



# Charities and Trustee Investment (Scotland) Act 2005

2005 asp 10

## PART 2

### FUNDRAISING FOR BENEVOLENT BODIES

#### *Preliminary*

#### **79 Interpretation of Part 2**

(1) In this Part—

“benevolent body” means a body (including a charity) which is established for charitable, benevolent or philanthropic purposes,

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

(a) the whole or part of—

(i) the consideration given for goods or services sold or supplied by that person,

(ii) any proceeds (other than such consideration) of a promotional venture undertaken by that person,

(b) sums given by that person by way of donation in connection with the sale or supply of such goods or services,

“commercial participator” means a person who—

(a) carries on for profit a business other than a fundraising business, but

(b) in the course of that business, engages in a promotional venture in the course of which it is represented that benevolent contributions are to be—

(i) given to or applied for the benefit of one or more particular benevolent bodies, or

(ii) applied for charitable, benevolent or philanthropic purposes,

“fundraising business” means a business carried on for profit and wholly or primarily engaged in soliciting or otherwise procuring money or promises of

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*Status: This is the original version (as it was originally enacted).*

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money for one or more particular benevolent bodies or for charitable, benevolent or philanthropic purposes,

“goods” includes all corporeal moveables except money,

“professional fundraiser” means—

- (a) a person (other than a benevolent body or a company connected with it) who carries on a fundraising business,
- (b) any other person who for reward solicits money or other property for the benefit of a benevolent body or for charitable, benevolent or philanthropic purposes otherwise than in the course of a fundraising venture undertaken by a person falling within paragraph (a),

“promises of money” includes standing orders, direct debits and similar instructions and authorisations for the payment of money,

“promotional venture” means an advertising or sales campaign or any other venture undertaken for promotional purposes,

“radio or television programme” includes any item included in a programme service within the meaning of the Broadcasting Act 1990 (c. 42),

“services” includes facilities, and in particular—

- (a) access to any premises or event,
- (b) membership of any organisation,
- (c) a ticket or other entitlement to participate in a lottery or game of chance,
- (d) the provision of advertising space, and
- (e) the provision of any financial facilities,

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

- (2) In subsection (1), the definition of “commercial participator”, in relation to a benevolent body, does not include a company connected with the body.
- (3) The following persons are excluded from paragraph (b) of the definition of “professional fundraiser” in subsection (1)—
  - (a) a benevolent body or a company connected with it,
  - (b) a person concerned in the management or control, or an employee, of any such body or company,
  - (c) a person who in the course of a radio or television programme during which a fundraising venture is undertaken by a benevolent body, or by a company connected with it, makes any solicitation at the instance of the body or company,
  - (d) a commercial participator,
  - (e) a person who receives no more than—
    - (i) such sum as may be specified by regulations under section 83 by way of remuneration in connection with soliciting money or other property for the benefit of the benevolent body, or
    - (ii) such sum as may be so specified by way of remuneration in connection with any fundraising venture in the course of which the person solicits money or other property for the benefit of that body.
- (4) For the purposes of this Part a company is connected with a benevolent body if—
  - (a) the body, or
  - (b) the body and one or more other benevolent bodies, when 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 a general meeting of the company.

## **80 Representation and solicitation**

- (1) In this Part, references to representing and soliciting are to representing and soliciting in any manner, whether expressly or impliedly and however the representation or solicitation is communicated, and include representations and solicitations made—
  - (a) orally (whether or not in the presence of the person being spoken to),
  - (b) in writing (whether or not by means of electronic communication), or
  - (c) by means of a statement published in any newspaper, film or radio or television programme.
- (2) In construing references to soliciting or otherwise procuring money or promises of money, it is immaterial whether any consideration by way of goods or services is, or is to be, given in return for the money or promises of money.
- (3) Where—
  - (a) a solicitation of money or a promise of money for the benefit of a benevolent body is made in accordance with arrangements between a person and the body, and
  - (b) under those arrangements the person will be responsible for receiving on behalf of the body money or a promise of money given in response to the solicitation,then (if the person would not be so regarded apart from this subsection) that person is to be regarded for the purposes of this Part as soliciting money or promises of money for the benefit of the body.
- (4) Where a fundraising venture is undertaken by a professional fundraiser in the course of a radio or television programme, a solicitation which is made by a person in the course of the programme at the instance of the fundraiser is to be treated for the purposes of this Part as made by the fundraiser and not by the person (whether or not the solicitation is made by the person for any reward).