

SCOTTISH INDEPENDENCE REFERENDUM ACT 2013

EXPLANATORY NOTES

COMMENTARY

Offences

292. [Section 31](#) introduces schedule 7 which contains provisions about offences related to the referendum.
293. [Section 32](#) provides for offences by a body corporate, a Scottish partnership or other unincorporated association under the Act. In this case, where it can be proved that the offence was committed with the consent or connivance, or caused by the neglect of, an individual, the individual, as well as the body, is liable.

Schedule 7: Offences

294. [Schedule 7](#), introduced by section 31, contains details of the offences under the Act. Some are deemed to be ‘corrupt practices’ (such as the ‘personation’ offence in paragraph 1) and carry a penalty of imprisonment for a term not exceeding two years or to an unlimited fine or both. Other offences are ‘illegal practices’ (such as the voting offences in paragraph 2) which are summary offences and the maximum penalty is a £5,000 fine.
295. [Schedule 7](#) includes the following provisions:
- **Personation** (paragraph 1) – this is where any individual votes as someone else (whether that person is living or dead or is a fictitious person), either by post or in person at a polling station as an elector or as a proxy. Further, the individual voting can be deemed guilty of personation if they vote as a person they have reasonable grounds for supposing is dead or fictitious, or where they have reasonable grounds for supposing their proxy appointment is no longer valid.
 - **Other voting offences** (paragraph 2) – there are a number of voting offences listed in this paragraph. Knowingly causing someone else to commit one of the voting offences below is itself an offence:
 - Voting in person or by post, or applying to vote by proxy or by post as a voter or a proxy knowing that you are subject to a legal incapacity to vote.
 - Applying for the appointment of a proxy, in the knowledge that you or the proxy is subject to a legal incapacity to vote.
 - Voting, whether by proxy or by post, knowing that the voter for whom you are voting as proxy is subject to a legal incapacity to vote.
 - Voting more than once in the referendum (other than as a proxy).
 - Voting in person when entitled to vote by post.

These notes relate to the Scottish Independence Referendum Act 2013 (asp 14) which received Royal Assent on 17 December 2013

- Voting in person in the knowledge that someone else has voted by proxy on your behalf or is entitled to vote as proxy postally.
- Applying for someone to vote as your proxy without cancelling the appointment or application for appointment of someone already appointed as your proxy voter.
- Voting by proxy for the same voter more than once.
- Voting in person as proxy for someone when you have opted to vote by post as proxy for that voter.
- Voting in person as proxy for a voter in the knowledge that the person has already voted in person or by post.
- Voting by post as proxy for a voter knowing that the voter has already voted in person or by post.
- Voting as proxy for more than two people of whom you are not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.
- **Imitation poll cards** (paragraph 3) - producing false poll cards which are intended to deceive people, for the purpose of achieving a particular outcome in the referendum, is an offence.
- **Offences relating to applications for postal and proxy votes** (paragraph 4) – it is an offence to try to prevent a vote or gain a vote in the referendum by: applying for a postal or proxy vote as someone else (including a fictitious person), making a false statement in, or providing false information in connection with, a postal or proxy vote application, causing a ballot paper relating to a postal or proxy vote to be sent to an incorrect address or to cause information related to a postal or proxy vote or a postal ballot paper not to be delivered to the correct recipient.
- **Breach of official duty** (paragraph 5) – the Chief Counting Officer and any proper officer of a council, registration officer, counting officer, presiding officer, their deputies or any other person assisting them in the running of the referendum may be guilty of an offence by means of an act or omission in breach of their official duty under the Act.
- **Tampering with ballot papers etc.** (paragraph 6) – it is an offence to:
 - deface or destroy a ballot paper, postal voting statement or official envelope used in postal voting,
 - give someone a ballot paper without proper authority,
 - put any paper into the ballot box other than the authorised ballot paper,
 - remove a ballot paper from a polling station,
 - destroy, take, open or interfere with a ballot box or packet of ballot papers.
 - counterfeit a ballot paper or the official mark on a ballot paper.
- **Requirement of secrecy** (paragraph 7) - everyone involved in the electoral process should be aware of the secrecy of the ballot and should not breach it. The counting officer will give everyone who attends the opening or counting of ballot papers a copy of parts of the requirement of secrecy, as required by rule 16 of schedule 3 to the Act. Breach of the requirement of secrecy is an offence under paragraph 7(8).
- **Prohibition on publication of exit polls** (paragraph 8) – it is an offence for anyone to publish a statement before the close of the poll about the way voters or proxies for voters have voted based on information they provided after voting or to publish

a forecast of the result before the close of the poll based on information provided by voters about how they voted.

- **Payments to voters for exhibition of referendum notices** (paragraph 9) – it is an offence for a voter to be paid for exhibiting a poster, advert or notice on their property to promote a referendum outcome, where it is not the voter’s usual course of business.
- **Treating** (paragraph 10) - a person is guilty of treating if either before, during or after the referendum they directly or indirectly give or provide (or pay wholly or in part the expense of giving or providing) any meat, drink, entertainment or provision in order to influence any voter to vote or refrain from voting.
- **Undue influence** (paragraph 11) - a person is guilty of undue influence if they directly or indirectly use or threaten to use force, violence or restraint, or cause or threaten to cause injury, damage, harm or loss in order to induce or compel any voter to vote or refrain from voting. A person may also be guilty of undue influence if they impede or prevent the voter from freely exercising their right to vote. This latter offence can also be committed where a person intends to impede or prevent the free exercise of a vote even where the attempt is unsuccessful.
- **Bribery** (paragraph 12) - a person is guilty of bribery if they directly or indirectly give money to or procure an office for any voter, in order to induce any voter to vote, or not vote, for a particular outcome; or to vote or refrain from voting. This includes making any gift or procurement in favour of the voter, giving, lending, agreeing to give or lend, offering promising or promising to procure or endeavour to procure any money or valuable consideration. It is an offence for a person to commit bribery in connection with the referendum, and a voter who receives a bribe in connection with the referendum is also guilty of an offence. “Voter” for all these purposes includes a proxy for a voter.
- **Disturbances at public meetings** (paragraph 13) – it is an offence deliberately to disrupt a public meeting by causing a disturbance.
- **Illegal canvassing by police constables** (paragraph 14) – it is an offence for a police constable to try to persuade someone to vote or not vote in a particular way.
- **Prosecutions for corrupt practices** (paragraph 15) - this paragraph sets out the penalties for someone guilty of a corrupt practice.
- **Prosecutions for illegal practices** (paragraph 16) - this paragraph sets out the penalty for someone guilty of an illegal practice.
- **Conviction of illegal practice on charge of corrupt practice** (paragraph 17) – this paragraph clarifies that someone charged with a corrupt practice may be found guilty of an illegal practice which attracts a lesser maximum penalty (a person cannot be imprisoned when convicted of an illegal practice and the maximum fine is limited). A person charged with an illegal practice may be found guilty of that offence whether or not the act was a corrupt practice.
- **Incapacity to hold public or judicial office in Scotland** (paragraph 18) – anyone convicted of a corrupt or illegal practice under schedule 7 is not allowed to hold any public or judicial office in Scotland for 5 years from the date of their conviction. If they already hold such an position, they vacate it on conviction.
- **Prohibition of paid canvassers** (paragraph 19) – if someone pays someone else to canvass to promote a particular outcome in the referendum, then the person paying the canvasser and the canvasser are both guilty of illegal employment.
- **Providing money for illegal purposes** (paragraph 20) - someone who provides or replaces money for a payment contrary to the legislation, for any expenses that exceed the spending limits, is guilty of an illegal payment.

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- **Prosecutions for illegal employment or illegal payment** (paragraph 21) – this paragraph sets out the penalty for someone found guilty of illegal employment or an illegal payment under paragraphs 19 or 20 (the maximum penalty is a £5,000 fine). A person charged with one of these offences may be convicted of the other.