

SCOTTISH INDEPENDENCE REFERENDUM ACT 2013

EXPLANATORY NOTES

COMMENTARY

Procedures to be followed at polling stations

104. Rule 13 further provides that information to help voters with the voting process is to be displayed inside and outside the polling station and in every polling booth. To help voters who have a visual impairment, an enlarged sample copy of the ballot papers is to be made available, along with a device for enabling voters who are blind or partially sighted to vote without any assistance. The counting officer also has a power to display an enlarged copy of the ballot papers, marked as a specimen copy, translated into other languages as they deem appropriate for that area.
105. Rule 14 allows referendum agents to appoint polling agents or counting agents to attend the poll or the count. Referendum agents must give the counting officer notice of the appointments by the 5th day before the referendum. The number of counting agents allowed to attend the count may be limited by the counting officer, provided that each referendum agent is permitted an equal number, and that number is not less than the number of clerks employed divided by the number of referendum agents. A referendum agent may also undertake the duties of a counting or polling agent under this section. If an agent appointed under this section fails to attend to witness the proceedings, this does not invalidate the process so long as it is otherwise conducted properly.
106. Rule 15 lists the people who are allowed to be admitted to a polling station. The presiding officer of the polling station has overall control on how many voters and any children they may have with them may be admitted to the polling station at any one time. Each permitted participant in the referendum cannot have more than one polling agent representing them in the polling station at any time.
107. The counting officer's staff and police constables on duty at a polling station are allowed to vote at a polling station other than the one they were allotted provided they have a certificate to do so.
108. Under the provisions of rule 16, counting officers must ensure that everyone at a polling station, other than voters and those accompanying them, and police constables, has been given a copy of the information in sub-paragraphs (1), (3), (5), (8), (9) and (10) of paragraph 7 of schedule 7 to the Act. These sub-paragraphs all relate to the need to ensure that each person's vote in the referendum remains secret. Before the poll closes, they are not to discuss or reveal the name or electoral registration number of anyone who has or has not requested a ballot paper. The official mark on every ballot paper (under the provisions of schedule 3, rule 6) must not be discussed either (sub-paragraph (3) of paragraph 7 of schedule 7). Nor should they (under sub-paragraph (5)):
 - make any attempt to interfere with a voter when recording their vote

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which received Royal Assent on 17 December 2013*

- make any attempt in the polling station to find out how the voter intends to vote or has voted
 - discuss with anyone how a voter intends to vote or has voted
 - discuss the ballot paper number on the back of a voter's ballot paper
 - cause a voter to display a marked ballot paper which might reveal how they have voted or intend to vote in the referendum.
109. If they are required to help a voter with disabilities to vote in the referendum, they should not reveal to anyone how the person has voted or intends to vote, or the unique identifying number on the back of the ballot paper (sub-paragraph (8)).
110. The final piece of information, contained in sub-paragraphs (9) and (10), that counting officers are required to give to everyone at the polling station, is that if they fail to adhere to these requirements they commit an offence. The penalty for the offence is a maximum of 12 months imprisonment or a fine up to level 5 on the standard scale.
111. Similar provision is made in relation to those attending the counting of votes. The counting officer must give them notice of sub-paragraph (4) of paragraph 7 of schedule 7, which requires them to maintain secrecy and, in particular, not to attempt to find out the unique identifying number or to communicate any information obtained at the count about how any voter has voted.
112. Rule 17 imposes a duty on the presiding officer to keep order at the polling station and a power to remove immediately anyone who does anything to stop the polling station from operating effectively; such a person can be removed either by the presiding officer or a police constable and may not enter the polling station again that day, other than to vote. If they are charged with an offence they may be taken into custody without a warrant. The presiding officer cannot remove someone if it would prevent a voter from voting.
113. Rule 18 sets out the procedures for dealing with the ballot boxes during the poll. Before the poll opens, the presiding officer must demonstrate to anyone present that the ballot boxes are empty and then they must place the presiding officer's seal on the box in such a way that if the box is opened, the seal would be broken. This verifies to everyone that the box has remained closed and not been tampered with by anyone during the poll. The box must be visible to the presiding officer at all times during the poll for the same reason and it must remain sealed until after the poll closes and it is delivered to the counting officer for the count of the votes.
114. Rule 19 provides the questions that must be put to voters by the presiding officer when they arrive at the polling station to vote, if a referendum agent or polling agent requires it or the presiding officer considers it appropriate to do so. There are different questions for voters applying to vote in person and those applying to vote as proxy. Only the questions set out in this paragraph of schedule 3 may be asked about a voter's eligibility to vote. The person's answers to the questions help the presiding officer to determine whether the voter is eligible to vote and whether they should be given a ballot paper to vote in the referendum.
115. Rule 20 makes provision for circumstances where someone declares that the voter is not who they claim to be or the voter is arrested on suspicion of committing or being about to commit an offence of personation. These situations are not to be treated as reasons to prevent the voter from voting.
116. Under the provisions of rule 21, provided an eligible voter has answered the questions put to them under rule 19 satisfactorily, the voter must be given a ballot paper. Before handing a ballot paper to a voter, the staff at the polling station should declare the voter's name and number as it appears in the polling list and then write the voter's number against the number of the ballot paper contained in the corresponding number list. This

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ensures that there is a record of that ballot paper being given to that voter. In the copy of the polling list, the voter's name should be marked to show that they have received a ballot paper and if the voter is voting as proxy, a mark should be put against their name in the list of proxies. If the voter has an anonymous entry in the electoral register, only their number should be called out.

117. Having received a ballot paper the voter is required to go immediately to a polling booth to vote, cast their vote, show the ballot paper number on their ballot paper to the presiding officer and then, in the presence of the presiding officer, put their ballot paper in the ballot box provided. They must then leave the polling station. Where a voter arrives at the polling station before 10pm, but is still in waiting to vote at 10pm, the presiding officer must allow them to vote after the normal 10pm deadline. The polling station must be closed immediately after the last such voter has voted.
118. If a voter asks for help to cast their vote because of an inability to read or because of a disability such as blindness, rule 22 places a duty on the presiding officer, in the presence of any polling agents, to ensure that their vote is cast as they wish to vote and their ballot paper is placed in the ballot box. The voter's name and number from the polling list is to be marked in a 'marked votes list' along with the reason for the entry in that list.
119. Rule 23 covers other circumstances under which a voter who is unable to read, is blind or has a physical disability may vote. If the voter asks the presiding officer to vote with the help of a companion, the presiding officer will ask them to explain the reason for needing assistance. The companion must complete a form, prescribed by the CCO, stating that they are the parent, grandparent, brother, sister, spouse, civil partner, child or grandchild of the voter, aged 16 or over, and eligible to vote in the referendum. The presiding officer cannot charge a fee for the declaration, and must sign and keep it.
120. If the presiding officer is satisfied that the voter needs assistance and that the companion is eligible to fulfil the role, the request must be granted. If an application has been granted, the voter's name and number from the polling list and the companion's name and address must be marked in an 'assisted voters list'. If someone is voting by proxy in this way, the number to be entered is the voter's number. If the voter being assisted by the companion has an anonymous entry in the electoral register, only the voter's number is to be entered in the assisted voters list.
121. Rule 24 sets out four situations which may occur where there is doubt that the person is eligible to vote in the referendum. These situations, set out in paragraphs (2) to (5) are where:
 - someone claiming to be a voter (but not named on the postal voter or proxy voter lists) or claiming to be a proxy voter (but not a postal proxy voter) asks for a ballot paper after someone has already voted as that person either in person or as a proxy voter
 - someone asking for a ballot paper claims to be a voter on the polling list, is named in the postal voters list and claims that either they have not applied to vote by post in the referendum or that they are not an existing postal voter (under schedule 2, paragraph 2(2))
 - someone asking for a ballot paper claims to be a proxy voter in the list of proxies, is named in the proxy postal voters list and claims that either they have not applied to vote by post as proxy in the referendum or that they are not an existing postal proxy voter in local government or Scottish Parliament elections (under schedule 2, paragraph 6(4))
 - someone claims after the last time for replacement postal ballot papers, but before the close of the poll, that they have lost or never received a postal ballot paper and they claim that they are named on the polling list and the postal voters list or that they are a proxy voter in the list of proxies and named in the postal proxy voters list.

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122. In all four of the situations described above the person would be allowed to complete what is known as a tendered ballot paper, provided they answered the questions set out in rule 19 to the satisfaction of the presiding officer.
123. In these circumstances, the person will receive a ballot paper of a colour prescribed by the CCO that is different to the colour of the normal ballot paper used in the referendum. Once they have marked their vote, the 'tendered ballot paper' is given to the presiding officer who will write the voter's name and voter number on the ballot paper. The ballot paper is not placed in the ballot box, but is instead placed in a separate packet and kept to one side. Such votes are not counted towards the declared result of the referendum. The voter's name and voter number is then entered on a list known as the 'tendered votes list' (paragraph (8)). If someone is voting as proxy for a voter in these circumstances, the voter's number is entered on the tendered votes list (paragraph (9)). Where someone has an anonymous entry in the electoral register, the same procedure is to be followed, except that only the voter's number would be entered in the tendered votes list (paragraph (10)).
124. Rule 25 deals with ballot papers that have been inadvertently spoiled. If the voter makes an error or the ballot paper cannot be used for some other reason, the original ballot paper must be returned to the presiding officer of the polling station and immediately cancelled and a new ballot paper issued.
125. Under Rule 26, the presiding officer must keep a list, known as the 'polling day alterations list', of people who receive ballot papers because they have had their entry in the electoral register altered on the day of the poll itself (done by issuing a late notice of alteration under the Representation of the People Act 1983, including that Act as applied by the Scottish Independence Referendum (Franchise) Act 2013 in relation to the register of young voters) and are then eligible to vote at the referendum.
126. Rule 27 provides a procedure which the presiding officer is to follow if proceedings at the polling station are interrupted by riot or open violence. The presiding officer will close the polling station until the next day and let the counting officer know immediately what has happened. The poll will be adjourned and the polling station will observe the same opening hours the following day.
127. Under the provisions of Rule 28, as soon as possible after the poll closes, the presiding officer must seal each ballot box using the presiding officer's own seal, so that no more votes can be cast. Separate packets are to be sealed containing:
- unused and spoiled ballot papers
 - tendered ballot papers
 - marked copies of the polling list, marked copy notices and the list of proxies (all in one packet)
 - certificates from police constables or the counting officer's staff who voted at a polling station instead of the one they were allotted
 - the completed corresponding number list. This is to be in a different packet from the one containing the marked copies of the polling list (as is the list of certificates from police constables and counting officer staff)
 - the tendered votes list and other specified lists
 - any postal ballot papers or postal voting statements returned to the polling station.
128. The presiding officer must include a statement with the packets, known as the 'ballot paper account' which provides a count of the ballot papers the presiding officer was given, the number issued and not otherwise accounted for, unused ballot papers, spoiled ballot papers and the tendered ballot papers.

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129. The sealed ballot boxes and the packets are then to be delivered to the counting officer. If the presiding officer does not deliver the ballot papers in person, the counting officer must approve any alternative delivery arrangements.
130. Rule 29 places a duty on counting officers to make arrangements for the count of votes as soon as possible after the close of the poll and to give notice in writing to the Chief Counting Officer, each referendum agent appointed for the area, and any counting agents appointed to attend the count stating where and when the count will take place. There is also a duty on the counting officer to ensure that the ballot boxes and packets are kept secure from the time he or she assumes responsibility for them until the count gets underway.
131. Paragraph (5) sets out the categories of people who are allowed to attend the count. As with polling and counting agents, counting officers may limit the number of permitted participants' agents ('counting agents') at the polling stations or the count of votes, but they cannot favour one permitted participant over another – they would have to ensure that each permitted participant could have the same number of counting agents present.
132. Before the count of votes for each referendum outcome can start, the counting officer must check the number of votes to be counted from each ballot box against the number of ballot papers delivered and recorded on the ballot paper account by the presiding officer of each polling station. Rule 30 sets out the procedure for this. Each ballot box must be opened with any counting agents present, and the ballot papers it contains counted and recorded (paragraph (1)). The number of ballot papers is to be checked against the ballot paper account supplied by the presiding officer for that box. The ballot paper account is then verified, again with counting agents present, by comparing its totals with the number of ballot papers recorded, the unused and spoilt ballot papers and the tendered votes list. The packets containing the unused and spoilt ballot papers and the tendered votes list are then resealed. The counting officer must then prepare a statement, known as the 'verification statement' that records the totals of these counts against the ballot paper accounts provided by presiding officers of the polling stations (paragraph (2)).
133. The number of postal ballot papers is also counted and recorded. Postal ballot papers cannot be included in the count unless they have been delivered by hand to a polling station in the right local authority area or posted to the counting officer before the close of the poll. A postal voting statement that is signed (unless no signature is needed due to a disability or inability to read or write) and includes the voter or proxy's date of birth must be included with the postal ballot paper (paragraph (4) of rule 30).
134. Under paragraph (5), before the count of votes can start, postal ballot papers must be mixed with the ballot papers from at least one ballot box. Ballot papers in a ballot box must be mixed with the ballot papers of at least one other box. (This prevents anyone from being able to tell from observing the count how voters in a particular locality have voted in the referendum.) Only then can the count of votes for each outcome in the referendum get underway.
135. No tendered ballot paper is to be counted. No postal vote can be included in the count if the counting officer, having verified the personal identifiers (the voter or proxy's signature and date of birth), is not satisfied that the postal voting statement has been completed correctly.
136. The counting officer must make every effort to ensure that no one can identify the voter that cast a particular vote in the referendum.
137. Rule 29(1) provides that the counting officer must arrange to count the votes as soon as practicable after the close of the poll, which should usually mean that counting begins before midnight on polling day. The counting officer is responsible for the security of the ballot papers during the period between close of the poll and the start of the count. The count should normally proceed to a conclusion, but rule 30(9) allows the counting

officer to exclude counting between 7 pm on any day after the day of the poll and 9am the following morning.

138. Rule 31 deals with ballot papers that are rejected from the count because they do not bear the official mark, they provide a vote both for and against the referendum question, they include anything that identifies the voter (other than the printed number on the back of the ballot paper) or they are unmarked or the person's voting intention is unclear. The counting officer must mark these papers rejected (and, if any counting agent objects to the counting officer's decision, mark them 'rejection objected to'), and prepare a statement that records the numbers of ballot papers rejected in these ways.
139. Paragraph (3) gives the counting officer the power to decide whether a vote can be counted if the voter's cross is not where it should be on the ballot paper, they marked the paper without using a cross or if they marked the paper more than once. So long as the voter's intention is clear, the counting officer may decide to include the ballot paper in the count of votes. However the vote cannot be counted if it is possible to identify the voter from the ballot paper.
140. Rule 32 gives the counting officer a duty to count the votes for and against the referendum question.
141. Rule 33 provides that any decision of the counting officer on a question that arises in respect of a ballot paper is final, subject to any judicial review in accordance with section 34.
142. Rule 34 gives both the counting officer and the CCO the power to have votes re-counted and re-counted again if they consider it appropriate to do so.
143. Once the count of votes in their area has been concluded to the counting officer's satisfaction, under rule 35, the counting officer has a duty to immediately provide the CCO with the total number of votes counted, the number of votes cast for and against the referendum question, the details of the verification statements that relate to the ballot paper account and the details of the rejected ballot papers statement. Once authorised by the CCO, the counting officer must then announce the local result.
144. Once the CCO has received the local information for every area and is satisfied that no re-counts are required, he or she must declare the result of the referendum for the whole of Scotland which includes the number of votes counted, and the number of votes cast for and against the referendum question and the number of rejected ballot papers.
145. Once the CCO has confirmed that no recount is required, each counting officer is required as soon as possible under rule 36 to seal separate packets containing counted ballot papers and rejected ballot papers. Counting officers are not to open the packets containing tendered ballot papers, the corresponding number lists, the certificates presented by police constables and those working at polling stations and the marked copies of the polling lists and any marked copies of the notices of late alterations to the register of electors. Once the papers have been sealed, rule 37 requires the counting officer to add a label to each packet that describes their contents and includes the date of the referendum, and to send them to the proper officer of the local authority for which the ballot papers were counted. The proper officer has responsibility for custody of these kinds of documents under existing local government electoral legislation. The package of papers to be sent must include packets of the following:
 - the packets of ballot papers
 - the ballot paper accounts from each polling station, the rejected ballot paper statement and the verification statements
 - the tendered votes list, the assisted votes list, the marked votes list, the polling day alterations lists and the companion declarations
 - the completed corresponding number lists

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- the certificates presented by police constables and those working at polling stations under rule 15
 - the marked copies of the polling lists and marked copies of the notices of late alteration of the register.
146. The proper officer of the local authority is then required under rule 38 to keep all of the papers for one year after which they must be destroyed unless they are required to keep them for longer by order of the Court of Session or a sheriff principal.
147. With the exception of the ballot papers, the corresponding number lists and the certificates submitted by police constables and those working at polling stations, all the papers must be made available for public inspection as the officer of the local authority sees fit. Anyone who wishes to inspect the papers must not copy them or record any information from them; to do so would be an offence. They are, however, allowed to take handwritten notes about them.
148. Under rule 39, the CCO must keep any certifications made by the CCO or by counting officers under section 7 regarding the results of the referendum. These are to be made available for public inspection as determined by the CCO.
149. If someone is being prosecuted for an offence relating to any ballot papers, under rule 40 the Court of Session or a sheriff principal may order inspection of any rejected ballot papers, corresponding number list, employment certificate or ballot paper that has been counted. The Court or sheriff principal can place conditions on who, when, where and how the inspection of these papers may take place. The way in which a voter voted should not be revealed until it is proved that the vote was given and a court has declared the vote to be invalid. Any appeal against a sheriff principal's order would be heard in the Court of Session.
150. When the officer of the local authority produces a document in relation to the case, it is to be taken as conclusive evidence that the document relates to the referendum. Anything written on the packet in which the document is kept is to be taken as evidence that the ballot papers in that packet are what is written on the packet (unless there is evidence to the contrary). When the officer of the local authority produces a ballot paper or corresponding number list in relation to a case, these documents are to be taken as evidence that the voter who voted using the ballot paper was the same person whose voter number appears in the corresponding number list against the number of that ballot paper (again unless there is evidence to the contrary).
151. Other than for the purposes of a prosecution relating to an offence, no one is allowed to inspect any counted or rejected ballot papers or open any sealed packet containing the corresponding number list or the employment certificates provided by police constable or people working at polling stations on the day of the referendum.
152. Rule 41 allows the CCO to prescribe the forms necessary for the referendum.

Schedule 4: Campaign rules

Part 1: Interpretation

153. **Section 11** introduces schedule 4 to the Act which provides for the rules which govern campaigning at the referendum. Paragraph 1 contains definitions of words and phrases used in the schedule.

Part 2: Permitted participants and designated organisations

154. **Paragraph 2** of schedule 4 provides that if an individual or an organisation (including a political party) wishes to spend more than £10,000 (a limit set by schedule 4, paragraph 18) on campaigning, they will have to declare to the Electoral Commission that they

wish to be a ‘permitted participant’ and identify the outcome they will campaign for at the referendum. Paragraph 2 also sets out the criteria that individuals and bodies must fulfil to be eligible to become permitted participants.

155. Paragraph 3 sets out the requirements for the declarations. Declarations made by a registered political party must be signed by the responsible officers of the party (usually the treasurer) or in the case of a minor party (one that contests only one or more parish or community election in England and Wales) it must include the name of the person who will be responsible for the party’s compliance with the referendum campaign rules.
156. Declarations made by individuals wishing to become permitted participants must be signed by the individual and give their full name and home address.
157. Declarations made by other organisations, known as ‘qualifying bodies’ must be signed by the secretary or similar office bearer of the body and must include the name and address of the organisation, including, in the case of a company, its registered number.
158. Paragraph 4 prohibits a responsible person for a permitted participant from making a declaration under paragraph 2 by or on behalf of another permitted participant. If an individual is a permitted participant and also treasurer of a registered party other than a minor party, he or she ceases to be a permitted participant if the party registers as a permitted participant. A declaration by a qualifying body or minor party will be considered not to satisfy the requirements of paragraph 3(1)(b) or 3(3)(a)(ii) to notify who is the responsible person for a permitted participant if the intended responsible person is already a responsible person for another permitted participant or a permitted participant in his or her own right.
159. Paragraph 5 places a duty on the Electoral Commission to create and maintain a register of declarations made by registered parties, individuals and other organisations who wish to become permitted participants in the referendum. The register must not include the home address of an individual who has made a declaration.
160. Paragraphs 6 and 7 provide that a permitted participant may apply to the Electoral Commission to be the principal campaign organisation representing one of the outcomes of the referendum. These permitted participants are called ‘designated organisations’ and have a higher campaign spending limit (full limits are set out in paragraph 19). Paragraph 7 specifies the form that applications must take and sets out the timetable for applications and for the Electoral Commission’s decision. It makes clear that even where an application has been made only in respect of one outcome, the Electoral Commission should make the designation provided they are satisfied that the applicant is genuinely representative of those campaigning for that outcome. The Commission may designate an organisation in relation to one or both outcomes.
161. Under paragraph 8, designated organisations are entitled to use school rooms or meeting rooms in publicly maintained buildings for public campaign meetings during the four-week period before the referendum is held.
162. Paragraph 9 requires the designated organisation to contact the education authority in advance if they wish to use a school room and entitles them to inspect a list of the rooms that are available for them to use.

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.

Part 4: Publications

183. Paragraph 26 provides that, for the 28 day period ending with the date of the referendum, the Scottish Ministers and certain public authorities in Scotland cannot publish any material providing general information about the referendum, dealing with issues raised by the question to be voted on in the referendum, putting any arguments for or against a particular answer to the question to be voted on, or which is designed to encourage voting in the referendum. However, this rule does not apply to information made available following a specific request; specified material published by or under the auspices of the Scottish Parliament Corporate Body; any information from the Electoral Commission, a designated organisation or the Chief Counting Officer or any other counting officer; or to any published information about how the poll is to be held.
184. Under paragraph 27, printed material associated with the referendum cannot be published unless it meets the following requirements:
- If the material is contained on a single side of a printed page, then the name and address of the printer, the promoter and the person on behalf of whom the material is being published must be on the face of the document
 - If the printed material is not on a single sided page, then those names and addresses must appear on the first or last page of the document
 - If the printed material is a newspaper or periodical advertisement, then the name and address of the printer of the newspaper or periodical must appear on its first or last page and the names and address of both the promoter and the person on behalf of whom the material is being printed must be in the advertisement.
185. The paragraph also prevents any non-printed material associated with the referendum, such as material on the internet, from being published unless it includes the name and address of the person on behalf of whom the material is being published. There is an exception where it is not practical to comply with these requirements; an example might be very small advertisements.
186. If any printed material is published without meeting the requirements, then the promoter of the material, the printer, and any person who publishes it are all guilty of an offence. If any non-printed material fails to meet the requirements, then the promoter of the material and publisher are guilty of an offence. In both cases, it is a defence to show that circumstances beyond the person's control caused the offence to be committed and that they took all reasonable steps to avoid committing an offence.

187. [Paragraph 28](#) applies the Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 in relation to the display on any site of an advertisement relating specifically to the referendum as they have effect in relation to the display of an advertisement relating specifically to parliamentary election.

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 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

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).

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 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.

Part 6: Control of loans and credit

209. The rules set out in Part 6 of schedule 4 provide for the control of ‘regulated transactions’, i.e. loan or credit transactions entered into by permitted participants who are not registered parties. Paragraph 45 sets out the operation of this Part of the schedule. Paragraph 46 defines a regulated transaction as an agreement by someone to lend money or provide credit to a permitted participant, where the permitted participant intends to use all or part of the money or credit to meet referendum expenses. An agreement of this type may also be supplemented by a ‘connected transaction’, where a third party backs up the permitted participant by offering security to the lender. In this case, the connected transaction is also considered to be a regulated transaction. Agreements where the value is less than £500, and payments which are already covered in statements to the Electoral Commission under paragraph 39, do not count as regulated transactions.
210. [Paragraph 47](#) clarifies the value of regulated transactions. Where the transaction is a loan agreement, the value is the full amount of the money to be lent. Where the transaction is a credit agreement, the value is the maximum credit limit. Both of these exclude any interest provisions in the agreement. Where the transaction is arranged on the basis of a security, the value is the liability under the security.
211. [Paragraph 48](#) prohibits permitted participants from entering into regulated transactions with anyone who is not a permissible donor as defined in paragraph 1(2) of schedule 4.
212. Under paragraph 49, any transaction between a permitted participant and an impermissible donor is void. Any money received under the transaction must be repaid, along with any interest due. If the money is not repaid, the Electoral Commission may apply to the courts to make an order to return the money or discharge any security, with the effect that both parties return to the position they would have been in if the transaction had never existed.
213. [Paragraph 50](#) provides that where a regulated transaction is void due to impermissibility of the donor as under paragraph 49, any connected transaction as described in paragraph 46(3)(b) is also void. If the lender is unable to recover the full amount owed by the permitted participant, they may recover such sums from the third party.
214. [Paragraph 51](#) confirms that any attempt by an authorised participant to transfer their interest in a regulated transaction to an unauthorised participant is not valid.
215. [Paragraph 52](#) provides the offences related to regulated transactions, including:
- it is an offence to enter into a regulated transaction in the knowledge (or where it ought reasonably to have been known) that the other party is not an authorised participant
 - where a permitted participant has entered into a transaction with an unauthorised participant, but could not reasonably have been expected to know, it is still an

offence not to take reasonable steps to repay the money after the impermissibility of the other party becomes apparent

- it is an offence to benefit from or be in line to benefit from a connected transaction which involves an unauthorised participant where their impermissibility was known or could reasonably expect to have been known. It is also an offence, where the impermissibility was not known, to fail to take all reasonable steps to repay the benefits once the impermissibility becomes apparent
 - it is an offence to knowingly enter into, or knowingly facilitate any arrangement which is likely to result in the permitted participant being involved in a regulated transaction with an unauthorised participant.
216. The offences include situations where the other party was originally an authorised participant but later ceased to be one. It is a defence for a person who is the responsible person for the permitted participant to show that they took all reasonable steps to prevent the permitted participant entering into the transaction.
217. [Paragraph 53](#) details the penalties associated with the offences listed above, which, depending on the offence, are either a fine or imprisonment for a term of up to 12 months.
218. [Paragraph 54](#) sets out the requirement for permitted participants to include regulated transactions in the statements prepared for the Electoral Commission under paragraph 21. The transaction need only be included in the return where the value exceeds £7,500, or where the aggregate value of the transaction and any other relevant benefits exceeds £7,500.
219. [Paragraphs 55 to 57](#) require the statement to include details of any authorised or unauthorised participants, and details of the transaction in line with Schedule 6A to the Political Parties, Elections and Referendums Act 2000.
220. Under paragraph 58, where there is any change to the agreement, such as different participants, the information from before and after the change must be included in the statement, as well as the date the change was made. Where the loan has been repaid in full or the debt released this information must be included.
221. [Paragraph 59](#) requires that the statement also includes the total value of regulated transactions that are not recordable.
222. [Paragraph 60](#) requires that reports must be prepared by the responsible person in relation to permitted participants detailing regulated transactions which have a value exceeding £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 same periods as required in paragraph 42 for donations. If no such transactions were entered into, the report must state this. Failure to make a report and failure to comply with the requirements of paragraph 60 are offences. Paragraph 63 deals with a situation where the courts, on the application of the Commission, are convinced that a failure to comply with any requirement under this part of the schedule was caused by a person attempting to conceal the existence of, or true value of, the transaction. In this case, the courts may make an order which will return the parties to the same position as if the transaction had never been made. Paragraph 61 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.
223. [Paragraph 62](#) requires the Electoral Commission to make pre-poll transaction reports publicly available as soon as reasonably practicable.
224. [Paragraph 64](#) makes provision in relation to the court proceedings before the sheriff under paragraphs 49 or 63, confirming that they will take place as civil proceedings,

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

and that orders of the sheriff are appealable to the Court of Session. Rules of court may make provision with respect to court applications or appeals.

225. [Paragraph 65](#) contains definitions of words and phrases used in this schedule.