
*Changes to legislation: There are currently no known outstanding effects for the
Scottish Independence Referendum Act 2013, PART 2. (See end of Document for details)*

SCHEDULE 6 CAMPAIGN RULES: CIVIL SANCTIONS

PART 2

DISCRETIONARY REQUIREMENTS

Imposition of discretionary requirements

- 6 (1) The Electoral Commission may impose one or more discretionary requirements on a person if satisfied beyond reasonable doubt that the person has committed a campaign offence listed in Part 7.
- (2) The Commission may impose one or more discretionary requirements on a permitted participant if satisfied beyond reasonable doubt that the responsible person—
- (a) has committed a campaign offence listed in Part 7, or
 - (b) has failed to comply with a requirement imposed by paragraph 23(2), (3) or (4) of schedule 4.
- (3) For the purposes of this schedule a “discretionary requirement” is—
- (a) a requirement to pay a monetary penalty to the Commission of such amount as the Commission may determine up to a maximum of £10,000, (but see also sub-paragraph (6)),
 - (b) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the offence or failure to comply does not continue or recur, or
 - (c) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence or failure to comply had not happened.
- (4) Discretionary requirements may not be imposed on the same person on more than one occasion in relation to the same act or omission.
- (5) In this schedule—
- “variable monetary penalty” means such a requirement as is referred to in sub-paragraph (3)(a),
 - “non-monetary discretionary requirement” means such a requirement as is referred to in sub-paragraph (3)(b) or (c).
- (6) In the case of a variable monetary penalty imposed under sub-paragraph (1) or (2)
- (a), where the offence in question is—
 - (a) triable summarily only, and
 - (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment), - the amount of the penalty may not exceed the maximum amount of that fine.

Representations and appeals etc.

- 7 (1) Where the Electoral Commission propose to impose a discretionary requirement on a person, they must serve on the person a notice of what is proposed.

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- (2) A person served with a notice under sub-paragraph (1) may make written representations and objections to the Commission in relation to the proposed imposition of the discretionary requirement.
- (3) After the end of the period for making such representations and objections (see paragraph 8(2)) the Commission must decide whether—
 - (a) to impose the discretionary requirement, with or without modifications, or
 - (b) to impose any other discretionary requirement that the Commission have power to impose under paragraph 6.
- (4) The Commission may not impose a discretionary requirement on a person if, taking into account (in particular) any matter raised by the person, the Commission are no longer satisfied as mentioned in paragraph 6(1) or (2) (as applicable).
- (5) Where the Commission decide to impose a discretionary requirement on a person, they must serve on the person a notice specifying what the requirement is.
- (6) A person on whom a discretionary requirement is imposed may appeal against the decision to impose the requirement on the ground—
 - (a) that the decision was based on an error of fact,
 - (b) that the decision was wrong in law,
 - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,
 - (d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable, or
 - (e) that the decision is unreasonable for any other reason.
- (7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (5) is received.
- (8) Where an appeal under sub-paragraph (6) is made, the discretionary requirement is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Information to be included in notices under paragraph 7

- 8 (1) A notice under paragraph 7(1) must include information as to—
 - (a) the grounds for the proposal to impose the discretionary requirement,
 - (b) the right to make representations and objections,
 - (c) the circumstances in which the Commission may not impose the discretionary requirement.
- (2) Such a notice must also specify the period within which representations and objections may be made.

That period may not be less than 28 days beginning with the day on which the notice is received.
- (3) A notice under paragraph 7(5) must include information as to—
 - (a) the grounds for imposing the discretionary requirement,
 - (b) where the discretionary requirement is a variable monetary penalty—
 - (i) how payment may be made,

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- (ii) the period within which payment must be made, and
- (iii) any early payment discounts or late payment penalties,
- (c) rights of appeal,
- (d) the consequences of non-compliance.

Discretionary requirements: criminal conviction

- 9 (1) A person on whom a discretionary requirement is imposed may not at any time be convicted of a campaign offence in respect of the act or omission giving rise to the requirement.
- (2) Sub-paragraph (1) does not apply where—
- (a) a non-monetary discretionary requirement is imposed on the person,
 - (b) no variable monetary penalty is imposed on the person, and
 - (c) the person fails to comply with the non-monetary discretionary requirement.

Compliance and restoration certificates

- 10 (1) Where, after the service of a notice under paragraph 7(5) imposing a non-monetary discretionary requirement on a person, the Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect.
- (2) A notice served under paragraph 7(5) ceases to have effect on the issue of a certificate relating to that notice.
- (3) A person on whom a notice under paragraph 7(5) has been served may at any time apply for a certificate and the Commission must make a decision whether to issue a certificate within the period of 28 days beginning with the day on which they receive such an application.
- (4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the notice has been complied with.
- (5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—
- (a) the grounds for the decision not to issue a certificate, and
 - (b) rights of appeal.
- (6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.
- (7) Where the Commission revoke a certificate, the notice has effect as if the certificate had not been issued.
- (8) A person who has applied for a certificate under sub-paragraph (3) may appeal to a sheriff against a decision not to issue a certificate under this paragraph on the ground that the decision was—
- (a) based on an error of fact,
 - (b) wrong in law, or
 - (c) unfair or unreasonable.

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- (9) An appeal must be made within the period of 28 days beginning with the day on which notification of the decision is received.

Failure to comply with discretionary requirements

- 11 (1) The Electoral Commission may by notice impose a monetary penalty (a “non-compliance penalty”) on a person for failing to comply with a non-monetary discretionary requirement imposed on the person.
- (2) The amount of a non-compliance penalty is to be determined by the Commission, but must not exceed £10,000.
- (3) A non-compliance penalty must be paid to the Commission.
- (4) A notice under sub-paragraph (1) must include information as to—
- (a) the grounds for imposing the non-compliance penalty,
 - (b) the amount of the penalty,
 - (c) how payment may be made,
 - (d) the period within which payment must be made, which must be not less than 28 days beginning with the day on which the notice imposing the penalty is received,
 - (e) rights of appeal, and
 - (f) the consequences of failure to make payment within the period specified.
- (5) If, before the end of the period specified for payment of a non-compliance penalty—
- (a) the person on whom the penalty was imposed has taken the steps specified in the notice imposing the non-monetary discretionary requirement to which the penalty relates, and
 - (b) the Commission have issued a certificate under paragraph 10(1) in respect of that notice,
- the Commission may waive, or reduce the amount of, the penalty.
- (6) A person served with a notice imposing a non-compliance penalty may appeal against the notice on the ground that the decision to serve the notice—
- (a) was based on an error of fact,
 - (b) was wrong in law, or
 - (c) was unfair or unreasonable for any reason (for example because the amount is unreasonable).
- (7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (1) is received.
- (8) Where an appeal under sub-paragraph (6) is made, the non-compliance penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

Late payment

- 12 (1) A variable monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 7(5) is received.
- (2) If the penalty is not paid within that period the amount payable is increased by 25%.

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- (3) If the penalty (as increased by sub-paragraph (2)) is not paid within 56 days of the day on which the notice under paragraph 7(5) is received, the amount payable is the amount of the penalty originally imposed increased by 50%.
- (4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or varied it, or because the appeal was withdrawn, is payable within 28 days of the day of determination or withdrawal of the appeal, and if it is not paid within that period the amount payable is increased by 25%.
- (5) If the penalty (as increased by sub-paragraph (4)) is not paid within 56 days of the day of determination or withdrawal of the appeal the amount payable is the amount of the penalty originally imposed increased by 50%.

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