
Changes to legislation: There are currently no known outstanding effects for the Referendums (Scotland) Act 2020, PART 5. (See end of Document for details)

SCHEDULE 5 CAMPAIGN RULES: CIVIL SANCTIONS

PART 5

GENERAL AND SUPPLEMENTAL

Restrictions on combination of sanctions

- 22 (1) The Electoral Commission may not serve on a person a notice under paragraph 2(1) (notice of proposed fixed monetary penalty) in relation to any act or omission in relation to which—
- (a) a discretionary requirement has been imposed on that person, or
 - (b) a stop notice has been served on that person.
- (2) The Commission may not serve on a person a notice under paragraph 7(1) (notice of proposed discretionary requirement), or serve a stop notice on a person, in relation to any act or omission in relation to which—
- (a) a fixed monetary penalty has been imposed on that person, or
 - (b) the person's liability for a fixed monetary penalty has been discharged as mentioned in paragraph 2(2).

Withdrawal or variation of notice

- 23 (1) The Electoral Commission may by notice in writing at any time withdraw a notice served under paragraph 2(4).
- (2) The Commission may by notice in writing at any time—
- (a) withdraw a notice served under paragraph 7(5),
 - (b) reduce the monetary amount payable under such a notice, or
 - (c) reduce the steps to be taken under such a notice.
- (3) The Commission may by notice in writing at any time withdraw a stop notice (but may serve another stop notice in respect of the same activity specified in the withdrawn notice).

Use of statements made compulsorily

- 24 (1) The Electoral Commission must not take into account a statement made by a person in compliance with a requirement imposed under schedule 4 in deciding whether—
- (a) to impose a fixed monetary penalty on the person,
 - (b) to impose a discretionary requirement on the person,
 - (c) to serve a stop notice on the person.
- (2) Sub-paragraph (1)(a) or (b) does not apply to a penalty or requirement imposed in respect of an offence under paragraph 12(3) of schedule 4 (providing false information in purported compliance with a requirement under that schedule).

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Unincorporated associations

- 25 Any amount that is payable under this schedule by an unincorporated association must be paid out of the funds of the association.

Guidance as to enforcement

- 26 (1) The Electoral Commission must prepare and publish guidance as to—
- (a) the sanctions (including criminal sanctions) that may be imposed on a person who does something that might lead to—
 - (i) a fixed monetary penalty or a discretionary requirement being imposed on the person,
 - (ii) a stop notice being served on the person,
 - (iii) an enforcement undertaking being accepted from the person,
 - (b) the action that the Commission may take in relation to such a person (whether by virtue of this schedule or otherwise),
 - (c) the circumstances in which the Commission are likely to take any such action.
- (2) The guidance must include guidance about the Commission's use of the power to impose a fixed monetary penalty, with information as to—
- (a) the circumstances in which such a penalty may not be imposed,
 - (b) the amount of such a penalty,
 - (c) how liability for such a penalty may be discharged and the effect of discharge,
 - (d) rights to make representations and objections and rights of appeal in relation to such a penalty.
- (3) The guidance must include guidance about the Commission's use of the power to impose a discretionary requirement, with information as to—
- (a) the circumstances in which such a requirement may not be imposed,
 - (b) rights to make representations and objections and rights of appeal in relation to such a requirement,
 - (c) in the case of a variable monetary penalty, the matters likely to be taken into account by the Commission in determining the amount of the penalty (including, where relevant, any discounts for voluntary reporting of non-compliance).
- (4) The guidance must include guidance about the Commission's use of the power to serve a stop notice, with information as to—
- (a) the circumstances in which such a notice may not be served,
 - (b) rights of appeal in relation to such a notice.
- (5) The guidance must include guidance about the Commission's use of the power to accept an enforcement undertaking.
- (6) Where appropriate, the Commission must revise guidance published under subparagraphs (1) to (5) and publish the revised guidance.
- (7) The Commission must consult such persons as they consider appropriate before publishing guidance or revised guidance under this paragraph.

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- (8) The Commission must have regard to the guidance or revised guidance published under this paragraph in exercising their functions under this Act.

Recovery of penalties etc.

- 27 The Electoral Commission may recover as a civil debt—
- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty, and
 - (b) any interest or other financial penalty for late payment of such a penalty.

Payment of penalties etc. into Scottish Consolidated Fund

- 28 Where, in pursuance of any provision contained in or made under this schedule, the Electoral Commission receive—
- (a) a fixed monetary penalty, a variable monetary penalty or a non-compliance penalty,
 - (b) any interest or other financial penalty for late payment of such a penalty, or
 - (c) a sum paid as mentioned in paragraph 2(2) (in discharge of liability for a fixed monetary penalty),
- they must pay it into the Scottish Consolidated Fund.

Reports on use of civil sanctions

- 29 (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 fixed monetary penalty or discretionary requirement was imposed or a stop notice served (other than cases in which the penalty, requirement or notice was overturned on appeal),
 - (b) the cases in which liability for a fixed monetary penalty was discharged as mentioned in paragraph 2(2),
 - (c) the cases in which an enforcement undertaking was accepted.
- (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.

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Disclosure of information

- 30 (1) Information held by or on behalf of a procurator fiscal or a constable in Scotland may be disclosed to the Electoral Commission for the purpose of the exercise by the Commission of any powers conferred on them under or by virtue of this schedule.
- (2) It is immaterial for the purposes of sub-paragraph (1) whether the information was obtained before or after the day on which this paragraph comes into force.
- (3) A disclosure under this paragraph is not to be taken to breach any restriction on the disclosure of information.
- (4) This paragraph does not affect a power to disclose that exists apart from this paragraph.

Powers of sheriff

- 31 (1) On an appeal under paragraph 2(6) the sheriff may overturn or confirm the penalty.
- (2) On an appeal under paragraph 7(6), 11(6) or 16(1) the sheriff may—
- (a) overturn, confirm or vary the requirement or notice,
 - (b) take such steps as the Electoral Commission could take in relation to the act or omission giving rise to the requirement or notice,
 - (c) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Commission.
- (3) On an appeal under paragraph 10(8), 16(2) or 21(1) the sheriff may make an order requiring the Commission to issue (as appropriate)—
- (a) a certificate under paragraph 10(1),
 - (b) a completion certificate under paragraph 15(1), or
 - (c) a certificate under paragraph 20(1).

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