

SCOTTISH INDEPENDENCE REFERENDUM ACT 2013

EXPLANATORY NOTES

COMMENTARY

Procedures to be followed at polling stations

Schedule 4: Campaign rules

Part 5: Control of donations

188. The Act deals with controls of donations to permitted participants that are not registered parties or are minor parties. Donations to registered political parties are already subject to a regulatory regime established in the Political Parties, Elections and Referendums Act 2000. The rules set out in Part 5 of schedule 4 to the Act define what donations are allowed, both by description and by monetary value (or a determination of monetary value), who is allowed to make a donation and what a permitted participant must do to record and report the donations of over £500 that they receive.
189. [Paragraph 29](#) defines a ‘relevant donation’ in this context as meaning a donation to a permitted participant for the purposes of meeting referendum expenses. Under sub-paragraph (6), only permitted participants that are designated organisations can accept donations from registered political parties.
190. Sub-paragraph (7)(a) adds anti-avoidance provisions in order to cover donations provided so that expenses are not incurred, and sub-paragraph (7)(b) provides for a test of reasonably assuming something to be a donation.
191. Sub-paragraphs (8) to (10) provide an explanation of what constitutes a donation in relation to any money spent in paying any referendum expenses incurred by or on behalf of the permitted participant. Sub-paragraph (11) makes it immaterial where a donation is received.
192. [Paragraph 30\(1\)](#) explains what constitutes a donation for the purposes of the referendum. Where the value of the transaction, whether it be in money or other property, services or facilities at less than the market rate, the money or property transferred to a permitted participant is taken to be a gift and therefore a donation made to the permitted participant. Sub-paragraph (3) explains that in order to determine whether property, services or facilities are provided to a permitted participant on terms better than a commercial rate, a comparison is needed with the total sum involved. Further clarification is provided in sub-paragraph (5) which explains that anything given to someone representing a permitted participant that is not for their personal use is assumed to be a donation to the permitted participant.
193. A donation to a permitted participant includes any sponsorship of the permitted participant. Paragraph 31 explains that sponsorship in this context includes any money given to the permitted participant in order to help with referendum expenses or to avoid incurring costs in the referendum. This includes the sponsorship of conferences

or other events run by or on behalf of the permitted participant, costs associated with a publication by or on behalf of the permitted participant and any study or research it undertakes. However, sponsorship does not include someone paying for admission to a conference, buying a publication or payment for an advertisement where the cost involved is charged at the usual commercial rate.

194. [Paragraph 32](#) outlines other payments that are not donations for the purposes of the Act. These include a grant from public funds, the rights of a designated organisation to a free mailshot to each voter and to the use of public rooms under paragraphs 8 and 9 of schedule 4, transmission by a broadcaster of referendum campaign broadcasts, the services of someone volunteering to work with or for the permitted participant at no charge or any interest that may accrue on a donation. Any donation with a value of £500 or less is also to be disregarded.
195. [Paragraph 33](#) explains how the value of a donation is to be established. The value of any donation other than money is to be taken as the market value of the property involved. Where goods or services are provided to the permitted participant at a rate preferential to the commercial rate, the value of the donation is taken to be the difference in value between what was actually paid and what would have been paid had the commercial rate been applied. The value of sponsorship is taken as either the money involved, or the market value of any property transferred to the permitted participant. Any value accruing to the sponsor from the sponsorship is to be disregarded. The value of any loan, or property, services or other facilities provided at a rate better than the commercial rate is taken to be the difference between the amount actually paid by the permitted participant and the amount that would have been paid had the commercial rate been applied. If the permitted participant benefits from such a donation over a period of time, for example through paying a lower rent over several months, the donation involved is the total amount saved over those months.
196. [Paragraph 34](#) prohibits permitted participants from accepting certain donations. Only donations from people or bodies listed in paragraph 1(2) of schedule 4 as ‘permissible donors’ can be accepted:
- individuals registered on the electoral register
 - companies registered under the Companies Act or incorporated in the EU or that conduct business in the UK
 - registered parties that intend to contest an EU election (only designated organisations may receive donations from registered parties, under sub-paragraph 29(6))
 - trade unions
 - building societies
 - limited liability partnerships
 - friendly societies
 - unincorporated associations carrying on business or other activities wholly or mainly and having their main office in the UK.
197. In addition, donations from exempt trusts are to be counted as relevant donations¹. However a donation from a trustee of any property which is not an exempt trust donation, or if the beneficiaries under the trust are not permitted participants or members

¹ “Exempt trust donations” are donations received from a trustee where the trust was created before 27 July 1999 and which has had no property transferred to it after that date nor have the terms of the trust varied after that date or it is a donation received from a trustee where the trust was created either by a person who was a permissible donor under section 54 of the Political Parties, Elections and Referendums Act 2000 or created in the will of such a person and no property has been transferred to the trust other than by the person who created or by the will. (See section 162 of the 2000 Act and the definition in paragraph 1(1) of the Act).

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of an unincorporated association which is a permissible donor, is to be taken as a donation from an impermissible donor, i.e. it should not be accepted by the permitted participant.

198. Where someone provides a donation to the permitted participant on behalf of themselves together with someone else as a 'principal donor', or an agent provides a donation on behalf of others, then each donation of over £500 is to be taken as a donation from each of the individuals. In such cases, the responsible person of the permitted participant must be given certain details about the donor. An offence is committed by the principal donor or the agent if the details are not provided. The details to be provided depend on the status of the donor but usually it involves their name and address. These details are to be provided for each donation in the statement of donations to be submitted to the Electoral Commission under paragraph 39.
199. Under paragraph 35, if a donation is accepted by the permitted participant, they should make every effort to verify that the donor is who they say they are and that the donor is a permitted donor and to verify the donor's name and address. If the permitted participant receives a donation they should not accept, then the donation should be returned within 30 days to whoever provided it. An offence is committed if these steps are not taken within the 30 day period but it is a defence to show that within the 30 days steps were taken to identify the donor and it was concluded that the donation was from a permissible donor.
200. Under paragraph 36, if the donation was provided anonymously, it should be returned to the person who provided it on the anonymous donor's behalf or the financial institution they used to send it. If that is not possible, the donation should be sent to the Electoral Commission. The Commission would then pay it into the Scottish Consolidated Fund.
201. Under paragraph 37, where a permitted participant accepts a donation that it should not have accepted (because it was given anonymously or by someone other than a permissible donor), a sheriff can, regardless of whether legal proceedings have been brought in connection with an offence, order the permitted participant to forfeit money equivalent to the amount of the donation. The permitted participant can appeal against the sheriff's decision to the Court of Session. If the amount of the donation is forfeited, then the money is paid into the Scottish Consolidated Fund.
202. If someone deliberately tries in any way to make a donation to a permitted participant when the donor is not a permissible donor, that person commits an offence under the provisions of paragraph 38. An offence is also committed if someone provides deliberately false information to the responsible person of the permitted participant about the amount of a donation or the donor. Similarly, an offence is committed if someone deliberately tries to deceive the responsible person of the permitted participant by withholding information about the amount of a donation or the donor.
203. As part of the return to the Electoral Commission, the permitted participant is required by the provisions of paragraph 39 to provide a statement of relevant donations.
204. [Paragraph 40](#) sets out the information to be provided in the statement of relevant donations. For individual donations of over £7,500 or cumulative donations of over £7,500 from the same donor, the statement must include the amount of the donation or its value if the donation was something other than money, the date when it was accepted by the permitted participant and other information about the donor, which, although dependent on the status of the donor, is in most cases the donor's name and address.
205. The total value of all the other donations which are under £7,500 should also be provided in the statement. Where someone who has an anonymous entry on the electoral register has made a donation, the statement should also include a copy of the evidence that the permitted participant has seen of the anonymous entry.
206. Where a donation has been received by a permitted participant from an impermissible donor in accordance with the rules for such donations in paragraph 34(1)(a), paragraph

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41 requires that the statement should record the name and address of the donor, the amount of the donation or its value if the donation was something other than money, the date the donation was received and the date it was sent back to the donor or the person acting on the donor's behalf in accordance with paragraph 35(3)(a). Where a donation has been received by a permitted participant from an unidentifiable donor in accordance with the rules for such donations in paragraph 34(1)(b), the statement should record the name and address of the donor, the amount of the donation or its value if the donation was something other than money, the date the donation was received and the date it was dealt with in accordance with paragraph 35 (3)(b).

207. [Paragraph 42](#) requires that reports are prepared by responsible persons for permitted participants during the referendum period which include details of donations received of more than £7,500 that are to be used for the purpose of meeting referendum expenses incurred by the permitted participant during the referendum period. Reports must be prepared in respect of the period ending with the 28th day of the referendum period, including the time before the referendum period, the two succeeding periods of 4-weeks, and the period from the end of the second of these 4-week periods until the end of the seventh day before the report is due to the Electoral Commission. If no donations of more than £7,500 were received, this information must also be included in the report. The reports must be delivered to the Electoral Commission within 7 days at the end of each 4-week period, or, in the case of the final 4-week period, by the end of the fourth day before the referendum. It is an offence to fail to make such a report, or if the report does not comply with the requirements of paragraph 42. Paragraph 43 requires each of these reports to be accompanied by a declaration, signed by the responsible person, confirming that the report is complete. A false declaration, or a failure to make one by a responsible person, is also an offence.
208. [Paragraph 44](#) requires the Electoral Commission to make pre-poll donation reports publicly available as soon as reasonably practicable.