

Deletions log

Below is a catalogue of rules that have been deleted from the Code. This does not include instances where rules have been merged to make two or more rules in to one. These are rules that have been deleted in their entirety, and also do not include text removed from rules that have been substantially incorporated into the Code.

| | Rule(s) | Rationale for deletion |
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| 1. | <p>1.3.2 Acceptance and Refusal of Donations</p> <p>a) The trustees (and their delegates) MUST* act in the best interests of the charity when deciding to accept or refuse a particular donation.</p> | <p>The law in this area is more complex than the 3 rules imply. We propose to just keep a single rule.</p> <p>“If you are a charity, you must not* refuse or return donations except in specific circumstances“,</p> <p>and reference IoF guidance on accepting or refusing donations for more information on the circumstances that apply.</p> |
| 2. | <p>1.7 Returning Donations</p> <p>a) Fundraising organisations which are charities MUST* not return donations unless certain criteria are fulfilled. For all other fundraising organisations, donations MUST only be refunded in line with any policies or in exceptional circumstances. It may not be lawful to return a donation and fundraisers MUST take advice from legal advisers or the Charity Commission / OSCR before doing so.</p> | <p>See rationale for 1.3.2</p> |
| 3. | <p>2.2.3 Specific Considerations when Working with ‘on Behalf of’ Volunteers</p> <p>a) There is a range of legal obligations placed on organisations in respect of health and safety, some of which apply to volunteers. The key obligations are:</p> <p>i. Organisations MUST* conduct their organisation in such a way as to ensure, so far as is reasonably practicable, that volunteer fundraisers are not exposed to risks to their health and safety (the specific obligations are set out in the <u>Health and Safety at Work Act 1974</u> or, in Northern Ireland, the <u>Health and Safety at Work (Northern Ireland) Order 1978</u>).</p> | <p>Revised with in the code, under the volunteers section. Some of the rules are specific to ‘on behalf of ‘ volunteers others apply more broadly.</p> |

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| | <p>ii. Organisations MUST* carry out appropriate risk assessments and (if there are over 5 employees) MUST* keep clear records of all risk assessments and training undertaken.</p> <p>iii. Organisations MUST* make and give effect to appropriate arrangements for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.</p> <p>iv. Organisations MUST* audit the adequacy of their risk assessment procedures.</p> <p>v. Organisations MUST* appoint one or more competent person(s) to implement the measures needed to comply with health and safety law.</p> | |
| 4. | <p>2.2.3 b) Where appropriate, organisations MUST check the suitability and credentials of volunteer fundraisers to act as responsible people on the organisation's behalf and in the case of house to house collections MUST* carry out due diligence to check if collectors are fit and proper persons.</p> | <p>This is covered by rules brought in from the rulebooks, and those have been kept in the Code.</p> |
| 5. | <p>3.4 After the Event/Activity</p> <p>a) All monies received MUST be acknowledged promptly by the organisation.</p> | <p>It is covered in other areas of the Code and these rules have been incorporated into the Code.</p> |
| 6. | <p>4.2 g) Organisations MUST require any agency or third party they work with to inform them of any notice received by the agency or third party to cease or not commence direct marketing from (or on behalf of) an individual.</p> | <p>This rule is superseded by 4.2 h) which contains the same requirement and builds on it to include FPS compliance. 4.2 h) is within the Code.</p> |
| 7. | <p>4.6 c) Consultants/Freelance Fundraisers MUST NOT be remunerated by commission or commission-only methods, unless certain criteria are fulfilled.</p> | <p>This rule has been removed in preference for 19.6 a) which covers the same ground in more detail. 19.6 a) is in the Code.</p> |
| 8. | <p>8.2.1 Working with Suppliers</p> <p>a) If the supplier falls within the definition of a professional fundraiser, the supplier MUST* have a written agreement with the organisation.</p> <p>b) If using external suppliers who do not fall within the definition of a professional fundraiser, an agreement MUST be in place.</p> | <p>Rules on written agreements with suppliers are repeated throughout the Code and have been incorporated into the Code.</p> |

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| | <p>c) Agreements with professional fundraisers MUST* include details of the payment/expenses the professional fundraiser will receive together with the other matters legally required to be included in agreements with professional fundraisers.</p> <p>d) Agreements with suppliers who are not professional fundraisers MUST include this information.</p> | |
| 9. | <p>8.2.4 Pre-Call Contact</p> <p>a) All responses to contact which indicate that the potential recipient of the call does not wish to receive it MUST* be complied with.</p> | This is covered in general principles and that version has been kept. |
| 10. | 8.3.1 h) Fundraisers MUST* make appropriate disclosure statements (L10) | Not required in the Telephone section, specifically covered elsewhere. |
| 11. | <p>8.4.1 Fulfilment of Donations</p> <p>c) If donations are paid to the external telephone fundraiser, they MUST* be paid on to the fundraising organisation as soon as reasonably practicable after receipt and, in any event, no later than 28 days after receipt (unless, in England and Wales, a different time frame has been agreed).</p> <p>d) Any written information soliciting donations sent by a charity as a result of the call MUST* include a statement that the organisation is a charity (L12).</p> <p>e) In Scotland this MUST* also contain the full name and charity number (L12).</p> <p>f) Where donors' details are stored, fundraisers MUST* ensure compliance with the requirements of data protection law.</p> | These rules are covered elsewhere in the code. |
| 12. | 9.2.1 a) Organisations MUST* have specified information on their website about their status, dependent on certain conditions. | This rule is repeated elsewhere in the Code and is included in the version. |
| 13. | <p>9.3.1 Electronic Payments</p> <p>There are a number of standards that apply to electronic payments, such as the <u>Payment Card Industry-Data Security Standard (PCI- DSS)</u> for processing card transactions, and the Direct Debit Guarantee for processing Direct Debits.</p> | These rules are repeated elsewhere and those versions have been kept in the version. |
| 14. | 9.3.2 Online Raffles and Lotteries | This rule is repeated elsewhere in the same section and that version has been kept in the Code. |

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| | <p>a) Organisations MUST* comply with the Gambling Act 2005 or, in Northern Ireland, the Betting, Gaming, Lotteries and Amusements (NI) Order 1985</p> <p>For more information on the different types of lotteries and the rules that apply to each type, please see the L13 Raffles and Lotteries or speak to the Gambling Commission, who regulate this area.</p> <p>For Northern Ireland, please consult the Department for Social Development Social Policy Unit and its Information Leaflet - The Law on Lotteries in Northern Ireland.</p> | |
| 15. | <p>9.3.3 Online Trading, Trading Subsidiaries and e-commerce</p> <p>a) Organisations MUST* only trade if their governing documents allow it.</p> <p>b) Organisations MUST* comply with all relevant consumer law and digital commerce legislation including the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013.</p> <p>d) Organisations MUST* ensure that descriptions and images of goods are sufficiently accurate that donors are not misled about what they are buying.</p> <p>e) Organisations MUST* have the necessary intellectual property permissions to use or share digital content, such as images, audio, video etc.</p> <p>f) Organisations MUST* comply with legal requirements as to delivery, cancellation, refunds and returns and MUST have policies that set out processes and timings for potential customers.</p> | <p>We propose to deal with trading in separate guidance as the trading and e-commerce sections predominantly relates to commercial transactions rather than donations.</p> <p>Rule e) is repeated elsewhere in the Code.</p> |
| 16. | <p>9.4 Working with Third Parties</p> <p>a) Professional fundraisers and commercial participators working on digital media projects MUST* have written agreements in place with the charity and MUST* make the appropriate statements.</p> <p>b) When not legally required to have written agreements, organisations MUST still have contracts or agreements in place.</p> | <p>This rule is repeated elsewhere and now sits within working with third parties.</p> |

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| 17. | <p>9.5 Social Media</p> <p>a) Organisations MUST ensure that usernames and passwords for their social media accounts are only available to trusted individuals.</p> | <p>This rule is not fundraising-related and is a matter for internal charity policy. Broader data protection requirements are covered in the code.</p> |
| 18. | <p>9.7.1 Data Protection</p> <p>a) Fundraising organisations MUST* comply with the requirements of data protection law and MUST NOT* disclose information obtained in situations where a legal duty to keep information confidential arises.</p> <p>b) Organisations MUST* provide a valid address for opt-out requests.</p> | <p>These rules are repeated elsewhere in the Data Protection sections of the Code and remains in the version.</p> |
| 19. | <p>9.7.2 Content</p> <p>a) Emails MUST carry a statement confirming the status of an organisation, and MUST* do so <u>in certain circumstances</u>.</p> <p>c) Organisations MUST use a simple opt-out message.</p> | <p>These rules are repeated elsewhere in the Data Protection sections of the Code and remains in the version.</p> |
| 20. | <p>10.5.2 b) When appeals for specific projects are so successful that not all money can be allocated to them, or projects do not go ahead organisations MUST obtain Charity Commission / OSCR advice regarding the use or return of remaining funds.</p> | <p>See rationale for 1.3.2</p> |
| 21. | <p>13.2 Key Points and Legalities</p> <p>a) This area is one of the most heavily regulated fundraising activities, but also one of the most popular. The range of regulation is <u>set out in detail in the Legal Appendices</u> and MUST* be followed.</p> <p>b) Additional <u>standards</u> are included in the <u>Legal Appendices</u> and MUST be observed.</p> <p><i>The <u>Gambling Commission</u> should be referred to for queries and up-to-date advice.</i></p> <p><i><u>There is more information about raffles and lotteries in the Institute of Fundraisings Raffles and Lotteries guidance</u></i></p> | <p>As the legal appendices have now been moved into the main body of the Code, these rules have been superseded by those previously in L13.</p> |
| 22. | <p>14.3.3 Using External Fundraisers</p> <p>a) External Fundraisers (who fall within the definition of a '<u>commercial participator</u>' or '<u>professional fundraiser</u>') hired by Fundraising</p> | <p>These rules are repeated a number of times throughout the Code and Legal Appendices. These rules are included in the Code but are taken from a different area.</p> |

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| | Organisations MUST* have a written agreement with the organisation they are representing. b) External Fundraisers (who fall within the definition of a ' <u>commercial participator</u> ' or ' <u>professional fundraiser</u> ') hired by Fundraising Organisations MUST* make legally compliant statements as to how they are paid. | |
| 23. | 15.2.5 Written Agreements a) Organisations MUST have written agreements with all external parties clearly highlighting all parties' rights, responsibilities and obligations. b) If any party is a <u>professional fundraiser</u> or a <u>commercial participator</u> , a written agreement MUST* be in place. | These rules are repeated a number of times throughout the Code and Legal Appendices. These rules are included in the Code but are taken from a different area. |
| 24. | 15.3.2 Participants/Attendees b) Some participants may fall within the definition of <u>professional fundraisers</u> (for example, if the cost of the event is being paid for by the organisation or by sponsorship and falls outside the minimum level of remuneration permitted under the relevant legislation). If this is the case, there MUST* be a written agreement and organisations MUST ensure participants are aware of their legal obligations about giving donors certain information. | This rule is repeated a number of times throughout the Code and Legal Appendices. This rule is included in the Code but is taken from a different area. |
| 25. | 15.3.3 d) All data obtained in the course of preparing for and running an event MUST* be treated in accordance with the principles of data protection law. e) When organising a challenge event and drafting data collection statements you MUST clarify with the tour operator who will be collecting the data and for what purposes the data will be collected and held. | This rule is covered in the data processing section of the Code. |
| 26. | 15.3.3 f) If an event organiser, or participants themselves, fall within the definition of <u>professional fundraiser</u> or <u>commercial participator</u> , they MUST* have a written agreement in place with the organisation for which funds are being raised and MUST* make the appropriate statements. | This rule is repeated a number of times throughout the Code and Legal Appendices. This rule is included in the Code but is taken from a different area. |
| 27. | 15.4.4 Raffles and Lotteries | This rule is covered in the lotteries section. |

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| | <p>a) If a lottery (which includes a raffle) is to be held at the event, it MUST* comply with the <u>Gambling Act 2005</u> or <u>Betting, Gaming, Lotteries and Amusements (Northern Ireland) Order 1985</u> and the <u>Betting and Lotteries (Northern Ireland) Order 1994</u>. For further information please see <u>13.0 Raffles and Lotteries</u>.</p> | |
| 28. | <p>15.5 Three Peaks</p> <p>This section provides additional standards for the Three Peaks Challenge, where teams are challenged to climb Ben Nevis, Scafell Pike and Snowdon, the highest mountains in Scotland, England and Wales.</p> <p>a) An organiser MUST:</p> <ul style="list-style-type: none"> • register all groups of 12 or more with the <u>Glen Nevis Visitor Centre</u>, the central registration point for all of the peaks at least twelve months in advance (unless a shorter timeframe is agreed); • limit the number of walkers to no more than 200 per event; • only run events at peak times where crucial to success or if it is the only workable option; • remove the time pressure element by excluding the driving time between mountains and allocating a minimum driving time for all participants which is added to the walking time, regardless of the actual duration of the drive. <p>b) Arrival or departure MUST NOT be between the hours of 2300 and 0500.</p> <p>c) Organisations MUST always use the <u>Visitor Centre at Glen Nevis</u> as the start point for Ben Nevis.</p> | <p>This section is very specific and the need to adhere to specific requirements of an event site is covered by other rules regarding challenge events more broadly and in the General Rules.</p> |
| 29. | <p>16.3 Licensing/Permission Requirements</p> <p>c) In England and Wales, a licence to collect MUST* be obtained from the relevant authority in the area, such as the local authority or the Metropolitan Police (unless the collection is house to house and the charity holds a National Exemption Order – see the Legal Guidance and below for further detail).</p> <p>d) In Northern Ireland, an appropriate permit or licence MUST* be obtained from the PSNI station for each local area in which a house to house collection is to be carried out.</p> | <p>These rules repeat in detail regulations on collection licences which are subject to national and local variance and primarily enforced by individual local authorities. Except for generally applicable licencing rules, we propose to replace this detail with a link to guidance on public collections by the relevant national regulators and simply emphasise that fundraisers must have a licence where required and comply with the terms of that licence</p> |

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| | <p>e) In Scotland, the collection will be a licensed one and legal obligations MUST* be met if it is a collection of money (whether given for consideration or not) which is taken in a public place or by means of visits from place to place, but excluding a collection which takes place in the course of a public meeting or by means of an unattended receptacle kept in a fixed position in a public place.</p> <p>f) In Scotland, 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).</p> <p>g) In Scotland, a licence holder MUST* appoint an independent responsible person or qualified accountant to act as auditor of the collection upon receipt of permission to collect. If the licence holder appoints an agent to act on his behalf, he MUST* exercise due diligence in accordance with the Regulations.</p> <p>h) Licences MUST* be applied for in good time before the collection is due to take place</p> | |
| 30. | <p>16.4 a) Where a Fundraising Organisation has the benefit of a national exemption licence (in England and Wales, a National Exemption Order, in Scotland, an Exempt Promoter, and in Northern Ireland an Exemption Order) for house to house collections it MUST:</p> <ul style="list-style-type: none"> • establish a clear annual programme of collections; • fix specific dates a year in advance for all collections (some fundraising organisations advocate two years) and negotiate any proposed changes to dates with relevant authorities at the earliest opportunity and confirm all changes in writing; • make every attempt to avoid a conflict in collection dates; • inform relevant authorities of collection dates and, as far as possible, the specific areas to be covered by the collection; • confirm all agreed dates in writing to the relevant authorities; • notify relevant authorities, immediately, of any decisions to cancel a collection; | See rationale for 16.3 |

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| | <ul style="list-style-type: none"> • where practicable, advise relevant police authorities and all other Exemption Order holders/ Exempt Promoters by letter of agreed collection dates at the earliest opportunity; • abide by established collection dates; • ensure that sufficient collectors are available to support an effective collection in order not to deprive other charities of the opportunity to collect; • be able to provide information on the precise dates and locations of all collections; and • MUST NOT book large blocks of time. • b) In Scotland, Exempt Promoters MUST observe the above standards, and MUST*: • give at least 3 months' notice to the relevant Local Authority of any intended collection which would otherwise have required a licence; • follow the licensed collection rules which apply to licence holders regarding an organiser's duties, certificates of authority, how funds are received, and the opening of collections; • report annually to the Office of the Scottish Charity Regulator (OSCR), giving an audited account of collections carried out (including a breakdown by local authority area and details of the expenses incurred), a signed organiser's statement and an auditor's statement • publish a notice summarising the audited account of collections in a spaper with a national Scottish circulation within one month of submission of these records to OSCR. | |
| 31. | <p>16.5 Working with Third Parties</p> <p>a) When working with third parties, Fundraising Organisations MUST have contracts in place except where, in England and Wales and Scotland, commercial participators or professional fundraisers are involved, contracts MUST* be in place. See section 4.5 for further details on what these contracts are required to include.</p> | <p>These rules are already covered in working with third parties. e) is covered in solicitation statements. Those versions appear in the Code.</p> |

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| | <p>b) Additionally, when a collection involves a <u>commercial participator</u> or <u>professional fundraiser</u> appropriate statements MUST* be made.</p> <p>c) In Northern Ireland, there are currently no specific regulations in place in regard to third parties, but Fundraising Organisations MUST* follow the forms of contracts used elsewhere in the United Kingdom.</p> <p>e) Where a collector is a paid charity employee, paid officer or paid trustee, the collector MUST* <u>make a statement</u> to the effect they are being paid to carry out the collection.</p> | |
| 32. | <p>16.6 Age of Collectors</p> <p>a) The Fundraising Organisation MUST* ensure any age limits on collectors are complied with.</p> | This rule is covered in working with children and that version is included in the Code. |
| 33. | <p>16.7 Selection and Authorisation of Collectors</p> <p>a) In England and Wales, for house to house collections, Fundraising Organisations MUST* exercise all due diligence to ensure collectors are fit and proper persons to collect.</p> <p>b) In England and Wales, for house to house collections, collectors MUST* be given a certificate of authority and badge.</p> <p>c) In England and Wales, for street collections, each collector MUST* generally have the written authority of the promoter.</p> <p>d) In Scotland, Fundraising Organisations MUST* ensure that:</p> <ul style="list-style-type: none"> • reasonable steps are taken to ensure collectors are fit and proper persons to collect; • all collectors are at least the minimum age required by that jurisdiction; and • collectors are aware of their legal obligations. | See rationale for 16.3. In addition the requirements appear as repetitions or are covered within the code elsewhere. |

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| 34. | <p>16.8 a) In England and Wales, for house to house collections, the promoter MUST* exercise due diligence to ensure that collectors comply with the House to House Collections Regulations 1947.</p> <p>16.8 b) In Northern Ireland, fundraising organisations MUST* ensure that:</p> <ul style="list-style-type: none"> • reasonable steps are taken to ensure collectors are fit and proper persons to collect; • collectors are given a certificate of authority and badge and collecting boxes or receipt books. | See rationale for 16.3 |
| 35. | <p>16.8 c) Fundraising organisations MUST ensure that all fundraisers/ agents are properly trained to the Institute’s prescribed training standards for face to face fundraising.</p> | As a regulator we cannot require or endorse the training regime of any specific organisation where we have no input into the quality or standards maintained. |
| 36. | <p>16.10 Conduct of Collections</p> <p>e) In Scotland, fundraising organisations MUST* also be able to provide full details of all collectors within a given area, including name, address, telephone number, the precise area to be</p> <p>g) In cases where the activity is to secure a form of non-financial commitment, but there is a possibility that the Fundraising Organisation will subsequently ask for a financial commitment, collectors MUST inform the individual being engaged during the initial activity of this possibility.</p> <p>h) Fundraising Organisations MUST be able to provide full details of all those collecting on their behalf within a given area, including name, address, telephone number, the area to be covered and the exact period during which the collector is authorised to collect.</p> <p>i) If times are not set out as part of agreements or licences, standard operating hours MUST be 9am-9pm on a weekday and 10am-9pm on a weekend.</p> <p>k) Collectors MUST ensure that they wear appropriate clothing, which includes ensuring any provided clothing showing the name of the Fundraising Organisation is visible.</p> | These rules are covered by rules which have been brought in to the Code from the Rulebooks. |

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| 37. | 16.10 o) Collectors MUST be able to give the public information on how to make a complaint. | This rule has been superseded by 1.6 a) after the recent consultation on complaints handling . |
| 38. | 16.11 Handling the Proceeds of a Cash Collection a) The <u>relevant standards for handling cash donations</u> MUST be observed and legal requirements MUST* be complied with. | This rule is already covered in handling donations and that version appears in the Code. |
| 39. | 16.12 a) The promoter of the collection MUST* send any necessary information to the licensing authority within the required period after the collection. 16.12 b) Fundraising Organisations MUST have procedures in place to enable accounts to be created within this timescale. | See rationale for 16.3 |
| 40. | 17.5 b) In Scotland, most notices, advertisements and documents (including any document soliciting money or other property) sent by, or on behalf of, any charity in the Scottish Charity Register MUST* <u>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 Scottish charity number.</u> | This rule is repeated in L12.4 g) . |
| 41. | 17.6 Collecting and Sending Donations to the Organisations a) If the collector is a professional fundraiser, all monies MUST* be returned to the organiser/organisation without deductions of fees or expenses as soon as is reasonably practicable. | This rule is already covered by 20.1.2 b) which has been kept in the Code. |
| 42. | 18.2 Key Principles a) A fundraiser MUST NOT* exert undue influence on a potential legator. | This rule already exists as a general key principle and that version remains in the Code. |
| 43. | 18.2 b) <i>the below bullet point only</i> <ul style="list-style-type: none"> the duty of trustees to optimise <u>create</u> the <u>most</u> benefit to the fundraising organisation; | Covered by trustees duties in General Rules |
| 44. | 18.3 Undertaking Legacy Fundraising c) Organisations MUST ensure that any incentives and recognition devices are of appropriate value, which will usually be of minimal cost. | Repetition of a general principle. The general principle has been kept to cover this. |
| 45. | 18.3.2 Communicating in Person a) Organisations MUST consider the needs and situation of vulnerable individuals before embarking on face-to-face legacy fundraising activity. | This rule is already covered in general principles. The general principle has been kept to cover this. |
| 46. | 18.4.2 Conditional/Restricted Gifts | This rule conflicts with others in the section which are legal requirements. |

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| | <p>a) If a legacy is left with a request/wish, rather than subject to conditions, organisations MUST consider whether to comply with the legator's wishes.</p> | |
| 47. | <p>19.8.2 Professional Fundraisers</p> <p>a) Those freelance fundraisers and consultants who fall within the legal definition of a professional fundraiser (L8) MUST* comply with the applicable legal requirements.</p> | <p>We have incorporated freelance fundraisers and consultants within the definition of third parties and already define duties in relation to those third parties which fall within the definition of a professional fundraiser. This rule sign posted to requirements held in L8 that are now incorporated into the main code.</p> |
| 48. | <p>19.4 Choosing the Appropriate Payment Mechanism</p> <p>a) Practices and controls MUST be in place to ensure that payment methods do not leave the fundraiser or organisation out of pocket.</p> | <p>We propose to delete this as it is covered by other rules regarding excessive remuneration and because its meaning is insufficiently clear.</p> |
| 49. | <p>20.1.2 General Requirements</p> <p>d) Expenses MUST* be met (where previously agreed) by the organisation after receipt of the donation.</p> | <p>This rule is repeated in detail elsewhere within the code.</p> |
| 50. | <p>20.5 Card Transactions</p> <p>c) The PCI-DSS state that the CSC should not be stored and this requirement MUST be observed.</p> | <p>This is already covered in 20.5 a) PCI requirements which has been incorporated into the Code.</p> |

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| 51. | <p><u>Street and Door to door Rulebooks FR3, Private site Rulebook FR4:</u></p> <p>Solicitation statements</p> <p>Fundraisers MUST make legally compliant solicitation statements. In all cases, the solicitation statement MUST be made before any financial details relevant to the transaction are requested by the fundraiser.</p> | <p>This is covered in solicitation statements previously within the legal appendices and those rules have been kept.</p> |
| 52. | <p><u>Street Rulebook FR15, Door to door Rulebook FR6, Private site Rulebook FR8:</u></p> <p>Consent for future contact</p> <p>During the sign up process, if obtaining consent for the charity to send communications to them in the future, fundraisers MUST clearly explain to members of the public that they can choose to give or withhold consent to future marketing contact.</p> <p>Fundraisers MUST ensure that members of the public understand the method and purpose of contact they are consenting to. Consent MUST be unambiguous, freely given, specific and informed.</p> <p>Fundraisers MUST collect a positive indication of the choices selected, such as providing a signature.</p> | <p>This is covered in sections on the usage of data. The rules in the Code were updated in a previous consultation to reflect GDPR requirements.</p> |

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| <p>53.</p> | <p>L3.1 England and Wales</p> <p>These limits on the payment of trustees relate only to fundraising organisations which are charities.</p> <p>Either:</p> <ul style="list-style-type: none"> the charity’s constitution specifically provides for the type of payment proposed or the payment is authorised by an order of the <u>Charity Commission</u> or the Court <p>Or:</p> <ul style="list-style-type: none"> 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 <u>section 185 of the Act 2011</u> (“the Act”) (see below) <p>a) The provisions of <u>section 185 of the Act</u> which MUST* be complied with are:</p> <ul style="list-style-type: none"> 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. <p>These provisions also apply to payments to certain persons connected to trustees, including business associates and family. Further guidance is available on the <u>Charity Commission’s website</u>.</p> | <p>This is general charity governance commentary and signposting with some non-fundraising related rules included. This has been removed because it falls within the remit of CCEW.</p> |
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| 54. | <p>L3.2 Scotland</p> <p>A payment to a charity trustee (or connected person) may only be made if:</p> <p>Either:</p> <ul style="list-style-type: none"> • 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) <p>Or:</p> <ul style="list-style-type: none"> • the charity complies with the provisions of <u>section 67 of the 2005 Act</u> (see below) <p>a) The provisions of <u>section 67 of the 2005 Act</u> which MUST* be complied with are:</p> <ul style="list-style-type: none"> • 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. <p>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 <u>Office of the Scottish Charity Regulator (OSCR)</u> but trustees should have regard to</p> | <p>This is general charity governance commentary and signposting with some non-fundraising related rules included. This has been removed because it falls within the remit of OSCR.</p> |
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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.

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| 55. | <p>L3.3 Northern Ireland</p> <p>In Northern Ireland the provision which covers remuneration of trustees is <u>s.88 of the Charities Act (Northern Ireland) 2008</u>. 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.</p> <p>Guidance for trustees on the making of agreements for remuneration has not yet been agreed by the <u>Charity Commission for Northern Ireland</u>.</p> | <p>This is general charity governance commentary and signposting with some non-fundraising related rules included. This has been removed because it falls within the remit of CCNI.</p> |
| 56. | <p>L5.1 Advertisements</p> <p>This section applies to all types of fundraising organisation. <u>The UK Code of Advertising and Sales Promotion and Direct Marketing (The CAP Code)</u> 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).</p> <p><u>The Broadcast Advertising Code (the BCAP Code)</u>, enforced by the <u>Advertising Standards Authority</u>, contains similar requirements for advertisements on radio and television. Compliance with these codes will ensure that advertisements meet the legal requirements set out below.</p> <p>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 <u>Unfair Trading Regulations 2008</u>, the <u>Business Protection from Misleading Marketing Regulations 2008</u> and the <u>Package Travel, Package Holidays and Package Tours Regulations 1992</u></p> | <p>Guidance beyond the remit of the code itself. Rules in the code cover the requirements to adhere to Advertising standards and signpost to the detailed guidance from the ASA.</p> |
| 57. | <p>L6.2.3 b) Permits MUST* be applied for at least one month before the date of the collection.</p> | <p>See rationale for 16.3</p> |
| 58. | <p>L6.2.6 Materials</p> <p>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.</p> <p>b) Every collector MUST* carry a collecting box.</p> | <p>See rationale for 16.3</p> |

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| <p>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.</p> <p>d) Collection boxes MUST* prominently display the name of the charity or fund which is to benefit.</p> | |
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| 59. | <p>L6.2.7 Solicitation Statements</p> <p>The <u>Charities Act 2006</u> introduced an obligation on some people fundraising for charities who, although paid, would not otherwise fall within the definition of a <u>professional fundraiser</u>.</p> <p>These are:</p> <p>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* <u>make a statement</u> which is equivalent to the s.60 Charities Act 1992 statement.</p> <p>b) Paid employees, officers and trustees carrying out a public charitable collection (subject to the same 'lower paid' exception set out above).</p> <p>c) If these individuals make a solicitation for a donation for a particular charity they MUST* <u>make a statement</u> indicating:</p> <ul style="list-style-type: none"> • 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. <p>d) If these individuals make a solicitation for general charitable, benevolent or philanthropic purposes (as opposed to a specific named charity), then they MUST* <u>make a similar statement</u> that they are being paid for those general purposes.</p> | <p>These rules are repeated in the section on Solicitation Statements and those rules have been kept in the Code.</p> |
| 60. | <p>L6.2.8 a) Collectors MUST* only collect at the times and in the areas stipulated in the licence.</p> <p>d) Cash donations MUST* be placed immediately in the collection box.</p> | <p>See rationale for 16.3</p> |
| 61. | <p>L6.2.9 a) Every collector MUST* deliver, unopened, all collecting boxes in his possession to a promoter.</p> | <p>See rationale for 16.3</p> |

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| | <p>c) A record MUST* be kept of the proceeds collected by each collector and details of the collecting materials returned.</p> | |
| 62. | <p>L6.2.9 Proceeds of a Collection</p> <p>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.</p> | <p>This is repeated in Section 20 and that version has been kept in the Code.</p> |
| 63. | <p>L6.2.10 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.</p> | <p>See rationale for 16.3</p> |
| 64. | <p><u>L6.3 Street Collections – Scotland</u></p> <p>L6.3.1 Sources of Law</p> <p>All such street/house to house collections in Scotland are currently governed by <u>section 119 of the Civic Government (Scotland) Act 1982</u> and the <u>Public Charitable Collections (Scotland) Regulations 1984</u>.</p> <p>L6.3.2 Definitions</p> <ul style="list-style-type: none"> • “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 <p>The definition of public place will change in Scotland if and when the Public Benevolent Collections provisions contained in the <u>Charities and Trustee Investment (Scotland) Act 2005</u> are commenced.</p> | <p>See rationale for 16.3</p> |

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| 65. | <p>L6.3.10 Information to be provided after the collection</p> <p>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 spapers circulating in the area for which the collection was licensed. <u>Exempt promoters</u> MUST* publish the summary in a spaper circulating throughout Scotland.</p> <p>b) The receipts and papers relating to the collection MUST* be retained for two years after submission of the accounts.</p> | See rationale for 16.3 |
| 66. | <p>L6.3.3 Permits</p> <p>a) Unless an <u>exempt promoter</u>, a written application MUST* be made at least one month in advance (or within such other period as the local authority may determine).</p> | See rationale for 16.3 |
| 67. | <p>L6.3.4 Age of Collectors</p> <p>The minimum age for a collector taking part in a street collection is 14.</p> | This is repeated in Section 3 and that version has been kept in the Code. |
| 68. | <p>L6.3.5 Exemption Holders</p> <p>a) In Scotland, anyone organising collections over the whole or a substantial part of Scotland may apply to the <u>Office of the Scottish Charity Regulator (OSCR)</u> to be made an Exempt Promoter. There are currently 16 exempt promoters.</p> | See rationale for 16.3 |

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| 69. | <p>L6.3.6 Materials</p> <p>a) Collection envelopes MUST* only be used if the collection is a house to house one.</p> <p>b) Every collector in a licensed collection MUST* be provided with:</p> <ul style="list-style-type: none"> • 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. <p>c) The collector's badge MUST*:</p> <ul style="list-style-type: none"> • 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 <p>d) The collector's certificate of authority MUST* show:</p> <ul style="list-style-type: none"> • 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. <p>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).</p> | <p>See rationale for 16.3</p> |
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| 70. | <p>L6.3.7 Solicitation Statements</p> <p>a) In Scotland, the rules regarding <u>solicitation statements</u> apply to and MUST* be followed by <u>professional fundraisers</u> making solicitations, <u>commercial participators</u> making representations and Benevolent Fundraisers (other than volunteers) carrying out benevolent fundraising.</p> | This rule is covered in the section on Solicitation Statements and that rule has been kept in the Code. |
| 71. | <p>L6.3.8 Conduct of Collections</p> <p>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.</p> <p>b) Fundraisers carrying out licensed collections MUST* have visible ID badges.</p> | See rationale for 16.3 |
| 72. | <p>L6.3.9 Proceeds of Collection</p> <p>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.</p> <p>b) A record MUST* be kept of the proceeds collected by each collector and details of the collecting materials returned.</p> <p>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.</p> <p>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).</p> <p>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.</p> | See rationale for 16.3 |

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| 73. | <p>L6.4.3 Permits</p> <p>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.</p> | See rationale for 16.3 |
| 74. | <p>L6.4.5 Payment of Collectors</p> <p>a) Collectors MUST NOT* be paid.</p> | See rationale for 16.3 |
| 75. | <p>L6.4.6 Materials</p> <p>a) Each collector MUST* have the written authority of the promoter of the collection and produce this authority when requested to do so.</p> <p>b) Every collector MUST* have a collection box.</p> <p>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.</p> <p>d) Collection boxes MUST* prominently display the name of the charity or fund which is to benefit.</p> | See rationale for 16.3 |
| 76. | <p>L6.4.7 Conduct of Collections</p> <p>a) Collectors MUST NOT* cause obstruction, inconvenience or annoyance to any person nor harass or annoy any person.</p> <p>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.</p> <p>c) An animal MUST NOT* accompany collectors (except for a guide dog).</p> <p>d) Donations MUST* be placed immediately in the collection box.</p> | See rationale for 16.3 |

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| 77. | <p>L6.4.8 Proceeds of Collections</p> <p>a) Collection boxes MUST* be returned unopened with the seal intact to a promoter/permit holder.</p> <p>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.</p> <p>c) A record MUST* be kept of the proceeds collected by each collector and details of the collecting materials returned.</p> | See rationale for 16.3 |
| 78. | <p>L6.4.9 Information to Provide to the PSNI</p> <p>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.</p> | See rationale for 16.3 |
| 79. | <p>L6.5.3 Licences</p> <p>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.</p> <p>b) Licences MUST* be applied for at least one month before the date of the collection.</p> <p>c) Licences may be refused or revoked if:</p> <ul style="list-style-type: none"> • 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 <u>section 3 Vagrancy Act 1824</u>. • The applicant/holder of the licence is regarded as not a ‘fit and proper person’ to organise a collection. | See rationale for 16.3 |

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| <ul style="list-style-type: none">• 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. <p>d) Where an application for a licence is refused or revoked the licensing authority MUST* provide written notice explaining the decision.</p> <p>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.</p> | |
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| 80. | <p>L6.5.5 Age of Collectors</p> <p>For house to house collections the minimum age for a collector is 16.</p> | <p>This rule is repeated in Section 20 and that version has been kept.</p> |
| 81. | <p>L6.5.7 Training of Collectors</p> <p>a) The promoter MUST* also ensure that collectors comply with the <u>House to House Collections Regulations (1947)</u>.</p> | <p>This rule is repeated in Section 16 and that version has been kept.</p> |
| 82. | <p>L6.5.8 Payment of collectors</p> <p>1. In England and Wales collectors may be paid to conduct a house to house collection.</p> | <p>This rule is covered in the section on professional fundraisers and that rule has been kept in the Code.</p> |

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| 83. | <p>L6.5.9 Collection Materials</p> <p>a) Every collector MUST* be provided with:</p> <ul style="list-style-type: none"> • 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. <p>b) The collector’s badge MUST*:</p> <ul style="list-style-type: none"> • 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. <p>c) The collector’s certificate of authority MUST* show:</p> <ul style="list-style-type: none"> • 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. <p>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.</p> <p>e) Collection envelopes MUST* only be used by <u>National Exemption Order holders</u> who have obtained the prior permission of the Minister for the Cabinet Office, and there are specific rules governing envelope collections</p> | See rationale for 16.3 |
| 84. | <p>L6.5.9 g) In addition, if the collection is for a registered charity with income over £10,000, all printed materials MUST* <u>state that the charity is registered.</u></p> | This rule is covered in the section on references in documents and that rule has been kept in the Code. |

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| 85. | <p>L6.5.10 Solicitation Statements</p> <p><u>The Charities Act 2006</u> 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:</p> <p>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* <u>make a statement</u> which is equivalent to the s.60 Charities Act 1992 statement.</p> <p>b) Paid employees, officers and trustees carrying out a public charitable collection (subject to the same 'lower paid' exception set out above).</p> <p>c) If these individuals make a solicitation for a donation for a particular charity they MUST* <u>make a statement</u> indicating:</p> <ul style="list-style-type: none"> • 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. <p>d) If these individuals make a solicitation for general charitable, benevolent or philanthropic purposes (as opposed to a specific named charity), then they MUST* <u>make a similar statement</u> that they are being paid for those general purposes.</p> | <p>These rules are covered in the section on Solicitation Statements and those rules have been kept in the Code.</p> |
| 86. | <p>L6.5.12 Handling proceeds of a cash donation</p> <p>a) Where a collection box is used, donations MUST* be placed in that box.</p> <p>b) Where no collection box is used, collectors MUST* record donations immediately in a receipt book and issue a signed receipt to the donor.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.</p> | <p>These rules are repeated in Section 20 and that version has been kept.</p> |

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| 87. | <p>L6.6.10 Information to be provided after the Collection</p> <p>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 <u>exempt promoters</u>, who can submit annual accounts.) The receipts and papers relating to the collection MUST* be retained for two years after submission of the accounts.</p> <p>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.</p> <p>c) A record MUST* be kept of the proceeds collected by each collector and details of the collecting materials returned.</p> <p>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 spapers circulating in the area for which the collection was licensed.</p> <p>e) <u>Exempt promoters</u> MUST* publish this summary in a spaper circulating throughout Scotland.</p> | See rationale for 16.3 |
| 88. | <p>L6.6.3 a) In Scotland, anyone organising collections over the whole or a substantial part of Scotland may apply to the <u>Office of the Scottish Charity Regulator (OSCR)</u> to be made an Exempt Promoter. There are currently 16 exempt promoters.</p> | Commentary not a rule |
| 89. | <p>L6.6.3 b) In Scotland, Exempt Promoters MUST* report annually to OSCR.</p> <p>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.</p> <p>d) They MUST* also publish a notice summarising the audited collection account in a spaper with a national Scottish circulation within one month of submission of their records to the Regulator.</p> | See rationale for 16.3 |

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| 90. | <p>L6.6.4 Permits</p> <p>a) Collections of goods do not require licences.</p> <p>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).</p> | <p>See rationale for 16.3</p> |
| 91. | <p>L6.6.5 Age of Collectors</p> <p>The minimum age for a collector taking part in a house to house collection is 16.</p> | <p>This rule is covered in the section on working with children and that rule has been kept in the Code.</p> |

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| 92. | <p>L6.6.6 Collection Materials</p> <p>a) Charities' materials MUST* include the <u>charity's registered name</u>, 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).</p> <p>b) The issue and return of all materials connected with the collection MUST* be recorded.</p> <p>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;</p> <p>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.</p> <p>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.</p> <p>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.</p> | <p>See rationale for 16.3</p> |
| 93. | <p>L6.6.7 Solicitation Statements</p> <p>a) In Scotland, the rules regarding <u>solicitation statements</u> apply to and MUST* be followed by <u>professional fundraisers</u> making solicitations, <u>commercial participators</u> making representations and Benevolent Fundraisers (other than volunteers) carrying out benevolent fundraising.</p> | <p>This rule is covered in the section on Solicitation Statements and that rule has been kept in the Code.</p> |

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| 94. | 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. | See rationale for 16.3 |
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| 95. | <p>L6.6.8 Conduct of Collection</p> <p>b) A collector MUST* only accept donations which are made in sealed envelopes.</p> | <p>This is repeated in the same set of rules under part c) in this section.</p> |
| 96. | <p>L6.6.9 Proceeds of Collections</p> <p>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.</p> <p>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.</p> <p>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).</p> <p>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).</p> <p>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.</p> | <p>See rationale for 16.3</p> |

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| 97. | 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. 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. | See rationale for 16.3 |
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| 98. | <p>L6.7 House to House Collections – Northern Ireland</p> <p>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 <u>Police Service for Northern Ireland (“PSNI”)</u>. Applications should be made to <u>Charities Branch of the Department for Social Development</u>.</p> <p>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.</p> <p>b) <u>Exemption Order holders in Northern Ireland</u> 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.</p> <p>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.</p> <p>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.</p> <p>e) Promoters are required to ensure that collectors are ‘fit and proper’ persons and that they receive a certificate of authority and badge.</p> <p>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.</p> <p>g) Badges MUST*:</p> <ul style="list-style-type: none"> • 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. | See rationale for 16.3 |
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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.

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| 99. | 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. | This is guidance. The few rules that did sit within this text appear in the Code from repetitions in other sections |
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| 100. | <p>L7.3 Requirements in England and Wales</p> <p>L7.3.1 Charity Commission</p> <p>If the trustees are concerned about whether or not to refuse a particular donation, they may wish to seek the views of the <u>Charity Commission</u> under <u>section 110 Charities Act 2011</u> (power to give advice) or an order from the Charity Commission sanctioning their decision under <u>section 105 Charities Act 2011</u> (power to authorise dealings with charity property etc.).</p> <p>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.</p> <p>See also the section on ex gratia payments below.</p> <p>L7.3.2 A legal obligation to return a donation</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>If the donor is, strictly, entitled to a refund, the provisions of the <u>Charities Act 2011</u> may help. <u>Section 65 Charities Act 2011</u> 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</p> | <p>This is mostly guidance. The few rules that did sit within this text appear in the Code from repetitions in other sections.</p> |
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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.

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.

L7.4 Requirements in Scotland

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.

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 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 negates 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 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

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| 101. | <p>L7.3.1 Charity Commission</p> <p>If the trustees are concerned about whether or not to refuse a particular donation, they may wish to seek the views of the <u>Charity Commission</u> under <u>section 110 Charities Act 2011</u> (power to give advice) or an order from the Charity Commission sanctioning their decision under <u>section 105 Charities Act 2011</u> (power to authorise dealings with charity property etc.).</p> <p>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.</p> <p>See also the section on ex gratia payments below.</p> | <p>This is guidance/commentary which is not required within the Code.</p> |
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| 102. | <p>L7.3.2 A legal obligation to return a donation</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>If the donor is, strictly, entitled to a refund, the provisions of the <u>Charities Act 2011</u> may help. <u>Section 65 Charities Act 2011</u> 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 <u>section 63 Charities Act 2011</u> to apply the donated funds for different charitable purposes.</p> <p>More information is available in Charity Commission operational guidance <u>OG53: Charitable Appeals – Avoiding and Dealing with Failure</u>. 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.</p> <p>If <u>section 65</u> 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. <u>Section 63</u> 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 <u>section 64</u> certain donations can be treated as belonging to donors who cannot be identified, including cash in collecting boxes and funds which the Charity</p> | <p>This is guidance/commentary which is not required within the Code.</p> |
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| | <p>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.</p> <p>There may also be scope to take advantage of the Commission's general scheme making powers in the event of a failed charitable gift.</p> <p>Another example of where there may be a legal obligation to return a donation is under <u>Section 61, Charities Act 1992, Part II</u>, 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 <u>professional fundraiser</u> or <u>commercial participator</u> 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. <u>Section 61 of the Charities Act 1992</u> was updated in 1999 to set the applicable threshold for return of donations to £100 from £50.</p> | |
| 103. | <p>L7.3.3 A moral obligation to return a donation – ex gratia payment</p> <p>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.</p> <p>There is scope for the Charity Commission, using its powers under <u>section 106 Charities Act 2011</u>, to authorise a charity to refund a donation in these circumstances. More information is available in the Charity Commission's guidance <u>CC7 – Ex Gratia Payments by Charities</u> and in the Charity Commission's operational guidance <u>OG 539 Ex Gratia Payments by Charities</u>.</p> | This is guidance/commentary which is not required within the Code. |
| 104. | <p>L7.4 Requirements in Scotland</p> <p>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.</p> | This is mostly guidance or commentary. The rule at the beginning of this text is removed as per the rationale for removing 1.3.2 |

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.

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.

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| 105. | <p>L7.4 Requirements in Scotland</p> <p>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 <u>OSCR</u> 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.</p> <p>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.</p> <p>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.</p> <p>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.</p> | <p>This is guidance/commentary which is not required within the Code.</p> |
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| 106. | <p>L7.5 Northern Ireland Requirements</p> <p>The Northern Ireland position is similar to England and Wales. Under the <u>Charities Act (Northern Ireland) 2008</u> a charity may in respect of donations, seek the advice of the <u>Charity Commission for Northern Ireland under Section 46</u>. 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.</p> <p>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.</p> <p><u>Under Section 47 of the Charities Act (Northern Ireland) 2008</u> the Commission also has the power to authorise ex-gratia payments. This is where there is a large sum of money 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.</p> <p>Also, <u>under Section 49</u> 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.</p> <ul style="list-style-type: none"> • Further Guidance can be found in the Institute of Fundraising's Acceptance, refusal and return: A practical guide to dealing with donations | This is guidance/commentary which is not required within the Code. |
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| 107. | <p>L8.4.1 Written Agreements</p> <p>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:</p> <p>The names and addresses of all the parties to the agreement;</p> <p>The date on which each party signed and the duration of the agreement;</p> <ul style="list-style-type: none"> • 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. | <p>This rule is repeated elsewhere in the Code and remains in the version.</p> |
| 108. | <p>L11.2 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.</p> | <p>This rule is not relevant to fundraising and falls within the regulation of the Charity Commission.</p> |

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| 109. | <p>L11.2 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.</p> | There is no rule contained within this so it has been removed. |
| 110. | <p>L12.5 Northern Ireland Requirements</p> <ul style="list-style-type: none"> • The <u>Charities Act (Northern Ireland) 2008</u> will require all organisations which operate under one of the recognised charitable purposes, to register with the <u>Charity Commission for Northern Ireland</u>. • 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 | This section is not relevant to references in documents. This section is relevant to charity registration in Northern Ireland and is covered elsewhere in the Code. |
| 111. | <p>L13.3 Definitions and Key Requirements</p> <p>b) Organisations that promote a <u>small society lottery</u> MUST* register with their <u>local authority</u> and follow criteria as laid down by the Act, the local authority and the <u>Gambling Commission</u> unless the lottery is exempt from the requirement to register.</p> <p>c) Organisations that promote a <u>large society</u> 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.</p> | These rules repeat in detail regulations on lotteries primarily enforced by individual local authorities, the Gambling Commission (England, Wales and Scotland) and PSNI (Northern Ireland). Except for generally applicable rules and existing professional standards, we propose to replace this detail with guidance on the various types of lotteries defined in law, and links to guidance from the relevant authorities. |

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| 112. | 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 <u>incidental lotteries</u> from the Gambling Commission | See rationale for L13.3 |
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| 113. | <p>L13.3.3 Private Lotteries</p> <p>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</p> <p>For all private lotteries:</p> <ul style="list-style-type: none"> 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. <p>Residents’ lotteries</p> <ul style="list-style-type: none"> 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). <p>Work lotteries</p> <ul style="list-style-type: none"> 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). <p>Private society lotteries</p> | <p>See rationale for L13.3</p> |
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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.

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| 114. | <p>L13.3.3 Private Lotteries</p> <p>Customer lotteries</p> <p>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.</p> | Customer lotteries cannot be used for fundraising so this rule is not required in the Code. |
| 115. | <p>L13.3.4 Society Lotteries</p> <p>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.</p> | See rationale for L13.3 |
| 116. | <p>L13.4.1 Small Society Lotteries</p> <p>a) The society MUST* register with the <u>local authority</u> of the area in which it is based before it can run any <u>small society lotteries</u>.</p> | See rationale for L13.3 |

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| 117. | <p>L13.4.2 Large Society Lotteries</p> <p>a) A large society lottery MUST* be run under a licence from the <u>Gambling Commission</u>.</p> <p>There are two types of licence:</p> <ul style="list-style-type: none"> • an <u>operating licence</u>, 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 <u>personal management licence</u> 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. <p>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 <u>Disclosure and Barring Service</u> form (in England and Wales), <u>Disclosure Scotland</u> form (if in Scotland) or <u>Access NI</u> form (if in Northern Ireland).</p> <p>c) Every society that proposes running a <u>large society lottery</u> 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).</p> | <p>See rationale for L13.3</p> |
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| 118. | <p>L13.6 Tickets</p> <p>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</p> <p>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):</p> <ul style="list-style-type: none"> • 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). • b) This document MUST* contain the following details: <ul style="list-style-type: none"> ○ 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. | <p>See rationale for L13.3</p> |
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| | For more information see information from the Gambling Commission on Society Lotteries . | |
| 119. | <p>L13.7 Prizes</p> <p>a) In small society lotteries, the value of the top prize for each lottery MUST NOT* be more than £25,000.</p> <p>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.</p> <p>c) Rollover lotteries are allowed but the lottery MUST NOT* breach relevant maximum prize allowances.</p> <p>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).</p> | See rationale for L13.3 |
| 120. | <p>L13.8 Proceeds</p> <p>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.</p> <p>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.</p> <p>c) In both cases, at least 20% of lottery proceeds MUST* go to a purpose of the society.</p> | See rationale for L13.3 |
| 121. | <p>L13.11.1 General Requirements</p> <p>a) All records MUST* be kept for at least three years for each lottery.</p> | See rationale for L13.3 |

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| 122. | 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: <ul style="list-style-type: none">• 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. | See rationale for L13.3 |
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| 123. | <p>L13.11.3 Large society lotteries</p> <p>a) The requirements are contained in the licences issued by the <u>Gambling Commission</u> and organisations MUST* fulfil these obligations, which will include:</p> <ul style="list-style-type: none"> • to keep accurate records of each lottery they run, showing: <ul style="list-style-type: none"> ○ 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 • to keep accounting records of each lottery for at least three years following the draw. <p>c) Licence holders MUST* comply with the Gambling Commission's codes of practice referred to above.</p> | See rationale for L13.3 |
| 124. | <p>L13.12 Running a Lottery through a Trading Subsidiary</p> <p>Organisations can run a lottery through a trading subsidiary but they MUST* still apply for a licence from the relevant licencing Authority. The <u>Gambling Commission</u> will grant permission as long as they meet certain conditions.</p> | See rationale for L13.3 |

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| 125. | <p>L13.13 Using and External Lottery Manager</p> <p>External lottery managers are individuals or organisations who have been licensed by the Gambling Commission to promote lotteries on behalf of other societies.</p> <p>a) Societies using external lottery managers MUST* still obtain an operating licence and, unless they are exempt, may need a personal management licence.</p> | See rationale for L13.3 |
| 126. | <p>L13.16 Raffles in Northern Ireland</p> <p>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.</p> | See rationale for L13.3 |
| 127. | <p>L13.16.1 Small Lotteries at Exempt Entertainments</p> <p>a) The lottery MUST* take place during an entertainment event.</p> <p>b) Lotteries under this heading MUST* meet the following criteria:</p> <ul style="list-style-type: none"> • 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. | See rationale for L13.3 |

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| 128. | <p>L13.16.1 Private Lotteries</p> <p>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.</p> <p>a) A private lottery in Northern Ireland MUST NOT* realise more than £1,000 on the sale of tickets.</p> <p>b) All proceeds, after printing and stationery expenses, MUST* be devoted to prizes or the purposes of the society, or both.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>g) A society wishing to operate a private lottery MUST* also adhere to the rules relating to advertisement of the lottery.</p> <p>h) Societies MUST NOT* advertise the lottery by any other means than a notice on their premises.</p> | <p>See rationale for L13.3</p> |
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| 129. | <p>L13.16.2 Society Lotteries</p> <p>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.</p> <p>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.</p> <p>b) To maintain its registration a society MUST* send a real 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.</p> <p>c) A society lottery in Northern Ireland MUST* be promoted in Northern Ireland by a society member who has been duly authorised in writing.</p> <p>d) If lottery managers/consultants are used, a lottery certificate MUST* first be obtained from the magistrate's court.</p> <p>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.</p> <p>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.</p> <p>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.</p> | <p>See rationale for L13.3</p> |
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- 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.
- 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:
- 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](#).

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| 130. | <p>L14.0 Data Protection</p> <p>Data Protection is a legal requirement for all fundraising organisations and impacts on all data processing activities including:</p> <ul style="list-style-type: none"> • 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 <p>The Information Commissioner's Office (ICO) provides further information and guidance on data protection</p> <p>Organisations need to adhere with the requirements of:</p> <ul style="list-style-type: none"> • General Data Protection Regulations 2018 • Data Protection Act 2018 • Privacy and Electronic Communications (EC Directive) Regulations 2003 <p>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.</p> <ul style="list-style-type: none"> • 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. | <p>Following amendments to the Code made as a result of GDPR, we placed this text as a placeholder knowing that this review would be taking place in the near future. Relevant information now appears in the Code in Section 1. c Processing data.</p> |
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