

SCOTTISH INDEPENDENCE REFERENDUM ACT 2013

EXPLANATORY NOTES

COMMENTARY

Procedures to be followed at polling stations

Schedule 4: Campaign rules

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:

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- 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,

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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, 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.