

SCHEDULE 4

(introduced by section 14(4))

CAMPAIGN RULES: INVESTIGATORY POWERS OF THE ELECTORAL COMMISSION

Power to require disclosure of documents etc.

- 1 (1) The Electoral Commission may give a disclosure notice to a person who—
- (a) is, or has been at any time in the period of 5 years ending with the day on which the notice is given, the treasurer or another officer of an organisation that is a permitted participant, or
 - (b) is an individual who is a permitted participant,
 - (c) is a person who has made a declaration as a qualifying individual under paragraph 2 of schedule 3 and the Commission have reasonable grounds for believing that the individual is not a qualifying individual,
 - (d) is a person who has made a declaration as a qualifying body under paragraph 2 of schedule 3 and the Commission have reasonable grounds for believing that the body is not a qualifying body,
 - (e) is an individual or body that is not a permitted participant and the Commission have reasonable grounds for believing that the individual or body is incurring referendum expenses,
 - (f) is an individual or body that the Commission have reasonable grounds for believing has received a relevant donation,
 - (g) is an individual or body that the Commission have reasonable grounds for believing has entered into a regulated transaction,
 - (h) is an individual or body that the Commission have reasonable grounds for believing is providing goods, services or facilities to a permitted participant or a person mentioned in paragraph (e),
 - (i) is a body that is not a permitted participant and the Commission have reasonable grounds for believing that the body has published material to which paragraph 28(1) of schedule 3 applies.
- (2) In sub-paragraph (1)(f), “relevant donation” includes, in the case of a permitted participant, any donation received at a time before the individual or body became a permitted participant, if the donation would have been a relevant donation had the individual or body been a permitted participant at that time.
- (3) In sub-paragraph (1)(g), “regulated transaction” includes, in the case of a permitted participant, any transaction entered into at a time before the individual or body became a permitted participant, if the transaction would have been a regulated transaction had the individual or body been a permitted participant at that time.
- (4) A disclosure notice is a notice requiring the person to whom it is given—
- (a) to produce for inspection by the Commission, or a person authorised by the Commission, any documents which—
 - (i) relate to income and expenditure of the organisation or individual in question, and
 - (ii) are reasonably required by the Commission for the purposes of carrying out their functions under section 14 and schedule 3, or
 - (b) to provide the Commission, or a person authorised by the Commission, with any information or explanation which relates to that income and expenditure and is reasonably required by the Commission for those purposes.

Changes to legislation: There are currently no known outstanding effects for the Referendums (Scotland) Act 2020, SCHEDULE 4. (See end of Document for details)

- (5) In the case of a person mentioned in sub-paragraph (1)(c) or (as the case may be) (d), a disclosure notice may also require the person to whom it is given to provide the Commission, or a person authorised by the Commission, with any information or explanation reasonably required by the Commission for the purposes of determining whether the person is a qualifying individual (within the meaning of paragraph 2(3) of schedule 3) or (as the case may be) a qualifying body (within the meaning of paragraph 2(4) of that schedule).
- (6) In the case of a person mentioned in sub-paragraph (1)(f) or (as the case may be) (g), a disclosure notice may also require the person to whom it is given to provide the Commission, or a person authorised by the Commission, with any information or explanation reasonably required by the Commission for the purposes of carrying out their functions under Part 5 or (as the case may be) 6 of schedule 3.
- (7) In the case of a person mentioned in sub-paragraph (1)(i), a disclosure notice may also require the person to whom it is given to provide the Commission, or a person authorised by the Commission, with any information or explanation reasonably required by the Commission for the purposes of carrying out their functions under paragraph 28 of schedule 3.
- (8) A person to whom a disclosure notice is given must comply with the notice within such reasonable time as is specified in the notice.

Inspection warrants

- 2 (1) This paragraph applies in relation to an organisation or individual that is a permitted participant.
- (2) A sheriff or a justice of the peace may, on the application of the Electoral Commission, issue an inspection warrant in relation to any premises occupied by an organisation or individual to whom this paragraph applies if satisfied that—
 - (a) there are reasonable grounds for believing that on those premises there are documents relating to the income and expenditure of the organisation or individual,
 - (b) the Commission need to inspect the documents for the purposes of carrying out their functions under section 14 and schedule 3 (other than their investigatory functions), and
 - (c) permission to inspect the documents on the premises has been requested by the Commission and has been unreasonably refused.
- (3) An inspection warrant is a warrant authorising a member of the Commission's staff—
 - (a) at any reasonable time to enter the premises specified in the warrant, and
 - (b) having entered the premises, to inspect any documents within sub-paragraph (2)(a).
- (4) An inspection warrant also authorises the person who executes the warrant to be accompanied by any other persons who the Commission consider are needed to assist in executing it.
- (5) The person executing an inspection warrant must, if required to do so, produce—
 - (a) the warrant, and
 - (b) documentary evidence that the person is a member of the Commission's staff,

Changes to legislation: There are currently no known outstanding effects for the Referendums (Scotland) Act 2020, SCHEDULE 4. (See end of Document for details)

for inspection by the occupier of the premises that are specified in the warrant or by anyone acting on the occupier's behalf.

- (6) An inspection warrant continues in force until the end of the period of one month beginning with the day on which it is issued.
- (7) An inspection warrant may not be used for the purposes of carrying out investigatory functions.
- (8) In this paragraph, “investigatory functions” means functions of investigating—
 - (a) suspected campaign offences, or
 - (b) suspected contraventions of restrictions or requirements imposed by schedule 3.

Powers in relation to suspected offences or contraventions

- 3 (1) This paragraph applies where the Electoral Commission have reasonable grounds to suspect that—
 - (a) a person has committed a campaign offence, or
 - (b) a person has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by schedule 3.
- (2) In this paragraph, “the suspected offence or contravention” means the offence or contravention referred to in sub-paragraph (1).
- (3) The Commission may by notice require any person (including an organisation or individual to whom paragraph 1 applies)—
 - (a) to produce for inspection by the Commission, or a person authorised by the Commission, any documents that they reasonably require for the purposes of investigating the suspected offence or contravention,
 - (b) to provide the Commission, or a person authorised by the Commission, with any information or explanation that they reasonably require for those purposes.
- (4) A person to whom a notice is given under sub-paragraph (3) must comply with the notice within such reasonable time as is specified in the notice.
- (5) A person authorised by the Commission (“the investigator”) may require—
 - (a) the person mentioned in sub-paragraph (1) (if that person is an individual), or
 - (b) an individual who the investigator reasonably believes has relevant information,
 to attend before the investigator at a specified time and place and answer any questions that the investigator reasonably considers to be relevant.
- (6) The time specified must be a reasonable time.
- (7) In sub-paragraph (5), “relevant” means relevant to an investigation by the Commission of the suspected offence or contravention.

Document disclosure orders

- 4 (1) This paragraph applies where the Electoral Commission have given a notice under paragraph 3 requiring documents to be produced.

Changes to legislation: There are currently no known outstanding effects for the Referendums (Scotland) Act 2020, SCHEDULE 4. (See end of Document for details)

- (2) The Court of Session may, on the application of the Commission, make a document disclosure order against a person (“the respondent”) if satisfied that—
- (a) there are reasonable grounds to suspect that a person (whether or not the respondent) has committed a campaign offence or has otherwise contravened any restriction or other requirement imposed by schedule 3, and
 - (b) there are documents referred to in the notice under paragraph 3 which—
 - (i) have not been produced as required by the notice (either within the time specified in the notice for compliance or subsequently),
 - (ii) are reasonably required by the Commission for the purposes of investigating the offence or contravention referred to in paragraph (a), and
 - (iii) are in the custody or under the control of the respondent.
- (3) A document disclosure order is an order requiring the respondent to deliver to the Commission, within such time as is specified in the order, such documents falling within sub-paragraph (2)(b) as are identified in the order (either specifically or by reference to any category or description of document).
- (4) For the purposes of sub-paragraph (2)(b)(iii) a document is under a person's control if it is in the person's possession or if the person has a right to possession of it.
- (5) A person who fails to comply with a document disclosure order may not, in respect of that failure, be both punished for contempt of court and convicted of an offence under paragraph 12(1).

Information disclosure orders

- 5 (1) This paragraph applies where the Electoral Commission have given a notice under paragraph 3 requiring any information or explanation to be provided.
- (2) The Court of Session may, on the application of the Commission, make an information disclosure order against a person (“the respondent”) if satisfied that—
- (a) there are reasonable grounds to suspect that a person (whether or not the respondent) has committed a campaign offence or has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by schedule 3, and
 - (b) there is any information or explanation referred to in the notice under paragraph 3 which—
 - (i) has not been provided as required by the notice (either within the time specified in the notice for compliance or subsequently),
 - (ii) is reasonably required by the Commission for the purposes of investigating the offence or contravention referred to in paragraph (a), and
 - (iii) the respondent is able to provide.
- (3) An information disclosure order is an order requiring the respondent to provide to the Commission, within such time as is specified in the order, such information or explanation falling within sub-paragraph (2)(b) as is identified in the order.
- (4) A person who fails to comply with an information disclosure order may not, in respect of that failure, be both punished for contempt of court and convicted of an offence under paragraph 12(1).

Retention of documents delivered under paragraph 4

- 6 (1) The Electoral Commission may retain any documents delivered to them in compliance with an order under paragraph 4 for a period of 3 months (or for longer if any of sub-paragraphs (3) to (8) applies).
- (2) In this paragraph, “the documents” and “the 3 month period” mean the documents and the period mentioned in sub-paragraph (1).
- (3) If, within the 3 month period, proceedings to which the documents are relevant are commenced against any person for any offence, the documents may be retained until the conclusion of the proceedings.
- (4) If, within the 3 month period, the Commission serve a notice under paragraph 2(1) of schedule 5 of a proposal to impose a fixed monetary penalty on any person and the documents are relevant to the decision to serve the notice, the documents may be retained—
- (a) until liability for the penalty is discharged as mentioned in paragraph 2(2) of that schedule (if it is),
 - (b) until the Commission decide not to impose a fixed monetary penalty (if that is what they decide),
 - (c) until the end of the period given by sub-paragraph (6) (if they do impose a fixed monetary penalty).
- (5) If, within the 3 month period, the Commission serve a notice under paragraph 7(1) of schedule 5 of a proposal to impose a discretionary requirement on any person and the documents are relevant to the decision to serve the notice, the documents may be retained—
- (a) until the Commission decide not to impose a discretionary requirement (if that is what they decide),
 - (b) until the end of the period given by sub-paragraph (6) (if they do impose a discretionary requirement).
- (6) If, within the 3 month period—
- (a) a notice is served imposing a fixed monetary penalty on any person under paragraph 2(4) of schedule 5 and the documents are relevant to the decision to impose the penalty, or
 - (b) a notice is served imposing a discretionary requirement on any person under paragraph 7(5) of that schedule and the documents are relevant to the decision to impose the requirement,
- the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.
- (7) If, within the 3 month period—
- (a) a stop notice is served on any person under paragraph 13 of schedule 5, and
 - (b) the documents are relevant to the decision to serve the notice,
- the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.
- (8) If, within the 3 month period or the period given by sub-paragraph (7) (or, if applicable, by sub-paragraph (5) or (6)(b))—

Changes to legislation: There are currently no known outstanding effects for the Referendums (Scotland) Act 2020, SCHEDULE 4. (See end of Document for details)

- (a) the Commission, having served a stop notice on any person under paragraph 13 of schedule 5, decide not to issue a completion certificate under paragraph 15 of that schedule in relation to the stop notice, and
 - (b) the documents are relevant to the decision not to issue the certificate,
- the documents may be retained until the end of the period allowed for bringing an appeal against that decision or (if an appeal is brought) until the conclusion of proceedings on the appeal.

Power to make copies and records

- 7 The Electoral Commission or a person authorised by the Commission—
- (a) may make copies or records of any information contained in—
 - (i) any documents produced or inspected under this schedule,
 - (ii) any documents delivered to them in compliance with an order under paragraph 4,
 - (b) may make copies or records of any information or explanation provided under this schedule.

Authorisation to be in writing

- 8 An authorisation of a person by the Electoral Commission under this schedule must be in writing.

Documents in electronic form

- 9 (1) In the case of documents kept in electronic form—
- (a) a power of the Electoral Commission under this schedule to require documents to be produced for inspection includes power to require a copy of the documents to be made available for inspection in legible form,
 - (b) a power of a person (“the inspector”) under this schedule to inspect documents includes power to require any person on the premises in question to give any assistance that the inspector reasonably requires to enable the inspector—
 - (i) to inspect and make copies of the documents in legible form or to make records of information contained in them, or
 - (ii) to inspect and check the operation of any computer, and any associated apparatus or material, that is or has been in use in connection with the keeping of the documents.
- (2) Paragraph 7(a) applies in relation to any copy made available as mentioned in subparagraph (1)(a) above.

Legal professional privilege

- 10 Nothing in this schedule requires a person to produce or provide, or authorises a person to inspect or take possession of, anything in respect of which a claim to confidentiality of communications could be maintained in legal proceedings.

Admissibility of statements

- 11 (1) A statement made by a person (“P”) in compliance with a requirement imposed under this schedule is admissible in evidence in any proceedings (as long as it also complies with any requirements governing the admissibility of evidence in the circumstances in question).
- (2) But in criminal proceedings in which P is charged with an offence (other than one to which sub-paragraph (3) applies) or in proceedings within sub-paragraph (4) to which both the Electoral Commission and P are parties—
- (a) no evidence relating to the statement is admissible against P, and
 - (b) no question relating to the statement may be asked on behalf of the prosecution or (as the case may be) the Commission in cross-examination of P,
- unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of P.
- (3) This sub-paragraph applies to—
- (a) an offence under paragraph 12(3),
 - (b) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath).
- (4) Proceedings are within this sub-paragraph if they arise out of the exercise by the Commission of any of their powers under schedule 5 other than powers in relation to an offence under paragraph 12(3) below.

Offences

- 12 (1) A person who fails, without reasonable excuse, to comply with any requirement imposed under or by virtue of this schedule commits an offence.
- (2) A person who intentionally obstructs a person authorised by or by virtue of this schedule in the carrying out of that person's functions under the authorisation commits an offence.
- (3) A person who knowingly or recklessly provides false information in purported compliance with a requirement imposed under or by virtue of this schedule commits an offence.
- (4) A person who commits an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) A person who commits an offence under sub-paragraph (1) or (3) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Guidance by Commission

- 13 (1) The Electoral Commission must prepare and publish guidance as to—
- (a) the circumstances in which the Commission are likely to give a notice under paragraph 4 or 3,

Changes to legislation: There are currently no known outstanding effects for the Referendums (Scotland) Act 2020, SCHEDULE 4. (See end of Document for details)

- (b) the consequences (including criminal sanctions) that may result from a failure to comply with such a notice,
 - (c) the circumstances in which the Commission are likely to apply for a warrant under paragraph 2,
 - (d) the procedures to be followed in connection with questioning under paragraph 3(5),
 - (e) the circumstances in which the Commission are likely to apply for an order under paragraph 4 or 5,
 - (f) the principles and practices to be applied in connection with the exercise of powers under paragraphs 6 and 7,
 - (g) any other matters concerning the exercise of powers under this schedule about which the Commission consider that guidance would be useful.
- (2) Where appropriate, the Commission must revise guidance published under sub-paragraph (1) and publish the revised guidance.
- (3) The Commission must have regard to the guidance or revised guidance published under this paragraph in exercising their functions under this Act.

Information about use of investigatory powers in Commission's report

- 14 (1) The Electoral Commission must, in accordance with this paragraph, make a report about the use made by the Commission of their powers under this schedule.
- (2) The report must, in particular, specify—
- (a) the cases in which a notice was given under paragraph 1 or 3(3),
 - (b) the cases in which premises were entered under a warrant issued under paragraph 2,
 - (c) the cases in which a requirement was imposed under paragraph 3(5),
 - (d) the cases in which an order under paragraph 4 or 5—
 - (i) was applied for,
 - (ii) was made.
- (3) This paragraph does not require the Commission to include in the report any information that, in their opinion, it would be inappropriate to include on the ground that to do so—
- (a) would or might be unlawful, or
 - (b) might adversely affect any current investigation or proceedings.
- (4) The report may be made—
- (a) in the report by the Commission under section 29,
 - (b) in a separate report made as soon as practicable after the report under section 29 is published, or
 - (c) partly in accordance with paragraph (a) and partly in accordance with paragraph (b).
- (5) The Commission must—
- (a) lay any report under sub-paragraph (4)(b) before the Scottish Parliament, and
 - (b) after laying, publish the report in such manner as they may determine.

Changes to legislation: There are currently no known outstanding effects for the Referendums (Scotland) Act 2020, SCHEDULE 4. (See end of Document for details)

Interpretation

15 In this schedule—

“contravention” includes a failure to comply, and related expressions are to be construed accordingly,

“documents” includes any books or records,

“restriction” includes prohibition.

Changes to legislation:

There are currently no known outstanding effects for the Referendums (Scotland) Act 2020, SCHEDULE 4.