

SCHEDULE 6

Regulation 42

CONTROL OF DONATIONS TO INDIVIDUAL CANDIDATES

PART 1

INTRODUCTORY

Operation and interpretation of Schedule

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

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

(3) In accordance with sub-paragraph (1), references to a candidate are to an individual candidate.

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

(5) In sub-paragraph (4) above 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 shall be taken to be a donation for either of those purposes if, having regard to all the circumstances, it must be reasonably assumed to be such a donation.

(6) “Donation” shall be construed in accordance with paragraphs 2 to 4 below.

(7) Where—

(a) at a time when any order is in force under section 70(1) of the 2000 Act a donation is received by a candidate at a European Parliamentary election in Great Britain or Gibraltar, and

(b) the order provides for sub-paragraph (7) of paragraph 1 of Schedule 2A to the 1983 Act⁽¹⁾ to apply to any such donation,

references to a permissible donor falling within section 54(2) of that Act⁽²⁾ in relation to the donation, as not including a registered party which is registered in the Northern Ireland register maintained by the Commission under Part 2 of that Act⁽³⁾.

(8) “The Commission” means the Electoral Commission established by section 1 of that Act.

Donations: general rules

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

(a) any gift to the candidate or his election agent of money or other property;

(b) any sponsorship provided in relation to the candidate (as defined by paragraph 3 below);

(c) any money spent (otherwise than by the candidate, his 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 his 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).

⁽¹⁾ Schedule 2A was inserted by section 130 of, and Schedule 16 to, the 2000 Act.

⁽²⁾ Section 54(2) was amended by Regulation 11(b) of the 2001 Regulations.

⁽³⁾ Schedule 2A was inserted by section 130 of, and Schedule 16 to, the 2000 Act.

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(2) Where—

- (a) any money or other property is transferred to a candidate or his 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 shall (subject to sub-paragraph (4) below) constitute a gift to the candidate or (as the case may be) his election agent for the purposes of sub-paragraph (1)(a) above.

(3) In determining—

- (a) for the purposes of sub-paragraph (1)(d) above, whether any money lent to a candidate or his election agent is so lent otherwise than on commercial terms, or
- (b) for the purposes of sub-paragraph (1)(e) above, 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 shall 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) above and by virtue of any other provision of this paragraph, sub-paragraph (1)(b) (together with paragraph 3 below) shall apply in relation to it to the exclusion of the other provision of this paragraph.

(5) The reference in sub-paragraph (1)(c) above to money spent as mentioned in that provision is a reference to money so spent by a person, other than the candidate, his election agent or any sub-agent, out of his own resources (with no right to reimbursement out of the resources of any such other person); and where, by virtue of sub-paragraph (1)(c) above, money so spent constitutes a donation to the candidate, the candidate shall be 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 his 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) above “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) above—
 - (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) 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 shall be regarded as a donation—
 - (a) the provision of any facilities provided in pursuance of any right conferred on a candidate at an election by these Regulations;
 - (b) the provision by an individual of his own services which he provides voluntarily in his own time and free of charge;
 - (c) any interest accruing to a candidate or his election agent in respect of any donation which is dealt with by the candidate or (as the case may be) his election agent in accordance with section 56(2)(a) or (b) of the 2000 Act (as applied by paragraph 7 below).
- (2) There shall also be disregarded any donation whose value (determined in accordance with paragraph 5 below) is not more than £50.

Value of donations

- 5.—(1) The value of any donation falling within paragraph 2(1)(a) above (other than money) shall be taken to be the market value of the property in question.
- (2) Where, however, paragraph 2(1)(a) above applies by virtue of paragraph 2(2) above, the value of the donation shall be taken to be 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 his election agent.
- (3) The value of any donation falling within paragraph 2(1)(b) above shall be taken to be the value of the money, or (as the case may be) the market value of the property, transferred as mentioned in paragraph 3(1) above; and accordingly any value in monetary terms of any benefit conferred on the person providing the sponsorship in question shall be disregarded.
- (4) The value of any donation falling within paragraph 2(1)(d) or (e) above shall be taken to be 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 his election agent in respect of the loan or the provision of the property, services or facilities if—
 - (i) the loan had been made, or
 - (ii) the property, services or facilities had been provided,
 - on commercial terms, and

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- (b) the total value in monetary terms of the consideration (if any) actually so provided by or on behalf of the candidate or his election agent.
- (5) Where a donation such as is mentioned in sub-paragraph (4) above confers an enduring benefit on the donee over a particular period, the value of the donation—
 - (a) shall be determined at the time when it is made, but
 - (b) shall 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 an individual candidate or his 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) his election agent, a permissible donor falling within section 54(2) of the 2000 Act; or
- (b) the candidate or (as the case may be) his 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 his election agent which is an exempt trust donation shall be regarded as a relevant donation received by the candidate or his election agent from a permissible donor; and section 162 of the 2000 Act (interpretation: exempt trust donations) shall apply 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 his election agent from a trustee of any property (in his capacity as such) which is not—

- (a) an exempt trust donation, or
- (b) a relevant donation transmitted by the trustee to the candidate or his election agent on behalf of beneficiaries under the trust who are—
 - (i) persons who at the time of its receipt by the candidate or his 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,

shall be regarded as a relevant donation received by the candidate or his 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 his election agent by way of a relevant donation—

- (a) on behalf of himself 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 shall be 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 his election agent, the candidate or (as the case may be) his 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) below; and
- (b) (in any case) all such details in respect of the donation as are required by virtue of paragraph 11(a) below.

(6) Where—

- (a) any person (“the agent”) causes an amount to be received by a candidate or his 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 his election agent, the candidate or (as the case may be) his election agent is given all such details in respect of the donor as are required by virtue of paragraph 11(c) below.

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

(8) A person guilty of an offence under sub-paragraph (7) shall be 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).

(9) In the application of this paragraph to an individual candidate (or his election agent) at an election in the combined region—

- (a) the references in sub-paragraphs (1)(a) and (3)(b)(i) to a permissible donor falling within section 54(2) include references to persons listed in section 54(2A)(a) to (g) of the 2000 Act;
- (b) in sub-paragraph (3)(b)(ii) the reference to an unincorporated association which is a permissible donor includes a reference to an unincorporated association falling within section 54(2A)(g) of the 2000 Act; and
- (c) in sub-paragraph (2) and (3)(a) the references to an exempt trust donation include a reference to an exempt Gibraltar trust donation (within the meaning of section 162 of the 2000 Act).

Acceptance or return of donations

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

- (a) a relevant donation received by a candidate or his 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) shall have 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 (if the donation were a recordable donation within the meaning of that Schedule) were construed as a reference to the particulars which are required to be included in a return by virtue of paragraph 11(c) below;

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- (b) section 56(3) shall have effect as if the reference to the party were omitted and the reference to the treasurer of the party were construed as a reference to the candidate or (as the case may be) his election agent; and
- (c) section 56(4) shall have effect as if the reference to the treasurer of the party were construed as a reference to the candidate or (as the case may be) his election agent.

Transfer of donations received by candidate to election agent

8.—(1) Sub-paragraph (2) below 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, his own election agent at the time of receipt of the donation).

(2) The candidate shall, on receipt of any such donation as is mentioned in sub-paragraph (1) above, forthwith deliver to his election agent—

- (a) the donation,
- (b) where paragraph 6(5) or (6) above 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 him, 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) above, the donation shall be treated for the purposes of paragraph 6(1) to (4) above and the provisions applied by paragraph 7 above as if it had been—

- (a) originally received by the election agent, and
- (b) so received by him 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 himself) as election agent is in force he shall either—

- (a) forthwith deliver the donation and the information mentioned in sub-paragraph (2)(b) and (c) above to the agent, or
- (b) (if he fails to do so) deal with the donation in accordance with section 56 of the 2000 Act.

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

(6) Sub-paragraph (7) below 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 him at a time when no appointment of another person as his election agent was in force, or
 - (ii) although such an appointment was in force, he 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 himself) 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) below, the candidate shall, as soon as reasonably practicable after the relevant time, deliver to the election agent—

- (a) the donation (if it has been accepted by him), and
- (b) any information which he 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 him, in relation to the donation, under Part 3 of this Schedule.

(8) The relevant time for the purposes of sub-paragraph (7) above 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) above 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 regulation 38(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 above.

Evasion of restrictions on donations

9. Section 61 of the 2000 Act shall apply 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 an individual candidate or (as the case may be) his 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 his election agent (or both).

PART 3

REPORTING OF DONATIONS

Statement of relevant donations

10. The candidate's election agent must include in any return required to be delivered under regulation 51 a statement of relevant donations which complies with paragraphs 11 and 12 below.

Donations from permissible donors

11. The statement must record, in relation to each relevant donation accepted by the candidate or his 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 above;
- (b) the date when the donation was accepted by the candidate or his election agent;

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- (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.

Donations from impermissible donors

12.—(1) This paragraph applies to relevant donations falling within paragraph 6(1)(a) or (b) above.

(2) Where paragraph 6(1)(a) above 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 above;
- (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) above 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 above;
- (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 above.