

Referendums (Scotland) Bill

[AS INTRODUCED]

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**THE FOLLOWING ACCOMPANYING DOCUMENTS ARE ALSO PUBLISHED:
Explanatory Notes (SP Bill 46-EN), a Financial Memorandum (SP Bill 46-FM), a Policy
Memorandum (SP Bill 46-PM) and statements on legislative competence (SP Bill 46-LC).**

Referendums (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the holding of referendums throughout Scotland; to make provision about such referendums and other referendums held under Acts of the Scottish Parliament.

Referendums

- 5 **1 Power to provide for referendums**
- (1) The Scottish Ministers may by regulations provide for a referendum to be held throughout Scotland on one or more questions.
- (2) The regulations must specify—
- 10 (a) the date on which the poll at the referendum is to be held,
- (b) the form of the ballot paper to be used in the referendum (including the wording of the question or questions and the possible answers to it or them),
- (c) the referendum period.
- (3) Regulations under subsection (1) are subject to the affirmative procedure.
- (4) The Scottish Ministers must consult the Electoral Commission before laying a draft
15 Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament for approval.
- (5) In this Act, “question” includes proposition (and “answer” accordingly includes response).
- (6) References in this Act to “the referendum” are to any referendum to be held in
20 pursuance of regulations made under subsection (1).
- 2 Application of this Act**
- (1) This Act applies to any referendum to be held in pursuance of regulations made under section 1(1) subject to such modifications (if any) as may be specified in regulations made by the Scottish Ministers.
- 25 (2) Regulations under subsection (1) are subject to the affirmative procedure.
- (3) Regulations under subsection (1) may—
- (a) include incidental, supplementary, consequential, transitional, transitory or saving provision,

- (b) modify any enactment.
- (4) The Scottish Ministers must consult the Electoral Commission before laying a draft Scottish statutory instrument containing regulations under subsection (1) before the Scottish Parliament for approval.

3 Referendum questions

- (1) Subsections (2) and (3) apply where—
 - (a) provision is made by or under an Act of the Scottish Parliament (including this Act) for the holding of a referendum throughout Scotland, and
 - (b) the wording of any question in the referendum is to be specified in subordinate legislation.
- (2) If the subordinate legislation is subject to the affirmative procedure, the Scottish Ministers must—
 - (a) consult the Electoral Commission on the wording of the question before a draft of any instrument containing the subordinate legislation is laid before the Scottish Parliament, and
 - (b) at the time when any such draft is so laid, lay before the Parliament a report stating any views as to the intelligibility of the question which the Commission have expressed in response to the consultation.
- (3) If the subordinate legislation is subject to the negative procedure, the Scottish Ministers must—
 - (a) consult the Electoral Commission on the wording of the question before making the subordinate legislation, and
 - (b) at the time when the instrument containing the subordinate legislation is laid before the Scottish Parliament, lay before the Parliament a report stating any views as to the intelligibility of the question which the Commission have expressed in response to the consultation.
- (4) Subsection (5) applies where a Bill is introduced to the Scottish Parliament which—
 - (a) provides for the holding of a referendum throughout Scotland, and
 - (b) specifies the wording of the question.
- (5) The Electoral Commission must—
 - (a) consider the wording of the question, and
 - (b) publish a statement of any views of the Commission as to the intelligibility of the question—
 - (i) as soon as reasonably practicable after the Bill is introduced, and
 - (ii) in such manner as they may determine.
- (6) Where the Bill or subordinate legislation specifies not only the question but also any statement which is to precede the question on the ballot paper at the referendum, any reference in subsection (2), (3) or, as the case may be, (5) to the question is to be read as a reference to the question and the statement taken together.

- (7) This section does not apply in relation to a question or statement if the Electoral Commission have—
- (a) previously published a report setting out their views as to the intelligibility of the question or statement, or
 - (b) recommended the wording of the question or statement.

Franchise

4 Those who are entitled to vote

A person is entitled to vote in the referendum if, on the date on which the poll at the referendum is held, the person is—

- (a) aged 16 or over,
- (b) registered in the register of local government electors maintained under section 9(1)(b) of the Representation of the People Act 1983 for any area in Scotland,
- (c) not subject to any legal incapacity to vote (age apart) (see section 5), and
- (d) a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the European Union.

5 Those who are subject to a legal incapacity to vote

For the purposes of this Act, a person is, on any date, subject to a legal incapacity to vote if the person would be legally incapable (whether by virtue of any enactment or any rule of law) of voting at a local government election in Scotland held on that date.

Voting etc.

6 Provision about voting etc.

Schedule 1 makes provision about voting in the referendum, including—

- (a) provision about the manner of voting (including provision for absent voting),
- (b) provision about registration,
- (c) provision about postal voting, and
- (d) provision about the supply of certain documents.

Conduct

7 Chief Counting Officer

- (1) The Scottish Ministers must, in writing, appoint a Chief Counting Officer for the referendum.
- (2) The Chief Counting Officer is to be the person who, immediately before the coming into force of the regulations under section 1(1) providing for the holding of the referendum, is the person appointed as the convener of the Electoral Management Board for Scotland by virtue of section 2 of the Local Electoral Administration (Scotland) Act 2011.
- (3) But subsection (2) does not apply if—
 - (a) there is no person appointed as convener at that time,

- (b) that person is unable or unwilling to be appointed as the Chief Counting Officer,
- (c) that person has been removed from office as the Chief Counting Officer under subsection (5),

(in which case the Scottish Ministers must appoint such person as they consider appropriate).

(4) The Chief Counting Officer may resign by giving notice in writing to the Scottish Ministers.

(5) The Scottish Ministers may, by notice in writing, remove the Chief Counting Officer from office if—

(a) where subsection (2) applies, the Chief Counting Officer ceases to be the convener of the Electoral Management Board for Scotland,

(b) the Chief Counting Officer is convicted of any offence, or

(c) they are satisfied that the Chief Counting Officer is unable to perform the Chief Counting Officer's functions by reason of any physical or mental illness or disability.

(6) If the Chief Counting Officer dies, resigns or is removed from office, the Scottish Ministers must appoint another person to be the Chief Counting Officer.

(7) The Chief Counting Officer may, in writing, appoint deputies to carry out some or all of the officer's functions and, so far as necessary for the purposes of carrying out those functions, any reference in this Act to the Chief Counting Officer is to be read as including a deputy.

(8) A person may be appointed to be—

(a) the Chief Counting Officer,

(b) a deputy of the Chief Counting Officer,

only if the person is or has been a returning officer appointed under section 41(1) of the 1983 Act.

8 Other counting officers

(1) The Chief Counting Officer must, in writing, appoint a counting officer for each local government area.

(2) The Chief Counting Officer must notify the Scottish Ministers of each appointment made under subsection (1).

(3) A counting officer may resign by giving notice in writing to the Chief Counting Officer.

(4) The Chief Counting Officer may, by notice in writing, remove a counting officer from office if—

(a) the Chief Counting Officer is satisfied that the counting officer is for any reason unable to perform the counting officer's functions, or

(b) the counting officer fails to comply with a direction given or requirement imposed by the Chief Counting Officer.

(5) If the counting officer for an area dies, resigns or is removed from office, the Chief Counting Officer must appoint another person to be the counting officer for the area.

- (6) A counting officer may, in writing, appoint deputies to carry out some or all of the officer's functions and, so far as necessary for the purposes of carrying out those functions, any reference in this Act to a counting officer is to be read as including a deputy.

9 Functions of the Chief Counting Officer and other counting officers

- (1) The Chief Counting Officer is responsible for ensuring the proper and effective conduct of the referendum, including the conduct of the poll and the counting of votes, in accordance with this Act.

- (2) Each counting officer must—

(a) conduct the poll and the counting of votes cast in the local government area for which the officer is appointed in accordance with this Act, and

(b) certify—

(i) the number of ballot papers counted by the officer,

(ii) the number of votes cast in the area in favour of each answer to the referendum question, and

(iii) the number of rejected ballot papers.

- (3) A counting officer—

(a) must consult the Chief Counting Officer before making a certification under subsection (2)(b), and

(b) must not make the certification or any public announcement of the result of the count until authorised to do so by the Chief Counting Officer.

- (4) The Chief Counting Officer must, for the whole of Scotland, certify—

(a) the total number of ballot papers counted,

(b) the total number of votes cast in favour of each answer to the referendum question, and

(c) the total number of rejected ballot papers.

- (5) A counting officer must give the Chief Counting Officer any information which the Chief Counting Officer requires for the carrying out of the Chief Counting Officer's functions.

- (6) A counting officer must carry out the counting officer's functions under this Act in accordance with any directions given by the Chief Counting Officer.

- (7) The Chief Counting Officer must not impose a requirement or give a direction that is inconsistent with this Act.

- (8) The Chief Counting Officer may—

(a) appoint such staff,

(b) require a council to provide, or ensure the provision of, such property, staff and services,

as may be required by the Chief Counting Officer for the carrying out of the Chief Counting Officer's functions.

- (9) The council for the local government area for which a counting officer is appointed must provide, or ensure the provision of, such property, staff and services as may be required by the counting officer for the carrying out of the counting officer's functions.

10 Correction of procedural errors

- (1) The Chief Counting Officer or a counting officer may take such steps as the officer thinks appropriate to remedy any act or omission on the officer's part, on the part of a deputy of the officer, or on the part of a relevant person, which—

(a) arises in connection with any function the Chief Counting Officer, counting officer or relevant person (as the case may be) has in relation to the referendum, and

(b) is not in accordance with the requirements of this Act relating to the conduct of the referendum.

- (2) But the Chief Counting Officer or a counting officer may not under subsection (1) recount the votes cast in the referendum after the result has been declared.

- (3) For the purposes of subsection (1), each of the following is a relevant person—

(a) in relation to the Chief Counting Officer, a counting officer or a deputy of a counting officer,

(b) a registration officer,

(c) a presiding officer,

(d) a person providing goods or services to the counting officer,

(e) a deputy of any registration officer or presiding officer,

(f) a person appointed to assist or, in the course of the person's employment, assisting any person mentioned in paragraphs (b) to (d) in connection with any function that person has in relation to the referendum.

- (4) The Chief Counting Officer or a counting officer does not commit an offence under paragraph 5 of schedule 6 by virtue of an act or omission in breach of the officer's official duty if the officer remedies that act or omission in full by taking steps under subsection (1).

- (5) Subsection (4) does not affect any conviction, or any penalty imposed, before the date on which the act or omission is remedied in full.

11 Expenses of counting officers

- (1) The Chief Counting Officer is entitled to recover from the Scottish Ministers charges for, and any expenses incurred in connection with, the exercise by the Chief Counting Officer of functions under this Act.

- (2) A counting officer is entitled to recover from the Scottish Ministers charges for, and any expenses incurred in connection with, the exercise by the counting officer of functions under this Act.

- (3) The amount of charges and expenses recoverable under this section is not to exceed such maximum amount as is specified in, or determined under, regulations made by the Scottish Ministers.

- (4) However the Scottish Ministers may pay an amount of charges or expenses that exceeds that maximum amount if they consider—
- (a) that it was reasonable for the Chief Counting Officer or, as the case may be, the counting officer, to incur the charges or expenses, and
 - (b) that the amount of the charges or expenses is reasonable.
- (5) Regulations under subsection (3) may include provision for the submission by the Chief Counting Officer and counting officers to the Scottish Ministers of accounts of charges and expenses before payments are made by the Scottish Ministers, including provision about—
- (a) the time by which accounts are to be submitted,
 - (b) the form and manner in which they are to be submitted.
- (6) Regulations under subsection (3)—
- (a) may make different provision for different functions, cases or areas,
 - (b) may include incidental and supplementary provision.
- (7) If the Chief Counting Officer or a counting officer requests from the Scottish Ministers an advance on account of any charges or expenses recoverable by the officer from the Scottish Ministers under this section, the Scottish Ministers may make such advance on such terms as they think fit.

12 Conduct rules

Schedule 2 makes provision about the conduct of the referendum.

Campaign

13 Campaign rules

Schedule 3 makes provision about the conduct of campaigning in the referendum, including provision—

- (a) limiting the amount of expenses that can be incurred by those campaigning in the referendum,
- (b) restricting the publication of certain material,
- (c) controlling donations, and the provision of loans and credit, to those campaigning in the referendum.

14 Monitoring and securing compliance with the campaign rules

- (1) The Electoral Commission must—
- (a) monitor compliance with the restrictions and other requirements imposed by schedule 3, and
 - (b) take such steps as they consider appropriate with a view to securing compliance with those restrictions and requirements.

- (2) The Electoral Commission may prepare and publish guidance setting out, in relation to any restriction or requirement imposed by schedule 3, their opinion on any of the following matters—
- (a) what it is necessary, or is sufficient, to do (or avoid doing) in order to comply with the restriction or requirement,
- (b) what it is desirable to do (or avoid doing) in view of the purpose of the restriction or requirement.
- (3) Subsection (2) does not affect the generality of section 26(4).
- (4) Schedule 4 makes provision about the investigatory powers of the Electoral Commission for the purpose of subsection (1).
- (5) Schedule 5 makes provision for civil sanctions in relation to—
- (a) the commission of campaign offences,
- (b) the failure to comply with certain requirements imposed by schedule 3.
- (6) In this section, “restriction” includes a prohibition.

15 Inspection of Electoral Commission’s registers etc.

- (1) This section applies to any register kept by the Electoral Commission under paragraph 6 of schedule 3.
- (2) The Commission must make a copy of the register available for public inspection during ordinary office hours, either at the Commission’s offices or at some convenient place appointed by them.
- (3) The Commission may make other arrangements for members of the public to have access to the contents of the register.
- (4) If requested to do so by any person, the Commission must supply the person with a copy of the register or any part of it.
- (5) The Commission may charge such reasonable fee as they may determine in respect of—
- (a) any inspection or access allowed under subsection (2) or (3), or
- (b) any copy supplied under subsection (4).
- (6) Subsections (2) to (5) apply in relation to any document a copy of which the Commission are for the time being required to make available for public inspection by virtue of paragraph 26, 45 or 63 of schedule 3 as they apply in relation to any register falling within subsection (1).
- (7) Where any register falling within subsection (1) or any document falling within subsection (6) is held by the Commission in electronic form, any copy—
- (a) made available for public inspection under subsection (2), or
- (b) supplied under subsection (4),
- must be made available, or (as the case may be) supplied, in a legible form.

16 Campaign rules: general offences

- (1) A person commits an offence if—
- (a) the person—
 - (i) alters, suppresses, conceals or destroys any document to which this subsection applies, or
 - (ii) causes or permits the alteration, suppression, concealment or destruction of any such document, and
 - (b) the person does so with the intention of falsifying the document or enabling any person to evade any of the provisions of schedules 3 to 5.
- (2) Subsection (1) applies to any book, record or other document which is or is liable to be required to be produced for inspection under paragraph 1 or 3 of schedule 4.
- (3) Subsection (4) applies where the relevant person in the case of a supervised organisation, or a person acting on behalf of the relevant person, requests a person holding an office in any such organisation (“the office-holder”) to supply the relevant person with any information which the relevant person reasonably requires for the purposes of any of the provisions of schedules 3 to 5.
- (4) The office-holder commits an offence if—
- (a) without reasonable excuse, the office-holder fails to supply the relevant person with that information as soon as practicable, or
 - (b) in purporting to comply with the request, the office-holder knowingly supplies the relevant person with any information which is false in a material particular.
- (5) A person commits an offence if, with intent to deceive, the person withholds—
- (a) from the relevant person in the case of a supervised organisation, or
 - (b) from a supervised individual,
- any information required by the relevant person or that individual for the purposes of any of the provisions of schedules 3 to 5.
- (6) In subsections (1) to (5) any reference to a supervised organisation or individual includes a reference to a former supervised organisation or individual.
- (7) A person who commits an offence under subsection (1), (4)(b) or (5) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
- (8) A person who commits an offence under subsection (4)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (9) In this section—
- “supervised individual” means an individual who is a permitted participant,
 - “supervised organisation” means a permitted participant other than an individual,
 - “relevant person” means a person who is (or has been), in relation to a permitted participant, the responsible person for the purposes of this Act.

17 Campaign offences: summary proceedings

- (1) Summary proceedings for a campaign offence may, without prejudice to any jurisdiction exercisable apart from this subsection, be taken—
- (a) against any body, including an unincorporated association, at any place at which it has a place of business, and
 - (b) against an individual at any place at which the individual is for the time being.
- (2) Despite anything in section 136 of the Criminal Procedure (Scotland) Act 1995 (time limit for certain offences), summary proceedings for a campaign offence may be commenced within the period of 6 months after the relevant date but no later than 3 years after the date of commission of the offence; and subsection (3) of that section applies for the purposes of this subsection as it applies for the purposes of that section.
- (3) In this section “the relevant date” means the date on which evidence sufficient in the opinion of the prosecutor to justify proceedings comes to the prosecutor’s knowledge.
- (4) For the purposes of subsection (3) a certificate of any prosecutor as to the date on which such evidence as is there mentioned came to the prosecutor’s knowledge is conclusive evidence of that fact.

18 Duty of court to report convictions to the Electoral Commission

The court by or before which a person is convicted of a campaign offence must notify the Electoral Commission of the conviction as soon as practicable.

*Referendum agents***19 Referendum agents**

- (1) A permitted participant may, for any local government area, appoint an individual (who may be the responsible person) to be the permitted participant’s agent (“referendum agent”).
- (2) If a permitted participant appoints a referendum agent for a local government area, the responsible person must give the counting officer for that area notification of the name and address of—
- (a) the permitted participant, and
 - (b) the referendum agent.
- (3) The notification must be—
- (a) in writing,
 - (b) signed by the responsible person, and
 - (c) given before noon on the twenty-fifth day before the date of the referendum.
- (4) For the purpose of subsection (3)(c), the following days are to be disregarded—
- (a) a Saturday or Sunday,
 - (b) Christmas Eve or Christmas Day,
 - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
 - (d) a day appointed for public thanksgiving or mourning.

- (5) The duties imposed on a responsible person by this section may be discharged by any person authorised in writing by the responsible person.
- (6) A counting officer who receives a notification under subsection (2) must, as soon as practicable, publish notice of—
- 5 (a) the name of the permitted participant, and
- (b) the name and address of the referendum agent.
- (7) If—
- (a) a permitted participant revokes the appointment of a referendum agent or a referendum agent dies, and
- 10 (b) the permitted participant has notified the counting officer of the appointment of a polling or counting agent under rule 14 of the conduct rules,
- the permitted participant must, as soon as practicable, appoint another referendum agent under subsection (1).
- (8) Where subsection (7) applies, the notification under subsection (2) must be made as soon as practicable after the appointment of the new referendum agent (and subsection (3)(c) does not apply to that notification).
- 15

Observers

20 Attendance of Electoral Commission at proceedings and observation of working practices

- 20 (1) A representative of the Electoral Commission may attend proceedings relating to the referendum that are the responsibility of—
- (a) the Chief Counting Officer, or
- (b) a counting officer.
- (2) The right conferred by subsection (1) is subject to any other provision of this Act which regulates attendance at the proceedings in question.
- 25 (3) A representative of the Electoral Commission may observe the working practices of each of the following in carrying out functions under this Act—
- (a) a registration officer,
- (b) the Chief Counting Officer,
- 30 (c) a counting officer,
- (d) any person acting under the direction of a person mentioned in paragraphs (a) to (c).
- (4) In this section, “representative of the Electoral Commission” means any of the following—
- 35 (a) a member of the Electoral Commission,
- (b) a member of staff of the Electoral Commission,
- (c) a person appointed by the Electoral Commission for the purposes of this section.

21 Accredited observers: individuals

- (1) A person who is aged 16 or over may apply to the Electoral Commission to be an accredited observer at any of the following proceedings relating to the referendum—
- (a) proceedings at the issue or receipt of postal ballot papers,
 - (b) proceedings at the poll,
 - (c) proceedings at the counting of votes.
- (2) If the Commission grant the application, the accredited observer may attend the proceedings in question.
- (3) An application under subsection (1) must be made in the manner specified by the Commission.
- (4) The Commission may at any time revoke the grant of an application under subsection (1).
- (5) If the Commission—
- (a) refuse an application under subsection (1), or
 - (b) revoke the grant of any such application,
- they must give their decision in writing and must, when doing so, give reasons for the refusal or revocation.
- (6) The right conferred on an accredited observer by this section is subject to any provision of this Act which regulates attendance at the proceedings in question.

22 Accredited observers: organisations

- (1) An organisation may apply to the Electoral Commission to be accredited for the purpose of nominating observers at any of the following proceedings relating to the referendum—
- (a) proceedings at the issue or receipt of postal ballot papers,
 - (b) proceedings at the poll,
 - (c) proceedings at the counting of votes.
- (2) If the Commission grant the application the organisation may nominate members who may attend the proceedings in question.
- (3) The Commission, in granting the application, may specify a limit on the number of observers nominated by the organisation who may attend, at the same time, specified proceedings by virtue of this section.
- (4) An application under subsection (1) must be made in the manner specified by the Commission.
- (5) The Commission may at any time revoke the grant of an application under subsection (1).
- (6) If the Commission—
- (a) refuse an application under subsection (1), or
 - (b) revoke the grant of any such application,
- they must give their decision in writing and must, when doing so, give reasons for the refusal or revocation.

- (7) The right conferred by this section is subject to any provision of this Act which regulates attendance at the proceedings in question.

23 Attendance and conduct of accredited observers

- 5 (1) A relevant officer may limit the number of persons who may be present at any proceedings at the same time by virtue of section 21 or 22.
- (2) If a person who is entitled to attend any proceedings by virtue of section 21 or 22 commits misconduct while attending the proceedings, the relevant officer may cancel the person's entitlement.
- 10 (3) Subsection (2) does not affect any power that a relevant officer has by virtue of any enactment or rule of law to remove a person from any place.
- (4) A relevant officer is—
- (a) in the case of proceedings at a polling station, the presiding officer,
 - (b) in the case of any other proceedings at the referendum, the Chief Counting Officer or a counting officer,
 - 15 (c) any other person authorised by a person mentioned in paragraph (a) or (b) for the purposes of the proceedings mentioned in that paragraph.

24 Code of practice on attendance of observers

- (1) The Electoral Commission must prepare a code of practice on the attendance of—
- 20 (a) representatives of the Commission,
 - (b) accredited observers, and
 - (c) nominated members of accredited organisations,
- at proceedings relating to the referendum.
- (2) The code must in particular—
- 25 (a) specify the manner in which applications under section 21(1) or 22(1) are to be made to the Commission,
 - (b) specify the criteria that the Commission will take into account in determining such applications,
 - (c) give guidance to relevant officers as to the exercise of the powers conferred by section 23(1) and (2),
 - 30 (d) give guidance to such officers as to the exercise, in relation to a person entitled to attend any proceedings by virtue of section 21 or 22, of any other power under this Act to control the number of persons present at any proceedings relating to the referendum,
 - 35 (e) give guidance to representatives of the Commission, accredited observers and nominated members of accredited organisations as to the exercise of the rights conferred by sections 20, 21 and 22.
- (3) The code may make different provision for different purposes.
- (4) The Commission must consult the Scottish Ministers before preparing the code.
- (5) The Commission must lay the code before the Scottish Parliament.

- (6) The Commission must publish the code in such manner as they may determine.
- (7) The following persons must have regard to the code in exercising any function or right conferred by section 20, 21, 22 or 23—
- (a) the Commission,
 - (b) representatives of the Commission,
 - (c) relevant officers.
- (8) The Commission may at any time revise the code.
- (9) Subsections (4) to (7) apply to a revision of the code as they apply to the code.
- (10) In this section—

“accredited observer” is to be construed in accordance with section 21,
 “accredited organisation” is to be construed in accordance with section 22, and
 “nominated member” is to be construed accordingly,
 “relevant officer” has the meaning given in section 23(4),
 “representative of the Commission” means a representative of the Electoral
 Commission within the meaning of section 20(4).

Information, guidance, advice and encouragement

25 Information for voters

The Electoral Commission must take such steps as they consider appropriate to promote public awareness and understanding in Scotland about—

- (a) the referendum,
- (b) the referendum question, and
- (c) voting in the referendum.

26 Guidance

- (1) The Electoral Commission may issue guidance to the Chief Counting Officer about the exercise of the Chief Counting Officer’s functions under this Act.
- (2) The Chief Counting Officer may issue guidance to counting officers and registration officers about the exercise of their respective functions under this Act.
- (3) The Electoral Commission may, with the consent of the Chief Counting Officer, issue guidance to counting officers about the exercise of their functions under this Act.
- (4) The Electoral Commission may issue guidance to permitted participants and persons who may become permitted participants about the provisions set out in schedule 3 of this Act.
- (5) Guidance issued under subsection (4) must include information on what may constitute a common plan or other arrangement for the purposes of paragraph 21 of schedule 3.

27 Advice

The Electoral Commission may, if asked to do so by any person, provide the person with advice about—

- (a) the application of this Act,
- (b) any other matter relating to the referendum.

28 Encouraging participation

(1) The Chief Counting Officer must take whatever steps the Chief Counting Officer considers appropriate to—

- (a) encourage participation in the referendum, and
- (b) facilitate co-operation among officers taking steps under this section.

(2) A counting officer must take whatever steps the counting officer considers appropriate to encourage participation in the referendum in the local government area for which the officer is appointed.

*Report on referendum***29 Report on the conduct of the referendum**

(1) As soon as practicable after the referendum, the Electoral Commission must prepare and lay before the Scottish Parliament a report on the conduct of the referendum.

(2) The report must include a summary of—

- (a) how the Commission have carried out their functions under this Act,
- (b) the expenditure incurred by the Commission in carrying out those functions.

(3) The Chief Counting Officer must provide the Commission with such information as they may require for the purposes of the report.

(4) On laying the report, the Commission must publish the report in such manner as they may determine.

(5) In the 2000 Act, in schedule 1, in paragraph 20(1) (report on Electoral Commission's functions), the reference to the Commission's functions does not include a reference to the Commission's functions under this Act.

*Electoral Commission: administrative provision***30 Reimbursement of Commission's costs**

(1) The SPCB must reimburse the Electoral Commission for any expenditure incurred by the Commission that is attributable to the carrying out of the Commission's functions under this Act.

(2) In the 2000 Act, in schedule 1, paragraph 14(1) (financing of the Electoral Commission) has effect as if paragraph (a) included a reference to expenditure reimbursed under subsection (1) of this section.

31 Estimates of expenditure

- (1) The Electoral Commission must, before the start of each financial year—
- (a) prepare an estimate of the Commission’s expenditure for the year that is attributable to the carrying out of their functions under this Act, and
 - 5 (b) send the estimate to the SPCB for approval.
- (2) The Commission may, in the course of a financial year, prepare a revised estimate for the remainder of the year and send it to the SPCB for approval.
- (3) The period from the commencement of this Act until the following 31 March is treated, for the purposes of this section, as the first financial year.
- 10 (4) Subsection (1) has effect in relation to the first financial year as if the reference to the start of the financial year were a reference to the end of the period of one month beginning with the date of the commencement of this Act.
- (5) In the 2000 Act, in schedule 1, paragraph 14(2) (Commission to prepare estimates of income and expenditure) does not apply in relation to income and expenditure of the Commission that is attributable to the carrying out of their functions under this Act.
- 15

32 Maladministration

In the Scottish Public Services Ombudsman Act 2002, in section 7(6D) (restrictions on investigations), after “Scotland”, insert “or the exercise of the Commission’s functions under the Referendums (Scotland) Act 2019”.

20

33 Information about persons aged under 16

- (1) Section 14 of the Scottish Elections (Reduction of Voting Age) Act 2015 (exceptions from prohibition on disclosure of information about persons aged under 16) is amended as follows.
- 25 (2) In subsection (1)—
- (a) omit the “or” following paragraph (a),
 - (b) after paragraph (b) insert “, or
 - (c) the conduct of a referendum in accordance with the Referendums (Scotland) Act 2019.”.
- 30 (3) In subsection (3), after “election” insert “or referendum”.
- (4) In subsection (4), after paragraph (h) insert—
- “(i) the Referendums (Scotland) Act 2019.”.
- (5) In subsection (5)—
- (a) omit the “or” following paragraph (a),
 - 35 (b) after paragraph (b) insert “, or
 - (c) the conduct of a referendum in accordance with the Referendums (Scotland) Act 2019.”.

34 Registration officers' expenses

- (1) A registration officer is entitled to recover from the Scottish Ministers any expenses incurred by the registration officer that are attributable specifically to the exercise of the registration officer's functions under this Act.
- 5 (2) The amount of expenses recoverable under this section is not to exceed such maximum amount as is specified in, or determined under, regulations made by the Scottish Ministers.
- (3) However the Scottish Ministers may pay an amount of expenses that exceeds that maximum amount if they consider—
- 10 (a) that it was reasonable for the registration officer to incur the expenses, and
(b) that the amount of the expenses is reasonable.
- (4) Regulations under subsection (2) may include provision for the submission by registration officers to the Scottish Ministers of accounts of expenses before payments are made by the Scottish Ministers, including provision about—
- 15 (a) the time by which accounts are to be submitted,
(b) the form and manner in which they are to be submitted.
- (5) Regulations under subsection (2)—
- (a) may make different provision for different functions, cases or areas,
(b) may include incidental and supplementary provision.

*Offences***35 Offences**

Schedule 6 makes provision about offences in or in connection with the referendum.

36 Individual culpability for offending by an organisation

- (1) Subsection (2) applies where—
- 25 (a) an offence under this Act is committed by—
(i) a body corporate,
(ii) a Scottish partnership, or
(iii) an unincorporated association other than a Scottish partnership, and
(b) the commission of the offence involves the connivance or consent of, or is
30 attributable to the neglect of—
(i) a relevant individual, or
(ii) an individual purporting to act in the capacity of a relevant individual.
- (2) The individual (as well as the body corporate, partnership or (as the case may be) association) commits the offence.
- 35 (3) In subsection (1), "relevant individual" means—
(a) in relation to a body corporate (other than a limited liability partnership)—
(i) a director, manager, secretary or other similar officer of the body,

- (ii) where the affairs of the body are managed by its members, a member,
- (b) in relation to a limited liability partnership, a member,
- (c) in relation to a Scottish partnership, a partner,
- (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Power to modify this Act

37 Power to modify this Act

- (1) The Scottish Ministers may by regulations make such modifications of this Act as they consider necessary or expedient—
 - (a) in consequence of or in connection with any modification (or proposed modification) of any other enactment relating to—
 - (i) the conduct of referendums or campaigning in any referendum,
 - (ii) the conduct of elections or campaigning in elections,
 - (iii) entitlement to vote at any referendum or any election,
 - (b) to give effect to recommendations of the Electoral Commission.
- (2) Regulations under subsection (1) may include incidental, supplementary, consequential, transitional, transitory or saving provision.
- (3) Regulations under subsection (1) are subject to the affirmative procedure.

38 Power to vary specified sums

- (1) The Scottish Ministers may by regulations vary any sum for the time being specified in this Act.
- (2) The Scottish Ministers may make regulations under subsection (1)—
 - (a) where they consider it expedient to do so in consequence of changes in the value of money, or
 - (b) in order to give effect to a recommendation of the Electoral Commission.
- (3) Regulations under subsection (1) are—
 - (a) where subsection (2)(a) applies, subject to the negative procedure,
 - (b) where subsection (2)(b) applies, subject to the affirmative procedure.
- (4) This section does not affect the generality of the power conferred by section 37(1).

Legal proceedings

39 Restriction on legal challenge to referendum result

- (1) No court may entertain any proceedings for questioning the number of ballot papers counted or votes cast as certified by a counting officer or by the Chief Counting Officer under section 9(2)(b) or (as the case may be) (4) unless—
 - (a) the proceedings are brought by way of a petition for judicial review, and
 - (b) the petition is lodged before the end of the permitted period.

- (2) In subsection (1)(b) “the permitted period” means the period of 6 weeks beginning with—
- (a) the day on which the officer in question makes the certification as to the number of ballot papers counted and votes cast in the referendum, or
 - (b) if the officer makes more than one such certification, the day on which the last is made.
- (3) In subsection (1), references to a petition for judicial review are references to an application to the supervisory jurisdiction of the Court of Session.

Final provisions

- 10 **40 Interpretation**
Schedule 7 provides definitions for words and expressions used in this Act.
- 41 Commencement**
This Act comes into force on the day after Royal Assent.
- 42 Short title**
15 The short title of this Act is the Referendums (Scotland) Act 2019.

SCHEDULE 1
(introduced by section 6)

FURTHER PROVISION ABOUT VOTING IN THE REFERENDUM

PART 1

MANNER OF VOTING

Manner of voting

- 1 (1) This paragraph applies to determine the manner of voting of a voter.
- (2) A voter may vote in person at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules unless the voter is entitled to an absent vote in the referendum.
- 10 (3) A voter may vote by post if the voter is entitled to vote by post in the referendum.
- (4) If a voter is entitled to vote by proxy in the referendum, the voter may so vote unless, before a ballot paper is issued for the voter to vote by proxy, the voter applies at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules for a ballot paper for the purpose of voting in person, in which case the voter may vote in person there.
- 15 (5) If a voter—
- (a) is not entitled to an absent vote in the referendum, and
- (b) cannot reasonably be expected to go in person to the polling station allotted to the voter under rule 9(1)(b) of the conduct rules because of the particular circumstances of the voter's employment, either as a constable or by the counting officer, on the date of the referendum for a purpose connected with the referendum,
- the voter may vote in person at any polling station in the local government area in which the polling station allotted to the voter is situated.
- 25 (6) Nothing in sub-paragraphs (1) to (5) applies to—
- (a) a voter to whom section 7 of the 1983 Act (mental patients who are not detained offenders) applies and who is liable, by virtue of any enactment, to be detained in the mental hospital in question, whether the voter is registered by virtue of that provision or not, and such a voter may vote—
- 30 (i) in person at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules (if granted permission to be absent from the hospital and voting in person does not breach any condition attached to the permission), or
- (ii) by post or by proxy (if entitled so to vote in the referendum), or
- 35 (b) a voter to whom section 7A of that Act (person remanded in custody) applies, whether the voter is registered by virtue of that provision or not, and such a voter may only vote by post or by proxy (if entitled so to vote in the referendum).
- (7) Sub-paragraph (2) does not prevent a voter, at the polling station allotted to the voter under rule 9(1)(b) of the conduct rules, marking a tendered ballot paper in pursuance of rule 24 of those rules.
- 40

(8) For the purposes of this Act—

(a) references to a voter being entitled to an absent vote in the referendum are references to the voter being entitled to vote by post or by proxy in the referendum, and

(b) a voter is entitled to vote—

(i) by post in the referendum if the voter is shown in the postal voters list (see paragraph 4(2)) for the referendum as so entitled,

(ii) by proxy in the referendum if the voter is shown in the list of proxies (see paragraph 4(3)) for the referendum as so entitled.

Existing absent voters

2 (1) A person is taken to have been granted a vote by post in the referendum if the person is—

(a) shown in the record maintained under paragraph 3(4) of schedule 4 of the Representation of the People Act 2000 as voting by post at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or

(b) shown in the record maintained by the registration officer of persons entitled to vote by post at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

(2) Such a person is referred to in this schedule as an “existing postal voter”.

(3) A person is taken to have been granted a vote by proxy in the referendum if the person is—

(a) shown in the record maintained under paragraph 3(4) of schedule 4 of the Representation of the People Act 2000 as voting by proxy at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or

(b) shown in the record maintained by the registration officer of persons entitled to vote by proxy at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

(4) Such a person is referred to in this schedule as an “existing proxy voter”.

(5) Sub-paragraph (1) does not apply to a person if the person is granted a vote by proxy by virtue of an application under paragraph 3.

(6) Sub-paragraph (3) does not apply to a person if the person is granted a vote by post by virtue of an application under paragraph 3.

Applications for absent vote

3 (1) Where a person applies to the registration officer to vote by post in the referendum, the registration officer must grant the application if—

(a) the registration officer is satisfied that the applicant is registered in the register of local government electors maintained by the officer or will be registered in that register on the date of the referendum, and

- (b) the application meets the requirements set out in paragraph 7.
- (2) Where a person applies to the registration officer to vote by proxy in the referendum, the registration officer must grant the application if—
- 5 (a) the registration officer is satisfied that the applicant’s circumstances on the date of the referendum will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted, or likely to be allotted, to the applicant under rule 9(1)(b) of the conduct rules,
- 10 (b) the registration officer is satisfied that the applicant is registered in the register of local government electors maintained by the officer or will be registered in that register on the date of the referendum, and
- (c) the application meets the requirements set out in paragraph 7.
- (3) Where a person who has an anonymous entry in the register of local government electors maintained by a registration officer applies to the registration officer to vote by proxy in the referendum, the registration officer must grant the application if it meets the requirements set out in paragraph 7.
- 15 (4) Sub-paragraphs (1) and (2) do not apply to a person who is an existing postal voter or an existing proxy voter.
- (5) If an existing postal voter applies to the appropriate registration officer for the person’s ballot paper to be sent to a different address from that shown in the record referred to in paragraph 2(1) in relation to that existing postal voter, the registration officer must grant the application if it meets the requirements set out in paragraph 7.
- 20 (6) If an existing postal voter applies to the appropriate registration officer to vote by proxy in the referendum, the registration officer must grant the application if—
- 25 (a) the registration officer is satisfied that the applicant’s circumstances on the date of the referendum will be or are likely to be such that the person cannot reasonably be expected to vote in person at the polling station allotted, or likely to be allotted, to the person under rule 9(1)(b) of the conduct rules, and
- (b) the application meets the requirements set out in paragraph 7.
- (7) If an existing proxy voter applies to the appropriate registration officer to vote by post in the referendum, the registration officer must grant the application if it meets the requirements set out in paragraph 7.
- 30 (8) In sub-paragraphs (5) to (7), “appropriate registration officer” means, in relation to an existing postal voter or an existing proxy voter, the registration officer responsible for keeping the record mentioned in paragraph 2(1) or (3) by virtue of which the person is such a voter.
- 35

Absent voters lists

- 4 (1) Each registration officer must keep the 2 lists mentioned in sub-paragraphs (2) and (3).
- (2) The first list (the “postal voters list”) is a list of—
- 40 (a) those who are existing postal voters by reason of an entry in a record mentioned in paragraph 2(1) kept by the registration officer, together with the addresses—
- (i) shown in the record mentioned in that paragraph, or
- (ii) provided in any application by them under paragraph 3(5),

as the addresses to which their ballot papers are to be sent, and

(b) those granted a vote by post in the referendum by the registration officer by virtue of an application under paragraph 3 together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

5 (3) The second list (the “list of proxies”) is a list of—

(a) those who are existing proxy voters by reason of an entry in a record mentioned in paragraph 2(3) kept by the registration officer, and

(b) those granted a vote by proxy in the referendum by the registration officer by virtue of an application under paragraph 3,

10 together (in each case) with the names and addresses of those appointed as their proxies.

(4) In the case of a person who has an anonymous entry in the register of local government electors, any entry in the postal voters list or list of proxies must show in relation to the person only the person’s voter number.

15 (5) Where a person is removed from the postal voters list or the list of proxies, the registration officer must, where practicable, notify the person of the removal and the reason for it.

Proxies

5 (1) Subject to the provisions of this paragraph, any person is capable of being appointed as proxy to vote for another in the referendum and may vote in pursuance of the
20 appointment.

(2) A person (“A”) cannot have more than one person at a time appointed as proxy to vote for A in the referendum.

(3) A person is not capable of being appointed to vote, or of voting, as proxy at the referendum—

25 (a) if the person is subject to any legal incapacity (age apart) to vote in the referendum, or

(b) if the person is not a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the European Union.

30 (4) A person is not capable of being appointed to vote, or of voting, as proxy unless the registration officer is satisfied that the person is or will be registered in the register of local government electors.

(5) A person is not capable of voting as a proxy in the referendum unless, on the date of the referendum, the person is of voting age.

35 (6) A person is not entitled to vote as proxy in the referendum on behalf of more than 2 others of whom that person is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.

(7) If there is an existing proxy for an existing proxy voter, the existing proxy is taken to have been appointed as proxy to vote for the existing proxy voter in the referendum.

- (8) In sub-paragraph (7), “existing proxy” means, in relation to an existing proxy voter—
- (a) a person appointed under paragraph 6(7) of schedule 4 of the Representation of the People Act 2000 as proxy to vote for the existing proxy voter at local government elections, or
 - 5 (b) if there is no such person, a person appointed as proxy to vote for the existing proxy voter at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.
- (9) Where a person applies to the registration officer for the appointment of a proxy to vote for the person in the referendum, the registration officer must make the appointment if—
- 10 (a) the registration officer is satisfied that the applicant is or will be—
 - (i) registered in the register of local government electors maintained by the officer, and
 - (ii) entitled to vote by proxy in the referendum by virtue of paragraph 2(3) or an application under paragraph 3,
 - 15 (b) the registration officer is satisfied that the proxy is capable of being and willing to be appointed, and
 - (c) the application meets the requirements in paragraph 7.
- (10) The appointment of a proxy under this paragraph is to be made by means of a proxy paper issued by the registration officer.
- 20 (11) The appointment of a proxy to vote for a person (“A”) in the referendum—
- (a) may be cancelled by A by giving notice to the registration officer, and
 - (b) ceases to have effect on the issue of a proxy paper appointing a different person to vote for A in the referendum.

Voting as proxy

- 25 6 (1) A person entitled to vote as proxy for another (“A”) in the referendum may do so in person at the polling station allotted to A under rule 9(1)(b) of the conduct rules unless the person is entitled to vote by post as proxy in the referendum, in which case the person may vote by post.
- 30 (2) Where a person is entitled to vote by post as proxy for another (“A”) in the referendum, A may not apply for a ballot paper for the purpose of voting in person at the referendum.
- (3) For the purposes of this schedule, a person entitled to vote as proxy for another in the referendum is entitled so to vote by post if the person is included in the proxy postal voters list (see sub-paragraph (7)).
- 35 (4) An existing proxy is taken to have been granted a vote by post as proxy if the existing proxy is—
- (a) shown in the record kept under paragraph 7(6) of schedule 4 of the Representation of the People Act 2000 as voting by post as proxy at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or

(b) shown in the record maintained by the registration officer of persons entitled to vote by post as proxy at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.

5 (5) In sub-paragraph (4), “existing proxy” means a person who is taken to have been appointed as proxy by virtue of paragraph 5(7).

(6) Where a person applies to the registration officer to vote by post as proxy for another (“A”) in the referendum, the registration officer must grant the application if—

10 (a) the registration officer is satisfied that A is registered in the register of local government electors maintained by the officer or will be registered in that register on the date of the referendum,

(b) there is in force an appointment of the applicant as A’s proxy to vote for A in the referendum, and

(c) the application meets the requirements in paragraph 7.

(7) The registration officer must keep a special list (the “proxy postal voters list”) of—

15 (a) those taken to have been granted a vote by post as proxy by virtue of sub-paragraph (4) by reason of an entry in a record mentioned in that sub-paragraph kept by the registration officer, together with the addresses shown in the record as the addresses to which their ballot papers are to be sent, and

20 (b) those whose applications under sub-paragraph (6) have been granted by the registration officer, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.

(8) Where a person to be included in the proxy postal voters list applies to the registration officer for the person’s ballot paper to be sent to a different address, the registration officer must grant the application if it meets the requirements in paragraph 7.

25 (9) In the case of a person who has an anonymous entry in the register of local government electors, the proxy postal voters list must contain only the person’s voter number.

(10) The registration officer must keep a record in relation to those whose applications under sub-paragraph (6) have been granted showing—

(a) their dates of birth, and

30 (b) except in cases where the registration officer in pursuance of paragraph 7(6) (or other provision to like effect) has dispensed with the requirement to provide a signature, their signatures.

(11) The registration officer must retain the record kept under sub-paragraph (10) for the period of one year following the date of the referendum.

35 (12) Sub-paragraph (2) does not prevent a person (“A”), at the polling station allotted to A under rule 9(1)(b) of the conduct rules, from marking a tendered ballot paper in pursuance of rule 24 of those rules.

Requirements as to applications

7 (1) This paragraph applies in relation to applications under paragraph 3, 5(9) or 6(6) or (8).

40 (2) An application must—

(a) be made in writing,

(b) state the date on which it is made, and

(c) be made before the cut-off date.

(3) An application to vote by post (including an application to vote by post as a proxy) must contain—

5 (a) the applicant's full name and date of birth,

(b) the applicant's signature, and

(c) the address to which the ballot paper is to be sent.

(4) An application to vote by proxy must contain—

(a) the applicant's full name and date of birth,

10 (b) the applicant's signature,

(c) a statement of the reasons why the applicant's circumstances on the date of the referendum will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the applicant under rule 9(1)(b) of the conduct rules, and

15 (d) an application under paragraph 5(9) for the appointment of a proxy.

(5) An application to vote by proxy made as described in sub-paragraph (9)(a) must also meet any applicable additional requirements set out in paragraph 8.

(6) The registration officer may, in relation to any application to which sub-paragraph (3) or (4) applies, dispense with the requirement to include the applicant's signature if the officer is satisfied that the applicant is unable—

20 (a) to provide a signature because—

(i) of any disability that the applicant has, or

(ii) the applicant is unable to read or write, or

25 (b) to sign in a consistent and distinctive way because of any such disability or inability.

(7) For the purposes of sub-paragraphs (3)(a) and (b) and (4)(a) and (b), the applicant's date of birth and signature must be set out in a manner that is sufficiently clear and unambiguous as to be capable of electronic scanning and, in particular—

30 (a) the date of birth must be set out numerically in the sequence day, month, year (for example, the date 30 July 1965 must be set out 30071965),

(b) the signature must be written within an area of white, unlined paper no smaller than 5 centimetres by 2 centimetres.

(8) An application for the appointment of a proxy must state the full name and address of the person whom the applicant wishes to appoint as proxy, together with that person's family relationship, if any, with the applicant and—

35 (a) if the application is signed only by the applicant, the application must contain a statement signed by the applicant that the applicant has consulted the person so named and that that person is capable of being and willing to be appointed to vote as the applicant's proxy, or

(b) if the application is signed also by the person to be appointed as proxy, must contain a statement by that person that the person is capable of being and willing to be appointed to vote as the applicant's proxy.

5 (9) Sub-paragraph (10) applies in relation to an application to vote by proxy (and an application under paragraph 5(9) for the appointment of a proxy contained in such an application to vote by proxy)—

(a) made after the cut-off date and on the grounds that the applicant cannot reasonably be expected to vote in person at the polling station allotted under rule 9(1)(b) of the conduct rules because—

10 (i) of a disability suffered after that date, or

(ii) of reasons relating to the applicant's occupation, service or employment, of which the applicant only became aware after the cut-off date, or

(b) by a person to whom paragraph 1(6)(a) applies.

15 (10) Sub-paragraph (2)(c) does not apply in relation to the application and instead the application must be made before 5pm on the date of the referendum.

(11) Sub-paragraph (12) applies in relation to an application under paragraph 3(5) or 6(8) for the person's ballot paper to be sent to a different address.

20 (12) Subject to sub-paragraph (13), the application must set out why the applicant's circumstances will be or are likely to be such that the applicant requires the ballot paper to be sent to that address.

(13) The requirement in sub-paragraph (12) does not apply where an applicant has, or has applied for, an anonymous entry.

Additional requirements as to certain applications to vote by proxy

8 (1) Sub-paragraphs (2) to (5) apply in relation to an application to vote by proxy made as
25 described in paragraph 7(9)(a)(i).

(2) The application must contain a statement of the date on which the applicant became aware of the reasons given in the statement required by paragraph 7(4)(c).

(3) Where the application is made on or after the fifth day before the date of the referendum, the application must be signed by a person who—

30 (a) is aged 16 or over,

(b) knows the applicant, and

(c) is not related to the applicant.

35 (4) The person who signs the application in accordance with sub-paragraph (3) must certify in the application that the following information is true to the best of the person's knowledge and belief—

(a) the information given in the statement required by sub-paragraph (2), and

(b) the reasons given in the statement required by paragraph 7(4)(c).

(5) That person must also state in the application—

(a) the person's name and address,

- (b) that the person—
 - (i) is aged 16 or over,
 - (ii) knows the applicant, and
 - (iii) is not related to the applicant.
- 5 (6) Sub-paragraphs (8) to (11) apply in relation to an application to vote by proxy made as described in paragraph 7(9)(a)(ii).
- (7) But sub-paragraphs (9) to (11) do not apply if the applicant is or will be registered as a service voter.
- (8) The application must contain a statement of—
 - 10 (a) where the applicant is an employee, the name of the applicant’s employer,
 - (b) where the applicant is not an employee, details of the applicant’s occupation or service,
 - (c) the date on which the applicant became aware of the reasons given in the statement required by paragraph 7(4)(c).
- 15 (9) Where the application is made on or after the fifth day before the date of the referendum, the application must be signed—
 - (a) where the applicant is an employee, by—
 - (i) the applicant’s employer, or
 - (ii) another employee to whom this function is delegated by the employer,
 - 20 (b) where the applicant is not an employee, by a person who—
 - (i) is aged 16 or over,
 - (ii) knows the applicant, and
 - (iii) is not related to the applicant.
- 25 (10) The person who signs the application in accordance with sub-paragraph (9) must certify in the application that the following information is true to the best of the person’s knowledge and belief—
 - (a) the information given in the statement required by sub-paragraph (8), and
 - (b) the reasons given in the statement required by paragraph 7(4)(c).
- (11) That person must also state in the application—
 - 30 (a) the person’s name and address,
 - (b) if the applicant is an employee, either (as the case may be)—
 - (i) that the person is the applicant’s employer, or
 - (ii) the position that the person holds in the employment of the applicant’s employer,
 - 35 (c) if the applicant is not an employee, that the person—
 - (i) is aged 16 or over,
 - (ii) knows the applicant, and
 - (iii) is not related to the applicant.

(12) For the purposes of this paragraph—

- (a) a person (“A”) is related to another person (“B”) if A is the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of B,
- (b) a person is registered as a service voter if the person has made a service declaration under section 15 of the 1983 Act and is registered in the register of local government electors in pursuance of it.

(13) For the purposes of sub-paragraphs (3) and (9), the following days are to be disregarded—

- (a) a Saturday or Sunday,
- (b) Christmas Eve or Christmas Day,
- (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
- (d) a day appointed for public thanksgiving or mourning.

Grant or refusal of applications

- 9 (1) This paragraph applies in relation to applications under paragraph 3, 5(9) or 6(6) or (8).
- (2) Where the registration officer grants an application, the officer must notify the applicant.
- (3) Where the registration officer refuses an application, the officer must notify the applicant of the decision and of the reason for it.
- (4) Where an application under paragraphs 3(2) and 5(9) is granted, the registration officer must, where practicable, notify the voter of—
- (a) the appointment of the proxy, and
 - (b) the name and address of the proxy.

Forms

- 10 (1) The registration officer must, on request, provide free of charge to any person who satisfies the officer of the person’s intention to use the forms in connection with the referendum as many forms for use in connection with—
- (a) applications to register as a voter at the referendum, and
 - (b) applications for an absent vote at the referendum,
- as appear to the registration officer to be reasonable in the circumstances.
- (2) The forms provided under sub-paragraph (1) are to be in the form prescribed.

Personal identifiers record

- 11 (1) Each registration officer must keep a record in relation to persons granted applications to which paragraph 7(3) or (4) applies showing—
- (a) their dates of birth, and
 - (b) except in cases where the officer has under paragraph 7(6) dispensed with the requirement for a signature, their signatures.

- (2) The registration officer must, as soon as possible after the cut-off date, either—
- (a) provide the relevant counting officer with a copy of the information contained in the record, or
 - (b) give the relevant counting officer access to the information.
- 5 (3) A registration officer may disclose information contained in the record to any other registration officer if the registration officer disclosing it thinks that to do so would assist the other registration officer in the carrying out of the other officer's functions.
- 10 (4) A counting officer may disclose information contained in the record to any other person if the counting officer thinks that to do so would assist the other person in ascertaining whether postal ballot papers have been returned in accordance with rule 30(4) of the conduct rules.

Marked lists for polling stations

- 12 To indicate that a voter or a voter's proxy is entitled to vote by post and is for that reason not entitled to vote in person, the letter "A" is to be placed against the entry of
 15 that voter in any list of voters (or any part of a list) provided for a polling station.

Appeals

- 13 (1) Where an appeal under section 56 of the 1983 Act (registration appeals) is pending when notice of the referendum is given—
- 20 (a) the appeal does not prejudice the operation as respects the referendum of the decision appealed against, and
 - (b) anything done in pursuance of the decision is as good as if no such appeal had been brought and is not affected by the decision on the appeal.
- 25 (2) Where, as a result of the decision on an appeal under section 56 of the 1983 Act, an alteration in the register of local government electors is made which takes effect under section 13(5), 13A(2) or 13B(3) or (3B) of the 1983 Act on or before the date of the referendum, sub-paragraph (1) does not apply to the appeal.

PART 2

REGISTRATION

Effect of register

- 30 14 (1) A person registered in the register of local government electors or entered in the list of proxies is not to be excluded from voting in the referendum on any of the grounds set out in sub-paragraph (2), but this does not affect the person's liability to any penalty for voting.
- (2) The grounds referred to in sub-paragraph (1) are—
- 35 (a) that the person is not of voting age,
 - (b) that the person is not or was not at any particular time—
 - (i) a Commonwealth citizen,
 - (ii) a citizen of the Republic of Ireland, or

(iii) a relevant citizen of the European Union,

(c) that the person is or was at any particular time otherwise subject to any other legal incapacity to vote in the referendum.

Effect of misdescription

5 15 No misnomer or inaccurate description of any person or place named—

(a) in the register of local government electors, or

(b) in any list, proxy paper, ballot paper, notice or other document required for the purposes of this Act,

10 affects the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

Carrying out of registration functions

16 (1) A registration officer must carry out the registration officer's functions under this Act in accordance with any directions given by the Chief Counting Officer.

15 (2) The Chief Counting Officer must not give a direction that is inconsistent with this Act or any other enactment under which a registration officer exercises functions.

(3) Any of the functions of a registration officer under this Act may be carried out by a deputy for the time being appointed by the registration officer for the purposes of this Act, and the provisions of this Act apply to any such deputy so far as respects any functions to be carried out by the deputy as they apply to the registration officer.

20 (4) A registration officer may appoint more than one deputy for the purposes of this Act.

(5) Each council must assign such officers to assist the registration officer appointed by the council as may be required for carrying out the registration officer's functions under this Act.

Alterations in the register of local government electors

25 17 (1) An alteration in the register of local government electors under section 13A(2) (alteration of registers) or 56 (registration appeals) of the 1983 Act which is to take effect after the fifth day before the date of the referendum does not have effect for the purposes of the referendum.

(2) For the purposes of sub-paragraph (1), the following days are to be disregarded—

30 (a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning.

35 (3) Section 13B(2) to (6) of the 1983 Act applies in relation to the referendum as it applies in relation to an election to which that section applies but as if—

(a) any reference to the appropriate publication date were a reference to the fifth day before the date of the referendum,

- (b) any reference to the date of the poll at such an election were a reference to the date of the referendum,
- (c) any reference to the relevant election area were a reference to the area for which the registration officer acts,
- 5 (d) any reference to the prescribed time on the day of the poll were a reference to 9pm on the date of the referendum,
- (e) any reference to the issuing of a notice in the prescribed manner were a reference to the issuing of the notice in such manner and form as the registration officer may determine.
- 10 (4) The Scottish Ministers may by regulations modify sub-paragraph (1) or (3)(a) for the purposes of the referendum.
- (5) Regulations under sub-paragraph (4) are subject to the negative procedure.
- (6) The Scottish Ministers must consult the Electoral Commission before making regulations under sub-paragraph (4).
- 15 (7) Sub-paragraph (4) does not affect the generality of the power conferred by section 2(1).

The cut-off date

- 18 (1) In this Act, the cut-off date means—
- (a) in relation to an application under paragraph 3(2) or 5(9), 5pm on the sixth day before the date of the referendum,
 - 20 (b) in any other case, 5pm on the eleventh day before the date of the referendum.
- (2) For the purpose of ascertaining the cut-off date, the following days are to be disregarded—
- (a) a Saturday or Sunday,
 - (b) Christmas Eve or Christmas Day,
 - 25 (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
 - (d) a day appointed for public thanksgiving or mourning.

PART 3

POSTAL VOTING: ISSUE AND RECEIPT OF BALLOT PAPERS

30 *Persons entitled to be present at issue and receipt of postal ballot papers*

- 19 (1) Without prejudice to sections 20 to 22, no person may be present at the proceedings on the issue of postal ballot papers other than the counting officer and the counting officer's staff.
- (2) Without prejudice to sections 20 to 22, no person may be present at the proceedings on the receipt of postal ballot papers other than—
- 35 (a) the counting officer and the counting officer's staff,
 - (b) a referendum agent or any person appointed by a referendum agent to attend in such referendum agent's place,

(c) any agents appointed under sub-paragraph (3).

(3) Each referendum agent may appoint one or more agents to attend the proceedings on the receipt of the postal ballot papers (“postal ballot agents”).

(4) The number of postal ballot agents that may be appointed under sub-paragraph (3)—

(a) is to be determined by the counting officer, and

(b) is to be the same for each referendum agent.

(5) A referendum agent who appoints postal ballot agents must give the counting officer notice of the appointment no later than the time fixed for the opening of the postal voters box.

(6) If a postal ballot agent dies or becomes unable to perform the agent’s functions, the referendum agent may appoint another agent and must give the counting officer notice of the new appointment as soon as practicable.

(7) A notice under sub-paragraph (5) or (6)—

(a) must be given in writing, and

(b) must give the names and addresses of the persons appointed.

(8) In this Part of this schedule, references to postal ballot agents are to agents appointed under sub-paragraph (3) or (6)—

(a) whose appointments have been duly made and notified, and

(b) who are within the number authorised by the counting officer.

(9) Where in this Part of this schedule anything is required or authorised to be done in the presence of postal ballot agents, the non-attendance of any agent or agents at the time and place appointed for the purpose does not invalidate the thing (if the thing is otherwise duly done).

Notification of requirement of secrecy

20 The counting officer must make such arrangements as are practicable to ensure that every person attending the proceedings in connection with the issue or receipt of postal ballot papers has been given a copy of sub-paragraphs (7), (9) and (10) of paragraph 7 of schedule 6.

Time when postal ballot papers are to be issued

21 The counting officer is to issue postal ballot papers (and postal voting statements) as soon as practicable.

Issue of postal ballot papers

(1) The number of the voter as stated in the register of local government electors must be marked on the corresponding number list, next to the unique identifying number of the ballot paper issued to that voter.

(2) A mark is to be placed in the postal voters list or the proxy postal voters list against the number of the voter to denote that a ballot paper has been issued to the voter or the voter’s proxy, but without showing the particular ballot paper issued.

- (3) The number of a postal ballot paper must be marked on the postal voting statement sent with that paper.
- (4) Subject to sub-paragraph (5), the address to which the postal ballot paper, postal voting statement and the envelopes referred to in paragraph 24 are to be sent is—
- 5 (a) in the case of a voter, the address shown in the postal voters list,
 (b) in the case of a proxy, the address shown in the proxy postal voters list.
- (5) Where a person has an anonymous entry in the register of local government electors, the items specified in sub-paragraph (4) are to be sent in an envelope or other form of covering so as not to disclose to any other person that the person has an anonymous entry to the address to which postal ballot papers should be sent—
- 10 (a) as shown in the record of anonymous entries, or
 (b) as given in pursuance of an application made under paragraph 3(1) or (5) or 6(6) or (8).

Refusal to issue postal ballot paper

- 15 23 Where a counting officer is satisfied that two or more entries in the postal voters list, or the proxy postal voters list or in each of those lists relate to the same voter, the counting officer may not issue more than one ballot paper in respect of that voter.

Envelopes

- 20 24 (1) The envelope which the counting officer is required by rule 8(1) of the conduct rules to issue to a postal voter is to be marked with the letter “B”.
- (2) The counting officer must also issue to a postal voter a smaller envelope which is to be marked with—
- (a) the letter “A”,
 (b) the words “ballot paper envelope”, and
 25 (c) the number of the ballot paper.

Sealing up of completed corresponding number lists and security of special lists

- 25 (1) As soon as practicable after the issue of each batch of postal ballot papers, the counting officer must make up into a packet the completed corresponding number lists for those ballot papers which have been issued and must seal that packet.
- 30 (2) Until the counting officer has sealed the packet as described in paragraph 34(9), the counting officer must take proper precautions for the security of the marked copy of the postal voters list and the proxy postal voters list.

Payment of postage on postal ballot papers

- 26 (1) Where ballot papers are posted to postal voters, postage must be prepaid.
- 35 (2) Return postage must be prepaid where the address provided by the postal voter for the receipt of the postal ballot paper is within the United Kingdom.

Spoilt postal ballot papers

- 27 (1) If a postal voter has inadvertently dealt with a postal ballot paper or postal voting statement in such manner that it cannot be conveniently used as a ballot paper (a “spoilt ballot paper”) or a postal voting statement (a “spoilt postal voting statement”) the postal voter may return the spoilt ballot paper or (as the case may be) the spoilt postal voting statement to the counting officer (either by hand or by post).
- (2) Where a postal voter exercises the entitlement conferred by sub-paragraph (1), the postal voter must also return—
- (a) the postal ballot paper or (as the case may be) the postal voting statement (whether spoilt or not), and
- (b) the envelopes supplied for their return.
- (3) Subject to sub-paragraph (4), on receipt of the documents referred to in sub-paragraphs (1) and (2), the counting officer must issue another postal ballot paper except where those documents are received after 5pm on the date of the referendum.
- (4) Where the counting officer receives the documents referred to in sub-paragraphs (1) and (2) after 5pm on the day before the date of the referendum, the counting officer may only issue another postal ballot paper if the postal voter returns the documents by hand.
- (5) The following provisions apply in relation to a replacement postal ballot paper under sub-paragraph (3) as they apply in relation to a ballot paper—
- (a) paragraph 22 (except sub-paragraph (2)),
- (b) paragraphs 24 and 25, and
- (c) subject to sub-paragraph (8), paragraph 26.
- (6) Any postal ballot paper or postal voting statement (whether spoilt or not) returned in accordance with sub-paragraphs (1) and (2) must be immediately cancelled.
- (7) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (6), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.
- (8) Where a postal voter applies in person after 5pm on the day before the date of the referendum, the counting officer may only issue a replacement postal ballot paper by handing it to the postal voter.
- (9) The counting officer must enter in a list kept for the purpose (“the list of spoilt postal ballot papers”)—
- (a) the name and number of the postal voter as stated in the register of local government electors (or, in the case of a postal voter who has an anonymous entry, that person’s voter number alone),
- (b) the number of the postal ballot paper (or papers) issued under this paragraph, and
- (c) where the postal voter whose ballot paper is spoilt is a proxy, the name and address of the proxy.

Lost postal ballot papers

- 28 (1) Where a postal voter claims either to have lost or not to have received—
- (a) the postal ballot paper (a “lost postal ballot paper”),
 - (b) the postal voting statement, or
 - 5 (c) one or more of the envelopes supplied for their return,
- the postal voter may apply (whether or not in person) to the counting officer for a replacement ballot paper.
- (2) An application under sub-paragraph (1) must include evidence of the postal voter’s identity.
- 10 (3) Where a postal voter exercises the entitlement conferred by sub-paragraph (1), the postal voter must return any of the documents referred to in sub-paragraph (1)(a) to (c) which the postal voter has received and which have not been lost.
- (4) Any postal ballot paper or postal voting statement returned in accordance with sub-paragraph (3) must be immediately cancelled.
- 15 (5) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (4), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.
- 20 (6) Subject to sub-paragraphs (7) and (8), where the application referred to in sub-paragraph (1) is received by the counting officer before 5pm on the date of the referendum and the counting officer—
- (a) is satisfied as to the postal voter’s identity, and
 - (b) has no reason to doubt that the postal voter has either lost or has not received a
 - 25 document referred to in sub-paragraph (1)(a) to (c),
- the counting officer must issue another postal ballot paper.
- (7) Where the application referred to in sub-paragraph (1) is received by the counting officer after 5pm on the day before the date of the referendum, the counting officer may only issue another postal ballot paper if the postal voter applies in person.
- 30 (8) The counting officer may refuse to issue another postal ballot paper if the officer considers that it is reasonable for the voter to allow further time for the delivery of the documents referred to in sub-paragraph (1).
- (9) The counting officer must enter in a list kept for the purpose (“the list of lost postal ballot papers”)—
- 35 (a) the name and number of the postal voter as stated in the register of local government electors (or, in the case of a postal voter who has an anonymous entry, that person’s voter number alone),
 - (b) the number of the lost postal ballot paper and of its replacement issued under this paragraph, and
 - 40 (c) where the postal voter is a proxy, the name and address of the proxy.
- (10) The following provisions apply in relation to a replacement postal ballot paper under sub-paragraph (6) as they apply in relation to a ballot paper—

- (a) paragraph 22 (except sub-paragraph (2)),
- (b) paragraphs 24 and 25, and
- (c) subject to sub-paragraph (11), paragraph 26.

- 5 (11) Where a postal voter applies in person after 5pm on the day before the date of the referendum, the counting officer may only issue a replacement postal ballot paper by handing it to the postal voter.
- (12) Where the counting officer issues another postal ballot paper under sub-paragraph (6), the lost postal ballot paper is void and of no effect.

Superseded postal ballot papers

- 10 29 (1) This paragraph applies where—
- (a) an event mentioned in sub-paragraph (2) occurs in relation to a voter or a voter’s proxy, and
 - (b) the documents mentioned in sub-paragraph (3) have previously been issued to the voter or, as the case may be, proxy.
- 15 (2) The events are—
- (a) an application by the voter is granted under paragraph 3(2), (5), (6) or (7),
 - (b) the voter is removed from the postal voters list,
 - (c) the appointment of the proxy to vote for the voter in the referendum is cancelled, or ceases to have effect, by virtue of paragraph 5(11),
 - 20 (d) the proxy is removed from the proxy postal voters list,
 - (e) an application by the proxy is granted under paragraph 6(8).
- (3) The documents are—
- (a) a postal ballot paper (a “superseded postal ballot paper”),
 - (b) a postal voting statement,
 - 25 (c) the envelopes supplied for their return.
- (4) The registration officer must notify the counting officer of the occurrence of the event.
- (5) The superseded postal ballot paper is void and of no effect.
- (6) The counting officer must issue a replacement postal ballot paper where an application is granted under paragraph 3(5) or 6(8).
- 30 (7) The voter or, as the case may be, proxy must return the documents mentioned in sub-paragraph (3).
- (8) Any postal ballot paper or postal voting statement returned in accordance with sub-paragraph (7) must be immediately cancelled.
- 35 (9) The counting officer must, as soon as practicable after cancelling those documents, make up those documents in a separate packet and must seal the packet; and if on any subsequent occasion documents are cancelled as mentioned in sub-paragraph (8), the sealed packet must be opened and the additional cancelled documents included in it and the packet must again be made up and sealed.

- (10) The counting officer must enter in a list kept for the purpose (“the list of superseded postal ballot papers”)—
- (a) the name and number of the voter as stated in the register of local government electors (or, in the case of a voter who has an anonymous entry, the voter’s voter number alone),
 - (b) the number of the superseded postal ballot paper,
 - (c) the number of any replacement postal ballot paper issued under sub-paragraph (6), and
 - (d) where the superseded postal ballot paper was issued to a proxy, the name and address of the proxy.

Notice of opening of postal ballot paper envelopes

- 30 (1) The counting officer must give to each of the referendum agents appointed for the area not less than 48 hours’ notice in writing of each occasion on which a postal voters box and the envelopes contained in it are to be opened.
- 15 (2) That notice must specify—
- (a) the time and place at which such an opening is to take place, and
 - (b) the number of postal ballot agents that may be appointed to attend each opening.

Boxes and receptacles

- 31 (1) The counting officer must provide a separate box for the reception of—
- (a) the covering envelopes when returned by the postal voters, and
 - (b) postal ballot papers.
- (2) Each such box must be marked “postal voters box” or “postal ballot box” (as the case may be) and with the name of the local government area.
- (3) The postal ballot box must be shown as being empty to any postal ballot agents present on the occasion of opening the first postal voters box.
- (4) The counting officer must then—
- (a) lock the postal ballot box,
 - (b) apply the counting officer’s seal in such manner as to prevent the box being opened without breaking the seal, and
 - (c) allow any referendum agent or postal ballot agent present who wishes to affix the agent’s seal to do so.
- (5) The counting officer must provide separate receptacles for—
- (a) rejected votes,
 - (b) ballot paper envelopes,
 - (c) rejected ballot paper envelopes,
 - (d) rejected votes (verification procedure), and
 - (e) postal voting statements (verification procedure).

- (6) The counting officer must take proper precautions for the safe custody of every box and receptacle referred to in this paragraph.

Receipt of covering envelopes and collection of postal votes

- 5 32 (1) The counting officer must, immediately on receipt (whether by hand or by post) of a covering envelope (or an envelope which is stated to include a postal vote) before the close of the poll, place it unopened in a postal voters box.
- (2) Where an envelope, other than a covering envelope issued by the counting officer—
- (a) has been opened, and
- (b) contains a ballot paper envelope, postal voting statement or ballot paper,
- 10 the envelope, together with its contents, is to be placed in a postal voters box.
- (3) The counting officer may collect (or arrange to be collected) any postal ballot paper or postal voting statement which by virtue of rule 28(2)(g) of the conduct rules the presiding officer of a polling station would otherwise be required to deliver (or arrange to be delivered) to the counting officer.
- 15 (4) Where the counting officer collects (or arranges to be collected) any postal ballot paper or postal voting statement in accordance with sub-paragraph (3), the presiding officer must first make it (or them) up into a packet (or packets) sealed with the presiding officer's seal and the seal of any postal ballot agent present who wishes to affix the agent's seal.

20 *Opening of postal voters box*

- 33 (1) Each postal voters box must be opened by the counting officer in the presence of any postal ballot agents who are present.
- (2) So long as the counting officer ensures that there is at least one sealed postal voters box for the reception of covering envelopes up to the time of the close of the poll, the other
- 25 postal voters boxes may be opened by the counting officer.
- (3) The last postal voters box and the postal ballot box must be opened at the counting of the votes under rule 30 of the conduct rules.

Opening of covering envelopes

- 30 34 (1) When a postal voters box is opened, the counting officer must count and record the number of covering envelopes (including any envelope which is stated to include a postal vote and any envelope described in paragraph 32(2)).
- (2) The counting officer must open separately each covering envelope (including an envelope described in paragraph 32(2)).
- (3) The procedure in paragraph 36 applies where a covering envelope (including an
- 35 envelope to which paragraph 32(2) applies) contains both—
- (a) a postal voting statement, and
- (b) a ballot paper envelope, or if there is no ballot paper envelope, a ballot paper.

- (4) Where the covering envelope does not contain the postal voting statement separately, the counting officer must open the ballot paper envelope to ascertain whether the postal voting statement is inside.
- (5) Where a covering envelope does not contain both—
- (a) a postal voting statement (whether separately or not), and
- (b) a ballot paper envelope or, if there is no ballot paper envelope, a ballot paper,
- the counting officer must mark the covering envelope “provisionally rejected”, attach its contents (if any) and place it in the receptacle for rejected votes.
- (6) In carrying out the procedures in this paragraph and paragraphs 36 to 40, the counting officer and the counting officer’s staff—
- (a) must keep the ballot papers face downwards and must take proper precautions for preventing any person from seeing the votes made on the ballot papers, and
- (b) must not look at the corresponding number list used at the issue of postal ballot papers.
- (7) Where an envelope opened in accordance with sub-paragraph (2) contains a postal voting statement, the counting officer must place a mark in the marked copy of the postal voters list or proxy postal voters list in a place corresponding to the number of the voter to denote that a postal vote has been returned.
- (8) A mark made under sub-paragraph (7) must be distinguishable from and must not obscure the mark made under paragraph 22(2).
- (9) As soon as practicable after the last covering envelope has been opened, the counting officer must make up into a packet the copy of the marked postal voters list and proxy postal voters list that have been marked in accordance with sub-paragraph (7) and must seal that packet.

Confirmation of receipt of postal voting statement

- 35 (1) A voter or a voter’s proxy who is shown in the postal voters list or proxy postal voters list may make a request, at any time between the first issue of postal ballots under paragraph 22 and the close of the poll, that the counting officer confirm—
- (a) whether a mark is shown in the marked copy of the postal voters list or proxy postal voters list in a place corresponding to the number of the voter to denote that a postal vote has been returned, and
- (b) whether the number of the ballot paper issued to the voter or the voter’s proxy has been recorded on either of the lists of provisionally rejected postal ballot papers kept by the counting officer under sub-paragraphs (2) and (3) of paragraph 39.
- (2) Where a request is received in accordance with sub-paragraph (1) the counting officer must, if satisfied that the request has been made by the voter or the voter’s proxy, provide confirmation of the matters mentioned in sub-paragraph (1).

Procedure in relation to postal voting statements: personal identifier verification

- 36 (1) This paragraph applies in the circumstances described in paragraph 34(3).

- 5 (2) The counting officer must determine whether the postal voting statement is duly completed and, as part of that process, must compare the date of birth and the signature on the postal voting statement against the date of birth and the signature contained in the personal identifiers record relating to the person to whom the postal ballot paper was addressed.
- (3) Where the counting officer determines that the statement is not duly completed, the counting officer must mark the statement “rejected”, attach it to the ballot paper envelope, or if there is no such envelope, the ballot paper, and, subject to sub-paragraph (4), place it in the receptacle for rejected votes (verification procedure).
- 10 (4) Before placing a postal voting statement in the receptacle for rejected votes (verification procedure), the counting officer must—
- (a) show it to the postal ballot agents,
 - (b) permit the agents to view the entries in the personal identifiers record relating to the person to whom the postal ballot paper was addressed, and
 - 15 (c) if any agent objects to the counting officer’s decision, add the words “rejection objected to”.
- (5) The counting officer must then examine the number on the postal voting statement against the number on the ballot paper envelope and, where they are the same, the counting officer must place the statement and the ballot paper envelope respectively in the receptacle for postal voting statements (verification procedure) and the receptacle for ballot paper envelopes.
- 20 (6) Where—
- (a) the number on a valid postal voting statement is not the same as the number on the ballot paper envelope, or
 - 25 (b) that envelope has no number on it,
- the counting officer must open the envelope.
- (7) Sub-paragraph (8) applies where—
- (a) there is a valid postal voting statement but no ballot paper envelope, or
 - 30 (b) the ballot paper envelope has been opened under paragraph 34(4) or sub-paragraph (6).
- (8) The counting officer must place—
- (a) in the postal ballot box, any postal ballot paper the number on which is the same as the number on the valid postal voting statement,
 - 35 (b) in the receptacle for rejected votes (verification procedure), any other ballot paper, with the valid postal voting statement attached and marked “provisionally rejected”,
 - (c) in the receptacle for rejected votes (verification procedure), any valid postal voting statement marked “provisionally rejected” where there is no postal ballot paper, and
 - 40 (d) in the receptacle for postal voting statements (verification procedure), any valid statement not disposed of under paragraph (b) or (c).

Opening of ballot paper envelopes

37 (1) The counting officer must open separately each ballot paper envelope placed in the receptacle for ballot paper envelopes.

(2) The counting officer must place—

- (a) in the postal ballot box, any postal ballot paper the number on which is the same as the number on the ballot paper envelope,
- (b) in the receptacle for rejected votes, any other postal ballot paper, which is to be marked “provisionally rejected” and to which is to be attached the ballot paper envelope, and
- (c) in the receptacle for rejected ballot paper envelopes, any ballot paper envelope which is to be marked “provisionally rejected” because it does not contain a postal ballot paper.

Retrieval of cancelled postal ballot papers

38 (1) Where it appears to the counting officer that a cancelled postal ballot paper has been placed—

- (a) in a postal voters box,
- (b) in the receptacle for ballot paper envelopes, or
- (c) in a postal ballot box,

the counting officer must proceed as set out in sub-paragraphs (2) and (3).

(2) The counting officer must on the next occasion on which a postal voters box is opened in accordance with paragraph 33, also open any postal ballot box and the receptacle for ballot paper envelopes and—

- (a) retrieve the cancelled postal ballot paper,
- (b) show the ballot paper number on the cancelled postal ballot paper to the postal ballot agents,
- (c) retrieve the postal voting statement that relates to a cancelled paper from the receptacle for postal voting statements (verification procedure),
- (d) attach any cancelled postal ballot paper to the postal voting statement to which it relates,
- (e) place the cancelled documents in a separate packet and deal with that packet in the manner provided for in paragraph 27(7), and
- (f) unless the postal ballot box has been opened for the purposes of the counting of votes under rule 30 of the conduct rules, seal the postal ballot box in the presence of the agents.

(3) Whilst retrieving a cancelled postal ballot paper in accordance with sub-paragraph (2), the counting officer and the counting officer’s staff—

- (a) must keep the ballot papers face downwards and take proper precautions for preventing any person from seeing the votes made on the ballot papers, and
- (b) must not look at the corresponding number list used at the issue of postal ballot papers.

Lists of provisionally rejected postal ballot papers

- 39 (1) The counting officer must keep two separate lists of provisionally rejected postal ballot papers.
- 5 (2) In the first list, the counting officer must record the ballot paper number of any postal ballot paper for which no valid postal voting statement was received with it.
- (3) In the second list, the counting officer must record the ballot paper number of any postal ballot paper which is entered on a valid postal voting statement where that postal ballot paper is not received with the postal voting statement.

Checking of lists kept under paragraph 39

- 10 40 (1) Where the counting officer receives a valid postal voting statement without the postal ballot paper to which it relates, the counting officer may, at any time prior to the close of the poll, check the list kept under paragraph 39(2) to see whether the number of any postal ballot paper to which the statement relates is entered in the list.
- 15 (2) Where the counting officer receives a postal ballot paper without the postal voting statement to which it relates, the counting officer may, at any time prior to the close of the poll, check the list kept under paragraph 39(3) to see whether the number of the postal ballot paper is entered in the list.
- 20 (3) The counting officer must conduct the checks required by sub-paragraphs (1) and (2) as soon as practicable after the receipt, under rule 28(1)(d) of the conduct rules, of packets from every polling station in the local government area.
- (4) Where the ballot paper number in the list matches that number on a valid postal voting statement or (as the case may be) the postal ballot paper, the counting officer must retrieve that statement or paper.
- 25 (5) The counting officer must then take the appropriate steps under this Part of this schedule as though any document earlier marked “provisionally rejected” had not been so marked and must amend the document accordingly.

Sealing of receptacles

- 30 41 (1) As soon as practicable after the completion of the procedure under paragraph 40(3) and (4), the counting officer must make up into separate packets the contents of—
- (a) the receptacle for rejected votes,
- (b) the receptacle for rejected ballot paper envelopes,
- (c) the lists of spoilt, lost and superseded postal ballot papers,
- (d) the receptacle for rejected votes (verification procedure), and
- (e) the receptacle for postal voting statements (verification procedure),
- 35 and must seal up such packets.
- (2) Any document in those packets marked “provisionally rejected” is to be deemed to be marked “rejected”.

Forwarding of documents

42 (1) The counting officer must, at the same time as sending the documents mentioned in rule 37 of the conduct rules, send to the proper officer of the council for the local government area in which the votes being counted have been cast—

- 5 (a) any packets referred to in paragraphs 25, 27(7), 28(5), 29(9), 34(9), 38(2)(e) and 41, endorsing on each packet a description of its contents and the date of the referendum, and
- (b) a completed statement giving details of postal ballot papers issued, received, counted and rejected in the form prescribed.

10 (2) Where—

- (a) any covering envelopes are received by the counting officer after the close of the poll (apart from those delivered in accordance with the provisions of rule 28 of the conduct rules),
- 15 (b) any envelopes addressed to postal voters are returned as undelivered too late to be re-addressed, or
- (c) any spoilt postal ballot papers are returned too late to enable other postal ballot papers to be issued,

the counting officer must put them unopened in a separate packet, seal up that packet and endorse and send it at a subsequent date in the manner described in sub-paragraph (1).

- (3) Rules 38 and 40 of the conduct rules apply to any packet or document sent under this paragraph as they apply for the purposes of the documents referred to in those rules.
- (4) A copy of the statement referred to in sub-paragraph (1)(b) is to be provided by the counting officer to the Electoral Commission.

25 *Power of Chief Counting Officer to prescribe*

- 43 (1) In paragraphs 10(2) and 42(1)(b), “prescribed” means prescribed by the Chief Counting Officer.
- (2) Where a form is so prescribed, the form may be used with such variations as the circumstances may require.

30 *Interpretation of Part*

44 In this Part—

- “postal ballot paper” means a ballot paper issued, or to be issued, to a postal voter,
 “postal voter” means a voter or a voter’s proxy who is entitled to vote by post.

PART 4

SUPPLY OF REGISTER OF LOCAL GOVERNMENT ELECTORS ETC.

Supply of free copy of register of local government electors etc. to counting officers

- 45 (1) Each registration officer must, at the request of the relevant counting officer, supply free of charge to the counting officer as many printed copies of—

- (a) the latest version of the register of local government electors,
- (b) any notice setting out an alteration to the register of local government electors issued under—
 - (i) section 13A(2) of the 1983 Act, or
 - (ii) section 13B(3), (3B) or (3D) of that Act, and
- (c) any record of anonymous entries,

as the counting officer may reasonably require for the purposes of the referendum.

- (2) Each registration officer must, as soon as practicable, supply free of charge to the relevant counting officer as many printed copies of—

- (a) the postal voters list,
- (b) the list of proxies, and
- (c) the proxy postal voters list,

as the counting officer may reasonably require for the purposes of the referendum.

- (3) If, after supplying copies of the register of local government electors and notices in accordance with sub-paragraph (1), any further notices of the kind referred to in paragraph (b) of that sub-paragraph are issued by a registration officer, the registration officer must, as soon as practicable after issuing the notices, supply the relevant counting officer with as many printed copies as the counting officer may reasonably require for the purposes of the referendum.

- (4) The duty under sub-paragraph (1) to supply as many printed copies of the register of local government electors and notices as the counting officer may reasonably require includes a duty to supply up to two copies in data form.

- (5) No person to whom a copy of a document has been supplied under this paragraph may, except for the purposes of the referendum—

- (a) supply a copy of the document,
- (b) disclose any information contained in it (that is not also contained in the edited version of the register of local government electors), or
- (c) make use of any such information.

Supply of free copy of register of local government electors etc. to Electoral Commission

- 46 (1) Each registration officer must supply free of charge to the Electoral Commission one copy of—

- (a) the latest version of the register of local government electors,
- (b) any notice setting out an alteration of the register of local government electors issued under—
 - (i) section 13A(2) of the 1983 Act, or
 - (ii) section 13B(3), (3B) or (3D) of that Act,
- (c) the postal voters list,
- (d) the list of proxies, and

- (e) the proxy postal voters list.
- (2) The duty to supply under sub-paragraph (1) is a duty to supply in data form unless the Commission have, prior to the supply, requested in writing a printed copy instead.
- (3) Neither an Electoral Commissioner nor any person employed by the Commission may—
- 5 (a) supply a copy of any document supplied under sub-paragraph (1) otherwise than to another Electoral Commissioner or another such person,
- (b) disclose any information contained in any such document otherwise than in accordance with sub-paragraph (5) below,
- 10 (c) make use of any such information otherwise than in connection with the Commissioner's or the person's functions under, or by virtue of, this Act.
- (4) In sub-paragraph (3), "Electoral Commissioner" includes a Deputy Electoral Commissioner and an Assistant Electoral Commissioner.
- (5) A document supplied under sub-paragraph (1), or any information contained in it, may not be disclosed otherwise than—
- 15 (a) where necessary to carry out the Commission's functions under this Act in relation to permissible donors,
- (b) by publishing information about voters which does not include the name or address of any voter.
- (6) A registration officer must, at the request of the Electoral Commission, supply free of charge to the Commission a further copy of any document referred to in sub-paragraph 20 (1) if satisfied that it is necessary in the circumstances to do so.
- (7) Sub-paragraphs (2) to (5) apply to the supply of a document under sub-paragraph (6) as they apply to the supply of a document under sub-paragraph (1).

Supply of free copy of register of local government electors etc. to permitted participants

- 25 47 (1) If a permitted participant so requests, the registration officer must supply free of charge to the participant one copy of—
- (a) the full, latest version of the register of local government electors published under section 13(1) or (3) of the 1983 Act,
- (b) any notice setting out an alteration of that version of the register issued under—
- 30 (i) section 13A(2) of the 1983 Act, or
- (ii) section 13B(3), (3B) or (3D) of that Act,
- (c) the postal voters list kept by the officer under paragraph 5(2) of schedule 4 (absent voting at parliamentary and local government elections) of the Representation of the People Act 2000,
- 35 (d) the list of proxies kept by the officer under paragraph 5(3) of that schedule, and
- (e) the proxy postal voters list kept by the officer under paragraph 7(8) of that schedule.
- (2) A request under sub-paragraph (1) must—
- (a) be made in writing,

- (b) specify the documents requested,
- (c) state whether the request is made only in respect of the current documents or whether it includes a request for the supply of any further documents issued, and
- (d) state whether a printed copy of any of the documents is requested instead of a version in data form.

(3) Unless a request has been made in advance of supply under sub-paragraph (2)(d), the copy of a document supplied under sub-paragraph (1) is to be in data form.

(4) No person employed by, or assisting (whether or not for reward) a permitted participant to which a document has been supplied under this paragraph may, except for a purpose set out in sub-paragraph (5)—

- (a) supply a copy of the document to any person,
- (b) disclose any information contained in it (that is not also contained in the edited version of the register of local government electors), or
- (c) make use of any such information.

(5) The purposes are—

- (a) purposes in connection with the campaign in respect of the outcome identified in the declaration made by the permitted participant under paragraph 2 of schedule 3, and
- (b) the purposes of complying with the controls on donations and regulated transactions in that schedule.

(6) A registration officer may, at the request of a permitted participant, supply free of charge to the permitted participant a further copy of any document referred to in sub-paragraph (1) if satisfied that it is necessary in the circumstances to do so.

(7) Sub-paragraphs (2) to (5) apply to the supply of a document under sub-paragraph (6) as they apply to the supply of a document under sub-paragraph (1).

Dates of birth to be omitted from copies of register supplied

48 A copy of the register of local government electors supplied under paragraph 45, 46 or 47 is to contain the same information as in the register except that, in the case of an entry relating to a person aged 16 or 17, the date on which the person will attain the age of 18 is to be omitted.

Supply of data

49 A duty of a registration officer to supply data under this Part of this schedule is a duty only to supply the data in—

- (a) the form in which the officer holds it, or
- (b) such form as may be agreed between the registration officer and the recipient of the data.

General restriction on use of registration documents and information contained in them

50 (1) This paragraph applies to—

- (a) any person to whom a copy of a registration document is supplied under any enactment other than paragraphs 45 to 47,
- 5 (b) any person to whom information contained in a registration document has been disclosed,
- (c) any person to whom a person referred to in paragraph (a) or (b) has supplied a copy of a registration document or information contained in it, and
- 10 (d) any person who has obtained access to a copy of a registration document or information contained in it by any other means.

(2) No person to whom this paragraph applies may, except for the purposes of the referendum—

- (a) supply a copy of a registration document,
- 15 (b) disclose any information contained in a registration document (that is not also contained in the edited version of the register of local government electors), or
- (c) make use of any such information.

(3) In this paragraph, “registration document” means a document referred to in paragraph 45(1) and (2).

Offence in relation to disclosure of registration documents

20 51 (1) A person (“A”) commits an offence—

- (a) if A contravenes any of paragraphs 45(5), 46(3) or (5), 47(4) or 50(2), or
- (b) if A is an appropriate supervisor of another person (“B”) who contravenes any of those paragraphs and A failed to take appropriate steps.

(2) B does not commit an offence under sub-paragraph (1) if—

- 25 (a) B has an appropriate supervisor, and
- (b) B complied with all the requirements imposed on B by the appropriate supervisor.

(3) A does not commit an offence under sub-paragraph (1) if—

- (a) A is not, and does not have, an appropriate supervisor, and
- 30 (b) A took all reasonable steps to ensure that A did not contravene a provision specified in sub-paragraph (1)(a).

(4) In this paragraph—

“appropriate supervisor” means a person who is a director of a company, or concerned in the management of an organisation, in which B is employed or under whose direction or control B is,

35 “appropriate steps” are such steps as it was reasonable for the appropriate supervisor to take to secure the operation of procedures designed to prevent, so far as practicable, any contravention of a provision specified in sub-paragraph (1)(a).

(5) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Destruction of copies of the register of local government electors etc.

- 52 (1) This paragraph applies to any person holding a copy of a document supplied under paragraph 45 or 47.
- (2) The person must ensure that the document is securely destroyed no later than one year after the date of the referendum, unless otherwise directed by an order of the Court of Session or a sheriff principal.
- (3) A person who fails to comply with sub-paragraph (2) commits an offence.
- (4) A person who commits an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

PART 5

SUPPLY OF MARKED REGISTER OF LOCAL GOVERNMENT ELECTORS ETC.

Supply of marked register of local government electors etc. to designated organisations

- 53 (1) A designated organisation may request that a counting officer supply the organisation with copies of—
- (a) the marked copy of the register of local government electors,
- (b) the marked copy of any notice setting out an alteration of the register of local government electors issued under section 13B(3B) or (3D) of the 1983 Act,
- (c) the marked copy of the postal voters list,
- (d) the marked copy of the list of proxies, and
- (e) the marked copy of the proxy postal voters list.
- (2) A request under sub-paragraph (1) must—
- (a) be made in writing,
- (b) specify the documents requested,
- (c) state whether a printed copy of the documents is requested or a copy in data form, and
- (d) state the purposes for which the documents will be used and why the supply of the unmarked copies of the documents would not be sufficient to achieve those purposes.
- (3) Where a request is duly made by a designated organisation under sub-paragraph (1), the counting officer must supply the documents requested if—
- (a) the officer is satisfied that the organisation needs to see the marks on the marked copies of the documents in order to achieve the purpose for which they are requested, and
- (b) the officer has received payment of a fee calculated in accordance with paragraph 54.
- (4) A designated organisation that obtains a copy of any document referred to in sub-paragraph (1) may use it—

(a) only for—

(i) purposes in connection with the campaign in respect of the outcome identified in the declaration made by the organisation under paragraph 2 of schedule 3, or

(ii) the purposes of complying with the controls on donations and regulated transactions in that schedule, and

(b) subject to any conditions that would apply to the use of the unmarked copies of the documents by virtue of paragraph 47.

(5) Where a person (“A”) has been supplied with a copy of a document referred to in sub-paragraph (1), or information contained in such a document, by a person (“B”) to whom paragraph 47(4) applies, the restrictions in that paragraph also apply to A as they apply to B.

(6) A designated organisation may—

(a) supply a copy of a document referred to in sub-paragraph (1) to a processor for the purpose of processing the information contained in it, or

(b) procure that a processor processes and supplies to the organisation any copy of the information in such a document that the processor has obtained under this paragraph,

for use in respect of the purposes for which the designated organisation is entitled to obtain such document or information.

(7) A duty of a counting officer to supply data under this paragraph is a duty only to supply the data in—

(a) the form in which the officer holds it, or

(b) such form as may be agreed between the counting officer and the recipient of the data.

(8) Paragraph 52 applies to a person holding a copy of a document supplied under this paragraph as it applies to a person holding a copy of any document supplied under paragraph 45 or 47 (and the reference in paragraph 52(2) to the document is to be construed accordingly).

(9) In sub-paragraph (6), “processor” means a person who provides a service which consists of putting information into data form and includes an employee of such a person.

(10) In this Act, “marked copy” means—

(a) in relation to the register of local government electors, the copy marked as mentioned in rule 21(2)(c) of the conduct rules,

(b) in relation to a notice issued under section 13B(3B) or (3D) of the 1983 Act, the copy marked as mentioned in that rule as modified by rule 21(4),

(c) in relation to the list of proxies, the copy marked as mentioned in rule 21(2)(d),

(d) in relation to the postal voters list or proxy postal voters list, the copy marked as mentioned in paragraph 22(2) of this schedule.

Fee for supply of marked register of local government electors etc.

- 54 (1) The fee to be paid in accordance with sub-paragraph (3)(b) of paragraph 53 by a designated organisation requesting the supply of a document referred to in sub-paragraph (1) of that paragraph is set out in sub-paragraph (2).
- 5 (2) The fee is £10 plus—
- (a) for a copy in printed form, £2 for each 1,000 entries (or remaining part of 1,000 entries) covered by the request,
 - (b) for a copy in data form, £1 for each 1,000 entries (or remaining part of 1,000 entries) covered by the request.
- 10 (3) For the purposes of this paragraph, a request for a copy of the whole or the same part of a document in both printed and data form may be treated as two separate requests.

SCHEDULE 2
(introduced by section 12)

CONDUCT RULES

15 *Publication of notice of the referendum*

- 1 (1) The counting officer must publish notice of the referendum not later than the twenty-fifth day before the date of the referendum.
- (2) For the purposes of paragraph (1), the following days are to be disregarded—
- (a) a Saturday or Sunday,
 - 20 (b) Christmas Eve or Christmas Day,
 - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
 - (d) a day appointed for public thanksgiving or mourning.
- (3) The notice must—
- 25 (a) be in the form prescribed, and
 - (b) set out—
- (i) the date of the referendum,
 - (ii) the hours of polling,
 - (iii) a description of who is entitled to vote at each polling station, and
 - 30 (iv) the situation of each polling station in the local government area.
- (4) The notice must also state the day by which—
- (a) applications to register to vote,
 - (b) applications to vote by post or by proxy,
 - (c) other applications and notices about postal or proxy voting,
- 35 must reach the registration officer in order that they may be effective for the referendum.
- (5) As soon as practicable after publishing the notice under paragraph (1), the counting officer must give a copy of it to each of the referendum agents appointed for the area.

Hours of polling

2 The hours of polling are between 7am and 10pm.

The ballot

3 (1) The votes at the referendum are to be given by ballot.

5 (2) The ballot of every voter consists of a ballot paper.

(3) The ballot paper is to be of the prescribed colour.

Printing of ballot papers

4 The counting officer must arrange for the printing of the ballot papers for the counting officer's area unless the Chief Counting Officer takes responsibility for doing so.

10 *The corresponding number list*

5 (1) The counting officer must prepare a list (the "corresponding number list") which complies with paragraph (2).

(2) The corresponding number list must—

15 (a) contain the unique identifying numbers of all ballot papers to be issued in accordance with rule 8(1) or provided in accordance with rule 13(1), and

(b) be in the form prescribed.

Security marking

6 (1) Every ballot paper must bear or contain—

(a) an official mark on the front of the ballot paper, and

20 (b) a unique identifying number on the back of the ballot paper.

(2) The counting officer may use a different official mark for ballot papers issued for the purpose of voting by post from the official mark used for ballot papers issued for the purpose of voting in person.

(3) The counting officer may use a different official mark for different purposes.

25 (4) The official mark must be kept secret.

Use of schools and public rooms for polling and counting votes

7 (1) The counting officer may use, free of charge, for the purpose of taking the poll or counting the votes—

30 (a) a suitable room in the premises of a school to which this rule applies in accordance with paragraph (2), and

(b) any meeting room to which this rule applies in accordance with paragraph (3).

(2) This rule applies to any school maintained by an education authority.

- (3) This rule applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—
- (a) the Scottish Ministers or any other part of the Scottish Administration, or
 - (b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).
- (4) The counting officer—
- (a) must pay any expenses incurred in preparing, warming, lighting and cleaning the room and restoring the room to its usual condition after use for the referendum, and
 - (b) must pay for any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises by reason of its being used for the purposes of taking the poll or counting the votes.
- (5) For the purposes of this rule (except those of paragraph (4)(b)), the premises of a school are not to be taken to include any private dwelling.
- (6) In this rule—
- “dwelling” includes any part of a building where that part is occupied separately as a dwelling,
 - “meeting room” means any room which it is the practice to let for public meetings,
 - “room” includes a hall, gallery or gymnasium.

Postal ballot papers

- 8 (1) The counting officer must issue to those entitled to vote by post—
- (a) a ballot paper,
 - (b) a postal voting statement in the form prescribed, and
 - (c) an envelope for their return.
- (2) The counting officer must also, as soon as practicable, issue to those entitled to vote by post information about how to obtain—
- (a) translations into languages other than English of any directions to or guidance for voters sent with the ballot paper,
 - (b) a translation into Braille of such directions or guidance,
 - (c) a graphical representation of such directions or guidance, and
 - (d) the directions or guidance in any other form (including in audible form).

Provision of polling stations

- 9 (1) The counting officer must—
- (a) provide a sufficient number of polling stations, and
 - (b) allot the voters to the polling stations.
- (2) One or more polling stations may be provided in the same room.

- (3) The counting officer must provide each polling station with such number of compartments as may be necessary in which the voters can mark their votes screened from observation.

Appointment of presiding officers and clerks

- 5 10 (1) The counting officer must appoint and pay—
- (a) a presiding officer to attend at each polling station, and
 - (b) such clerks as may be necessary for the purposes of the referendum.
- (2) The counting officer must not knowingly appoint any person who is or has been involved in campaigning for a particular outcome in the referendum.
- 10 (3) The counting officer may preside at a polling station and the provisions of these rules relating to a presiding officer apply to a counting officer who so presides with the necessary modifications as to things done by the counting officer to the presiding officer or by the presiding officer to the counting officer.
- (4) A presiding officer may authorise a clerk appointed under paragraph (1)(b) to do any act which the presiding officer is required or authorised by these rules to do at a polling station, except ordering the removal and exclusion of any person from the polling station.
- 15

Issue of poll cards

- 20 11 (1) The counting officer must, as soon as practicable after publishing the notice of the referendum under rule 1, send to voters whichever of the following is appropriate—
- (a) an official poll card,
 - (b) an official postal poll card,
 - (c) an official poll card issued to the proxy of a voter, or
 - (d) an official postal poll card issued to the proxy of a voter.
- 25 (2) A voter's official poll card is to be sent or delivered to the voter's qualifying address.
- (3) A voter's official postal poll card is to be sent or delivered to the address to which the voter has stated that the ballot paper is to be sent.
- (4) A proxy's official poll card or official postal poll card is to be sent or delivered to the proxy's address as shown in the list of proxies.
- 30 (5) The cards mentioned in paragraph (1) are to be in the form prescribed.
- (6) The cards must set out—
- (a) the voter's name, qualifying address and number in the register of local government electors (unless the voter has an anonymous entry),
 - (b) the date of the referendum,
 - (c) the hours of polling, and
 - (d) the situation of the polling station allotted to the voter under rule 9(1)(b) (in the case of the cards mentioned in paragraph (1)(a) and (c)).
- 35 (7) Where a poll card is sent to a voter who has appointed a proxy, the card must also notify the voter of the appointment of the proxy.

- (8) In the case of a voter who has an anonymous entry, the card must be sent in an envelope or other form of covering so as not to disclose to any other person that the person has an anonymous entry.

Loan of equipment for referendum

- 5 12 (1) A council must, if requested to do so by a counting officer, loan to the counting officer any ballot boxes, fittings and compartments provided by or belonging to the council.
- (2) Paragraph (1) does not apply if the council requires the equipment for immediate use by that council.
- 10 (3) A loan under paragraph (1) is to be on such terms and conditions as the council and the counting officer may agree.

Equipment of polling stations

- 13 (1) The counting officer must provide each presiding officer with such number of ballot boxes and ballot papers as the counting officer considers necessary.
- 15 (2) Each ballot box is to be constructed so that the ballot papers can be put in, but cannot be withdrawn from it, without the box being opened.
- (3) The counting officer must provide each polling station with—
- (a) materials to enable voters to mark the ballot papers,
- (b) copies of the register of local government electors or such part of it as contains the entries relating to the voters allotted to the station,
- 20 (c) the parts of any lists of persons entitled to vote by post or by proxy prepared for the referendum corresponding to the register of local government electors or the part of it provided under sub-paragraph (b),
- (d) copies of forms of declarations and other documents required for the purpose of the poll, and
- 25 (e) the part of the corresponding number list which contains the numbers corresponding to those on the ballot papers provided to the presiding officer of the polling station.
- (4) The reference in paragraph (3)(b) to the copies of the register of local government electors includes a reference to copies of any notices issued under section 13B(3B) or
- 30 (3D) of the 1983 Act in respect of alterations to the register of local government electors.
- (5) A notice giving directions for the guidance of voters in voting is to be displayed—
- (a) inside and outside every polling station, and
- (b) in every compartment of every polling station.
- 35 (6) The notice under paragraph (5) is to be in the form prescribed.
- (7) The counting officer must also provide each polling station with—
- (a) an enlarged hand-held sample copy of the ballot paper for the assistance of voters who are partially-sighted, and
- 40 (b) a device for enabling voters who are blind or partially-sighted to vote without any need for assistance from the presiding officer or any companion.

- (8) The counting officer may cause to be displayed at every polling station an enlarged sample copy of the ballot paper and may include a translation of it into such other languages as the counting officer considers appropriate.
- (9) The sample copy mentioned in paragraphs (7)(a) and (8) must be clearly marked as a specimen provided only for the guidance of voters in voting.

Appointment of polling and counting agents

14 (1) A referendum agent may appoint—

(a) polling agents to attend at polling stations for the purpose of detecting personation,

(b) counting agents to attend at the counting of the votes.

(2) The counting officer may limit the number of counting agents that may be appointed, so long as—

(a) the number that may be appointed by each referendum agent is the same, and

(b) the number that may be appointed by each referendum agent is not less than the number obtained by dividing the number of clerks employed on the counting by the number of referendum agents.

(3) For the purposes of paragraph (2)(b), a counting agent appointed by more than one referendum agent is to be treated as a separate agent for each of them.

(4) A referendum agent who appoints a polling or counting agent must give the counting officer notice of the appointment no later than the fifth day before the date of the referendum.

(5) For the purposes of paragraph (4), the following days are to be disregarded—

(a) a Saturday or Sunday,

(b) Christmas Eve or Christmas Day,

(c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,

(d) a day appointed for public thanksgiving or mourning.

(6) If a polling agent or counting agent dies or becomes unable to perform the agent's functions, the referendum agent may appoint another agent and must give the counting officer notice of the new appointment as soon as practicable.

(7) A notice under paragraph (4) or (6)—

(a) must be given in writing,

(b) must give the name and address of the person appointed,

(c) in the case of a polling agent, must set out which polling stations the agent may attend,

(d) in the case of a counting agent, must set out which counts the agent may attend.

(8) In schedule 1 and these conduct rules, references to polling agents and counting agents are to agents appointed under paragraph (1) or (6)—

(a) whose appointments have been duly made and notified, and

(b) where the number of agents is restricted, who are within the permitted numbers.

- (9) Any notice required to be given to a counting agent by the counting officer may be delivered at, or sent by post to, the address stated in the notice under paragraph (4) or (6).
- (10) A referendum agent may do (or assist in doing) anything that a polling or counting agent appointed by that referendum agent is authorised to do.
- (11) Anything required or authorised by schedule 1 or these conduct rules to be done in the presence of polling or counting agents may be done instead in the presence of the referendum agent who appointed the polling or counting agents.
- (12) Where in schedule 1 or these conduct rules anything is required or authorised to be done in the presence of polling or counting agents, the non-attendance of any agent or agents at the time and place appointed for the purpose does not invalidate the thing (if the thing is otherwise duly done).

Admission to polling station

- (1) No person other than the presiding officer and the persons mentioned in paragraph (2) may attend a polling station.
- (2) Those persons are—
- (a) voters,
 - (b) persons under the age of 16 accompanying voters,
 - (c) the companions of voters with disabilities,
 - (d) the Member of Parliament for the constituency in which the polling station is situated,
 - (e) the member of the Scottish Parliament for the constituency in which the polling station is situated,
 - (f) members of the Scottish Parliament for the region in which the polling station is situated,
 - (g) members of the council for the electoral ward in which the polling station is situated,
 - (h) members of the European Parliament for the electoral region of Scotland,
 - (i) the clerks appointed to attend at the polling station,
 - (j) the Chief Counting Officer and members of the Chief Counting Officer's staff,
 - (k) the counting officer and members of the counting officer's staff,
 - (l) constables on duty,
 - (m) persons entitled to attend by virtue of section 20, 21 or 22,
 - (n) referendum agents,
 - (o) polling agents appointed to attend at the polling station, and
 - (p) any other person the presiding officer permits to attend.
- (3) In paragraph (2)(g), “electoral ward” has the meaning given by section 1 of the Local Governance (Scotland) Act 2004.
- (4) The presiding officer may regulate the total number of voters and persons under the age of 16 accompanying voters who may be admitted to the polling station at the same time.

- (5) Not more than one polling agent is to be admitted at the same time to a polling station on behalf of the same permitted participant.
- (6) A constable or a member of the counting officer's staff may only be admitted to vote in person elsewhere than at the polling station allotted under rule 9(1)(b), in accordance with paragraph 1(5) of schedule 1, on production of a certificate which satisfies the requirements set out in paragraph (7).
- (7) A certificate must—
- (a) be signed by—
 - (i) in the case of a constable, an officer of police of the rank of inspector or above, or
 - (ii) in the case of a member of the counting officer's staff, the counting officer, and
 - (b) be in the form prescribed.
- (8) A certificate produced under paragraph (6) must be immediately cancelled.

Notification of requirement of secrecy

- 16 (1) The counting officer must make such arrangements as are practicable to ensure that—
- (a) every person attending at a polling station has been given a copy of the provisions of sub-paragraphs (1), (3), (5), (8), (9) and (10) of paragraph 7 of schedule 6,
 - (b) every person attending at the counting of the votes has been given a copy of sub-paragraphs (4), (9) and (10) of that paragraph.
- (2) Paragraph (1) does not require the provision of that information to—
- (a) a person attending the polling station for the purpose of voting,
 - (b) a person under the age of 16 accompanying a voter,
 - (c) a companion of a voter with disabilities, or
 - (d) a constable on duty at a polling station or at the count.

Keeping of order at polling station

- 17 (1) The presiding officer must keep order at the polling station.
- (2) If a person—
- (a) obstructs the operation of the polling station,
 - (b) obstructs any voter in polling, or
 - (c) does anything else which the presiding officer considers may adversely affect proceedings at the polling station,
- the presiding officer may order the person to be removed immediately from the polling station.
- (3) A person may be removed—
- (a) by a constable, or
 - (b) by the presiding officer.

- (4) A person removed under paragraph (2) must not enter the polling station again during that day without the presiding officer’s permission.
- (5) A person removed under paragraph (2) may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody by a constable for an offence without a warrant.
- (6) The power to remove a person from the polling station is not to be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

Sealing of ballot boxes

- 18 (1) Immediately before the commencement of the poll, the presiding officer must—
- (a) show each ballot box proposed to be used for the purposes of the poll to such persons (if any) who are present in the polling station so that they may see that each box is empty,
 - (b) place the presiding officer’s seal on each box in such a manner as to prevent it being opened without breaking the seal,
 - (c) allow any referendum agent or polling agent present who wishes to affix the agent’s seal to do so, and
 - (d) place each box in the presiding officer’s view for the receipt of ballot papers.
- (2) The presiding officer must ensure that each box remains sealed until the close of the poll.

Questions to be put to voters

- 19 (1) At the time a voter applies for a ballot paper (but not afterwards), the presiding officer—
- (a) must put the questions mentioned in paragraph (2) to the voter if required to do so by a referendum agent or polling agent,
 - (b) may put the questions mentioned in paragraph (2) to the voter if the presiding officer considers it appropriate to do so.
- (2) The questions referred to in paragraph (1) are—

<i>Type of person applying for ballot paper</i>	<i>Questions</i>
1. A person applying as a voter	(a) “Are you the person named in the register of local government electors as follows (<i>read the whole entry from the register of local government electors</i>)?” (b) “Have you already voted in this referendum otherwise than as proxy for some other person?”
2. A person applying as proxy	(a) “Are you the person whose name appears as A.B. in the list of proxies for this referendum as entitled to vote as proxy on behalf of C.D.?” (b) “Have you already voted in this referendum as proxy on behalf of C.D.?”

<i>Type of person applying for ballot paper</i>	<i>Questions</i>
	(c) “Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of C.D.?”
5 10 15 20 3. A person applying as proxy for a voter with an anonymous entry (instead of the questions in entry 2)	(a) “Are you the person entitled to vote as proxy on behalf of the voter whose number on the register of local government electors is <i>(read out the number from the register of local government electors)?</i> ” (b) “Have you already voted in this referendum as proxy on behalf of the voter whose number on the register of local government electors is <i>(read out the number from the register of local government electors)?</i> ” (c) “Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the person whose number on the register of local government electors is <i>(read out the number from the register of local government electors)?</i> ”
25 4. A person applying as proxy if the answer to the question at 2(c) or 3(c) is not “yes”	“Have you already voted in this referendum on behalf of two persons of whom you are not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild?”
5. A person applying as a voter in relation to whom there is an entry in the postal voters list	(a) “Did you apply to vote by post?” (b) “Why have you not voted by post?”
30 6. A person applying as proxy who is named in the proxy postal voters list	(a) “Did you apply to vote by post as proxy?” (b) “Why have you not voted by post as proxy?”

(3) In the case of a voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, the references in the questions in entries 1(a) and 3(a), (b) and (c) to the register of local government electors is to be read as a reference to the notice issued under that section.

(4) A ballot paper must not be delivered to any person required to answer a question under this rule unless the person answers the question satisfactorily.

(5) Except as authorised by this rule, no enquiry is permitted as to the right of any person to vote.

Challenge of voter

20 (1) A person is not to be prevented from voting by reason only that—

(a) a referendum agent or polling agent—

- (i) has reasonable cause to believe that the person has committed an offence of personation, and
 - (ii) the agent makes a declaration to that effect, or
- (b) the person is arrested on the grounds of being suspected of committing or of being about to commit such an offence.

(2) Paragraph (1) does not affect the person’s liability to any penalty for voting.

Voting procedure

21 (1) Subject to rule 19(4), a ballot paper must be delivered to a voter who applies for one.

(2) Immediately before delivering the ballot paper to the voter—

- (a) the number and (unless paragraph (3) applies) name of the voter as stated in the register of local government electors is to be called out,
- (b) the number of the voter is to be marked on the list mentioned in rule 13(3)(e) beside the number of the ballot paper to be delivered to the voter,
- (c) a mark is to be placed in the register of local government electors against the number of the voter to note that a ballot paper has been received but without showing the particular ballot paper which has been received, and
- (d) in the case of a person applying for a ballot paper as proxy, a mark is also to be placed against that person’s name in the list of proxies.

(3) In the case of a voter who has an anonymous entry, the voter’s official poll card must be shown to the presiding officer and only the voter’s number is to be called out in pursuance of paragraph (2)(a).

(4) In the case of a voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (2) is modified as follows—

- (a) in sub-paragraph (a), for “register of local government electors” substitute “copy of the notice issued under section 13B(3B) or (3D) of the 1983 Act”,
- (b) in sub-paragraph (c), for “in the register of local government electors” substitute “on the copy of the notice issued under section 13B(3B) or (3D) of the 1983 Act”.

(5) On receiving the ballot paper, the voter must without delay—

- (a) proceed into a compartment in the polling station,
- (b) there secretly mark the voter’s ballot paper,
- (c) show the unique identifying number on the ballot paper to the presiding officer, and
- (d) put the ballot paper into the ballot box in the presiding officer’s presence.

(6) Where—

- (a) a voter attends the polling station before 10pm, and
- (b) the voter is still waiting to vote at 10pm,

the presiding officer must permit the voter to vote without delay after 10pm and must close the poll immediately after the last such voter has voted.

(7) The voter must leave the polling station as soon as the voter has put the ballot paper into the ballot box.

Votes marked by presiding officer

22 (1) On the application of a voter—

(a) who is incapacitated by blindness or other disability from voting in the manner required by rule 21, or

(b) who declares orally an inability to read,

the presiding officer must, in the presence of any polling agents, cause the voter's vote to be marked on a ballot paper in the manner directed by the voter and the ballot paper to be put into the ballot box.

(2) The name and number in the register of local government electors of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, is to be entered on a list (the "marked votes list") and in the case of a person voting as proxy for a voter, the number to be entered is the voter's number.

(3) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (2) applies as if for "in the register of local government electors of every voter" there were substituted "relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act".

Voting by persons with disabilities

23 (1) If a voter applies to the presiding officer to be allowed to vote with the assistance of another person by whom the voter is accompanied (the "companion"), on the ground of—

(a) blindness or other physical disability, or

(b) inability to read,

the presiding officer must require the voter to declare (orally or in writing) whether the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance.

(2) The presiding officer must grant the application if the presiding officer—

(a) is satisfied that the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance, and

(b) is also satisfied, by a declaration made by the companion (a "companion declaration") which complies with paragraph (3), that the companion—

(i) meets the requirements set out in paragraph (3)(c)(i) or (ii), and

(ii) has not previously assisted more than one voter with disabilities to vote at the referendum.

(3) A companion declaration must—

(a) be in the form prescribed,

(b) be made before the presiding officer at the time when the voter applies to vote with the assistance of the companion, and

(c) state that the companion—

(i) is a person who is entitled to vote as a voter at the referendum, or

(ii) is the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the voter with disabilities, and has attained the age of 16.

(4) The presiding officer must sign the companion declaration and keep it.

(5) No fee or other payment may be charged in respect of the declaration.

5 (6) A person is a “voter with disabilities” for the purposes of paragraph (2)(b)(ii) if the person has made a declaration mentioned in paragraph (1).

(7) Where an application is granted under paragraph (2), anything which is required by these rules to be done to or by the voter in connection with the giving of that voter’s vote may be done to, by, or with the assistance of, the companion.

10 (8) The name and number in the register of local government electors of every voter whose vote is given in accordance with this rule and the name and address of the companion is to be entered on a list (the “assisted voters list”) and, in the case of a person voting as proxy for a voter, the number to be entered is the voter’s number.

15 (9) Where the voter being assisted by a companion has an anonymous entry, only the voter’s number in the register of local government electors is to be entered on the assisted voters list.

20 (10) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (8) applies as if for “in the register of local government electors of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act”.

Tendered ballot papers

24 (1) Paragraph (6) applies if any of situations A to D exist.

(2) Situation A exists if a person, claiming to be—

25 (a) a particular voter named on the register of local government electors and not named in the postal voters list or the list of proxies, or

(b) a particular person named in the list of proxies as proxy for a voter and not entitled to vote by post as proxy,

30 applies for a ballot paper after another person has voted in person either as the voter or the voter’s proxy.

(3) Situation B exists if—

(a) a person applies for a ballot paper claiming that the person is a particular voter named on the register of local government electors,

(b) the person is also named in the postal voters list, and

35 (c) the person claims that—

(i) no application to vote by post in the referendum was made by that person, or

(ii) the person is not an existing postal voter within the meaning of paragraph 2(2) of schedule 1.

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- (4) Situation C exists if—
- (a) a person applies for a ballot paper claiming that the person is a particular person named as a proxy in the list of proxies,
 - (b) the person is also named in the proxy postal voters list, and
 - 5 (c) the person claims that—
 - (i) no application to vote by post as proxy was made by that person, or
 - (ii) the person is not an existing proxy to whom paragraph 6(4) of schedule 1 applies.
- (5) Situation D exists if, before the close of the poll but after the last time at which a person
10 may apply for a replacement postal ballot paper—
- (a) a person claims that the person is—
 - (i) a particular voter named on the register of local government electors who is also named in the postal voters list, or
 - 15 (ii) a particular person named as proxy in the list of proxies who is also named in the proxy postal voters list, and
 - (b) the person claims that the person has lost or has not received a postal ballot paper.
- (6) Where this paragraph applies, the person is entitled, on satisfactorily answering the questions permitted by rule 19 to be asked at the poll, to mark a tendered ballot paper in the same manner as any other voter.
- 20 (7) A tendered ballot paper must—
- (a) be of a prescribed colour differing from that of the ballot paper issued in accordance with rule 8(1) or provided in accordance with rule 13(1),
 - (b) instead of being put into the ballot box, be given to the presiding officer and endorsed by the presiding officer with the name of the voter and the voter's
25 number in the register of local government electors, and
 - (c) be set aside in a separate packet.
- (8) The name of the voter and the voter's number in the register of local government electors is to be entered on a list (the "tendered votes list").
- (9) In the case of a person voting as proxy for a voter, the number to be endorsed or entered
30 is to be the voter's number.
- (10) This rule applies to a voter who has an anonymous entry subject to the following modifications—
- (a) in paragraphs (7)(b) and (8), the references to the voter's name are to be ignored, and
 - 35 (b) otherwise, a reference to a person named on the register of local government electors or other list is to be construed as a reference to a person whose number appears on the register of local government electors or other list (as the case may be).
- 40 (11) This rule applies in the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act as if—

(a) in paragraphs (2)(a), (3)(a) or (5)(a)(i), for “named on the register of local government electors” there were substituted “in respect of whom a notice under section 13B(3B) or (3D) of the 1983 Act has been issued”, and

5 (b) in paragraphs (7)(b) and (8), for “the voter’s number in the register of local government electors” there were substituted “the number relating to that person on a notice issued under section 13B(3B) or (3D) of the 1983 Act”.

Spoilt ballot papers

25 (1) A voter who has inadvertently dealt with a ballot paper in such manner that it cannot be conveniently used as a ballot paper may—

10 (a) by returning it to the presiding officer, and

(b) proving to the presiding officer’s satisfaction the fact of the inadvertence, obtain another ballot paper in the place of the returned ballot paper (the “spoilt ballot paper”).

(2) The spoilt ballot paper must be immediately cancelled.

15 *Correction of errors on polling day*

26 (1) The presiding officer must keep a list of persons to whom ballot papers are delivered in consequence of an alteration to the register made by virtue of section 13B(3B) or (3D) of the 1983 Act which takes effect on the date of the referendum.

(2) The list kept under paragraph (1) is referred to as the “polling day alterations list”.

20 *Adjournment of poll in case of riot*

27 (1) Where the proceedings at any polling station are interrupted by riot or open violence, the presiding officer must—

(a) adjourn the proceedings until the following day, and

(b) inform the counting officer without delay.

25 (2) If the counting officer is informed under paragraph (1)(b), the counting officer must inform the Chief Counting Officer without delay.

(3) Where the poll is adjourned at any polling station—

(a) the hours of polling on the day to which it is adjourned are to be the same as for the original day, and

30 (b) references in these rules to the close of the poll are to be construed accordingly.

Procedure on close of poll

28 (1) As soon as practicable after the close of the poll, the presiding officer must—

(a) in the presence of any referendum agents or polling agents, seal each ballot box in use at the station so as to prevent the introduction of additional ballot papers,

35 (b) allow any of those agents present who wishes to affix the agent’s seal to do so,

(c) separate and make up into separate sealed packets the papers mentioned in paragraph (2), and

(d) deliver the sealed ballot boxes and packets (or arrange for them to be delivered) to the counting officer to be taken charge of by the counting officer.

(2) The papers referred to in paragraph (1) are—

(a) the unused and spoiled ballot papers (as a single packet),

(b) the tendered ballot papers,

(c) the marked copies of the register of local government electors (including any marked copy notices issued under section 13B(3B) or (3D) of the 1983 Act) and of the list of proxies (as a single packet),

(d) any certificates produced under rule 15(6),

(e) the corresponding number list completed in accordance with rule 21(2)(b) (the “completed corresponding number list”),

(f) the tendered votes list, the assisted voters list, the marked votes list, the polling day alterations list and the companion declarations (as a single packet),

(g) any postal ballot papers or postal voting statements returned to the station.

(3) The marked copies of the register of local government electors and of the list of proxies are to be in one packet but must not be in the same packet as the certificates mentioned in paragraph (2)(d) or the lists mentioned in paragraph (2)(e).

(4) The packets must be accompanied by a statement (the “ballot paper account”) made by the presiding officer, showing the number of ballot papers entrusted to the presiding officer and accounting for them under the following heads—

(a) ballot papers issued and not otherwise accounted for,

(b) unused ballot papers,

(c) spoiled ballot papers, and

(d) tendered ballot papers.

(5) If the sealed ballot boxes and packets are not delivered to the counting officer by the presiding officer personally, the arrangements for their delivery require the counting officer’s approval.

Attendance at counting of votes

(1) The counting officer must make arrangements for counting of the votes as soon as practicable after the close of the poll.

(2) In making arrangements, the counting officer must not knowingly appoint or employ any person who has been involved in campaigning for a particular outcome in the referendum.

(3) The counting officer must give notice in writing to the Chief Counting Officer, each of the referendum agents appointed for the area and any counting agents appointed to attend at the count of the time and place at which the counting officer will begin to count the votes.

(4) The counting officer need not begin the counting of the votes in the period from the close of the poll until 9am on the following morning if the officer considers that it would be unreasonable to do so having regard to the time at which the poll closed.

- (5) Paragraph (4) is subject to any direction given by the Chief Counting Officer under section 9(6).
- (6) The counting officer must take proper precautions for the security of the ballot boxes and packets in the period between taking charge of them and the beginning of the count.
- 5 (7) No person other than the persons mentioned in paragraph (8) may attend the counting of the votes.
- (8) Those persons are—
- (a) the Member of Parliament for any constituency which contains all or part of the area in which the votes being counted have been cast,
 - 10 (b) the member of the Scottish Parliament for any constituency which contains all or part of the area in which the votes being counted have been cast,
 - (c) members of the Scottish Parliament for any region which contains all or part of the area in which the votes being counted have been cast,
 - (d) members of the council for any local government area which contains all or part
15 of the area in which the votes being counted have been cast,
 - (e) members of the European Parliament for the electoral region of Scotland,
 - (f) the Chief Counting Officer and members of the Chief Counting Officer's staff,
 - (g) a counting officer and members of a counting officer's staff,
 - (h) constables on duty,
 - 20 (i) persons entitled to attend by virtue of section 20,
 - (j) persons entitled to attend by virtue of section 21 or 22,
 - (k) referendum agents,
 - (l) counting agents appointed to attend at the count, and
 - (m) any other person the counting officer permits to attend.
- 25 (9) The counting officer may exclude a person from the counting of the votes if the counting officer considers that the efficient counting of the votes would be impeded by that person attending the counting of the votes.
- (10) Paragraph (9) does not permit the counting officer to exclude the persons mentioned in paragraph (8)(f) or (i).
- 30 (11) The counting officer may limit the number of counting agents who are permitted to be present at the counting of the votes on behalf of a permitted participant, but the same limit is to apply to each permitted participant.
- (12) The counting officer must give any counting agents such reasonable facilities for overseeing the proceedings and such information with respect to the proceedings as the
35 counting officer can give consistently with the orderly conduct of the proceedings and the carrying out of the counting officer's functions in connection with them.
- (13) In particular, where the votes are counted by sorting the ballot papers according to the answer for which the vote is given and then counting the number of ballot papers for each answer, the counting agents are entitled to satisfy themselves that the ballot papers
40 are correctly sorted.

The count

30 (1) The counting officer must—

- 5 (a) in the presence of the counting agents, open each ballot box and count and record the number of ballot papers in it, checking the number against the ballot paper account,
- (b) verify each ballot paper account in the presence of any referendum agents, and
- (c) count such of the postal ballot papers as have been duly returned and record the number counted.

10 (2) For the purposes of paragraph (1)(b), a counting officer must—

- 10 (a) verify the ballot paper account by comparing it with the number of ballot papers recorded, the unused and spoilt ballot papers in the counting officer's possession and the tendered votes list (opening and resealing the packets containing the unused and spoilt ballot papers and the tendered votes list), and
- 15 (b) prepare a statement as to the result of the verification (the “verification statement”).

(3) The counting officer must, on the request of any counting agent present at the verification, supply a copy of the verification statement to the counting agent.

(4) For the purposes of paragraph (1)(c), a postal ballot paper is not to be considered as having been duly returned unless it—

20 (a) is returned—

- (i) by hand to a polling station in the same local government area, or
- (ii) by hand or post to the counting officer,
- before the close of the poll, and

(b) is accompanied by a postal voting statement which—

- 25 (i) is duly signed (unless the requirement for signature has been dispensed with in accordance with paragraph 7(6) of schedule 1), and
- (ii) states the date of birth of the voter or the voter's proxy.

(5) The counting officer must not count the votes given on any ballot papers until—

- 30 (a) in the case of postal ballot papers, they have been mixed with ballot papers from at least one ballot box, and
- (b) in the case of ballot papers from a ballot box, they have been mixed with ballot papers from at least one other ballot box.

(6) The counting officer must not count any tendered ballot paper.

35 (7) The counting officer must not count any postal ballot paper if, having taken steps to verify the signature and date of birth of the voter or the voter's proxy, the counting officer is not satisfied that the postal voting statement has been properly completed.

(8) The counting officer, while counting and recording the number of ballot papers and counting the votes, must take all proper precautions for preventing any person from identifying the voter who cast the vote.

(9) The counting officer must, so far as practicable, proceed continuously with counting the votes, allowing only time for refreshment, but the counting officer may suspend counting between 7pm on any day following the date of the referendum and 9am on the following morning.

5 (10) During any period when counting is suspended, the counting officer must take proper precautions for the security of the papers.

Rejected ballot papers

31 (1) Any ballot paper to which paragraph (2) applies is void and is not to be counted, subject to paragraph (3).

10 (2) This paragraph applies to a ballot paper—

(a) which does not bear the official mark,

(b) which indicates votes in favour of more answers than are permitted,

(c) on which anything is written or marked by which the voter can be identified (other than by the unique identifying number), or

15 (d) which is unmarked or void for uncertainty.

(3) A ballot paper on which the vote is marked—

(a) elsewhere than in the proper place,

(b) otherwise than by means of a cross, or

(c) by more marks than are permitted,

20 is not for such reason to be considered to be void by reason only of indicating a vote by means of figures or words (or any other mark) instead of a cross if, in the counting officer's opinion, the mark clearly indicates the voter's intention.

(4) Paragraph (3) does not apply if—

(a) the way in which the ballot paper is marked identifies the voter, or

25 (b) it can be shown that the voter can be identified from it.

(5) The counting officer must—

(a) endorse the word "rejected" on any ballot paper which falls not to be counted under this rule, and

30 (b) if any counting agent objects to the counting officer's decision, add to the endorsement the words "rejection objected to".

(6) The counting officer must prepare a statement showing the number of ballot papers rejected under each of sub-paragraphs (a) to (d) of paragraph (2).

Counting the votes

32 35 The counting officer must count the votes in favour of each answer to the referendum question.

Decisions on ballot papers

33 The decision of the counting officer on any question arising in respect of a ballot paper is final, subject to any judicial review in accordance with section 39.

Re-counts

- 34 (1) The counting officer may have the votes re-counted (or again re-counted) if the counting officer considers it appropriate to do so.
- 5 (2) The Chief Counting Officer may require the counting officer to have the votes re-counted (or again re-counted).

Declaration of result

- 35 (1) After making the certification under section 9(2)(b) (results for the counting officer's area), the counting officer must, without delay, give to the Chief Counting Officer—
- 10 (a) notice of the matters certified,
- (b) details of the information contained in the verification statements prepared under rule 30, and
- (c) notice of the number of rejected ballot papers under each head shown in the statement of rejected ballot papers prepared under rule 31.
- (2) When authorised to do so by the Chief Counting Officer, the counting officer must—
- 15 (a) make a declaration of the matters certified under section 9(2)(b), and
- (b) as soon as practicable, give public notice of those matters together with the number of rejected ballot papers under each head shown in the statement of rejected ballot papers.
- (3) After making the certification under section 9(4) (results for the whole of Scotland), the
- 20 Chief Counting Officer must—
- (a) make a declaration of the matters certified, and
- (b) as soon as practicable, give public notice of those matters together with the total number of rejected ballot papers for the whole of Scotland under each head shown in the statements of rejected ballot papers.

Sealing up of ballot papers

- 25 36 (1) On the completion of the counting, the counting officer must seal up in separate packets—
- (a) the counted ballot papers, and
- (b) the rejected ballot papers.
- 30 (2) The counting officer must not open the sealed packets of—
- (a) tendered ballot papers,
- (b) the completed corresponding number lists,
- (c) the certificates mentioned in rule 15(6), or
- 35 (d) marked copies of the register of local government electors (including any marked copy notices issued under section 13B(3B) or (3D) of the 1983 Act) and lists of proxies.

Delivery of papers

37 (1) After sealing the papers in accordance with rule 36, the counting officer must send the papers mentioned in paragraph (2) to the proper officer of the council for the local government area in which the votes being counted have been cast, endorsing on each packet a description of its contents and the date of the referendum.

(2) Those papers are—

(a) the packets of ballot papers in the counting officer's possession,

(b) the ballot paper accounts, the statements of rejected ballot papers and the verification statements,

(c) the tendered votes list, the assisted voters list, the marked votes list, the polling day alterations lists and the companion declarations,

(d) the packets of the completed corresponding numbers lists,

(e) the packets of the certificates mentioned in rule 15(6), and

(f) the packets containing marked copies of the register of local government electors (including any marked copy notices issued under section 13B(3B) or (3D) of the 1983 Act) and of the postal voters list, of lists of proxies and of the proxy postal voters list.

Retention and public inspection of papers

38 (1) The proper officer of the council must retain for one year all papers received by virtue of rule 37.

(2) Those papers, except ballot papers, completed corresponding number lists and the certificates mentioned in rule 15(6), are to be made available for public inspection at such times and in such manner as the proper officer may determine.

(3) A person inspecting marked copies of the register of local government electors may not—

(a) make copies of any part of them, or

(b) record any particulars included in them,

otherwise than by means of hand-written notes.

(4) A person who makes a copy of marked copies of the register of local government electors, or records any particulars included in them, otherwise than by means of hand-written notes commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(5) After the expiry of one year, the proper officer must ensure that the papers are securely destroyed, unless otherwise directed by an order of the Court of Session or a sheriff principal.

Retention and public inspection of certifications

39 (1) The Chief Counting Officer must retain for one year—

(a) certifications made by counting officers under section 9(2)(b), and

(b) certifications made by the Chief Counting Officer under section 9(4).

- (2) Those certifications are to be made available for public inspection at such times and in such manner as the Chief Counting Officer may determine.

Orders for production of documents

- 5 40 (1) The Court of Session or a sheriff principal may make an order mentioned in paragraph (2) if the Court or the sheriff principal is satisfied by evidence on oath that the order is required for the purpose of—
- (a) instituting or maintaining a prosecution for an offence in relation to ballot papers, or
 - (b) proceedings brought as mentioned in section 39.
- 10 (2) An order referred to in paragraph (1) is an order for—
- (a) the inspection or production of any rejected ballot papers in the custody of a proper officer,
 - (b) the opening of a sealed packet of the completed corresponding number lists or of the certificates mentioned in rule 15(6), or
 - 15 (c) the inspection of any counted ballot papers in the proper officer's custody.
- (3) An order under this rule may be made subject to such conditions as to—
- (a) persons,
 - (b) time,
 - (c) place and mode of inspection, and
 - 20 (d) production or opening,
- as the Court or the sheriff principal considers expedient.
- (4) In making and carrying out an order mentioned in paragraph (2)(b) or (c), care must be taken to ensure that the way in which the vote of any particular voter has been given will not be disclosed until it is proved—
- 25 (a) that such vote was given, and
 - (b) that such vote has been declared by a competent court to be invalid.
- (5) Any power given to the Court of Session or a sheriff principal under this rule may be exercised by any judge of the Court, or by the sheriff principal, otherwise than in open court.
- 30 (6) An appeal lies to the Court of Session from any order of a sheriff principal under this rule.
- (7) Where an order is made for the production by a proper officer of any document in that officer's custody relating to the referendum—
- 35 (a) the production by such officer or the officer's agent of the document ordered in such manner as may be directed by that order is conclusive evidence that the document relates to the referendum, and
 - (b) any endorsement on any packet of ballot papers so produced is prima facie evidence that the ballot papers are what they are stated to be by the endorsement.
- (8) The production from the proper officer's custody of—
- 40 (a) a ballot paper purporting to have been used at the referendum, and

- (b) a completed corresponding number list with a number marked in writing beside the number of the ballot paper,

is prima facie evidence that the voter whose vote was given by that ballot paper was the person whose entry in the register of local government electors (or on a notice issued under section 13B(3B) or (3D) of the 1983 Act) at the time of the referendum contained the same number as the number marked as mentioned in sub-paragraph (b).

- (9) Except as provided by this rule, no person is to be allowed to—
- (a) inspect any rejected or counted ballot papers in the custody of the proper officer, or
- (b) open any sealed packet of the completed corresponding number list or of the certificates mentioned in rule 15(6).

Power of Chief Counting Officer to prescribe

- 41 (1) In this schedule, “prescribed” means prescribed by the Chief Counting Officer.
- (2) Where a form is prescribed under paragraph (1), the form may be used with such variations as the circumstances may require.

SCHEDULE 3
(introduced by section 13)

CAMPAIGN RULES

PART 1

INTERPRETATION

Interpretation of schedule

- 1 (1) In this schedule—
- “bequest” includes any form of testamentary disposition,
- “body”, without more, includes a body corporate or any combination of persons or other unincorporated associations,
- “broadcaster” means—
- (a) the holder of a licence under the Broadcasting Act 1990 or 1996, or
- (b) the British Broadcasting Corporation,
- “exempt trust donation” has the meaning given by section 162 of the 2000 Act,
- “market value”, in relation to any property, means the price which might reasonably be expected to be paid for the property on a sale in the open market,
- “property” includes any description of property, and references to the provision of property accordingly include the supply of goods,
- “qualified auditor” has the meaning given by section 160 of the 2000 Act.
- (2) For the purposes of this schedule, each of the following is a “permissible donor”—
- (a) an individual registered in an electoral register,

- (b) a company—
- (i) registered under the Companies Act 2006,
 - (ii) incorporated within the United Kingdom or another member State, and
 - (iii) carrying on business in the United Kingdom,
- 5 (c) a registered party,
- (d) a trade union entered in the list kept under the Trade Union and Labour Relations (Consolidation) Act 1992 or the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807),
- (e) a building society (within the meaning of the Building Societies Act 1986),
- 10 (f) a limited liability partnership—
- (i) registered under the Limited Liability Partnerships Act 2000, and
 - (ii) carrying on business in the United Kingdom,
- (g) a friendly society registered under the Friendly Societies Act 1974, a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act (Northern Ireland) 1969,
- 15 (h) any unincorporated association of two or more persons which—
- (i) does not fall within any of the preceding paragraphs,
 - (ii) carries on business or other activities wholly or mainly in the United Kingdom, and
 - (iii) has its main office in the United Kingdom,
- 20 (i) any body incorporated by Royal Charter and not otherwise within this subparagraph,
- (j) any Scottish charitable incorporated organisation within the meaning of Chapter 7 of Part 1 of the Charities and Trustee Investment (Scotland) Act 2005,
- 25 (k) any charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011 or Part 11 of the Charities Act (Northern Ireland) 2008, and
- (l) any partnership constituted under the law of Scotland which carries on its business in the United Kingdom.

- 30 (3) In this schedule, “electoral register” means any of the following—
- (a) a register of parliamentary or local government electors for any area (whether or not in Scotland) maintained under section 9 of the 1983 Act,
 - (b) a register of relevant citizens of the European Union prepared under the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (S.I. 2001/1184),
 - 35 (c) a register of peers prepared under regulations under section 3 of the Representation of the People Act 1985.
- (4) References in this schedule (in whatever terms) to payments out of public funds are references to any of the following—
- 40 (a) payments out of—

(i) the Consolidated Fund of the United Kingdom, the Scottish Consolidated Fund, the Consolidated Fund of Northern Ireland or the Welsh Consolidated Fund, or

(ii) money provided by Parliament or appropriated by Act of the Northern Ireland Assembly,

(b) payments by—

(i) a Minister of the Crown, the Scottish Ministers, a Minister within the meaning of the Northern Ireland Act 1998 or the Welsh Ministers (including the First Minister for Wales or the Counsel General to the Welsh Government), or

(ii) a government department (including a Northern Ireland department) or a part of the Scottish Administration,

(c) payments by the SPCB, the Northern Ireland Assembly Commission or the National Assembly for Wales Commission, and

(d) payments by the Electoral Commission.

References in this schedule (in whatever terms) to expenses met, or things provided, out of public funds are references to expenses met, or things provided, by means of payments out of public funds.

PART 2

PERMITTED PARTICIPANTS AND DESIGNATED ORGANISATIONS

Permitted participants

2 (1) For the purposes of this schedule, a registered party, a qualifying individual or a qualifying body may make a declaration to the Electoral Commission in accordance with this paragraph and paragraph 3 identifying the outcome for which the party, individual or body proposes to campaign at the referendum.

(2) A party, individual or body which has made a declaration in accordance with this paragraph and paragraph 3 is referred to in this Act as a “permitted participant”.

(3) A “qualifying individual” is an individual who is—

(a) resident in the United Kingdom, or

(b) registered in an electoral register.

(4) A “qualifying body” is a body which is—

(a) a company—

(i) registered under the Companies Act 2006,

(ii) incorporated within the United Kingdom or another member State, and

(iii) carrying on business in the United Kingdom,

(b) a trade union entered in the list kept under the Trade Union and Labour Relations (Consolidation) Act 1992 or the Industrial Relations (Northern Ireland) Order 1992 (S.I. 1992/807),

(c) a building society within the meaning of the Building Societies Act 1986,

Part 2—Permitted participants and designated organisations

- (d) a limited liability partnership—
- (i) registered under the Limited Liability Partnerships Act 2000, and
 - (ii) carrying on business in the United Kingdom,
- (e) a friendly society registered under the Friendly Societies Act 1974, a registered society within the meaning of the Co-operative and Community Benefit Societies Act 2014 or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act (Northern Ireland) 1969,
- (f) an unincorporated association of two or more persons which—
- (i) does not fall within any of the preceding paragraphs,
 - (ii) carries on business or other activities wholly or mainly in the United Kingdom, and
 - (iii) has its main office in the United Kingdom,
- (g) any body incorporated by Royal Charter and not otherwise within this sub-paragraph,
- (h) any Scottish charitable incorporated organisation within the meaning of Chapter 7 of Part 1 of the Charities and Trustee Investment (Scotland) Act 2005,
- (i) any charitable incorporated organisation within the meaning of Part 11 of the Charities Act 2011 or Part 11 of the Charities Act (Northern Ireland) 2008, or
- (j) any partnership constituted under the law of Scotland which carries on its business in the United Kingdom.

Further provision about declarations under paragraph 2

- 3 (1) A declaration under paragraph 2 by a registered party—
- (a) must be signed by the responsible officers of the party (within the meaning of section 64(7) of the 2000 Act), and
 - (b) if made by a minor party, must be accompanied by a notification which states the name of the person who will be responsible for compliance on the part of the party with the provisions of this schedule.
- (2) A declaration under paragraph 2 by a qualifying individual must—
- (a) state the individual's full name and home address, and
 - (b) be signed by the individual.
- (3) A declaration under paragraph 2 by a qualifying body within any of paragraphs (a) to (f) of paragraph 2(4) must—
- (a) state—
 - (i) all such details in respect of the body as are required by virtue of any of sub-paragraphs (4) and (6) to (10) of paragraph 2 of schedule 6 of the 2000 Act to be given in respect of such a body as the donor of a recordable donation,
 - (ii) the name of the person or officer who will be responsible for compliance on the part of the body with the provisions of this schedule, and

- (iii) in the case of a body within paragraph (f) of paragraph 2(4) (unincorporated associations), the details mentioned in sub-paragraph (4),
- (b) be signed by the body's secretary or a person who acts in a similar capacity in relation to the body.
- 5 (4) The details referred to in sub-paragraph (3)(a)(iii) are the names of—
- (a) where the body has more than 15 members and has officers or a governing body, those officers or the members of the governing body, or
- (b) otherwise, the body's members.
- 10 (5) A declaration under paragraph 2 by a qualifying body within any of paragraphs (g) to (j) of paragraph 2(4) must—
- (a) state—
- (i) the details mentioned in sub-paragraph (6), and
- (ii) the name of the person or officer who will be responsible for compliance on the part of the body with the provisions of this schedule, and
- 15 (b) be signed by the body's secretary or a person who acts in a similar capacity in relation to the body.
- (6) The details referred to in sub-paragraph (5)(a)(i) are—
- (a) in the case of a body within paragraph 2(4)(g) (body incorporated by Royal Charter)—
- 20 (i) the name of the body, and
- (ii) the address of its main office in the United Kingdom,
- (b) in the case of a body within paragraph 2(4)(h) or (i) (charitable incorporate organisation)—
- (i) the name of the body, and
- 25 (ii) the address of its principal office,
- (c) in the case of a body within paragraph 2(4)(j) (Scottish partnership)—
- (i) the name of the body, and
- (ii) the address of its main office in the United Kingdom.
- 30 (7) Sub-paragraph (8) applies if, at any time before the end of the compliance period, any statement which—
- (a) is contained in a notification under sub-paragraph (1)(b), or
- (b) in accordance with any provision of sub-paragraph (2), (3) or (5), is contained in a declaration under paragraph 2,
- ceases to be accurate.
- 35 (8) The permitted participant by whom the notification was given or declaration was made must give the Electoral Commission a notification ("a notification of alteration") replacing the statement with another statement—
- (a) contained in the notification of alteration, and
- (b) conforming with sub-paragraph (1)(b), (2), (3) or (as the case may be) (5).

- (9) For the purposes of sub-paragraph (7), “the compliance period” is the period during which any provision of this schedule remains to be complied with on the part of the permitted participant.
- (10) A declaration under paragraph 2 must be accompanied by a statement by the person who is the responsible person which—
- (a) states that the person is willing to exercise in relation to the referendum the functions conferred by and under this Act on the responsible person, and
 - (b) is signed by that person.
- (11) Sub-paragraph (10) applies to a notification of alteration if the notification replaces a statement under sub-paragraph (1)(b), (3)(a)(ii) or (5)(a)(ii).

Unincorporated associations with offensive or similar names

- 4 (1) Sub-paragraphs (2) to (4) apply to a declaration made under paragraph 2 by an unincorporated association within sub-paragraph (4)(f) of that paragraph.
- (2) The declaration is not to be treated for the purposes of paragraph 2 or 6 as having been made unless the Electoral Commission have accepted the declaration.
- (3) As soon as reasonably practicable after receiving the declaration, the Electoral Commission must decide whether or not to accept the declaration and they must accept it unless, in their opinion, the name of the association—
- (a) is obscene or offensive,
 - (b) includes words the publication of which would be likely to amount to the commission of an offence,
 - (c) is the same as or similar to the name of an existing permitted participant, or
 - (d) would otherwise be likely to result in voters confusing the association with an existing permitted participant.
- (4) As soon as reasonably practicable after deciding whether to accept the declaration, the Electoral Commission must give written notice to the association—
- (a) stating whether they accept the declaration, and
 - (b) if their decision is not to accept the declaration, giving the reasons for that decision.
- (5) Where—
- (a) a permitted participant is an unincorporated association within paragraph 2(4)(f),
 - (b) the Electoral Commission is notified under paragraph 3(8) of a change of name of the association, and
 - (c) in the opinion of the Electoral Commission the new name—
- (i) is obscene or offensive,
 - (ii) includes words the publication of which would be likely to amount to the commission of an offence,
 - (iii) is the same as or similar to the name of another permitted participant, or

- (iv) would otherwise be likely to result in voters confusing the permitted participant with another permitted participant.

the Electoral Commission does not have to enter the new name in the register under paragraph 6.

- 5 (6) If the Electoral Commission decide not to enter the new name in that register, the Electoral Commission—
- (a) must as soon as reasonably practicable give written notice to the association of that decision and the reasons for it, and
- 10 (b) in any case where they are required to make available for public inspection a document that uses the association’s new name, may replace that name in the document with the name that appears on the register in respect of the association.
- (7) The fact that the association’s new name is not entered in the register does not cause the association to cease to be a permitted participant.

Further provision about responsible persons

- 15 5 (1) A person who is the responsible person in relation to a permitted participant may not make a declaration under paragraph 2 as a qualifying individual or on behalf of a qualifying body.
- (2) An individual who is a permitted participant ceases to be a permitted participant if the individual is the treasurer of a registered party (other than a minor party) that becomes a permitted participant.
- 20 (3) A declaration made or notification given by a minor party or a qualifying body does not comply with the requirement in paragraph 3(1)(b), (3)(a)(ii) or (5)(a)(ii) if the person whose name is stated—
- (a) is already the responsible person in relation to a permitted participant,
- 25 (b) is an individual who makes a declaration under paragraph 2 at the same time, or
- (c) is the person whose name is stated, in purported compliance with paragraph 3(1)(b), (3)(a)(ii) or (5)(a)(ii), in a declaration made or notification given at the same time by another minor party or qualifying body.
- (4) Where a registered party (other than a minor party) makes a declaration under paragraph 2 and the treasurer of the party (“T”) is already the responsible person in relation to a permitted participant (“P”)—
- 30 (a) T ceases to be the responsible person in relation to P at the end of the period of 14 days beginning with the day on which (by reason of the declaration) T becomes the responsible person for the party,
- 35 (b) P must, before the end of that period, give a notification of alteration under paragraph 3(8) stating the name of the person who is to replace T as the responsible person in relation to P.
- (5) In sub-paragraphs (3) and (4), “the person”, in relation to a qualifying body, is to be read as “the person or officer”.
- 40 (6) Section 25(6) of the 2000 Act (references to the treasurer to be read in certain cases as references to the campaigns officer) applies for the purposes of this Act as it applies for the purposes of Part 7 of that Act.

Register of declarations under paragraph 2

- 6 (1) The Electoral Commission must maintain a register of all declarations made to them under paragraph 2.
- 5 (2) The register is to be maintained by the Commission in such form as the Commission may determine.
- (3) The register must contain, in relation to each declaration, all of the information supplied to the Commission in connection with the declaration in accordance with paragraph 3.
- 10 (4) Where a declaration is made to the Commission under paragraph 2, the Commission must cause the information mentioned in sub-paragraph (3) to be entered in the register as soon as practicable.
- (5) Where a notification of alteration is given to the Commission under paragraph 3(8) the Commission must cause any change required as a consequence of the notification to be made in the register as soon as practicable.
- 15 (6) The information to be entered in the register in respect of a permitted participant who is an individual must not include the individual's home address.

Designated organisations

- 7 (1) The Electoral Commission may, in relation to any of the possible outcomes in the referendum, designate under this paragraph one permitted participant as representing those campaigning for the outcome in question.
- 20 (2) The Commission may make a designation under this paragraph only on an application made under paragraph 8.
- (3) The Commission may designate a permitted participant under this paragraph in relation to one of the possible outcomes whether or not a permitted participant is designated in relation to any of the other possible outcomes.
- 25 (4) The Commission may designate the same permitted participant under this paragraph in relation to more than one of the possible outcomes.
- (5) A permitted participant designated under this paragraph is referred to in this Act as a “designated organisation”.

Applications for designation under paragraph 7

- 30 8 (1) A permitted participant seeking to be designated under paragraph 7 must make an application for that purpose to the Electoral Commission.
- (2) An application for designation must—
- 35 (a) be accompanied by information or statements designed to show that the applicant adequately represents those campaigning for the outcome in the referendum in relation to which the applicant seeks to be designated, and
- (b) be made within the application period.
- (3) Where an application for designation has been made to the Commission in accordance with this paragraph, the application must be determined by the Commission within the decision period.

(4) If there is only one application in relation to a particular outcome in the referendum, the Commission must designate the applicant unless they are not satisfied that the applicant adequately represents those campaigning for that outcome.

5 (5) If there is more than one application in relation to a particular outcome in the referendum, the Commission must designate whichever of the applicants appears to them to represent to the greatest extent those campaigning for that outcome unless they are not satisfied that any of the applicants adequately represents those campaigning for that outcome.

(6) In this paragraph—

10 “the application period” is the period of 28 days ending at 12 noon on the day before the first day of the decision period, and

“the decision period” is the period of 16 days ending with the second day before the first day of the referendum period.

Designated organisation’s right to use rooms for holding public meetings

15 9 (1) Persons authorised by a designated organisation are entitled, for the purpose of holding public meetings in furtherance of the organisation’s referendum campaign, to the use free of charge, at reasonable times during the relevant period, of—

(a) a suitable room in the premises of a school to which this paragraph applies in accordance with sub-paragraph (2), and

20 (b) any meeting room to which this paragraph applies in accordance with sub-paragraph (3).

For this purpose, “the relevant period” means the period of 28 days ending with the day before the date of the referendum.

(2) This paragraph applies to any school maintained by an education authority.

25 (3) This paragraph applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—

(a) the Scottish Ministers or any other part of the Scottish Administration, or

(b) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998).

30 (4) Where a room is used for a meeting in pursuance of the rights conferred by this paragraph, the person by whom or on whose behalf the meeting is convened—

(a) must pay any expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring the room to its usual condition after the meeting, and

35 (b) must pay for any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises.

40 (5) A person is not entitled to exercise the rights conferred by this paragraph except on reasonable notice; and this paragraph does not authorise any interference with the hours during which a room in school premises is used for educational purposes, or any interference with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its letting for any purpose.

- (6) For the purposes of this paragraph (except those of sub-paragraph (4)(b)), the premises of a school are not to be taken to include any private dwelling.
- (7) In this paragraph—
- “dwelling” includes any part of a building where that part is occupied separately as a dwelling,
- “meeting room” means any room which it is the practice to let for public meetings, and
- “room” includes a hall, gallery or gymnasium.

Supplementary provisions about use of rooms for public meetings

- 10 (1) This paragraph has effect with respect to the rights conferred by paragraph 9 and the arrangements to be made for their exercise.
- (2) Any arrangement for the use of a room in school premises is to be made with the education authority maintaining the school.
- (3) The Scottish Ministers may determine any question as to—
- (a) the rooms in school premises which a person authorised by a designated organisation is entitled to use,
- (b) the times at which the person is entitled to use them,
- (c) the notice which is reasonable.
- (4) Any person authorised by a designated organisation is entitled at all reasonable hours to inspect—
- (a) any lists prepared in pursuance of paragraph 6 of schedule 5 of the 1983 Act (use of rooms for parliamentary election meetings), or
- (b) a copy of any such lists,
- in connection with exercising the rights conferred by paragraph 9.

PART 3

REFERENDUM EXPENSES

Referendum expenses

- 11 (1) The following provisions have effect for the purposes of this schedule.
- (2) “Referendum expenses” means expenses incurred by or on behalf of any individual or body which are—
- (a) expenses falling within paragraph 12, and
- (b) incurred for referendum purposes.
- (3) Expenses are incurred for referendum purposes if they are incurred—
- (a) in connection with the conduct or management of a referendum campaign, or
- (b) otherwise in connection with promoting or procuring any particular outcome in the referendum.

Expenses qualifying where incurred for referendum purposes

12 (1) For the purposes of paragraph 11(2)(a) the expenses falling within this paragraph are expenses incurred in respect of any of the matters set out in the following list—

1. Referendum campaign broadcasts.

(Expenses in respect of such broadcasts include agency fees, design costs and other costs in connection with preparing and producing such broadcasts.)

2. Advertising of any nature (whatever the medium used).

(Expenses in respect of such advertising include agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it.)

3. Unsolicited material addressed to voters (whether addressed to them by name or intended for delivery to households within any particular area or areas).

(Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing or otherwise disseminating such material (including the cost of postage).)

4. Any material to which paragraph 27 applies.

(Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing or otherwise disseminating such material.)

5. Market research or canvassing conducted for the purpose of ascertaining voting intentions.

6. The provision of any services or facilities in connection with press conferences or other dealings with the media.

7. Transport (by any means) of persons to any place or places with a view to obtaining publicity in connection with a referendum campaign.

(Expenses in respect of such transport include the costs of hiring a particular means of transport for the whole or part of the period during which the campaign is being conducted.)

8. Rallies and other events, including public meetings (but not annual or other party conferences) organised so as to obtain publicity in connection with a referendum campaign or for other purposes connected with a referendum campaign.

(Expenses in respect of such events include costs incurred in connection with the attendance of persons at such events, the hire of premises for the purposes of such events or the provision of goods, services or facilities at them.)

(2) Nothing in sub-paragraph (1) is to be taken as extending to—

(a) any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds,

(b) any expenses incurred in respect of the remuneration or allowances payable to any member of the staff (whether permanent or otherwise) of the campaign organiser,

(c) any expenses incurred in respect of an individual (“A”) by way of travelling expenses (by any means of transport) or in providing for A’s accommodation or other personal needs to the extent that the expenses are paid by A from A’s own resources and are not reimbursed to A, or

(d) any expenses incurred in respect of the publication of any matter relating to the referendum (other than an advertisement) in—

(i) a newspaper or periodical,

(ii) a broadcast made by the British Broadcasting Corporation, or

(iii) a programme included in any service licensed under Part 1 or 3 of the Broadcasting Act 1990 or Part 1 or 2 of the Broadcasting Act 1996.

(3) The Electoral Commission may issue, and from time to time revise, a code of practice giving guidance as to the kinds of expenses which do, or do not, fall within this paragraph.

(4) As soon as practicable after issuing or revising a code of practice under sub-paragraph (3), the Commission must send a copy to the Scottish Ministers.

(5) The Scottish Ministers must lay before the Scottish Parliament a copy of the code or (as the case may be) the revised code.

Notional referendum expenses

13 (1) This paragraph applies where, in the case of any individual or body—

(a) either—

(i) property is transferred to the individual or body free of charge or at a discount of more than 10 per cent of its market value, or

(ii) property, services or facilities is or are provided for the use or benefit of the individual or body free of charge or at a discount of more than 10 per cent of the commercial rate for the use of the property or for the provision of the services or facilities, and

(b) the property, services or facilities is or are made use of by or on behalf of the individual or body in circumstances such that, if any expenses were to be (or are) actually incurred by or on behalf of the individual or body in respect of that use, they would be (or are) referendum expenses incurred by or on behalf of the individual or body.

(2) Where this paragraph applies, an amount of referendum expenses determined in accordance with this paragraph (“the appropriate amount”) is to be treated, for the purposes of this schedule, as incurred by the individual or body during the period for which the property, services or facilities is or are made use of as mentioned in sub-paragraph (1)(b).

(3) Sub-paragraph (2) is subject to sub-paragraph (13).

(4) Where sub-paragraph (1)(a)(i) applies, the appropriate amount is such proportion as is reasonably attributable to the use made of the property as mentioned in sub-paragraph (1)(b) of either—

(a) the market value of the property (where the property is transferred free of charge), or

(b) the difference between the market value of the property and the amount of expenses actually incurred by or on behalf of the individual or body in respect of the property (where the property is transferred at a discount).

5 (5) Where sub-paragraph (1)(a)(ii) applies, the appropriate amount is such proportion as is reasonably attributable to the use made of the property, services or facilities as mentioned in sub-paragraph (1)(b) of either—

(a) the commercial rate for the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided free of charge), or

10 (b) the difference between that commercial rate and the amount of expenses actually incurred by or on behalf of the individual or body in respect of the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided at a discount).

15 (6) Sub-paragraph (7) applies where the services of an employee are made available by the employee's employer for the use or benefit of an individual or body.

(7) For the purposes of this paragraph, the amount which is to be taken as constituting the commercial rate for the provision of those services is the amount of the remuneration or allowances payable to the employee by the employer in respect of the period for which the employee's services are made available (but do not include any amount in respect of contributions or other payments for which the employer is liable in respect of the employee).

20 (8) Where an amount of referendum expenses is treated, by virtue of sub-paragraph (2), as incurred by or on behalf of an individual or body during any period the whole or part of which falls within the referendum period, then—

25 (a) the amount mentioned in sub-paragraph (10) is to be treated as incurred by or on behalf of the individual or body during the referendum period, and

(b) if a return falls to be prepared under paragraph 22 in respect of referendum expenses incurred by or on behalf of the individual or body during that period, the responsible person must make a declaration of that amount.

30 (9) Sub-paragraph (8) does not apply if the amount referred to in sub-paragraph (8)(a) does not exceed £200.

(10) The amount referred to in sub-paragraph (8)(a) is such proportion of the appropriate amount (determined in accordance with sub-paragraph (4) or (5)) as reasonably represents the use made of the property, services or facilities as mentioned in sub-paragraph (1)(b) during the referendum period.

35 (11) A person commits an offence if the person knowingly or recklessly makes a false declaration under sub-paragraph (8)(b).

(12) A person who commits an offence under sub-paragraph (11) is liable—

40 (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(13) No amount of referendum expenses is to be regarded as incurred by virtue of sub-paragraph (2) in respect of—

- (a) the transmission by a broadcaster of a referendum campaign broadcast,
- (b) the provision of any rights conferred on a designated organisation (or persons authorised by such an organisation) by virtue of—
- (i) paragraph 9 or 10, or
- (ii) any enactment conferring a right to send free of charge postal communications containing matter relating to the referendum, or
- (c) the provision by any individual of the individual's own services which are provided voluntarily in the individual's own time and free of charge.
- (14) Paragraph 31(5) and (6)(a) applies with any necessary modifications for the purpose of determining, for the purposes of sub-paragraph (1), whether property is transferred to an individual or body.

Restriction on incurring referendum expenses

- 14 (1) No amount of referendum expenses is to be incurred by or on behalf of a permitted participant except with the authority of—
- (a) the responsible person, or
- (b) a person authorised in writing by the responsible person.
- (2) A person commits an offence if, without reasonable excuse, the person incurs any expenses in contravention of sub-paragraph (1).
- (3) A person who commits an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Where, in the case of a permitted participant that is a registered party, any expenses are incurred in contravention of sub-paragraph (1), the expenses do not count for the purposes of paragraphs 19 to 25 as referendum expenses incurred by or on behalf of the permitted participant.

Restriction on payments in respect of referendum expenses

- 15 (1) No payment (of whatever nature) may be made in respect of any referendum expenses incurred or to be incurred by or on behalf of a permitted participant except by—
- (a) the responsible person, or
- (b) a person authorised in writing by the responsible person.
- (2) A payment made in respect of any such expenses by a person within paragraph (a) or (b) of sub-paragraph (1) must be supported by an invoice or a receipt unless the amount of the payment does not exceed £200.
- (3) Where a person within paragraph (b) of sub-paragraph (1) makes a payment to which sub-paragraph (2) applies, the person must, as soon as possible after making the payment, deliver to the responsible person—
- (a) notification that the payment has been made, and
- (b) the supporting invoice or receipt.
- (4) A person commits an offence if, without reasonable excuse, the person—
- (a) makes a payment in contravention of sub-paragraph (1), or

(b) contravenes sub-paragraph (3).

- (5) A person who commits an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Restriction on making claims in respect of referendum expenses

- 5 16 (1) A claim for payment in respect of referendum expenses incurred by or on behalf of a permitted participant during the referendum period is not payable unless the claim is sent within the period of 30 days after the end of the referendum period to—
- (a) the responsible person, or
- (b) any other person authorised under paragraph 14 to incur the expenses.
- 10 (2) A claim sent in accordance with sub-paragraph (1) must be paid within the period of 60 days after the end of the referendum period.
- (3) A person commits an offence if, without reasonable excuse, the person—
- (a) pays a claim which by virtue of sub-paragraph (1) is not payable, or
- 15 (b) makes a payment in respect of a claim after the end of the period allowed under sub-paragraph (2).
- (4) A person who commits an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In the case of a claim to which sub-paragraph (1) applies—
- (a) the person making the claim, or
- 20 (b) the person with whose authority the expenses in question were incurred,
- may apply to the Electoral Commission for leave for the claim to be paid although sent in after the end of the period mentioned in that sub-paragraph; and the Commission, if satisfied that it is appropriate to do so, may grant the leave.
- (6) Nothing in sub-paragraph (1) or (2) applies in relation to any sum paid in pursuance of the leave granted by the Commission.
- 25 (7) Sub-paragraph (2) is without prejudice to any rights of a creditor of a permitted participant to obtain payment before the end of the period allowed under that sub-paragraph.
- (8) Subsections (9) and (10) of section 77 of the 2000 Act apply for the purposes of this paragraph as if—
- 30 (a) any reference to subsection (1) or (2) of that section were a reference to sub-paragraph (1) or (2) above,
- (b) any reference to campaign expenditure were a reference to referendum expenses, and
- 35 (c) any reference to the treasurer or deputy treasurer of the registered party were a reference to the responsible person in relation to the permitted participant.

Disputed claims

17 (1) This paragraph applies where—

(a) a claim for payment in respect of referendum expenses incurred by or on behalf of a permitted participant as mentioned in paragraph 16(1) is sent to—

(i) the responsible person, or

(ii) any other person with whose authority it is alleged that the expenses were incurred,

within the period allowed under that provision, and

(b) the responsible person or other person to whom the claim is sent fails or refuses to pay the claim within the period allowed under paragraph 16(2).

(2) A claim to which this paragraph applies is referred to in this paragraph as “the disputed claim”.

(3) The person by whom the disputed claim is made may bring an action for the disputed claim, and nothing in paragraph 16(2) applies in relation to any sum paid in pursuance of any judgment or order made by a court in the proceedings.

(4) For the purposes of this paragraph, sub-paragraphs (5) and (6) of paragraph 16 apply in relation to an application made by the person mentioned in sub-paragraph (1)(b) above for leave to pay the disputed claim as they apply in relation to an application for leave to pay a claim (whether it is disputed or otherwise) which is sent in after the period allowed under paragraph 16(1).

Rights of creditors

18 Nothing in this schedule which prohibits—

(a) payments and contracts for payments,

(b) the payment or incurring of referendum expenses in excess of the maximum amount allowed by this schedule, or

(c) the incurring of expenses not authorised as mentioned in paragraph 14,

affects the right of any creditor who, when the contract was made or the expense was incurred, was ignorant of that contract or expense being in contravention of this schedule.

General restriction on referendum expenses

19 (1) This paragraph applies in relation to an individual or body that is not a permitted participant.

(2) The total referendum expenses incurred by or on behalf of an individual or a body to which this paragraph applies during the referendum period must not exceed £10,000.

(3) Where, during the referendum period, any referendum expenses are incurred by or on behalf of an individual to which this paragraph applies in excess of the limit imposed by sub-paragraph (2), the individual commits an offence if the individual knew, or ought reasonably to have known, that the expenses were being incurred in excess of that limit.

(4) An individual who commits an offence under sub-paragraph (3) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

5 (5) Where, during the referendum period, any referendum expenses are incurred by or on behalf of a body to which this paragraph applies in excess of the limit imposed by sub-paragraph (2), then—

- (a) the body commits an offence, and
- (b) any person who authorised the expenses to be incurred by or on behalf of the body also commits an offence if the person knew, or ought reasonably to have known, that the expenses would be incurred in excess of that limit.

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(6) A body or person who commits an offence under sub-paragraph (5) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

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(7) It is a defence for an individual, body or other person charged with an offence under sub-paragraph (3) or (5) to show—

- (a) that any code of practice for the time being issued under paragraph 12(3) was complied with in determining whether to incur any expenses, and
- (b) that the limit would not have been exceeded on the basis of compliance with the code of practice as it had effect at that time.

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(8) Sub-paragraph (9) applies where—

- (a) before the beginning of the referendum period, any expenses are incurred by or on behalf of an individual or body to which this paragraph applies in respect of any property, services or facilities, and
- (b) the property, services or facilities is or are made use of by or on behalf of the individual or body during the referendum period in circumstances such that, had any expenses been incurred in respect of that use during that period, they would by virtue of paragraph 11(2) have constituted referendum expenses incurred by or on behalf of the individual or body during that period.

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(9) The appropriate proportion of the expenses mentioned in sub-paragraph (8)(a) is to be treated for the purposes of this paragraph as referendum expenses incurred by or on behalf of the individual or body during that period.

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(10) For the purposes of sub-paragraph (9) the appropriate proportion of the expenses mentioned in paragraph (a) of sub-paragraph (8) is such proportion of those expenses as is reasonably attributable to the use made of the property, services or facilities as mentioned in paragraph (b) of that sub-paragraph.

Special restrictions on referendum expenses by permitted participants

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20 (1) The total referendum expenses incurred by or on behalf of a permitted participant during the referendum period must not exceed—

- (a) if the permitted participant is a designated organisation, £1,500,000,

(b) if the permitted participant is not a designated organisation but is a registered party and has a relevant percentage, whichever is the greater of—

(i) the sum calculated by multiplying the sum of £3,000,000 by the party's relevant percentage, or

(ii) £150,000, or

(c) if the permitted participant is not a designated organisation nor such a registered party, £150,000.

(2) For the purposes of sub-paragraph (1)(b)—

(a) a registered party has a relevant percentage if, at the general election for membership of the Scottish Parliament last occurring before the relevant day (“the election”), constituency votes were cast for one or more candidates at the election authorised to use the party's registered name and regional votes were cast for the party, and

(b) a registered party's relevant percentage is equal to the sum (rounded to one decimal place) of—

(i) the total number of constituency votes cast at the election for the candidate or candidates mentioned in paragraph (a) expressed as a percentage of the total number of constituency votes cast at that election for all candidates, multiplied by 56.6%, and

(ii) the total number of regional votes cast at the election for the party expressed as a percentage of the total number of regional votes cast at that election for all registered parties and individual candidates, multiplied by 43.4%.

(3) In sub-paragraph (2)(a) the “relevant day” is the day on which the regulations specifying the provision referred to in section 1(2)(b) in relation to the referendum come into force.

(4) Sub-paragraph (5) applies in the case where, at the election, a candidate stood for return as a constituency member in the name of more than one registered party.

(5) For the purposes of sub-paragraph (2)(b)(i), the number of constituency votes cast for the candidate is to be divided equally among each of the registered parties in whose name the candidate stood.

(6) In sub-paragraphs (2) to (5)—

“constituency member” has the meaning given in section 126(1) of the Scotland Act 1998,

“constituency vote” means a vote cast for a candidate standing for return as a constituency member,

“regional vote” has the meaning given in section 6(2) of the Scotland Act 1998.

(7) Where any referendum expenses are incurred by or on behalf of a permitted participant during the referendum period in excess of the limit imposed by sub-paragraph (1), then—

(a) if the permitted participant is a registered party—

(i) the party commits an offence, and

- (ii) the responsible person or any deputy treasurer of the party also commits an offence if the person or deputy treasurer authorised the expenses to be incurred by or on behalf of the party and knew or ought reasonably to have known that the expenses would be incurred in excess of that limit,
- 5 (b) if the permitted participant is an individual, that individual commits an offence if the individual knew or ought reasonably to have known that the expenses would be incurred in excess of that limit,
- (c) if the permitted participant is a body other than a registered party—
- (i) the body commits an offence, and
- 10 (ii) the responsible person commits an offence if the person authorised the expenses to be incurred by or on behalf of the body and knew or ought reasonably to have known that the expenses would be incurred in excess of that limit.
- (8) A person who commits an offence under sub-paragraph (7) is liable—
- 15 (a) on summary conviction, to a fine not exceeding the statutory maximum,
- (b) on conviction on indictment, to a fine.
- (9) It is a defence for a permitted participant or other person charged with an offence under sub-paragraph (7) to show—
- 20 (a) that any code of practice for the time being issued under paragraph 12(3) was complied with in determining the items and amounts of referendum expenses to be entered in the relevant return under paragraph 22, and
- (b) that the limit would not have been exceeded on the basis of the items and amounts entered in that return.
- (10) Sub-paragraphs (8) to (10) of paragraph 19 apply for the purposes of this paragraph and paragraphs 22 to 25 as they apply for the purposes of paragraph 19, but as if references in them to an individual or body to which that paragraph applies were references to a permitted participant.
- 25 (11) For the purposes of this paragraph and paragraphs 22 to 25 any reference to referendum expenses incurred by or on behalf of a permitted participant during the referendum period includes any referendum expenses so incurred at any time before the individual or body became a permitted participant.
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Referendum expenses incurred as part of common plan

- 21 (1) This paragraph applies where—
- 35 (a) referendum expenses are incurred by or on behalf of an individual or body during the referendum period,
- (b) the expenses are incurred as part of a common plan or other arrangement with one or more other individuals or bodies,
- (c) the common plan or arrangement is one whereby referendum expenses are to be incurred by or on behalf of both or all of the individuals or bodies involved in the common plan or arrangement with a view to, or otherwise in connection with, promoting or procuring one particular outcome in the referendum, and
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(d) there is a designated organisation in respect of each of the possible outcomes in the referendum.

(2) Subject to sub-paragraph (4), the expenses referred to in sub-paragraph (1)(a) are to be treated for the purposes of paragraphs 19 and 20 as having also been incurred by each of the other individuals or bodies involved in the common plan or arrangement.

(3) This paragraph applies whether or not any of the individuals or bodies involved in the common plan or arrangement is a permitted participant.

(4) Where a designated organisation is involved in the common plan or arrangement, the expenses referred to in sub-paragraph (1)(a)—

(a) so far as—

(i) incurred by or on behalf of an individual or body that is not a permitted participant, and

(ii) the total amount of such expenses incurred by or on behalf of that individual or body does not exceed £10,000,

are to be treated for the purposes of paragraphs 19 and 20 as having been incurred only by the designated organisation,

(b) so far as incurred by or on behalf of a permitted participant other than the designated organisation, are to be treated for the purposes of paragraphs 19 and 20 as having been incurred only by the designated organisation, and

(c) so far as incurred by or on behalf of the designated organisation, are not to be treated for any purposes as having been incurred also by or on behalf of any other individual or body.

Returns as to referendum expenses

(1) The responsible person in relation to a permitted participant must make a return under this paragraph in respect of any referendum expenses incurred by or on behalf of the permitted participant during the referendum period.

(2) A return under this paragraph must contain—

(a) a statement of all payments made in respect of referendum expenses incurred by or on behalf of the permitted participant during the referendum period,

(b) a statement of all disputed claims (within the meaning of paragraph 17),

(c) a statement of all the unpaid claims (if any) of which the responsible person is aware in respect of which an application has been made, or is about to be made, to the Electoral Commission under paragraph 16(5),

(d) a declaration under sub-paragraph (5),

(e) a declaration under sub-paragraph (6), and

(f) in a case where the permitted participant either is not a registered party or is a minor party—

(i) the statement required by paragraph 40, and

(ii) a statement of regulated transactions entered into in respect of the referendum which complies with the requirements of paragraphs 55 to 59.

- (3) A return under this paragraph must be accompanied by—
- (a) all invoices or receipts relating to the payments mentioned in sub-paragraph (2)(a), and
 - (b) in the case of any referendum expenses treated as incurred by virtue of paragraph 13, any declaration falling to be made with respect to those expenses in accordance with paragraph 13(8).
- (4) Sub-paragraphs (2)(a) to (c) and (3) do not apply to any referendum expenses incurred at any time before the individual or body became a permitted participant, but the return must be accompanied by a declaration made by the responsible person of the total amount of such expenses incurred at any such time.
- (5) For the purposes of sub-paragraph (2)(d), a declaration under this sub-paragraph is a declaration of—
- (a) whether there are any referendum expenses incurred by or on behalf of an individual or body other than the permitted participant that must under paragraph 21 be treated as having been incurred during the referendum period by or on behalf of the permitted participant, and
 - (b) if so, in the case of each such individual or body—
 - (i) the individual's or body's name, and
 - (ii) the amount of referendum expenses incurred by or on behalf of the individual or body that must be treated as mentioned in paragraph (a).
- (6) For the purposes of sub-paragraph (2)(e), a declaration under this sub-paragraph is a declaration of—
- (a) whether there are any referendum expenses incurred by or on behalf of the permitted participant that must under paragraph 21 be treated as having been incurred during the referendum period by or on behalf of another individual or body, and
 - (b) if so, in the case of each such individual or body—
 - (i) the individual's or body's name, and
 - (ii) the amount of referendum expenses incurred by or on behalf of the permitted participant that must be treated as mentioned in paragraph (a).
- (7) The reference in sub-paragraph (6) to referendum expenses incurred by or on behalf of the permitted participant includes referendum expenses incurred before the individual or body by or on whose behalf the expenses were incurred became a permitted participant.
- (8) A reference in sub-paragraph (5) or (6) to referendum expenses that must be treated under paragraph 21 as having been incurred during the referendum period by or on behalf of a particular person includes—
- (a) referendum expenses that, under that paragraph, must be treated as having been incurred by or on behalf of that person only, and
 - (b) referendum expenses that, under that paragraph, must be treated as having also been incurred by or on behalf of that person.

- (9) A reference in sub-paragraph (5) or (6) to the name of an individual or body is to be read, in the case where the individual or body is a permitted participant, as a reference to the name under which the permitted participant is registered in the register maintained under paragraph 6.
- 5 (10) Sub-paragraph (11) applies where the responsible person in relation to a permitted participant makes a declaration that, to the best of the person’s knowledge and belief—
- (a) no referendum expenses have been incurred by or on behalf of a permitted participant during the referendum period, or
- (b) the total amount of such expenses incurred by or on behalf of a permitted participant during that period does not exceed £10,000.
- 10 (11) The responsible person in relation to the permitted participant—
- (a) is not required to make a return under this paragraph, but
- (b) must instead deliver the declaration referred to in sub-paragraph (10) to the Electoral Commission within the period of 3 months beginning with the end of the referendum period.
- 15 (12) The responsible person commits an offence if—
- (a) without reasonable excuse, the person fails to comply with the requirements of sub-paragraph (11) in relation to a declaration, or
- (b) the person knowingly or recklessly makes a false declaration under that sub-paragraph.
- 20 (13) A person who commits an offence under sub-paragraph (12)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (14) A person who commits an offence under sub-paragraph (12)(b) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
- 25 (15) The Electoral Commission may issue guidance about the form of return to be used for the purposes of this paragraph.

30 *Auditor’s report on return*

- 23 (1) Where the return prepared under paragraph 22 in respect of the referendum expenses incurred by or on behalf of a permitted participant indicates that the expenses incurred exceed £250,000, a report must be prepared by a qualified auditor on the return.
- (2) An auditor appointed to carry out an audit under this paragraph—
- (a) has a right of access at all reasonable times to such books, documents and other records of the permitted participant as the auditor thinks necessary for the purpose of carrying out of the audit,
- (b) is entitled to require from the responsible person in relation to the permitted participant such information and explanations as the auditor thinks necessary for that purpose.
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(3) If a person fails to provide the auditor with any access, information or explanation to which the auditor has a right or is entitled by virtue of sub-paragraph (2), the Commission may give the person such written directions as they consider appropriate for ensuring that the failure is remedied.

5 (4) If the person fails to comply with the directions, the Court of Session may, on the application of the Commission, deal with the person as if the person had failed to comply with an order of the Court.

10 (5) A person commits an offence if the person knowingly or recklessly makes to an auditor appointed to carry out an audit under this paragraph a statement (whether written or oral) which—

(a) conveys or purports to convey any information or explanation to which the auditor is entitled by virtue of sub-paragraph (2), and

(b) is misleading, false or deceptive in a material particular.

(6) A person who commits an offence under sub-paragraph (5) is liable—

15 (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Delivery of returns to Electoral Commission

20 24 (1) Sub-paragraph (2) applies where—

(a) a return falls to be prepared under paragraph 22 in respect of referendum expenses incurred by or on behalf of a permitted participant, and

(b) an auditor's report on it falls to be prepared under paragraph 23.

25 (2) The responsible person must deliver the return to the Electoral Commission, together with a copy of the auditor's report, within the period of 6 months beginning with the end of the referendum period.

(3) In the case of any other return falling to be prepared under paragraph 22, the responsible person must deliver the return to the Commission within the period of 3 months beginning with the end of the referendum period.

30 (4) Where, after the date on which a return is delivered to the Commission under this paragraph, leave is given by the Commission under paragraph 16(5) for any claim to be paid, the responsible person must, within the period of 7 days beginning with the date of the payment, deliver to the Commission a return of any sums paid in pursuance of the leave.

35 (5) The responsible person commits an offence if, without reasonable excuse, the person—

(a) fails to comply with the requirements of sub-paragraph (2) or (3) in relation to a return under paragraph 22,

(b) delivers a return which does not comply with the requirements of paragraph 22(2) or (3), or

40 (c) fails to comply with the requirements of sub-paragraph (4) in relation to a return under that sub-paragraph.

- (6) A person who commits an offence under sub-paragraph (5)(a) or (c) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A person who commits an offence under sub-paragraph (5)(b) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Declaration of responsible person as to return under paragraph 22

25 (1) Each return prepared under paragraph 22 in respect of referendum expenses incurred by or on behalf of a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

- (2) The declaration must state—
- (a) that the responsible person has examined the return in question, and
 - (b) that to the best of the responsible person's knowledge and belief—
- (i) it is a complete and correct return as required by law, and
 - (ii) all expenses shown in it as paid have been paid by the responsible person or a person authorised by the responsible person.

(3) In a case where the permitted participant either is not a registered party or is a minor party, the declaration must also—

- (a) in relation to all relevant donations recorded in the return as having been accepted by the permitted participant—
- (i) state that they were all from permissible donors, or
 - (ii) state whether or not paragraph 36(3) was complied with in the case of each of those donations that was not from a permissible donor,
- (b) in relation to all regulated transactions entered in the return as having been entered into by the permitted participant—
- (i) state that none of the transactions was made void by paragraph 50(2) or (6), or
 - (ii) state whether or not paragraph 50(3)(a) was complied with in the case of each of the transactions that was made void by paragraph 50(2) or (6).

(4) A person commits an offence if—

- (a) the person knowingly or recklessly makes a false declaration under this paragraph, or
- (b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the return relates.

(5) A person who commits an offence under sub-paragraph (4) is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

(6) In this paragraph—

“relevant donation” has the same meaning as in paragraph 30, and

“regulated transaction” is to be construed in accordance with paragraph 47.

Public inspection of returns under paragraph 22

- 5 26 (1) Where the Electoral Commission receive any return under paragraph 22 they must—
- (a) as soon as practicable after receiving the return, make a copy of the return and of the documents accompanying it available for public inspection, and
 - (b) keep any such copy available for public inspection for the period for which the return or other document is kept by them.
- 10 (2) If the return contains a statement of relevant donations or a statement of regulated transactions in accordance with paragraph 22(2)(f), the Commission must secure that the copy of the statement made available for public inspection does not include—
- (a) in the case of any donation by an individual, the donor’s address,
 - (b) in the case of a transaction entered into by the permitted participant with an individual, the individual’s address.
- 15 (3) At the end of the period of two years beginning with the date when any return or other document mentioned in sub-paragraph (1) is received by the Commission—
- (a) they may cause the return or other document to be destroyed, but
 - (b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the return or other document to be returned to that person.
- 20

PART 4

PUBLICATIONS

Restriction on publication etc. of promotional material by central and local government etc.

- 25 27 (1) This paragraph applies to any material which—
- (a) provides general information about the referendum,
 - (b) deals with any of the issues raised by the referendum question,
 - (c) puts any arguments for or against any outcome, or
 - (d) is designed to encourage voting in the referendum.
- 30 (2) Subject to sub-paragraph (3), no material to which this paragraph applies is to be published during the relevant period by or on behalf of—
- (a) the Scottish Ministers or any other part of the Scottish Administration,
 - (b) the SPCB, or
 - (c) any Scottish public authority with mixed functions or no reserved functions
- 35 (within the meaning of the Scotland Act 1998).

- (3) Sub-paragraph (2) does not apply to—
- (a) material made available to persons in response to specific requests for information or to persons specifically seeking access to it,
 - (b) material published—
 - 5 (i) in a report of a committee, the Business Bulletin or the Official Report of the Scottish Parliament, in accordance with the Parliament’s Standing Orders,
 - (ii) on the Scottish Parliament official website, or
 - 10 (iii) in relation to any meeting, debate, discussion or other parliamentary event authorised by the SPCB and held in accordance with the SPCB’s rules and policies applicable during the relevant period,
 - (c) anything done by or on behalf of—
 - (i) a designated organisation,
 - (ii) the Electoral Commission, or
 - 15 (iii) the Chief Counting Officer or any other counting officer, or
 - (d) the publication of information relating to the holding of the poll.

- (4) In this paragraph—

20 “publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means (and “publication” is to be construed accordingly),

“the relevant period” means the period of 28 days ending with the date of the referendum.

Details to appear on referendum material

- 25 28 (1) No material wholly or mainly relating to the referendum is to be published during the referendum period unless—
- (a) in the case of material which is, or is contained in, such a printed document as is mentioned in sub-paragraph (4), (5) or (6), the requirements of that sub-paragraph are complied with, or
 - 30 (b) in the case of any other material, the requirements of sub-paragraph (7) are complied with.
- (2) Sub-paragraph (1)(b) applies to the publication of material only if the publication can reasonably be regarded as being done with a view to promoting or procuring a particular outcome in the referendum.
- 35 (3) For the purposes of sub-paragraphs (4) to (6) the following details are “the relevant details” in the case of any material falling within sub-paragraph (1)(a), namely—
- (a) the name and address of the printer of the document,
 - (b) the name and address of the promoter of the material, and
 - (c) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).

- (4) Where the material is a document consisting (or consisting principally) of a single side of printed matter, the relevant details must appear on the face of the document.
- (5) Where the material is a printed document other than one to which sub-paragraph (4) applies, the relevant details must appear on either the first or last page of the document.
- 5 (6) Where the material is an advertisement contained in a newspaper or periodical—
- (a) the name and address of the printer of the newspaper or periodical must appear on either its first or last page, and
 - (b) the relevant details specified in sub-paragraph (3)(b) and (c) must be included in the advertisement.
- 10 (7) In the case of material falling within sub-paragraph (1)(b), the following details, namely—
- (a) the name and address of the promoter of the material, and
 - (b) the name and address of any person on behalf of whom the material is being published (and who is not the promoter),
- 15 must be included in the material unless it is not reasonably practicable to include the details.
- (8) Where, during the referendum period, any material is published in contravention of sub-paragraph (1)(a), then the following persons commit an offence, namely—
- (a) the promoter of the material,
 - 20 (b) any other person by whom the material is so published, and
 - (c) the printer of the document.
- (9) Where, during the referendum period, any material is published in contravention of sub-paragraph (1)(b), then the following persons commit an offence, namely—
- (a) the promoter of the material, and
 - 25 (b) any other person by whom the material is so published.
- (10) A person who commits an offence under sub-paragraph (8) or (9) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (11) It is a defence for a person charged with an offence under sub-paragraph (8) or (9) to show—
- 30 (a) that the offence arose from circumstances beyond the person’s control, and
 - (b) that the person took all reasonable steps, and exercised all due diligence, to ensure that an offence under this paragraph would not be committed.
- (12) Sub-paragraph (1) does not apply to any material published for the purposes of the referendum if the publication is required under or by virtue of any enactment.
- 35 (13) In this paragraph—
- “print” means print by whatever means, and “printer” is to be construed accordingly,
 - “the promoter”, in relation to any material falling within sub-paragraph (1), means the person causing the material to be published,

“publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means.

Display of advertisements

- 29 The Town and Country Planning (Control of Advertisements) (Scotland) Regulations
5 1984 (S.I. 1984/467) have effect in relation to the display on any site in Scotland of an
advertisement relating specifically to the referendum as they have effect in relation to
the display of an advertisement relating specifically to a parliamentary election.

PART 5

CONTROL OF DONATIONS

10 *Operation and interpretation of this Part*

- 30 (1) This Part has effect for controlling donations to permitted participants that either are not
registered parties or are minor parties.
- (2) The following provisions have effect for the purposes of this Part.
- (3) In accordance with sub-paragraph (1), “permitted participant” does not include a
15 permitted participant that is a registered party other than a minor party.
- (4) “Relevant donation”, in relation to a permitted participant, means a donation to the
permitted participant for the purpose of meeting referendum expenses incurred by or on
behalf of the permitted participant.
- (5) “Donation” is to be construed in accordance with paragraphs 31 to 33.
- 20 (6) In relation to donations received by a permitted participant other than a designated
organisation, references to a permissible donor do not include a registered party.
- (7) Where any provision of this Part refers to a donation for the purpose of meeting a
particular kind of expenses incurred by or on behalf of a permitted participant—
- 25 (a) the reference includes a reference to a donation for the purpose of securing that
any such expenses are not so incurred, and
- (b) a donation is to be taken to be a donation for either of those purposes if, having
regard to all the circumstances, it must reasonably be assumed to be such a
donation.
- (8) Sub-paragraphs (9) and (10) apply to any provision of this Part which provides, in
30 relation to a permitted participant, that money spent (otherwise than by or on behalf of
the permitted participant) in paying expenses incurred directly or indirectly by the
permitted participant is to constitute a donation to the permitted participant.
- (9) The reference in any such provision to money so spent is a reference to money so spent
by a person, other than the permitted participant, out of the person’s own resources (with
35 no right to reimbursement out of the resources of the permitted participant).
- (10) Where, by virtue of any such provision, any amount of money so spent constitutes a
donation to the permitted participant, the permitted participant is to be treated as
receiving an equivalent amount on the date on which the money is paid to the creditor in
respect of the expenses in question.

- (11) For the purposes of this Part, it is immaterial whether a donation received by a permitted participant is so received in Scotland or elsewhere.

Donations: general rules

31 (1) “Donation”, in relation to a permitted participant, means (subject to paragraph 33)—

- 5 (a) a gift to the permitted participant of money or other property,
(b) any sponsorship provided in relation to the permitted participant (as defined by paragraph 32),
10 (c) any money spent (otherwise than by or on behalf of the permitted participant) in paying any referendum expenses incurred by or on behalf of the permitted participant,
(d) the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the permitted participant (including the services of any person),
15 (e) in the case of a permitted participant other than an individual, any subscription or other fee paid for affiliation to, or membership of, the permitted participant.

(2) Where—

- 20 (a) any money or other property is transferred to a permitted participant pursuant to any transaction or arrangement involving the provision by or on behalf of the permitted participant of any property, services or facilities or other consideration of monetary value, and
(b) the total value in monetary terms of the consideration so provided by or on behalf of the permitted participant is less than the value of the money or (as the case may be) the market value of the property transferred,

25 the transfer of the money or property is (subject to sub-paragraph (4)) to be taken to be a gift to the permitted participant for the purposes of sub-paragraph (1)(a).

30 (3) In determining for the purposes of sub-paragraph (1)(d) whether any property, services or facilities provided for the use or benefit of a permitted participant is or are so provided otherwise than on commercial terms, regard must be had to the total value in monetary terms of the consideration provided by or on behalf of the permitted participant in respect of the provision of the property, services or facilities.

(4) Where (apart from this sub-paragraph) anything would be a donation both by virtue of sub-paragraph (1)(b) and by virtue of any other provision of this paragraph, sub-paragraph (1)(b) (together with paragraph 32) applies in relation to it to the exclusion of the other provision of this paragraph.

35 (5) Anything given or transferred to any officer, member, trustee or agent of a permitted participant in the officer’s, member’s, trustee’s or agent’s capacity as such (and not for the officer’s, member’s, trustee’s or agent’s own use or benefit) is to be regarded as given or transferred to the permitted participant (and references to donations received by a permitted participant accordingly include donations so given or transferred).

40 (6) In this paragraph—

- (a) any reference to anything being given or transferred to a permitted participant or any other person is a reference to its being given or transferred either directly or indirectly through any third person,

- (b) “gift” includes bequest.

Sponsorship

32 (1) For the purposes of this schedule, sponsorship is provided in relation to a permitted participant if—

5 (a) any money or other property is transferred to the permitted participant or to any person for the benefit of the permitted participant, and

(b) the purpose (or one of the purposes) of the transfer is (or must, having regard to all the circumstances, reasonably be assumed to be)—

10 (i) to help the permitted participant with meeting, or to meet, to any extent any defined expenses incurred or to be incurred by or on behalf of the permitted participant, or

(ii) to secure that to any extent any such expenses are not so incurred.

(2) In sub-paragraph (1), “defined expenses” means expenses in connection with—

15 (a) any conference, meeting or other event organised by or on behalf of the permitted participant,

(b) the preparation, production or dissemination of any publication by or on behalf of the permitted participant, or

(c) any study or research organised by or on behalf of the permitted participant.

(3) The following do not, however, constitute sponsorship by virtue of sub-paragraph (1)—

20 (a) the making of any payment in respect of—

(i) any charge for admission to any conference, meeting or other event, or

(ii) the purchase price of, or any other charge for access to, any publication,

25 (b) the making of any payment in respect of the inclusion of an advertisement in any publication where the payment is made at the commercial rate payable for the inclusion of such an advertisement in any such publication.

(4) In this paragraph “publication” means a publication made available in whatever form and by whatever means (whether or not to the public at large or any section of the public).

Payments etc. not to be regarded as donations

30 33 (1) None of the following is to be regarded as a donation—

(a) any grant provided out of public funds,

(b) the provision of any rights conferred on a designated organisation (or persons authorised by a designated organisation) by virtue of—

35 (i) paragraph 9 or 10 (right to use rooms for public meetings), or

(ii) any enactment conferring a right to send free of charge postal communications containing matter relating to the referendum,

(c) the transmission by a broadcaster of a referendum campaign broadcast,

(d) the provision by an individual of the individual's own services which the individual provides voluntarily in the individual's own time and free of charge, or

(e) any interest accruing to a permitted participant in respect of any donation which is dealt with by the permitted participant in accordance with paragraph 36(3)(a) or (b).

(2) Any donation the value of which (as determined in accordance with paragraph 34) does not exceed £500 is to be disregarded.

Value of donations

34 (1) The value of any donation falling within paragraph 31(1)(a) (other than money) is to be taken to be the market value of the property in question.

(2) Where, however, paragraph 31(1)(a) applies by virtue of paragraph 31(2), the value of the donation is to be taken to be the difference between—

(a) the value of the money or (as the case may be) the market value of the property, in question, and

(b) the total value in monetary terms of the consideration provided by or on behalf of the permitted participant.

(3) The value of any donation falling within paragraph 31(1)(b) is to be taken to be the value of the money or (as the case may be) the market value of the property, transferred as mentioned in paragraph 32(1) and accordingly any value in monetary terms of any benefit conferred on the person providing the sponsorship in question is to be disregarded.

(4) The value of any donation falling within paragraph 31(1)(d) is to be taken to be the amount representing the difference between—

(a) the total value in monetary terms of the consideration that would have had to be provided by or on behalf of the permitted participant in respect of the provision of the property, services or facilities if the property, services or facilities had been provided on commercial terms, and

(b) the total value in monetary terms of the consideration (if any) actually so provided by or on behalf of the permitted participant.

(5) Where a donation such as is mentioned in sub-paragraph (4) confers an enduring benefit on the donee over a particular period, the value of the donation—

(a) is to be determined at the time when it is made, but

(b) is to be so determined by reference to the total benefit accruing to the donee over that period.

Prohibition on accepting donations from impermissible donors

35 (1) A relevant donation received by a permitted participant must not be accepted by the permitted participant if—

(a) the person by whom the donation would be made is not, at the time of its receipt by the permitted participant, a permissible donor, or

(b) the permitted participant is (whether because the donation is given anonymously or by reason of any deception or concealment or otherwise) unable to ascertain the identity of the person offering the donation.

5 (2) For the purposes of this schedule, any relevant donation received by a permitted participant which is an exempt trust donation is to be regarded as a relevant donation received by the permitted participant from a permissible donor.

10 (3) But, for the purposes of this schedule, any relevant donation received by a permitted participant from a trustee of any property (in the trustee's capacity as such) is to be regarded as a relevant donation received by the permitted participant from a person who is not a permissible donor unless it is—

(a) an exempt trust donation, or

(b) a relevant donation transmitted by the trustee to the permitted participant on behalf of beneficiaries under the trust who are—

15 (i) persons who at the time of its receipt by the permitted participant are permissible donors, or

(ii) the members of an unincorporated association which at that time is a permissible donor.

20 (4) Where any person (“the principal donor”) causes an amount (“the principal donation”) to be received by a permitted participant by way of a relevant donation—

(a) on behalf of the principal donor and one or more other persons, or

(b) on behalf of two or more other persons,

then for the purposes of this schedule each individual contribution by a person falling within paragraph (a) or (b) which exceeds £500 is to be treated as if it were a separate donation received from that person.

25 (5) In relation to each such separate donation, the principal donor must ensure that, at the time when the principal donation is received by the permitted participant, the responsible person is given—

30 (a) (except in the case of a donation which the principal donor is treated as making) all such details in respect of the person treated as making the donation as are required by virtue of paragraph 41(1)(c) to be given in respect of the donor of a donation to which that paragraph applies, and

(b) (in any case) all such details in respect of the donation as are required by virtue of paragraph 41(1)(a).

35 (6) Where—

(a) any person (“the agent”) causes an amount to be received by a permitted participant by way of a donation on behalf of another person (“the donor”), and

(b) the amount of the donation exceeds £500,

40 the agent must ensure that, at the time when the donation is received by the permitted participant, the responsible person is given all such details in respect of the donor as are required by virtue of paragraph 41(1)(c) to be given in respect of the donor of a donation to which that paragraph applies.

(7) A person commits an offence if, without reasonable excuse, the person fails to comply with sub-paragraph (5) or (6).

- (8) A person who commits an offence under sub-paragraph (7) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Acceptance or return of donations

36 (1) Sub-paragraph (2) applies where—

- (a) a donation is received by a permitted participant, and
- (b) it is not immediately decided that the permitted participant should (for whatever reason) refuse the donation.

(2) All reasonable steps must be taken without delay by or on behalf of the permitted participant to verify (or, so far as any of the following is not apparent, ascertain)—

- (a) the identity of the donor,
- (b) whether the donor is a permissible donor, and
- (c) if it appears that the donor is a permissible donor, all such details in respect of the donor as are required by virtue of paragraph 41(1)(c) to be included in a statement under paragraph 40 in respect of a relevant donation.

(3) If a permitted participant receives a donation which the permitted participant is prohibited from accepting by virtue of paragraph 35(1), or which it is decided the permitted participant should refuse, then—

- (a) unless the donation falls within paragraph 35(1)(b), the donation, or a payment of an equivalent amount, must be sent back to the person who made the donation or any person appearing to be acting on that person's behalf,
- (b) if the donation falls within that paragraph, the required steps (see paragraph 37(1)) must be taken in relation to the donation,

within the period of 30 days beginning with the date when the donation is received by the permitted participant.

(4) The permitted participant and the responsible person each commit an offence if—

- (a) sub-paragraph (3)(a) applies in relation to a donation, and
- (b) the donation is not dealt with in accordance with that sub-paragraph.

(5) It is a defence for a permitted participant or responsible person charged with an offence under sub-paragraph (4) to show that—

- (a) all reasonable steps were taken by or on behalf of the permitted participant to verify (or ascertain) whether the donor was a permissible donor, and
- (b) as a result, the responsible person believed the donor to be a permissible donor.

(6) The responsible person in relation to a permitted participant commits an offence if—

- (a) sub-paragraph (3)(b) applies in relation to a donation, and
- (b) the donation is not dealt with in accordance with that sub-paragraph.

- (7) A person who commits an offence under sub-paragraph (4) or (6) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
- (8) For the purposes of this schedule, a donation received by a permitted participant is to be taken to have been accepted by the permitted participant unless—
- (a) it is dealt with in accordance with sub-paragraph (3), and
 - (b) a record can be produced of the receipt of the donation and of its having been dealt with in accordance with that sub-paragraph.
- (9) Where a donation is received by a permitted participant in the form of an amount paid into an account held by the permitted participant with a financial institution, it is to be taken for the purposes of this schedule to have been received by the permitted participant at the time when the permitted participant is notified in the usual way of the payment into the account.

Return of donation where donor unidentifiable

- 37 (1) For the purposes of paragraph 36(3)(b), the required steps are—
- (a) if the donation was transmitted by a person other than the donor and the identity of that person is apparent, to return the donation to that person,
 - (b) if paragraph (a) does not apply but it is apparent that the donor has, in connection with the donation, used any facility provided by an identifiable financial institution, to return the donation to that institution, or
 - (c) in any other case, to send the donation to the Electoral Commission.
- (2) In sub-paragraph (1) any reference to returning or sending a donation to any person or body includes a reference to sending a payment of an equivalent amount to that person or body.
- (3) Any amount sent to the Electoral Commission in pursuance of sub-paragraph (1)(c) is to be paid by the Commission into the Scottish Consolidated Fund.

Forfeiture of donations made by impermissible or unidentifiable donors

- 38 (1) This paragraph applies to any donation received by a permitted participant—
- (a) which, by virtue of paragraph 35(1), the permitted participant is prohibited from accepting, but
 - (b) which has been accepted by the permitted participant.
- (2) A sheriff may, on the application of the Electoral Commission, order the forfeiture by the permitted participant of an amount equal to the value of the donation.
- (3) An order may be made under this paragraph whether or not proceedings are brought against any person for an offence connected with the donation.
- (4) Proceedings on an application for an order under this paragraph are civil proceedings and, accordingly, the standard of proof that applies is that applicable in civil proceedings.

- (5) The permitted participant may appeal to the Court of Session against an order made under this paragraph.
- (6) Rules of court may make provision—
- (a) with respect to applications and appeals under this paragraph,
 - 5 (b) for the giving of notice of such applications or appeals to persons affected by them,
 - (c) for the sisting of such persons as parties,
 - (d) generally with respect to procedure in such applications or appeals.
- (7) An amount forfeited by virtue of an order under this paragraph is to be paid into the Scottish Consolidated Fund.
- 10 (8) Sub-paragraph (7) does not apply—
- (a) where an appeal is made under sub-paragraph (5), before the appeal is determined or otherwise disposed of, or
 - 15 (b) in any other case, before the end of any period within which, in accordance with rules of court, an appeal under sub-paragraph (5) is to be made.

Evasion of restrictions on donations

- 39 (1) A person commits an offence if the person—
- (a) knowingly enters into, or
 - (b) knowingly does any act in furtherance of,
- 20 any arrangement which facilitates or is likely to facilitate, whether by means of any concealment or disguise or otherwise, the making of relevant donations to a permitted participant by any person or body other than a permissible donor.
- (2) A person commits an offence if the person—
- 25 (a) knowingly gives the responsible person in relation to a permitted participant any information relating to—
 - (i) the amount of any relevant donation made to the permitted participant, or
 - (ii) the person or body making such a donation,which is false in a material particular, or
 - 30 (b) with intent to deceive, withholds from the responsible person in relation to a permitted participant any material information relating to a matter within paragraph (a)(i) or (ii).
- (3) A person who commits an offence under this paragraph is liable—
- 35 (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Statement of relevant donations

40 The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 22 a statement of relevant donations which complies with paragraphs 41 and 42.

5 *Donations from permissible donors*

41 (1) The statement must record, in relation to each relevant donation falling within sub-paragraph (3) which is accepted by the permitted participant—

10 (a) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 34,

(b) the date when the donation was accepted by the permitted participant, and

15 (c) the information about the donor which is, in connection with recordable donations to registered parties, required to be recorded in donation reports by virtue of paragraph 2 of schedule 6 of the 2000 Act or, where the donor is within any of paragraphs (i) to (l) of paragraph 1(2), the information mentioned in sub-paragraph (2).

(2) The information to be recorded in the case of a donor within any of paragraphs (i) to (l) of paragraph 1(2) is—

20 (a) in the case of a body within paragraph 1(2)(i) (body incorporated by Royal Charter)—

(i) the name of the body, and

(ii) the address of its main office in the United Kingdom,

(b) in the case of a body within paragraph 1(2)(j) or (k) (charitable incorporated organisation)—

25 (i) the name of the body, and

(ii) the address of its principal office,

(c) in the case of a body within paragraph 1(2)(l) (Scottish partnership)—

(i) the name of the body, and

(ii) the address of its main office in the United Kingdom.

30 (3) Sub-paragraph (1) applies to a relevant donation where—

(a) the value of the donation exceeds £7,500, or

(b) the value of it and any other relevant benefit or benefits exceeds that amount.

35 (4) In sub-paragraph (3)(b) “relevant benefit” means any relevant donation or regulated transaction (within the meaning of paragraph 46(4)) made by or entered into with the person who made the donation.

(5) The statement must also record the total value of any relevant donations, other than those falling within sub-paragraph (3), which are accepted by the permitted participant.

- (6) In the case of a donation made by an individual who has an anonymous entry in an electoral register, if the statement states that the permitted participant has seen evidence that the individual has such an anonymous entry, the statement must be accompanied by a copy of the evidence.

5 *Donations from impermissible or unidentifiable donors*

42 (1) This paragraph applies to relevant donations falling within paragraph 35(1)(a) or (b).

(2) Where paragraph 35(1)(a) applies, the statement must record—

- (a) the name and address of the donor,
(b) the amount of the donation (if a donation of money, in cash or otherwise) or (in
10 any other case) the nature of the donation and its value as determined in
accordance with paragraph 34, and
(c) the date when the donation was received, and the date when, and the manner in
which, it was dealt with in accordance with paragraph 36(3)(a).

(3) Where paragraph 35(1)(b) applies, the statement must record—

- (a) details of the manner in which the donation was made,
15 (b) the amount of the donation (if a donation of money, in cash or otherwise) or (in
any other case) the nature of the donation and its value as determined in
accordance with paragraph 34, and
20 (c) the date when the donation was received, and the date when, and the manner in
which, it was dealt with in accordance with paragraph 36(3)(b).

Donation reports during referendum period

43 (1) The responsible person in relation to a permitted participant must prepare a report under this paragraph in respect of each of the following periods—

- (a) the period starting with the relevant day and ending with the 28th day of the
25 referendum period,
(b) each of the two succeeding periods of 4 weeks during the referendum period, and
(c) the period from the end of the second of the periods referred to in paragraph (b)
until the end of the day before the date of the referendum.

(2) In sub-paragraph (1)(a), the “relevant day” is the day on which the draft Scottish
30 statutory instrument containing the regulations under section 1(1) that provide for the
holding of the referendum was laid before the Scottish Parliament for approval.

(3) The report for a period must record, in relation to each relevant donation of more than
£7,500 which is received by the permitted participant during the period—

- (a) the amount of the donation (if a donation of money, in cash or otherwise) or (in
35 any other case) the nature of the donation and its value as determined in
accordance with paragraph 34,
(b) the date when the donation was received by the permitted participant, and
(c) the information about the donor which is, in connection with recordable donations
40 to registered parties, required to be recorded in weekly donation reports by virtue
of paragraph 3 of schedule 6 of the 2000 Act.

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- (4) If during any period no relevant donations of more than £7,500 were received by the permitted participant, the report for the period must contain a statement of that fact.
- (5) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”)—
- 5 (a) a separate report under this paragraph need not be prepared in respect of any preceding period, but
- (b) for the purposes of sub-paragraphs (3) and (4), the report for the period in question must also cover the time from the relevant day (as defined in sub-paragraph (2)) to the start of the period, and references in those sub-paragraphs to
- 10 the period are to be read accordingly.
- (6) Sub-paragraphs (3) and (4) apply to a relevant donation received by a permitted participant before the start of the referendum period only if the donation was for the purpose of meeting referendum expenses to be incurred by the permitted participant during the referendum period.
- 15 (7) References in this paragraph and in paragraph 44 to a relevant donation received by a permitted participant include any donation received at a time before the individual or body concerned became a permitted participant, if the donation would have been a relevant donation had the individual or body been a permitted participant at that time.
- (8) A report under this paragraph must be delivered by the responsible person to the Electoral Commission within the period of 7 days beginning with the end of the period to which the report relates.
- 20 (9) For the purpose of sub-paragraph (8), the following days are to be disregarded—
- (a) a Saturday or Sunday,
- (b) Christmas Eve or Christmas Day,
- 25 (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
- (d) a day appointed for public thanksgiving or mourning.
- (10) If, in relation to a donation made by an individual who has an anonymous entry in an electoral register, a report under this paragraph contains a statement that the permitted
- 30 participant has seen evidence that the individual has such an anonymous entry, the report must be accompanied by a copy of the evidence.
- (11) The responsible person commits an offence if, without reasonable excuse, the person—
- (a) fails to comply with the requirements of sub-paragraph (8) in relation to a report under this paragraph,
- 35 (b) delivers a report to the Electoral Commission that does not comply with the requirements of sub-paragraphs (3), (4) or (10).
- (12) A person who commits an offence under sub-paragraph (11)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (13) A person who commits an offence under sub-paragraph (11)(b) is liable—
- 40 (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Declaration of responsible person as to donation reports under paragraph 43

5 44 (1) Each report prepared under paragraph 43 in respect of relevant donations received by a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

(2) The declaration must state—

(a) that the responsible person has examined the report, and

10 (b) that to the best of the responsible person's knowledge and belief, it is a complete and correct report as required by law.

(3) A person commits an offence if—

(a) the person knowingly or recklessly makes a false declaration under this paragraph, or

15 (b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the report relates.

(4) A person who commits an offence under sub-paragraph (3) is liable—

(a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

20 (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Public inspection of donation reports under paragraph 43

45 (1) Where the Electoral Commission receive a report under paragraph 43 they must—

(a) as soon as practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and

25 (b) keep any such copy available for public inspection for the period for which the report or other document is held by them.

(2) The Commission must secure that the copy of the report made available for public inspection does not include, in the case of any donation by an individual, the donor's address.

30 (3) At the end of the period of 2 years beginning with the date when any report under paragraph 43 or other document accompanying it is received by the Commission—

(a) they may cause the report or other document to be destroyed, or

35 (b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.

PART 6

CONTROL OF LOANS AND CREDIT

Operation of Part

- 5 46 (1) This Part has effect for controlling regulated transactions entered into by permitted participants that either are not registered parties or are minor parties.
- (2) The following provisions have effect for the purposes of this Part.
- (3) In accordance with sub-paragraph (1), “permitted participant” does not include a permitted participant which is a registered party other than a minor party.
- (4) “Regulated transaction” has the meaning given by paragraph 47.

Regulated transactions

- 10 47 (1) An agreement between a permitted participant and another person by which the other person makes a loan of money to the permitted participant is a regulated transaction if the use condition is satisfied.
- 15 (2) An agreement between a permitted participant and another person by which the other person provides a credit facility to the permitted participant is a regulated transaction if the use condition is satisfied.
- (3) Where—
- 20 (a) a permitted participant and another person (“A”) enter into a regulated transaction of a description mentioned in sub-paragraph (1) or (2), or a transaction under which any property, services or facilities are provided for the use or benefit of the permitted participant (including the services of any person),
- (b) A also enters into an arrangement whereby another person (“B”) gives any form of security (whether real or personal) for a sum owed to A by the permitted participant under the transaction mentioned in paragraph (a), and
- 25 (c) the use condition is satisfied,
- the arrangement is a regulated transaction.
- (4) An agreement or arrangement is also a regulated transaction if—
- (a) the terms of the agreement or arrangement as first entered into do not constitute a regulated transaction by virtue of sub-paragraph (1), (2) or (3), but
- 30 (b) the terms are subsequently varied in such a way that the agreement or arrangement becomes a regulated transaction.
- (5) The use condition is that the permitted participant intends at the time of entering into a transaction mentioned in sub-paragraph (1), (2) or (3)(a) to use any money or benefit obtained in consequence of the transaction for meeting referendum expenses incurred by or on behalf of the permitted participant.
- 35 (6) For the purposes of sub-paragraph (5), it is immaterial that only part of the money or benefit is intended to be used for meeting referendum expenses incurred by or on behalf of the permitted participant.

- (7) References in sub-paragraphs (1) and (2) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if that person makes the agreement as such.
- 5 (8) References in sub-paragraph (3) to a permitted participant include references to an officer, member, trustee or agent of the permitted participant if the property, services or facilities are provided to that person as such, or the sum is owed by that person as such.
- (9) A reference to a connected transaction is a reference to the transaction mentioned in sub-paragraph (3)(b).
- 10 (10) In this paragraph a reference to anything being done by or in relation to a permitted participant or a person includes a reference to its being done directly or indirectly through a third person.
- (11) A credit facility is an agreement whereby a permitted participant is enabled to receive from time to time from another party to the agreement a loan of money not exceeding such amount (taking account of any repayments made by the permitted participant) as is specified in or determined in accordance with the agreement.
- 15 (12) An agreement or arrangement is not a regulated transaction—
- (a) to the extent that a payment made in pursuance of the agreement or arrangement falls, by virtue of paragraph 40, to be included in a return under paragraph 22 (or would do so but for paragraph 22(10) and (11)), or
- 20 (b) if its value does not exceed £500.

Valuation of regulated transaction

- 48 (1) The value of a regulated transaction which is a loan is the value of the total amount to be lent under the loan agreement.
- 25 (2) The value of a regulated transaction which is a credit facility is the maximum amount which may be borrowed under the agreement for the facility.
- (3) The value of a regulated transaction which is an arrangement by which any form of security is given is the contingent liability under the security provided.
- 30 (4) For the purposes of sub-paragraphs (1) and (2), no account is to be taken of the effect of any provision contained in a loan agreement or an agreement for a credit facility at the time it is entered into which enables outstanding interest to be added to any sum for the time being owed in respect of the loan or credit facility, whether or not any such interest has been so added.

Authorised participants

- 49 (1) A permitted participant must not—
- 35 (a) be a party to a regulated transaction to which any of the other parties is not an authorised participant,
- (b) derive a benefit in consequence of a connected transaction if any of the parties to that transaction is not an authorised participant.
- (2) In this Part, an authorised participant is a person who is a permissible donor.

- (3) In relation to transactions entered into by a permitted participant other than a designated organisation, references in this Part to an authorised participant do not include a registered party.

Regulated transaction involving unauthorised participant

- 5 50 (1) This paragraph applies if a permitted participant is a party to a regulated transaction to which another party is not an authorised participant.
- (2) The transaction is void.
- (3) Despite sub-paragraph (2)—
- 10 (a) any money received by the permitted participant by virtue of the transaction must be repaid by the responsible person to the person from whom it was received, along with interest at the rate referred to in section 71I(3)(a) of the 2000 Act,
- (b) the person from whom it was received is entitled to recover the money, along with such interest.
- (4) If—
- 15 (a) the money is not (for whatever reason) repaid as mentioned in sub-paragraph (3)(a), or
- (b) the person entitled to recover the money refuses or fails to do so,
- the Commission may apply to a sheriff to make such order as the sheriff thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.
- 20 (5) An order under sub-paragraph (4) may in particular—
- (a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it),
- 25 (b) where any form of security is given for a sum owed under the transaction, require that security to be discharged.
- (6) In the case of a regulated transaction where a party other than a permitted participant—
- (a) at the time the permitted participant enters into the transaction, is an authorised participant, but
- 30 (b) subsequently, for whatever reason, ceases to be an authorised participant,
- the transaction is void and sub-paragraphs (3) to (5) apply with effect from the time when the other party ceased to be an authorised participant.

Guarantees and securities: unauthorised participant

- 35 51 (1) This paragraph applies if—
- (a) a permitted participant and another person (“A”) enter into a transaction of a description mentioned in paragraph 47(3)(a),
- (b) A is party to a regulated transaction of a description mentioned in paragraph 47(3)(b) (“the connected transaction”) with another person (“B”), and
- (c) B is not an authorised participant.

- (2) Paragraph 50(2) to (5) applies to the transaction mentioned in sub-paragraph (1)(a).
- (3) The connected transaction is void.
- (4) Sub-paragraph (5) applies if (but only if) A is unable to recover from the permitted participant the whole of the money mentioned in paragraph 50(3)(a) (as applied by sub-paragraph (2) above), along with such interest as is there mentioned.
- (5) Despite sub-paragraph (3), A is entitled to recover from B any part of that money (and such interest) that is not recovered from the permitted participant.
- (6) Sub-paragraph (5) does not entitle A to recover more than the contingent liability under the security provided by virtue of the connected transaction.
- (7) In the case of a connected transaction where B—
- (a) at the time A enters into the transaction, is an authorised participant, but
 - (b) subsequently, for whatever reason, ceases to be an authorised participant,
- sub-paragraphs (2) to (6) apply with effect from the time when B ceased to be an authorised participant.
- (8) If the transaction mentioned in paragraph 47(3)(a) is not a regulated transaction of a description mentioned in paragraph 47(1) or (2), references in this paragraph and paragraph 50(2) to (5) (as applied by sub-paragraph (2) above) to the repayment or recovery of money are to be construed as references to (as the case may be)—
- (a) the return or recovery of any property provided under the transaction,
 - (b) to the extent that such property is incapable of being returned or recovered or its market value has diminished since the time the transaction was entered into, the repayment or recovery of the market value at that time, or
 - (c) the market value (at that time) of any facilities or services provided under the transaction.

Transfer to unauthorised participant invalid

- 52 If an authorised participant purports to transfer the participant's interest in a regulated transaction to a person who is not an authorised participant the purported transfer is of no effect.

Offences

- 53 (1) An individual who is a permitted participant commits an offence if—
- (a) the individual enters into a regulated transaction of a description mentioned in paragraph 47(1) or (2) to which another party is not an authorised participant, and
 - (b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (2) A permitted participant that is not an individual commits an offence if—
- (a) it enters into a regulated transaction of a description mentioned in paragraph 47(1) or (2) to which another party is not an authorised participant, and
 - (b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).

-
- (3) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
- 5 (a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 47(1) or (2) to which another party is not an authorised participant, and
- (b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (4) An individual who is a permitted participant commits an offence if—
- 10 (a) the individual enters into a regulated transaction of a description mentioned in paragraph 47(1) or (2) to which another party is not an authorised participant,
- (b) the individual neither knew nor ought reasonably to have known that the other party is not an authorised participant, and
- 15 (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the individual, the individual fails to take all reasonable steps to repay any money which the individual has received by virtue of the transaction.
- (5) A permitted participant that is not an individual commits an offence if—
- (a) it enters into a regulated transaction of a description mentioned in paragraph 47(1) or (2) to which another party is not an authorised participant,
- 20 (b) no officer of the permitted participant knew or ought reasonably to have known that the other party is not an authorised participant, and
- (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the responsible person, the responsible person fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.
- 25 (6) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—
- (a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 47(1) or (2) to which another party is not an authorised participant,
- 30 (b) sub-paragraph (3)(b) does not apply to the person, and
- (c) as soon as practicable after knowledge of the matters mentioned in paragraph (a) comes to the person, the person fails to take all reasonable steps to repay any money which the permitted participant has received by virtue of the transaction.
- (7) An individual who is a permitted participant commits an offence if—
- 35 (a) the individual benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and
- (b) the individual knew or ought reasonably to have known of the matters mentioned in paragraph (a).
- (8) A permitted participant that is not an individual commits an offence if—
- 40 (a) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and

(b) an officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraph (a).

(9) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—

5 (a) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant, and

(b) the person knew or ought reasonably to have known of the matters mentioned in paragraph (a).

10 (10) An individual who is a permitted participant commits an offence if—

(a) the individual is a party to a transaction of a description mentioned in paragraph 47(3)(a),

(b) the individual benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,

15 (c) the individual neither knew nor ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and

(d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the individual, the individual fails to take all reasonable steps to pay to any person who has provided the individual with any benefit in consequence of the connected transaction the value of the benefit.

20 (11) A permitted participant that is not an individual commits an offence if—

(a) it is a party to a transaction of a description mentioned in paragraph 47(3)(a),

(b) it benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,

25 (c) no officer of the permitted participant knew or ought reasonably to have known of the matters mentioned in paragraphs (a) and (b), and

(d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the responsible person, the responsible person fails to take all reasonable steps to pay to any person who has provided the permitted participant with any benefit in consequence of the connected transaction the value of the benefit.

30 (12) A person who is the responsible person in relation to a permitted participant that is not an individual commits an offence if—

35 (a) the permitted participant is a party to a transaction of a description mentioned in paragraph 47(3)(a),

(b) the permitted participant benefits from or falls to benefit in consequence of a connected transaction to which any of the parties is not an authorised participant,

(c) sub-paragraph (9)(b) does not apply to the person, and

40 (d) as soon as practicable after knowledge of the matters mentioned in paragraphs (a) and (b) comes to the person, the person fails to take all reasonable steps to pay to any person who has provided the permitted participant with any benefit in consequence of the connected transaction the value of the benefit.

- (13) A person commits an offence if the person—
- (a) knowingly enters into, or
 - (b) knowingly does any act in furtherance of,
- any arrangement which facilitates or is likely to facilitate, whether by means of concealment or disguise or otherwise, the participation by a permitted participant in a regulated transaction with a person other than an authorised participant.
- (14) It is a defence for a person charged with an offence under sub-paragraph (3) to prove that the person took all reasonable steps to prevent the permitted participant entering into the transaction.
- (15) It is a defence for a person charged with an offence under sub-paragraph (9) to prove that the person took all reasonable steps to prevent the permitted participant benefiting in consequence of the connected transaction.
- (16) A reference to a permitted participant entering into a regulated transaction includes a reference to any circumstances in which the terms of a regulated transaction are varied so as to increase the amount of money to which the permitted participant is entitled in consequence of the transaction.
- (17) A reference in sub-paragraphs (1) to (6) to entering into a regulated transaction of a description mentioned in paragraph 47(1) or (2) to which another party is not an authorised participant includes a reference to receiving an amount of money under a regulated transaction of a description mentioned in paragraph 47(1) or (2) at a time when a person who is also a party to the transaction (and who was an authorised participant when the transaction was entered into) has ceased to be an authorised participant.
- (18) It is a defence for a person charged with an offence under any of sub-paragraphs (1) to (3) by virtue of sub-paragraph (17) to prove that the person took all reasonable steps, as soon as practicable, to repay money received as mentioned in sub-paragraph (17).
- (19) Where a person is charged with an offence under sub-paragraph (3) by virtue of sub-paragraph (17), sub-paragraph (14) does not apply.
- (20) In relation to a case where sub-paragraph (4)(a) and (b), (5)(a) and (b) or (6)(a) and (b) applies by virtue of sub-paragraph (17), the reference in sub-paragraph (4)(c), (5)(c) or, as the case may be, (6)(c) to any money received by virtue of the transaction is to be read as a reference to any money so received after the party in question ceased to be an authorised participant.

Penalties

- 54 (1) A person who commits an offence under sub-paragraph (1), (2), (4), (7), (8) or (10) of paragraph 53 is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (2) A person who commits an offence under sub-paragraph (3), (5), (6), (9), (11), (12) or (13) of paragraph 53 is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Statement of regulated transactions

- 5 55 (1) The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 22 a statement of regulated transactions entered into by the permitted participant.
- (2) The statement must comply with paragraphs 56 to 60.
 - (3) For the purposes of those paragraphs a regulated transaction is a recordable transaction—
10 (a) if the value of the transaction exceeds £7,500, or
(b) if the aggregate value of it and any other relevant benefit or benefits exceeds that amount.
 - (4) In sub-paragraph (3)(b) “relevant benefit” means any relevant donation (within the meaning of paragraph 30(4)) or regulated transaction made by, or entered into with, the person with whom the regulated transaction was entered into.
15

Information about authorised participants

- 20 56 (1) The statement must record, in relation to each recordable transaction to which an authorised participant was a party—
- (a) the information about the authorised participant which is, in connection with transactions entered into by registered parties, required to be recorded in transaction reports by virtue of paragraph 2 of schedule 6A of the 2000 Act, or
(b) where the authorised participant is within any of paragraphs (i) to (l) of paragraph 1(2), the information mentioned in sub-paragraph (2).
- 25 (2) The information referred to in sub-paragraph (1)(b) is—
- (a) where the authorised participant is a body within paragraph 1(2)(i) (body incorporated by Royal Charter)—
 - (i) the name of the body, and
 - (ii) the address of its main office in the United Kingdom,
 - (b) where the authorised participant is a body within paragraph 1(2)(j) or (k) (charitable incorporated organisation)—
30 (i) the name of the body, and
(ii) the address of its principal office,
 - (c) where the authorised participant is a body within paragraph 1(2)(l) (Scottish partnership)—
35 (i) the name of the body, and
(ii) the address of its main office in the United Kingdom.

Identity of unauthorised participants

57 The statement must record, in relation to each recordable transaction to which a person other than an authorised participant was a party—

- (a) the name and address of the person,
- 5 (b) the date when, and the manner in which, the transaction was dealt with in accordance with sub-paragraphs (3) to (5) of paragraph 50 or those sub-paragraphs as applied by paragraph 50(6) or 51(2).

Details of transactions

10 58 (1) The statement must record, in relation to each recordable transaction, the information about the transaction which is, in connection with transactions entered into by registered parties, required to be recorded in transaction reports by virtue of paragraph 5(2), (3) and (4) of schedule 6A of the 2000 Act (read with the modifications mentioned in sub-paragraph (2) and any other necessary modifications).

(2) In relation to the statement—

- 15 (a) paragraph 5(3) of schedule 6A of the 2000 Act has effect as if the reference to section 71G were a reference to paragraph 48 of this schedule,
- (b) paragraph 5(4) of that schedule has effect as if the references to the relevant date for the transaction determined in accordance with paragraph 8 of that schedule were a reference to the relevant date for the transaction determined in accordance
20 with paragraph 8(1) of that schedule, and
- (c) paragraph 8(1) of that schedule has effect as if—
 - (i) the reference to a quarterly report were a reference to the statement,
 - (ii) the reference to section 71M(4)(a) or (7)(a) were a reference to paragraph
25 55(3)(a) of this schedule, and
 - (iii) the reference to section 71M(4)(b) or (7)(b) were a reference to paragraph
55(3)(b) of this schedule.

(3) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 47(1) or (2), the information about the transaction which is, in
30 connection with transactions entered into by registered parties, required to be recorded in transaction reports by virtue of paragraph 6 of schedule 6A of the 2000 Act.

(4) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 47(3), the information about the transaction which is, in
35 connection with transactions entered into by registered parties, required to be recorded in transaction reports by virtue of paragraph 7(2)(b), (3) and (4) of schedule 6A of the 2000 Act.

Changes

59 (1) Where another authorised participant has become a party to a regulated transaction (whether in place of or in addition to any existing participant), or there has been any
40 other change in any of the information that is required by paragraphs 56 to 58 to be included in the statement, the statement must record—

- (a) the information as it was both before and after the change,

(b) the date of the change.

(2) Where a recordable transaction has come to an end, the statement must—

(a) record that fact,

(b) record the date when it happened,

5 (c) in the case of a loan, state how the loan has come to an end.

(3) For the purposes of sub-paragraph (2), a loan comes to an end if—

(a) the whole debt (or all the remaining debt) is repaid,

(b) the creditor releases the whole debt.

Total value of non-recordable transactions

10 60 The statement must record the total value of any regulated transactions that are not recordable transactions.

Transaction reports during referendum period

61 (1) The responsible person in relation to a permitted participant must prepare a report under this paragraph in respect of each of the following periods—

15 (a) the period starting with the relevant day and ending with the 28th day of the referendum period,

(b) each of the two succeeding periods of 4 weeks during the referendum period, and

(c) the period from the end of the second of the periods referred to in paragraph (b) until the end of the day before the date of the referendum.

20 (2) In sub-paragraph (1)(a), the “relevant day” is the day on which the draft Scottish statutory instrument containing the regulations under section 1(1) that provide for the holding of the referendum was laid before the Scottish Parliament for approval.

(3) The report for any period must record, in relation to each regulated transaction having a value exceeding £7,500 which is entered into by the permitted participant during the period—

25 (a) the same information about the transaction as would be required, by virtue of paragraph 58, to be recorded in the statement referred to in paragraph 55(1),

30 (b) in relation to a transaction to which an authorised participant is a party, the information about each authorised participant which is, in connection with recordable transactions entered into by registered parties, required to be recorded in weekly transaction reports by virtue of paragraph 3 of schedule 6A of the 2000 Act, and

(c) in relation to a transaction to which a person who is not an authorised participant is a party, the information referred to in paragraph 57.

35 (4) If during any period no regulated transactions having a value exceeding £7,500 were entered into by the permitted participant, the report for the period must contain a statement of that fact.

(5) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”)—

- (a) a separate report under this paragraph need not be prepared for any preceding period, but
- (b) for the purposes of sub-paragraphs (3) and (4), the report for the period in question must also cover the time from the relevant day (as defined in sub-paragraph (2)) to the start of the period, and references in those sub-paragraphs to the period are to be read accordingly.
- (6) Sub-paragraphs (3) and (4) apply to a regulated transaction entered into by a permitted participant before the start of the referendum period only if any money or benefit obtained in consequence of the transaction is to be used for meeting referendum expenses to be incurred by the permitted participant during the referendum period.
- (7) References in this paragraph and in paragraph 62 to a regulated transaction entered into by a permitted participant include any transaction entered into at a time before the individual or body concerned became a permitted participant, if the transaction would have been a regulated transaction had the individual or body been a permitted participant at that time.
- (8) A report under this paragraph must be delivered by the responsible person to the Electoral Commission within the period of 7 days beginning with the end of the period to which the report relates.
- (9) For the purpose of sub-paragraph (8), the following days are to be disregarded—
- (a) a Saturday or Sunday,
 - (b) Christmas Eve or Christmas Day,
 - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
 - (d) a day appointed for public thanksgiving or mourning.
- (10) If, in relation to a regulated transaction entered into with an individual who has an anonymous entry in an electoral register, a report under this paragraph contains a statement that the permitted participant has seen evidence that the individual has such an anonymous entry, the report must be accompanied by a copy of the evidence.
- (11) The responsible person commits an offence if, without reasonable excuse, the person—
- (a) fails to comply with the requirements of sub-paragraph (8) in relation to a report under this paragraph,
 - (b) delivers a report to the Electoral Commission that does not comply with the requirements of sub-paragraphs (3), (4) or (10).
- (12) A person who commits an offence under sub-paragraph (11)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (13) A person who commits an offence under sub-paragraph (11)(b) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Declaration of responsible person as to transaction reports under paragraph 61

62 (1) Each report prepared under paragraph 61 in respect of regulated transactions entered into by a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.

5 (2) The declaration must state—

(a) that the responsible person has examined the report, and

(b) that to the best of the responsible person's knowledge and belief, it is a complete and correct report as required by law.

(3) A person commits an offence if—

10 (a) the person knowingly or recklessly makes a false declaration under this paragraph, or

(b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the report relates.

(4) A person who commits an offence under sub-paragraph (3) is liable—

15 (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

(b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Public inspection of transaction reports under paragraph 61

20 63 (1) Where the Electoral Commission receive a report under paragraph 61 they must—

(a) as soon as practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and

(b) keep any such copy available for public inspection for the period for which the report or other document is held by them.

25 (2) The Commission must secure that the copy of the report made available for public inspection does not include, in the case of any transaction entered into by the permitted participant with an individual, the individual's address.

(3) At the end of the period of 2 years beginning with the date when any report under paragraph 61 or other document accompanying it is received by the Commission—

30 (a) they may cause the report or other document to be destroyed, or

(b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.

Non-disclosure with intent to conceal

35 64 (1) This paragraph applies where, on an application made by the Commission, a sheriff is satisfied that any failure to comply with a requirement of paragraphs 55 to 62 in relation to—

(a) any transaction entered into by the permitted participant, or

(b) any change made to a transaction to which the permitted participant is a party,

was attributable to an intention on the part of any person to conceal the existence or true value of the transaction.

- (2) The sheriff may make such order as the sheriff thinks fit to restore (so far as is possible) the parties to the transaction to the position they would have been in if the transaction had not been entered into.
- (3) An order under this paragraph may in particular—
- (a) where the transaction is a loan or credit facility, require that any amount owed by the permitted participant be repaid (and that no further sums be advanced under it),
 - (b) where any form of security is given for a sum owed under the transaction, or the transaction is an arrangement by which any form of security is given, require that the security be discharged.

Proceedings under paragraphs 50 and 64

- (1) This paragraph has effect in relation to proceedings on an application under paragraph 50(4) or 64.
- (2) The proceedings are civil proceedings and, accordingly, the standard of proof that applies is that applicable to civil proceedings.
- (3) An order may be made whether or not proceedings are brought against any person for an offence under paragraph 25 or 53.
- (4) An appeal against an order made by the sheriff may be made to the Court of Session.
- (5) Rules of court may make provision—
- (a) with respect to applications or appeals from proceedings on such applications,
 - (b) for the giving of notice of such applications or appeals to persons affected,
 - (c) for the sisting of such persons as parties,
 - (d) generally with respect to procedure in such applications or appeals.
- (6) Sub-paragraph (5) does not affect any existing power to make rules.

Interpretation

- (1) In this Part—
- “authorised participant” is to be construed in accordance with paragraph 49,
 - “connected transaction” has the meaning given by paragraph 47(9),
 - “credit facility” has the meaning given by paragraph 47(11),
 - “permitted participant” is to be construed in accordance with paragraph 46,
 - “regulated transaction” is to be construed in accordance with paragraph 47.
- (2) For the purposes of any provision relating to the reporting of transactions, anything required to be done by a permitted participant in consequence of its being a party to a regulated transaction must also be done by it, if it is a party to a transaction of a description mentioned in paragraph 47(3)(a), as if it were a party to the connected transaction.

SCHEDULE 4
(introduced by section 14(4))

CAMPAIGN RULES: INVESTIGATORY POWERS OF THE ELECTORAL COMMISSION

Power to require disclosure of documents etc.

- 5 1 (1) This paragraph applies in relation to an organisation or individual that is a permitted participant.
- (2) The Electoral Commission may give a disclosure notice to a person who—
- 10 (a) is, or has been at any time in the period of 5 years ending with the day on which the notice is given, the treasurer or another officer of an organisation to which this paragraph applies, or
- (b) is an individual to whom this paragraph applies.
- (3) A disclosure notice is a notice requiring the person to whom it is given—
- 15 (a) to produce for inspection by the Commission, or a person authorised by the Commission, any documents which—
- (i) relate to income and expenditure of the organisation or individual in question, and
- (ii) are reasonably required by the Commission for the purposes of carrying out their functions under section 14 and schedule 3, or
- 20 (b) to provide the Commission, or a person authorised by the Commission, with any information or explanation which relates to that income and expenditure and is reasonably required by the Commission for those purposes.
- (4) A person to whom a disclosure notice is given must comply with the notice within such reasonable time as is specified in the notice.

Inspection warrants

- 25 2 (1) This paragraph applies in relation to an organisation or individual that is a permitted participant.
- (2) A sheriff or a justice of the peace may, on the application of the Electoral Commission, issue an inspection warrant in relation to any premises occupied by an organisation or individual to whom this paragraph applies if satisfied that—
- 30 (a) there are reasonable grounds for believing that on those premises there are documents relating to the income and expenditure of the organisation or individual,
- (b) the Commission need to inspect the documents for the purposes of carrying out their functions under section 14 and schedule 3 (other than their investigatory functions), and
- 35 (c) permission to inspect the documents on the premises has been requested by the Commission and has been unreasonably refused.
- (3) An inspection warrant is a warrant authorising a member of the Commission's staff—
- (a) at any reasonable time to enter the premises specified in the warrant, and

- (b) having entered the premises, to inspect any documents within sub-paragraph (2)(a).
- (4) An inspection warrant also authorises the person who executes the warrant to be accompanied by any other persons who the Commission consider are needed to assist in executing it.
- (5) The person executing an inspection warrant must, if required to do so, produce—
- (a) the warrant, and
 - (b) documentary evidence that the person is a member of the Commission’s staff, for inspection by the occupier of the premises that are specified in the warrant or by anyone acting on the occupier’s behalf.
- (6) An inspection warrant continues in force until the end of the period of one month beginning with the day on which it is issued.
- (7) An inspection warrant may not be used for the purposes of carrying out investigatory functions.
- (8) In this paragraph, “investigatory functions” means functions of investigating—
- (a) suspected campaign offences, or
 - (b) suspected contraventions of restrictions or requirements imposed by schedule 3.

Powers in relation to suspected offences or contraventions

- 3 (1) This paragraph applies where the Electoral Commission have reasonable grounds to suspect that—
- (a) a person has committed a campaign offence, or
 - (b) a person has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by schedule 3.
- (2) In this paragraph, “the suspected offence or contravention” means the offence or contravention referred to in sub-paragraph (1).
- (3) The Commission may by notice require any person (including an organisation or individual to whom paragraph 1 applies)—
- (a) to produce for inspection by the Commission, or a person authorised by the Commission, any documents that they reasonably require for the purposes of investigating the suspected offence or contravention,
 - (b) to provide the Commission, or a person authorised by the Commission, with any information or explanation that they reasonably require for those purposes.
- (4) A person to whom a notice is given under sub-paragraph (3) must comply with the notice within such reasonable time as is specified in the notice.
- (5) A person authorised by the Commission (“the investigator”) may require—
- (a) the person mentioned in sub-paragraph (1) (if that person is an individual), or
 - (b) an individual who the investigator reasonably believes has relevant information, to attend before the investigator at a specified time and place and answer any questions that the investigator reasonably considers to be relevant.
- (6) The time specified must be a reasonable time.

- (7) In sub-paragraph (5), “relevant” means relevant to an investigation by the Commission of the suspected offence or contravention.

Document disclosure orders

- 4 (1) This paragraph applies where the Electoral Commission have given a notice under
5 paragraph 3 requiring documents to be produced.
- (2) The Court of Session may, on the application of the Commission, make a document disclosure order against a person (“the respondent”) if satisfied that—
- (a) there are reasonable grounds to suspect that a person (whether or not the
10 respondent) has committed a campaign offence or has otherwise contravened any restriction or other requirement imposed by schedule 3, and
- (b) there are documents referred to in the notice under paragraph 3 which—
- (i) have not been produced as required by the notice (either within the time specified in the notice for compliance or subsequently),
- (ii) are reasonably required by the Commission for the purposes of
15 investigating the offence or contravention referred to in paragraph (a), and
- (iii) are in the custody or under the control of the respondent.
- (3) A document disclosure order is an order requiring the respondent to deliver to the Commission, within such time as is specified in the order, such documents falling within sub-paragraph (2)(b) as are identified in the order (either specifically or by reference to
20 any category or description of document).
- (4) For the purposes of sub-paragraph (2)(b)(iii) a document is under a person’s control if it is in the person’s possession or if the person has a right to possession of it.
- (5) A person who fails to comply with a document disclosure order may not, in respect of that failure, be both punished for contempt of court and convicted of an offence under
25 paragraph 12(1).

Information disclosure orders

- 5 (1) This paragraph applies where the Electoral Commission have given a notice under paragraph 3 requiring any information or explanation to be provided.
- (2) The Court of Session may, on the application of the Commission, make an information
30 disclosure order against a person (“the respondent”) if satisfied that—
- (a) there are reasonable grounds to suspect that a person (whether or not the respondent) has committed a campaign offence or has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by schedule 3, and
- (b) there is any information or explanation referred to in the notice under paragraph 3
35 which—
- (i) has not been provided as required by the notice (either within the time specified in the notice for compliance or subsequently),
- (ii) is reasonably required by the Commission for the purposes of investigating
40 the offence or contravention referred to in paragraph (a), and
- (iii) the respondent is able to provide.

- (3) An information disclosure order is an order requiring the respondent to provide to the Commission, within such time as is specified in the order, such information or explanation falling within sub-paragraph (2)(b) as is identified in the order.
- (4) A person who fails to comply with an information disclosure order may not, in respect of that failure, be both punished for contempt of court and convicted of an offence under paragraph 12(1).

Retention of documents delivered under paragraph 4

- (1) The Electoral Commission may retain any documents delivered to them in compliance with an order under paragraph 4 for a period of 3 months (or for longer if any of sub-paragraphs (3) to (8) applies).
- (2) In this paragraph, “the documents” and “the 3 month period” mean the documents and the period mentioned in sub-paragraph (1).
- (3) If, within the 3 month period, proceedings to which the documents are relevant are commenced against any person for any offence, the documents may be retained until the conclusion of the proceedings.
- (4) If, within the 3 month period, the Commission serve a notice under paragraph 2(1) of schedule 5 of a proposal to impose a fixed monetary penalty on any person and the documents are relevant to the decision to serve the notice, the documents may be retained—
- (a) until liability for the penalty is discharged as mentioned in paragraph 2(2) of that schedule (if it is),
 - (b) until the Commission decide not to impose a fixed monetary penalty (if that is what they decide),
 - (c) until the end of the period given by sub-paragraph (6) (if they do impose a fixed monetary penalty).
- (5) If, within the 3 month period, the Commission serve a notice under paragraph 7(1) of schedule 5 of a proposal to impose a discretionary requirement on any person and the documents are relevant to the decision to serve the notice, the documents may be retained—
- (a) until the Commission decide not to impose a discretionary requirement (if that is what they decide),
 - (b) until the end of the period given by sub-paragraph (6) (if they do impose a discretionary requirement).
- (6) If, within the 3 month period—
- (a) a notice is served imposing a fixed monetary penalty on any person under paragraph 2(4) of schedule 5 and the documents are relevant to the decision to impose the penalty, or
 - (b) a notice is served imposing a discretionary requirement on any person under paragraph 7(5) of that schedule and the documents are relevant to the decision to impose the requirement,

the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

- (7) If, within the 3 month period—
- (a) a stop notice is served on any person under paragraph 13 of schedule 5, and
 - (b) the documents are relevant to the decision to serve the notice,
- the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.
- (8) If, within the 3 month period or the period given by sub-paragraph (7) (or, if applicable, by sub-paragraph (5) or (6)(b))—
- (a) the Commission, having served a stop notice on any person under paragraph 13 of schedule 5, decide not to issue a completion certificate under paragraph 15 of that schedule in relation to the stop notice, and
 - (b) the documents are relevant to the decision not to issue the certificate,
- the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

Power to make copies and records

- 7 The Electoral Commission or a person authorised by the Commission—
- (a) may make copies or records of any information contained in—
 - (i) any documents produced or inspected under this schedule,
 - (ii) any documents delivered to them in compliance with an order under paragraph 4,
 - (b) may make copies or records of any information or explanation provided under this schedule.

Authorisation to be in writing

- 8 An authorisation of a person by the Electoral Commission under this schedule must be in writing.

Documents in electronic form

- 9 (1) In the case of documents kept in electronic form—
- (a) a power of the Electoral Commission under this schedule to require documents to be produced for inspection includes power to require a copy of the documents to be made available for inspection in legible form,
 - (b) a power of a person (“the inspector”) under this schedule to inspect documents includes power to require any person on the premises in question to give any assistance that the inspector reasonably requires to enable the inspector—
 - (i) to inspect and make copies of the documents in legible form or to make records of information contained in them, or
 - (ii) to inspect and check the operation of any computer, and any associated apparatus or material, that is or has been in use in connection with the keeping of the documents.

- (2) Paragraph 7(a) applies in relation to any copy made available as mentioned in sub-paragraph (1)(a) above.

Legal professional privilege

- 10 Nothing in this schedule requires a person to produce or provide, or authorises a person
5 to inspect or take possession of, anything in respect of which a claim to confidentiality
of communications could be maintained in legal proceedings.

Admissibility of statements

- 11 (1) A statement made by a person (“P”) in compliance with a requirement imposed under
10 this schedule is admissible in evidence in any proceedings (as long as it also complies
with any requirements governing the admissibility of evidence in the circumstances in
question).

- (2) But in criminal proceedings in which P is charged with an offence (other than one to
which sub-paragraph (3) applies) or in proceedings within sub-paragraph (4) to which
both the Electoral Commission and P are parties—

- 15 (a) no evidence relating to the statement is admissible against P, and
(b) no question relating to the statement may be asked on behalf of the prosecution or
(as the case may be) the Commission in cross-examination of P,

unless evidence relating to it is adduced, or a question relating to it is asked, in the
proceedings by or on behalf of P.

- 20 (3) This sub-paragraph applies to—

- (a) an offence under paragraph 12(3),
(b) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland)
Act 1995 (false statements made otherwise than on oath).

- 25 (4) Proceedings are within this sub-paragraph if they arise out of the exercise by the
Commission of any of their powers under schedule 5 other than powers in relation to an
offence under paragraph 12(3) below.

Offences

- 12 (1) A person who fails, without reasonable excuse, to comply with any requirement
imposed under or by virtue of this schedule commits an offence.

- 30 (2) A person who intentionally obstructs a person authorised by or by virtue of this schedule
in the carrying out of that person’s functions under the authorisation commits an
offence.

- 35 (3) A person who knowingly or recklessly provides false information in purported
compliance with a requirement imposed under or by virtue of this schedule commits an
offence.

- (4) A person who commits an offence under sub-paragraph (1) or (2) is liable on summary
conviction to a fine not exceeding level 5 on the standard scale.

- (5) A person who commits an offence under sub-paragraph (3) is liable—

- 40 (a) on summary conviction, to imprisonment for a term not exceeding 12 months or
to a fine not exceeding the statutory maximum (or both),

- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Guidance by Commission

13 (1) The Electoral Commission must prepare and publish guidance as to—

- (a) the circumstances in which the Commission are likely to give a notice under paragraph 1 or 3,
- (b) the consequences (including criminal sanctions) that may result from a failure to comply with such a notice,
- (c) the circumstances in which the Commission are likely to apply for a warrant under paragraph 2,
- (d) the procedures to be followed in connection with questioning under paragraph 3(5),
- (e) the circumstances in which the Commission are likely to apply for an order under paragraph 4 or 5,
- (f) the principles and practices to be applied in connection with the exercise of powers under paragraphs 6 and 7,
- (g) any other matters concerning the exercise of powers under this schedule about which the Commission consider that guidance would be useful.

(2) Where appropriate, the Commission must revise guidance published under subparagraph (1) and publish the revised guidance.

(3) The Commission must have regard to the guidance or revised guidance published under this paragraph in exercising their functions under this Act.

Information about use of investigatory powers in Commission's report

14 (1) The Electoral Commission must, in accordance with this paragraph, make a report about the use made by the Commission of their powers under this schedule.

(2) The report must, in particular, specify—

- (a) the cases in which a notice was given under paragraph 1 or 3(3),
- (b) the cases in which premises were entered under a warrant issued under paragraph 2,
- (c) the cases in which a requirement was imposed under paragraph 3(5),
- (d) the cases in which an order under paragraph 4 or 5—
 - (i) was applied for,
 - (ii) was made.

(3) This paragraph does not require the Commission to include in the report any information that, in their opinion, it would be inappropriate to include on the ground that to do so—

- (a) would or might be unlawful, or
- (b) might adversely affect any current investigation or proceedings.

- (4) The report may be made—
- (a) in the report by the Commission under section 29,
 - (b) in a separate report made as soon as practicable after the report under section 29 is published, or
 - (c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).
- (5) The Commission must—
- (a) lay any report under sub-paragraph (4)(b) before the Scottish Parliament, and
 - (b) after laying, publish the report in such manner as they may determine.

Interpretation

- 15 In this schedule—
- “contravention” includes a failure to comply, and related expressions are to be construed accordingly,
 - “documents” includes any books or records,
 - “restriction” includes prohibition.

SCHEDULE 5
(introduced by section 14(5))

CAMPAIGN RULES: CIVIL SANCTIONS

PART 1

FIXED MONETARY PENALTIES

Imposition of fixed monetary penalties

- 1 (1) The Electoral Commission may by notice impose a fixed monetary penalty on a person if satisfied beyond reasonable doubt that the person has committed a campaign offence listed in Part 7.
- 25 (2) The Commission may by notice impose a fixed monetary penalty on a permitted participant if satisfied beyond reasonable doubt that the responsible person in relation to the permitted participant—
- (a) has committed a campaign offence listed in Part 7, or
 - (b) has failed to comply with a requirement imposed by paragraph 24(2), (3) or (4) of schedule 3.
- 30 (3) For the purposes of this schedule a “fixed monetary penalty” is a requirement to pay to the Commission a penalty of £200.

Representations and appeals etc.

- 35 2 (1) Where the Electoral Commission propose to impose a fixed monetary penalty on a person, they must serve on the person a notice of what is proposed.

- (2) A notice under sub-paragraph (1) must offer the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of £200.

The following provisions of this paragraph apply if the person does not do so.

- (3) The person may make written representations and objections to the Commission in relation to the proposed imposition of the fixed monetary penalty.

- (4) After the end of the period for making such representations and objections (see paragraph 3(2)) the Commission must decide whether to impose the fixed monetary penalty.

If they decide to do so they must serve on the person a notice imposing the penalty.

- (5) The Commission may not impose a fixed monetary penalty on a person if, taking into account (in particular) any matter raised by the person, the Commission are no longer satisfied as mentioned in paragraph 1(1) or (2) (as applicable).

- (6) A person on whom a fixed monetary penalty is imposed may appeal against the decision to impose the penalty on the ground that the decision was—

- (a) based on an error of fact,
- (b) wrong in law, or
- (c) unreasonable.

- (7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (4) is received.

- (8) Where an appeal under sub-paragraph (6) is made, the fixed monetary penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Information to be included in notices under paragraph 2

- 3 (1) A notice under paragraph 2(1) must include information as to—

- (a) the grounds for the proposal to impose the fixed monetary penalty,
- (b) the effect of payment of the sum referred to in paragraph 2(2),
- (c) the right to make representations and objections,
- (d) the circumstances in which the Commission may not impose the fixed monetary penalty.

- (2) Such a notice must also specify—

- (a) the period within which liability for the fixed monetary penalty may be discharged, and
- (b) the period within which representations and objections may be made.

Neither period may be more than 28 days beginning with the day on which the notice is received.

- (3) A notice under paragraph 2(4) must include information as to—

- (a) the grounds for imposing the fixed monetary penalty,
- (b) how payment may be made,

- (c) the period within which payment may be made,
- (d) any early payment discounts or late payment penalties,
- (e) rights of appeal,
- (f) the consequences of non-payment.

5 *Late payment*

- 4 (1) A fixed monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 2(4) is received.
- (2) If the penalty is not paid within that period the amount payable is increased by 25%.
- 10 (3) If the penalty (as increased by sub-paragraph (2)) is not paid within the period of 56 days beginning with the day on which the notice under paragraph 2(4) is received, the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.
- (4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or because the appeal was withdrawn, is payable within the period of 15 28 days beginning with the day of determination or withdrawal of the appeal, and if not paid within that period the amount payable is increased by 25%.
- (5) If the penalty (as increased by sub-paragraph (4)) is not paid within the period of 56 20 days beginning with the day of determination or withdrawal of the appeal, the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.

Fixed monetary penalties: criminal proceedings and conviction

- 5 (1) Where a notice under paragraph 2(1) is served on a person—
- 25 (a) no criminal proceedings for a campaign offence may be instituted against the person in respect of the act or omission to which the notice relates before the end of the period within which the person's liability may be discharged as mentioned in paragraph 2(2) (see paragraph 3(2)),
- (b) if the liability is so discharged, the person may not at any time be convicted of a campaign offence in relation to that act or omission.
- 30 (2) A person on whom a fixed monetary penalty is imposed may not at any time be convicted of a campaign offence in respect of the act or omission giving rise to the penalty.

PART 2

DISCRETIONARY REQUIREMENTS

Imposition of discretionary requirements

- 35 6 (1) The Electoral Commission may impose one or more discretionary requirements on a person if satisfied beyond reasonable doubt that the person has committed a campaign offence listed in Part 7.

- (2) The Commission may impose one or more discretionary requirements on a permitted participant if satisfied beyond reasonable doubt that the responsible person in relation to the permitted participant—
- (a) has committed a campaign offence listed in Part 7, or
 - (b) has failed to comply with a requirement imposed by paragraph 24(2), (3) or (4) of schedule 3.
- (3) For the purposes of this schedule a “discretionary requirement” is—
- (a) a requirement to pay a monetary penalty to the Commission of such amount as the Commission may determine up to a maximum of £10,000, (but see also sub-paragraph (6)),
 - (b) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the offence or failure to comply does not continue or recur, or
 - (c) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence or failure to comply had not happened.
- (4) Discretionary requirements may not be imposed on the same person on more than one occasion in relation to the same act or omission.
- (5) In this schedule—
- “variable monetary penalty” means such a requirement as is referred to in sub-paragraph (3)(a),
 - “non-monetary discretionary requirement” means such a requirement as is referred to in sub-paragraph (3)(b) or (c).
- (6) In the case of a variable monetary penalty imposed under sub-paragraph (1) or (2)(a), where the offence in question is—
- (a) triable summarily only, and
 - (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),
- the amount of the penalty may not exceed the maximum amount of that fine.

Representations and appeals etc.

- 7 (1) Where the Electoral Commission propose to impose a discretionary requirement on a person, they must serve on the person a notice of what is proposed.
- (2) A person served with a notice under sub-paragraph (1) may make written representations and objections to the Commission in relation to the proposed imposition of the discretionary requirement.
- (3) After the end of the period for making such representations and objections (see paragraph 8(2)) the Commission must decide whether—
- (a) to impose the discretionary requirement, with or without modifications, or
 - (b) to impose any other discretionary requirement that the Commission have power to impose under paragraph 6.

- (4) The Commission may not impose a discretionary requirement on a person if, taking into account (in particular) any matter raised by the person, the Commission are no longer satisfied as mentioned in paragraph 6(1) or (2) (as applicable).
- (5) Where the Commission decide to impose a discretionary requirement on a person, they must serve on the person a notice specifying what the requirement is.
- (6) A person on whom a discretionary requirement is imposed may appeal against the decision to impose the requirement on the ground—
- (a) that the decision was based on an error of fact,
 - (b) that the decision was wrong in law,
 - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,
 - (d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable, or
 - (e) that the decision is unreasonable for any other reason.
- (7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (5) is received. Where an appeal under sub-paragraph (6) is made, the discretionary requirement is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Information to be included in notices under paragraph 7

- (1) A notice under paragraph 7(1) must include information as to—
- (a) the grounds for the proposal to impose the discretionary requirement,
 - (b) the right to make representations and objections,
 - (c) the circumstances in which the Commission may not impose the discretionary requirement.
- (2) Such a notice must also specify the period within which representations and objections may be made.
- That period may not be less than 28 days beginning with the day on which the notice is received.
- (3) A notice under paragraph 7(5) must include information as to—
- (a) the grounds for imposing the discretionary requirement,
 - (b) where the discretionary requirement is a variable monetary penalty—
 - (i) how payment may be made,
 - (ii) the period within which payment must be made, and
 - (iii) any early payment discounts or late payment penalties,
 - (c) rights of appeal,
 - (d) the consequences of non-compliance.

Discretionary requirements: criminal conviction

9 (1) A person on whom a discretionary requirement is imposed may not at any time be convicted of a campaign offence in respect of the act or omission giving rise to the requirement.

- 5 (2) Sub-paragraph (1) does not apply where—
- (a) a non-monetary discretionary requirement is imposed on the person,
 - (b) no variable monetary penalty is imposed on the person, and
 - (c) the person fails to comply with the non-monetary discretionary requirement.

Compliance and restoration certificates

10 (1) Where, after the service of a notice under paragraph 7(5) imposing a non-monetary discretionary requirement on a person, the Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect.

(2) A notice served under paragraph 7(5) ceases to have effect on the issue of a certificate relating to that notice.

15 (3) A person on whom a notice under paragraph 7(5) has been served may at any time apply for a certificate and the Commission must make a decision whether to issue a certificate within the period of 28 days beginning with the day on which they receive such an application.

20 (4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the notice has been complied with.

(5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—

- 25 (a) the grounds for the decision not to issue a certificate, and
(b) rights of appeal.

(6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.

30 (7) Where the Commission revoke a certificate, the notice has effect as if the certificate had not been issued.

(8) A person who has applied for a certificate under sub-paragraph (3) may appeal to a sheriff against a decision not to issue a certificate under this paragraph on the ground that the decision was—

- 35 (a) based on an error of fact,
(b) wrong in law, or
(c) unfair or unreasonable.

(9) An appeal must be made within the period of 28 days beginning with the day on which notification of the decision is received.

Failure to comply with discretionary requirements

- 11 (1) The Electoral Commission may by notice impose a monetary penalty (a “non-compliance penalty”) on a person for failing to comply with a non-monetary discretionary requirement imposed on the person.
- 5 (2) The amount of a non-compliance penalty is to be determined by the Commission, but must not exceed £10,000.
- (3) A non-compliance penalty must be paid to the Commission.
- (4) A notice under sub-paragraph (1) must include information as to—
- 10 (a) the grounds for imposing the non-compliance penalty,
- (b) the amount of the penalty,
- (c) how payment may be made,
- (d) the period within which payment must be made, which must not be less than 28 days beginning with the day on which the notice imposing the penalty is received,
- (e) rights of appeal, and
- 15 (f) the consequences of failure to make payment within the period specified.
- (5) If, before the end of the period specified for payment of a non-compliance penalty—
- (a) the person on whom the penalty was imposed has taken the steps specified in the notice imposing the non-monetary discretionary requirement to which the penalty relates, and
- 20 (b) the Commission have issued a certificate under paragraph 10(1) in respect of that notice,
- the Commission may waive, or reduce the amount of, the penalty.
- (6) A person served with a notice imposing a non-compliance penalty may appeal against the notice on the ground that the decision to serve the notice was—
- 25 (a) based on an error of fact,
- (b) wrong in law, or
- (c) unfair or unreasonable for any reason (for example because the amount is unreasonable).
- (7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (1) is received.
- 30 (8) Where an appeal under sub-paragraph (6) is made, the non-compliance penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Late payment

- 35 12 (1) A variable monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 7(5) is received.
- (2) If the penalty is not paid within that period the amount payable is increased by 25%.

- (3) If the penalty (as increased by sub-paragraph (2)) is not paid within the period of 56 days beginning with the day on which the notice under paragraph 7(5) is received, the amount payable is the amount of the penalty originally imposed increased by 50%.
- (4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or varied it, or because the appeal was withdrawn, is payable within 28 days of the day of determination or withdrawal of the appeal, and if it is not paid within that period the amount payable is increased by 25%.
- (5) If the penalty (as increased by sub-paragraph (4)) is not paid within the period of 56 days beginning with the day of determination or withdrawal of the appeal, the amount payable is the amount of the penalty originally imposed increased by 50%.

PART 3

STOP NOTICES

Imposition of stop notices

- 13 (1) Where sub-paragraph (2) or (3) applies, the Electoral Commission may serve on a person a notice (a “stop notice”) prohibiting the person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.
- (2) This sub-paragraph applies where—
- (a) the person is carrying on the activity,
 - (b) the Commission reasonably believe that the activity as carried on by the person involves or is likely to involve the person committing a campaign offence listed in Part 7, and
 - (c) the Commission reasonably believe that the activity as carried on by the person is seriously damaging public confidence in the effectiveness of the controls in schedule 3, or presents a significant risk of doing so.
- (3) This sub-paragraph applies where—
- (a) the person is likely to carry on the activity,
 - (b) the Commission reasonably believe that the activity as carried on by the person will involve or will be likely to involve the person committing a campaign offence listed in Part 7, and
 - (c) the Commission reasonably believe that the activity as likely to be carried on by the person will seriously damage public confidence in the effectiveness of the controls mentioned in sub-paragraph (2)(c), or will present a significant risk of doing so.
- (4) The steps referred to in sub-paragraph (1) must be steps to secure that the activity is carried on or (as the case may be) will be carried on in a way that does not involve the person acting as mentioned in sub-paragraph (2)(b) or (3)(b).

Information to be included in stop notices

- 14 A stop notice must include information as to—
- (a) the grounds for serving the notice,
 - (b) rights of appeal,

- (c) the consequences of not complying with the notice.

Completion certificates

- 5 15 (1) Where, after the service of a stop notice on a person, the Electoral Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect (a “completion certificate”).
- (2) A stop notice ceases to have effect on the issue of a completion certificate relating to that notice.
- (3) A person on whom a stop notice is served may at any time apply for a completion certificate.
- 10 The Commission must make a decision whether to issue a completion certificate within the period of 14 days beginning with the day on which they receive such an application.
- (4) An application for a completion certificate must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the stop notice has been complied with.
- 15 (5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a completion certificate they must notify the applicant and provide the applicant with information as to—
- (a) the grounds for the decision not to issue a completion certificate, and
- (b) rights of appeal.
- 20 (6) The Commission may revoke a completion certificate if it was granted on the basis of inaccurate, incomplete or misleading information.
- (7) Where the Commission revoke a completion certificate, the stop notice has effect as if the certificate had not been issued.

Appeals etc.

- 25 16 (1) A person served with a stop notice may appeal against the decision to serve it on the ground that—
- (a) the decision was based on an error of fact,
- (b) the decision was wrong in law,
- (c) the decision was unreasonable,
- 30 (d) any step specified in the notice is unreasonable, or
- (e) the person has not acted as mentioned in paragraph 13(2)(b) or (3)(b) and would not have done so even if the stop notice had not been served.
- (2) A person served with a stop notice may appeal against a decision not to issue a completion certificate on the ground that the decision—
- 35 (a) was based on an error of fact,
- (b) was wrong in law, or
- (c) was unfair or unreasonable.
- (3) An appeal under sub-paragraph (1) or (2) is to a sheriff.

- (4) An appeal under sub-paragraph (1) against a decision to serve a stop notice must be made within the period of 28 days beginning with the day on which the stop notice is received.
- (5) An appeal under sub-paragraph (2) against a decision not to issue a completion certificate must be made within the period of 28 days beginning with the day on which notification of the decision is received.
- (6) Where an appeal under sub-paragraph (1) or (2) is made, the stop notice continues to have effect unless it is suspended or varied on the order of the sheriff.

Failure to comply with stop notice

- 17 (1) A person served with a stop notice who does not comply with it commits an offence.
- (2) A person who commits an offence under sub-paragraph (1) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both).

PART 4

ENFORCEMENT UNDERTAKINGS

Enforcement undertakings

- 18 (1) This paragraph applies where—
- (a) the Electoral Commission have reasonable grounds to suspect that a person has committed a campaign offence listed in Part 7,
- (b) the person offers an undertaking (an “enforcement undertaking”) to take such action, within such period, as is specified in the undertaking,
- (c) the action so specified is—
- (i) action to secure that the offence does not continue or recur,
- (ii) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not happened, and
- (d) the Commission accept the undertaking.
- (2) Unless the person has failed to comply with the undertaking or any part of it—
- (a) the person may not at any time be convicted of a campaign offence in respect of the act or omission to which the undertaking relates,
- (b) the Commission may not impose on the person any fixed monetary penalty that they would otherwise have power to impose by virtue of paragraph 1 in respect of that act or omission,
- (c) the Commission may not impose on the person any discretionary requirement that they would otherwise have power to impose by virtue of paragraph 6 in respect of that act or omission.

Enforcement undertakings: further provision

- 19 (1) An enforcement undertaking must be in writing and include—
- (a) a statement that the undertaking is an enforcement undertaking regulated by this Act,
 - 5 (b) the terms of the undertaking,
 - (c) the period within which the action specified in the undertaking must be completed,
 - (d) details of how and when a person is to be considered to have complied with the undertaking, and
 - 10 (e) information as to the consequences of failure to comply in full or in part with the undertaking, including reference to the effect of paragraph 18(2).
- (2) The enforcement undertaking may be varied or extended if the person who has given the undertaking and the Electoral Commission agree.
- (3) The Commission may publish any enforcement undertaking which they accept in
 15 whatever manner they see fit.

Compliance certificate

- 20 (1) Where, after accepting an enforcement undertaking from a person, the Electoral Commission are satisfied that the undertaking has been complied with in full they must issue a certificate to that effect.
- 20 (2) An enforcement undertaking ceases to have effect on the issue of a certificate relating to that undertaking.
- (3) A person who has given an enforcement undertaking may at any time apply for a certificate, and the Commission must make a decision whether to issue a certificate
 25 within the period of 28 days beginning with the day on which they receive such an application.
- (4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the undertaking has been complied with.
- (5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a
 30 certificate they must notify the applicant and provide the applicant with information as to—
- (a) the grounds for the decision not to issue a certificate, and
 - (b) rights of appeal.
- (6) The Commission may revoke a certificate if it was granted on the basis of inaccurate,
 35 incomplete or misleading information.
- (7) Where the Commission revoke a certificate, the enforcement undertaking has effect as if the certificate had not been issued.

Appeals

- 21 (1) A person who has given an enforcement undertaking may appeal to the sheriff against a decision not to issue a certificate under paragraph 20 on the ground that the decision was—
- 5 (a) based on an error of fact,
(b) wrong in law, or
(c) unfair or unreasonable.
- (2) An appeal must be made within the period of 28 days beginning with the day on which notification of the Electoral Commission's decision is received.

10 **PART 5**

GENERAL AND SUPPLEMENTAL

Restrictions on combination of sanctions

- 22 (1) The Electoral Commission may not serve on a person a notice under paragraph 2(1) (notice of proposed fixed monetary penalty) in relation to any act or omission in relation to which—
- 15 (a) a discretionary requirement has been imposed on that person, or
(b) a stop notice has been served on that person.
- (2) The Commission may not serve on a person a notice under paragraph 7(1) (notice of proposed discretionary requirement), or serve a stop notice on a person, in relation to any act or omission in relation to which—
- 20 (a) a fixed monetary penalty has been imposed on that person, or
(b) the person's liability for a fixed monetary penalty has been discharged as mentioned in paragraph 2(2).

Withdrawal or variation of notice

- 23 (1) The Electoral Commission may by notice in writing at any time withdraw a notice served under paragraph 2(4).
- (2) The Commission may by notice in writing at any time—
- 25 (a) withdraw a notice served under paragraph 7(5),
(b) reduce the monetary amount payable under such a notice, or
30 (c) reduce the steps to be taken under such a notice.
- (3) The Commission may by notice in writing at any time withdraw a stop notice (but may serve another stop notice in respect of the same activity specified in the withdrawn notice).

Use of statements made compulsorily

- 35 24 (1) The Electoral Commission must not take into account a statement made by a person in compliance with a requirement imposed under schedule 4 in deciding whether—
- (a) to impose a fixed monetary penalty on the person,

- (b) to impose a discretionary requirement on the person,
- (c) to serve a stop notice on the person.

- (2) Sub-paragraph (1)(a) or (b) does not apply to a penalty or requirement imposed in respect of an offence under paragraph 12(3) of schedule 4 (providing false information in purported compliance with a requirement under that schedule).

Unincorporated associations

- 25 Any amount that is payable under this schedule by an unincorporated association must be paid out of the funds of the association.

Guidance as to enforcement

- 10 26 (1) The Electoral Commission must prepare and publish guidance as to—

- (a) the sanctions (including criminal sanctions) that may be imposed on a person who does something that might lead to—
 - (i) a fixed monetary penalty or a discretionary requirement being imposed on the person,
 - (ii) a stop notice being served on the person,
 - (iii) an enforcement undertaking being accepted from the person,
- (b) the action that the Commission may take in relation to such a person (whether by virtue of this schedule or otherwise),
- (c) the circumstances in which the Commission are likely to take any such action.

- 20 (2) The guidance must include guidance about the Commission's use of the power to impose a fixed monetary penalty, with information as to—

- (a) the circumstances in which such a penalty may not be imposed,
- (b) the amount of such a penalty,
- (c) how liability for such a penalty may be discharged and the effect of discharge,
- (d) rights to make representations and objections and rights of appeal in relation to such a penalty.

- (3) The guidance must include guidance about the Commission's use of the power to impose a discretionary requirement, with information as to—

- (a) the circumstances in which such a requirement may not be imposed,
- (b) rights to make representations and objections and rights of appeal in relation to such a requirement,
- (c) in the case of a variable monetary penalty, the matters likely to be taken into account by the Commission in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance).

- 35 (4) The guidance must include guidance about the Commission's use of the power to serve a stop notice, with information as to—

- (a) the circumstances in which such a notice may not be served,
- (b) rights of appeal in relation to such a notice.

- (5) The guidance must include guidance about the Commission's use of the power to accept an enforcement undertaking.
- (6) Where appropriate, the Commission must revise guidance published under subparagraphs (1) to (5) and publish the revised guidance.
- 5 (7) The Commission must consult such persons as they consider appropriate before publishing guidance or revised guidance under this paragraph.
- (8) The Commission must have regard to the guidance or revised guidance published under this paragraph in exercising their functions under this Act.

Recovery of penalties etc.

- 10 27 The Electoral Commission may recover as a civil debt—
- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty, and
- (b) any interest or other financial penalty for late payment of such a penalty.

Payment of penalties etc. into Scottish Consolidated Fund

- 15 28 Where, in pursuance of any provision contained in or made under this schedule, the Electoral Commission receive—
- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty,
- (b) any interest or other financial penalty for late payment of such a penalty, or
- 20 (c) a sum paid as mentioned in paragraph 2(2) (in discharge of liability for a fixed monetary penalty),
- they must pay it into the Scottish Consolidated Fund.

Reports on use of civil sanctions

- 25 29 (1) The Electoral Commission must, in accordance with this paragraph, make a report about the use made by the Commission of their powers under this schedule.
- (2) The report must, in particular, specify—
- (a) the cases in which a fixed monetary penalty or discretionary requirement was imposed or a stop notice served (other than cases in which the penalty, requirement or notice was overturned on appeal),
- 30 (b) the cases in which liability for a fixed monetary penalty was discharged as mentioned in paragraph 2(2),
- (c) the cases in which an enforcement undertaking was accepted.
- (3) This paragraph does not require the Commission to include in the report any information that, in their opinion, it would be inappropriate to include on the ground that to do so—
- 35 (a) would or might be unlawful, or
- (b) might adversely affect any current investigation or proceedings.

- (4) The report may be made—
- (a) in the report by the Commission under section 29,
 - (b) in a separate report made as soon as practicable after the report under section 29 is published, or
 - 5 (c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).
- (5) The Commission must—
- (a) lay any report under sub-paragraph (4)(b) before the Scottish Parliament, and
 - (b) after laying, publish the report in such manner as they may determine.

10 *Disclosure of information*

- 30 (1) Information held by or on behalf of a procurator fiscal or a constable in Scotland may be disclosed to the Electoral Commission for the purpose of the exercise by the Commission of any powers conferred on them under or by virtue of this schedule.
- (2) It is immaterial for the purposes of sub-paragraph (1) whether the information was
 15 obtained before or after the day on which regulations under section 1(1) come into force.
- (3) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information.
- (4) This paragraph does not affect a power to disclose that exists apart from this paragraph.

Powers of sheriff

- 20 31 (1) On an appeal under paragraph 2(6) the sheriff may overturn or confirm the penalty.
- (2) On an appeal under paragraph 7(6), 11(6) or 16(1) the sheriff may—
- (a) overturn, confirm or vary the requirement or notice,
 - (b) take such steps as the Electoral Commission could take in relation to the act or omission giving rise to the requirement or notice,
 - 25 (c) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Commission.
- (3) On an appeal under paragraph 10(8), 16(2) or 21(1) the sheriff may make an order requiring the Commission to issue (as appropriate)—
- (a) a certificate under paragraph 10(1),
 - 30 (b) a completion certificate under paragraph 15(1), or
 - (c) a certificate under paragraph 20(1).

PART 6

INTERPRETATION

- 32 In this schedule—
- 35 “completion certificate” has the meaning given in paragraph 15(1),
 “discretionary requirement” has the meaning given in paragraph 6(3),

“enforcement undertaking” has the meaning given in paragraph 18(1)(b),
 “fixed monetary penalty” has the meaning given in paragraph 1(3),
 “non-compliance penalty” has the meaning given in paragraph 11(1),
 “non-monetary discretionary requirement” has the meaning given in paragraph
 5 6(5),
 “responsible person”, in relation to a permitted participant, has the meaning given
 in schedule 7,
 “restriction” includes prohibition,
 “stop notice” has the meaning given in paragraph 13(1),
 10 “variable monetary penalty” has the meaning given in paragraph 6(5).

PART 7

LISTED CAMPAIGN OFFENCES

Section 16(4)(a)	Failure to supply information to relevant person as required by schedules 3 to 5
15 Paragraph 14(2) of schedule 3	Incurring referendum expenses without authority
Paragraph 15(4)(a) of schedule 3	Making payment in respect of referendum expenses without authority
20 Paragraph 15(4)(b) of schedule 3	Failure to notify responsible person of payment in respect of referendum expenses
Paragraph 16(3)(a) of schedule 3	Paying claim in respect of referendum expenses where failure to comply with procedure
25 Paragraph 16(3)(b) of schedule 3	Paying claim in respect of referendum expenses outside specified time period
Paragraph 19(3) of schedule 3	Individual (other than permitted participant) exceeding limits on referendum expenses
Paragraph 19(5) of schedule 3	Body (other than permitted participant) exceeding limits on referendum expenses

	Paragraph 20(7) of schedule 3	Permitted participant exceeding limits on referendum expenses
	Paragraph 22(12)(a) of schedule 3	Failure to comply with requirements for declaration
5	Paragraph 24(5)(a) of schedule 3	Failure to deliver return to Electoral Commission
	Paragraph 24(5)(b) of schedule 3	Failure to comply with requirements for return to Electoral Commission
10	Paragraph 24(5)(c) of schedule 3	Failure to deliver to Electoral Commission a return of sums paid in pursuance of leave given to pay late claims
	Paragraph 25(4)(b) of schedule 3	Failure of responsible person of permitted participant (other than an individual) to provide or sign declaration with return to Electoral Commission
15	Paragraph 28(8) or (9) of schedule 3	Printing or publishing referendum material without details of printer or publisher
	Paragraph 35(7) of schedule 3	Failure to provide information about donors
	Paragraph 36(4) or (6) of schedule 3	Failure to return donations
20	Paragraph 43(11)(a) of schedule 3	Failure to deliver donation reports to Electoral Commission within time limits
	Paragraph 43(11)(b) of schedule 3	Failure to comply with requirements for recording donations in donation reports
25	Paragraph 44(3)(b) of schedule 3	Failure of responsible person of permitted participant (other than an individual) to provide or sign declaration with donation report

Paragraph 53(1) of schedule 3	Permitted participant (individual) knowingly enters into regulated transaction with unauthorised participant
5 Paragraph 53(2) of schedule 3	Permitted participant (other than an individual) knowingly enters into regulated transaction with unauthorised participant
10 Paragraph 53(3) of schedule 3	Responsible person for permitted participant (other than an individual) knowingly enters into regulated transaction with unauthorised participant
Paragraph 53(4) of schedule 3	Permitted participant (individual) unknowingly enters into regulated transaction with unauthorised participant and fails to take steps to repay
15 Paragraph 53(5) or (6) of schedule 3	Failure of responsible person for permitted participant (other than an individual) to take steps to repay money received in connection with a regulated transaction with an unauthorised participant which was entered into unknowingly
20 Paragraph 53(7) of schedule 3	Permitted participant (individual) knowingly benefits from regulated transaction with unauthorised participant
25 Paragraph 53(8) or (9) of schedule 3	Permitted participant (other than an individual) knowingly benefits from connected transaction with unauthorised participant
30 Paragraph 53(11) or (12) of schedule 3	Failure of responsible person for permitted participant (other than an individual) to take steps to repay benefits from connected transaction with unauthorised participant which was entered into unknowingly
Paragraph 61(11)(a) of schedule 3	Failure to deliver transaction reports to Electoral Commission within time limits
35 Paragraph 62(3)(b) of schedule 3	Failure of responsible person of permitted participant (other than an individual) to provide or sign declaration with report relating to regulated transactions
40 Paragraph 12(1) of schedule 4	Failure to comply with investigation requirement

SCHEDULE 6
(introduced by section 35)

OFFENCES

Personation

- 5 1 (1) A person (“A”) commits the offence of personation in the referendum if—
- (a) A votes in person or by post in the referendum as some other person, whether as a voter or as proxy, and whether that other person is living or dead or is a fictitious person, or
 - (b) A votes, as proxy, in person or by post in the referendum—
- 10 (i) for a person whom A knows or has reasonable grounds for supposing to be dead or to be a fictitious person, or
- (ii) when A knows or has reasonable grounds for supposing that A’s appointment as proxy is no longer in force.
- (2) For the purposes of this paragraph, a person is deemed to have voted if the person—
- 15 (a) has applied for a ballot paper for the purpose of voting in person, or
- (b) has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post.
- (3) A person commits a corrupt practice if the person commits the offence of personation in the referendum or aids, abets, counsels or procures the commission of that offence.

20 *Other voting offences*

- 2 (1) A person (“A”) commits an offence if—
- (a) A votes in person or by post in the referendum, whether as a voter or as proxy, or applies to vote by proxy or by post as a voter or as proxy in the referendum knowing that A is subject to a legal incapacity to vote in the referendum,
 - 25 (b) A applies for the appointment of a proxy to vote for A in the referendum knowing that A or the person to be appointed is subject to a legal incapacity to vote in the referendum, or
 - (c) A votes, whether in person or by post, as proxy for some other person in the referendum, knowing that the other person is subject to a legal incapacity to vote.
- 30 (2) For the purposes of sub-paragraph (1), references to a person being subject to a legal incapacity to vote do not, in relation to things done before the date of the referendum, include the person’s being below voting age if the person will be of voting age on that date.
- (3) A person (“A”) commits an offence if—
- 35 (a) A votes as a voter more than once in the referendum,
- (b) A votes as a voter in person in the referendum when A is entitled to vote by post,
- (c) A votes as a voter in person in the referendum knowing that a person appointed to vote as A’s proxy in the referendum either has already voted in person in the referendum or is entitled to vote by post in the referendum, or

(d) A applies for a person to be appointed as A’s proxy to vote for A in the referendum without applying for the cancellation of a previous appointment of a third person then in force in respect of the referendum or without withdrawing a pending application for such an appointment in respect of the referendum.

- 5 (4) A person (“A”) commits an offence if—
- (a) A votes as proxy for the same voter more than once in the referendum,
 - (b) A votes in person as proxy for a voter in the referendum when A is entitled to vote by post as proxy in the referendum for that voter,
 - 10 (c) A votes in person as proxy for a voter in the referendum knowing that the voter has already voted in person or by post in the referendum, or
 - (d) A votes by post as proxy for a voter in the referendum knowing that the voter has already voted in person or by post in the referendum.
- (5) A person (“A”) commits an offence if A votes in the referendum as proxy for more than two persons of whom A is not the spouse, civil partner, parent, grandparent, brother, 15 sister, child or grandchild.
- (6) A person (“A”) commits an offence if A knowingly induces or procures some other person to do an act which is, or but for that other person’s lack of knowledge would be, an offence by that other person under any of sub-paragraphs (1) to (5).
- (7) For the purposes of this paragraph a person is deemed to have voted if the person— 20
- (a) has applied for a ballot paper for the purpose of voting in person, or
 - (b) has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post.
- (8) For the purpose of determining whether an application for a ballot paper constitutes an offence under sub-paragraph (5), a previous application made in circumstances which 25 entitle the applicant only to mark a tendered ballot paper is, if the person does not exercise that right, to be disregarded.
- (9) A person does not commit an offence under sub-paragraph (3)(b) or (4)(b) only by reason of the person’s having marked a tendered ballot paper in pursuance of rule 24 of the conduct rules.
- 30 (10) An offence under this paragraph is an illegal practice, but the court before which a person is convicted of any such offence may, if the court thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of paragraph 18.
- (11) In this paragraph “legal incapacity to vote” has the meaning given by section 5.

35 *Imitation poll cards*

- 3 (1) A person commits an offence if the person, for the purpose of promoting or procuring a particular outcome in the referendum, issues any poll card or document so closely resembling an official poll card as to be calculated to deceive.
- 40 (2) An offence under sub-paragraph (1) is an illegal practice, but the court before which a person is convicted of any such offence may, if the court thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of paragraph 18.

Offences relating to applications for postal and proxy votes

- 4 (1) A person (“A”) commits an offence if A—
- (a) engages in an act specified in sub-paragraph (2) in connection with the referendum, and
 - 5 (b) intends, by doing so—
 - (i) to deprive another of an opportunity to vote in the referendum, or
 - (ii) to make for A or another a gain of money or property or a gain of a vote in the referendum to which A or the other is not otherwise entitled.
- (2) These are the acts—
- 10 (a) applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person),
 - (b) otherwise making a false statement in, or in connection with, an application for a postal or proxy vote or providing false information in, or in connection with, such an application,
 - 15 (c) inducing the registration officer or counting officer to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote,
 - (d) causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.
- 20 (3) In sub-paragraph (1)(b)(ii), property includes any description of property.
- (4) In sub-paragraph (2), a reference to a postal vote or a postal ballot paper includes a reference to a proxy postal vote or proxy postal ballot paper (as the case may be).
- (5) A person commits a corrupt practice if the person commits an offence under sub-paragraph (1) or aids, abets, counsels or procures the commission of that offence.

Breach of official duty

- 5 (1) If a person to whom this paragraph applies without reasonable cause (and whether by act or omission) breaches the person’s official duty, the person commits an offence.
- (2) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- 30 (3) No person to whom this paragraph applies is liable for breach of official duty to any penalty at common law and no action for damages lies in respect of the breach by such a person of the person’s official duty.
- (4) The persons to whom this paragraph applies are—
- (a) the Chief Counting Officer,
 - 35 (b) any proper officer, registration officer, counting officer or presiding officer, and
 - (c) any deputy of a person mentioned in paragraph (a) or (b) or any other person appointed to assist or, in the course of the other person’s employment, assisting a person so mentioned in connection with that person’s official duties,
- and “official duty” for the purpose of this paragraph is to be construed accordingly, but
40 does not include duties imposed otherwise than by this Act.

Tampering with ballot papers etc.

- 6 (1) A person (“A”) commits an offence if, in connection with the referendum—
- (a) A fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any postal voting statement or official envelope used in connection with voting by post,
 - (b) A, without due authority, supplies any ballot paper to any person,
 - (c) A fraudulently puts into any ballot box any paper other than the ballot paper which A is authorised by law to put in,
 - (d) A fraudulently takes out of the polling station any ballot paper,
 - (e) A, without due authority, destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the referendum, or
 - (f) A fraudulently or without due authority (as the case may be) attempts to do any of the acts mentioned in paragraphs (a) to (e).
- 15 (2) A person commits an offence if, in connection with the referendum, the person forges or counterfeits (or attempts to forge or counterfeit) any ballot paper or the official mark on any ballot paper.
- (3) If a counting officer, a presiding officer or a clerk appointed to assist in taking the poll, counting the votes or assisting at the proceedings in connection with the issue or receipt of postal ballot papers in the referendum commits an offence under this paragraph, the officer or clerk is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine (or both).
- 25 (4) If any other person commits an offence under this paragraph the person is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).

Requirement of secrecy

- 30 7 (1) Every person (other than one mentioned in sub-paragraph (2)) attending at a polling station in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not, except for a purpose authorised by law, communicate to any person before the close of the poll the information described in sub-paragraph (3).
- (2) Sub-paragraph (1) does not apply to—
- (a) a person attending at the polling station for the purpose of voting,
 - (b) a person under the age of 16 accompanying a voter or a proxy for a voter,
 - (c) a companion of a voter with disabilities,
 - (d) a constable on duty at the polling station.
- 35

- (3) The information referred to in sub-paragraph (1) is any information as to—
- (a) the name of any voter or proxy for a voter who has or has not applied for a ballot paper or voted at a polling station,
 - (b) the number on the register of local government electors of any voter who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station,
 - (c) the official mark being used in accordance with rule 6 of the conduct rules.
- (4) Every person attending at the counting of the votes in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not—
- (a) ascertain or attempt to ascertain at the counting of the votes the unique identifying number on the back of any ballot paper,
 - (b) communicate any information obtained at the counting of the votes as to the outcome for which any vote is given on any particular ballot paper.
- (5) A person must not—
- (a) interfere with or attempt to interfere with a voter when recording the voter's vote in the referendum,
 - (b) otherwise obtain or attempt to obtain in a polling station information as to the outcome for which a voter in that station is about to vote or has voted in the referendum,
 - (c) communicate at any time to any person any information obtained in a polling station in the referendum as to the outcome for which a voter in that station is about to vote or has voted, or as to the unique identifying number on the back of a ballot paper given to a voter at that station, or
 - (d) directly or indirectly induce a voter to display a ballot paper after the voter has marked it so as to make known to any person any outcome for which the voter has or has not voted in the referendum.
- (6) In sub-paragraph (5), references to a voter include references to a proxy for a voter.
- (7) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not—
- (a) except for a purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark,
 - (b) except for a purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the unique identifying number on the back of any ballot paper sent to any person,
 - (c) except for a purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the unique identifying number on the back of any ballot paper, or
 - (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the outcome for which any vote is given in any particular ballot paper or communicate any such information obtained at those proceedings.
- (8) A companion of a voter with disabilities must not communicate at any time to any person any information as to the outcome for which that voter intends to vote or has voted, or as to the unique identifying number on the back of a ballot paper given for the use of that voter.

- (9) If a person acts in contravention of this paragraph the person commits an offence.
- (10) A person who commits an offence under sub-paragraph (9) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).
- 5 (11) In this paragraph a voter with disabilities is a voter who has made a declaration under rule 23(1) of the conduct rules.

Prohibition on publication of exit polls

- 8 (1) No person may publish before the close of the poll—
- 10 (a) any statement relating to the way in which voters have voted in the referendum where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted, or
- (b) any forecast as to the result of the referendum which is (or might reasonably be taken to be) based on information so given.
- (2) If a person acts in contravention of this paragraph the person commits an offence.
- 15 (3) A person who commits an offence under sub-paragraph (2) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).
- (4) In this paragraph—
- 20 “forecast” includes estimate,
- “publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means,
- “voters” includes proxies for voters,
- any reference to the result of the referendum is a reference to the result for the whole of Scotland or the result in one or more local government areas.

25 *Payments to voters for exhibition of referendum notices*

- 9 (1) No payment or contract for payment may, for the purposes of promoting a particular outcome in the referendum, be made to a voter on account of—
- (a) the exhibition of, or
- (b) the use of any house, land, building or premises for the exhibition of,
- 30 any bill, advertisement or notice.
- (2) Sub-paragraph (1) does not apply if—
- (a) it is the ordinary business of the voter to exhibit bills, advertisements or notices for payment, and
- (b) the payment or contract is made in the ordinary course of that business.
- 35 (3) If a payment or contract for payment is knowingly made in contravention of sub-paragraph (1) (whether before, during or after the referendum), each of the following persons commits an offence—
- (a) the person who makes the payment or enters into the contract,

- (b) the person who receives the payment or is a party to the contract (if the person knows the payment or contract is in contravention of sub-paragraph (1)).
- (4) An offence under sub-paragraph (3) is an illegal practice.

Treating

- 5 10 (1) A person (“A”) commits the offence of treating in connection with the referendum if A, whether before, during or after the referendum, corruptly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person—
- 10 (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting in the referendum, or
- (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting, in the referendum.
- (2) Sub-paragraph (1) applies regardless of whether an act is done—
- 15 (a) directly or indirectly,
- (b) by A or by another person on A’s behalf.
- (3) A voter or proxy who corruptly accepts or takes any such meat, drink, entertainment or provision also commits the offence of treating in connection with the referendum.
- (4) A person commits a corrupt practice if the person commits the offence of treating in connection with the referendum.

Undue influence

- 20 11 (1) A person (“A”) commits the offence of undue influence in connection with the referendum if—
- 25 (a) A makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, personally or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting in the referendum, or on account of that person having voted or refrained from voting in the referendum, or
- 30 (b) by abduction, duress or any fraudulent device or contrivance, A impedes or prevents, or intends to impede or prevent, the free exercise of the franchise of a voter or proxy for a voter in the referendum, or so compels, induces or prevails upon, or intends so to compel, induce or prevail upon, a voter or proxy for a voter either to vote or to refrain from voting in the referendum.
- (2) Sub-paragraph (1)(a) applies regardless of whether an act is done—
- 35 (a) directly or indirectly,
- (b) by A or by another person on A’s behalf.
- (3) A person commits a corrupt practice if the person commits the offence of undue influence in connection with the referendum.

Bribery

12 (1) A person commits the offence of bribery in connection with the referendum if the person—

(a) gives any money to or procures any office for—

(i) any voter,

(ii) any other person on behalf of any voter, or

(iii) any other person,

in order to induce any voter to vote or refrain from voting in the referendum,

(b) corruptly makes any gift or procurement as mentioned in paragraph (a) on account of any voter having voted or refrained from voting in the referendum,

(c) makes any gift or procurement as mentioned in paragraph (a) to or for any person in order to induce that person to procure, or endeavour to procure, any particular outcome in the referendum, or

(d) upon or in consequence of any such gift or procurement as mentioned in paragraph (a), procures or engages, promises or endeavours to procure any particular outcome in the referendum.

(2) A person commits the offence of bribery in connection with the referendum if the person—

(a) advances or pays or causes to be paid any money to or for the use of any other person with the intent that the money or any part of it is to be expended in bribery in connection with the referendum, or

(b) knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or partly expended in bribery in connection with the referendum.

(3) A voter commits the offence of bribery in connection with the referendum if, whether before or during the referendum, the voter receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment for the voter or for any other person for—

(a) voting or agreeing to vote in the referendum, or

(b) refraining or agreeing to refrain from voting in the referendum.

(4) A person commits the offence of bribery in connection with the referendum if, after the referendum, the person receives any money or valuable consideration on account of any person—

(a) having voted or refrained from voting in the referendum, or

(b) having induced any other person to vote or refrain from voting in the referendum.

(5) Sub-paragraphs (1) to (4) apply regardless of whether an act is done—

(a) directly or indirectly,

(b) by the person or by another person on the person's behalf.

- (6) For the purposes of sub-paragraph (1)—
- (a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or to endeavour to procure any money or valuable consideration,
 - 5 (b) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment.
- (7) Sub-paragraphs (1) and (2) do not apply to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning the referendum.
- 10 (8) A person commits a corrupt practice if the person commits the offence of bribery in connection with the referendum.
- (9) In this paragraph, the expression “voter” includes—
- (a) a proxy for a voter, and
 - (b) any other person who has or claims to have a right to vote in the referendum.

15 *Disturbances at public meetings*

- 13 (1) A person commits an offence if the person, at a lawful public meeting to which this paragraph applies, acts (or incites others to act) in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together.
- (2) This paragraph applies to a meeting held in connection with the referendum during the referendum period.
- 20 (3) An offence under this paragraph is an illegal practice.

Illegal canvassing by police officers

- 14 (1) A person who is a constable commits an offence if the person by word, message, writing or in any other manner endeavours to persuade any person to give (or dissuade any person from giving) the person’s vote in the referendum.
- 25 (2) A person is not liable under sub-paragraph (1) for anything done in the discharge of the person’s duty as a constable.
- (3) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

30 *Penalties for corrupt practices*

- 15 A person who commits a corrupt practice under any provision of this schedule is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - 35 (b) on conviction on indictment—
 - (i) in the case of a corrupt practice under paragraph 1 or 4, to imprisonment for a term not exceeding 2 years or to a fine (or both),
 - (ii) in any other case, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Prosecutions for illegal practices

16 (1) A person who commits an illegal practice under any provision of this schedule is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

5 (2) On a prosecution for such an illegal practice it is sufficient to allege that the person charged has committed an illegal practice.

Conviction of illegal practice on charge of corrupt practice etc.

10 17 A person charged with a corrupt practice under any provision of this schedule may, if the circumstances warrant such finding, be convicted of an illegal practice (which offence is for that purpose to be an indictable offence), and a person charged with an illegal practice may be convicted of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

Incapacity to hold public or judicial office in Scotland

18 (1) A person convicted of a corrupt or illegal practice under any provision of this schedule—

15 (a) is, for the period of 5 years beginning with the date of the person's conviction, incapable of holding any public or judicial office in Scotland (within the meaning of section 185 of the 1983 Act), and

(b) if already holding such an office, vacates it as from that date.

20 (2) Sub-paragraph (1) applies in addition to any punishment imposed on the person under paragraph 15 or 16.

Prohibition of paid canvassers

19 If a person is, whether before or during the referendum, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting a particular outcome in the referendum—

25 (a) the person engaging or employing the canvasser, and

(b) the canvasser,

commits the offence of illegal employment.

Providing money for illegal purposes

20 If a person knowingly provides money—

30 (a) for any payment which is contrary to the provisions of this Act,

(b) for any expenses incurred in excess of the maximum amount allowed by this Act,
or

(c) for replacing any money expended in any such payment or expenses,
the person commits the offence of illegal payment.

Prosecutions for illegal employment or illegal payment

- 21 (1) A person who commits an offence of—
- (a) illegal employment under paragraph 19, or
 - (b) illegal payment under paragraph 20,
- 5 is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) On a prosecution for such an illegal employment or illegal payment it is sufficient to allege that the person charged has committed the offence of illegal employment or illegal payment (as the case may be).
- 10 (3) A person charged with an offence of illegal employment or illegal payment may be convicted of that offence notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

SCHEDULE 7
(introduced by section 40)

INTERPRETATION

15 In this Act—

“the 1983 Act” means the Representation of the People Act 1983,

“the 2000 Act” means the Political Parties, Elections and Referendums Act 2000,

“absent vote” is to be construed in accordance with paragraph 1(8)(a) of schedule 1,

20 “anonymous entry”, in relation to a register of local government electors, is to be construed in accordance with section 9B of the 1983 Act, and “record of anonymous entries” means the record prepared under regulation 45A of the Representation of the People (Scotland) Regulations 2001 (S.I. 2001/497),

“assisted voters list” has the meaning given in rule 23(8) of the conduct rules,

25 “ballot paper account” has the meaning given in rule 28(4) of the conduct rules,

“campaign offence” means an offence under section 16 or any of schedules 3 to 5,

“campaign organiser”, in relation to referendum expenses, means the individual or body by whom or on whose behalf the expenses are incurred,

“Chief Counting Officer” means the person appointed under section 7(1) or (6),

30 “companion” has the meaning given in rule 23(1) of the conduct rules,

“companion declaration” has the meaning given in rule 23(2) of the conduct rules,

“completed corresponding number list” has the meaning given in rule 28(2)(e) of the conduct rules,

“conduct rules” means the rules set out in schedule 2,

35 “corresponding number list” means the list prepared in accordance with rule 5 of the conduct rules,

“council” means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994,

“counting agent” has the meaning given in rule 14(8) of the conduct rules,

“counting officer” means a person appointed under section 8(1) or (5),

“cut-off date” has the meaning given in paragraph 18(1) of schedule 1,

“data form” means information which is in a form which is capable of being processed by means of equipment operating automatically in response to instructions given for that purpose,

“date of the referendum” means the date on which the poll at the referendum is to be held,

“designated organisation” means a permitted participant that has been designated under paragraph 7 of schedule 3,

“education authority” has the same meaning as in the Education (Scotland) Act 1980,

“list of proxies” means the list kept under paragraph 4(3) of schedule 1,

“local government area” is to be construed in accordance with section 1 of the Local Government etc. (Scotland) Act 1994,

“marked copy” has the meaning given in paragraph 53(10) of schedule 1,

“marked votes list” has the meaning given in rule 22(2) of the conduct rules,

“members of the Chief Counting Officer’s staff” means staff appointed or provided under section 9(8),

“members of the counting officer’s staff” means staff provided under section 9(9),

“minor party” has the same meaning as in the 2000 Act,

“money” and “pecuniary reward” (except in schedule 3 and paragraph 12 of schedule 6) include—

(a) any office, place or employment,

(b) any valuable security or other equivalent of money, and

(c) any valuable consideration,

and expressions referring to money are to be construed accordingly,

“notification of alteration” has the meaning given in paragraph 3(8) of schedule 3,

“organisation” includes any body corporate and any combination of persons or other unincorporated association,

“outcome” means a particular outcome in relation to the referendum question,

“payment” includes any pecuniary or other reward,

“permissible donor” is to be construed in accordance with paragraph 1(2) of schedule 3,

“permitted participant” has the meaning given in paragraph 2 of schedule 3,

“personal identifiers record” means the record kept by a registration officer under paragraph 11 of schedule 1,

“polling agent” has the meaning given in rule 14(8) of the conduct rules,

“polling day alterations list” has the meaning given in rule 26(2) of the conduct rules,

“postal ballot agent” has the meaning given in paragraph 19(8) of schedule 1,

“postal ballot paper” has the meaning given in paragraph 44 of schedule 1,

“postal voters list” means the list kept under paragraph 4(2) of schedule 1,

“postal voting statement” means the statement referred to in rule 8(1)(b) of the conduct rules,

5 “presiding officer” means an officer appointed under rule 10(1)(a) of the conduct rules,

“proper officer” has the meaning given in section 235(3) of the Local Government (Scotland) Act 1973,

“proxy postal voters list” means the list kept under paragraph 6(7) of schedule 1,

10 “qualifying address”, in relation to a person registered in the register of local government electors, is the address in respect of which that person is entitled to be so registered,

“referendum agent” has the meaning given in section 19,

15 “referendum campaign” means a campaign conducted with a view to promoting or procuring a particular outcome in the referendum,

“referendum campaign broadcast” means a broadcast the purpose (or main purpose) of which is or may reasonably be assumed to be—

(a) to further any referendum campaign, or

(b) otherwise to promote or procure any particular outcome in the referendum,

20 “referendum expenses” is to be construed in accordance with paragraph 11 of schedule 3,

“referendum period” means the period set out in regulations under section 1(1),

“referendum question” means the question to be voted on in the referendum,

25 “register of local government electors” means the register of local government electors maintained under section 9(1)(b) of the 1983 Act for any area in Scotland,

“registered party” means a party registered under Part 2 of the 2000 Act other than a Gibraltar party (within the meaning of that Act),

“registration officer” means a registration officer appointed under section 8(3) of the 1983 Act,

30 “regulated transaction” is to be construed in accordance with paragraph 47 of schedule 3,

“relevant citizen of the European Union” means a citizen of the Union who is not a Commonwealth citizen or a citizen of the Republic of Ireland,

35 “relevant counting officer”, in relation to a registration officer, means the counting officer for the local government area for which the registration officer is appointed,

“relevant donation” has the meaning given in paragraph 30 of schedule 3,

“responsible person” means, in relation to a permitted participant—

(a) if the permitted participant is a registered party—

40 (i) the treasurer of the party, or

(ii) in the case of a minor party, the person for the time being notified to the Electoral Commission by the party in accordance with paragraph 3(1)(b) of schedule 3,

(b) if the permitted participant is an individual, that individual, and

5 (c) otherwise, the person or officer for the time being notified to the Electoral Commission by the permitted participant in accordance with paragraph 3(3)(a)(ii) or (5)(a)(ii) of schedule 3,

“SPCB” means the Scottish Parliamentary Corporate Body,

“spoilt ballot paper” has the meaning given in rule 25(1) of the conduct rules,

10 “tendered ballot paper” means a ballot paper referred to in rule 24(6) of the conduct rules,

“tendered votes list” has the meaning given in rule 24(8) of the conduct rules,

“treasurer”, in relation to a registered party, has the same meaning as in the 2000 Act,

15 “unique identifying number” means the number on the back of a ballot paper which is unique to that ballot paper and which identifies that ballot paper as a ballot paper to be issued by the counting officer,

“verification statement” has the meaning given in rule 30(2) of the conduct rules,

20 “voter” (except in the conduct rules) means a person entitled to vote in the referendum in the person’s own right (as opposed to a person entitled to vote as proxy for another),

25 “voter” (in the conduct rules) means a person voting in the referendum and includes (except where the context requires otherwise) a person voting as proxy and “vote” (whether as noun or verb) is to be construed accordingly except that any reference to a voter voting or a voter’s vote includes a reference to a voter voting by proxy or a voter’s vote given by proxy,

“voter number” means, in relation to a person registered in the register of local government electors, the person’s electoral number,

“voting age” means age 16 or over.

Referendums (Scotland) Bill

[AS INTRODUCED]

An Act of the Scottish Parliament to make provision for the holding of referendums throughout Scotland; to make provision about such referendums and other referendums held under Acts of the Scottish Parliament.

Introduced by: Michael Russell
On: 28 May 2019
Bill type: Government Bill

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