

SCHEDULES

SCHEDULE 1

Section 2

INVESTIGATORY POWERS OF COMMISSION: SCHEDULE TO BE INSERTED INTO THE 2000 ACT

Commencement Information

II Sch. 1 in force at 1.12.2010 by S.I. 2010/2866, art. 3(e) (with art. 5)

“SCHEDULE 19B

Section 146

INVESTIGATORY POWERS OF COMMISSION

Power to require disclosure

- 1 (1) This paragraph applies to the following organisations and individuals—
- (a) a registered party or, in the case of a registered party with accounting units—
 - (i) the central organisation of the party;
 - (ii) an accounting unit of the party;
 - (b) a recognised third party (within the meaning of Part 6);
 - (c) a permitted participant (within the meaning of Part 7);
 - (d) a regulated donee (within the meaning of Schedule 7);
 - (e) a regulated participant (within the meaning of Schedule 7A);
 - (f) a candidate at an election (other than a local government election in Scotland);
 - (g) the election agent for such a candidate;
 - (h) an organisation or individual formerly falling within any of paragraphs (a) to (g).
- (2) The Commission may give a disclosure notice to a person who—
- (a) is the treasurer or another officer of an organisation to which this paragraph applies, or has been at any time in the period of five years ending with the day on which the notice is given; or
 - (b) is an individual to whom this paragraph applies.
- (3) 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 the 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;
- or

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- (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.
- (4) A person to whom a disclosure notice is given shall comply with it within such reasonable time as is specified in the notice.

Inspection warrants

- 2 (1) This paragraph applies to the following organisations and individuals—
- (a) a registered party or, in the case of a registered party with accounting units—
 - (i) the central organisation of the party;
 - (ii) an accounting unit of the party;
 - (b) a recognised third party (within the meaning of Part 6);
 - (c) a permitted participant (within the meaning of Part 7);
 - (d) a members association (within the meaning of Schedule 7).
- (2) A justice of the peace may issue an inspection warrant in relation to premises occupied by any such organisation or individual if satisfied, on information on oath given by or on behalf of the Commission, 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 functions of the Commission other than 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, 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 suspected offences under this Act or suspected contraventions of restrictions or requirements imposed by or by virtue of this Act.

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- (9) In the application of this paragraph to Scotland—
- (a) a reference to a justice of the peace is to be read as a reference to a justice of the peace or a sheriff;
 - (b) a reference to information on oath is to be read as a reference to evidence on oath.

Powers in relation to suspected offences or contraventions

- 3 (1) This paragraph applies where the Commission have reasonable grounds to suspect that—
- (a) a person has committed an offence under this Act, or
 - (b) a person has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by or by virtue of this Act.

In this paragraph “the suspected offence or contravention” means the offence or contravention referred to above.

- (2) The Commission may by notice require any person (including an organisation to which, or an 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.
- (3) A person to whom a notice is given under sub-paragraph (2) shall comply with it within such reasonable time as is specified in the notice.
- (4) 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.
- (5) In sub-paragraph (4) “relevant” means relevant to an investigation by the Commission of the suspected offence or contravention.

Court order for delivery of documents or provision of information etc

- 4 (1) This paragraph applies where the Commission have given a notice under paragraph 3 requiring documents to be produced.
- (2) The High Court or (in Scotland) the Court of Session may make a document-disclosure order against a person (“the respondent”) if satisfied on an application by the Commission that—
- (a) there are reasonable grounds to suspect that a person (whether or not the respondent) has committed an offence under this Act or has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by or by virtue of this Act, and
 - (b) there are documents referred to in the notice under paragraph 3 which—

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- (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 13(1).
- 5 (1) This paragraph applies where the Commission have given a notice under paragraph 3 requiring any information or explanation to be provided.
- (2) The High Court or (in Scotland) the Court of Session may make an information-disclosure order against a person (“the respondent”) if satisfied on an application by the Commission that—
- (a) there are reasonable grounds to suspect that a person (whether or not the respondent) has committed an offence under this Act or has contravened (otherwise than by committing an offence) any restriction or other requirement imposed by or by virtue of this Act, 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 13(1).

Retention of documents delivered under paragraph 4

- 6 (1) The Commission may retain any documents delivered to them in compliance with an order under paragraph 4 for a period of three months (or for longer if any of following sub-paragraphs applies).

In this paragraph “the documents” and “the three-month period” mean the documents and the period mentioned above.

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- (2) If within the three-month period proceedings to which the documents are relevant are commenced against any person for any criminal offence, the documents may be retained until the conclusion of those proceedings.
- (3) If within the three-month period the Commission serve a notice under paragraph 2(1) of Schedule 19C 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 (5) (if they do impose a fixed monetary penalty).
- (4) If within the three-month period the Commission serve a notice under paragraph 6(1) of Schedule 19C 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 (5) (if they do impose a discretionary requirement).
- (5) If within the three-month period—
- (a) a notice is served imposing a fixed monetary penalty on any person under paragraph 2(4) of Schedule 19C 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 6(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.
- (6) If within the three-month period—
- (a) a stop notice is served on any person under paragraph 10 of Schedule 19C, 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.
- (7) If within the three-month period or the period given by sub-paragraph (6) (or, if applicable, by sub-paragraph (4) or (5)(b))—
- (a) the Commission, having served a stop notice on any person under paragraph 10 of Schedule 19C, decide not to issue a completion certificate under paragraph 12 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.

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Power to make copies and records

- 7 The Commission or a person authorised by the Commission—
- (a) may make copies of, or make 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 Commission under this Schedule must be in writing.

Meaning of “documents”

- 9 In this Schedule “documents” includes any books or records.

Documents in electronic form

- 10 (1) In the case of documents kept in electronic form—
- (a) a power of the 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 sub-paragraph (1)(a) above.

Legal professional privilege

- 11 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 legal professional privilege (in Scotland, to confidentiality of communications) could be maintained in legal proceedings.

Admissibility of statements

- 12 (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 Commission and P are parties—

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- (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 13(3);
 - (b) an offence under section 5 of the Perjury Act 1911 (false statements made otherwise than on oath);
 - (c) an offence under section 44(2) of the Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made otherwise than on oath);
 - (d) an offence under Article 10 of the Perjury (Northern Ireland) Order 1979 (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 19C other than powers in relation to an offence under paragraph 13(3) below.

Offences

- 13 (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.

Guidance by Commission

- 14 (1) The Commission shall prepare and publish guidance as to—
- (a) the circumstances in which the Commission are likely to give a notice under paragraph 1 or 3(2);
 - (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(4);
 - (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 shall revise guidance published under this paragraph and publish the revised guidance.

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- (3) The Commission shall consult such persons as they consider appropriate before publishing guidance or revised guidance under this paragraph.
- (4) The Commission shall have regard to the guidance or revised guidance published under this paragraph in exercising their functions.

Information about use of investigatory powers in Commission's annual report

- 15 (1) Each report by the Commission under paragraph 20 of Schedule 1 shall contain information about the use made by the Commission of their powers under this Schedule during the year in question.
- (2) The report shall, in particular, specify—
- (a) the cases in which a notice was given under paragraph 1 or 3(2);
 - (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(4);
 - (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 a 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.”

Changes to legislation:

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