

SCHEDULES

SCHEDULE 5

Article 30(4)

Control of donations to candidates

PART 1

Introductory

Operation and interpretation of Schedule

1.—(1) This Schedule has effect for controlling donations to candidates at a PCC election.

(2) The following provisions have effect for the purposes of this Schedule.

(3) “Relevant donation”, in relation to a candidate at a PCC election, means a donation to the candidate or the candidate’s election agent for the purpose of meeting election expenses incurred by or on behalf of the candidate.

(4) In sub-paragraph (3) the reference to a donation for the purpose of meeting election expenses incurred by or on behalf of a candidate includes a reference to a donation for the purpose of securing that any such expenses are not so incurred; and a donation is to be taken as being a donation for either of those purposes if, having regard to all the circumstances, it must be reasonably assumed to be such a donation.

(5) “Donation” is to be construed in accordance with paragraphs 2 to 4.

(6) In relation to a donation received by a candidate at a PCC election, references to a permissible donor falling within section 54(2) of the 2000 Act are to be read as if section 54(2) did not include a party registered in the Northern Ireland register maintained by the Commission under Part 2 of that Act.

Donations: general rules

2.—(1) “Donation”, in relation to a candidate at a PCC election, means (subject to paragraph 4)—

- (a) any gift to the candidate or the candidate’s election agent of money or other property;
- (b) any sponsorship provided in relation to the candidate (as defined by paragraph 3);
- (c) any money spent (otherwise than by the candidate, the candidate’s election agent or any sub-agent) in paying any election expenses incurred by or on behalf of the candidate;
- (d) any money lent to the candidate or the candidate’s election agent otherwise than on commercial terms;
- (e) the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the candidate (including the services of any person).

(2) Where—

- (a) any money or other property is transferred to a candidate or the candidate’s election agent pursuant to any transaction or arrangement involving the provision by or on behalf of the candidate of any property, services or facilities or other consideration of monetary value, and

- (b) the total value in monetary terms of the consideration so provided by or on behalf of the candidate is less than the value of the money or (as the case may be) the market value of the property transferred,

the transfer of the money or property (subject to sub-paragraph (4)) constitutes a gift to the candidate or (as the case may be) the candidate's election agent for the purposes of sub-paragraph (1)(a).

(3) In determining—

- (a) for the purposes of sub-paragraph (1)(d), whether any money lent to a candidate or the candidate's election agent is so lent otherwise than on commercial terms, or
- (b) for the purposes of sub-paragraph (1)(e), whether any property, services or facilities provided for the use or benefit of a candidate is or are so provided otherwise than on such terms,

regard is to be had to the total value in monetary terms of the consideration provided by or on behalf of the candidate in respect of the loan or the provision of the property, services or facilities.

(4) Where (apart from this sub-paragraph) anything would be a donation both by virtue of sub-paragraph (1)(b) and by virtue of any other provision of this paragraph, sub-paragraph (1)(b) (together with paragraph 3) applies in relation to it to the exclusion of the other provision of this paragraph.

(5) The reference in sub-paragraph (1)(c) to money spent as mentioned in that provision is a reference to money so spent by a person (other than the candidate, the candidate's election agent or any sub-agent) out of the person's own resources (with no right to reimbursement out of the resources of the candidate, the candidate's election agent or any sub-agent); and where, by virtue of sub-paragraph (1)(c), money so spent constitutes a donation to the candidate, the candidate is treated as receiving an equivalent amount on the date on which the money is paid to the creditor in respect of the expenses in question.

(6) In this paragraph—

- (a) any reference to anything being given or transferred to a candidate or the candidate's election agent includes a reference to its being given or transferred either directly or indirectly through any third person;
- (b) "gift" includes a bequest or any other form of testamentary disposition.

Sponsorship

3.—(1) For the purposes of this Schedule, sponsorship is provided in relation to a candidate if—

- (a) any money or other property is transferred to the candidate or to any person for the benefit of the candidate, and
- (b) the purpose (or one of the purposes) of the transfer is (or must, having regard to all the circumstances, reasonably be assumed to be)—
 - (i) to help the candidate with meeting, or to meet, to any extent any defined expenses incurred or to be incurred by or on behalf of the candidate, or
 - (ii) to secure that to any extent any such expenses are not so incurred.

(2) In sub-paragraph (1) "defined expenses" means expenses in connection with—

- (a) any conference, meeting or other event organised by or on behalf of the candidate,
- (b) the preparation, production or dissemination of any publication by or on behalf of the candidate, or
- (c) any study or research organised by or on behalf of the candidate.

(3) The following do not, however, constitute sponsorship by virtue of sub-paragraph (1) —

- (a) the making of any payment in respect of—

- (i) any charge for admission to any conference, meeting or other event, or
 - (ii) the purchase price of, or any other charge for access to, any publication,
- (b) the making of any payment in respect of the inclusion of an advertisement in any publication where the payment is made at the commercial rate payable for the inclusion of such an advertisement in any such publication.
- (4) The Secretary of State may, on the recommendation of the Commission, by order made by statutory instrument amend sub-paragraph (2) or (3).
- (5) Any order under sub-paragraph (4) may not be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (6) For the purposes of section 1 of the Statutory Instruments Act 1946⁽¹⁾ (definition of “Statutory Instrument”), the power to make an order which is conferred by sub-paragraph (4) is to be taken to be conferred by an Act of Parliament.
- (7) In this paragraph “publication” means a publication made available in whatever form and by whatever means (whether or not to the public at large or any section of the public).
Payments etc not to be regarded as donations

4.—(1) None of the following is to be regarded as a donation—

- (a) the provision of any facilities provided in pursuance of any right conferred on a candidate at a PCC election by this Order;
- (b) the provision by an individual of the individual’s own services which are provided voluntarily in the individual’s own time and free of charge;
- (c) any interest accruing to a candidate or the candidate’s election agent in respect of any donation which is dealt with by the candidate or (as the case may be) the candidate’s election agent in accordance with section 56(2)(a) or (b) of the 2000 Act (as applied by paragraph 7).

(2) There is also to be disregarded any donation whose value (determined in accordance with paragraph 5) is not more than £50.

Value of donations

5.—(1) The value of any donation falling within paragraph 2(1)(a) (other than money) is to be taken as being the market value of the property in question.

(2) Where, however, paragraph 2(1)(a) applies by virtue of paragraph 2(2), the value of the donation is to be taken as being the difference between—

- (a) the value of the money, or the market value of the property, in question, and
- (b) the total value in monetary terms of the consideration provided by or on behalf of the candidate or the candidate’s election agent.

(3) The value of any donation falling within paragraph 2(1)(b) is to be taken as being the value of the money, or (as the case may be) the market value of the property, transferred as mentioned in paragraph 3(1); and accordingly any value in monetary terms of any benefit conferred on the person providing the sponsorship in question is to be disregarded.

(4) The value of any donation falling within paragraph 2(1)(d) or (e) is to be taken as being the amount representing the difference between—

- (a) the total value in monetary terms of the consideration that would have had to be provided by or on behalf of the candidate or the candidate’s election agent in respect of the loan or the provision of the property, services or facilities if—

⁽¹⁾ 1946 9&10 Geo.6 (c.36).

- (i) the loan had been made, or
 - (ii) the property, services or facilities had been provided,
on commercial terms, and
 - (b) the total value in monetary terms of the consideration (if any) actually so provided by or on behalf of the candidate or the candidate's election agent.
- (5) Where a donation such as is mentioned in sub-paragraph (4) confers an enduring benefit on the donee over a particular period, the value of the donation—
- (a) is to be determined at the time when it is made, but
 - (b) is to be so determined by reference to the total benefit accruing to the donee over that period.
- (6) In this paragraph “market value” in relation to any property, means the price which might reasonably be expected to be paid for the property on a sale in the open market.

PART 2

Controls on donations

Prohibition on accepting donations from impermissible donors

6.—(1) A relevant donation received by a candidate or the candidate's election agent must not be accepted if—

- (a) the person by whom the donation would be made is not, at the time of its receipt by the candidate or (as the case may be) the candidate's election agent, a permissible donor falling within section 54(2) of the 2000 Act, or
- (b) the candidate or (as the case may be) the candidate's election agent is (whether because the donation is given anonymously or by reason of any deception or concealment or otherwise) unable to ascertain the identity of the person offering the donation.

(2) For the purposes of this Schedule, any relevant donation received by a candidate or the candidate's election agent which is an exempt trust donation is to be regarded as a relevant donation received by the candidate or the candidate's election agent from a permissible donor; and section 162 of the 2000 Act (interpretation: exempt trust donations) applies for the purposes of this Schedule as it applies for the purposes of that Act.

(3) But, for the purposes of this Schedule, any relevant donation received by a candidate or the candidate's election agent from a trustee of any property (in the trustee's capacity as such) which is not—

- (a) an exempt trust donation, or
- (b) a relevant donation transmitted by the trustee to the candidate or the candidate's election agent on behalf of beneficiaries under the trust who are—
 - (i) persons who at the time of its receipt by the candidate or the candidate's election agent are permissible donors falling within section 54(2) of the 2000 Act, or
 - (ii) the members of an unincorporated association which at that time is such a permissible donor,

is to be regarded as a relevant donation received by the candidate or the candidate's election agent from a person who is not such a permissible donor.

(4) Where any person (“the principal donor”) causes an amount (“the principal donation”) to be received by a candidate or the candidate's election agent by way of a relevant donation—

- (a) on behalf of the principal donor and one or more other persons, or
- (b) on behalf of two or more other persons,

then for the purposes of this Part each individual contribution by a person falling within paragraph (a) or (b) of more than £50 is treated as if it were a separate donation received from that person.

(5) In relation to each such separate donation, the principal donor must ensure that, at the time when the principal donation is received by the candidate or the candidate's election agent, the candidate or (as the case may be) the candidate's election agent is given—

- (a) (except in the case of a donation which the principal donor is treated as making) all such details in respect of the person treated as making the donation as are required by virtue of paragraph 11(c), and
- (b) (in any case) all such details in respect of the donation as are required by virtue of paragraph 11(a).

(6) Where—

- (a) any person ("the agent") causes an amount to be received by a candidate or the candidate's election agent by way of a donation on behalf of another person ("the donor"), and
- (b) the amount of the donation is more than £50,

the agent must ensure that, at the time when the donation is received by the candidate or the candidate's election agent, the candidate or (as the case may be) the candidate's election agent is given all such details in respect of the donor as are required by virtue of paragraph 11(c).

(7) A person commits an offence if, without reasonable excuse, the person fails to comply with sub-paragraph (5) or (6).

(8) A person guilty of an offence under sub-paragraph (7) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to a term of imprisonment not exceeding 6 months (or both);
- (b) on conviction on indictment, to a fine or to a term of imprisonment not exceeding one year (or both).

Acceptance or return of donations

7.—(1) Sections 56 to 60 of the 2000 Act apply for the purposes of this Schedule in relation to—

- (a) a relevant donation received by a candidate or the candidate's election agent, and
- (b) the candidate or (as the case may be) the election agent,

as they apply in relation to a donation received by a registered party and the registered party.

(2) In the application of sections 56 to 60 of that Act in accordance with sub-paragraph (1)—

- (a) section 56(1) has effect as if the reference to the particulars relating to a donor which would be required to be included in a donation report by virtue of paragraph 2 of Schedule 6 to that Act (if the donation were a recordable donation within the meaning of that Schedule) were a reference to the particulars which are required to be included in a return by virtue of paragraph 11(c) of this Schedule,
- (b) section 56(3) has effect as if the reference to the party were omitted and the reference to the treasurer of the party were a reference to the candidate or (as the case may be) the candidate's election agent, and
- (c) section 56(4) has effect as if the reference to the treasurer of the party were a reference to the candidate or (as the case may be) the candidate's election agent.

Transfer of donations received by candidate to election agent

8.—(1) Sub-paragraph (2) applies in relation to any relevant donation received by a candidate after the deadline for appointing an election agent (unless the candidate is, or is deemed to be, also acting as the election agent at the time of receipt of the donation).

(2) The candidate must, on receipt of any such donation as is mentioned in sub-paragraph (1), forthwith deliver to the candidate's election agent—

- (a) the donation,
- (b) where paragraph 6(5) or (6) applies in relation to the donation, the information provided to the candidate in pursuance of that provision, and
- (c) any other information which the candidate has about the donation and its donor which might reasonably be expected to assist the election agent in the discharge of any duties imposed on the agent, in relation to the donation, under this Part or Part 3 of this Schedule.

(3) Where a donation is delivered to an election agent in accordance with sub-paragraph (2), the donation is treated for the purposes of paragraph 6(1) to (4) and the provisions applied by paragraph 7 as if it had been—

- (a) originally received by the election agent, and
- (b) so received by the agent on the date on which it was received by the candidate.

(4) Where a candidate receives a relevant donation before the deadline for appointing an election agent but at a time when an appointment of a person (other than the candidate) as election agent is in force the candidate must either—

- (a) forthwith deliver the donation and the information mentioned in sub-paragraph (2)(b) and (c) to the election agent, or
- (b) (if the candidate fails to make such delivery) deal with the donation in accordance with section 56 of the 2000 Act.

(5) Sub-paragraph (3) has effect in relation to any relevant donation delivered to an election agent in accordance with sub-paragraph (4)(a) as it has effect in relation to a donation delivered to the election agent in accordance with sub-paragraph (2).

(6) Sub-paragraph (7) applies where—

- (a) a relevant donation received by a candidate before the deadline for appointing an election agent has been dealt with by the candidate in accordance with section 56 of the 2000 Act either because—
 - (i) it was received by the candidate at a time when no appointment of another person as the candidate's election agent was in force, or
 - (ii) although such an appointment was in force, the candidate was by virtue of sub-paragraph (4)(b) required to deal with the donation, and
- (b) an appointment of a person (other than the candidate) as election agent is in force at, or at any time after—
 - (i) the deadline for appointing an election agent, or
 - (ii) if later, the time when the candidate has dealt with the donation in accordance with section 56 of the 2000 Act.

(7) Subject to sub-paragraph (9), the candidate must, as soon as reasonably practicable after the relevant time, deliver to the election agent—

- (a) the donation (if it has been accepted by the candidate), and
- (b) any information which the candidate has about the donation and the donor which might reasonably be expected to assist the election agent in the discharge of any duties imposed on the agent, in relation to the donation, under Part 3 of this Schedule.

- (8) The relevant time for the purposes of sub-paragraph (7) is—
- (a) the time mentioned in sub-paragraph (6)(b)(i) or (ii) (as the case may be) if the appointment of another person as election agent is in force at that time, or
 - (b) otherwise, the time when any such appointment subsequently comes into force.

(9) The duty imposed on a candidate by sub-paragraph (7)(a) does not apply to any relevant donation to the extent to which it has been lawfully used by the candidate for the purpose of paying election expenses.

(10) In this paragraph—

- (a) any reference to the deadline for appointing an election agent is a reference to the latest time by which an election agent may in accordance with article 26(1) be named as election agent by the candidate, and
- (b) any reference to any provision of section 56 of the 2000 Act is a reference to that provision as applied by paragraph 7.

Evasion of restrictions on donations

9. Section 61 of the 2000 Act applies for the purposes of this Schedule as if—

- (a) any reference to donations were to relevant donations,
- (b) any reference to a registered party were, in relation to a relevant donation, a reference to a candidate or (as the case may be) the candidate's election agent, and
- (c) any reference in subsection (2) to the treasurer of a registered party were, in relation to a relevant donation, a reference to either the candidate or the candidate's election agent (or both).

PART 3

Reporting of Donations

Statement of relevant donations

10.—(1) The candidate's election agent must include in any return required to be delivered under article 40 a statement of relevant donations which complies with paragraphs 11 and 12.

(2) If the statement states that the candidate's election agent has seen, in relation to an individual donor, a certificate of anonymous registration, the statement must be accompanied by a copy of that certificate.

(3) "Certificate of anonymous registration" means a certificate issued in pursuance of regulation 45G of the 2001 Regulations(2).

Donations from permissible donors

11. The statement must record, in relation to each relevant donation accepted by the candidate or the candidate's election agent—

- (a) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 5,
- (b) the date when the donation was accepted by the candidate or the candidate's election agent,
- (c) the information about the donor which is, in connection with recordable donations to registered parties, required to be recorded in donation reports by virtue of paragraph 2 of Schedule 6 to the 2000 Act, and
- (d) such other information as may be required by regulations made by the Commission.

(2) Regulation 45G was inserted by S.I. 2006/2910.

Donations from impermissible donors

- 12.**—(1) This paragraph applies to relevant donations falling within paragraph 6(1)(a) or (b).
- (2) Where paragraph 6(1)(a) applies, the statement must record—
- (a) the name and address of the donor,
 - (b) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 5,
 - (c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with section 56(2)(a) of the 2000 Act, and
 - (d) such other information as is required by regulations made by the Commission.
- (3) Where paragraph 6(1)(b) applies, the statement must record—
- (a) details of the manner in which the donation was made,
 - (b) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 5,
 - (c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with section 56(2)(b) of the 2000 Act, and
 - (d) such other information as is required by regulations made by the Commission.
- (4) In this paragraph any reference to any provision of section 56 of the 2000 Act is a reference to that provision as applied by paragraph 7.