

Updated 25/05/2018

L1.0 Legal Referencing and Code Referencing

The Code of Fundraising Practice sets standards to be followed across all areas of fundraising. It uses **MUST*** and **MUST NOT*** (with asterisk) where there is a legal requirement and **MUST** and **MUST NOT** (without asterisk) where there is no legal requirement. The Fundraising Regulator treats all standards, regardless of legal requirement, as professional and therefore expects full compliance with the Code itself.

While the Code contains broad statements and general guidance about legal requirements, fundraising organisations and fundraisers are encouraged to seek their own legal advice, to ensure compliance with legal requirements that relate to their fundraising activities.

L2.0 General

Fundraising organisations may take a number of different legal forms and different law applies to different types of organisation. The most heavily regulated type of fundraising organisation is a charity and as such this guidance applies mainly to charities. At the beginning of each section there is a note confirming the type of organisation which the guidance applies to.

a) Legal requirements also vary between the United Kingdom's three legal jurisdictions (England and Wales, Scotland, and Northern Ireland) and **MUST*** be observed.

Please see below the links to Legal Appendices of the Code of Fundraising Practice

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[L4.0 Travel Law](#)

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[L7.0 Acceptance and Refusal of Donations](#)

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L3.0 Payment of Trustees

L3.1 England and Wales

These limits on the payment of trustees relate only to fundraising organisations which are charities.

Either:

- the charity's constitution specifically provides for the type of payment proposed or the payment is authorised by an order of the Charity Commission or the Court

Or:

- the charity's constitution does not expressly prohibit the type of payment proposed
- the payment is not for being a trustee or under a contract of employment
- the charity complies with the provisions of section 185 of the Act 2011 ("the Act") (see below)

a) The provisions of section 185 of the Act which **MUST*** be complied with are:

- the trustees **MUST*** have regard to the relevant Charity Commission guidance (currently CC11 – Trustee Expenses and Payments) before entering into an arrangement to pay a trustee;
- the payment or maximum amount **MUST*** be set out in a written agreement;
- the payment or maximum amount **MUST NOT*** exceed what is reasonable;
- the trustees **MUST*** decide, before entering into the agreement, that the arrangement is in the best interests of the charity; and the number of trustees remunerated under s.185, or otherwise, **MUST*** constitute a minority of the total number of trustees of the charity.

These provisions also apply to payments to certain persons connected to trustees, including business associates and family. Further guidance is available on the Charity Commission's website.

L3.2 Scotland

A payment to a charity trustee (or connected person) may only be made if:

Either:

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- the charity's constitution contains an authorising provision specifically permitting the payment of remuneration to the service provider, trustee or connected person concerned, and this provision was in force on 15th November 2004 (the date that the 2005 Act was first laid before the Scottish Parliament)

Or:

- the charity complies with the provisions of section 67 of the 2005 Act (see below)

a) The provisions of section 67 of the 2005 Act which **MUST*** be complied with are:

- the maximum amount of the payment **MUST*** be set out in a written agreement between the individual providing the services and the charity;
- the maximum amount **MUST*** be reasonable in the circumstances;
- the charity trustees **MUST*** be satisfied before entering into the agreement that it is in the interests of the charity for the services to be provided by the charity trustee or connected person for that maximum amount;
- immediately after the agreement is entered into, the number of trustees receiving remuneration, entitled to receive remuneration or connected with another charity trustee who is remunerated or entitled to remuneration **MUST*** be in the minority; and
- the charity's constitution or governing document **MUST NOT*** expressly prohibit the payment of remuneration.

b) Under the common law on conflicts of interest, a charity trustee who is to receive remuneration or who is connected with a person who is to receive remuneration **MUST NOT*** take part in any of the relevant decisions. There is no obligation to refer to the Office of the Scottish Charity Regulator (OSCR) but trustees should have regard to the relevant guidance (presently section 5 of 'Guidance for Charity Trustees: Acting with care and diligence').

There is nothing to prevent a trustee from being remunerated for services provided in his capacity as a charity or under a contract of employment.

These provisions also apply to payments to those persons connected to trustees, including business associates and family, where the charity trustee might benefit either directly or indirectly from the remuneration provided to the connected person. Further guidance is available in OSCR's guidance for charity trustees and in section 68(2) of the 2005 Act.

The remuneration rules also do not prevent the receipt of remuneration where it is authorised by an order of the Court in Session or any enactment.

L3.3 Northern Ireland

In Northern Ireland the provision which covers remuneration of trustees is s.88 of the Charities Act (Northern Ireland) 2008. It applies to the trustee and anyone connected with the trustee. 'In connection with' can be interpreted as immediate family; partner, a company of the trustee; person in business with the trustee.

Guidance for trustees on the making of agreements for remuneration has not yet been agreed by the Charity Commission for Northern Ireland.

L3.2 Scotland

A payment to a charity trustee (or connected person) may only be made if:

Either:

- the charity's constitution contains an authorising provision specifically permitting the payment of remuneration to the service provider, trustee or connected person concerned, and this provision was in force on 15th November 2004 (the date that the 2005 Act was first laid before the Scottish Parliament)

Or:

- the charity complies with the provisions of section 67 of the 2005 Act (see below)

a) The provisions of section 67 of the 2005 Act which **MUST*** be complied with are:

- the maximum amount of the payment **MUST*** be set out in a written agreement between the individual providing the services and the charity;
- the maximum amount **MUST*** be reasonable in the circumstances;
- the charity trustees **MUST*** be satisfied before entering into the agreement that it is in the interests of the charity for the services to be provided by the charity trustee or connected person for that maximum amount;
- immediately after the agreement is entered into, the number of trustees receiving remuneration, entitled to receive remuneration or connected with another charity trustee who is remunerated or entitled to remuneration **MUST*** be in the minority; and
- the charity's constitution or governing document **MUST NOT*** expressly prohibit the payment of remuneration.

b) Under the common law on conflicts of interest, a charity trustee who is to receive remuneration or who is connected with a person who is to receive remuneration **MUST NOT*** take part in any of the relevant decisions. There is no obligation to refer to the Office of the Scottish Charity Regulator (OSCR) but trustees should have regard to

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the relevant guidance (presently section 5 of 'Guidance for Charity Trustees: Acting with care and diligence').

There is nothing to prevent a trustee from being remunerated for services provided in his capacity as a charity or under a contract of employment.

These provisions also apply to payments to those persons connected to trustees, including business associates and family, where the charity trustee might benefit either directly or indirectly from the remuneration provided to the connected person. Further guidance is available in OSCR's guidance for charity trustees and in section 68(2) of the 2005 Act.

The remuneration rules also do not prevent the receipt of remuneration where it is authorised by an order of the Court in Session or any enactment.

L3.3 Northern Ireland

In Northern Ireland the provision which covers remuneration of trustees is s.88 of the Charities Act (Northern Ireland) 2008. It applies to the trustee and anyone connected with the trustee. 'In connection with' can be interpreted as immediate family; partner, a company of the trustee; person in business with the trustee.

Guidance for trustees on the making of agreements for remuneration has not yet been agreed by the Charity Commission for Northern Ireland.

L4.0 Travel Law

L4.1 Travel Law

This section applies to all fundraising organisations other than where there is a specific reference to charities.

There are special legal requirements for events involving flights and certain other travel services.

The Package Travel, Package Holidays and Package Tours Regulations 1992 (as amended) ("the Package Travel Regulations") apply to

"the pre-arranged combination of at least two of the following components when sold or offered for sale at an inclusive price and when the service covers a period of more than 24 hours or includes overnight accommodation:

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- (a) transport;
- (b) accommodation
- (c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package.”

Most of the obligations under the Regulations fall on “the organiser”. This is defined as “the person who, otherwise than occasionally, organises packages and sells or offers them for sale, whether directly or through a retailer”. There are also obligations on retailers who sell packages to consumers. Generally, fundraising organisations will want the specialist tour operator to be the “organiser” with responsibility for compliance. Further basic information is available from the Department for Business Innovation and Skills – but this is a complicated area and you should take professional advice.

There are additional legal requirements for events involving flights (under the Civil Aviation Air Travel Organisers’ Licensing Regulations 1995 (“the ATOL Regulations”)). The Civil Aviation Authority (“the CAA”) has in the past issued guidance for charities organising challenge events involving flights. Detailed information is available on the CAA’s website. This is also a complicated area and you should take professional legal advice. Flying displays, the operation of balloons for public flights and other “unusual aerial events” (e.g. balloon releases and fireworks displays) may require consent from the Civil Aviation Authority (CAA) or notification to the CAA.

L5.0 Advertisements

L5.1 Advertisements

This section applies to all types of fundraising organisation. The UK Code of Advertising and Sales Promotion and Direct Marketing (The CAP Code) require non-broadcast advertisements to be legal, decent, honest and truthful. Further information can be obtained from the Committee of Advertising Practice (www.cap.org.uk).

The Broadcast Advertising Code (the BCAP Code), enforced by the Advertising Standards Authority, contains similar requirements for advertisements on radio and television. Compliance with these codes will ensure that advertisements meet the legal requirements set out below.

- a) In England, public advertisements for an event **MUST NOT*** contravene the Town and Country Planning Act 1990 as amended, the Control of Advertisements Regulations 2007 (as amended) issued under it or the Highways Act 1980.

- b) In Scotland, public advertisements **MUST NOT*** contravene the Town and Country Planning (Scotland) Act 1997 and the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984, as amended by Amendment Regulations 1992. No advert can be displayed without the consent of the planning authority, although advertisements that fall into certain classes have deemed consent. The Roads (Scotland) Act 1984 (section 100) prohibits anything (including an advert) being placed on a public road without the consent of the roads authority. There are also laws concerning the public display of advertisements generally and on the highway.
- c) All advertisements **MUST*** comply with trademark and copyright law. Consent for billboard type advertisements should be obtained from the local planning authority, from where further information can also be obtained. See also the Highways Agency.

Making misleading statements in advertising can give rise to criminal offences as well as civil (i.e. non-criminal) liabilities, for example under the Consumer Protection from Unfair Trading Regulations 2008, the Business Protection from Misleading Marketing Regulations 2008 and the Package Travel, Package Holidays and Package Tours Regulations 1992

L6.0 Fundraising in a Public Place

L6.1 In this section:

L6.2 Street Collections – England and Wales

L6.2.1 Sources of law

- The Police, Factories, etc. (Miscellaneous Provisions) Act 1916 establishes the right of Local Authorities (District Councils), the Metropolitan Police and the Common Council of the City of London to create regulations governing street or public place collections undertaken to benefit “charitable or other purposes”.
- There are model regulations set out in the Charitable Collections (Transitional Provisions) Order 1974 which many, but not all, local authorities have adopted. Requirements under these regulations will be highlighted throughout.

L6.2.2 Definitions

- “Street Collections” means collecting money or selling goods for the benefit of charitable or other purposes in any street or public place in England and Wales.
- “Street” includes any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not.

- “Public Place” is not defined in legislation. There is some case law on what is a public place which in theory should cover a place where members of the public go even when they have no legal right to do so, or any place where they are invited to go. It does not include any place to which members of the public can only go by paying or receiving specific permission. In practice areas such as a station forecourt, shopping malls and supermarket car parks are treated as private and not public places. Upcoming reform of the public collections regime is likely to include a definition of what amounts to a public place.

a) It is commonly argued that collections for direct debits do not constitute a collection of money or other property. That said, the Fundraising Regulator requires that all collections requirements in its Code **MUST** be followed for direct debit collections, other than where they directly refer to cash collections.

L6.2.3 Permits

- a) A collection **MUST NOT*** be made until the promoter has obtained a licence from the relevant licensing authority.
- b) Permits **MUST*** be applied for at least one month before the date of the collection.

L6.2.4 Age of collectors

The model regulations set the minimum age for a collector at 16. In London this can be lowered to 14 in some situations.

L6.2.5 Payment of Collectors

- a) If following the model regulations, collectors **MUST NOT*** be paid to carry out a street collection but may be paid to carry out a house to house collection.
- b) Any other payments from the collection **MUST*** be agreed in advance with the licensing authority.

L6.2.6 Materials

- a) Each collector **MUST*** have the written authority of the promoter of the collection, and produce this authority when requested to do so by a council official or police officer.
- b) Every collector **MUST*** carry a collecting box.
- c) All collecting boxes **MUST*** be numbered consecutively and **MUST** be securely closed and sealed in such a way as to prevent them being opened without the seal being broken.

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d) Collection boxes **MUST*** prominently display the name of the charity or fund which is to benefit.

e) If the collection is for a registered charity with income over £10,000, all printed materials **MUST*** state that the charity is registered.

L6.2.7 Solicitation Statements

The Charities Act 2006 introduced an obligation on some people fundraising for charities who, although paid, would not otherwise fall within the definition of a professional fundraiser.

These are:

a) Paid individuals carrying out a public charitable collection (except anyone who receives £5 or less per day or £500 or less per year). Such individuals **MUST*** make a statement which is equivalent to the s.60 Charities Act 1992 statement.

b) Paid employees, officers and trustees carrying out a public charitable collection (subject to the same 'lower paid' exception set out above).

c) If these individuals make a solicitation for a donation for a particular charity they **MUST*** make a statement indicating:

- the name or names of the institutions which will benefit and if more than one, the proportions in which they will benefit;
- the fact that they are an officer, employee or trustee of an institution; and
- the fact that they are receiving remuneration as an officer, employee, trustee or for acting as a collector. They do not have to state the amount of their remuneration.

d) If these individuals make a solicitation for general charitable, benevolent or philanthropic purposes (as opposed to a specific named charity), then they **MUST*** make a similar statement that they are being paid for those general purposes.

L6.2.8 Conduct of Collections

a) Collectors **MUST*** only collect at the times and in the areas stipulated in the licence.

b) If following the model regulations, collectors **MUST*** remain stationary and stand at least 25 metres away from any other collector.

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c) Collectors **MUST NOT*** conduct the collection in a manner likely to annoy or inconvenience anybody and **MUST NOT** “importune any person” to their annoyance.

d) Cash donations **MUST*** be placed immediately in the collection box.

L6.2.9 Proceeds of a Collection

a) Every collector **MUST*** deliver, unopened, all collecting boxes in his possession to a promoter.

b) Collection boxes **MUST*** be opened and the contents counted in the presence of the promoter of the collection and another responsible and unrelated person, or by a bank official.

c) A record **MUST*** be kept of the proceeds collected by each collector and details of the collecting materials returned.

L6.2.10 Information to provide to the licensing authority

a) Within one month of the date of a collection (three months in London) the promoter **MUST*** send a statement (in the form set out in the Regulations), showing the amount received and the expenses and payments incurred, certified by the promoter and a qualified accountant. It should include a list of the collectors and a list of the amounts contained in each collecting box.

There may also be a requirement to place an advertisement confirming certain information about the collection.

L6.3 Street Collections – Scotland

L6.3.1 Sources of Law

All such street/house to house collections in Scotland are currently governed by section 119 of the Civic Government (Scotland) Act 1982 and the Public Charitable Collections (Scotland) Regulations 1984.

L6.3.2 Definitions

- “Street Collection” means a collection made by soliciting contributions from passersby in a public place
- “Public Place” means any place (whether a thoroughfare or not) to which the public have unrestricted access and includes
- the door ways or entrances of premises abutting on any such place

- any common passage, close, court, stair, garden or yard pertinent to any tenement or group of separately owned houses

The definition of public place will change in Scotland if and when the Public Benevolent Collections provisions contained in the Charities and Trustee Investment (Scotland) Act 2005 are commenced.

L6.3.3 Permits

a) Unless an exempt promoter, a written application **MUST*** be made at least one month in advance (or within such other period as the local authority may determine).

L6.3.4 Age of Collectors

The minimum age for a collector taking part in a street collection is 14.

L6.3.5 Exemption Holders

a) In Scotland, anyone organising collections over the whole or a substantial part of Scotland may apply to the Office of the Scottish Charity Regulator (OSCR) to be made an Exempt Promoter. There are currently 16 exempt promoters.

b) In Scotland, Exempt Promoters **MUST*** report annually to OSCR.

c) This report **MUST*** include an audited account of collections carried out (including a breakdown by local authority area and details of the expenses incurred) as well as a signed organiser's statement and auditor's statement.

d) They **MUST*** also publish a notice summarising the audited collection account in a newspaper with a national Scottish circulation within one month of submission of their records to the Regulator.

L6.3.6 Materials

a) Collection envelopes **MUST*** only be used if the collection is a house to house one.

b) Every collector in a licensed collection **MUST*** be provided with:

- a collector's badge; and
- a certificate of authority,
- a sealed collecting box (in either case, bearing the name of the funds or organisations to benefit from the collection); and
- clear instructions as to the proper conduct of the collection.

c) The collector's badge **MUST***:

- have the registered name of the organisation which is to benefit from the collection printed on it, along with any other name by which it is known
- bear the registered charity number, if applicable, and a reference to the organisation's charitable status unless this is already included in its name

d) The collector's certificate of authority **MUST*** show:

- the registered name and the address of the funds or organisations which are to benefit from the collection, as well as any other name by which it is known;
- the registered charity number, if applicable, and a reference to the organisation's charitable status (unless this is already included in its name);
- the name and address of the collector;
- the place in which the collector is authorised to collect;
- the period during which the collector is authorised to collect;
- the signature of the collector and the promoter of the collection. The promoter's agent may sign on his/her behalf provided that the agent's name and address are also then supplied; and
- the name and address of the organiser.

e) Where money is to be collected, every collector **MUST*** be provided with a sealed collecting box or collection envelopes in accordance with the requirements specific to that jurisdiction as to when each may be used and what information each **MUST** contain (see below).

L6.3.7 Solicitation Statements

a) In Scotland, the rules regarding solicitation statements apply to and **MUST*** be followed by professional fundraisers making solicitations, commercial participators making representations and Benevolent Fundraisers (other than volunteers) carrying out benevolent fundraising.

L6.3.8 Conduct of Collections

a) When carrying out a collection by means of a sealed collecting box, the collector **MUST*** only accept donations which are made by the donor placing it in a collecting box.

b) Fundraisers carrying out licensed collections **MUST*** have visible ID badges.

L6.3.9 Proceeds of Collection

- a) Arrangements **MUST*** be made for the receipt of the collection proceeds of any licensed collection and all used and unused materials connected with it including the collector's badge and certificate of authority at a specified point authorised by the organiser of the collection.
- b) A record **MUST*** be kept of the proceeds collected by each collector and details of the collecting materials returned.
- c) All proceeds from all collectors **MUST*** be remitted to the organiser of the collection unopened, together with the collector's badge and certificate of authority and any unused collection materials as soon as he ceases to act as a collector (i.e. at the end of the collection) or upon demand by the organiser.
- d) Sealed collecting boxes/envelopes **MUST*** only be opened by either the organiser or his agent in the presence of an independent responsible person, or by an official of the bank (having been delivered unopened to a bank).
- e) A record **MUST*** be kept of each numbered collecting box which is returned as well as the proceeds in each collector's collecting box (unless opened by a bank official). In the case of an envelope collection, a record **MUST*** be kept of the number of envelopes issued to and returned by each collector, and the total amount of money in them.

L6.3.10 Information to be provided after the collection

- a) Organisers of collections **MUST*** publish a summary of the collection and the accounts within one month of submitting the accounts, unless the collection took place in a single local authority area and the local authority waives this requirement. The summary **MUST*** include specified information and be published in one or more newspapers circulating in the area for which the collection was licensed. Exempt promoters **MUST*** publish the summary in a newspaper circulating throughout Scotland.
- b) The receipts and papers relating to the collection **MUST*** be retained for two years after submission of the accounts.

L6.4 Street Collections – Northern Ireland

L6.4.1 Sources of Law

Street collections in Northern Ireland are governed by the Police, Factories, etc. (Miscellaneous Provisions) Act 1916. This establishes the right for the Police Service for Northern Ireland (PSNI) to make regulations governing street or public place collections undertaken to benefit charitable or other purposes.

L6.4.2 Definitions

- “Street” includes any highway and any public bridge, road, lane, footway, square, court, alley or passage, whether a thoroughfare or not
- “Public Place” is not defined in the legislation and some private property can be treated as if it were a public place, for example, supermarket car parks or shopping centres

L6.4.3 Permits

a) Permits are issued by the PSNI. The local PSNI station should be approached. The minimum requirement for a notice is the first day of the month preceding the month in which the collection is to be held. A collection **MUST NOT*** be made until the promoter has obtained a permit.

L6.4.4 Age of Collectors

a) Collectors **MUST*** be over 16 years of age.

L6.4.5 Payment of Collectors

a) Collectors **MUST NOT*** be paid.

L6.4.6 Materials

a) Each collector **MUST*** have the written authority of the promoter of the collection and produce this authority when requested to do so.

b) Every collector **MUST*** have a collection box.

c) All collecting boxes **MUST*** be numbered consecutively and **MUST*** be securely closed and sealed in such a way as to prevent them being opened without the seal being broken.

d) Collection boxes **MUST*** prominently display the name of the charity or fund which is to benefit.

L6.4.7 Conduct of Collections

a) Collectors **MUST NOT*** cause obstruction, inconvenience or annoyance to any person nor harass or annoy any person.

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- b) Collectors should remain stationary. Not more than two persons should collect at the same place and a collector should stand at least twenty-five meters away from any other collector.
- c) An animal **MUST NOT*** accompany collectors (except for a guide dog).
- d) Donations **MUST*** be placed immediately in the collection box.

L6.4.8 Proceeds of Collections

- a) Collection boxes **MUST*** be returned unopened with the seal intact to a promoter/permit holder.
- b) Collection boxes **MUST*** be opened and the contents counted in the presence of the promoter of the collection and two others who should count and record the amount received prior to lodgement.
- c) A record **MUST*** be kept of the proceeds collected by each collector and details of the collecting materials returned.

L6.4.9 Information to Provide to the PSNI

- a) A returns form **MUST*** be submitted to PSNI within two months of the collection and a statement to the senior police officer who granted the permit with accompanying vouchers certified by two officials of the organisation and appropriately audited showing the amount received and expenses incurred.

L6.5 House to House Collections – England and Wales

L6.5.1 Sources of law

- The House to House Collections Act (1939)
- The House to House Collections Regulations (1947)

L6.5.2 Definitions

“House to house collections” means collecting money or other property, whether for consideration or not, by means of visits from house to house (or business to business).

L6.5.3 Licences

- a) A collection for a ‘charitable purpose’ (which includes benevolent and philanthropic purposes) **MUST NOT*** take place from house to house without a licence issued by the local authority in whose area all or any part of the collection will take place. If a

collection is for local purposes and to be carried out over a short period, the local authority may grant a certificate excepting the collection from the need for a licence.

b) Licences **MUST*** be applied for at least one month before the date of the collection.

c) Licences may be refused or revoked if:

- The total amount applied for charitable purposes is seen as inadequate in relation to the likely amount collected.
- The remuneration (of anyone connected with the collection) is seen as excessive in proportion to the likely proceeds of the collection.
- The collection offends section 3 Vagrancy Act 1824.
- The applicant/holder of the licence is regarded as not a 'fit and proper person' to organise a collection.
- The applicant/holder of the licence fails to exercise 'due diligence' to ensure that all collectors are 'fit and proper persons' to collect.
- appropriate badges/certificates of authority are not properly recorded, issued and returned after the collection.
- There is a failure to give sufficient information to the licensing body regarding any of the above listed matters.

d) Where an application for a licence is refused or revoked the licensing authority **MUST*** provide written notice explaining the decision.

e) Appeal against such a decision is made directly to the Minister for the Cabinet Office and **MUST*** be made within 14 days of date of the notice.

L6.5.4 National Exemption Orders

- Holders of National Exemption Orders do not have to apply for licences every time they wish to carry out house to house collections.
- Organisations can generally obtain National Exemption Orders if they have had house-to-house collection licences in at least 70–100 local authority licensing areas for the two preceding years. There are currently 43 national exemption order holders (who are named individuals working for charitable organisations).
- There are few legal obligations on National Exemption Order holders but it is accepted good practice to liaise with local authorities about dates and locations of collections and observe other good practice requirements regarding the conduct of a collection.

L6.5.5 Age of Collectors

For house to house collections the minimum age for a collector is 16.

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L6.5.6 Selection of Collectors

a) The promoter of a collection **MUST*** carry out due diligence to check that collectors are 'fit and proper persons' to collect.

L6.5.7 Training of Collectors

a) The promoter **MUST*** also ensure that collectors comply with the House to House Collections Regulations (1947).

L6.5.8 Payment of collectors

1. In England and Wales collectors may be paid to conduct a house to house collection.

L6.5.9 Collection Materials

a) Every collector **MUST*** be provided with:

- a collector's badge – see below for details – which **MUST*** be worn prominently;
- a certificate of authority – see below ; and
- a sealed collecting box or receipt book marked with a clear indication of the purpose of the collection and a distinguishing number.

b) The collector's badge **MUST***:

- have the registered name of the organisation which is to benefit from the collection printed on it, along with any other name by which it is known;
- bear the registered charity number, if applicable; and
- be signed by the collector on receipt.

c) The collector's certificate of authority **MUST*** show:

- the purpose for which the collection is being carried out
- the name and address of the collector;
- the place of the collection;
- the period during which the collector is authorised to collect; and
- the signature of the collector and the promoter of the collection.

d) Badges and certificates of authority in England and Wales **MUST*** be standard, supplied by HMSO or, for Exemption Order holders only, of a design approved by Cabinet Office.

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e) Collection envelopes **MUST*** only be used by National Exemption Order holders who have obtained the prior permission of the Minister for the Cabinet Office, and there are specific rules governing envelope collections.

g) In addition, if the collection is for a registered charity with income over £10,000, all printed materials **MUST*** state that the charity is registered.

L6.5.10 Solicitation Statements

The Charities Act 2006 introduced an obligation on some people fundraising for charities who, although paid, would not otherwise fall within the definition of a professional fundraiser. These are:

a) Paid individuals carrying out a public charitable collection (except anyone who receives £5 or less per day or £500 or less per year). Such individuals **MUST*** make a statement which is equivalent to the s.60 Charities Act 1992 statement.

b) Paid employees, officers and trustees carrying out a public charitable collection (subject to the same 'lower paid' exception set out above).

c) If these individuals make a solicitation for a donation for a particular charity they **MUST*** make a statement indicating:

- the name or names of the institutions which will benefit and if more than one, the proportions in which they will benefit;
- the fact that they are an officer, employee or trustee of an institution; and
- the fact that they are receiving remuneration as an officer, employee, trustee or for acting as a collector. They do not have to state the amount of their remuneration.

d) If these individuals make a solicitation for general charitable, benevolent or philanthropic purposes (as opposed to a specific named charity), then they **MUST*** make a similar statement that they are being paid for those general purposes.

L6.5.11 Conducting a Collection

a) Collectors **MUST NOT*** "importune any person to the annoyance of such person", or remain in, or at the door of, any house if requested to leave.

L6.5.12 Handling proceeds of a cash donation

a) Where a collection box is used, donations **MUST*** be placed in that box.

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- b) Where no collection box is used, collectors **MUST*** record donations immediately in a receipt book and issue a signed receipt to the donor.
- c) All proceeds from all collectors **MUST*** be remitted to the organiser of the collection together with the collector's badge, certificate of authority and any unused collection materials as soon as possible. The seal on collection boxes **MUST*** remain intact and envelopes must be unopened.
- d) On receipt of the collection box or receipt book, the proceeds **MUST*** be counted or checked in the presence of a promoter and another responsible person or a bank official.
- e) A certified record **MUST*** be kept of the proceeds collected by each collector, the amount collected in each box and details of the collecting materials returned e.g. in the case of envelope collections, the number of envelopes containing cash that are returned by each collector and the total amount of money contained therein.

L6.5.13 Information to be provided to the licensing authority

- a) Accounts **MUST*** be submitted to the licensing authority within one month of the expiry of the licence.
- b) Where a National Exemption Order has been made, accounts **MUST*** be submitted yearly to the Cabinet Office.

L6.6 House to House Collections – Scotland

L6.6.1 Sources of Law

Civic Government (Scotland) Act 1982

Public Charitable Collections (Scotland) Regulations 1984

L6.6.2 Definitions

“House to House Collection” means a collection made by going from house to house and soliciting contributions from the occupants thereof “House” includes a place of business “ Public Place” means any place (whether a thoroughfare or not) to which the public have unrestricted access and includes the door ways or entrances of premises abutting on any such place any common passage, close, court, stair, garden or yard pertinent to any tenement or group of separately owned houses

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The definition of public place will change in Scotland if and when the Public Benevolent Collections provisions contained in the Charities and Trustee Investment (Scotland) Act 2005 are commenced.

L6.6.3 Exemption Holders

a) In Scotland, anyone organising collections over the whole or a substantial part of Scotland may apply to the Office of the Scottish Charity Regulator (OSCR) to be made an Exempt Promoter. There are currently 16 exempt promoters.

b) In Scotland, Exempt Promoters **MUST*** report annually to OSCR.

c) This report **MUST*** include an audited account of collections carried out (including a breakdown by local authority area and details of the expenses incurred) as well as a signed organiser's statement and auditor's statement.

d) They **MUST*** also publish a notice summarising the audited collection account in a newspaper with a national Scottish circulation within one month of submission of their records to the Regulator.

L6.6.4 Permits

a) Collections of goods do not require licences.

b) Unless an exempt promoter, a written application **MUST*** be made at least one month in advance (or within such other period as the local authority may determine).

L6.6.5 Age of Collectors

The minimum age for a collector taking part in a house to house collection is 16.

L6.6.6 Collection Materials

a) Charities' materials **MUST*** include the charity's registered name, any other name by which it is commonly known, the fact that it is a charity (if its name does not already include reference to its charitable status) and its registered charity number (which begins with SC0).

b) The issue and return of all materials connected with the collection **MUST*** be recorded.

c) The collector's badge **MUST***: have the registered name of the organisation which is to benefit from the collection printed on it, along with any other name by which it is

known; bear the registered charity number, if applicable, and a reference to the organisation's charitable status unless this is already included in its name;

d) The collector's certificate of authority **MUST*** show: the registered name and the address of the funds or organisations which are to benefit from the collection, as well as any other name by which it is known; the registered charity number, if applicable, and make reference to the organisation's charitable status unless this is already included in its name); the name and address of the collector; the place of the collection; the period during which the collector is authorised to collect; the signature of the collector and the promoter of the collection. The promoter's agent may sign on his/her behalf provided that the agent's name and address are then supplied; and the name and address of the organiser.

e) Badges and certificates of authority do not take a prescribed form but **MUST*** include all of the information required by the legislation, described above.

f) The organiser of a collection **MUST*** record the name and address of each collector as well as the number of collecting envelopes, or the number marked on the collecting box given to each collector.

L6.6.7 Solicitation Statements

a) In Scotland, the rules regarding solicitation statements apply to and **MUST*** be followed by professional fundraisers making solicitations, commercial participators making representations and Benevolent Fundraisers (other than volunteers) carrying out benevolent fundraising.

L6.6.8 Conduct of Collection

a) Fundraisers carrying out licensed collections **MUST*** have visible ID badges.

b) A collector **MUST*** only accept donations which are made in sealed envelopes.

c) When carrying out an envelope collection in Scotland, a collector **MUST*** only accept donations which are made in sealed envelopes. When carrying out a collection by means of a sealed collecting box, the collector **MUST*** only accept donations which are made by the donor placing it in a collecting box.

L6.6.9 Proceeds of Collections

a) Collection materials **MUST*** be opened and the contents counted and witnessed in the presence of the promoter of the collection or another responsible and unrelated person, or they can be delivered unopened to a bank.

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- b) All proceeds from all collectors **MUST*** be remitted to the organiser of the collection unopened, together with the collector's badge and certificate of authority and any unused collection materials as soon as he ceases to act as a collector (i.e. at the end of the collection) or upon demand by the organiser.
- c) Sealed collecting boxes/envelopes **MUST*** only be opened by either the organiser or his agent in the presence of an independent responsible person, or by an official of the bank (having been delivered unopened to a bank).
- d) A record **MUST*** be kept of each numbered collecting box which is returned as well as the proceeds in each collector's collecting box (unless opened by a bank official).
- e) In the case of an envelope collection, a record **MUST*** be kept of the number of envelopes issued to and returned by each collector, and the total amount of money in them.

L6.6.10 Information to be provided after the Collection

- a) Organisers of collections **MUST*** submit accounts for the collection to the relevant local authority within one month of the collection, and the accounts **MUST*** satisfy the requirements of the Regulations. (Different requirements apply to exempt promoters, who can submit annual accounts.) The receipts and papers relating to the collection **MUST*** be retained for two years after submission of the accounts.
- b) Arrangements **MUST*** be made for the receipt of the collection proceeds of any licensed collection and all used and unused materials connected with it including the collector's badge and certificate of authority at a specified point authorised by the organiser of the collection.
- c) A record **MUST*** be kept of the proceeds collected by each collector and details of the collecting materials returned.
- d) Organisers of collections **MUST*** publish a summary of the collection and the accounts within one month of submitting the accounts, unless the collection took place in a single local authority area and the local authority waives this requirement. The summary **MUST*** include specified information and be published in one or more newspapers circulating in the area for which the collection was licensed.
- e) Exempt promoters **MUST*** publish this summary in a newspaper circulating throughout Scotland.

L6.7 House to House Collections – Northern Ireland

In Northern Ireland, if the collection is to cover all of Northern Ireland an exemption order may be obtained to avoid the inconvenience of multiple applications to the Police Service for Northern Ireland (“PSNI”). Applications should be made to Charities Branch of the Department for Social Development.

- a) The organisation **MUST*** give reasonable notice to the PSNI on when they intend to act upon the exemption order because if they do not, then there is a chance of an overlap if the PSNI grant another organisation the right to fundraise there.
- b) Exemption Order holders in Northern Ireland **MUST*** provide annual accounts to the DSD duly certified by the chief promoter of collections and also certified by an independent responsible person as auditor.
- c) A chief promoter **MUST*** be appointed and the exemption order is issued to them. They cannot delegate their role and if they do so then the exemption order is automatically invalid.
- d) The organisation **MUST*** give PSNI at least six weeks’ notice before using its exemption order to avoid a local charity seeking a permit to collect and discovering that the holders of an exemption order are collecting in the same area without having notified the PSNI.
- e) Promoters are required to ensure that collectors are ‘fit and proper’ persons and that they receive a certificate of authority and badge.
- f) Materials **MUST*** show the name and address of the charity, name and address of the collector, the place of the collection and bear the signature of the collector and the promoter of the collection.
- g) Badges **MUST***:
 - meet the specifications set out in the 1952 Act and indicate the purpose of the collection bear the name of the charity and the HMRC reference number;
 - be signed by the collector; and
 - be returned when the collection is completed.
- h) Certificates **MUST*** show the name and address of the charity, name and address of the collector, the place of the collection and bear the signature of the collector and the promoter of the collection.

- i) Collectors **MUST*** be issued with collecting boxes or receipt books marked with a distinguishing number.
- j) If receipt books are issued, they **MUST*** have records of a sum equal to the total amount of the contributions entered therein.

L7.0 Acceptance and Refusal of Donations

L7.1 Delaying a donation

On occasion a charity may wish to refuse a donation, or delay its acceptance, with a view to persuading the donor to make the gift in a more tax-effective manner (e.g. by Gift Aid). A charity can decide to do this provided that the trustees are clearly aware of the risk that the donor might be put off making the donation altogether, and provided that the charity explains the tax advantages accurately to the donor.

L7.2 Record-keeping

Where the trustees (or their delegates) decide to refuse a donation, they **MUST** keep a careful minute of their decision, and the reasons for it. It is good practice for charities to adopt a policy about the circumstances in which donations might be refused.

L7.3 Requirements in England and Wales

L7.3.1 Charity Commission

If the trustees are concerned about whether or not to refuse a particular donation, they may wish to seek the views of the Charity Commission under section 110 Charities Act 2011 (power to give advice) or an order from the Charity Commission sanctioning their decision under section 105 Charities Act 2011 (power to authorise dealings with charity property etc.).

Circumstances where advice or an order might be of particular benefit are those where: it is not immediately clear what the 'best interests of the charity' are in relation to the proposed donation large sums of money or property are involved the trustees have reason to believe that a decision taken by them might be subsequently challenged in the courts; and the trustees wish to use the 'authority' of Charity Commission advice or an order to mitigate against the threat of negative publicity engendered by the refusal of a donation.

See also the section on ex gratia payments below.

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L7.3.2 A legal obligation to return a donation

There may be a legal obligation on a charity to return a donation. For example, the conditions attached to the gift may require the return of the gift in certain circumstances.

One situation where this might arise is known as a failed appeal. This may occur where an appeal for a particular purpose fails to raise sufficient funds to achieve that purpose: strictly the donors may be entitled to a refund.

This can be pre-empted if the wording of the appeal literature makes it clear that in these circumstances, the funds will be used for the charity's general purposes. The donor will not generally be entitled to a refund in those circumstances.

If the donor is, strictly, entitled to a refund, the provisions of the Charities Act 2011 may help. Section 65 Charities Act 2011 applies if donors to an appeal are informed that if the appeal fails, donations will be used for general charitable purposes, unless the donor makes a written declaration to the effect that they would like to have the opportunity to reclaim their donation in these circumstances. If the appeal fails, the trustees **MUST** then take certain steps to contact the donors who have made declarations: the Charity Commission can then be asked to make a scheme under section 63 Charities Act 2011 to apply the donated funds for different charitable purposes.

More information is available in Charity Commission operational guidance OG53: Charitable Appeals – Avoiding and Dealing with Failure. Note that it will often be easier to ensure that appeal literature simply specifies that the funds will be used for the charity's general purposes if the appeal fails, rather than relying on the more complicated section 65 procedure, which requires the Charity Commission's involvement.

If section 65 does not apply, it may still be possible to ask the Charity Commission to exercise its powers under section 63 to make a scheme to the effect that the property should be used for different charitable purposes. Section 63 allows the Commission to make a scheme in certain circumstances, including where the donor cannot be identified or found after certain advertisements and inquiries have been made. Under section 64 certain donations can be treated as belonging to donors who cannot be identified, including cash in collecting boxes and funds which the Charity Commission has decided should be treated as belonging to unidentifiable donors, because the costs of trying to trace the donors would be disproportionate or because in the circumstances (for instance a lapse of time) it would be unreasonable for the donors to expect the return of their donations.

There may also be scope to take advantage of the Commission's general scheme making powers in the event of a failed charitable gift.

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Another example of where there may be a legal obligation to return a donation is under Section 61, Charities Act 1992, Part II, which applies in England and Wales and provides for the return of donations of more than £100 made by credit/debit card within a seven day 'cooling off' period. The donation **MUST** have been made in response to an appeal by a professional fundraiser or commercial participator either in the course of a radio or television show or otherwise made orally (other than by speaking directly to, or in the presence of, the individual to whom the appeal is addressed). NB. Section 61 of the Charities Act 1992 was updated in 1999 to set the applicable threshold for return of donations to £100 from £50.

L7.3.3 A moral obligation to return a donation – ex gratia payment

There may be situations where a charity has no legal obligation to return a donation which has been made, but the trustees feel that there is a moral obligation to do so.

There is scope for the Charity Commission, using its powers under section 106 Charities Act 2011, to authorise a charity to refund a donation in these circumstances. More information is available in the Charity Commission's guidance CC7 – Ex Gratia Payments by Charities and in the Charity Commission's operational guidance OG 539 Ex Gratia Payments by Charities.

L7.4 Requirements in Scotland

While charities in England and Wales can seek an order from the Charity Commission authorising the refusal of a donation, no similar procedure exists in Scotland. Trustees of charities which are governed by OSCR ought to seek professional legal advice if they are concerned about a particular donation in order to ensure that they fulfil their legal duties when opting to accept or refuse the donation.

Where it is clear that the activities of a donor are directly inimical to the objectives of the charity, the agreed policies of the charity, or to the beneficiaries of the charity, the trustees can refuse the donation in the interests of the charity.

Where the potential donor is a person or a company whose activities are not directly related to the charitable objects of the charity, but the charity nevertheless wishes to avoid association with the donor, great care should be exercised in coming to a decision.

Where it can be shown that the cost to the charity of accepting a donation will be greater than the value of the donation itself, the trustees (in promoting the best interests of the charity) can and should refuse the donation.

a) If refusing a donation, trustees **MUST*** be able to demonstrate the tangible fact that they have grounds reasonably to believe that it is not in the interests of the charity to

accept the donation, usually by showing that they have cause to believe that acceptance of the donation will itself directly lead to a net decline in the asset base, support or reputation of the charity, or cause harm to its beneficiaries.

Where the offer of support is dependent upon the fulfilment of certain conditions placed upon the charity, the trustees have the right to refuse that support. Such cases might exist where:

- any condition linked to the support is, in itself, contrary to the objectives of the charity
- any condition linked to the support is regarded as unreasonable in relation to the nature of the support in terms of its size or impact on the work of the charity
- conditions linked to the support will divert the charity from pursuing its current objectives, policies or work priorities as a necessary result of the fulfilment of the conditions alone
- the conditions linked to the support tie the funds and/or property offered to a specific activity, and that specific activity is not:
 - i) charitable in nature
 - ii) within the scope of legitimate action permitted by the recipient charity's constitution in order to achieve its charitable aims
 - iii) practically achievable by the recipient charity

Practical considerations may mean that an otherwise acceptable donation is refused. Such cases might exist where:

- the support is tied to a particular project or activity which, whilst reflecting the charity's objects, is nevertheless impractical, given the current standing of the organisation. An example of such a case is where support is offered to purchase capital assets (building or land) but the charity, whilst in need of the capital asset, has no resources with which to maintain the running costs associated with it
- the support is presented in an unconventional manner and the cost of processing the donation exceeds the value of the donation. An example of such a case is where a charity is offered a wheelbarrow of penny coins. It might be argued that the costs associated with the counting and processing of the coins will outweigh the value of the donation itself
- the support consists of goods, services or property which the charity cannot lawfully use, convert, exchange or sell in direct support of its charitable objects

Where a donation has been accepted but the conditions later prove to be inappropriate or unworkable, the charity may be able to apply to OSCR to reorganise the restricted fund created by the donation. However, this will only be possible where the charity is unable to ascertain the wishes of the donor.

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While ex-gratia payments to discharge a compelling moral, but not legal, obligation can be made in England and Wales with the Charity Commission's consent, there is no equivalent procedure in Scotland. In Scotland, charities' constitutions must, under section 7(4) of the Charities and Trustee Investment (Scotland) Act 2005, prohibit the distribution of the charity's funds for non-charitable purposes. This, coupled with the lack of any equivalent mechanism permitting OSCR to authorise ex-gratia payments, means that charities which are governed by Scots law and have OSCR as their principal regulator cannot make ex-gratia payments. While they remain entitled to take a commercial view on matters and may agree a compromise with an individual or body which has a valid legal claim, they cannot make a payment where there is no legal case solely on the grounds of compassion or morality.

Where a donor requests it, the law provides for the return (subject to the deduction of any administrative expenses reasonably incurred) of certain donations of £100 or more within a seven day 'cooling off' period. This provision exists in in Scotland under Regulation 5 of the Charities and Benevolent Fundraising (Scotland) Regulations 2009. The donation **MUST** have been made in response to an appeal by a professional fundraiser or commercial participator and either:

- the appeal was made in the course of a radio or television show and payment of at least £100 was made by credit or debit card
- the payment was made, or an agreement was made to make a payment or payments at a later date with the amount or aggregate amount totalling at least £100, in response to an appeal made orally (other than by speaking directly to, or in the presence of, the individual to whom the appeal is
- addressed) and the payment was made by any means.

L7.5 Northern Ireland Requirements

The Northern Ireland position is similar to England and Wales. Under the Charities Act (Northern Ireland) 2008 a charity may in respect of donations, seek the advice of the Charity Commission for Northern Ireland under Section 46. This section gives the Commission the power to authorise dealings and to act upon any decisions which may be expedient to the charity – this also comes with the added power of being able to sanction their decision.

Also, a donation may be refused if some condition in it cannot be fulfilled – if it is impossible or impracticable. There are numerous examples of this, and if the condition fails, then the donation is returned. However, there is a precedent that setting a condition that money to be returned negatives the charitable intent, so it will be applied cy-près.

Under Section 47 of the Charities Act (Northern Ireland) 2008 the Commission also has the power to authorise ex-gratia payments. This is where there is a large sum of money

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attained by the charity and although they have no legal obligation to return the payment, the trustees of the charity feel that they have a moral obligation to return the donation.

Also, under Section 49 the Commission have the power to give advice or guidance and if they so please, the trustees of the charity may approach the Commission to seek their views on a certain donation. However, the trustees are responsible if they follow the advice.

Further Guidance can be found in the Institute of Fundraising's [Acceptance, refusal and return: A practical guide to dealing with donations](#)

L8.0 Professional Fundraisers and Agreements

L8.1 Scope

This section applies to fundraising organisations which are charities

L8.2 England and Wales – Definition of a Professional Fundraiser

A “Professional Fundraiser” is:

- i) any person who carries on a business for gain which is wholly or primarily engaged in soliciting or otherwise procuring money or other property for charitable, philanthropic or benevolent purposes (but charities themselves and their trading subsidiaries are excluded)
- ii) any other person who solicits money or other property “for reward” (but again charities themselves, their employees and trustees and charity trading subsidiaries are excluded.) There are also exclusions aimed at celebrities who do TV or radio appeals, low paid fundraisers – i.e. those who do not receive more than £1,000 per year or £10 per day, and businesses which fall within the definition of commercial participator.

L8.3 Scotland- Definition of a Professional Fundraiser

The relevant law is set out in the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) and the Charities and Benevolent Fundraising Regulations (Scotland) 2009

A “Professional Fundraiser” is:

- any person (other than a benevolent body or a company connected with it) who carries on a fundraising business – being a business carried on for profit which is

wholly or primarily engaged in soliciting or otherwise procuring money or promises of money (but, unlike England and Wales, not other property) for one or more particular benevolent body, or for charitable, benevolent or philanthropic purposes; OR:

- any other person who, other than in the course of a fundraising venture undertaken by a person within the above definition, for reward solicits money or other property for the benefit of a benevolent body or for charitable, benevolent or philanthropic purposes, but excluding:
 - i) a benevolent body or a company connected with it
 - ii) any person concerned in the management or control of, or who is an employee of, a benevolent body or connected company
 - iii) people who solicit funds at the instance of a benevolent body or connected company in the course of a TV or radio programme during which that body undertakes a fundraising venture
 - iv) commercial participator

Unlike England and Wales, those undertaking public charitable collections are not exempted. In addition, while Scotland has provision allowing it to pass similar de minimus rules to those that exist in England and Wales, it has not used this power.

L8.4 England and Wales, and Scotland: Requirement to have a Written Agreement

L8.4.1 Written Agreements

a) It is unlawful for a professional fundraiser to solicit money for a particular institution unless it is done in accordance with a written agreement with the organisation it is raising funds for. The agreement **MUST*** be in writing and signed by or on behalf of both the professional fundraiser and the organisation it is raising funds for. The agreement **MUST*** specify:

The names and addresses of all the parties to the agreement;

The date on which each party signed and the duration of the agreement;

- any terms dealing with early termination or variation;
- a statement of the principal objectives of the agreement and the methods to be used to achieve those objectives;
- terms for the payment of fees and expenses to the Professional Fundraiser; and
- if more than one charity is involved, how funds raised will be shared between them.

b) Fundraising agreements between Charities registered in England and Wales and professional fundraisers **MUST*** include:

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- details of any voluntary regulatory fundraising scheme or standard that the professional fundraiser undertakes to be bound by;
- how the commercial organisation will protect the public from unreasonable intrusion on a person's privacy, unreasonably persistent approaches or undue pressure to give; and
- how compliance with the agreement will be monitored by the charity, as specified within section 13 of the Charities (Protection and Social Investment) Act 2016.

L8.4.2 England and Wales – Professional Fundraisers: other requirements

a) A professional fundraiser **MUST*** comply with further specific disclosure requirements in relation to television, radio and telephone appeals: (Sections 60(4)(5)(6) of the 1992 Act), including rights to cancel a donation and receive a refund (Section 61 of the 1992 Act).

b) A professional fundraiser with an agreement in place with a fundraising organisation **MUST*** on request make its books, documents and records relating to that organisation available for inspection and **MUST***, subject to a reasonable excuse, pass on funds to the organisation as soon as reasonably practicable and within a maximum of 28 days.

L8.4.3 Scotland – Professional Fundraisers: other requirements

a) A professional fundraiser **MUST*** pass on funds to the charitable institution/benevolent body in accordance with the Regulations. In Scotland, the funds **MUST** be passed on as soon as reasonably practicable and in any event within a maximum of 28 days of receipt. Scots law does not permit the parties to agree otherwise, nor does it make an exemption where there is a reasonable excuse.

L9.0 Commercial Participants and Agreements

L9.1 Scope

This section applies to fundraising organisations which are charities.

L9.2 England and Wales- Definition of Commercial Participant

The relevant law is set out in the Charities Act 1992 (as amended) (“the 1992 Act”) and the Charitable Institutions (Fund-Raising) Regulations 1994.

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Broadly speaking a “Commercial Participator” is any person who carries on a business and in the course of that business represents that it will make donations to a charity. For example, a manufacturer that advertises washing powder with the promise that a contribution will be made to charity for each packet sold would be a commercial participator.

The full definition is in Section 58(1) of the 1992 Act. Fundraising businesses and charity trading subsidiaries are excluded.

L9.3 Scotland- Definition of Commercial Participator

The relevant law is set out in the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”) and the Charities and Benevolent Fundraising Regulations (Scotland) 2009.

A “Commercial Participator” is defined in section 79 of the 2005 Act as any person who carries on for profit a business other than a fundraising business, and, in the course of that business, engages in any promotional venture in which a representation is made that benevolent contributions are to be given to or applied for the benefit of a benevolent body or (in an extension of the position in England and Wales) are to be applied for charitable, benevolent or philanthropic purposes, but it does not include a company connected with the benevolent body.

For example, a manufacturer that advertises tissues with the promise that a contribution will be made to support children in disadvantaged areas for each packet sold would be a commercial participator.

L9.4 England and Wales – Commercial Participator Solicitation Statement

a) Commercial participators **MUST*** make a statement every time they represent money will be paid to a charity or an institution which is established for benevolent or philanthropic purposes.

L9.5. Scotland- Commercial Participator Solicitation Statement

a) In Scotland, the rules regarding solicitation statements apply to and **MUST*** be followed by Professional fundraisers making solicitations, Commercial participators making representations and benevolent fundraisers (other than volunteers) carrying out benevolent fundraising.

L9.6 Requirement to have an agreement in place

a) It is unlawful for a commercial participator to represent as part of a promotional venture that it will give money to a charity (or an institution established for benevolent or

philanthropic purposes) unless it is done in accordance with a written agreement with the organisation it is raising funds for. The agreement **MUST*** be in writing and signed by or on behalf of both the commercial participator and the organisation it is raising funds for.

The agreement **MUST*** specify:

- The names and addresses of all the parties to the agreement;
- The date on which each party signed and the duration of the agreement;
- any terms dealing with early termination or variation;
- a statement of the principal objectives of the agreement and the methods to be used to achieve those objectives;
- the proportions in which each charity will benefit in cases where the money is to be divided between more than one charity;
- what proportion of the price of the goods or services will be given to the charity or what sums will be donated by the commercial participator in connection with the sale or supply of the goods or services;
- and any amount the commercial participator will be paid as remuneration or expenses.

b) Fundraising agreements between Charities registered in England and Wales and professional fundraisers **MUST*** include:

- details of any voluntary regulatory fundraising scheme or standard that the professional fundraiser undertakes to be bound by;
- how the commercial organisation will protect the public from unreasonable intrusion on a person's privacy, unreasonably persistent approaches or undue pressure to give; and
- how compliance with the agreement will be monitored by the charity, as specified within section 13 of the Charities (Protection and Social Investment) Act 2016.

L9.7 England and Wales: Other Requirements

a) A commercial participator who has an agreement with a charity **MUST*** on request make its books, documents and records relating to that charity available for inspection and **MUST***, subject to a reasonable excuse, pass on funds to the charity as soon as reasonably practicable and within a maximum of 28 days.

L9.8 Scotland: Other Requirements

- a) A professional fundraiser/commercial participator **MUST*** pass on funds to the charitable institution/benevolent body in accordance with the

Regulations. In Scotland, the funds **MUST** be passed on as soon as reasonably practicable and in any event within a maximum of 28 days of receipt. Scots law does not permit the parties to agree otherwise, nor does it make an exemption where there is a reasonable excuse.

L10.0 Solicitation Statements

L10.1 England and Wales

a) The Charities Act 2006 introduced an obligation on some people fundraising for charities who, although paid, would not otherwise fall within the definition of a professional fundraiser. These are:

- Paid individuals carrying out a public charitable collection (except anyone who receives £5 or less per day or £500 or less per year).
- Paid employees, officers and trustees (subject to the same 'lower paid' exception set out above).

b) If these individuals make a solicitation for a donation for a particular charity they **MUST*** make a statement indicating:

- the name or names of the institutions which will benefit and if more than one, the proportions in which they will benefit;
- the fact that they are an officer, employee or trustee of an institution; and
- the fact that they are receiving remuneration as an officer, employee, trustee or for acting as a collector. They do not have to state the amount of their remuneration.

c) If these individuals make a solicitation for general charitable, benevolent or philanthropic purposes (as opposed to a specific named charity), then they **MUST*** make a similar statement that they are being paid for those general purposes.

d) Professional fundraisers **MUST*** make a solicitation statement every time they solicit money or other property on behalf of a charity or an institution which is established for benevolent or philanthropic purposes. This is the case even if the money is not a pure donation but is given in return for something. (Section 58 (6) (b) Charities Act 1992).

In the case of telephone fundraising, the appropriate statement **MUST*** be made during each call and within seven days of any payment of £100 or more being made by the donor to the professional fundraiser, the professional fundraiser **MUST*** give the donor

a written statement, and notify the donor of their right to a refund/cancel. (Section 60 (5) Charities Act 1992.)

e) Professional fundraisers **MUST*** give the following information:

- the name of the fundraising organisation(s) on whose behalf they are calling;
- if there is more than one organisation, the proportion in which they will each benefit;
- the method by which the fundraiser's remuneration is to be determined; and where known, the actual amount of the remuneration; or where unknown, an estimate of the remuneration, calculated as accurately as possible.

f) A professional fundraiser **MUST*** comply with further specific disclosure requirements in relation to television, radio and telephone appeals: (Sections 60(4)(5)(6) of the Charities Act 1992), including rights to cancel a donation and receive a refund (Section 61 of the Charities Act 1992).

Failure to make the correct statement is a criminal offence.

The Cabinet Office published two sets of guidance in 2008 which include example wording of statements:

- "Charitable Fundraising Guidance on Part 2 of the Charities Act 1992"
- "Guidance for employees and paid officers or trustees of a charity required to make a solicitation statement"

For more detailed guidance, professional advice should be sought.

L10.2 Scotland

a) In Scotland, the rules regarding solicitation statements apply to and **MUST*** be followed by professional fundraisers making solicitations, commercial participators making representations and benevolent fundraisers (other than volunteers) carrying out benevolent fundraising.

A benevolent fundraiser for this purpose is a benevolent body or any company connected with it; any persons who manage or control it; or any employees or agents either of such people or of the benevolent body or connected company. Benevolent fundraising means soliciting or otherwise procuring money or promises of money for the benefit of benevolent bodies or connected companies, or for charitable, benevolent or philanthropic purposes.

b) Professional fundraisers, commercial participators, and benevolent fundraisers (other than volunteers) **MUST*** give the following information:

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- the name of the benevolent body which will benefit;
- if there is more than one benevolent body, the proportion in which each will benefit;
- if the funds are for general charitable, benevolent or philanthropic purposes (rather than for a benevolent body), this must be stated and details given of how the distribution of funds will be determined; and
- whether he is to receive remuneration (unless he is a benevolent fundraiser and is an employee or agent of the benevolent body concerned or a company connected with it, and is carrying out the fundraising in writing).

c) Professional fundraisers and commercial participators **MUST*** also adhere to these additional rules:

- If the solicitation or representation is made orally (but not by speaking directly to and in the presence of the person to whom it is addressed) or in the course of a radio or television programme, he **MUST*** explain the right to a refund or to cancel the agreement which exists in terms of the Regulations;
- if he is to receive remuneration, he **MUST***:
 - indicate how this will be determined, and
 - state the amount (if known, and if not, the estimated amount) of the remuneration that he as a Professional fundraiser will receive; or
 - state the amount (if known, and if not, the estimated amount) of the sale proceeds or proceeds of the promotional venture that he as a Commercial participator will apply for the benevolent body or purpose, or the amount of the donation(s) that will be made.
- if he provides the statement regarding his remuneration orally, he **MUST***:
 - if making the statement in person, advise any person making a payment that he has the information on remuneration available in writing with him if they wish to see it; or
 - if the statement is not made in person, advise any person making a payment that he has the information on remuneration available in writing and will provide it if requested.

A professional fundraiser or commercial participator commits a criminal offence by failing to comply with any of these provisions and the trustees of a charity may be in breach of their duty of care if they do not make statements where appropriate or require statements to be made. Further information and guidance is available from OSCR and/or professional advice should be sought.

In Scotland unlike England and Wales, those undertaking public charitable collections are not exempted. In addition, while Scotland has provision allowing it to pass similar de minimus rules to those that exist in England and Wales, it has not used this power.

L10.3 Northern Ireland

At the present time, there is no equivalent legislation as in England, Wales or Scotland in regard to written agreements. However, it is deemed good practice to follow the England and Wales requirements.

Under the Charities Act (Northern Ireland) 2008, it will be unlawful for a professional fundraiser to solicit money without a written agreement with the organisation it is collecting for that satisfied the prescribed requirements. These provisions have not yet come into force and this Code will be updated to reflect the changing legislation in due course.

L11.0 Trustee Duties

L11.1 Scope

This section applies to fundraising organisations which are charities.

L11.2 Key Requirements

The overriding duty of all charity trustees is to advance the purposes of their charity. Those occupying equivalent positions in non-charitable voluntary organisations will have similar duties. In advancing their charities' purposes, trustees have several basic responsibilities:

a) Trustees are responsible for the proper administration of their charity.

Trustees **MUST*** ensure that the charity's assets and resources are used only for the purposes of the charity and that the charity is run in accordance with its constitution, charity law and all other applicable laws and regulations. Examples of legal requirements placed on trustees in the field of fundraising include the need for appropriate agreements with commercial participators and professional fundraisers, and the need for appropriate licences when conducting street or house to house collections.

b) Trustees have ultimate responsibility for everything the charity does.

The trustees are responsible for the vision, mission and management of the charity. While they may delegate in some circumstances, it is the trustees who are accountable if things go wrong.

c) Trustees have to act reasonably and prudently in all matters relating to their charity.

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The law imposes a duty of care on the trustees of charities, which is sometimes expressed as a duty “to exercise such care and skill as is reasonable in the circumstances”. The duty will be greater if a trustee has, or claims to have, any special knowledge or experience, or if their business or profession means that they can reasonably be expected to have special knowledge or experience. If trustees are not experts in certain matters, they will be expected to take appropriate advice.

d) Trustees **MUST*** safeguard and protect the assets of the charity.

As well as obvious assets such as investments, cash and land, a charity’s assets include its intellectual property, staff and reputation. So where a charity uses volunteers or paid fundraisers to fundraise, the trustees **MUST*** make sure that the charity receives all the funds to which it is entitled. Trustees **MUST*** also consider the impact of controversial fundraising campaigns on the charity’s reputation in the long term.

e) Trustees have a duty to act collectively.

Decisions and responsibilities are shared, so all trustees should take an active role. Trustees can act by majority decision, unless the constitution says otherwise, and some trustees, such as the Chair and the Treasurer, will have particular roles, but all the trustees are collectively responsible for decisions made by the trustees.

f) Trustees **MUST*** act in the best interests of their charity.

The interests of the charity are paramount. Trustees should not allow their personal interests or views to override this: they **MUST*** exercise independent judgment.

g) Trustees **MUST*** avoid any conflict between their personal interests and those of the charity.

The main implication of this is that the scope for trustees to benefit personally from their charity is very limited. Trustees **MUST*** deal appropriately with any conflicts between their own personal interests and those of the charity. They **MUST*** also be alert to possible conflicts between duties they may owe to other organisations and the duties they have to the charity.

Further information can be found on the Charity Commission website in guidance document [CC3: The Essential Trustee](#), [Charity fundraising: a guide to trustee duties \(CC20\)](#) and the [welcome pack for new trustees](#)

h) Trustees in Scotland

Charity trustees are obliged to comply with the [Charities and Trustee Investment \(Scotland\) Act 2005](#) and any regulations made under it or affecting charities. In

particular, charity trustees **MUST*** adhere to their charity's constitution and comply with their duties under Section 66 of the 2005 Act when exercising functions in their capacity as a charity trustee. Crucially, they **MUST*** act in the interests of the charity, seek in good faith to ensure that the charity acts in a manner which is consistent with its purposes, and act with the care and diligence that it is reasonable to expect of a person who is managing the affairs of another person.

i) Trustees in Northern Ireland

The duties and responsibilities of trustees are contained in the Trustee Act (Northern Ireland) 1958 and more recently the Trustee Act (Northern Ireland) 2001 and for an outline of the specific requirements of Northern Ireland see "The Guide for Trustees" which was drawn up by the Department for Social Development. These are very similar to those set out in the England and Wales 'key requirements'.

L12.0 References in Documents

L12.1 Scope

This section applies to fundraising organisations which are charities and concerns statements about charitable status on organisations' documents and materials

L12.2 UK-wide Requirements

Charities that are registered companies must adhere to the following requirements under the Companies (Trading Disclosures) Regulations 2008 in addition to the jurisdiction-specific charity law rules:

- a) The charity's business letters, order forms and website **MUST*** state the following:-
- The company's full name;
 - The company number;
 - The place of registration of the company (e.g. England and Wales or Scotland);
 - The address of the company's registered office (and if more than one address is mentioned, it **MUST*** be made clear which is the registered office);
 - If the name of the charity does not include the word 'Limited', a statement **MUST*** be made that the charity is a limited company; and
 - If the names of the charity's directors are included on the letterhead (which is not compulsory) then all directors **MUST*** be named.
- b) The company's registered name **MUST*** also be disclosed on all notices and other official publications; all cheques, bills of exchange, promissory notes and

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endorsements; all orders for money, goods or services; all invoices and other demands for payment, receipts and letters of credit; all applications for licences to carry on a trade or activity; and all other forms of its business correspondence and documentation.

L12.3 England and Wales Requirements

a) All notices, advertisements and documents issued by or on behalf of any registered charity with an income over £10,000 that contain a request for money or other property for the benefit of the charity **MUST*** include a statement that the organisation is a registered charity. It is best practice to include the organisation's registered charity number on such documents.

b) If the charity is a registered company, then its company number, place of registration (e.g. England and Wales) and the address of the registered office of the charity **MUST*** also be included if the fundraising material takes the form of a business letter or is published on the charity's website. As a registered company, the name of the charity **MUST*** also be disclosed on all fundraising materials that take any of the following forms:

- (a) Business letters;
- (b) Notices and other official publications;
- (c) bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed on behalf of the charity;
- (d) any documents relating to the sale or purchase of an interest in land purporting to be executed by the charity; and
- (e) bills, invoices, receipts and letters of credit.

c) If the charity is a registered company and its name does not include the word 'Limited', a statement that the charity is a limited company **MUST*** also be included on all business correspondence.

d) If the charity uses for fundraising, a trading subsidiary that is a company limited by shares having a share capital, as well as its company number, place of registration and registered office address, the amount of paid up share capital **MUST*** also be disclosed if the fundraising material takes the form of a business letter or is published on its website.

L12.4 Scotland Requirements.

The only organisations that can call themselves "charities" in Scotland are those that are registered with OSCR (the Office of the Scottish Charity Regulator).

a) Charities that are so registered **MUST*** comply with the Charities References in Documents (Scotland) Regulations 2007 and make certain statements about their

status in their documents (see Section 9.0). Scottish Charitable Incorporated Organisations (SCIOs) are subject to slightly different rules but **MUST*** comply with section 52 of the Charities and Trustee Investment (Scotland) Act 2005 and the Scottish Charitable Incorporated Organisations Regulations 2011 in relation to the statements that they make.

Foreign charities may refer to themselves as charities established under the law of a country or territory other than Scotland without being registered, but only if they satisfy the criteria in section 14 of the 2005 Act.

b) Under the Charities References in Documents (Scotland) Regulations 2007, charities entered on the Scottish Charity Register (other than SCIOs) **MUST*** specify the following in their documents:

- The charity's full name;
- Any other commonly used name;
- Its Scottish Charity Number; and
- If its name does not include 'charity' or 'charitable' it must state that it is a charity.

c) It **MUST*** use the term 'charity', 'charitable body', 'registered charity', or 'charity registered in Scotland'. The terms 'Scottish charity' and 'registered Scottish charity' are reserved for charities established in Scotland or managed/controlled wholly or mainly there.

d) Where a charity takes the form of a SCIO, the information it **MUST*** state is its full name and, if its name does not include reference to its legal form, the fact that it is a SCIO. As a matter of good practice, it **MUST** state its charity number and, when disclosing its SCIO status, state that it is a Scottish Charitable Incorporated Organisation rather than using the acronym SCIO.

e) In the case of both SCIOs and any other type of charity, this information **MUST*** be stated in all business letters; e-mails; advertisements; notices; official publications; any document soliciting money/other property for the charity; promissory notes; endorsements; orders for money or goods; bills rendered; invoices; receipts; letters of credit; statutory accounts; educational or campaign documentation; conveyances which create, transfer, vary or extinguish an interest in land; contractual documentation; bills of exchange (except cheques), and the home page of the charity's website.

f) The rules apply to documents which are issued or signed by others on a charity's behalf as well as by the charity itself. All charities registered in Scotland **MUST*** comply, regardless of size or income, although new charities (other than SCIOs) are given an initial six month 'grace' period.

g) In addition to the UK regulations, Scottish charitable companies **MUST*** comply with section 112(6) of the Companies Act 1989. If the company's name does not include 'charity' or 'charitable', it **MUST*** disclose its charitable status on all business letters; all notices and other official publications; all bills of exchange; promissory notes; endorsements; cheques; orders for money or goods purporting to be signed by or on its behalf; all conveyances purporting to be executed by it; all bills of parcels; invoices; receipts; and all letters of credit. Unlike the charity law rules, this also applies to cheques. Any person acting on behalf of a charitable company who issues a cheque without this statement commits an offence and will be personally liable for the sum due on the cheque if it is not honoured by the company

L12.5 Northern Ireland Requirements

- The Charities Act (Northern Ireland) 2008 will require all organisations which operate under one of the recognised charitable purposes, to register with the Charity Commission for Northern Ireland.
- Once it has satisfied the 'Public Benefit Test' and also falls under a recognised charitable purpose, that organisation will be supplied with a Northern Ireland Charity Registration (NIC) Number and placed on a public register of charities.
- In contrast to England and Wales legislation, there appears to be no threshold for turnover when registering a charity. It means that all organisations large and small will have to register eventually.
- When a charity is preparing to register, it **MUST*** first submit their constitution so the Charity Commission for Northern Ireland can examine whether or not it satisfies the public benefit test and also that it comes under one of the charitable purposes laid out in the Charities Act (Northern Ireland) 2008

L13.0 Raffles and Lotteries

L13.1 Scope

This section applies to all types of fundraising organisations. There are two legal jurisdictions for Raffles and Lotteries in the UK:

England, Wales and Scotland (L13.3-L13.15)

Northern Ireland (L13.16)

a) Organisations **MUST*** observe the legal requirements of the relevant jurisdiction

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L13.2 Legal references in this section

- Gambling Act 2005 (“the Act”)
- Gambling Commission’s Licence Conditions and Codes of Practice
- Betting, Gaming, Lotteries and Amusements (NI) Order 1985

L13.3 Definitions and Key Requirements

The terms ‘raffles’ and ‘lotteries’ are interchangeably used, but cover the same activity. The Gambling Act 2005 (the “Act”) defines a lottery as an arrangement where individuals pay for an opportunity to win a prize that is selected entirely by chance (or, where the selection process involves more than one stage, the first stage relies wholly on chance). This section also looks at prize competitions and draws.

- a) Organisations **MUST*** follow certain criteria to ensure they are not running an illegal raffle.
- b) Organisations that promote a small society lottery **MUST*** register with their local authority and follow criteria as laid down by the Act, the local authority and the Gambling Commission unless the lottery is exempt from the requirement to register.
- c) Organisations that promote a large society **MUST*** obtain a lottery operating licence to run a raffle and follow criteria as laid down by the Act and the Gambling Commission unless the lottery is exempt from the requirement to obtain a licence.
- d) To run an exempt lottery, organisations **MUST*** meet the criteria set out in the Act.

L13.3.1 Exempt Lotteries

The following types of lottery do not require an organisation to register with its local authority or to have a lottery operating licence from the Gambling Commission.

L13.3.2 Incidental lotteries

- a) To fall within the exemption: the lottery **MUST*** be incidental to an event; tickets **MUST*** only be sold during the event, on the premises where the event is held; the draw **MUST*** not rollover; and deductions from the profits going to good causes **MUST NOT*** exceed £100 in costs and £500 in prizes.

See further information on incidental lotteries from the Gambling Commission

L13.3.3 Private Lotteries

There are three types of private lotteries permitted by the Act – residents’ lotteries, work lotteries and private societies – as well as customer lotteries which do not require an organisation to register with its local authority or to have a lottery operating licence from the Gambling Commission. Read their Guidance on [Private lotteries](#)

For all private lotteries:

- a) the price of each ticket **MUST*** be the same;
- b) rollovers **MUST NOT*** be used; and
- c) rights attached to private lottery tickets are non-transferable.

Residents’ lotteries

- d) Tickets to enter a residents’ lottery **MUST*** be sold to residents in a single set of premises by fellow residents.
- e) The lottery **MUST*** be arranged so that either no profits are made and all the proceeds are used for reasonable expenses and prizes or, after deducting reasonable expenses and prizes the profits are given to a good cause (such as a charity).

Work lotteries

- f) Tickets to enter a work lottery **MUST*** be sold to workers on a single set of premises by fellow workers.
- g) The lottery **MUST*** be arranged so that either no profits are made and all the proceeds are used for reasonable expenses or prizes or, after deducting reasonable expenses and prizes the profits are given to a good cause (such as a charity).

Private society lotteries

- h) An organisation (except those established for gambling can promote a private society lottery to raise funds, but tickets **MUST*** be sold only to the organisation’s members or those who are on its premises.
- i) The promoter of a private society lottery **MUST*** be a member of the organisation and act under its written authorisation.

Customer lotteries

j) Customer lotteries are rarely used for fundraising as all proceeds **MUST*** be used for reasonable expenses and prizes. Tickets to enter a customer lottery **MUST*** be sold from a business premises to the customers of that business. There are specific requirements regarding the content of tickets and the value of prizes.

Read the Guidance on [customer lotteries](#) from the Gambling Commission

L13.3.4 Society Lotteries

a) Society lotteries **MUST*** only be promoted for the benefit of: charities; organisations established for the purpose of enabling participation in, or supporting, sport, athletics or a cultural activity; or other organisations conducted for non-commercial purpose and not for private gain.

There are two types of society lottery:

- [small society lotteries](#), where the value of tickets in any one lottery is not more than £20,000 and do not exceed £250,000 in any year
- [large society lotteries](#): where the above limits are exceeded. If a society runs a large society lottery, then every lottery it promotes in the following three years will also be a large society lottery which will require a [license](#)

Many of the requirements are the same for both small and large society lotteries, and this section therefore uses the generic term “society lottery”. Where there are differences, the Code refers to small society lotteries or large society lotteries, as appropriate.

For more information on fundraising with lotteries, see [the advice and guidance](#) from the Gambling Commission.

L13.4 Licensing and Permissions

L13.4.1 Small Society Lotteries

a) The society **MUST*** register with the [local authority](#) of the area in which it is based before it can run any [small society lotteries](#).

L13.4.2 Large Society Lotteries

a) A large society lottery **MUST*** be run under a licence from the [Gambling Commission](#).

There are two types of licence:

- an [operating licence](#), which authorises an individual or organisation to promote lotteries; and a personal management licence, which authorises an individual to perform specific management or operational functions in connection with the promotion of lotteries under an operating licence.
- A [personal management licence](#) is required where an organisation has an operating licence and there are more than three people with primary responsibilities for the management, finances and/or promotion of the lottery.

b) Operators of lotteries where no personal management licence is required **MUST*** appoint a “responsible person”, who **MUST*** complete a personal declaration form and a [Disclosure and Barring Service](#) form (in England and Wales), [Disclosure Scotland](#) form (if in Scotland) or [Access NI](#) form (if in Northern Ireland).

c) Every society that proposes running a [large society lottery](#) **MUST*** possess an operating licence to cover remote lotteries (lotteries where tickets are obtained electronically, i.e. internet, telephone, television or radio) and/or non-remote lotteries (where tickets are purchase in person).

L13.5 Role of the Promoter

- a) The designated individual promoter **MUST** be authorised in writing by the governing body of the society to act as such.
- b) The promoter of a lottery is personally responsible in law for the legality and conduct of the lottery and **MUST** ensure that those distributing and selling tickets are aware of the regulations which apply, even when distribution is sub-contracted.

L13.6 Tickets

For guidance on tickets for lotteries that do not require registration with a local authority or license please see the Gambling Commission’s [Organising Small Lotteries](#) guidance and their quick guide to [Running a lottery including raffles, tombolas, sweepstakes and more](#)

This section relates to tickets for [society lotteries](#) (i.e. lotteries promoted by organisations that are registered with their local authority or have a lottery operating licence from the [Gambling Commission](#)):

- a) The customer **MUST*** receive a document (this may be a ticket, a scratch-card or an electronic document that they can keep or print off).

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- b) This document **MUST*** contain the following details:
 - the name of the society on whose behalf the lottery is being promoted
 - the name and address of the person that the society has authorised to promote the lottery (this will be the external lottery manager, if one is used)
 - the date of the draw
- c) Tickets for large society lotteries **MUST*** also say that the lottery is licensed by the Gambling Commission and give details of the Gambling Commission's website.
- d) Although there is no restriction on ticket price, the price of each ticket **MUST*** be the same and be shown on the ticket (or other document) and there **MUST NOT*** be any discounts (e.g. five sold for the price of four)
- e) The price **MUST*** be paid before the customer becomes eligible to win a prize.
- f) An organisation **MUST NOT*** ask customers to pay more than the price of a ticket to qualify for entry into the draw.
- g) Tickets **MUST NOT*** be sold to individuals under the age of 16. This age limit does not apply to incidental, commercial and private lotteries.
- h) Tickets **MUST NOT*** be sold on the street, though they can be sold in kiosks.
- i) Door-to-door sales are permitted, but societies **MUST*** comply with door-to-door sales law.
- j) Customers **MUST*** have access, in writing, to the contractual terms of the lottery.

For more information see information from the Gambling Commission on [Society Lotteries](#)

L13.7 Prizes

- a) In [small society lotteries](#), the value of the top prize for each lottery **MUST NOT*** be more than £25,000.
- b) In [large society lotteries](#), a person buying a ticket **MUST NOT*** be able to win more than £25,000 by virtue of that ticket, or 10% of the lottery proceeds, if greater.
- c) Rollover lotteries are allowed but the lottery **MUST NOT*** breach relevant maximum prize allowances.
- d) Lotteries **MUST NOT*** be linked to other lotteries or competitions where the maximum statutory prize in a lottery could be exceeded (e.g. so that buying one ticket automatically enters the customer into a second lottery).

L13.8 Proceeds

- a) For [small society lotteries](#), ticket sales in a single lottery **MUST NOT*** exceed £20,000 and the total value of tickets sold in separate lotteries in a calendar year **MUST NOT*** exceed £250,000.
- b) For [large society lotteries](#), the total value of tickets sold of each lottery **MUST*** be no more than £4m, and the total value of tickets sales from all non-exempt lotteries in a year **MUST NOT*** exceed £10m.
- c) In both cases, at least 20% of lottery proceeds **MUST*** go to a purpose of the society.

L13.9 The Draw

- a) The draw **MUST** be witnessed and documented
- b) All counterfoils of purchased tickets **MUST** be entered in the draw.
- c) To transfer late entries to the next draw, it **MUST** be clear at the point of sale that this will be done.
- d) If, for any reason, the draw date needs to be deferred from that stated on the ticket, all reasonable steps **MUST** be taken to ensure that participants are made aware of the change and it **MUST** be discussed with the relevant licensing authority.

L13.10 Post-Draw Procedure

- a) All completed counterfoils and remittances **MUST** be returned to the promoter for audit purposes.
- b) Any prize donated back to a society by the legal owner of a winning ticket **MUST** be shown in the lottery's accounting records as a donation.
- c) Details of winners **MUST NOT** be publicly published without his/her explicit consent.
- d) All winners **MUST** be contacted within seven days of the draw.
- e) All reasonable efforts **MUST** be made to award prizes to the holders of winning tickets.

L13.11 Record-Keeping and Communication with the Licensing Authority

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L13.11.1 General Requirements

a) All records **MUST*** be kept for at least three years for each lottery.

L13.11.2 Small society lotteries

a) Within three months of each draw, the society **MUST*** send a return to the local authority, signed by two people authorised in writing by the Society.

The information required for the return includes:

- the date on which tickets were put on sale;
- the date of the draw;
- total proceeds of the lottery;
- amounts deducted in providing prizes (including rollover prizes)
- amount deducted for expenses;
- amount applied for the purposes of the society (at least 20% of the proceeds); and
- whether any expenses incurred were paid from a source other than the proceeds of ticket sales and, if so, what that source was.

L13.11.3 Large society lotteries

a) The requirements are contained in the licences issued by the Gambling Commission and organisations **MUST*** fulfil these obligations, which will include:

- to keep accurate records of each lottery they run, showing:
 - the total proceeds of the lottery;
 - the percentage of proceeds used for prizes;
 - the amount of lottery proceeds taken up by expenses; and
 - the total number of sold and unsold tickets;
- to send the Gambling Commission a description of, and/or a copy of the rules of, the lottery, at least 28 days before lottery tickets go on sale;
- within three months of the draw (or, in the case of a scratch card lottery, within three months of the tickets ceasing to be available for sale), to send a statement to the Gambling Commission detailing the proceeds of the lottery and how the proceeds were distributed between prizes, expenses and the society's purposes. This statement **MUST*** be verified by the society's personal management licence holder or, where the society is exempt from needing such a licence, by the "responsible person"
- at the end of every year (or quarter, depending on the terms of the licence), to send a return to the Gambling Commission giving whatever information the Commission requires; and

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- to keep accounting records of each lottery for at least three years following the draw.

b) Societies **MUST*** also contact the Gambling Commission they suspect that someone is breaking gambling law or in other specific circumstances set out in the [Gambling Commission's Licence conditions and codes of practice](#).

c) Licence holders **MUST*** comply with the [Gambling Commission's codes of practice](#) referred to above.

L13.12 Running a Lottery through a Trading Subsidiary

Organisations can run a lottery through a trading subsidiary but they **MUST*** still apply for a licence from the relevant licencing Authority. The [Gambling Commission](#) will grant permission as long as they meet certain conditions.

L13.13 Using and External Lottery Manager

[External lottery managers](#) are individuals or organisations who have been licensed by the [Gambling Commission](#) to promote lotteries on behalf of other societies.

- a) Societies using [external lottery managers](#) **MUST*** still obtain an [operating licence](#) and, unless they are exempt, may need a [personal management licence](#).

L13.14 Considerations other than the Gambling Act

a) A society that uses a premium phone line to allow people to enter its lotteries **MUST** comply with the [code of practice published by The Phone-paid Services Authority \(PSA\)](#), the independent regulator of premium rate services in the UK, which has a number of sections of its code are relevant to lotteries.

b) Societies promoting lotteries **MUST** comply with [section 8 of The British Code of Advertising and Sales Promotion and Direct Marketing \(The CAP Code\)](#).

L13.15 Prize Competitions and Free Draws

[Prize competitions](#) and [free prize draws](#) are free from statutory control under the [Gambling Act](#).

- a) To be a [prize competition](#), the arrangement **MUST*** require the participant to exercise a level of knowledge or judgement or to display an element of skill that will limit the number of applicants.

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b) To be [a free draw](#), the arrangement **MUST*** have a 'free' method of entry, which **MUST*** also be convenient, and accessible and the participant **MUST*** have the same chance as if entering by any paid route.

For Further information see the Guidance from Gambling Commission [Prize competitions and free draws](#) – the requirements of the gambling act 2005 and the Quick Guide [Running prize competitions and free draws](#)

L13.16 Raffles in Northern Ireland

a) Lotteries **MUST*** only be conducted in Northern Ireland in compliance with the Betting, Gaming and Lotteries (NI) Order 1985, as amended by the Betting and Lotteries (NI) Order 1994 and as supplemented by the Lotteries Regulations (NI) 1994.

L13.16.1 Small Lotteries at Exempt Entertainments

a) The lottery **MUST*** take place during an entertainment event.

b) Lotteries under this heading **MUST*** meet the following criteria:

- the person organising the event **MUST*** inform the police, at least seven days before the event itself, that it is to take place;
- the lottery **MUST NOT*** be the only, or the only substantial, inducement for the public to attend the entertainment event where the lottery is taking place;
- tickets **MUST*** only be sold on the premises where the event is taking place;
- the winners **MUST*** be announced during the event;
- all proceeds of the event (after deducting expenses) **MUST*** be devoted to purposes other than private gain;
- the organiser of the event **MUST*** tell participants in the lottery how the proceeds are going to be applied; and
- the organiser of the event **MUST*** keep records and accounts of the entertainment, including a record of how the proceeds of the entertainment are to be applied.

L13.16.1 Private Lotteries

A private lottery is one promoted by and for members of one society that may sell tickets to non-members on the society's premises.

a) A private lottery in Northern Ireland **MUST NOT*** realise more than £1,000 on the sale of tickets.

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- b) All proceeds, after printing and stationery expenses, **MUST*** be devoted to prizes or the purposes of the society, or both.
- c) Each ticket **MUST*** include a statement that no prize won will be paid or delivered to anyone other than the person to whom the winning ticket or chance was sold.
- d) No ticket or chance may be issued except by way of sale and that the full price **MUST*** be paid for it when it is issued. This means that no ticket or chance may be sold at a discount, for example 5 for the price of 4.
- e) Tickets sold in the lottery **MUST NOT** be sent through the post.
- f) The total amount of expenses (exclusive of prizes) deducted from the proceeds **MUST NOT*** exceed whichever is the less of the expenses actually incurred or 10 per cent of the proceeds.
- g) A society wishing to operate a private lottery **MUST*** also adhere to the rules relating to advertisement of the lottery.
- h) Societies **MUST NOT*** advertise the lottery by any other means than a notice on their premises.

L13.16.2 Society Lotteries

A society lottery is one run by a non-commercial society, but which is neither a small lottery nor a private lottery and tickets are sold to the general public. A society is non-commercial if it is established and conducted for: charitable purposes the purpose of enabling participation in, or support of, athletic sports, games or cultural activities any other non-commercial purpose other than that of private gain.

- a) A society that wants to promote a society lottery **MUST*** obtain a licence from the [District Council](#) in which it is based by sending an application form together with a copy of their approved lottery scheme and the relevant application fee; it **MUST*** also lodge a copy of its licence application with the local police headquarters.
- b) To maintain its registration a society **MUST*** send a renewal fee on 1 January of each year together with a copy of its updated lottery scheme, if different to the one submitted in the previous year, to the District Council.
- c) A society lottery in Northern Ireland **MUST*** be promoted in Northern Ireland by a society member who has been duly authorised in writing.
- d) If lottery managers/consultants are used, a lottery certificate **MUST*** first be obtained from the magistrate's court.

- e) Tickets **MUST*** specify: the name of the society; the name and address of the promoter; the name and address of the District Council where the lottery is registered; and the date of the lottery.
- f) Tickets **MUST NOT*** be sold: in the street; to or by any person under 16 years of age; at a bookmaker's office; for more than £1 each; door-to-door by people who visit people's homes as part of their employment; as a group of tickets in a set of lotteries where the winner wins a prize in each lottery; or by means of machine.
- g) The only means of participating in the lottery is by way of the purchase of a ticket and the ticket **MUST*** be paid for in full before the purchaser can participate in the draw.
- h) Ticket money cannot be returned and prices **MUST*** be as stated on the ticket.
- i) The price of each ticket sold **MUST*** be the same and tickets **MUST NOT*** be sold as, for example, 5 for the price of 4.
- j) If a society promotes two or more lotteries with the same date, the tickets sold in each lottery **MUST*** bear a serial number to identify which of the lotteries they relate to.
- k) Winning tickets **MUST NOT*** be identifiable in advance and winning **MUST NOT*** depend on the purchase of more than one ticket, unless the purchase price of the total number of tickets is no more than £1.
- l) The amount of lottery proceeds which may be deducted to meet expenses (exclusive of prizes) **MUST NOT*** exceed whichever is the lesser of:
- the expenses actually incurred;
 - where the proceeds are £10,000 or less, 20% of the proceeds; or
 - where the proceeds exceed £10,000, 15% of the proceeds.
- m) The total value of tickets sold in any one lottery **MUST NOT*** exceed £80,000 and the total sold by the society for all the lotteries promoted in any 12 month period **MUST NOT*** exceed £1 million.
- n) No prize may be worth more than £25,000 or 10% of the proceeds (whichever is the greater) and the total spent on prizes **MUST NOT*** be more than 50% of the proceeds.
- o) All proceeds, after lawful deductions, **MUST*** be applied for the purposes of the society.
- p) When the lottery has concluded the promoter **MUST***, within three months of the date of the lottery, send the following information to the District Council:

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- a completed return form; and
- a copy of a ticket

q) Societies **MUST*** keep copies of all returns, supporting bills, receipts and accounts for at least 18 months after the date of the lottery and may be asked to supply copies of the above information to the [District Council](#) or [Police Service of Northern Ireland](#).

e) Tickets sold in the lottery **MUST NOT** be sent through the post.

L14.0 Data Protection

Data Protection is a legal requirement for all fundraising organisations and impacts on all data processing activities including:

- how data is collected
- what purpose it is collected for
- how data is used
- legal bases for processing data
- how data is stored and for how long
- how personal information is kept up to date
- how data is amended or deleted

[The Information Commissioner's Office \(ICO\)](#) provides further information and guidance on data protection

Organisations need to adhere with the requirements of:

- General Data Protection Regulations 2018
- Data Protection Act 2018
- Privacy and Electronic Communications (EC Directive) Regulations 2003

The Code of Fundraising Practice provides a summary of this complex and changing area of law and should not be used to replace professional legal advice.

- Section 5: Personal information and Fundraising includes further information on [requirements relating to data protection](#).
- Please see also the Fundraising Regulator's [Guidance on Data Protection](#).