

Status: Point in time view as at 30/01/2020.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 6. (See end of Document for details)

SCHEDULE 6

(introduced by section 35)

OFFENCES

Personation

- 1 (1) A person (“A”) commits the offence of personation in the referendum if—
 - (a) A votes in person or by post in the referendum as some other person, whether as a voter or as proxy, and whether that other person is living or dead or is a fictitious person, or
 - (b) A votes, as proxy, in person or by post in the referendum—
 - (i) for a person whom A knows or has reasonable grounds for supposing to be dead or to be a fictitious person, or
 - (ii) when A knows or has reasonable grounds for supposing that A's appointment as proxy is no longer in force.
- (2) For the purposes of this paragraph, a person is deemed to have voted if the person—
 - (a) has applied for a ballot paper for the purpose of voting in person, or
 - (b) has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post.
- (3) A person commits a corrupt practice if the person commits the offence of personation in the referendum or aids, abets, counsels or procures the commission of that offence.

Other voting offences

- 2 (1) A person (“A”) commits an offence if—
 - (a) A votes in person or by post in the referendum, whether as a voter or as proxy, or applies to vote by proxy or by post as a voter or as proxy in the referendum knowing that A is subject to a legal incapacity to vote in the referendum,
 - (b) A applies for the appointment of a proxy to vote for A in the referendum knowing that A or the person to be appointed is subject to a legal incapacity to vote in the referendum, or
 - (c) A votes, whether in person or by post, as proxy for some other person in the referendum, knowing that the other person is subject to a legal incapacity to vote.
- (2) For the purposes of sub-paragraph (1), references to a person being subject to a legal incapacity to vote do not, in relation to things done before the date of the referendum, include the person's being below voting age if the person will be of voting age on that date.
- (3) A person (“A”) commits an offence if—
 - (a) A votes as a voter more than once in the referendum,
 - (b) A votes as a voter in person in the referendum when A is entitled to vote by post,
 - (c) A votes as a voter in person in the referendum knowing that a person appointed to vote as A's proxy in the referendum either has already voted in person in the referendum or is entitled to vote by post in the referendum, or
 - (d) A applies for a person to be appointed as A's proxy to vote for A in the referendum without applying for the cancellation of a previous appointment

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of a third person then in force in respect of the referendum or without withdrawing a pending application for such an appointment in respect of the referendum.

- (4) A person (“A”) commits an offence if—
- (a) A votes as proxy for the same voter more than once in the referendum,
 - (b) A votes in person as proxy for a voter in the referendum when A is entitled to vote by post as proxy in the referendum for that voter,
 - (c) A votes in person as proxy for a voter in the referendum knowing that the voter has already voted in person or by post in the referendum, or
 - (d) A votes by post as proxy for a voter in the referendum knowing that the voter has already voted in person or by post in the referendum.
- (5) A person (“A”) commits an offence if A votes in the referendum as proxy for more than two persons of whom A is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.
- (6) A person (“A”) commits an offence if A knowingly induces or procures some other person to do an act which is, or but for that other person's lack of knowledge would be, an offence by that other person under any of sub-paragraphs (1) to (5).
- (7) For the purposes of this paragraph a person is deemed to have voted if the person—
- (a) has applied for a ballot paper for the purpose of voting in person, or
 - (b) has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post.
- (8) For the purpose of determining whether an application for a ballot paper constitutes an offence under sub-paragraph (5), a previous application made in circumstances which entitle the applicant only to mark a tendered ballot paper is, if the person does not exercise that right, to be disregarded.
- (9) A person does not commit an offence under sub-paragraph (3)(b) or (4)(b) only by reason of the person's having marked a tendered ballot paper in pursuance of rule 24 of the conduct rules.
- (10) An offence under this paragraph is an illegal practice, but the court before which a person is convicted of any such offence may, if the court thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of paragraph 18.
- (11) In this paragraph “legal incapacity to vote” has the meaning given by section 5.

Imitation poll cards

- 3
- (1) A person commits an offence if the person, for the purpose of promoting or procuring a particular outcome in the referendum, issues any poll card or document so closely resembling an official poll card as to be calculated to deceive.
 - (2) An offence under sub-paragraph (1) is an illegal practice, but the court before which a person is convicted of any such offence may, if the court thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of paragraph 18.

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Offences relating to applications for postal and proxy votes

- 4 (1) A person (“A”) commits an offence if A—
- (a) engages in an act specified in sub-paragraph (2) in connection with the referendum, and
 - (b) intends, by doing so—
 - (i) to deprive another of an opportunity to vote in the referendum, or
 - (ii) to make for A or another a gain of money or property or a gain of a vote in the referendum to which A or the other is not otherwise entitled.
- (2) These are the acts—
- (a) applying for a postal or proxy vote as some other person (whether that other person is living or dead or is a fictitious person),
 - (b) otherwise making a false statement in, or in connection with, an application for a postal or proxy vote or providing false information in, or in connection with, such an application,
 - (c) inducing the registration officer or counting officer to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote,
 - (d) causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.
- (3) In sub-paragraph (1)(b)(ii), property includes any description of property.
- (4) In sub-paragraph (2), a reference to a postal vote or a postal ballot paper includes a reference to a proxy postal vote or proxy postal ballot paper (as the case may be).
- (5) A person commits a corrupt practice if the person commits an offence under sub-paragraph (1) or aids, abets, counsels or procures the commission of that offence.

Breach of official duty

- 5 (1) If a person to whom this paragraph applies without reasonable cause (and whether by act or omission) breaches the person's official duty, the person commits an offence.
- (2) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (3) No person to whom this paragraph applies is liable for breach of official duty to any penalty at common law and no action for damages lies in respect of the breach by such a person of the person's official duty.
- (4) The persons to whom this paragraph applies are—
- (a) the Chief Counting Officer,
 - (b) any proper officer, registration officer, counting officer or presiding officer, and
 - (c) any deputy of a person mentioned in paragraph (a) or (b) or any other person appointed to assist or, in the course of the other person's employment, assisting a person so mentioned in connection with that person's official duties,
- and “official duty” for the purpose of this paragraph is to be construed accordingly, but does not include duties imposed otherwise than by this Act.

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Tampering with ballot papers etc.

- 6 (1) A person (“A”) commits an offence if, in connection with the referendum—
- (a) A fraudulently defaces or fraudulently destroys any ballot paper, or the official mark on any ballot paper, or any postal voting statement or official envelope used in connection with voting by post,
 - (b) A, without due authority, supplies any ballot paper to any person,
 - (c) A fraudulently puts into any ballot box any paper other than the ballot paper which A is authorised by law to put in,
 - (d) A fraudulently takes out of the polling station any ballot paper,
 - (e) A, without due authority, destroys, takes, opens or otherwise interferes with any ballot box or packet of ballot papers then in use for the purposes of the referendum, or
 - (f) A fraudulently or without due authority (as the case may be) attempts to do any of the acts mentioned in paragraphs (a) to (e).
- (2) A person commits an offence if, in connection with the referendum, the person forges or counterfeits (or attempts to forge or counterfeit) any ballot paper or the official mark on any ballot paper.
- (3) If a counting officer, a presiding officer or a clerk appointed to assist in taking the poll, counting the votes or assisting at the proceedings in connection with the issue or receipt of postal ballot papers in the referendum commits an offence under this paragraph, the officer or clerk 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).
- (4) If any other person commits an offence under this paragraph the person is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).

Requirement of secrecy

- 7 (1) Every person (other than one mentioned in sub-paragraph (2)) attending at a polling station in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not, except for a purpose authorised by law, communicate to any person before the close of the poll the information described in sub-paragraph (3).
- (2) Sub-paragraph (1) does not apply to—
- (a) a person attending at the polling station for the purpose of voting,
 - (b) a person under the age of 16 accompanying a voter or a proxy for a voter,
 - (c) a companion of a voter with disabilities,
 - (d) a constable on duty at the polling station.
- (3) The information referred to in sub-paragraph (1) is any information as to—
- (a) the name of any voter or proxy for a voter who has or has not applied for a ballot paper or voted at a polling station,
 - (b) the number on the register of local government electors of any voter who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station,

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- (c) the official mark being used in accordance with rule 6 of the conduct rules.
- (4) Every person attending at the counting of the votes in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not—
- (a) ascertain or attempt to ascertain at the counting of the votes the unique identifying number on the back of any ballot paper,
 - (b) communicate any information obtained at the counting of the votes as to the outcome for which any vote is given on any particular ballot paper.
- (5) A person must not—
- (a) interfere with or attempt to interfere with a voter when recording the voter's vote in the referendum,
 - (b) otherwise obtain or attempt to obtain in a polling station information as to the outcome for which a voter in that station is about to vote or has voted in the referendum,
 - (c) communicate at any time to any person any information obtained in a polling station in the referendum as to the outcome for which a voter in that station is about to vote or has voted, or as to the unique identifying number on the back of a ballot paper given to a voter at that station, or
 - (d) directly or indirectly induce a voter to display a ballot paper after the voter has marked it so as to make known to any person any outcome for which the voter has or has not voted in the referendum.
- (6) In sub-paragraph (5), references to a voter include references to a proxy for a voter.
- (7) Every person attending the proceedings in connection with the issue or the receipt of ballot papers for persons voting by post in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not—
- (a) except for a purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark,
 - (b) except for a purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the unique identifying number on the back of any ballot paper sent to any person,
 - (c) except for a purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the unique identifying number on the back of any ballot paper, or
 - (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the outcome for which any vote is given in any particular ballot paper or communicate any such information obtained at those proceedings.
- (8) A companion of a voter with disabilities must not communicate at any time to any person any information as to the outcome for which that voter intends to vote or has voted, or as to the unique identifying number on the back of a ballot paper given for the use of that voter.
- (9) If a person acts in contravention of this paragraph the person commits an offence.
- (10) A person who commits an offence under sub-paragraph (9) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).
- (11) In this paragraph a voter with disabilities is a voter who has made a declaration under rule 23(1) of the conduct rules.

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Prohibition on publication of exit polls

- 8 (1) No person may publish before the close of the poll—
- (a) any statement relating to the way in which voters have voted in the referendum where that statement is (or might reasonably be taken to be) based on information given by voters after they have voted, or
 - (b) any forecast as to the result of the referendum which is (or might reasonably be taken to be) based on information so given.
- (2) If a person acts in contravention of this paragraph the person commits an offence.
- (3) A person who commits an offence under sub-paragraph (2) is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding level 5 on the standard scale (or both).
- (4) In this paragraph—
- “forecast” includes estimate,
 - “publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means,
 - “voters” includes proxies for voters,
- any reference to the result of the referendum is a reference to the result for the whole of Scotland or the result in one or more local government areas.

Payments to voters for exhibition of referendum notices

- 9 (1) No payment or contract for payment may, for the purposes of promoting a particular outcome in the referendum, be made to a voter on account of—
- (a) the exhibition of, or
 - (b) the use of any house, land, building or premises for the exhibition of, any bill, advertisement or notice.
- (2) Sub-paragraph (1) does not apply if—
- (a) it is the ordinary business of the voter to exhibit bills, advertisements or notices for payment, and
 - (b) the payment or contract is made in the ordinary course of that business.
- (3) If a payment or contract for payment is knowingly made in contravention of sub-paragraph (1) (whether before, during or after the referendum), each of the following persons commits an offence—
- (a) the person who makes the payment or enters into the contract,
 - (b) the person who receives the payment or is a party to the contract (if the person knows the payment or contract is in contravention of sub-paragraph (1)).
- (4) An offence under sub-paragraph (3) is an illegal practice.

Treating

- 10 (1) A person (“A”) commits the offence of treating in connection with the referendum if A, whether before, during or after the referendum, corruptly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person—
- (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting in the referendum, or

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- (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting, in the referendum.
- (2) Sub-paragraph (1) applies regardless of whether an act is done—
 - (a) directly or indirectly,
 - (b) by A or by another person on A's behalf.
- (3) A voter or proxy who corruptly accepts or takes any such meat, drink, entertainment or provision also commits the offence of treating in connection with the referendum.
- (4) A person commits a corrupt practice if the person commits the offence of treating in connection with the referendum.

Undue influence

- 11 (1) A person (“A”) commits the offence of undue influence in connection with the referendum if—
 - (a) A makes use of or threatens to make use of any force, violence or restraint, or inflicts or threatens to inflict, personally or by any other person, any temporal or spiritual injury, damage, harm or loss upon or against any person in order to induce or compel that person to vote or refrain from voting in the referendum, or on account of that person having voted or refrained from voting in the referendum, or
 - (b) by abduction, duress or any fraudulent device or contrivance, A impedes or prevents, or intends to impede or prevent, the free exercise of the franchise of a voter or proxy for a voter in the referendum, or so compels, induces or prevails upon, or intends so to compel, induce or prevail upon, a voter or proxy for a voter either to vote or to refrain from voting in the referendum.
- (2) Sub-paragraph (1)(a) applies regardless of whether an act is done—
 - (a) directly or indirectly,
 - (b) by A or by another person on A's behalf.
- (3) A person commits a corrupt practice if the person commits the offence of undue influence in connection with the referendum.

Bribery

- 12 (1) A person commits the offence of bribery in connection with the referendum if the person—
 - (a) gives any money to or procures any office for—
 - (i) any voter,
 - (ii) any other person on behalf of any voter, or
 - (iii) any other person,in order to induce any voter to vote or refrain from voting in the referendum,
 - (b) corruptly makes any gift or procurement as mentioned in paragraph (a) on account of any voter having voted or refrained from voting in the referendum,
 - (c) makes any gift or procurement as mentioned in paragraph (a) to or for any person in order to induce that person to procure, or endeavour to procure, any particular outcome in the referendum, or

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- (d) upon or in consequence of any such gift or procurement as mentioned in paragraph (a), procures or engages, promises or endeavours to procure any particular outcome in the referendum.
- (2) A person commits the offence of bribery in connection with the referendum if the person—
- (a) advances or pays or causes to be paid any money to or for the use of any other person with the intent that the money or any part of it is to be expended in bribery in connection with the referendum, or
 - (b) knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or partly expended in bribery in connection with the referendum.
- (3) A voter commits the offence of bribery in connection with the referendum if, whether before or during the referendum, the voter receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment for the voter or for any other person for—
- (a) voting or agreeing to vote in the referendum, or
 - (b) refraining or agreeing to refrain from voting in the referendum.
- (4) A person commits the offence of bribery in connection with the referendum if, after the referendum, the person receives any money or valuable consideration on account of any person—
- (a) having voted or refrained from voting in the referendum, or
 - (b) having induced any other person to vote or refrain from voting in the referendum.
- (5) Sub-paragraphs (1) to (4) apply regardless of whether an act is done—
- (a) directly or indirectly,
 - (b) by the person or by another person on the person's behalf.
- (6) For the purposes of sub-paragraph (1)—
- (a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or to endeavour to procure any money or valuable consideration,
 - (b) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment.
- (7) Sub-paragraphs (1) and (2) do not apply to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning the referendum.
- (8) A person commits a corrupt practice if the person commits the offence of bribery in connection with the referendum.
- (9) In this paragraph, the expression “voter” includes—
- (a) a proxy for a voter, and
 - (b) any other person who has or claims to have a right to vote in the referendum.

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Disturbances at public meetings

- 13 (1) A person commits an offence if the person, at a lawful public meeting to which this paragraph applies, acts (or incites others to act) in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting was called together.
- (2) This paragraph applies to a meeting held in connection with the referendum during the referendum period.
- (3) An offence under this paragraph is an illegal practice.

Illegal canvassing by police officers

- 14 (1) A person who is a constable commits an offence if the person by word, message, writing or in any other manner endeavours to persuade any person to give (or dissuade any person from giving) the person's vote in the referendum.
- (2) A person is not liable under sub-paragraph (1) for anything done in the discharge of the person's duty as a constable.
- (3) A person who commits an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Penalties for corrupt practices

- 15 A person who commits a corrupt practice under any provision of this schedule 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—
- (i) in the case of a corrupt practice under paragraph 1 or 4, to imprisonment for a term not exceeding 2 years or to a fine (or both),
- (ii) in any other case, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Prosecutions for illegal practices

- 16 (1) A person who commits an illegal practice under any provision of this schedule is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) On a prosecution for such an illegal practice it is sufficient to allege that the person charged has committed an illegal practice.

Conviction of illegal practice on charge of corrupt practice etc.

- 17 A person charged with a corrupt practice under any provision of this schedule may, if the circumstances warrant such finding, be convicted of an illegal practice (which offence is for that purpose to be an indictable offence), and a person charged with an illegal practice may be convicted of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

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Incapacity to hold public or judicial office in Scotland

- 18 (1) A person convicted of a corrupt or illegal practice under any provision of this schedule—
- (a) is, for the period of 5 years beginning with the date of the person's conviction, incapable of holding any public or judicial office in Scotland (within the meaning of section 185 of the 1983 Act), and
 - (b) if already holding such an office, vacates it as from that date.
- (2) Sub-paragraph (1) applies in addition to any punishment imposed on the person under paragraph 15 or 16.

Prohibition of paid canvassers

- 19 If a person is, whether before or during the referendum, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting a particular outcome in the referendum—
- (a) the person engaging or employing the canvasser, and
 - (b) the canvasser,
- commits the offence of illegal employment.

Providing money for illegal purposes

- 20 If a person knowingly provides money—
- (a) for any payment which is contrary to the provisions of this Act,
 - (b) for any expenses incurred in excess of the maximum amount allowed by this Act, or
 - (c) for replacing any money expended in any such payment or expenses,
- the person commits the offence of illegal payment.

Prosecutions for illegal employment or illegal payment

- 21 (1) A person who commits an offence of—
- (a) illegal employment under paragraph 19, or
 - (b) illegal payment under paragraph 20,
- is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) On a prosecution for such an illegal employment or illegal payment it is sufficient to allege that the person charged has committed the offence of illegal employment or illegal payment (as the case may be).
- (3) A person charged with an offence of illegal employment or illegal payment may be convicted of that offence notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

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