

# SCOTTISH INDEPENDENCE REFERENDUM ACT 2013

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## EXPLANATORY NOTES

### COMMENTARY

#### *Procedures to be followed at polling stations*

#### *Schedule 4: Campaign rules*

#### **Part 3: Referendum expenses**

163. [Paragraph 10](#) defines referendum expenses as any of the activities specified in paragraph 10 which are incurred in the running or conduct of a referendum campaign, or are incurred in connection with the promotion of any particular outcome in the referendum.
164. [Paragraph 11](#) sets out different types of activities which qualify to be counted as referendum expenses (including campaign broadcasts, advertising, material addressed to voters, market research or canvassing, press conferences or media dealings, transport, rallies or public meetings). Sub-paragraph (2) confirms that the definition of referendum expenses does not extend to any expenses which fall to be met out of public funds, any campaign staff costs, any expenses incurred by an individual which are not reimbursed, or any expenses related to the publication of material about the referendum which is not an advertisement.
165. Sub-paragraph (3) gives the Electoral Commission a power to issue guidance on the different kinds of expenses that qualify as referendum expenses, and requires them to provide a copy of this guidance to Scottish Ministers, who will lay a copy before the Scottish Parliament.
166. [Paragraph 12](#) deals with the concept of notional referendum expenses, where an individual or body is given property or allowed to use property, services or other facilities either free of charge or at more than 10% discount from the market rate for their use, for the purposes of campaigning for an outcome in the referendum. Notional expenses are counted towards the referendum expenses limit of the individual or body. There are four situations where notional expenses are calculated:
- i. Where a property is provided free of charge, the ‘appropriate amount’ of expenses is calculated as a reasonable proportion of the market value of the property taking into account the use of the property.
  - ii. Where the property is provided at a discount of more than 10%, the appropriate amount of expenses is the reasonable proportion of the difference between the market value of the property and the amount actually spent.
  - iii. Where property, services or other facilities are provided free of charge, the appropriate amount of expenses is calculated as a reasonable proportion of the

commercial rate for their use of the property taking into account the use of the property.

- iv. Where property, services or other facilities are provided at a discount of more than 10%, the appropriate amount of expenses is the reasonable proportion of the difference between the commercial rate for their use and the amount actually spent.
167. Where an employer makes the services of an employee available to the individual or body, the notional referendum expenses are taken to be the person's salary (but not other payments such as bonus payments for example) during the time they are working on behalf of the individual or body.
168. The effect of sub-paragraphs (9) and (10) is that only the proportion of the expenses incurred for the use of the property, services, facilities or employees during the referendum period is to be declared by a permitted participant in a return to the Electoral Commission. Only expenses of over £200 need be declared. Under sub-paragraph (12), someone who makes a false declaration in the return commits an offence. Notional referendum expenses do not include the costs associated with the transmission of a referendum campaign broadcast, the mailshot of referendum material, or the use of public rooms under paragraphs 8 and 9 for designated organisations. Time or services given voluntarily by an individual are also excluded.
169. [Paragraph 13](#) requires that any expenditure incurred on behalf of a permitted participant must have the authority of the responsible person (e.g. its treasurer or other named officer as defined in schedule 8) or someone authorised in writing by the responsible person. Anyone who spends money without this authority commits an offence.
170. Similarly, paragraph 14 requires that any payment made by the permitted participant in connection with referendum expenses must have the authority of the responsible person or someone authorised in writing by the responsible person and there must be an invoice or receipt for any payment over £200. When a payment of over £200 is made by someone authorised by the responsible person, they must notify the responsible person that the payment has been made and give them the relevant invoice or receipt. If anyone fails to follow these rules they commit an offence.
171. [Paragraph 15](#) requires someone with a claim for payment of referendum expenses to submit it to the permitted participant's responsible person or someone authorised by the responsible person within 30 days of the date of the referendum. Claims can be submitted beyond the 30 day period if the Electoral Commission agree that it is appropriate to do so. All other claims must be paid within 60 days of the date of the referendum. Paying a claim after that time is an offence. Paying a claim that should not be paid is also an offence. Any other rights a creditor of the permitted participant may have in relation to payment (for example right to earlier payment under a contract agreed by the creditor and permitted participant) are not affected by the timescale for payment of not later than 60 days after the referendum period.
172. Sub-paragraph (8) of paragraph 15 applies section 77(9) and (10) of the Political Parties, Elections and Referendums Act 2000, to prevent the 30 and 60 day periods from ending on a Saturday, Sunday or other national day of thanksgiving, mourning or holiday.
173. Where the permitted participant's responsible person (or someone allegedly authorised to incur the expenditure) fails or refuses to pay a claim for referendum expenses within 60 days of the date of the referendum, this is known as a 'disputed claim'. Paragraph 16 allows the person who made the claim to bring a court action to decide whether the claim ought to be paid, whether the 60 day period has passed or not. The court may consider whether there is a special reason for the claim to be paid if it was submitted after the 30 day period was over. Paragraph 17 confirms that the rights of the creditors of permitted participants to receive payments due to them are not affected by a permitted participant having incurred expenditure or spent money when prohibited by the campaign rules

in schedule 4 from doing so, so long as the creditor was unaware that the contract or expenditure contravened those rules.

174. **Paragraph 18** sets a spending limit of £10,000 in the referendum campaign for individuals or bodies that are not permitted participants. Sub-paragraphs (8) to (10) include within the £10,000 limit the appropriate sum of notional referendum expenses for property, services or facilities incurred before or during the referendum period. If that limit is exceeded, then the individual or body is guilty of an offence, and in the case of a body, the person who authorised the expenses is also guilty of an offence if they knew or should have known that the limit would be exceeded as a result of the payment. It is a defence for an individual or body to show that they complied with a code of practice issued by the Electoral Commission at the time of deciding whether to incur the expense, and in so doing, hadn't exceeded the spending limit at that time.
175. **Paragraph 19** sets out the spending limits for permitted participants. Where a permitted participant is a designated organisation they will have a campaign spending limit of £1,500,000. Permitted participants who are registered political parties and for whom constituency and regional votes were cast in the election for the Scottish Parliament held in 2011 will have a spending limit of either £3,000,000 multiplied by their percentage share, or a minimum of £150,000. Permitted participants who are not political parties will have a limit of £150,000. If a permitted participant is a member of a designated organisation (but not the organisation itself) that will not affect their separate entitlement to incur expenditure up to their own limit. Sub-paragraphs (8) to (10) of paragraph 18 also apply to these spending limits the notional appropriate sum of property, services or facilities incurred before or during the referendum period. Any referendum expenses incurred before the individual or body became a permitted participant also count towards the spending limit and should be noted in an expense return to the Electoral Commission.
176. Breach of the spending limits is treated as an offence, in the case of a political party both by the party itself and by its responsible person or deputy treasurer. If the permitted participant is an individual, then the individual is guilty of the offence and if the permitted participant is some other body, then both the body and the responsible person are guilty of the offence if the spending limits are exceeded. As with those who are not permitted participants, it is a defence to show that they had complied with a code of practice issued by the Electoral Commission at the time of deciding whether to incur the expense, and in so doing, had not exceeded the spending limit at that time.
177. **Paragraph 20** makes provision for campaigners working together as part of a common plan or arrangement, to allow campaigners to work together to provide a coordinated message to voters, while preventing an organisation or body declaring themselves a permitted participant under a number of different names in order to take advantage of multiple spending limits. Referendum expenses incurred by two or more permitted participants working together to a common plan or arrangement are to be treated as counting towards the spending limits of each permitted participant for the purposes of the spending limits in paragraphs 18 and 19. Such expenditure also counts towards the spending limit of a non-permitted participant, if one is involved in the common plan or arrangement. To allow a designated organisation to lead coordinated activity amongst campaigners, where a designated organisation is involved in a common plan, the designated organisation is taken to have incurred the total amount of common plan expenditure, and the other participants do not count any common plan expenditure against their individual spending limits. Any unregistered campaigner who spends more than £10,000 as part of a common plan with a designated organisation is however required to register as a permitted participant. Unregistered campaigners who spend less than £10,000 in a common plan with a designated organisation are effectively exempt from the common plan rules.
178. **Paragraph 21** requires each permitted participant to provide a report to the Electoral Commission about its finances including its spending, any disputed claims in which

it was involved, unpaid claims and any relevant donations it has received (with the exception of registered political parties which are required under UK legislation to submit a return about their donations to the Electoral Commission). This report or 'return' must include all invoices and receipts in relation to expenditure and a statement identifying the amount of any notional referendum expenses incurred. The return need not include details of, but must be accompanied by a declaration of the total amount of, any referendum expenses incurred before the individual or body became a permitted participant. The Electoral Commission has a power under sub-paragraph (10) to issue guidance about the form to be used for the return. Those who are not permitted participants do not need to submit a return to the Commission.

179. [Paragraph 22](#) requires designated organisations that have spent over £250,000 to submit an auditor's report on their financial return to the Electoral Commission. The auditor has the right to access the designated organisation's books and other paperwork, and the responsible person must provide any relevant additional information, that the auditor requires for the purposes of the audit. If the responsible person fails to do so, the Commission may write to them to require them to do so. If the responsible person fails to comply with the written directions of the Commission, the Commission can apply to the Court of Session to deal with the person as if they had failed to comply with a court order. A deliberately misleading, deceptive or false statement, whether oral or in writing by the responsible person to an auditor about the finances of the designated organisation is an offence.
180. Under paragraph 23, returns to the Commission must be submitted along with any auditor's report required within 6 months of the date when the referendum took place. Returns that do not need an auditor's report must be submitted to the Commission within 3 months. Where the Electoral Commission decides that a claim for expenses that was submitted after the 30 day deadline should be paid (under paragraph 15), the responsible person must, within 7 days of the payment, submit to the Commission a return detailing the payment. The responsible person commits an offence by failing to comply with the requirements of this paragraph.
181. [Paragraph 24](#) requires the responsible person to sign the return and provide a declaration along with it to the effect that he or she has examined the return and to the best of his or her knowledge and belief it is complete and correct and all expenses in the return have been paid by the responsible person or someone authorised by him or her. Where the permitted participant is not a registered political party, the declaration must also state that all relevant donations recorded in the return have been accepted from permissible donors and that no other donations have been accepted. The responsible person commits an offence if he or she knowingly or recklessly makes a false declaration in the return.
182. [Paragraph 25](#) requires the Commission to make a copy of the returns it receives from permitted participants available for public inspection while the return is in the Commission's possession. The Commission must ensure that where a donor is an individual rather than an organisation, the donor's address is not made public in the statement of relevant donations. A similar restriction applies where the return contains information about a regulated transaction. If the transaction was entered into with an individual, the individual's address should not be made public. The Commission has a power to destroy returns and any other papers it receives once two years have passed since it first received them, or else at the responsible person's request the Commission must send the return and other papers back to the permitted participant.