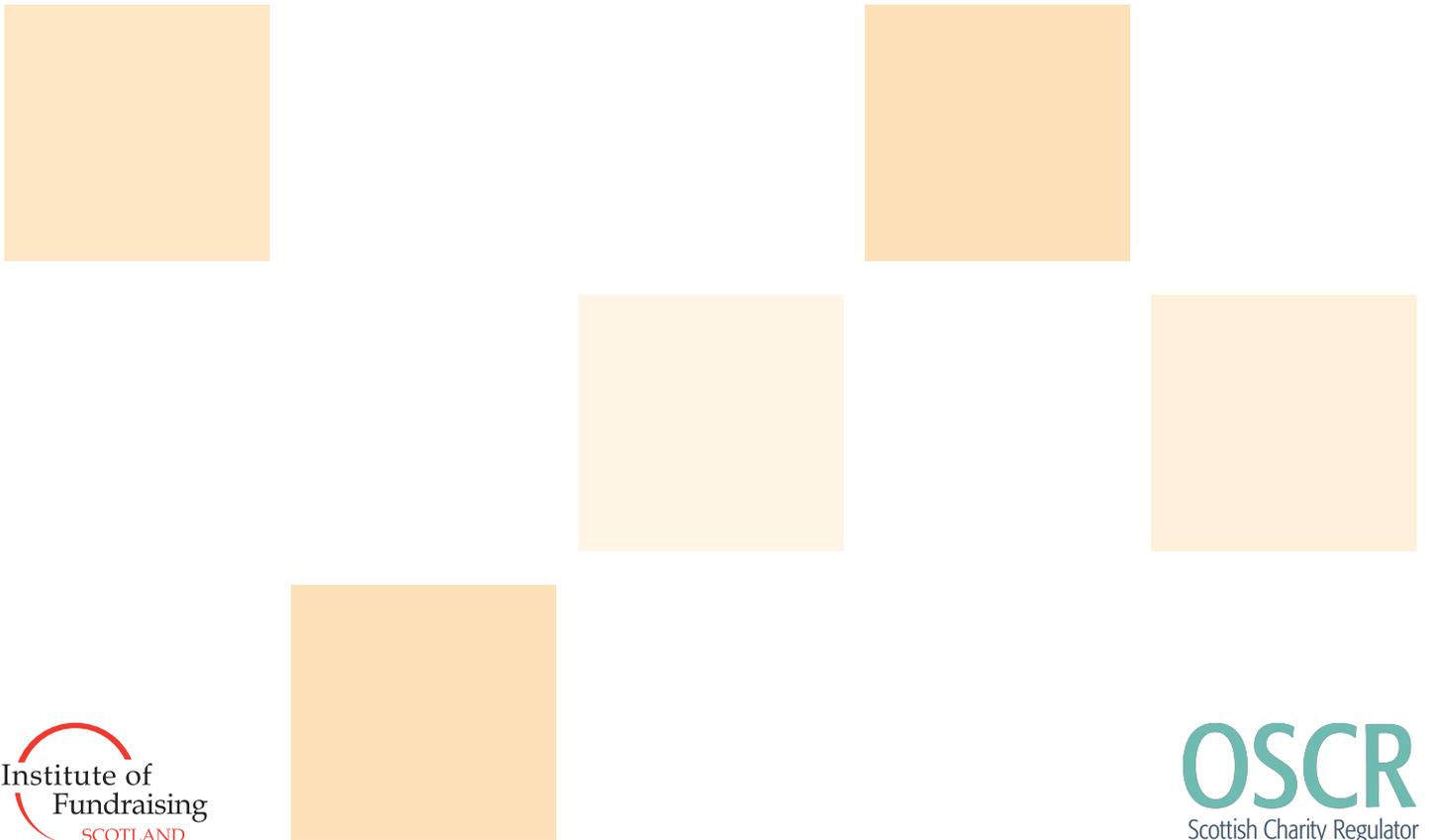




Benevolent Fundraising
A Guide to the Charities and Benevolent Fundraising
(Scotland) Regulations 2009

www.oscr.org.uk



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OSCR is grateful to the following people for their support and assistance in producing this guidance:

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Benevolent Fundraising

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Glossary

The following terms will be used throughout this guidance:

Benevolent body

Any body, whether or not it is a charity, which has been set up for charitable, benevolent or philanthropic purposes.

Benevolent fundraiser

Any benevolent body and companies connected with it and any person who is associated with the body or connected companies in the following ways:

- as a person in management or control
- as an employee or agent
- as a volunteer

For example, a benevolent fundraiser may be:

- a salaried charity fundraiser
- the chief officer of a charity
- a charity's trading subsidiary
- a social enterprise owned by a charity

Benevolent fundraising

The process of seeking money or promises of money for the benefit of benevolent bodies (and companies connected with them) or for general charitable, benevolent or philanthropic purposes.

Commercial participator

Any person who carries on a commercial business (other than a fundraising business) which, in the course of its business, takes part in a promotional venture during which it is communicated that some or all of its proceeds will be given to one or more particular benevolent bodies or will be applied for charitable, benevolent or philanthropic purposes.

The definition of a commercial participator does not include a company connected with a benevolent body.

For example, a commercial participator may be:

- a high street retailer selling Christmas cards from which a certain proportion of profits or sales revenue is donated to an agreed charity
- a bank promoting an 'affinity' credit card which promises to donate an agreed sum to a charity for each account opened and/or a proportion of the amount spent by the card-holder when using the card
- a company which collects goods door-to-door on behalf of a specific charity, using the charity's logo in its advertising and indicating that a certain percentage of the profits raised will be donated to that charity.

Company connected with a benevolent body

A company over which a benevolent body, either on its own or together with other benevolent bodies, has full voting control at a general meeting.

For example, a connected company may be a social enterprise or trading subsidiary which is wholly owned by a charity.

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Fundraising business

A commercial business which mainly seeks money or promises of money for one or more particular benevolent bodies or for general charitable, benevolent or philanthropic purposes.

For example, a fundraising business may be a company which employs face to face or telephone fundraisers to solicit funds on behalf of one or more charities.

Person

A person may be either a natural person (i.e. a human being) or an artificial or juristic person such as a company. A juristic person is a legal entity through which the law allows a group of natural persons to act as if they were a single individual for certain purposes. Both natural and juristic persons are recognised in law and can enter into legal transactions such as contracts, owning property and employing staff.

Professional fundraiser

Any person who carries on a fundraising business or who, in return for a financial reward or any other benefit, seeks money or other property for a benevolent body or for general charitable, benevolent or philanthropic purposes.

The definition of professional fundraiser does **not** include:

- a benevolent body or any company connected with it e.g. a charity's trading subsidiary
- any person in the management or control of or any employee of a benevolent body or a company connected with it
- a person who, in the course of a fundraising venture on a radio or TV programme, seeks money or promises of money on behalf of a benevolent body or a company connected with it
- a commercial participator

For example, a professional fundraiser may be a company which is paid to conduct face to face or telephone fundraising on behalf of a charity.

Promises of money

A promise to pay a particular sum at a future date by means of standing order, direct debit or any other similar agreement.

Services

Includes access to premises or an event, membership to an organisation, a ticket for a lottery or other game of chance, the provision of advertising space and the provision of financial facilities.

Solicitation

In the context of fundraising, a solicitation is the act of seeking money or promises of money on behalf of a benevolent body or for general charitable, benevolent or philanthropic purposes.

 This icon is used to indicate that a breach of a particular requirement of the Regulations is a criminal offence. Section 7 of this guidance explains in detail the penalty associated with each offence.

1. Introduction

The way in which benevolent fundraising in Scotland is carried out is governed by:

- sections 79-83 of the Charities and Trustee Investment (Scotland) Act 2005 (“the 2005 Act”)
- the Charities and Benevolent Fundraising (Scotland) Regulations 2009 (“the Regulations”)

The Regulations, which come into force on 1 July 2009, introduce new requirements regarding the information which must be supplied when funds are sought on behalf of a benevolent body and set out the required content for fundraising agreements between benevolent bodies and those who fundraise on their behalf.

This guidance aims to help benevolent bodies and those who fundraise on their behalf to understand and comply with these new requirements. The guidance will make reference to certain examples of best practice in shaded boxes throughout the document but more comprehensive guidance on all aspects of fundraising can be found in the Institute of Fundraising *Codes of Fundraising Practice* available at www.institute-of-fundraising.org.uk.

The guidance **does not** cover cash collections or the collection of goods as it is anticipated that these issues will be addressed by the forthcoming regulations regarding Public Benevolent Collections.

Scottish charities which are also registered as charities in another country or which are subject to another regulator, may have to comply with additional or differing requirements in respect of benevolent fundraising in that other country. The guidance publication, *Charitable Fundraising: Guidance on Part 2 of the Charities Act 1992*, available at www.cabinetoffice.gov.uk/third_sector/law_and_regulation, may be useful to cross-border charities registered with both OSCR and the Charity Commission for England and Wales.

2. Formal fundraising agreements

The 2005 Act prohibits a professional fundraiser or commercial participator from fundraising on behalf of a benevolent body without a written agreement and sets out what is required in an agreement.

2.1 When is an agreement required?

A fundraising agreement must be in place between a benevolent body and a professional fundraiser or commercial participator if:

- a professional fundraiser seeks money or promises of money on behalf of a benevolent body, **or**
- a commercial participator states or indicates that some or all of the proceeds of a promotional venture are to be given to the benevolent body.

The agreement must be in writing and signed by the benevolent body and the professional fundraiser or commercial participator.

2.2 What information must the agreement include?

- the name and address of each of the parties involved
- the date the agreement was signed
- the period which the agreement covers
- any conditions about the termination of or changes to the agreement prior to the agreed end date
- the main objectives of the agreement and the fundraising methods which will be used to achieve them
- if the agreement relates to more than one benevolent body, details of how the parties will decide the proportion of fundraised monies each will receive

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- detail of how the parties will determine the amount of remuneration or expenses the professional fundraiser or commercial participator is entitled to receive
- if the agreement is between a benevolent body and a commercial participator, details of how the parties will determine:
 - the proportion of proceeds from sales of goods or services which will be given to the benevolent body, and/or
 - the amount of donations the commercial participator will make to the benevolent body as a result of the sales of goods or services

If the agreement does not include all the requirements outlined above, the professional fundraiser or commercial participator cannot enforce it against the benevolent body except by an order of the sheriff. Additionally, the professional fundraiser or commercial participator is not entitled to receive payment or expenses for any activity undertaken relating to the agreement unless the agreement satisfies the requirements above and specifically permits the payment or expenses.

Further guidance on fundraising agreements and contracts can be found in the Institute of Fundraising Code of Practice, *Best Practice for Fundraising Contracts*, which is available at www.institute-of-fundraising.org.uk.

2.3 Availability of records relating to an agreement

Professional fundraisers or commercial participators who have a fundraising agreement with a benevolent body must make available upon request by the benevolent body any books, documents or other records relating to it which are kept for the purpose of the agreement. ⚠

2.4 Consequence of fundraising without an agreement

It is an offence for a professional fundraiser or commercial participator to fundraise on behalf of a benevolent body without a fundraising agreement in place which satisfies the requirements of the Regulations outlined at section 2.2 above. ⚠

Section 81(2) of the 2005 Act also states that, if a professional fundraiser or commercial participator fundraises on behalf of a benevolent body without a fundraising agreement, either the benevolent body or OSCR (if the body is a charity) may apply to the sheriff court for an interdict. An interdict may only be granted if the sheriff is satisfied that the fundraiser is likely to continue to fundraise without an agreement.

3. Right to refunds or to cancel agreements

The Regulations give any person a right to seek refunds of payments made to benevolent bodies or to cancel an agreement to make a payment at a later date, provided particular criteria are met. Donors should also be aware that other statutory rights to refunds may apply in addition to the rights outlined in the Regulations.

3.1 Thresholds for refunds

Refunds are available to donors in the following situations, provided the refund is requested within 7 days of the solicitation being made:

Method of fundraising	Threshold for entitlement to refund
Oral solicitation made during a radio or TV programme	Payments of £100 or more which are made by debit or credit card only.
Oral solicitation which is not made directly face to face with the potential donor e.g. telephone solicitations or video emails.	Payments (or promises to make payments in the future) of £100 or more which are made by any means.

3.2 How should a refund be claimed?

A person who is entitled to a refund or to cancel an agreement must do so by writing to the professional fundraiser or commercial participator within 7 days of the solicitation.

Professional fundraisers and commercial participators must ensure that any requests for refunds or to cancel agreements are met as soon as reasonably possible. ⚠

Any administrative cost reasonably incurred by the professional fundraiser or commercial participator in making the refund or cancelling the agreement may be deducted from the refund.

3.3 Exceptions to the right to a refund

The right to a refund does not apply if services have already been provided by a professional fundraiser or commercial participator in return for the donation, or if donors have already received goods in return for their payment, unless they ensure that these goods are returned.

Additionally, the right to a refund may not apply in a number of other circumstances, including when donations are made:

- in response to solicitations made directly by benevolent bodies or companies connected with them
- in response to written solicitations or face-to-face oral solicitations
- in response to TV, radio or indirect oral solicitations but which fall below the thresholds outlined in section 3.1 above.

Even when there is no statutory right to a refund available to a donor, it is recommended as a matter of best practice that all fundraisers meet any request for a refund made within seven days of the solicitation, if it is practical to do so.

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4. Information to be provided by fundraisers

4.1 Information regarding the recipient of funds and remuneration of fundraisers

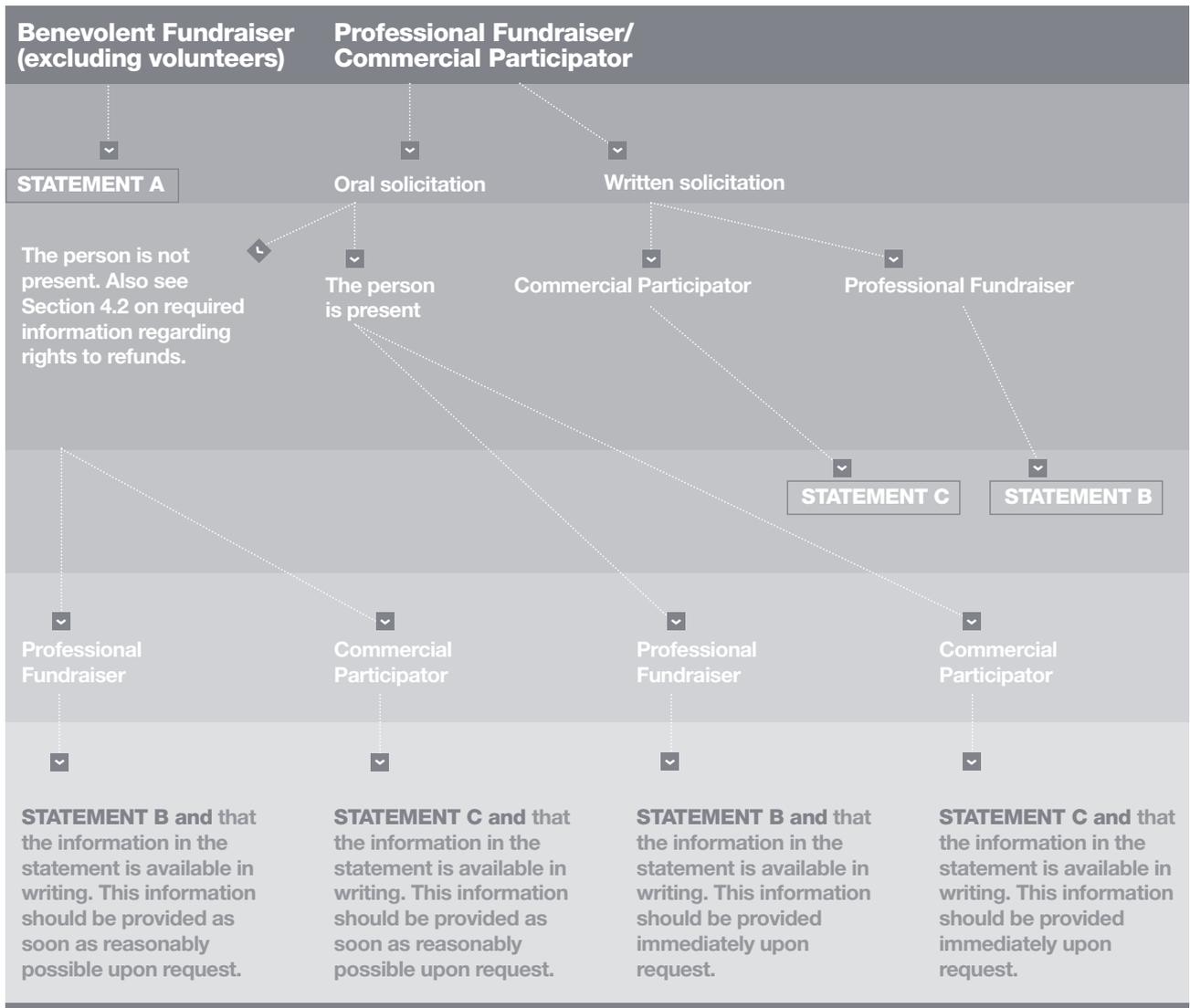
The Regulations require differing amounts of information to be provided to prospective donors depending whether solicitations are made orally or in writing and whether they are made by a benevolent fundraiser, professional fundraiser or commercial participator.

It should be noted that employees of professional fundraisers and commercial participators must comply with the requirements placed upon their employer when they are carrying out their duties.

Although the Regulations do not place any specific requirements on volunteers acting on behalf of a benevolent body, as a matter of best practice volunteers should make clear to potential donors which body they are representing and that the fact that they are volunteering.

Benevolent bodies should be aware of the legal differences between volunteers acting in aid of the body and those working specifically on its behalf. Further guidance on these matters can be found in the Institute of Fundraising publications, *Volunteer Fundraising and Guidance for 'in aid of' Volunteer Fundraisers*, which are available at www.institute-of-fundraising.org.uk.

The flow chart below indicates the information that must be provided: ⚠



Statement A

The following information must be given during the solicitation:

- if the benevolent fundraiser is seeking funds on behalf of a particular benevolent body:
 - the name of the benevolent body
 - if more than one body is to benefit, details of the proportion of funds raised which each body will receive, **or**
- if the benevolent fundraiser is seeking funds for general charitable, benevolent or philanthropic purposes (rather than a particular body):
 - an indication of this fact
 - details of how the distribution of the funds will be determined

If the solicitation is conducted orally, the benevolent fundraiser must also indicate if they are to receive remuneration. This may be done in a number of ways, including using one of the following example statements:

- “I am a paid employee of X charity”
- “I’m the staff fundraiser for X charity”
- “I work for X charity”.

Statement B

The following information must be given during the solicitation:

- if the professional fundraiser is seeking funds on behalf of a particular benevolent body:
 - the name of the benevolent body
 - if more than one body is to benefit, details of the proportion of funds raised which each body will receive, **or**
- if the professional fundraiser is seeking funds for general charitable, benevolent or philanthropic purposes (rather than a particular body):
 - an indication of this fact
 - details of how the distribution of the funds will be determined.

Professional fundraisers must also state whether they are to receive remuneration and, if so, the way in which the remuneration will be determined. The professional fundraiser must also state the actual amount of remuneration if known at that time or, if it is not known, the estimated amount of remuneration.

Statement C

The following information must be given during the solicitation:

- if the commercial participator is seeking funds on behalf of a particular benevolent body:
 - the name of the benevolent body
 - if more than one body is to benefit, details of the proportion of funds raised which each body will receive, **or**
- if the commercial participator is seeking funds for general charitable, benevolent or philanthropic purposes (rather than a particular body):
 - an indication of this fact
 - details of how the distribution of the funds will be determined.

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Commercial participators must also state whether they are to receive remuneration and, if so, the way in which the remuneration will be determined. The commercial participator must also state the actual amount of whichever of the following sums is applicable if known at that time or, if it is not known, the estimated amount:

- the amount received in payment for goods or services provided by the commercial participator
- the proceeds received from a promotional venture undertaken by the commercial participator
- the level of donations by the commercial participator to the benevolent body in relation to goods and services provided.

4.2 Information regarding the right to refunds

Professional fundraisers or commercial participators soliciting funds orally in the following situations must give potential donors information regarding their rights to refunds:

Method of fundraising	Information to be provided
During a radio or TV programme	Any person making payments of £100 or more by debit or credit card have a right to a refund if requested within 7 days of the solicitation.
Not directly face to face with the potential donor e.g. telephone solicitations or video emails.	Any person making payments (or promises to make payments in the future) of £100 or more have a right to a refund (or to cancel the agreement) if requested within 7 days of the solicitation.

It is an offence for a professional fundraiser or commercial participator to fail to provide such information regarding the right to refunds. ⚠

5. Transferring money or promises of money to benevolent bodies

Professional fundraisers and commercial participators must transfer any money or promises of money raised for the benefit of a benevolent body as soon as possible and certainly within 28 days of receipt. ⚠

As a matter of good practice, funds which are raised for general charitable, benevolent or philanthropic purposes (rather than a specific body) should be applied for those purposes as soon as is reasonably practical.

6. Prevention of unauthorised fundraising

Section 82 of the 2005 Act makes provision to prevent any person raising money or promises of money on behalf of a benevolent body without its permission or in a manner that is not to its satisfaction. This section of the Act does not apply to fundraising undertaken by a professional fundraiser or commercial participator.

6.1 When can unauthorised fundraising be prevented?

A benevolent body may take steps to prevent unauthorised fundraising if the person carrying out the fundraising:

- is using fundraising methods to which the benevolent body objects
- is not a fit and proper person to raise funds for the benevolent body
- is engaged in a particular promotion or venture with which the benevolent body does not want to be associated.

6.2 What can the benevolent body do?

If the benevolent body wishes to prevent unauthorised fundraising for any of the reasons set out at 6.1 above, it must firstly serve a notice on the person requesting that he/she immediately ceases fundraising on the body's behalf. The notice must also state that, if the person fails to comply with the request, an interdict will be sought.

After 28 days, the body may apply for an interdict if the person continues with fundraising activity on its behalf.

In the event that the person initially complies with the request to cease but later continues to fundraise on the body's behalf within 12 months of the original request being made, the body may apply for an interdict without a further notice being served.

OSCR may also exercise its powers under section 31 of the 2005 Act in respect of funds raised by a person purporting to act on behalf of a charity. These powers allow OSCR to control transactions made in relation to these funds or to direct the fundraiser to pay the funds to the charity within a set period of time.

7. Offences and penalties

As indicated by the  throughout this guidance, it is an offence for a person to fail, without reasonable excuse, to comply with a number of the requirements of the Regulations. Failure to comply with the following requirements may result in a penalty as indicated below:

Guidance Section	Requirement	Penalty
2.3	Duty of professional fundraiser or commercial participator to make available on request by a benevolent body any records relating to the body which are kept for the purpose of a fundraising agreement (Regulation 7(1)).	Fine not exceeding level 5 on the standard scale (£5,000 at the time of publication)
2.4	Duty of professional fundraiser or commercial participator to have an appropriate fundraising agreement in place when fundraising on behalf of a benevolent body (Regulation 2(1)).	
3.2	Duty of professional fundraiser or commercial participator to carry out a request for a refund or to cancel an agreement as soon as reasonably possible (Regulation 5(5)).	
4.1	Duty of fundraisers to provide the required information to potential donors in the course of the solicitation (Regulations 3(1) and 4(1) to 4(4)).	
4.2	Duty of professional fundraiser or commercial participator to provide the required information regarding donors' rights to refunds (Regulations 3(5) and (6)).	
5	Duty of professional fundraiser or commercial participator to transfer monies raised to a benevolent body within 28 days of receipt (Regulation (6)).	

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Sources of further information

Institute of Fundraising Scotland

The Institute of Fundraising is the professional body for UK fundraising whose aim is to promote the highest standard of fundraising practice:

22/1A Calton Road
Edinburgh
EH8 8DP
0131 557 2100
www.institute-of-fundraising.org.uk

Office of the Scottish Charity Regulator (OSCR)

The Office of the Scottish Charity Regulator is the independent regulator and registrar of Scottish charities:

Quadrant House, 9 Riverside Drive
Dundee
DD1 4NY
01382 220 446
www.oscr.org.uk

Fundraising Standards Board (FRSB)

The Fundraising Standards Board is the self-regulatory body for fundraising in the UK. The FRSB deals with public concerns about fundraising activity and ensures that its members adhere to the highest fundraising standards:

22/1A Calton Road
Edinburgh
EH8 8DP
0845 688 9894
www.frsb.org.uk

Public Fundraising Regulatory Association (PFRA)

The Public Fundraising Regulatory Association regulates the use of face to face fundraising in public places and works with local authorities to ensure that fundraising sites are used appropriately. It enforces a code of practice which aims to ensure that people's experience of face to face fundraising is positive:

22/1A Calton Road
Edinburgh
EH8 8DP
05601 251 368
www.pfra.org.uk

Charity Commission for England and Wales

The Charity Commission is the independent regulator and registrar of charities in England and Wales:

Charity Commission Direct
PO Box 1227
Liverpool
L69 3UG
0845 3000 218
www.charity-commission.gov.uk

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