



**Scottish Charity Law in Relation to
Fundraising and Public Charitable
Collections In Scotland
Code of Fundraising Practice**

This Code is undergoing a legal review and will be updated in due course.

The Institute of Fundraising is a charity registered in England and Wales (No 1079573) and Scotland (No SC038971), and a company limited by guarantee (No 3870883). VAT registration number 547 8930 96.

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1.0 The Codes of Fundraising Practice Explained

The Institute of Fundraising's **Codes of Fundraising Practice** are structured in order to highlight what is mandatory at law, what the Institute regards as a mandatory requirement for its members and what constitutes advice on best practice.

In this Code a phrase where the word:

MUST is in bold indicates a requirement that is mandatory at law.

OUGHT in bold indicates a requirement that is mandatory for members and affiliated organisations of the Institute.

SHOULD in bold indicates a course of action that is recommended as best practice.

Organisations engaged in fundraising **SHOULD** join the Fundraising Standards Board and **SHOULD** follow their complaints procedure.

This **Code of Fundraising Practice** is intended to address fundraising

activity throughout the UK. Legal requirements can vary between different jurisdictions (England & Wales; Northern Ireland; Scotland).

In this Code, **MUST*** in bold indicates a legal requirement within one jurisdiction but not in others.

The Institute recommends that organisations adhere to the most rigorous interpretation of the law applicable to an activity.

Users should be aware that this Code addresses the law as it stands at the date of publication throughout the UK.

Reviews of the law relating to fundraising and fundraising activities, governance and charitable status are ongoing in Scotland, England and Wales.

This **Code** will be revised to take into account any developments or changes in the law that may result from these initiatives.

2.0 Introduction

This Code reminds those involved in fundraising in Scotland of their obligations under existing Scotland legislation where it is of relevance to the fundraising process. In common with the Charities Act 1992 Part II (England and Wales), this Code does not seek to address all aspects of fundraising undertaken by charities on their own account and involving only their own staff and volunteers, or all of that carried out through connected companies under a charity's direct control. Aspects of these activities are covered by other of the Institute's Codes of Fundraising Practice which apply equally throughout the United Kingdom. Please note that this Code will be revised to take into account fundraising regulations made under the Charities and Trustee Investment (Scotland) Act 2005 once the regulations are published. The main pieces of legislation referred to in this context are:

- The Law Reform (Miscellaneous Provisions) (Scotland) Act 1990
- The Civic Government (Scotland) Act 1976
- Public Charitable Collections (Scotland) Regulations 1984

2.1 The registration and operation of Scottish charities, highlighting those differences that exist between Scottish, English and Welsh Law

The most significant legislation covering the activities of Scottish charities is the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. Although mainly concerned with structural, administrative and financial matters, it has some bearing on the fundraising process.

The Act provides for a 'recognised' body to describe itself as a 'Scottish Charity'. In practice this means that the body will be established for charitable purposes under Scots Law; will be managed or controlled wholly or mainly in or from Scotland, and will have current intimation from the Inland Revenue that it will be given relief under Section 505 of the Income and Corporation Taxes Act 1988 in respect of income applied to charitable purposes.

- Note that an organisation **MUST** be recognised by the Inland Revenue in this way in order for it to hold itself out as a Scottish Charity.
- A Scottish charity **MUST** provide (subject to reasonable copying and postage charges) a copy of its documents giving information about its charitable purposes within one month of a request for such information under the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 requires.

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- Charities **MUST** always provide clear contact addresses on all publicity and fundraising materials and **SHOULD** also show their Scottish Charity Number (issued by the Inland Revenue) on these materials. Though this requirement is not mandatory by law in Scotland, it is required by law in England and Wales.

Where varying degrees of regulation apply in different jurisdictions, the Institute recommends that fundraisers apply the most rigorous requirements of the law.

- A charity which is a company **MUST** similarly show its company registration details as provided for by the relevant Companies Acts.
- At the most general level, charities **MUST** ensure that their Trust Deeds, Articles of Association and/or Constitutions permit them to undertake fundraising activities.

The roles of trustees and paid staff respectively should be clearly defined, and clear lines of responsibility established.

2.2 Cross-border operations

- UK charities operating in Scotland but not domiciled there **OUGHT** to conduct their fundraising on a consistent basis throughout the UK.
- Where they undertake fundraising in Scotland, those activities should comply with any additional provisions of Scottish Law over and above the Charities Act 1992, Part II (England and Wales) and these charities **OUGHT** to ensure consistency with this in all their UK operations.
- Scottish charities and fundraisers (whether or not employed by a charity) **OUGHT** to conduct all their UK fundraising activities according to this principle.
- Scottish charities undertaking fundraising in England and Wales **MUST** be clear that the Charities Acts 1992 and 1993 will apply to these activities.
- It **MUST** also be taken into account that the Charity Commissioners for England and Wales have powers to act in the case of Scottish charities which are managed and controlled wholly or partly in England and Wales, or which have property or other assets there.

3.0 Public Charitable Collections

Public charitable collections undertaken in Scotland are governed by the Civic Government (Scotland) Act 1982 and the Public Charitable Collections (Scotland)

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Regulations 1984, as amended (Statutory Instruments 1984 No. 565 and 1988 No. 1323). Collections undertaken in England and Wales are currently governed by the House to House Collections Act.

3.1 Definition

A public charitable collection means a collection from the public of money (whether given for consideration or not) for charitable purposes taken either in a public place or by means of visits from place to place; charitable purposes, in this instance, means any charitable, benevolent or philanthropic purposes whether or not charitable within the meaning of any rule of law.

3.2 Permission to Hold a Public Charitable Collection

- Unless exempt, any person wishing to hold a public charitable collection **MUST** obtain permission from the district or islands council for the area in which it is to be held.

The holding of a collection without permission is an offence under the Civic Government (Scotland) Act 1982, section 119. This legislation does not apply to a collection taking place either in the course of a public meeting or by means of an unattended receptacle kept in a fixed position in a public place.

- An application for permission **MUST** be made in writing to the district or islands council by the organiser not later than one month before the date of the collection or within such a period as may be fixed by the council.
- On receipt of an application, the council **MUST** consult the chief constable for their area and may make such other enquiries as they think fit.

In granting permission, the council may impose conditions as they think fit and may refuse to grant permission if it appears that:

- the date, time, frequency or area of the collection would cause undue public inconvenience;
- another collection which is exempt or in respect of which permission has been granted is due to take place on the same or approximate day;
- the amount likely to be applied for charitable purposes in consequence of the collection is likely to be inadequate having regard to the likely amount of its proceeds; and
- the organiser of the collection has been convicted of an offence under the above Regulations, or under legislation, or any other offence involving dishonesty.

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Following the granting of permission, if the council consider that circumstances have changed or are likely to change so that there may be a breach of the above conditions, they may withdraw permission or vary any condition imposed.

- A council **MUST**, when either refusing or withdrawing permission for a collection, give written notice of that fact to the organiser of the collection, including a statement of the reasons for such a refusal or withdrawal.

3.3 Appeal Against Decision of Council

The organiser of a collection may appeal to the sheriff against the decision of a council in refusing permission, imposing a condition or withdrawing permission.

- An appeal **MUST** be lodged within 14 days of either the date of the decision appealed against, or the date of receipt of the reasons for the decision.

In upholding an appeal, the sheriff may either remit the case with reasons for his decision to the council for reconsideration of their decision, or may reverse or alter the decision of the council.

3.4 Exemption from Requirement for Permission

The Secretary of State may, if satisfied that a person pursues charitable purposes throughout the whole or a substantial part of Scotland, direct that that person shall be exempt from the requirement under s. 119(1) to obtain permission to hold a public charitable collection, subject to any conditions as may be specified in the direction. Any such direction may be revoked or amended by a further direction.

- Any person exempted **MUST**, unless the Secretary of State otherwise directs, give to the council in whose area the collection will be held three months' notice of their intention.

Any such direction may be revoked or amended by a further direction.

3.5 Regulations

The Secretary of State is empowered to make regulations for the purposes of regulating public charitable collections as follows.

- An exempt promoter **MUST**, on receiving permission to organise a collection, appoint an independent responsible person or qualified accountant to act as auditor of the collection.

The organiser may appoint an agent to carry out certain functions under the regulations.

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- The organiser **MUST** exercise due diligence to ensure that any such agent is a fit and proper person to carry out those functions, and that any agent, collector, or other person covered by the regulation complies with them and with any conditions imposed under s. 119 of the 1982 Act.

3.6 Certificate of Authority

- The organiser or agent **MUST** issue to each participating collector:
 - a badge, signed by the collector, clearly showing the name of the charity
 - a certificate of authority which **MUST** show:
 - the name and address of the charity;
 - the name and address of the collector;
 - the place of the collection;
 - the date of the collection;
 - the signatures of the collector and the promoter of the collection;
 - if the collection is by envelope, a supply of envelopes, each envelope having a gummed flap so that it can be securely closed; or
 - if the collection is not by envelope, a collecting box, marked with a distinguishing number, securely closed and sealed so that it cannot be opened without breaking the seal.
- The organiser or agent **MUST** record the name and address of each collector, and the number marked on the box provided or the number of envelopes issued.
- The organiser or agent **MUST** exercise due diligence to ensure that all collectors are 16 years of age or over (or in the case of a street collection, 14 years of age or over), are fit and proper persons to act as collectors, and are aware of their obligations under the Regulations and any conditions made under s. 119.
- No person may act as a collector unless the person displays a badge and possesses a certificate of authority, which **MUST** be produced on demand to a police officer, a person from whom a contribution has been solicited, or any other interested person.
- All badges, envelopes and collecting boxes **MUST** bear the name of the funds or organisations which are to benefit from the collection.
- A collector **MUST NOT** accept any contribution except:
 - in a sealed envelope, in the case of an envelope collection; or
 - by permitting the donor to place it in a collecting box, in the case of any other collection.

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- A collector **MUST NOT** annoy people by importuning them, nor remain in or at the door of any house if requested to leave by an occupant.
- A collector **MUST** return their certificate of authority and collecting box or envelopes, unopened, to the organiser or agent at any time on demand by either of them, or on ceasing to act as a collector.

A collecting box or sealed envelope may only be opened either (i) by the organiser or agent in the presence of another responsible person, or (ii) by an official of the bank, where it is delivered unopened to the bank.

- The person opening the envelopes or collecting boxes **MUST** note;
 - the total amount of money in the envelope and the number of envelopes returned by each collector;
 - or as the case may be, the number on each collecting box;
 - and in the case of a collection not opened by an employee of a bank, must record the amount of money in it and convey this information to the organiser.

3.7 Submission of Accounts

Provision is made in the regulations for the submission of accounts.

- An organiser who is not an exempt promoter **MUST** submit accounts to the council for the area in which the collection took place, within one month of the last date of the collection, except where the council consider in their discretion that there are special reasons for extending that period.
- The accounts **MUST** contain prescribed particulars and be accompanied by a statement by the organiser and a report by the auditor in the form prescribed by the Schedule.
- The organiser **MUST** retain all vouchers, receipts, and other papers for a period of two years after the date of submission of accounts to the council; **MUST** exhibit all such documents as the council may require during that period, and **MUST** supply any further information or explanation the council may require in relation to the prescribed documentation.
- An exempt promoter **MUST**, with certain exceptions, submit accounts to the Secretary of State at least once every 12 months, and a person ceasing to be an exempt promoter **MUST** submit accounts within 3 months of such cessation.
- Such accounts **MUST** contain the prescribed particulars, and be accompanied by a statement by the exempt promoter and a report by the auditor in the form prescribed by the Schedule.

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- The exempt promoter **MUST** give the Secretary of State any further information or explanation which may be required in relation to any of the prescribed particulars.
- Within one month of submitting accounts, the organiser **MUST** publish a summary of them, containing prescribed details, in one or more newspapers circulating in the area or areas for which permission had been granted to collect or, if the organiser is an exempted promoter, in one or more newspapers circulating throughout Scotland.

Where a collection has taken place within the area of a single council, that council may waive this requirement, subject to their making such a summary available for inspection by the public for a reasonable period.

A person contravening any of the regulations referred to above is guilty of an offence punishable by a fine on summary conviction.

3.8 Good practice

- In addition to the above regulations which are enshrined in law, a charity **OUGHT**:
 - always seek guidance from the appropriate council licensing department before undertaking the collection, if intending to collect in areas which may not be clearly defined as “public” e.g. privately-owned shopping centres, railway stations;
 - have a clear policy regarding insurance of both collectors and their collections;
 - ensure that public charitable collections do not take place after 9pm;
 - ensure that, where possible, collectors should “pair up” to increase security of collectors and collections; and
 - ensure that badges and Certificates of Authority give a contact name and daytime telephone number of an authorised person within the recognised charity on whose behalf the collection is being undertaken.

4.0 Appendices

4.1 Useful contacts and references

- **Scottish Council for Voluntary Organisations**
The Mansfield Traquair Centre
15 Mansfield Place
Edinburgh
EH3 6BB

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Tel: 0131 556 3882

Website: www.scvo.org.uk

- **Inland Revenue**

Charity Division

Meldrum House

15 Drumshaugh Gardens

Edinburgh

EH3 7UG

Tel: 0131 777 4000

Website: www.hmrc.gov.uk/charities

- **Scottish Charities Office**

Crown Office

25 Chambers Street

Edinburgh

EH1 1LA

Tel: 0131 226 2626

Website: www.crownoffice.gov.uk

- **HMSO (Scotland)**

26 Rutland Square

Edinburgh

EH1 2BW

Tel: 0131 659 7020

Website: www.tso.co.uk

The Institute's Standard Forms of Agreement, including those between charities and external advisers, fundraisers and commercial participators, can be obtained from www.institute-of-fundraising.org.uk, or by contacting the central office.

The Institute's Codes of Fundraising Practice are developed in consultation with many organisations and bodies. The Institute would particularly like to thank the SCVO for its support in developing this Code.