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**Changes to legislation:** There are currently no known outstanding effects for the Scottish Independence Referendum Act 2013, SCHEDULE 4. (See end of Document for details)

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SCHEDULE 4  
(introduced by section 11)

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,
  - (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 (SI 1992/807),
  - (e) a building society (within the meaning of the Building Societies Act 1986),
  - (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 or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969, and
  - (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

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(iii) has its main office in the United Kingdom.

- (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 (SI 2001/1184),
  - (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—
- (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 Assembly 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.
- (5) 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—

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- (i) an electoral register, or
  - (ii) the register of young voters.
- (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 (SI 1992/807),
  - (c) a building society within the meaning of the Building Societies Act 1986,
  - (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 or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 or the Industrial and Provident Societies Act (Northern Ireland) 1969, or
  - (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.

*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 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 to the 2000 Act to be given in respect of such a body as the donor of a recordable donation, 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
  - (b) be signed by the body's secretary or a person who acts in a similar capacity in relation to the body.

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- (4) If, at any time before the end of the compliance period, any statement which is contained in a notification under sub-paragraph (1)(b) or, in accordance with any provision of sub-paragraph (2) or (3), is contained in a declaration under paragraph 2, ceases to be accurate, 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) or (as the case may be) (3).
- (5) For the purposes of sub-paragraph (4), “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.

*Further provision about responsible persons*

- 4 (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.
- (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) or (3)(a)(ii) if the person whose name is stated—
- (a) is already the responsible person in relation to a permitted participant,
  - (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) or (3)(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”)—
- (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,
  - (b) P must, before the end of that period, give a notice of alteration under paragraph 3(4) 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”.

*Register of declarations under paragraph 2*

- 5 (1) The Electoral Commission must maintain a register of all declarations made to them under paragraph 2.
- (2) The register is to be maintained by the Commission in such form as the Commission may determine.

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- (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.
- (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 is reasonably practicable.
- (5) Where a notification of alteration is given to the Commission under paragraph 3(4) the Commission must cause any change required as a consequence of the notification to be made in the register as soon as is reasonably practicable.
- (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*

- 6 (1) The Electoral Commission may, in relation to each of the two possible outcomes in the referendum, designate under this paragraph one permitted participant as representing those campaigning for the outcome in question.
- (2) The Commission may make a designation under this paragraph only on an application made under paragraph 7.
- (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 the other possible outcome.
- (4) A permitted participant designated under this paragraph is referred to in this Act as a “designated organisation”.

#### *Applications for designation under paragraph 6*

- 7 (1) A permitted participant seeking to be designated under paragraph 6 must make an application for that purpose to the Electoral Commission.
- (2) An application for designation must—
  - (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) 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.

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- (6) In this paragraph—  
 “the application period” is the period of 28 days ending with the day before the first day of the decision period, and  
 “the decision period” is the period of 16 days ending with the 28th day before the first day of the referendum period.

*Designated organisation's right to use rooms for holding public meetings*

- 8 (1) Subject to the provisions of this paragraph, 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  
 (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.
- (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).
- (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  
 (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.
- (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 paragraph (b) of sub-paragraph (4)), 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.

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*Supplementary provisions about use of rooms for public meetings*

- 9 (1) This paragraph has effect with respect to the rights conferred by paragraph 8 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) Any question as to the rooms in school premises which a person authorised by a designated organisation is entitled to use, or as to the times at which the person is entitled to use them, or as to the notice which is reasonable, is to be determined by the Scottish Ministers.
- (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 to 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 8.

### PART 3

#### REFERENDUM EXPENSES

*Referendum expenses*

- 10 (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 11, 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*

- 11 (1) For the purposes of paragraph 10(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.)

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- (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 26 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.



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- (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*

- 12 (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) 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
  - (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).
- (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.

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- (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).
- (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—
- (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 21 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.
- (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.
- (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—
- (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 8 or 9, or
    - (ii) paragraph 1 of Schedule 12 (right to send referendum address post free) to the 2000 Act (as applied by article 4 of the Scotland Act 1998 (Modification of Schedule 5) Order 2013 (SI 2013/242)), 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 30(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*

- 13 (1) No amount of referendum expenses is to be incurred by or on behalf of a permitted participant except with the authority of—

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- (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 18 to 24 as referendum expenses incurred by or on behalf of the permitted participant.

*Restriction on payments in respect of referendum expenses*

- 14 (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*

- 15 (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 13 to incur the expenses.
- (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
  - (b) makes a payment in respect of a claim after the end of the period allowed under sub-paragraph (2).

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- (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
  - (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.
- (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—
  - (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
  - (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*

- 16 (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 15(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 15(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 15(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 15 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 15(1).

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### *Rights of creditors*

- 17 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 13, 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*

- 18 (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) 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.
- (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).
- (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 11(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.
- (8) Sub-paragraph (9) applies where—

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- (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 10(2) have constituted referendum expenses incurred by or on behalf of the individual or body during that period.
- (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.
- (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*

- 19 (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 held in 2011 (“the 2011 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 of—
    - (i) the total number of constituency votes cast at the 2011 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 rounded to one decimal place, and
    - (ii) the total number of regional votes cast at the 2011 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% and rounded to one decimal place.
- (3) Sub-paragraph (4) applies in the case where, at the 2011 election, a candidate stood for return as a constituency member in the name of more than one registered party.

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- (4) 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.
- (5) In sub-paragraphs (2) to (4)—
- “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.
- (6) 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,
  - (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
    - (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.
- (7) A person who commits an offence under sub-paragraph (6) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
  - (b) on conviction on indictment, to a fine.
- (8) It is a defence for a permitted participant or other person charged with an offence under sub-paragraph (6) to show—
- (a) that any code of practice for the time being issued under paragraph 11(3) was complied with in determining the items and amounts of referendum expenses to be entered in the relevant return under paragraph 21, and
  - (b) that the limit would not have been exceeded on the basis of the items and amounts entered in that return.
- (9) Sub-paragraphs (8) to (10) of paragraph 18 apply for the purposes of this paragraph and paragraphs 21 to 24 as they apply for the purposes of paragraph 18, but as if references in them to an individual or body to which that paragraph applies were references to a permitted participant.
- (10) For the purposes of this paragraph and paragraphs 21 to 24 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*

- 20 (1) This paragraph applies where—
- (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
  - (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 18 and 19 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 18 and 19 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 18 and 19 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*

- 21 (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 16),
  - (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 15(5), and



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- (d) in a case where the permitted participant either is not a registered party or is a minor party—
  - (i) the statement required by paragraph 39, 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 12, any declaration falling to be made with respect to those expenses in accordance with paragraph 12(8).
- (4) Sub-paragraphs (2) 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) Sub-paragraph (6) 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.
- (6) 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 (5) to the Electoral Commission within the period of 3 months beginning with the end of the referendum period.
- (7) The responsible person commits an offence if—
  - (a) without reasonable excuse, the person fails to comply with the requirements of sub-paragraph (6) in relation to a declaration, or
  - (b) the person knowingly or recklessly makes a false declaration under that sub-paragraph.
- (8) A person who commits an offence under sub-paragraph (7)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (9) A person who commits an offence under sub-paragraph (7)(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).
- (10) The Electoral Commission may issue guidance about the form of return to be used for the purposes of this paragraph.

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*Auditor's report on return*

- 22 (1) Where the return prepared under paragraph 21 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 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.
- (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.
- (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.
- (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—
- (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*

- 23 (1) Sub-paragraph (2) applies where—
- (a) a return falls to be prepared under paragraph 21 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 22.
- (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 21, the responsible person must deliver the return to the Commission within the period of 3 months beginning with the end of the referendum period.
- (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 15(5) for any claim to

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be paid, the responsible person must, within the period of 7 days after the payment, deliver to the Commission a return of any sums paid in pursuance of the leave.

- (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 21,
  - (b) delivers a return which does not comply with the requirements of paragraph 21(2) or (3), or
  - (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 21*

- 24 (1) Each return prepared under paragraph 21 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 35(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 49(2) or (6), or
    - (ii) state whether or not paragraph 49(3)(a) was complied with in the case of each of the transactions that was made void by paragraph 49(2) or (6).
- (4) A person commits an offence if—
- (a) the person knowingly or recklessly makes a false declaration under this paragraph, or

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- (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 29, and
  - “regulated transaction” is to be construed in accordance with paragraph 46.

*Public inspection of returns under paragraph 21*

- 25 (1) Where the Electoral Commission receive any return under paragraph 21 they must—
- (a) as soon as reasonably 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.
- (2) If the return contains a statement of relevant donations or a statement of regulated transactions in accordance with paragraph 21(2)(d) 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.
- (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.

**PART 4**

PUBLICATIONS

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

- 26 (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 at the referendum.
- (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,

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- (b) the SPCB, or
  - (c) any Scottish public authority with mixed functions or no reserved functions (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—
    - (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
    - (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
    - (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—
- “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*

- 27 (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 (3), (4) or (5), the requirements of that sub-paragraph are complied with, or
  - (b) in the case of any other material, the requirements of sub-paragraph (6) are complied with.
- (2) For the purposes of sub-paragraphs (3) to (5) 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).
- (3) 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.
- (4) Where the material is a printed document other than one to which sub-paragraph (3) applies, the relevant details must appear on either the first or last page of the document.

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- (5) 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 (2)(b) and (c) must be included in the advertisement.
- (6) 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),
- must be included in the material unless it is not reasonably practicable to include the details.
- (7) Where during the referendum period any material falling within sub-paragraph (1) (a) is published in contravention of sub-paragraph (1), then the following persons commit an offence, namely—
- (a) the promoter of the material,
  - (b) any other person by whom the material is so published, and
  - (c) the printer of the document.
- (8) Where during the referendum period any material falling within sub-paragraph (1) (b) is published in contravention of sub-paragraph (1), then the following persons commit an offence, namely—
- (a) the promoter of the material, and
  - (b) any other person by whom the material is so published.
- (9) A person who commits an offence under sub-paragraph (7) or (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) It is a defence for a person charged with an offence under sub-paragraph (7) or (8) to show—
- (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 that an offence under this paragraph would not be committed.
- (11) 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.
- (12) 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*

- 28      The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (SI 1984/467) have effect in relation to the display on any site in Scotland of an advertisement relating specifically to the referendum as they

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have effect in relation to the display of an advertisement relating specifically to a Parliamentary election.

## PART 5

### CONTROL OF DONATIONS

#### *Operation and interpretation of this Part*

- 29 (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 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 30 to 32.
- (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—
- (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 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 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*

- 30 (1) “Donation”, in relation to a permitted participant, means (subject to paragraph 32)—

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- (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 31),
- (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),
- (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—

- (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,

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).

- (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 31) applies in relation to it to the exclusion of the other provision of this paragraph.
- (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).
- (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*

- 31 (1) For the purposes of this schedule sponsorship is provided in relation to a permitted participant if—
- (a) any money or other property is transferred to the permitted participant or to any person for the benefit of the permitted participant, and



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- (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)—
  - (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—
  - (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)—
  - (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,
  - (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*

- 32 (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—
    - (i) paragraph 8 or 9, or
    - (ii) paragraph 1 of Schedule 12 (right to send referendum address post free) to the 2000 Act (as applied by article 4 of the Scotland Act 1998 (Modification of Schedule 5) Order 2013 (SI 2013/242)),
  - (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 35(3)(a) or (b).
- (2) Any donation the value of which (as determined in accordance with paragraph 33) does not exceed £500 is to be disregarded.

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*Value of donations*

- 33 (1) The value of any donation falling within paragraph 30(1)(a) (other than money) is to be taken to be the market value of the property in question.
- (2) Where, however, paragraph 30(1)(a) applies by virtue of paragraph 30(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 30(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 31(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 30(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*

- 34 (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.
- (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.
- (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) which is not—
- (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—

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- (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,

is to be regarded as a relevant donation received by the permitted participant from a person who is not a permissible donor.

- (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.

- (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—
- (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 40(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 40(1)(a).

- (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,

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 40(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*

- 35 (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.

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- (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 40(1)(c) to be included in a statement under paragraph 39 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 34(1), or which it is decided the permitted participant should refuse, then—
  - (a) unless the donation falls within paragraph 34(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 36(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.

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*Return of donation where donor unidentifiable*

- 36 (1) For the purposes of paragraph 35(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*

- 37 (1) This paragraph applies to any donation received by a permitted participant—
- (a) which, by virtue of paragraph 34(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,
  - (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.
- (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
  - (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.

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*Evasion of restrictions on donations*

- 38 (1) 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 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—
- (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
  - (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—
- (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*

- 39 The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 21 a statement of relevant donations which complies with paragraphs 40 and 41.

*Donations from permissible donors*

- 40 (1) The statement must record, in relation to each relevant donation falling within sub-paragraph (2) which is accepted by the permitted participant—
- (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 33,
  - (b) the date when the donation was accepted by the permitted participant, and
  - (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 to the 2000 Act.
- (2) 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.
- In paragraph (b) “relevant benefit” means any relevant donation or regulated transaction (with the meaning of paragraph 45(4)) made by or entered into with the person who made the donation.

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- (3) The statement must also record the total value of any relevant donations, other than those falling within sub-paragraph (2), which are accepted by the permitted participant.
- (4) 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.

*Donations from impermissible or unidentifiable donors*

- 41 (1) This paragraph applies to relevant donations falling within paragraph 34(1)(a) or (b).
- (2) Where paragraph 34(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 any other case) the nature of the donation and its value as determined in accordance with paragraph 33, 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 35(3)(a).
  - (3) Where paragraph 34(1)(b) applies, the statement must record—
    - (a) details of the manner in which the donation was made,
    - (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 33, 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 35(3)(b).

*Donation reports during referendum period*

- 42 (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 ending with the 28th day of the referendum period (including the time before 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 seventh day before the day by which the report is to be delivered to the Electoral Commission (“the final period”).
- (2) 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 any other case) the nature of the donation and its value as determined in accordance with paragraph 33,
    - (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 to registered parties, required to be recorded in weekly donation reports by virtue of paragraph 3 of Schedule 6 to the 2000 Act.

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- (3) 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.
- (4) 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 in respect of any preceding period, but
  - (b) for the purposes of sub-paragraphs (2) and (3), the report for the period in question must also cover the time before the start of the period, and references in those sub-paragraphs to the period are to be read accordingly.
- (5) Sub-paragraphs (2) and (3) 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.
- (6) References in this paragraph and in paragraph 43 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.
- (7) A report under this paragraph must be delivered by the responsible person to the Electoral Commission—
  - (a) in the case of the report in respect of a period other than the final period, within the period of 7 days beginning with the end of the period to which the report relates,
  - (b) in the case of the report in respect of the final period, by the end of the fourth day before the date of the referendum.
- (8) For the purpose of sub-paragraph (7)(b), 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.
- (9) 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 participant has seen evidence that the individual has such an anonymous entry, the report must be accompanied by a copy of the evidence.
- (10) The responsible person commits an offence if, without reasonable excuse, the person—
  - (a) fails to comply with the requirements of sub-paragraph (7) 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 (2), (3) or (9).
- (11) A person who commits an offence under sub-paragraph (10)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) A person who commits an offence under sub-paragraph (10)(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),



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- (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 42*

- 43
- (1) Each report prepared under paragraph 42 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
    - (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
    - (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),
    - (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 42*

- 44
- (1) Where the Electoral Commission receive a report under paragraph 42 they must—
    - (a) as soon as reasonably 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.
  - (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.
  - (3) At the end of the period of 2 years beginning with the date when any report under paragraph 42 or other document accompanying it is received by the Commission—
    - (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.

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## PART 6

### CONTROL OF LOANS AND CREDIT

#### *Operation of Part*

- 45 (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 46.
- (5) In relation to transactions entered into by a permitted participant other than a designated organisation, the reference in paragraph 48(2) to a permissible donor does not include a registered party.

#### *Regulated transactions*

- 46 (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.
- (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—
- (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
  - (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
  - (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.

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- (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.
- (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) 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.
- (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 39, to be included in a return under paragraph 21, or
  - (b) if its value does not exceed £500.

#### *Valuation of regulated transaction*

- 47
- (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.
  - (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.
  - (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*

- 48
- (1) A permitted participant must not—
    - (a) be a party to a regulated transaction to which any of the other parties is not an authorised participant,

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- (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.

*Regulated transaction involving unauthorised participant*

49 (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)—

- (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—

- (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.

(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),
- (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
- (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*

50 (1) This paragraph applies if—

- (a) a permitted participant and another person (“A”) enter into a transaction of a description mentioned in paragraph 46(3)(a),
- (b) A is party to a regulated transaction of a description mentioned in paragraph 46(3)(b) (“the connected transaction”) with another person (“B”), and
- (c) B is not an authorised participant.

(2) Paragraph 49(2) to (5) applies to the transaction mentioned in sub-paragraph (1)(a).

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- (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 49(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 46(3)(a) is not a regulated transaction of a description mentioned in paragraph 46(1) or (2), references in this paragraph and paragraph 49(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*

- 51 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*

- 52 (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 46(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 46(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—

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- (a) the permitted participant enters into a regulated transaction of a description mentioned in paragraph 46(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—
  - (a) the individual enters into a regulated transaction of a description mentioned in paragraph 46(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
  - (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 46(1) or (2) to which another party is not an authorised participant,
  - (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.
- (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 46(1) or (2) to which another party is not an authorised participant,
  - (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—
  - (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—
  - (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—

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- (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) 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 46(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,
  - (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.
- (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 46(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,
  - (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.
- (12) 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 is a party to a transaction of a description mentioned in paragraph 46(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
  - (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.

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- (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 to a permitted participant entering into a transaction to which another party is not an authorised participant includes a reference to any circumstances in which another party to the transaction who is an authorised participant ceases (for whatever reason) to be an authorised participant.

#### *Penalties*

- 53 (1) A person who commits an offence under sub-paragraph (1), (2), (4), (7), (8) or (10) of paragraph 52 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 52 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*

- 54 (1) The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 21 a statement of regulated transactions entered into by the permitted participant.
- (2) The statement must comply with paragraphs 55 to 59.
- (3) For the purposes of those paragraphs a regulated transaction is a recordable transaction—
  - (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.

In paragraph (b) “relevant benefit” means any relevant donation (within the meaning of paragraph 29(4)) or regulated transaction made by, or entered into with, the person with whom the regulated transaction was entered into.

#### *Identity of authorised participants*

- 55 The statement must record, in relation to each recordable transaction to which an authorised participant was a party, the information about the authorised participant



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which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 2 of Schedule 6A to the 2000 Act.

*Identity of unauthorised participants*

- 56 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,
  - (b) the date when, and the manner in which, the transaction was dealt with in accordance with sub-paragraphs (3) to (5) of paragraph 49 or those sub-paragraphs as applied by paragraph 49(6) or 50(2).

*Details of transaction*

- 57 (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 political parties, required to be recorded in transaction reports by virtue of paragraph 5(2), (3) and (4) of Schedule 6A to the 2000 Act (read with any necessary modifications).
- (2) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 46(1) or (2) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 6 of Schedule 6A to the 2000 Act.
- (3) The statement must record, in relation to each recordable transaction of a description mentioned in paragraph 46(3) above, the information about the transaction which is, in connection with transactions entered into by political parties, required to be recorded in transaction reports by virtue of paragraph 7(2)(b), (3) and (4) of Schedule 6A to the 2000 Act.

*Changes*

- 58 (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 other change in any of the information that is required by paragraphs 55 to 57 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,
  - (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.

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*Total value of non-recordable transactions*

- 59 The statement must record the total value of any regulated transactions that are not recordable transactions.

*Transaction reports during referendum period*

- 60 (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 ending with the 28th day of the referendum period (including the time before 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 seventh day before the day by which the report is to be delivered to the Electoral Commission (“the final period”).
- (2) 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—
- (a) the same information about the transaction as would be required, by virtue of paragraph 57, to be recorded in the statement referred to in paragraph 54(1),
  - (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 to 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 56.
- (3) 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.
- (4) 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 (2) and (3), the report for the period in question must also cover the time before the start of the period, and references in those sub-paragraphs to the period are to be read accordingly.
- (5) Sub-paragraphs (2) and (3) 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.
- (6) References in this paragraph and in paragraph 61 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.

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- (7) A report under this paragraph must be delivered by the responsible person to the Electoral Commission—
- (a) in the case of the report in respect of a period other than the final period, within the period of 7 days beginning with the end of the period to which the report relates,
  - (b) in the case of the report in respect of the final period, by the end of the fourth day before the date of the referendum.
- (8) For the purpose of sub-paragraph (7)(b), 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.
- (9) 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.
- (10) The responsible person commits an offence if, without reasonable excuse, the person—
- (a) fails to comply with the requirements of sub-paragraph (7) 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 (2), (3) or (9).
- (11) A person who commits an offence under sub-paragraph (10)(a) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (12) A person who commits an offence under sub-paragraph (10)(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 60*

- 61 (1) Each report prepared under paragraph 60 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.
- (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—
- (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—

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- (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 60*

- 62 (1) Where the Electoral Commission receive a report under paragraph 60 they must—
- (a) as soon as reasonably 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.
- (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 60 or other document accompanying it is received by the Commission—
- (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*

- 63 (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 54 to 61 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 49 and 63*

- 64 (1) This paragraph has effect in relation to proceedings on an application under paragraph 49(4) or 63.

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- (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 24 or paragraph 52.
- (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*

- 65 (1) In this Part—
- “authorised participant” is to be construed in accordance with paragraph 48 (and see paragraph 45(5)),
  - “connected transaction” has the meaning given by paragraph 46(9),
  - “credit facility” has the meaning given by paragraph 46(11),
  - “permitted participant” is to be construed in accordance with paragraph 45,
  - “regulated transaction” is to be construed in accordance with paragraph 46.
- (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 46(3)(a), as if it were a party to the connected transaction.

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