific institutions) are referred to, see also regulation 7 and the note on fund-raising for general charitable purposes.

Persons proposing to run a prize competition may also be subject to the controls in the Gambling Act 2005. Appropriate legal advice should be sought prior to running any such competition to ensure that any necessary licences or other authorisations have been obtained.

Example 9: Involvement in Spontaneous Appeals

Care is needed if a commercial organisation such as a high street shop decides, possibly at the last minute, to take part in a high-profile charitable appeal, e.g. one being promoted on national television. A handling fee should not be charged against donations received for the charity, nor should a link be advertised between sales and donations the company will make, at least without a prior written agreement with the charitable institution, and with an appropriate statement to accompany each solicitation or representation, as such activity is likely to amount to professional fund-raising or commercial participation and would therefore be subject to [Part 2](#) and the [1994 Regulations](#).

Annex C – Examples of solicitation statements

These are examples of the type of statement that, in our view, professional fund-raisers and commercial participators may choose to use to comply with the requirements of section 60(1), (2) or (3), as the case may be, of the Charities Act 1992. It is not an exhaustive list, and fund-raisers may choose their own form of words to comply with those requirements. *The 1992 Act does not specify whether the statement must be made orally or in writing, but it is clear that it must be made at the time of the solicitation or representation.*

In all cases, professional fund-raisers and commercial participators should satisfy themselves that their statements will comply with the requirements of the 1992 Act before making any solicitations or representations, seeking legal advice where appropriate.

Professional Fund-raisers

In appealing on behalf of a charity, charities or charitable etc. causes for money or other property, professional fund-raisers must make a solicitation statement to indicate clearly:

- for whom they are fund-raising or, if relevant, that they are fund-raising for purposes rather than specific institutions;
- if there is more than one institution, the proportions in which the institutions are respectively to benefit or, if the fund-raising is for purposes rather than institutions, how the proceeds of the appeal will be distributed amongst charitable institutions;
- how their payment is calculated and how much they will be paid in connection with the appeal, or if that is not known at the time, as accurate an estimate as is reasonably possible in the circumstances.

The examples below make a distinction between professional fund-raisers engaged as an individual (where the statement relates to their personal remuneration in connection with the appeal), and those employed by a fund-raising business (where the statement must relate to the remuneration of the fund-raising business in connection with the appeal).

Example oral statements

Example statements for professional fund-raisers who are fund-raising on behalf of specific institutions

- 1. Where the professional fund-raiser (an individual) is paid a fixed rate for each donor recruited and funds are being raised for a single institution:** *“I am a professional fund-raiser working for the benefit of <<charity>>. It has been agreed that I will be paid <<£xx>> for every donor that I recruit during the course of this campaign. It is estimated that I will be paid <<£zzz>> for my work on this campaign.”*

- 2. Where the professional fund-raiser (an individual) is being paid an hourly rate and funds are being raised for a single institution:** *I am a paid / professional fund-raiser working on behalf of <<charity >>. I am being paid an hourly rate of <<£xxx>>. In all, I expect to be paid approximately <<£ XXX>> for carrying out this programme of conversations with supporters like yourself throughout the UK across the whole of the year.*

- 3. Where the professional fund-raiser’s (a fund-raising business) fees are fixed in advance and funds are being raised for a single institution:** *I work for <<fund-raising company>> and we are working for the benefit of <<charity>>. My organisation is being paid <<£XXX>> to recruit supporters like yourself to make regular donations to <<charity>>. This fee was determined in the following way <<method>>.*

- 4. Another (fund-raising business) example where the criteria may be different**

(fees not known upfront) and funds are being raised for a single institution: I work for <<fund-raising company>> on behalf of <<charity>>. We expect to be paid <<£XXX>> in connection with this particular appeal, and the method used to determine our payment was <<method>>.

Example statements for professional fund-raisers who are fund-raising on behalf of more than one institutions

5. Where the professional fund-raiser (an individual) is paid a fixed rate for each donor recruited and funds are being raised for two institutions: “I am a professional fund-raiser working for the benefit of <<charity X> and < charity Y>>. Money raised as a result of this campaign will be shared equally by <<charity X and charity Y>>. It has been agreed that I will be paid <<£xx>> for every donor that I recruit during the course of this campaign. It is estimated that I will be paid <<£zzz>> for my work on this campaign.”

6. **Where there is a clear criterion for determining the professional fund-raiser’s (a fund-raising business) fees and funds are being raised for three institutions:** I work for <<fund-raising company>> and we are working for the benefit of <<charity X>>, >>charity Y>> and Charity Z>>. My organisation is being paid <<£XXX>> to recruit supporters like yourself to make regular donations to these<<charities>>. This fee was determined by <<method>>. Money raised as a part of this campaign will be shared between the three charities. <<Charity X>> will take 50% of the money raised and the remaining money will be equally shared between <<charity Y>> and <<charity Z>>.

Example statements for professional fund-raisers who are fund-raising for a particular purpose.

7. “I work for <<fund-raising business>> and we are seeking donations for <<charitable purpose>>. Our remuneration for this appeal will be calculated by <<method>>. We expect the total amount of our remuneration to be <<£yyy>>. The remaining proceeds of the appeal will be distributed to charitable institutions which work to further this purpose. We will determine how to distribute the proceeds of this appeal by <<method of selecting institutions>>.

Example written statements

8. Where the professional fund-raiser (an individual) is paid a fixed rate for each donor recruited and funds are being raised for a single institution:

“Before I ask you to sign, may I just draw your attention to this important legal statement?” →

The person you are speaking to is a professional fund-raiser working for the benefit of <<charity>> and is paid <<£x>> for each donor recruited. In all, I expect to be paid <<£XXX>> for my involvement in this campaign.

9. Where there is a clear criteria for determining the professional fund-raiser’s (a fund-raising business) fees and funds are being raised for a single institution:

“Before I ask you to sign, may I just draw your attention to this important legal statement?” →

The person you are speaking to today is a professional fund-raiser working for <<fund-raising business>> on behalf of <<charity>> as part of an ongoing campaign to recruit regular and committed donors. <<Fundraising business>> is paid <<£XXX>> for recruiting each donor. This year <<Charity>> expects to pay

<<£XXX >> to <<fund-raising business>> for this particular fund-raising campaign.

10. Where there is a clear criteria for determining the professional fund-raiser's (a fund-raising business) fees and funds are being raised for a single institution:

"Before I ask you to sign, may I just draw your attention to this important legal statement?" →

The person you are speaking to is a paid fund-raiser with <<fund-raising business>> working on behalf of <<charity>>. <<Fund-raising business>> expects to receive approximately <<£XXX>> for carrying out this programme of conversations with supporters like yourself across the UK throughout the whole of the year. This is based on <<method of calculation>>.

11. Where there is a clear criteria for determining the professional fund-raiser's (a fund-raising business) fees and funds are being raised for a two institutions:

"Before I ask you to sign, may I just draw your attention to this important legal statement?" →

The person you are speaking to is a paid fund-raiser with <<fund-raising business>> working on behalf of <<charity X>> and >>charity Y>>. <<Fund-raising business>> expects to receive approximately <<£ XXX >> for carrying out this programme of conversations with supporters like yourself across the UK throughout the whole of the year. This is based on <<method of calculation>>. Money raised as a part of this campaign will be shared equally between the two charities.

12. Where the professional fund-raiser (an individual) is paid a fixed rate for this fundraising campaign and funds are being raised for three charitable institutions:

“Before I ask you to sign, may I just draw your attention to this important legal statement?” →

The person you are speaking to is a professional fund-raiser working for the benefit of <<charity X>>, >>charity Y>> and >>charity Z>> and is paid <<£x>> per hour. In all I expect to be paid <<£XXX>> for my involvement in this campaign. Money raised as a part of this campaign will be equally shared between the three charities.

13. Where there is a clear criteria for determining the professional fund-raiser’s (a fund-raising business) fees and funds are being raised for a specific purpose:

“Before I ask you to sign, may I just draw your attention to this important legal statement?” →

The person you are speaking to is a paid fund-raiser with <<fund-raising business>> working to raise money for <<purpose>>. <<Fund-raising business>> expects to receive approximately <<£XXX>> as remuneration for carrying out this programme of conversations with supporters like yourself throughout the UK. This is based on <<method of calculation>>. We will distribute the [remaining] proceeds of the appeal between charitable institutions by <<method of distribution>>.

The example statements above show the information the professional fund-raiser must, in our view, provide to comply with the legislation. However, we recognise that professional fund-raisers may choose to include more information in the statement to make it more meaningful by putting it into context, such as:

- <<Charity>> expects this campaign to raise <<£YYY>> over <<Z>> years.
- It is anticipated that << Charity X >> will raise <<£xxx>> this year as a result of this campaign.
- A similar campaign we ran for the <<charity X>> last year recruited <<yyy>> supporters and generated <£xxx> income for the charity.
- We calculate that for every £1 we invest in recruiting supporters such as yourself through this campaign, we expect to get back at least <<£XXX>> over the course of <<XX years>>.
- [*message from the charity*] It's important to remember that charity trustees are obliged by law to ensure that our funds are used in the best way possible [to meet our strategic aims / deliver services to our beneficiaries / benefit <<the cause area>>] and all forms of fund-raising are carefully monitored **by our trustees** to ensure cost-effectiveness and value for money. If you require further information please visit our website <<www.charityswebsite.org>> or call (0XX) XXXX XXXX”.
- This represents **an investment of** less than <<Xp>> in the Pound from all the donations <<charity>> expects to receive as a result of this campaign.

In our view, professional fund-raisers are not prevented from providing this additional information provided that the requirements of the 1992 Act are complied with.

Commercial participators

In carrying out a promotional activity for a charity or charities, for money or other property, commercial participators must make a statement clearly indicating:

- which charitable institutions will benefit from the promotional venture;
- if there is more than one institution, the proportions in which the institutions are respectively to benefit; and;
- how much of the proceeds or donations from the promotional venture will go to the charity or charities or give as accurate an estimate as is reasonably possible in the circumstances.

Example statements for commercial participators who are fund-raising on behalf of specific institutions

1. <<X%>> of the purchase price will be donated to <<charity>>. It is expected that we will donate <<£yyy>> in total.
2. For each item sold, <<£X>> will be donated to <<charity>>. It is expected that we will donate <<£YYY>> in total.
3. <<Company>> will donate <<X%>> of profits from this promotion to <<charity>>. This is expected to be at least <<£YYY>>.
4. <<Company>> will donate <<£XXX>> to <<charity>> as a result of this promotion for the first <<YYY>> items sold, and a further <<£YYY>> for each additional item sold. The total amount to be donated is expected to be <<£ZZZ>>.

The example statements above show the information the commercial participator must, in our view, provide to comply with the legislation. However, we recognise that commercial participators may choose to include more information in the statement to make it more meaningful by putting it into context. Provided that the

requirements of the legislation are complied with, we do not think commercial participators are prevented from including this additional information.

Professional fund-raisers and commercial participators who make solicitations or representations during the course of television or radio programmes

Professional fund-raisers and commercial participators should be aware that where a solicitation or representation is made:

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

full details of the right to have refunded any payment of £50 or more must be given in the solicitation statement in addition to the information set out above. The examples above are not intended to give guidance on compliance with this additional requirement.

Professional fund-raisers and commercial participators who make solicitations or representations orally other than in the presence of the donor or in the course of a television or radio programme

Where a professional fund-raiser or commercial participator makes a solicitation or representation orally directly to a potential donor but not either in his or her presence or during the course of a television or radio programme and the potential donor makes a payment of £50 or more in response to the solicitation or representation, the donor must be sent a written statement.

This written statement must comply with the requirements of section 60(5) of the 1992 Act. This statement must contain a written solicitation statement as well as details of the right of the donor to have refunded any payment of £50 or more. The examples given above are not intended to give guidance on the additional information that would be required to comply with the requirements of section 60(5).

Example trustee / employee / officer statements

These statements need only be made in the course of a public charitable collection by trustees, employees or officers of a charitable institution (or employees or officers of a connected company) that are being paid either in that capacity or to act as collectors. The examples below only cover individuals soliciting money for the benefit of particular institutions.

1. I am making this appeal for the benefit of <<charity>>. I am a paid employee of that charity.
2. I am making this appeal for the benefit of <<charity A>> and <<charity B>>. I am a trustee of <<charity A>> and I am being paid by that charity to act as a collector. The proceeds from this appeal will be <<divided equally between charities A and B>>.
3. I am making this appeal for the benefit of <<charity>>. I am a paid employee of <<company>> which is connected to that charity.

Annex D - Sources of further information

Office of the Third Sector

The Charity Law and Regulation Team within the Office of the Third Sector deal with charity law and regulation affecting charities in England and Wales. We make sure that the legal framework helps charities to develop their activities and services and to play an increasing role for good in society, while giving confidence to the public about the integrity of charities.

Contact details:

Office of the Third Sector,
35 Great Smith Street,
London SW1P 3BQ

Tel: 0207 276 6400

http://www.cabinetoffice.gov.uk/third_sector/law_and_regulation/

Charity Commission

The Charity Commission for England and Wales is the statutory organisation that regulates charities and aims to give the public confidence in the integrity of charity.

Contact Details:

Charity Commission
Harmsworth House
13-15 Bouverie Street
London EC4Y 8DP

Tel: 0845 300 0218

Email: enquiries@charitycommission.gsi.gov.uk

www.charitycommission.gov.uk

Office of the Scottish Charity Regulator (OSCR)

The Office of the Scottish Charity Regulator is the independent regulator and register of Scottish charities.

Contact details:

Office of the Scottish Charity Regulator
2nd Floor
Quadrant House
9 Riverside Drive
Dundee
DD1 4NY

Tel: 01382 220446

E-mail: info@oscr.org.uk

www.oscr.org.uk

HMRC Charities

HMRC Charities deals with the tax affairs of charities and the tax relief to encourage people and companies to give to charities. They process the repayments of Gift Aid to charities and provide guidance to charities and donors on the various forms of tax-effective giving.

Contact details:

HMRC Charities
St John's House
Merton Road
Bootle
Merseyside
L69 9BB

Tel: 0845 302 0203

E-mail: charities@hmrc.gov.uk

www.hmrc.gov.uk/charities/

Institute of Fundraising

The Institute of Fundraising is the professional membership body for UK fundraisers. Its aim is to promote the highest standard of fundraising practice.

Contact details:

Institute of Fundraising
Park Place
12 Lawn Lane
London
SW8 1 UD

Tel: 0207 840 1010

E-mail: info@institute-of-fundraising.org.uk

www.institute-of-fundraising.org.uk

The Fundraising Standards Board (FRSB)

Contact details:

Hampton House
20 Albert Embankment
London
SE1 7TJ

Tel: 0845 402 5442

Email: info@frsb.org.uk

www.frsb.org.uk

Public Fundraising Regulatory Association (PFRA)

The Public Fundraising Regulatory Association (PFRA) regulates the use of face-to-face fundraising by charities and professional fundraising organisations and works with local authorities to ensure that fundraising sites are used appropriately. It enforces a code of practice, which aims to make certain that people's experience of face-to-face fundraising is positive, and uses an accreditation scheme, mystery shopping and feedback from stakeholders and members of the public to monitor our members' compliance.

Contact Details:

Unit 11, Europoint
5-11 Lavington Street
London
SE1 0NZ

Tel: 020 7401 8452

Fax: 020 7928 2925

info@pfra.org.uk

www.pfra.org.uk/

Charity Law Association

The Charity Law Association was established in 1992 with the aim of enabling those who advise on or use charity law to meet together, to exchange ideas and intelligence and to use their experience and expertise for the benefit of the Charity Sector.

Contact details:

Charity Law Association
2 Putney Hill
Putney
London SW1 7AD

Tel: 0208 394 6486

www.charitylawassociation.org.uk

National Council for Voluntary Organisation (NCVO)

NCVO provides free information, signposting and service for trustees, staff and volunteers in the voluntary sector through the Voluntary Sector helpdesk, NCVO website and the Sustainable Funding Project.

Contact details:

NCVO

Regent Wharf

8 All Saints St

London

N1 9RL

Tel: 0207 713 6161

E-mail: ncvo@ncvo-vol.org.uk

www.ncvo-vol.org.uk

Association of Fundraising Consultants

Established in 1990 by fundraising consultants who recognised the need to provide a European professional standard, AFC membership has become a hallmark for best practice within the not-for-profit sector.

Contact Details:

The Association of Fundraising Consultants

Suite 316, Linen Hall

162-168 Regent Street

London, W1B 4JN

Tel: 01582 762446

www.afc.org.uk



Charity Trustee Network (CTN)

CTN is a national charity that aims to support the trustees and management committee members of voluntary and community organisation.

CTN

3-4 Frensham Suite

Friary Court

13-21 High Street

Guildford

GU1 3DG

Tel: 01483 230280

E-mail: info@trusteenet.org.uk

www.trsteenet.org.uk