

*Status: Point in time view as at 30/01/2020.*

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

## SCHEDULE 5

*(introduced by section 14(5))*

### CAMPAIGN RULES: CIVIL SANCTIONS

#### PART 1

##### FIXED MONETARY PENALTIES

###### *Imposition of fixed monetary penalties*

- 1 (1) The Electoral Commission may by notice impose a fixed monetary penalty on a person if satisfied beyond reasonable doubt that the person has committed a campaign offence listed in Part 7.
- (2) The Commission may by notice impose a fixed monetary penalty on a permitted participant if satisfied beyond reasonable doubt that the responsible person in relation to the permitted participant—
  - (a) has committed a campaign offence listed in Part 7, or
  - (b) has failed to comply with a requirement imposed by paragraph 24(2), (3) or (4) of schedule 3.
- (3) For the purposes of this schedule a “fixed monetary penalty” is a requirement to pay to the Commission a penalty of £200.

###### *Representations and appeals etc.*

- 2 (1) Where the Electoral Commission propose to impose a fixed monetary penalty on a person, they must serve on the person a notice of what is proposed.
- (2) A notice under sub-paragraph (1) must offer the person the opportunity to discharge the person's liability for the fixed monetary penalty by payment of £200.

The following provisions of this paragraph apply if the person does not do so.
- (3) The person may make written representations and objections to the Commission in relation to the proposed imposition of the fixed monetary penalty.
- (4) After the end of the period for making such representations and objections (see paragraph 3(2)) the Commission must decide whether to impose the fixed monetary penalty.

If they decide to do so they must serve on the person a notice imposing the penalty.
- (5) The Commission may not impose a fixed monetary penalty on a person if, taking into account (in particular) any matter raised by the person, the Commission are no longer satisfied as mentioned in paragraph 1(1) or (2) (as applicable).
- (6) A person on whom a fixed monetary penalty is imposed may appeal against the decision to impose the penalty on the ground that the decision was—
  - (a) based on an error of fact,
  - (b) wrong in law, or
  - (c) unreasonable.

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- (7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (4) is received.
- (8) Where an appeal under sub-paragraph (6) is made, the fixed monetary penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

*Information to be included in notices under paragraph 2*

- 3 (1) A notice under paragraph 2(1) must include information as to—
- (a) the grounds for the proposal to impose the fixed monetary penalty,
  - (b) the effect of payment of the sum referred to in paragraph 2(2),
  - (c) the right to make representations and objections,
  - (d) the circumstances in which the Commission may not impose the fixed monetary penalty.
- (2) Such a notice must also specify—
- (a) the period within which liability for the fixed monetary penalty may be discharged, and
  - (b) the period within which representations and objections may be made.
- Neither period may be more than 28 days beginning with the day on which the notice is received.
- (3) A notice under paragraph 2(4) must include information as to—
- (a) the grounds for imposing the fixed monetary penalty,
  - (b) how payment may be made,
  - (c) the period within which payment may be made,
  - (d) any early payment discounts or late payment penalties,
  - (e) rights of appeal,
  - (f) the consequences of non-payment.

*Late payment*

- 4 (1) A fixed monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 2(4) is received.
- (2) If the penalty is not paid within that period the amount payable is increased by 25%.
- (3) If the penalty (as increased by sub-paragraph (2)) is not paid within the period of 56 days beginning with the day on which the notice under paragraph 2(4) is received, the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.
- (4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or because the appeal was withdrawn, is payable within the period of 28 days beginning with the day of determination or withdrawal of the appeal, and if not paid within that period the amount payable is increased by 25%.
- (5) If the penalty (as increased by sub-paragraph (4)) is not paid within the period of 56 days beginning with the day of determination or withdrawal of the appeal, the amount

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payable is the amount of the fixed monetary penalty originally imposed increased by 50%.

*Fixed monetary penalties: criminal proceedings and conviction*

- 5 (1) Where a notice under paragraph 2(1) is served on a person—
- (a) no criminal proceedings for a campaign offence may be instituted against the person in respect of the act or omission to which the notice relates before the end of the period within which the person's liability may be discharged as mentioned in paragraph 2(2) (see paragraph 3(2)),
  - (b) if the liability is so discharged, the person may not at any time be convicted of a campaign offence in relation to that act or omission.
- (2) A person on whom a fixed monetary penalty is imposed may not at any time be convicted of a campaign offence in respect of the act or omission giving rise to the penalty.

## PART 2

### DISCRETIONARY REQUIREMENTS

*Imposition of discretionary requirements*

- 6 (1) The Electoral Commission may impose one or more discretionary requirements on a person if satisfied beyond reasonable doubt that the person has committed a campaign offence listed in Part 7.
- (2) The Commission may impose one or more discretionary requirements on a permitted participant if satisfied beyond reasonable doubt that the responsible person in relation to the permitted participant—
- (a) has committed a campaign offence listed in Part 7, or
  - (b) has failed to comply with a requirement imposed by paragraph 24(2), (3) or (4) of schedule 3.
- (3) For the purposes of this schedule a “discretionary requirement” is—
- (a) a requirement to pay a monetary penalty to the Commission of such amount as the Commission may determine up to a maximum of £500,000, (but see also sub-paragraph (6)),
  - (b) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the offence or failure to comply does not continue or recur, or
  - (c) a requirement to take such steps as the Commission may specify, within such period as they may specify, to secure that the position is, so far as possible, restored to what it would have been if the offence or failure to comply had not happened.
- (4) Discretionary requirements may not be imposed on the same person on more than one occasion in relation to the same act or omission.
- (5) In this schedule—
- “variable monetary penalty” means such a requirement as is referred to in sub-paragraph (3)(a),

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“non-monetary discretionary requirement” means such a requirement as is referred to in sub-paragraph (3)(b) or (c).

- (6) In the case of a variable monetary penalty imposed under sub-paragraph (1) or (2) (a), where the offence in question is—
- (a) triable summarily only, and
  - (b) punishable on summary conviction by a fine (whether or not it is also punishable by a term of imprisonment),
- the amount of the penalty may not exceed the maximum amount of that fine.

*Representations and appeals etc.*

- 7 (1) Where the Electoral Commission propose to impose a discretionary requirement on a person, they must serve on the person a notice of what is proposed.
- (2) A person served with a notice under sub-paragraph (1) may make written representations and objections to the Commission in relation to the proposed imposition of the discretionary requirement.
- (3) After the end of the period for making such representations and objections (see paragraph 8(2)) the Commission must decide whether—
- (a) to impose the discretionary requirement, with or without modifications, or
  - (b) to impose any other discretionary requirement that the Commission have power to impose under paragraph 6.
- (4) The Commission may not impose a discretionary requirement on a person if, taking into account (in particular) any matter raised by the person, the Commission are no longer satisfied as mentioned in paragraph 6(1) or (2) (as applicable).
- (5) Where the Commission decide to impose a discretionary requirement on a person, they must serve on the person a notice specifying what the requirement is.
- (6) A person on whom a discretionary requirement is imposed may appeal against the decision to impose the requirement on the ground—
- (a) that the decision was based on an error of fact,
  - (b) that the decision was wrong in law,
  - (c) in the case of a variable monetary penalty, that the amount of the penalty is unreasonable,
  - (d) in the case of a non-monetary discretionary requirement, that the nature of the requirement is unreasonable, or
  - (e) that the decision is unreasonable for any other reason.
- (7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (5) is received.
- (8) Where an appeal under sub-paragraph (6) is made, the discretionary requirement is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

*Information to be included in notices under paragraph 7*

- 8 (1) A notice under paragraph 7(1) must include information as to—

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- (a) the grounds for the proposal to impose the discretionary requirement,
  - (b) the right to make representations and objections,
  - (c) the circumstances in which the Commission may not impose the discretionary requirement.
- (2) Such a notice must also specify the period within which representations and objections may be made.

That period may not be less than 28 days beginning with the day on which the notice is received.

- (3) A notice under paragraph 7(5) must include information as to—
- (a) the grounds for imposing the discretionary requirement,
  - (b) where the discretionary requirement is a variable monetary penalty—
    - (i) how payment may be made,
    - (ii) the period within which payment must be made, and
    - (iii) any early payment discounts or late payment penalties,
  - (c) rights of appeal,
  - (d) the consequences of non-compliance.

*Discretionary requirements: criminal conviction*

- 9 (1) A person on whom a discretionary requirement is imposed may not at any time be convicted of a campaign offence in respect of the act or omission giving rise to the requirement.
- (2) Sub-paragraph (1) does not apply where—
- (a) a non-monetary discretionary requirement is imposed on the person,
  - (b) no variable monetary penalty is imposed on the person, and
  - (c) the person fails to comply with the non-monetary discretionary requirement.

*Compliance and restoration certificates*

- 10 (1) Where, after the service of a notice under paragraph 7(5) imposing a non-monetary discretionary requirement on a person, the Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect.
- (2) A notice served under paragraph 7(5) ceases to have effect on the issue of a certificate relating to that notice.
- (3) A person on whom a notice under paragraph 7(5) has been served may at any time apply for a certificate and the Commission must make a decision whether to issue a certificate within the period of 28 days beginning with the day on which they receive such an application.
- (4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the notice has been complied with.
- (5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—
- (a) the grounds for the decision not to issue a certificate, and

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- (b) rights of appeal.
- (6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.
- (7) Where the Commission revoke a certificate, the notice has effect as if the certificate had not been issued.
- (8) A person who has applied for a certificate under sub-paragraph (3) may appeal to a sheriff against a decision not to issue a certificate under this paragraph on the ground that the decision was—
  - (a) based on an error of fact,
  - (b) wrong in law, or
  - (c) unfair or unreasonable.
- (9) An appeal must be made within the period of 28 days beginning with the day on which notification of the decision is received.

*Failure to comply with discretionary requirements*

- 11 (1) The Electoral Commission may by notice impose a monetary penalty (a “non-compliance penalty”) on a person for failing to comply with a non-monetary discretionary requirement imposed on the person.
- (2) The amount of a non-compliance penalty is to be determined by the Commission, but must not exceed £10,000.
- (3) A non-compliance penalty must be paid to the Commission.
- (4) A notice under sub-paragraph (1) must include information as to—
  - (a) the grounds for imposing the non-compliance penalty,
  - (b) the amount of the penalty,
  - (c) how payment may be made,
  - (d) the period within which payment must be made, which must not be less than 28 days beginning with the day on which the notice imposing the penalty is received,
  - (e) rights of appeal, and
  - (f) the consequences of failure to make payment within the period specified.
- (5) If, before the end of the period specified for payment of a non-compliance penalty—
  - (a) the person on whom the penalty was imposed has taken the steps specified in the notice imposing the non-monetary discretionary requirement to which the penalty relates, and
  - (b) the Commission have issued a certificate under paragraph 10(1) in respect of that notice,
 the Commission may waive, or reduce the amount of, the penalty.
- (6) A person served with a notice imposing a non-compliance penalty may appeal against the notice on the ground that the decision to serve the notice was—
  - (a) based on an error of fact,
  - (b) wrong in law, or
  - (c) unfair or unreasonable for any reason (for example because the amount is unreasonable).

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- (7) An appeal under sub-paragraph (6) is to a sheriff and must be made within the period of 28 days beginning with the day on which the notice under sub-paragraph (1) is received.
- (8) Where an appeal under sub-paragraph (6) is made, the non-compliance penalty is suspended from the day on which the appeal is made until the day on which the appeal is determined or withdrawn.

#### *Late payment*

- 12 (1) A variable monetary penalty must be paid within the period of 28 days beginning with the day on which the notice under paragraph 7(5) is received.
- (2) If the penalty is not paid within that period the amount payable is increased by 25%.
- (3) If the penalty (as increased by sub-paragraph (2)) is not paid within the period of 56 days beginning with the day on which the notice under paragraph 7(5) is received, the amount payable is the amount of the penalty originally imposed increased by 50%.
- (4) In the case of an appeal, any penalty which falls to be paid, whether because the sheriff upheld the penalty or varied it, or because the appeal was withdrawn, is payable within 28 days of the day of determination or withdrawal of the appeal, and if it is not paid within that period the amount payable is increased by 25%.
- (5) If the penalty (as increased by sub-paragraph (4)) is not paid within the period of 56 days beginning with the day of determination or withdrawal of the appeal, the amount payable is the amount of the penalty originally imposed increased by 50%.

### **PART 3**

#### **STOP NOTICES**

#### *Imposition of stop notices*

- 13 (1) Where sub-paragraph (2) or (3) applies, the Electoral Commission may serve on a person a notice (a “stop notice”) prohibiting the person from carrying on an activity specified in the notice until the person has taken the steps specified in the notice.
- (2) This sub-paragraph applies where—
  - (a) the person is carrying on the activity,
  - (b) the Commission reasonably believe that the activity as carried on by the person involves or is likely to involve the person committing a campaign offence listed in Part 7, and
  - (c) the Commission reasonably believe that the activity as carried on by the person is seriously damaging public confidence in the effectiveness of the controls in schedule 3, or presents a significant risk of doing so.
- (3) This sub-paragraph applies where—
  - (a) the person is likely to carry on the activity,
  - (b) the Commission reasonably believe that the activity as carried on by the person will involve or will be likely to involve the person committing a campaign offence listed in Part 7, and

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- (c) the Commission reasonably believe that the activity as likely to be carried on by the person will seriously damage public confidence in the effectiveness of the controls mentioned in sub-paragraph (2)(c), or will present a significant risk of doing so.
- (4) The steps referred to in sub-paragraph (1) must be steps to secure that the activity is carried on or (as the case may be) will be carried on in a way that does not involve the person acting as mentioned in sub-paragraph (2)(b) or (3)(b).

*Information to be included in stop notices*

- 14 A stop notice must include information as to—
- (a) the grounds for serving the notice,
  - (b) rights of appeal,
  - (c) the consequences of not complying with the notice.

*Completion certificates*

- 15 (1) Where, after the service of a stop notice on a person, the Electoral Commission are satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect (a “completion certificate”).
- (2) A stop notice ceases to have effect on the issue of a completion certificate relating to that notice.
- (3) A person on whom a stop notice is served may at any time apply for a completion certificate.
- The Commission must make a decision whether to issue a completion certificate within the period of 14 days beginning with the day on which they receive such an application.
- (4) An application for a completion certificate must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the stop notice has been complied with.
- (5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a completion certificate they must notify the applicant and provide the applicant with information as to—
- (a) the grounds for the decision not to issue a completion certificate, and
  - (b) rights of appeal.
- (6) The Commission may revoke a completion certificate if it was granted on the basis of inaccurate, incomplete or misleading information.
- (7) Where the Commission revoke a completion certificate, the stop notice has effect as if the certificate had not been issued.

*Appeals etc.*

- 16 (1) A person served with a stop notice may appeal against the decision to serve it on the ground that—
- (a) the decision was based on an error of fact,
  - (b) the decision was wrong in law,



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- (c) the decision was unreasonable,
  - (d) any step specified in the notice is unreasonable, or
  - (e) the person has not acted as mentioned in paragraph 13(2)(b) or (3)(b) and would not have done so even if the stop notice had not been served.
- (2) A person served with a stop notice may appeal against a decision not to issue a completion certificate on the ground that the decision—
- (a) was based on an error of fact,
  - (b) was wrong in law, or
  - (c) was unfair or unreasonable.
- (3) An appeal under sub-paragraph (1) or (2) is to a sheriff.
- (4) An appeal under sub-paragraph (1) against a decision to serve a stop notice must be made within the period of 28 days beginning with the day on which the stop notice is received.
- (5) An appeal under sub-paragraph (2) against a decision not to issue a completion certificate must be made within the period of 28 days beginning with the day on which notification of the decision is received.
- (6) Where an appeal under sub-paragraph (1) or (2) is made, the stop notice continues to have effect unless it is suspended or varied on the order of the sheriff.

#### *Failure to comply with stop notice*

- 17 (1) A person served with a stop notice who does not comply with it commits an offence.
- (2) A person who commits an offence under sub-paragraph (1) 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 2 years or to a fine (or both).

## **PART 4**

### ENFORCEMENT UNDERTAKINGS

#### *Enforcement undertakings*

- 18 (1) This paragraph applies where—
- (a) the Electoral Commission have reasonable grounds to suspect that a person has committed a campaign offence listed in Part 7,
  - (b) the person offers an undertaking (an “enforcement undertaking”) to take such action, within such period, as is specified in the undertaking,
  - (c) the action so specified is—
    - (i) action to secure that the offence does not continue or recur,
    - (ii) action to secure that the position is, so far as possible, restored to what it would have been if the offence had not happened, and
  - (d) the Commission accept the undertaking.
- (2) Unless the person has failed to comply with the undertaking or any part of it—

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- (a) the person may not at any time be convicted of a campaign offence in respect of the act or omission to which the undertaking relates,
- (b) the Commission may not impose on the person any fixed monetary penalty that they would otherwise have power to impose by virtue of paragraph 1 in respect of that act or omission,
- (c) the Commission may not impose on the person any discretionary requirement that they would otherwise have power to impose by virtue of paragraph 6 in respect of that act or omission.

*Enforcement undertakings: further provision*

- 19 (1) An enforcement undertaking must be in writing and include—
- (a) a statement that the undertaking is an enforcement undertaking regulated by this Act,
  - (b) the terms of the undertaking,
  - (c) the period within which the action specified in the undertaking must be completed,
  - (d) details of how and when a person is to be considered to have complied with the undertaking, and
  - (e) information as to the consequences of failure to comply in full or in part with the undertaking, including reference to the effect of paragraph 18(2).
- (2) The enforcement undertaking may be varied or extended if the person who has given the undertaking and the Electoral Commission agree.
- (3) The Commission may publish any enforcement undertaking which they accept in whatever manner they see fit.

*Compliance certificate*

- 20 (1) Where, after accepting an enforcement undertaking from a person, the Electoral Commission are satisfied that the undertaking has been complied with in full they must issue a certificate to that effect.
- (2) An enforcement undertaking ceases to have effect on the issue of a certificate relating to that undertaking.
- (3) A person who has given an enforcement undertaking may at any time apply for a certificate, and the Commission must make a decision whether to issue a certificate within the period of 28 days beginning with the day on which they receive such an application.
- (4) An application under sub-paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine whether the undertaking has been complied with.
- (5) Where, on an application under sub-paragraph (3), the Commission decide not to issue a certificate they must notify the applicant and provide the applicant with information as to—
- (a) the grounds for the decision not to issue a certificate, and
  - (b) rights of appeal.

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- (6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information.
- (7) Where the Commission revoke a certificate, the enforcement undertaking has effect as if the certificate had not been issued.

#### *Appeals*

- 21 (1) A person who has given an enforcement undertaking may appeal to the sheriff against a decision not to issue a certificate under paragraph 20 on the ground that the decision was—
  - (a) based on an error of fact,
  - (b) wrong in law, or
  - (c) unfair or unreasonable.
- (2) An appeal must be made within the period of 28 days beginning with the day on which notification of the Electoral Commission's decision is received.

### **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).

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*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).

*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—

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- (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.
- (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—

*Status: Point in time view as at 30/01/2020.*

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

- (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.

#### *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).

## PART 6

### INTERPRETATION

32 In this schedule—

- “completion certificate” has the meaning given in paragraph 15(1),
- “discretionary requirement” has the meaning given in paragraph 6(3),
- “enforcement undertaking” has the meaning given in paragraph 18(1)(b),
- “fixed monetary penalty” has the meaning given in paragraph 1(3),
- “non-compliance penalty” has the meaning given in paragraph 11(1),

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“non-monetary discretionary requirement” has the meaning given in paragraph 6(5),

“responsible person”, in relation to a permitted participant, has the meaning given in schedule 7,

“restriction” includes prohibition,

“stop notice” has the meaning given in paragraph 13(1),

“variable monetary penalty” has the meaning given in paragraph 6(5).

## PART 7

### LISTED CAMPAIGN OFFENCES

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Section 16(4)(a)	Failure to supply information to relevant person as required by schedules 3 to 5
Paragraph 14(2) of schedule 3	Incurring referendum expenses without authority
Paragraph 15(4)(a) of schedule 3	Making payment in respect of referendum expenses without authority
Paragraph 15(4)(b) of schedule 3	Failure to notify responsible person of payment in respect of referendum expenses
Paragraph 16(3)(a) of schedule 3	Paying claim in respect of referendum expenses where failure to comply with procedure
Paragraph 16(3)(b) of schedule 3	Paying claim in respect of referendum expenses outside specified time period
Paragraph 19(3) of schedule 3	Individual (other than permitted participant) exceeding limits on referendum expenses
Paragraph 19(5) of schedule 3	Body (other than permitted participant) exceeding limits on referendum expenses
Paragraph 20(7) of schedule 3	Permitted participant exceeding limits on referendum expenses
Paragraph 22(12)(a) of schedule 3	Failure to comply with requirements for declaration
Paragraph 24(5)(a) of schedule 3	Failure to deliver return to Electoral Commission
Paragraph 24(5)(b) of schedule 3	Failure to comply with requirements for return to Electoral Commission
Paragraph 24(5)(c) of schedule 3	Failure to deliver to Electoral Commission a return of sums paid in pursuance of leave given to pay late claims
Paragraph 25(4)(b) of schedule 3	Failure of responsible person of permitted participant (other than an individual) to provide or sign declaration with return to Electoral Commission

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Paragraph 28(10) or (11) of schedule 3	Printing or publishing referendum material without details of printer or publisher
Paragraph 35(7) of schedule 3	Failure to provide information about donors
Paragraph 36(4) or (6) of schedule 3	Failure to return donations
Paragraph 43(11)(a) of schedule 3	Failure to deliver donation reports to Electoral Commission within time limits
Paragraph 43(11)(b) of schedule 3	Failure to comply with requirements for recording donations in donation reports
Paragraph 44(3)(b) of schedule 3	Failure of responsible person of permitted participant (other than an individual) to provide or sign declaration with donation report
Paragraph 53(1) of schedule 3	Permitted participant (individual) knowingly enters into regulated transaction with unauthorised participant
Paragraph 53(2) of schedule 3	Permitted participant (other than an individual) knowingly enters into regulated transaction with unauthorised participant
Paragraph 53(3) of schedule 3	Responsible person for permitted participant (other than an individual) knowingly enters into regulated transaction with unauthorised participant
Paragraph 53(4) of schedule 3	Permitted participant (individual) unknowingly enters into regulated transaction with unauthorised participant and fails to take steps to repay
Paragraph 53(5) or (6) of schedule 3	Failure of responsible person for permitted participant (other than an individual) to take steps to repay money received in connection with a regulated transaction with an unauthorised participant which was entered into unknowingly
Paragraph 53(7) of schedule 3	Permitted participant (individual) knowingly benefits from regulated transaction with unauthorised participant
Paragraph 53(8) or (9) of schedule 3	Permitted participant (other than an individual) knowingly benefits from connected transaction with unauthorised participant
Paragraph 53(11) or (12) of schedule 3	Failure of responsible person for permitted participant (other than an individual) to take steps to repay benefits from connected transaction with unauthorised participant which was entered into unknowingly



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Paragraph 61(11)(a) of schedule 3	Failure to deliver transaction reports to Electoral Commission within time limits
Paragraph 62(3)(b) of schedule 3	Failure of responsible person of permitted participant (other than an individual) to provide or sign declaration with report relating to regulated transactions
Paragraph 12(1) of schedule 4	Failure to comply with investigation requirement

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**Status:**

Point in time view as at 30/01/2020.

**Changes to legislation:**

There are currently no known outstanding effects for the Referendums (Scotland) Act 2020, SCHEDULE 5.