

Charities and Benevolent Fundraising (Scotland) Regulations 2009

What this guide covers

This is a technical guide explaining the rules set out in the 2009 Regulations



Technical Guide: Charities and Benevolent Fundraising (Scotland) Regulations 2009

1. **Formal fundraising agreements**
2. **Prevention of unauthorised fundraising**
3. **Information to be provided by fundraisers**
4. **Rights to refunds or to cancel agreements**
5. **Transferring money or promises of money to benevolent bodies**
6. **Offences and penalties**
7. **Glossary**

Introduction

In this guide we explain the rules set out in the 2009 Regulations, which state:

- the information that must be contained in the fundraising agreements between **benevolent bodies** and those who fundraise for them and
- the information that must be supplied when asking for a financial donation on behalf of a benevolent body.

The 2009 Regulations cover all **benevolent fundraising** in Scotland not just that undertaken by charities. Benevolent fundraising includes raising money for a specific charity or for general charitable purposes.

Organisations fundraising in other parts of the UK should make sure they comply with the appropriate rules for that area. See **sources of help, advice and best practice** for more information.

How to use this Guide

The **glossary** provides you with further information, definitions and descriptions of some key terms. We have highlighted these key terms in **bold purple type**. Clicking on these terms will take you straight to the glossary.



This icon will be used throughout the Guide to indicate when a breach of the 2009 Regulations is a criminal offence.



This icon will be used throughout the Guide to indicate a charity trustee duty under the **Charities and Trustee Investment (Scotland) Act 2005 Act**.

The Guide is split into sections to help you find the information most relevant to you.

1. Formal fundraising agreements

When using a **professional fundraiser** or **commercial participator** to raise funds you must have a written and signed fundraising agreement in place.

When is a fundraising agreement required?

A fundraising agreement is a written agreement (including electronic versions), that 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.

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. The definition of a professional fundraiser **does not** include employees or volunteers of a charity.

- 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.

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 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.

What information must the fundraising agreement include?

Fundraising agreements must contain the following:

<ul style="list-style-type: none"> • the name and address of each of the parties to the agreement
<ul style="list-style-type: none"> • the date the fundraising agreement was signed
<ul style="list-style-type: none"> • the period which the fundraising agreement covers
<ul style="list-style-type: none"> • any conditions about the termination of or changes to the fundraising agreement prior to the agreed end date
<ul style="list-style-type: none"> • the main objectives of the fundraising agreement and the fundraising methods which will be used to achieve them
<ul style="list-style-type: none"> • if the fundraising agreement relates to more than one benevolent body, details of how the parties will decide the proportion of fundraised monies each will receive
<ul style="list-style-type: none"> • detail of how the parties will determine the amount of remuneration or expenses the professional fundraiser or commercial participator is entitled to receive
<ul style="list-style-type: none"> • if the fundraising agreement is between a benevolent body and a commercial participator, details of how the parties will determine: <ol style="list-style-type: none"> 1. the proportion of proceeds from sales of goods or services which will be given to the benevolent body, and/or 2. 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 fundraising agreement does not include all these requirements:

- the **professional fundraiser** or **commercial participator** is not entitled to payment for the fundraising activity and
- they cannot enforce the agreement against the **benevolent body** except by an order of the sheriff.

Making records relating to a fundraising agreement available



Professional fundraisers or **commercial participators** who have a fundraising agreement with a **benevolent body** must make any records and information about the agreement available to the benevolent body if they request it.



This means that charity trustees can ask to inspect the records of any **professional fundraisers** or **commercial participators** the charity has agreements with.

Consequence of fundraising without a fundraising 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 2009 Regulations.

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 organisation is a charity) may apply to the sheriff court for an interdict (court order) to stop unauthorised fundraising. An interdict may be granted only if the sheriff is satisfied that the fundraiser is likely to continue to fundraise without a fundraising agreement.

2. Preventing unauthorised fundraising

A **benevolent body** can take steps to stop unauthorised fundraising if the **person** carrying out the fundraising:

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



What can the benevolent body do?

If the **benevolent body** wants to stop unauthorised fundraising for any of these reasons it must serve a notice on the person requesting that he/she immediately stops fundraising on their 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 (court order) if the person continues fundraising on its behalf.

If the **person** initially complies with the request to stop but then starts fundraising for the body 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.

Breach of the regulations and fundraising agreements

A **person** or organisation that contravenes any of the 2009 Regulations may be guilty of a criminal offence and liable, on conviction, to a fine. Where the organisation is a charity any breach by charity trustees may also be treated as misconduct under the 2005 Act.

It is unlawful for an organisation or promoter to fundraise if the Court has prohibited them from doing so, or if the **benevolent body** has withdrawn from the fundraising agreement.



Charity trustees must take action in the interests of the charity if they become aware of unauthorised fundraising carried out in their name or on their behalf.

3. Information to be provided by fundraisers

Information regarding the recipient of funds and remuneration of fundraisers

The 2009 Regulations require different information to be given to potential donors depending on who is making the solicitation and how. Which **solicitation statement** is needed depends on whether the ‘ask’ is made verbally or in writing and whether it is made by a:

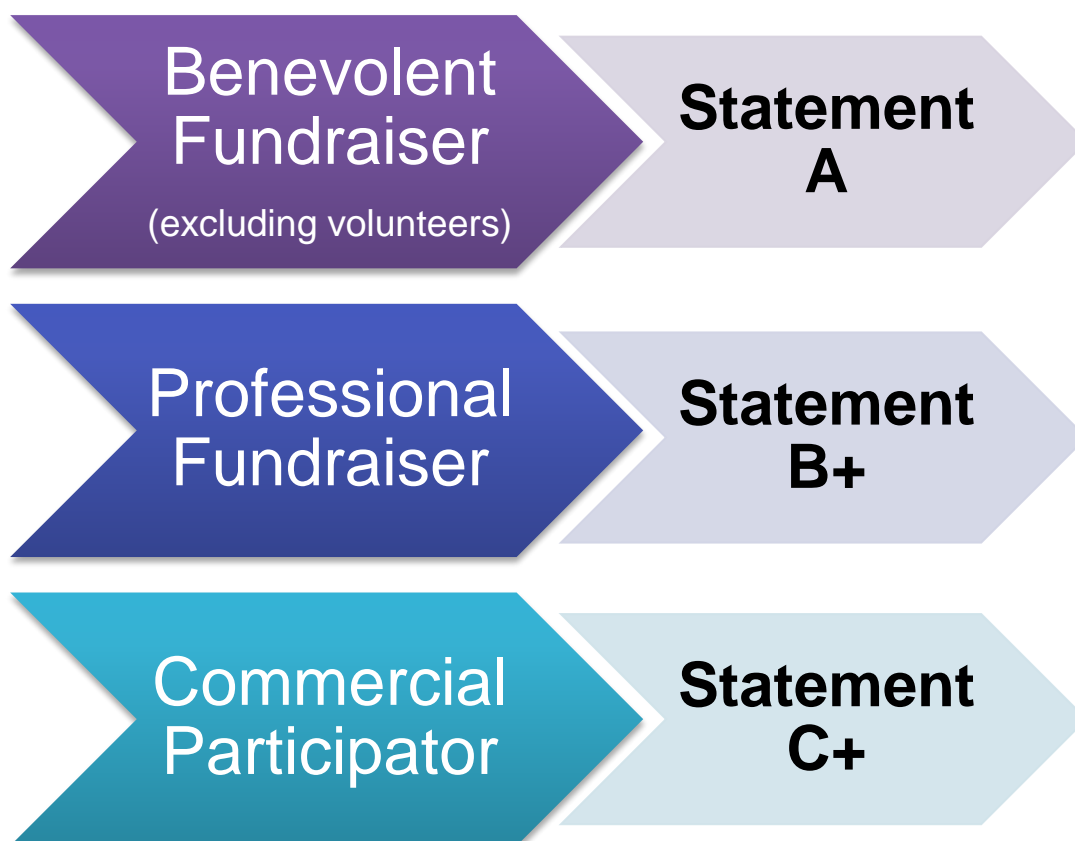
- **benevolent fundraiser,**
- **professional fundraiser** or
- **commercial participator.**

Employees of professional fundraisers and commercial participators must comply with the requirements placed upon their employer.

Solicitation statements



The chart below indicates the information that must be given to (potential) donors in different situations.



+ When these statements are given **verbally** it needs to be made clear that the information is available in writing. The information should be provided immediately upon request, or when the person is not present, as soon as possible.

Charity volunteers: Although there is no legal requirement it is best practice for volunteers to make clear to potential donors which organisation they are representing and the fact they are volunteering.

Benevolent Fundraiser (excluding volunteers): Statement A
The following information must be given during the solicitation:
<ul style="list-style-type: none"> • if the benevolent fundraiser is seeking funds on behalf of a particular benevolent body: <ul style="list-style-type: none"> ○ 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):

<ul style="list-style-type: none"> ○ an indication of this fact
<ul style="list-style-type: none"> ○ details of how the distribution of the funds will be determined
<p>If the solicitation is conducted verbally, 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:</p>
<ul style="list-style-type: none"> • ‘I am a paid employee of X charity’
<ul style="list-style-type: none"> • ‘I’m the staff fundraiser for X charity’
<ul style="list-style-type: none"> • ‘I work for X charity’

Professional Fundraiser: Statement B
<p>The following information must be given during the solicitation:</p>
<ul style="list-style-type: none"> • if the professional fundraiser is seeking funds on behalf of a particular benevolent body: <ul style="list-style-type: none"> ○ 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): <ul style="list-style-type: none"> ○ an indication of this fact ○ details of how the distribution of the funds will be determined.
<p>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.</p>

Commercial Participant: Statement C
<p>The following information must be given during the solicitation:</p>
<ul style="list-style-type: none"> • if the commercial participant is seeking funds on behalf of a particular benevolent body: <ul style="list-style-type: none"> ○ 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 participant is seeking funds for general charitable, benevolent or philanthropic purposes (rather than a particular body): <ul style="list-style-type: none"> ○ an indication of this fact ○ details of how the distribution of the funds will be determined

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.

Information regarding the right to refunds

Professional fundraisers or **commercial participators** soliciting funds **verbally** 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 for example by telephone or video.	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.

4. Donor rights to refunds or to cancel agreements

Any person (donor) has the right to seek a refund or to cancel an agreement for payment to a **benevolent body**, provided certain conditions are met. Donors will also have other statutory rights to refunds that may also apply.

Thresholds for refunds

Provided it is requested within 7 days of the **solicitation** refunds are available to donors as follows:

Method of fundraising	Threshold for entitlement to refund
Verbal solicitation made during a radio or TV programme.	Payments of £100 or more which are made by debit or credit card only.
Verbal solicitation which is not made directly face to face, for example by telephone.	Payments (or promises to make payments in the future) of £100 or more which are made by any means.

How should a refund be claimed?

A request for a refund or cancellation of an agreement **must be made in writing** within 7 days of the **solicitation** to the **professional fundraiser** or **commercial participator**.



Professional fundraisers and commercial participators must make sure that any refund or cancellation requests are met as soon as possible. If there is an admin cost for processing the request this can be deducted from the refund.

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 the goods are returned.

The right to a refund may not apply in certain 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 verbal solicitations
- in response to TV, radio or indirect verbal solicitations but which fall below the thresholds outlined above.

Good practice: Even when there is no statutory right to a refund, fundraisers should consider any request for a refund that's made within 7 days of the solicitation.

5. Transferring money or promises of money to benevolent bodies



Professional fundraiser or **commercial participator** must transfer any money or **promises of money** raised a **benevolent body** as soon as possible and certainly within 28 days of receipt.



Charity trustees should make sure that any funds the charity is expecting are transferred quickly and with the correct paperwork.

Good practice: funds which are raised for general charitable, benevolent or philanthropic purposes (rather than for a specific charity) should be applied for those purposes as soon as practical.

6. Offences and penalties



As indicated by the icon throughout this guidance, it is an offence for a person to fail, without reasonable excuse, to comply with the highlighted requirements of the 2009 Regulations. The fine for these offences should not exceed level 5 on the standard scale which is currently £5000.

Requirements under the 2009 Regulations where failure to comply can be an offence
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)).
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)).
Duty of professional fundraiser or commercial participator to carry out a request for a refund or to cancel a fundraising agreement as soon as reasonably possible (Regulation 5(5)).
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)).

Duty of professional fundraiser or commercial participator to provide the required information regarding donors' rights to refunds (Regulations 3(5) and (6)).

Duty of professional fundraiser or commercial participator to transfer monies raised to a benevolent body within 28 days of receipt (Regulation (6)).

7. Glossary

The following definitions are taken from the 2005 Act:

Benevolent body

Any organisation, 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 commercial participator does not include a company connected with a benevolent body, like the trading subsidiary of a 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.

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.

Person

A person may be either a natural person (a human being) or a legal person such as a company.

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:

- an employee of a charity
- a benevolent body or any company connected with it for example, 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.

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. In this Guide solicitation includes a professional fundraiser soliciting, a commercial participator making representations or a benevolent fundraiser benevolent fundraising.

SOURCES OF HELP AND ADVICE

OSCR publishes general guidance for charities, but we can't provide specific advice about fundraising practices. These organisations can also help with some areas of fundraising:

- **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.

- **Scottish Fundraising Standards Panel**

The Panel is the fundraising self-regulatory body for Scotland. They deal with complaints about charity fundraising and promote standards for charity fundraising in Scotland.

- **Fundraising Regulator**

They hold the Code of Fundraising Practice for the UK and deals with complaints about fundraising by charities registered England and Wales and Northern Ireland.

- **Charity Commission for England and Wales**

The Charity Commission regulate charities registered in England and Wales.

- **The Charity Commission for Northern Ireland**

The Charity Commission regulate charities registered in Northern Ireland.

- **HMRC – Gift Aid**

HM Revenue and Customs advises on Gift Aid, the Gift Aid Small Donations Scheme and other tax matters. You can also download Gift Aid declaration forms and guidance.

- **Scottish Council for Voluntary Organisations**

SCVO is a membership organisation offering a range of support for charities, community groups, social enterprises and voluntary organisations of all shapes and sizes across Scotland.

- **Information Commissioner's Office**

The ICO oversees the UK privacy and data protection laws.

- **Third Sector Interfaces**

TSIs offer a range of support and advice to voluntary organisations in all the local authority areas in Scotland.

- **Action Fraud**

Action Fraud is the UK's national reporting centre for fraud and cyber crime where you should report fraud if you have been scammed, defrauded or experienced cyber crime.

- **Gambling Commission**

The Commission license and regulate the people and businesses that provide gambling in Great Britain including Small society lotteries which raise money for charitable causes.

- **Advertising Standards Authority**

The ASA is the UK's independent advertising regulator. The ASA makes sure ads across UK media stick to the advertising rules (the Advertising Codes).

- **Ofcom**

Ofcom is the communications regulator for the TV, radio and video-on-demand sectors, fixed-line telecoms, mobiles and postal services, plus the airwaves over which wireless devices operate.

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