



Scotland's Future:

Draft
Referendum
(Scotland) Bill
Consultation
Paper

Choosing Scotland's Future

www.scotland.gov.uk/referendum

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The Scottish Government,
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For further copies of this report or for more information on the draft Referendum (Scotland) Bill Consultation please email referendum@scotland.gsi.gov.uk or visit the Referendum website at www.scotland.gov.uk/referendum

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Foreword by the First Minister

The National Conversation, launched in August 2007, has been a unique exercise in participative democracy. People across Scotland – from the voluntary sector, trades unions, business and local communities – took part through public meetings, written contributions and online.

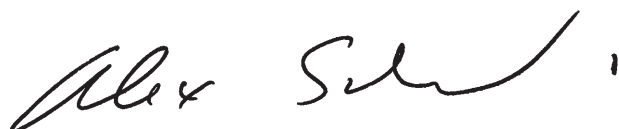
On St Andrew's Day 2009 we published the White Paper *Your Scotland, Your Voice*, a comprehensive examination of the options for Scotland's future – the status quo, further devolution and independence.

This Government believes in the sovereignty of the people of Scotland. We are committed to giving the people the opportunity to express their views in a referendum. More than 10 years on from the establishment of the Scottish Parliament the debate in Scotland is no longer about whether or not the Parliament should take on new responsibilities. The people want our Parliament to be able to do more, so the debate is now about how much more. And it is time the people had their say.

I believe that the future prosperity and development of Scotland is best served by Scotland becoming independent. The case for an independent Scotland is stronger and more urgent following recent economic events. It is exactly the flexibility that is offered by independence that Scotland needs if it is to deal most effectively with such challenges in the future. But I recognise that there are also those who argue that the responsibilities of the Scottish Parliament should be extended in more limited ways.

The draft Referendum Bill set out in this document would give the Scottish people the opportunity to have their say on two questions: first, whether the Scottish Parliament should have more devolved responsibility; second, whether there should be an additional transfer of the power to enable Scotland to become an independent country. The document seeks views on the best option for the question on further devolution: full devolution including fiscal autonomy, or the more limited proposals for the financing of the Scottish Parliament made by the Commission on Scottish Devolution.

The draft Bill provides the framework for a referendum shaped by the people of Scotland. I look forward to your response to this consultation, the debate on the Bill, and the referendum itself.



The Rt Hon Alex Salmond MP MSP
First Minister of Scotland

Summary

This consultation paper sets out proposals for a Referendum (Scotland) Bill. The draft Bill set out in the appendix to this paper provides the framework for the conduct of the referendum. The Scottish Government plans to introduce the Bill in 2010 and will be seeking the agreement of the Scottish Parliament that the referendum should be held as soon as possible.

Chapter 1 – The Ballot Papers

The Scottish Government believes that Scotland's future interests would be best served by it assuming all of the responsibilities and rights of a normal European state. Independence would give the Scottish Parliament and Government full responsibility for those matters currently reserved to the United Kingdom Parliament and Government, including key economic and political powers and the right of representation for Scotland in the European Union. Other aspects of an independent Scotland would remain the same. Her Majesty The Queen would remain as Head of State and the social union with the remainder of the UK would be maintained, with the nations continuing to co-operate on a range of matters.

However, the Scottish Government acknowledges that there is also support for extending the powers of the Scottish Parliament in more limited ways. The draft Bill would provide the people of Scotland with the opportunity to vote on two questions:

- the first about an extension of the powers and responsibilities of the Scottish Parliament, short of independence;
- the second about whether the Scottish Parliament should also have its powers extended to enable independence to be achieved.

The Scottish Government invites views on two possible options for the first question, one of which would be included on the referendum ballot paper. The first option, full devolution (sometimes called "devolution max"), would give the Scottish Parliament and Government responsibility for almost all domestic matters and most revenues and public spending in Scotland. The UK Parliament and Government would continue to have responsibility for defence, foreign affairs, financial regulation, monetary policy and the currency.

The second option for the first question would involve a more limited extension of devolution based on the financial recommendations made by the Commission on Scottish Devolution (the "Calman Commission") in June 2009. The Scottish Parliament would have the following additional responsibilities:

- responsibility to set a Scottish rate of Income Tax, which could vary by up to 10p in the pound from the rate in the rest of the UK;
- power to set the rates of Stamp Duty Land Tax and other minor taxes, and to introduce new taxes in Scotland with the agreement of the UK Parliament; and
- limited power to borrow money.

The Scottish Government believes that these Calman Commission proposals for financial devolution are seriously flawed and fall far short of the fiscal responsibilities which the Scottish Parliament requires. It believes that they also fall short of what would normally be seen as requiring a referendum. Indeed, those parties who took part in the Calman Commission have made clear their view that a referendum on these proposals is not necessary. However, the Income Tax proposal goes further than the tax-varying power which resulted from the vote in the second question in the 1997 Scottish devolution

referendum. Therefore the Scottish Government can see that there is an argument for including the Calman financial recommendations within a multi-option referendum and that approach is put forward here for consideration.

Chapter 1 also considers possible voting methods for a multi-option referendum. The method proposed – two questions with yes/no answers – is simple, provides a definitive result and is the same as that used in the 1997 referendum on Scottish devolution. A “yes” result for either question would be on the basis of a simple majority (more than 50%) of votes cast.

The referendum will be advisory, in that it will have no legislative effect. However, the Scottish Government would expect the UK and Scottish Parliaments and the respective Governments to listen to the views of the Scottish people and act on them.

Chapter 2 – Mechanics of the Referendum

The proposed rules about the conduct of the poll are based on those applying to the conduct of elections to the UK Parliament, Scottish Parliament and local councils. The referendum will be a traditional ballot-box poll held on a single day, with votes counted by hand, and a national declaration of the result. The Chief Counting Officer will be appointed by the Scottish Ministers and must be an existing or former returning officer for elections in Scotland.

The total cost of conducting the referendum is likely to be around £9.5 million, the bulk of which will be spent on running the poll and the count. Proportionately this is comparable to the estimated cost of as much as £120 million for the Alternative Vote referendum proposed by the UK Government for the whole of the UK.

The draft Bill follows the precedent of the 1997 referendum in that eligibility to vote is based on that for Scottish Parliament and Scottish local government elections. This is consistent with the internationally accepted principle that constitutional referendums should have a franchise determined by residency. The only departure from the 1997 franchise is that the draft Bill extends the vote to those aged 16 or 17 who are on the electoral register on the date of the poll. This is in line with the Scottish Government view that the voting age should be reduced to 16 for all elections.

Chapter 3 – Regulating the Campaign

The draft Bill includes rules to ensure that the referendum campaigns are run in a demonstrably fair and transparent manner. The rules are largely based on existing UK legislation.

The draft Bill creates a Scottish Referendum Commission to monitor the referendum. The Commission will, with limited exceptions, be completely independent of the Scottish Parliament and Government in the conduct of its affairs. The Commission’s functions will include publishing guidance for voters, Counting Officers, individuals and organisations campaigning in the referendum, observing the conduct of the poll and count, and reporting to the Scottish Parliament.

The draft Bill provides that an individual or organisation wishing to spend more than £3,000 on campaigning for a particular outcome must register with the Commission as a ‘permitted participant’. A ‘permitted participant’ may apply to the Commission to be the principal campaigner (the ‘designated organisation’) for an outcome in the referendum. In order to ensure a level playing field, the draft Bill imposes the spending limits shown in the table.

Campaign spending limits	
Type of Organisation	Proposed spending limit
Designated organisation ¹	£750,000
Political party represented in the Scottish Parliament	£100,000
Other permitted participants	£37,000
Individuals or bodies that are not permitted participants	£3,000

The draft Bill does not provide for any public funding for those who wish to campaign.

The draft Bill provides that, for the 28-day period before the referendum, the Scottish Ministers and certain public authorities in Scotland cannot publish material about the referendum which might influence its outcome.

Conclusion

This consultation is your opportunity to shape the referendum on Scotland's constitutional future. Chapter 4 explains how to respond. The deadline for responses is Friday 30 April 2010.

¹ Each designated organisation will also be entitled to one free postal communication to every household in Scotland to promote its campaign.

Introduction

The people of Scotland have been clear about their desire for our Parliament to have more responsibilities and in the white paper, *Your Scotland, Your Voice*², the Scottish Government has set out the options for our nation. The next step is to allow the people to have their say in a free and fair referendum.

This consultation provides the people with the opportunity to shape that referendum. The draft Referendum (Scotland) Bill set out in this document includes proposed ballot papers for a two-question referendum: the first question asking about an extension of the Scottish Parliament's powers short of independence, the second about whether the powers of the Scottish Parliament should also be extended to enable independence to be achieved.

Chapter 1 invites views on the principle of a multi-option referendum. It sets out two potential approaches to the first question: one based on the concept of full devolution and another based on the limited recommendations for financial devolution made by the Commission on Scottish Devolution (the "Calman Commission").

Chapter 2 deals with the rules about the conduct of the poll and eligibility to vote including a proposal that those aged 16 or 17 on the date of the referendum should be entitled to vote if they are registered to do so.

Chapter 3 seeks views on proposals for regulating the campaign and ensuring that it is run in a demonstrably fair and transparent manner. Those rules are largely based on existing UK legislation covering elections and referendums.

Chapter 4 explains how the consultation on the draft Bill will work and how comments should be submitted. A form is provided to enable you to respond.

The **Appendix** sets out the full text of the draft Bill.

² *Your Scotland, Your Voice* <http://www.scotland.gov.uk/Publications/2009/11/26155932/0>

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The Ballot Papers

Chapter Summary

- While the Scottish Government's favoured policy is independence, it acknowledges that there is support within Scotland for a range of positions on increased responsibilities for the Scottish Parliament. In order to reflect this as fully as possible, the Scottish Government is consulting on a referendum which would put two questions to the people of Scotland: firstly a question about the extension of the powers and responsibilities to the Scottish Parliament short of independence, and secondly a question about whether the Scottish Parliament should also have its powers extended to enable independence to be achieved.
- However, there is currently no consensus about what the further devolution option should be. The draft Bill therefore sets out two alternative versions for consideration.

- 1.1. Devolution was never intended to be a fixed arrangement. It was and is a process which should respond to political, economic and social circumstances over time. Devolved responsibilities have been increased on several occasions over the last decade, for example in relation to railways. Now, as the Scottish Parliament enters a second decade, it is clear that there is broad support for extending the Parliament's powers and responsibilities further. The Scottish Government therefore believes that options for extending those powers and responsibilities should be put before the people of Scotland in a referendum.
- 1.2. The Scottish Government believes that Scotland's future interests would be best served by it becoming an independent country and assuming all of the responsibilities and rights of a normal European state. Independence would bring responsibilities that could not be devolved within the UK, such as macroeconomic policy, full European representation and defence policy.
- 1.3. However, the Scottish Government acknowledges that there is support within Scotland for a range of other positions. *Your Scotland, Your Voice* therefore set out four possible scenarios for Scotland's future: the status quo, further devolution based on the recommendations of the Commission on Scottish Devolution (the "Calman" Commission), full devolution and independence.
- 1.4. Opinion polls confirm the broad support for giving the Scottish Parliament greater responsibilities. For example, an Ipsos MORI poll in November 2009³ found that 66% of those questioned favoured the Scottish Parliament having increased powers, whether in terms of further devolution or independence, while only 32% favoured the status quo.
- 1.5. Another poll, by Angus Reid in December 2009⁴ following the publication of *Your Scotland, Your Voice*, asked respondents which of the four scenarios for Scotland's

³ Poll conducted by Ipsos MORI, published on 29 November 2009

⁴ Poll conducted by Angus Reid, published on 14 December 2009

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future outlined in that publication they preferred. The poll found that 64% of respondents living in Scotland favoured increased powers, with 25% favouring independence, 22% favouring some additional powers along the lines of the Calman recommendations, and 17% favouring more additional powers, including full fiscal powers.

- 1.6. The recent Scottish Social Attitudes⁵ survey put the percentage supporting further powers even higher, with 69% of those questioned favouring significantly more powers for the Scottish Parliament.

The Proposed Referendum

- 1.7. The draft Bill would provide the people of Scotland with the opportunity to vote on two proposals:

- the first about an extension of the powers and responsibilities of the Scottish Parliament, short of independence;
- the second about whether the Scottish Parliament should also have its powers extended to enable independence to be achieved.

- 1.8. The Scottish Government recognises that those who support further devolution do not have a consensus position. The draft Bill therefore sets out two versions of the first ballot paper:

- the first version covering full devolution (sometimes called “devolution max”) and involving devolution of a wide range of policy responsibilities, while leaving macroeconomic policy, defence and foreign affairs with the UK Parliament and Government; and
- the second covering the proposals on the financing of the Scottish Parliament made by the Commission on Scottish Devolution (the “Calman” Commission).

- 1.9. These alternatives are considered below in greater detail. The proposed ballot papers are set out on pages 20-22.

First Ballot Paper

Version 1 – Full Devolution

- 1.10. Contributions to the National Conversation have indicated support for a range of proposals which reduce the matters reserved under the Scotland Act 1998. Under full devolution, the Scottish Parliament and Government would take on more responsibility for domestic matters and for raising, collecting and administering all (or the vast majority of) revenues in Scotland and the vast bulk of public spending. The UK Government and institutions would continue to have responsibility for matters such as macroeconomic policy and defence, but the Scottish Parliament and Government would have a greater range of measures available to them to support sustainable economic growth.

- 1.11. Version 1 of the first ballot paper asks voters whether the Scottish Parliament should have its powers extended so that it is fully responsible for laws, taxes and duties in Scotland, except for certain things which would remain the responsibility of the UK

⁵ Scottish Social Attitudes Survey 2009, 15 January 2010

Parliament. Key issues which would continue to be the responsibility of the UK Parliament would include:

- defence and foreign affairs;
- financial regulation, monetary policy and the currency.

Version 2 – The “Calman” Financial Recommendations

1.12. The Commission on Scottish Devolution (the “Calman Commission”), chaired by Sir Kenneth Calman, published its final report⁶ in June 2009. It made 63 recommendations in four categories: strengthening financial accountability; strengthening co-operation between the Scottish and UK Parliaments; strengthening the devolution settlement; and strengthening the Scottish Parliament. It made no recommendations in a number of important areas including economic issues, employment and company law, and foreign affairs.

1.13. The Scottish Government published its formal response to the Commission’s recommendations on 9 November 2009⁷. It supports many of the Commission’s recommendations for additional devolution and strengthened co-operation. It has sought action by the UK Government to secure early implementation of those on which there is consensus, a position supported by the Scottish Parliament following a debate in December 2009⁸. In the Scottish Government’s view, however, the Commission’s proposals for financial accountability are seriously flawed and fall far short of the fiscal responsibilities which Scotland needs to become a more successful country. That conclusion has been backed by a number of respected and independent economic commentators⁹.

1.14. It is not clear whether any of the parties which supported the Commission will fully support the implementation of its recommendations. The UK Government published its proposals for taking forward some of the Commission’s recommendations on 25 November 2009¹⁰. The leader of the Conservative Party indicated in December 2009 that a Conservative government would set out its own proposals for implementation¹¹. The parties which took part in the Commission have, however, made clear their view that a referendum on the Calman proposals is not necessary.

⁶ Serving Scotland Better: Scotland and the United Kingdom in the 21st Century.
<http://www.commissiononscottishdevolution.org.uk/uploads/2009-06-12-csd-final-report-2009fb bookmarked.pdf>

⁷ The Scottish Government’s Response to the Recommendations of the Commission on Scottish Devolution <http://www.scotland.gov.uk/Publications/2009/11/09152544/0>

⁸ The Scottish Parliament passed the following motion on 9 December 2009 “That the Parliament welcomes the recommendations of the Calman Commission on Scottish Devolution that responsibility for the law across a range of areas be devolved to the Scottish Parliament and also welcomes the recommendations for closer working between the Scottish and UK Ministers to ensure that the needs of Scotland are properly represented, and urges the UK Government to work with the Scottish Parliament to ensure that, where there is consensus, all such recommendations are implemented before the dissolution of the current UK Parliament.” S3M-5365, Official Report Cols 21957-22012 <http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-09/sor1209-02.htm>

⁹ Article in The Scotsman by Professor Drew Scott et al 17 June 2009 <http://thescotsman.scotsman.com/opinion/Longterm-planning-is-threatened-by.5371689.jp>

¹⁰ Scotland’s Future in the UK: Building on Ten Years of Scottish Devolution. Cm 7738. <http://www.scotlandoffice.gov.uk/scotlandoffice/files/Scotland's%20Future%20in%20the%20United%20Kingdom.pdf>

¹¹ The Times, 18 December 2009
<http://www.timesonline.co.uk/tol/news/uk/scotland/article6961216.ece>

1.15. The Scottish Government's view is also that the Commission's recommendations fall short of the increase in responsibilities that would normally be seen as requiring referendum consultation. Nevertheless, the Scottish Government notes that the proposal to give the Scottish Parliament tax-varying powers was put to voters as the second question in the 1997 devolution referendum. This resulted in the Scottish Parliament having the power to vary income tax by up to 3p in the pound. Given that the Calman recommendations include a proposal to give the Scottish Parliament responsibility for setting a Scottish rate of Income Tax, which could vary by up to 10p in the pound from the rate in the rest of the UK, the Scottish Government can see that there is an argument for including the Calman financial recommendations within a multi-option referendum.

1.16. Version 2 of the first ballot paper therefore sets out for consideration a proposed question which would ask voters whether the Scottish Parliament should have its financial responsibilities extended as recommended by the Calman Commission. Those additional responsibilities are:

- responsibility to set a Scottish rate of Income Tax which could vary by up to 10p in the pound from the rate in the rest of the UK;
- power to set the rates of Stamp Duty Land Tax and other minor taxes, and to introduce new taxes in Scotland with the agreement of the UK Parliament; and
- limited power to borrow money.

QUESTION 1

What are your views on the proposed referendum which seeks the people's views on two proposals for extending the powers of the Scottish Parliament?

QUESTION 2

What do you think should be the first proposal in that referendum: full devolution (Version 1 of Ballot Paper 1), or the Calman-based option (Version 2 of Ballot Paper 1)?

Second Ballot Paper – Additional power to enable Scotland to become an independent country

1.17. *Your Scotland, Your Voice* sets out the range of issues for which the Government and Parliament of an independent Scotland would be responsible. They can be summarised as follows:

- the economy, including decisions on the currency and the macroeconomic framework;
- investment in education, enterprise and infrastructure, including transport and housing;
- the environment, energy and climate change;
- the taxation and benefits system;
- the full range of public services, including benefits and health;
- foreign affairs, defence and security matters. For example, Scotland would continue membership of the European Union, representing its own national

interests in the same way as other member states, influencing directly the overall direction of European Union policy. An independent Scotland would also have full representation on other European and international bodies;

- equality legislation and human rights; and
- the constitution and government of Scotland, including Parliament, the courts and local government.

1.18. Independence would complete the responsibilities of the Scottish Parliament and Government while allowing existing structures and services – many of which are already devolved – to continue.

1.19. Her Majesty The Queen would remain as Head of State. The current parliamentary and political Union of Great Britain and Northern Ireland would become a monarchical and social Union – united kingdoms rather than a United Kingdom – maintaining a relationship forged in 1603 by the Union of the Crowns.

1.20. Within this relationship, a broad range of cultural, social and policy links would continue and it is likely that both an independent Scotland and the remainder of the UK would seek to maintain and build on a series of cross-border partnerships and services. As members of the European Union, both Scotland and the rest of the UK would enjoy full access to the other's markets and there would be freedom to travel and work in either country.

1.21. Scotland would continue to operate within the Sterling system until any decision to join the Euro by the people of Scotland in a referendum.

1.22. The Scottish Government proposes that any extension of the powers and responsibilities of the Scottish Parliament should include an additional power to enable Scotland to become an independent country. Ballot paper 2 contains a referendum proposal to that effect.

Voting Method for a Multi-option Referendum

1.23. There are a number of voting methods which could be used for a multi-option referendum. Many of the more complex methods have never been used in national elections or referendums, and none have been used in a comparable referendum. The Scottish Government has therefore considered two of the most easily understandable voting methods for which there have been successful precedents:

- **Method 1 – Preferential Voting (Alternative Vote)** using a ballot paper with three options. Voters would have the chance to rank the options by putting a “1” by their first preference and a “2” by their second preference. If no option has an absolute majority of first-preference votes, the option with the lowest number of first-preference votes is eliminated and these ballots are redistributed to the remaining options according to the second preferences marked; and
- **Method 2 – Two ballot papers with two separate questions** with results calculated for each using simple majority voting.

1.24. The approaches both have merits:

- **Method 1** – This should be familiar to voters as the system for local government elections. It would take into account second choices, and any option chosen by adding up the preferences would have the support of at least 50% of voters.

1 The Ballot Papers

However, it could be argued to be more difficult for voters to understand, and more complicated for those counting the votes.

- **Method 2** – The two-question system is a simple one both for voters to understand and for those conducting the count. It provides a definitive result and is in line with the approach taken in the 1997 Scottish devolution referendum¹².

1.25. The method adopted in the draft Bill is Method 2. As in the 1997 referendum, the questions would be on two separate, and differently coloured, ballot papers.

QUESTION 3

The Scottish Government proposes voting method 2 (two separate yes/no questions). What are your views on this?

The Referendum Proposals and Informing Voters

1.26. Scottish Parliament legislation must conform to the provisions of the Scotland Act 1998. The Scotland Act has in-built flexibility so that the Scottish Parliament's powers can be extended over time. The Scottish Parliament has a role in such processes, for example in relation to orders made under section 30 of the Act. It is therefore legitimate for a referendum held under an Act of the Scottish Parliament to ask the people questions related to an extension of its powers insofar as this is within the framework of the Scotland Act.

1.27. The wording of the proposals has also been developed with the UK Electoral Commission's guidelines on referendum questions in mind. Those guidelines state that a referendum question should present the options clearly, simply and neutrally, and should:

- be easy to understand;
- be to the point;
- be unambiguous;
- avoid encouraging voters to consider one response more favourably than another; and
- avoid misleading voters.

1.28. The proposed ballot papers are set out on pages 20-22. To ensure that voters are fully informed about the proposals, an information leaflet would be sent to every household. This would be distinct from any material produced by those campaigning for a particular outcome in the referendum. This was the approach taken by the UK Government in the lead-up to the 1997 referendum about the Scottish Parliament.

QUESTION 4

What are your views on the wording and format of the ballot papers?

¹² The 1997 referendum on Scottish devolution asked voters to indicate whether they 1) agreed or disagreed that there should be a Scottish Parliament and 2) agreed or disagreed that a Scottish Parliament should have tax-varying powers.

Timing of the Referendum

1.29. The date of the referendum will depend on the parliamentary progress of the Bill, and will ultimately be for the Scottish Parliament to decide. The Scottish Government will be seeking the agreement of the Parliament that the referendum should be held as soon as possible.

Referendum Results

1.30. The referendum will be advisory, in that it will have no legislative effect. It will not be subject to any minimum turnout requirement or approval threshold (where approval is required by a minimum percentage of registered voters). It is well established in the UK¹³ and across western Europe¹⁴ that referendums should be decided by those who choose to vote on a simple majority basis. The 1997 Scottish devolution referendum was conducted on that basis.

1.31. The Venice Commission's 2005 report *Referendums in Europe – An Analysis of the Legal Rules in European States* notes that most European states do not set thresholds for referendums - either in terms of participation or approval - that have to be exceeded for referendum results to be valid. In 2006 the Venice Commission published a voluntary *Code of Good Practice for Referendums* setting out the views of this Council of Europe Commission on best practice for referendums. Article 7 of the Code explicitly states that minimum turnout requirements and abnormal majority thresholds are not advisable. In the Scottish Government's view this is the correct approach.

1.32. While the referendum will have no legal effect on the Union, the Scottish Government would expect the UK and Scottish Parliaments and the respective Governments to listen to the views of the Scottish people and act on them.

What Would Follow the Referendum

(a) A majority vote against both proposals

1.33. Those not in favour of either proposal for extension of the powers and responsibilities of the Scottish Parliament would vote "no/no". If that were the majority position neither proposal would be taken forward.

(b) A vote in favour of the first proposal only

1.34. The first proposal asks voters whether they agree that the powers and responsibilities of the Scottish Parliament should be extended so that the Parliament becomes responsible for a range of matters (either full responsibility for domestic matters as set

¹³ The 1975 UK Referendum on continued membership of the EEC, the 1997 devolution referendums in Scotland and Wales, the 1998 Greater London Authority referendum, the 1998 referendum on the Belfast Agreement in Northern Ireland and the 2004 referendum on a regional assembly for the North East of England were all conducted without a minimum turnout requirement and with the result determined by a simple majority.

¹⁴ Examples of recent referendums in western Europe where no minimum turnout requirement or approval threshold was set are: the 1992 Maastricht treaty referendums in France and Ireland, the 1994 referendum on joining the EU and the 2003 referendum on adopting the Euro in Sweden, the 2005 referendums on the Constitution for the EU in Spain, France and the Netherlands, the 2006 referendum on greater autonomy for Catalonia and the 2008 and 2009 Lisbon Treaty Referendums in Ireland.

out in the full devolution proposal or more responsibility for financial affairs as recommended by the Calman Commission).

- 1.35. If there is a majority vote in favour of this proposal, but not for proposal 2, it would be for the Scottish and UK Parliaments to take forward implementation. Depending on the devolution package agreed by the people, the transfer of powers could be achieved through Orders in Council under the Scotland Act 1998 (which require the assent of both Parliaments), through an Act of the Westminster Parliament (which under the "Sewel Convention" would also require the agreement of the Scottish Parliament as it would alter the functions of the Parliament and the Scottish Ministers), or through a combination of the two mechanisms.
- 1.36. The Scottish Government would expect the UK Government to work with it to bring forward proposals for implementation by the two Parliaments in a timely manner in order to put in place the additional devolved responsibilities which the Scottish people have agreed should be put in place.
- 1.37. The process by which such an extension of the powers of the Scottish Parliament could be secured would therefore be as follows:
- The Scottish Parliament passes the Referendum Bill enabling the views of the Scottish electorate to be sought on whether there should be additional devolution in the terms set out above.
 - The referendum is held following a campaign period in which proponents of the status quo, extension of the Parliament's powers without power to enable independence and extension of powers to enable independence will each have their opportunity to make their case to the Scottish people.
 - The people of Scotland express their views through the referendum.
 - Following the necessary negotiations between the Scottish and UK Governments, it would then - in line with the position set out in paragraph 1.32 - be for the Scottish and UK Parliaments to act on the expressed will of the Scottish people.

(c) *A vote in favour of the second proposal*

- 1.38. The second proposal asks voters whether they agree that the extension of the Scottish Parliament's powers set out in proposal 1 should be supplemented by a further power to enable independence to be achieved.
- 1.39. The Scottish Government believes that the future prosperity and development of Scotland is best served by it becoming an independent country. It will continue to make this case and argue that Scotland should become independent.
- 1.40. The process by which Scotland could become independent would be as follows:
- The Scottish Parliament passes the Referendum Bill enabling the views of the Scottish electorate to be sought on extending the powers of the Scottish Parliament to enable it to decide on independence.
 - The referendum is held following a campaign period in which proponents of the status quo, extension of the Parliament's powers without power to enable independence and extension of powers to enable independence will each have their opportunity to make their case to the Scottish people. The Scottish Government would campaign for a "yes/yes" vote on the basis that independence is the best future for Scotland.

- The people of Scotland express their views through a "yes/yes" result in the referendum.
- Following the necessary negotiations between the Scottish and UK Governments, it would then be for the Scottish and UK Parliaments to act on the expressed will of the Scottish people, again in line with the position set out in paragraph 1.32.

THE BALLOT PAPERS

FIRST BALLOT PAPER (VERSION 1: FULL DEVOLUTION)

The Scottish Parliament has decided to consult people in Scotland on proposals to seek the transfer of more powers to the Parliament.

Proposal 1 is on this ballot paper. Proposal 2 is on a separate ballot paper. You can vote on both proposals.

Background to Proposal 1

The Scottish Government, in the paper *Your Scotland, Your Voice* (published on 30 November 2009), set out a proposal for extending the powers and responsibilities of the Scottish Parliament while Scotland remains part of the United Kingdom.

Under this proposal the Scottish Parliament would, with certain exceptions, be responsible for all laws, taxes and duties in Scotland. The exceptions, which would continue to be the responsibility of the United Kingdom Parliament, are—

- defence and foreign affairs,
- financial regulation, monetary policy and the currency.

Proposal 1 – Increased powers and responsibilities for Scotland

The Scottish Parliament should have its powers and responsibilities extended as described above.

Do you agree with this proposal?

Please put a cross (X) in one box only

YES, I AGREE	
--------------	--

OR

NO, I DO NOT AGREE	
--------------------	--

FIRST BALLOT PAPER (VERSION 2: CALMAN FISCAL REFORMS)

The Scottish Parliament has decided to consult people in Scotland on proposals to seek the transfer of more powers to the Parliament.

Proposal 1 is on this ballot paper. Proposal 2 is on a separate ballot paper. You can vote on both proposals.

Background to Proposal 1

The Commission on Scottish Devolution (the “Calman Commission”) recommended in its report of 15 June 2009 that the Scottish Parliament should have the following additional financial powers and responsibilities—

- responsibility for setting a Scottish rate of Income Tax which could vary by up to 10p in the pound from the rate in the rest of the United Kingdom,
- power to set the rates of Stamp Duty Land Tax and other minor taxes, and to introduce new taxes in Scotland with the agreement of the United Kingdom Parliament, and
- limited power to borrow money.

Proposal 1 – Increased financial powers and responsibilities for Scotland

The Scottish Parliament should have its financial powers and responsibilities extended as recommended by the Commission on Scottish Devolution.

Do you agree with this proposal?

Please put a cross (X) in one box only

YES, I AGREE	
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OR

NO, I DO NOT AGREE	
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SECOND BALLOT PAPER (POWER TO ENABLE INDEPENDENCE)

The Scottish Parliament has decided to consult people in Scotland on proposals to seek the transfer of more powers to the Parliament.

Proposal 2 is on this ballot paper. Proposal 1 is on a separate ballot paper. You can vote on both proposals.

Background to Proposal 2

The Scottish Government, in the paper *Your Scotland, Your Voice* (published on 30 November 2009), set out its preference for an independent Scotland which would—

- have the rights and responsibilities of a normal, sovereign state,
- be a full member of the European Union,
- maintain a relationship with the remainder of the United Kingdom where the nations co-operate on cross-border cultural, social and policy matters, and
- retain Her Majesty The Queen as Head of State.

Proposal 2 – Additional power to enable Scotland to become an independent country

The Scottish Government proposes that, in addition to the extension of the powers and responsibilities of the Scottish Parliament set out in Proposal 1, the Parliament’s powers should also be extended to enable independence to be achieved.

Do you agree with this proposal?

Please put a cross (X) in one box only

YES, I AGREE	
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OR

NO, I DO NOT AGREE	
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2 Mechanics of the Referendum

Chapter Summary

- The rules proposed for the conduct of the poll are based on those applying to the conduct of elections to the UK Parliament, Scottish Parliament and local authorities.
- The referendum will be a traditional ballot-box poll held on a single day at polling stations across the country. Voters will also have the option to vote by post or proxy. The votes will be counted by hand.
- Eligibility to vote will follow the precedent of the 1997 referendum in being based on who can vote at Scottish Parliament and Scottish local government elections. However, the draft Bill provides that those aged 16 or 17 on the electoral register on the date of the referendum will also be entitled to vote.

Conduct of the Poll and Count

- 2.1. The draft Bill establishes the office of the Chief Counting Officer (CCO), who will be responsible for the proper and effective conduct of the referendum. The CCO will be responsible for the running of the poll, the count and the declaration of the result.
- 2.2. The CCO role is one which has been established at previous referendums in the UK. The role will be similar to the CCO role in the 1997 devolution referendum in Scotland and the 2004 Regional Assembly and Local Government referendum held in 2004 in the North East of England.
- 2.3. The CCO will be an officer independent of Government, who has the necessary experience and expertise in running national votes. The draft Bill provides that the CCO will be appointed by the Scottish Ministers and must be an existing or former returning officer for elections in Scotland. The CCO will appoint a Counting Officer (CO) for each local authority area.
- 2.4. The draft Bill provides that there should be a national declaration of the result before any declaration of local results. In the 1997 referendum, a declaration was made of the result in each local authority area as that result became available. By the time the last results came through the overall national result was already decided and there was little coverage or interest in the results from the areas where the counting of votes took a little longer. The Scottish Government believes that as this is a national referendum there should be a declaration of a national result taking account of the votes cast in every part of Scotland. The results for individual local authorities would be available immediately following that national declaration.

Costs

- 2.5. The total cost of conducting the referendum is likely to be around £9.5 million, the bulk of which will be spent on running the poll and the count. Proportionately this is

2 Mechanics of the Referendum

comparable to the estimated cost of as much as £120 million for the Alternative Vote referendum proposed by the UK Government for the whole of the UK.

Eligibility to Vote

- 2.6. Following the precedent of the 1997 referendum, eligibility to vote will be based on that for Scottish Parliament and Scottish local government elections. That means that those resident in Scotland will be eligible to vote (with the exception of citizens of non-Commonwealth and non-EU countries). This is in line with the internationally accepted principle that the franchise for constitutional referendums should be determined by residency, and with the Scottish Government's view that sovereignty lies with the people of Scotland.
- 2.7. The only departure from the practice in the 1997 referendum is that the draft Bill extends the vote to those aged 16 or 17, as long as they are eligible to be registered on the electoral register.

The Local Government and Scottish Parliamentary Franchise

- 2.8. The franchises for local government and Scottish Parliamentary (LG & SP), Westminster Parliamentary (WP) and European Parliamentary (EP) elections are different, as set out in Table 1.

Local Government & Scottish Parliamentary franchise	Westminster Parliamentary franchise	European Parliamentary franchise
All British citizens resident in Scotland	All British citizens resident in Scotland	All British citizens resident in Scotland
Commonwealth citizens resident in Scotland	Commonwealth citizens resident in Scotland	Commonwealth citizens resident in Scotland
Republic of Ireland citizens resident in Scotland	Republic of Ireland citizens resident in Scotland	Republic of Ireland citizens resident in Scotland
Citizens of other EU countries resident in Scotland		Citizens of other EU countries resident in Scotland
	British nationals now living overseas who have previously been registered to vote in a Scottish constituency in the last 15 years	British nationals now living overseas who have previously been registered to vote in a Scottish constituency in the last 15 years
Members of the House of Lords resident in Scotland		Members of the House of Lords resident in Scotland

- 2.9. The main differences between the LG & SP and WP franchises are that the LG & SP franchise does not include former residents of Scotland now living overseas, but does include all EU citizens residing in Scotland (who cannot vote in WP elections). None of the franchises allows citizens of non-EU and non-Commonwealth countries to vote. Former residents of Scotland now living in the rest of the UK are not included in the LG & SP franchise, or any other franchise used in Scotland. The LG & SP franchise most closely reflects residency in Scotland and has been chosen for that reason.
- 2.10. The following groups of people will therefore be entitled to vote in the referendum:
- British citizens resident in Scotland;
 - Commonwealth citizens resident in Scotland;
 - Republic of Ireland citizens resident in Scotland;

- citizens of other EU countries resident in Scotland;
- members of the House of Lords resident in Scotland; and
- Service/Crown personnel serving in the UK or overseas in the armed forces or with Her Majesty's Government who are registered to vote in Scotland.

16 and 17 Year-olds

- 2.11. The Scottish Government's view is that the voting age should be reduced to 16 for all elections. Denying 16 and 17 year-olds the vote risks them becoming disengaged from the political process at the very point society expects them to take on rights and responsibilities such as getting married or serving in the armed forces. Reducing the voting age to 16 would encourage participation by young people in Scotland's democratic processes and will give them a voice on matters that affect them.
- 2.12. The principle of lowering the voting age enjoys wide support. The Liberal Democrats and Green Party support lowering the voting age, as do all of the major youth organisations in the UK¹⁵. Other countries are also starting to consider this issue. For example, in 2007, Austria became the first member of the European Union to adopt a voting age of 16 for all purposes, and Germany and Switzerland have lowered the voting age in certain elections. Jersey, Guernsey and the Isle of Man also have a voting age of 16.
- 2.13. The Health Boards (Membership and Elections) (Scotland) Act 2009 was the first piece of Scottish legislation to allow for those aged 16 or over to vote in elections. The pilot Health Board elections are due to take place in Fife and Dumfries and Galloway on 10 June 2010. The Labour Party, Liberal Democrats and Green Party all supported these proposals when they were put before the Scottish Parliament.
- 2.14. For the referendum, the Scottish Government is constrained by the fact that the franchise for elections is reserved to Westminster and that the systems for establishing and maintaining the electoral register are subject to Westminster legislation. That system currently allows 16 and 17 year-olds to apply to be on the electoral register if they will become 18 within 12 months of the period beginning with the 1 December after their application. The draft Bill therefore provides for the extension of the vote to those 16 and 17 year-olds who are eligible to be registered under the existing UK legislation.

Equalities

- 2.15. The draft Bill is designed to ensure equality of opportunity for people in having their say on the constitutional future of Scotland. In particular, it places responsibilities on the CCO and COs to make provisions so that as many people as possible have the opportunity to take part. These provisions follow existing legislation and practice for elections.
- 2.16. The draft Bill includes the following provisions to help people with disabilities to vote:
- if a voter applies to vote with the assistance of someone else on the grounds of blindness, other physical disability or an inability to read, the presiding officer of the

¹⁵ While the Labour Party currently have no official position on this issue, during a Question and Answer session in Wales in July 2009, the Prime Minister stated that "I personally would like to see the voting age reduced to 16."

2 Mechanics of the Referendum

polling station must approve the application if he is satisfied that the voter and the companion meet the terms of the legislation;

- polling stations are to be accessible to all, in line with other elections. This issue will be covered in further detail by guidance issued by the Scottish Referendum Commission;
- postal voters must be given information about how to obtain guidance for voters in Braille, pictorial format, audible format or in other formats;
- each polling station must have a sample copy of the ballot paper in large text for voters who are partially sighted, and a 'tactile voting device' for enabling voters who are blind or partially sighted to enable them to vote without the need for assistance; and
- an enlarged sample copy of the ballot paper must be displayed at every polling station and a translation of the ballot paper into other languages as appropriate.

2.17. In addition, there is a requirement in the draft Bill for the CO to issue to postal voters information about how to obtain translations (into languages other than English) of any directions or guidance for voters sent with the ballot paper.

QUESTION 5

What are your views on the proposals for how the poll is conducted and on eligibility to vote?

3 Regulating the Campaign

Chapter Summary

- To ensure that the referendum campaigns are run in a demonstrably fair and transparent manner it is essential that there are rules in place governing participation. The campaign rules set out in the draft Bill are largely based on existing UK legislation covering elections and referendums.
- The rules cover the regulation of the referendum by a Scottish Referendum Commission, the administration of the expenses of participants and limits on donations and spending.
- The Scottish Government does not propose that there should be any public funding of campaigning.

The Need for Campaign Rules

- 3.1. Current law in the UK for running a referendum has its origins in the Fifth Report of the Committee on Standards in Public Life¹⁶ which informed the Political Parties, Elections and Referendum Act 2000 (PPERA). As the PERA rules apply only to referendums held in consequence of an Act of the UK Parliament, separate provision is required for this referendum.
- 3.2. The Scottish Government believes that it is essential that there are rules in place to ensure that the campaigns are run in a demonstrably fair and open manner. The proposed regime is broadly based on the rules set out in PERA. The aim is to create a level playing field for those involved in campaigning; no political party or organisation should have an unfair advantage over another. In particular, a single wealthy organisation or individual should not be able to influence the campaign disproportionately.

The Scottish Referendum Commission

- 3.3. The Scottish Government's intention is that the referendum is run to the highest international standards. It is therefore essential to ensure that the campaign rules are followed and policed. The Government believes that a regulator, in the form of a commission answerable to the Scottish Parliament, should be established to fulfil that role.
- 3.4. The draft Bill creates a commission - the Scottish Referendum Commission - on a one-off basis to monitor the referendum. Based on the model of the Electoral Commission, the Referendum Commission will:

¹⁶ 'Standards in Public Life; The Funding of political Parties in the UK' - The Fifth Report of the Committee on Standards in Public Life, 1998.

3 Regulating the Campaign

- take a fair and balanced approach to its activities and be seen to be operating in this manner;
 - report to the Scottish Parliament; and
 - be, and be seen to be, at no risk of Government influence in its affairs.
- 3.5. The Commission will, with limited exceptions, be completely independent of the direction of the Scottish Parliament and Government. The draft Bill proposes that there should be three Commissioners, one of whom will act as Chair. Recognising the politically sensitive nature of the referendum, elected politicians in the UK, Scottish and European Parliaments, and those with strong political affiliations over the past 5 years, are disqualified from becoming Commissioners. Each Commissioner will be nominated by the Scottish Parliament for appointment by Her Majesty The Queen. The Commission's staff must neither be politicians nor have held strong political affiliations over the past 12 months.
- 3.6. The Scottish Referendum Commission's functions will include:
- publishing guidance for voters;
 - publishing guidance for Counting Officers;
 - publishing guidance for permitted participants (individuals or organisations campaigning in the referendum) on the returns they must make to the Commission in relation to the money they spend on campaigning and donations they receive;
 - observing the conduct of the referendum at polling stations;
 - observing the conduct of the count;
 - making copies of the returns detailing the money spent and donations received by permitted participants available for public inspection; and
 - publishing a report on the conduct and administration of the referendum.

Participants in the Referendum Campaign

- 3.7. Following Part 7 of PPERA, the draft Bill provides that, if an individual or an organisation (including a political party) wishes to spend more than £3,000 on campaigning, they will have to notify the Commission that they wish to be a 'permitted participant'.
- 3.8. A permitted participant will be subject to a higher spending limit as explained below.
- 3.9. The purpose of having declared permitted participants is to help to ensure an open campaign where those who wish to publicly support a particular outcome must publicly register that intention.
- 3.10. The draft Bill provides that a permitted participant may apply to the Scottish Referendum Commission to be the principal campaigner representing one of the outcomes of the referendum. These permitted participants are called 'designated organisations'. The approach to appointing designated organisations follows the rules set out in PPERA. For example, in the 2004 referendum on whether there should be a Regional Assembly for the North East of England, "Yes4thenortheast" (Y4NE) and "North East Says No" (NESNO) were the respective 'designated organisations'. Other groups campaigning on the Yes side, including the Labour Party, the Liberal Democrats and certain unions were affiliated with Y4NE. On the No side the Conservatives and UKIP were affiliated with NESNO. The only organisation that ran a significant campaign independently of the other organisations was the "North East No Campaign" (NENC).

3.11. A designated organisation will have a higher campaign spending limit than other permitted participants. In addition, each designated organisation will be entitled to one free mail-shot to every household in Scotland, or to every voter entitled to vote in the referendum, to promote its campaign. Designated organisations will also be entitled to use school rooms or other rooms for public campaign meetings during the four-week period before the referendum is held.

No Public Funding

3.12. The draft Bill does not provide for grants of public money to be made available to those who wish to campaign.

Spending Limits for Participants in the Referendum Campaign

3.13. For individuals or bodies that are **not permitted participants**, PPERA imposes a spending limit of £10,000 as a general restriction for UK-wide referendums. In recognition of the fact that this referendum will take place in Scotland only, the Scottish Government believes that the limit should be scaled down to £3,000.

3.14. There are no useful direct precedents which could be used as a starting point for spending limits for **designated organisations**, political parties and other groups. The limits for the 2004 North East of England referendum were so high as to have no effect (even the Y4NE campaign, which was by far the highest spending campaign, spent just over half the amount set as its spending limit) and the limits set out in PPERA itself are for UK-wide referendums. The Scottish Government therefore considers that the spending limits for political parties in Scottish Parliament election campaigns are the best starting point. A party contesting every seat in the Scottish Parliament is subject to a spending limit of about £1.5 million. However, while the referendum will be a national poll and can therefore be compared with the national element of an election campaign, there will not be local constituency campaigns in respect of any candidates. In the light of that, the Scottish Government proposes that designated organisations should each have a campaign spending limit of £750,000.

3.15. For referendums held under UK legislation, PPERA permits the largest political parties (those with over 30% of total number of votes cast at the last UK Parliamentary election) to spend the same as the designated organisations. In practice it is likely that the main political parties will be part of the designated organisations. Therefore, while political parties should not be prevented from campaigning outside of the designated organisations, the Scottish Government believes there is a case for more restrictive limits on them than the PPERA approach would provide. This would help to ensure that no group dominates the public debate by both being the main part of a designated organisation, whilst also having a large spending limit by virtue of being one of the political parties represented in the Scottish Parliament. The Scottish Government therefore proposes that the registered political parties currently represented in the Scottish Parliament should be limited to a campaign spend of £100,000, in addition to any spending as part of a designated organisation. This would still allow a significant national campaign to be carried out separately from any designated organisation.

3.16. For **other groups and political parties which wish to campaign outside of the designated organisations as permitted participants** (whether or not they also form part of such a group) the Scottish Government examined the limit set on third-party campaign expenditure at Scottish Parliament elections. This is currently set at £75,800. For the purposes of the referendum, and again in recognition of the lack of any constituency or regional vote for candidates, the Scottish Government proposes a

3 Regulating the Campaign

spending limit for such groups of £37,000. This should be enough to allow other groups to have some national impact but is also restrictive enough to encourage people to join the designated organisations if they wish to contribute more substantially.

3.17. Table 2 summarises the campaign spending limits proposed for the referendum.

Table 2: Referendum campaign spending limits	
Type of organisation	Proposed spending limit
Designated organisation	£750,000
Political party represented in Scottish Parliament	£100,000
Other permitted participants	£37,000
Individuals or bodies that are not permitted participants	£3,000

3.18. Breach of these limits is treated as an offence in the same way as PPERA treats such breaches. Sanctions for non-compliance are set out in the draft Bill.

Referendum Expenses

3.19. The draft Bill provides that expenses count towards the spending limits if they support a campaign or promote an outcome. The purpose of this definition is to capture every activity that is related to campaign expenditure and the definition is, for that reason, quite broad. Expenses that count towards the spending limits include:

- campaign broadcasts;
- advertising;
- unsolicited material addressed to voters;
- any material that provides information about the referendum, its questions or promotes an outcome;
- market research or canvassing;
- press or media conferences;
- transport costs for the purposes of obtaining publicity about the referendum; and
- rallies and other forms of public meetings.

3.20. Cost savings associated with property, facilities or services that are provided free of charge or at a preferential rate are also counted as referendum expenses if they exceed £200. These are referred to as 'notional referendum expenses' in the draft Bill and must be declared to the Commission, along with the other expenses.

3.21. To ensure that the referendum campaign is conducted openly, it is crucial that the campaign expenditure incurred is properly accounted for and reported. Permitted participants must demonstrate that they have maintained control over what they have spent on their campaigns so that their spending can be reported and made public. The draft Bill therefore contains detailed rules, based on the provisions of PPERA, to ensure that each participant has appropriate procedures in place to authorise and account for its expenses.

Donations Made to Permitted Participants in the Referendum Campaign

3.22. Donations to registered political parties are already subject to a regulatory regime established in Part 4 of PPERA. There is therefore no need to create an additional set

of rules regulating donations to political parties solely for the purposes of the referendum.

- 3.23. However, political parties will not be the only bodies wishing to campaign for a particular outcome at the referendum. The draft Bill therefore deals with controls of donations to permitted participants that are not registered parties or are minor parties. The rules are again based very strongly on the existing legislation for referendums in the UK, set out in PPERA. In general terms, the rules define what donations are allowed, both by description and by monetary value (or a determination of monetary value), who is allowed to make a donation and what a permitted participant must do to record and report the donations of over £500 that they receive. As under PPERA, permitted participants cannot accept anonymous donations or donations from individuals or organisations from outside the UK.

Returns to the Commission by Permitted Participants about their Campaign Finances

- 3.24. Permitted participants will be required to provide a report to the Commission about their finances. The draft Bill proposes a requirement that a person designated by a permitted participant as the 'responsible person' (in the case of a registered political party, the treasurer) must make a return to the Scottish Referendum Commission within 6 months of the date of the referendum setting out full details of expenses and donations. The Commission must make copies of the returns available for public inspection.

Government Publications during the Referendum Campaign

- 3.25. The Scottish Government's aim is that the campaign should be seen to be fair and should operate on a 'level playing field' for all participants in the referendum. In support of this principle, the Scottish Government recognises that there should be no undue Government influence on the campaign.
- 3.26. The draft Bill provides that, for the 28 day period before the date of the referendum, the Scottish Ministers and certain public authorities in Scotland cannot publish any material providing general information about the referendum, dealing with issues raised by the questions to be voted on in the referendum, putting any arguments for or against a particular answer to the questions to be voted on, or which is designed to encourage voting in the referendum. This follows the approach taken in the run-up to elections.

QUESTION 6:

What are your views on the proposed rules for the referendum campaign?

4 How to Respond

This consultation is your opportunity to shape the referendum on Scotland's constitutional future. Responses should be made by **30 April 2010**.

It would be helpful to have your response by email. The electronic response form can be accessed at the following website address: www.scotland.gov.uk/referendum. You can also email your response to the mailbox below. We are of course happy to receive written submissions too.

Email submissions: referendum@scotland.gsi.gov.uk

Written submissions:

Referendum Bill Team
National Conversation, Referendum and Elections Division
Victoria Quay
Edinburgh
EH6 6QQ

We would be grateful if you would use the consultation questionnaire provided or would clearly indicate in your response which questions or parts of the consultation paper you are responding to, as this will aid our analysis of the responses received.

This consultation, and all other Scottish Government consultation exercises, can be viewed online on the consultation web pages of the Scottish Government website at: www.scotland.gov.uk/consultations.

You can telephone Freephone 0800 77 1234 to find out where your nearest public internet access point is.

The Scottish Government has an email alert system for consultations. This system, called SEconsult, allows individuals and organisations to register and receive a weekly email with details of all new consultations (including web links). SEconsult complements, but in no way replaces, Scottish Government distribution lists. It is designed to allow people with an interest to keep up to date with all Scottish Government consultation activity. You can register at SEconsult: <http://www.scotland.gov.uk/consultations/seconsult.aspx>.

Handling your response

We need to know how you wish your response to be handled and, in particular, whether you are happy for your response to be made public. Please complete and return the Respondent Information Form which forms part of the separate consultation questionnaire as this will ensure that we treat your response appropriately. If you ask for your response not to be published we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

4 How to Respond

Next steps

If you tell us we can make your response public, we will put it in the Scottish Government Library within 20 working days of the closing date and on the Scottish Government consultation web pages. We will check all responses where agreement to publish has been given for any wording that might be harmful to others before putting them in the library or on the website. If you would like to see the responses please contact the Scottish Government Library on 0131 244 4565. Responses can be copied and sent to you, but a charge may be made for this service.

What happens next?

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us reach a decision about the finalised Bill.

We will issue a report on this consultation process which will be published on the Scottish Government's website at: <http://www.scotland.gov.uk/Publications/Recent>.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to: Referendum Bill Team, National Conversation, Referendum and Elections Division, Victoria Quay, Edinburgh EH6 6QQ.

RESPONDENT INFORMATION FORM

Please Note That This Form **Must** Be Returned With Your Response To Ensure That We Handle Your Response Appropriately

1. Name/Organisation

Organisation Name

Title Mr Ms Mrs Miss Dr *Please tick as appropriate*

Surname

Forename

2. Postal Address

Postcode	Phone	Email
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3. Permissions

I am responding as...

Individual / Group/Organisation
 Please tick as appropriate

<p>(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?</p> <p><i>Please tick as appropriate</i> <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis</p> <p style="text-align: center;"><i>Please tick ONE of the following boxes</i></p> <p>Yes, make my response, name and address all available <input type="checkbox"/></p> <p style="text-align: center;"><i>or</i></p> <p>Yes, make my response available, but not my name and address <input type="checkbox"/></p> <p style="text-align: center;"><i>or</i></p> <p>Yes, make my response and name available, but not my address <input type="checkbox"/></p>	<p>(c) The name and address of your organisation <i>will be</i> made available to the public (in the Scottish Government library and/or on the Scottish Government web site).</p> <p>Are you content for your <i>response</i> to be made available?</p> <p><i>Please tick as appropriate</i> <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?</p> <p><i>Please tick as appropriate</i> <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	

Consultation Questionnaire

Question 1

What are your views on the proposed referendum which seeks the people's views on two proposals for extending the powers of the Scottish Parliament?

Question 2

What do you think should be the first proposal in that referendum: full devolution (Version 1 of Ballot Paper 1), or the Calman-based option (Version 2 of Ballot Paper 1)?

Question 3

The Scottish Government proposes voting method 2 (two separate yes/no questions). What are your views on this?

Question 4

What are your views on the wording and format of the ballot papers?

4 How to Respond

Question 5

What are your views on the proposals for how the poll is conducted and on eligibility to vote?

Question 6

What are your views on the proposed rules for the referendum campaign?

Question 7

Do you have any other comments about the proposals in the draft Referendum (Scotland) Bill?

If necessary, please continue on a separate page

Draft Referendum (Scotland) Bill

[CONSULTATION DRAFT]

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Draft Referendum (Scotland) Bill

[CONSULTATION DRAFT]

An Act of the Scottish Parliament to make provision for the holding of a referendum in Scotland on proposals to seek the transfer of more powers to the Scottish Parliament.

Referendum

1 Referendum

- (1) A referendum is to be held in Scotland on proposals to seek the transfer of more powers to the Scottish Parliament.
- (2) The proposals to be voted on in the referendum and the front of the ballot papers to be used for that purpose are to be in the form set out in schedule 1.
- (3) The date on which the poll at the referendum is to be held is *[insert date]*.

Franchise

2 Those who are entitled to vote

- (1) A person is entitled to vote in the referendum if, on the date of the referendum, the person is—
 - (a) of voting age,
 - (b) registered in the register of local government electors maintained under section 9(1)(b) of the 1983 Act for any area in Scotland,
 - (c) not subject to any legal incapacity to vote (age apart), and
 - (d) a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union.
- (2) A person is of voting age for the purposes of this Act if the person is aged 16 or over.

3 Further provision about voting

Schedule 2 makes further provision about voting in the referendum, including—

- (a) provision about the manner of voting (including provision for absent voting), and
- (b) provision about the register of electors.

Conduct

4 Chief Counting Officer and other counting officers

- (1) The Scottish Ministers must appoint a Chief Counting Officer for the referendum.

- (2) The Chief Counting Officer may resign by giving notice in writing to the Scottish Ministers.
- (3) The Scottish Ministers may, by notice in writing, remove the Chief Counting Officer from office if they are satisfied that the Chief Counting Officer is unable to perform the Chief Counting Officer's functions by reason of any physical or mental illness or disability.
- (4) If the Chief Counting Officer dies, resigns or is removed from office, the Scottish Ministers must appoint another person to be the Chief Counting Officer.
- (5) A person may be appointed to be the Chief Counting Officer only if the person is or has been a returning officer appointed under section 41(1) of the 1983 Act.
- (6) The Chief Counting Officer must appoint a counting officer for each local government area.
- (7) A counting officer may resign by giving notice in writing to the Chief Counting Officer.
- (8) The Chief Counting Officer may, by notice in writing, remove a counting officer from office if—
 - (a) the Chief Counting Officer is satisfied that the counting officer is for any reason unable to perform the counting officer's functions, or
 - (b) the counting officer fails to comply with a direction given or requirement imposed by the Chief Counting Officer.
- (9) If the counting officer for an area dies, resigns or is removed from office, the Chief Counting officer must appoint another person to be the counting officer for the area.

5 Functions of the Chief Counting Officer and other counting officers

- (1) The Chief Counting Officer is responsible for ensuring the proper and effective conduct of the referendum, including the conduct of the poll and the counting of votes, in accordance with this Act.
- (2) Each counting officer must—
 - (a) conduct the poll and the counting of votes cast in the local government area for which the officer is appointed in accordance with this Act, and
 - (b) certify the number of ballot papers counted by the officer and the number of votes cast in the area for and against each proposal.
- (3) A counting officer—
 - (a) must consult the Chief Counting Officer before making a certification under subsection (2)(b), and
 - (b) must not make the certification or any public announcement of the result of the count until authorised to do so by the Chief Counting Officer.
- (4) The Chief Counting Officer must, for the whole of Scotland, certify—
 - (a) the total number of ballot papers counted, and
 - (b) the total number of votes cast for and against each proposal.
- (5) A counting officer must give the Chief Counting Officer any information which the Chief Counting Officer requires for the carrying out of the Chief Counting Officer's functions.

- (6) A counting officer must carry out the counting officer's functions under this Act in accordance with any directions given by the Chief Counting Officer.
- (7) The Chief Counting Officer must not impose a requirement or give a direction that is inconsistent with this Act.
- (8) The Chief Counting Officer may require a council to provide, or ensure the provision of, such property, staff and services as may be required by the Chief Counting Officer for the carrying out of the Chief Counting Officer's functions.
- (9) The council for the local government area for which a counting officer is appointed must provide, or ensure the provision of, such property, staff and services as may be required by the counting officer for the carrying out of the counting officer's functions.

6 Correction of procedural errors

- (1) A counting officer may take such steps as the officer thinks appropriate to remedy any act or omission on the officer's part, or on the part of a relevant person, which—
 - (a) arises in connection with any function the counting officer or relevant person has in relation to the referendum, and
 - (b) is not in accordance with the requirements of this Act relating to the conduct of the referendum.
- (2) But a counting officer may not under subsection (1) re-count the votes given in the referendum after the result has been declared.
- (3) For the purposes of subsection (1), each of the following is a relevant person—
 - (a) a registration officer,
 - (b) a presiding officer,
 - (c) a person providing goods or services to the counting officer,
 - (d) a deputy of any person mentioned in paragraph (a) or (b),
 - (e) a person appointed to assist or, in the course of the person's employment, assisting any person mentioned in paragraphs (a) to (c) in connection with any function that person has in relation to the referendum.
- (4) A counting officer is not guilty of an offence under paragraph 5 of schedule 5 by virtue of an act or omission in breach of the officer's official duty if the officer remedies that act or omission in full by taking steps under subsection (1).
- (5) Subsection (4) does not affect any conviction, or any penalty imposed, before the date on which the act or omission is remedied in full.
- (6) In this section, references to a counting officer include the Chief Counting Officer.

7 Expenses of Chief Counting Officer and other counting officers

- (1) A counting officer is entitled to recover from the Chief Counting Officer charges for, and any expenses incurred in connection with, the exercise by the counting officer of functions under this Act.
- (2) The Chief Counting Officer is entitled to recover from the SPCB—
 - (a) sums payable by the Chief Counting Officer by virtue of subsection (1), and

- (b) charges for, and any expenses incurred in connection with, the exercise by the Chief Counting Officer of functions under this Act.
- (3) The amount that a counting officer or the Chief Counting Officer is entitled to recover under subsection (1) or, as the case may be, (2) is not to exceed such maximum amount as is specified in, or determined under, an order made by the Scottish Ministers.
- (4) An order under subsection (3)—
 - (a) is to be made by statutory instrument,
 - (b) may make different provision for different functions, cases or areas,
 - (c) may include incidental and supplementary provision.
- (5) Sums recoverable by the Chief Counting Officer under subsection (2) are payable by the SPCB on the submission of an account for the sums to the SPCB by the Chief Counting Officer.
- (6) Before making any payment to the Chief Counting Officer, the SPCB may send the account to the Auditor General for Scotland for auditing.
- (7) If the Chief Counting Officer requests from the SPCB an advance on account of any sums, charges or expenses recoverable by the Chief Counting Officer under subsection (2), the SPCB may make such advance on such terms as it thinks fit.
- (8) Sums required by the SPCB for payments by it under this section are charged on the Scottish Consolidated Fund.

8 Appointment of observers

- (1) A permitted participant may appoint persons to—
 - (a) attend polling stations, and
 - (b) attend the counting of the votes.
- (2) A person—
 - (a) appointed under subsection (1), and
 - (b) in respect of whom notice is given in accordance with subsections (5) and (6),is referred to in this Act as an “observer”.
- (3) A permitted participant may appoint one observer for each local government area.
- (4) An observer may be appointed in respect of one or more local government areas.
- (5) The permitted participant must give notice of the appointment of an observer to the counting officer for each local government area in respect of which the observer is appointed.
- (6) Notice under subsection (5) must—
 - (a) be in writing,
 - (b) include the name and address of the observer, and
 - (c) be given not later than five days before the date of the referendum.
- (7) If the appointment is revoked or an observer dies or becomes incapable of acting, the permitted participant may appoint another observer and must, without delay, give notice in accordance with subsections (5) and (6).

- (8) The counting officer may limit the number of observers who are permitted to be present at the polling station or the counting of the votes, but the same limit is to apply to each permitted participant.

9 Conduct rules

Schedule 3 makes provision about the conduct of the referendum.

Campaign

10 Campaign rules

Schedule 4 makes provision regulating the conduct of campaigning in the referendum, including provision—

- (a) limiting the amount of expenses that can be incurred by those campaigning in the referendum, and
- (b) controlling donations to certain persons campaigning in the referendum.

Offences

11 Offences

Schedule 5 makes provision for or in connection with offences at or in connection with the referendum.

12 Offences by bodies corporate etc.

- (1) Subsection (2) applies where—
- (a) an offence under this Act has been committed by—
 - (i) a body corporate,
 - (ii) a Scottish partnership, or
 - (iii) an unincorporated association other than a Scottish partnership, and
 - (b) it is proved that the offence was committed with the consent or connivance of, or was attributable to neglect on the part of—
 - (i) a relevant individual, or
 - (ii) an individual purporting to act in the capacity of a relevant individual.
- (2) The individual (as well as the body corporate, partnership or, as the case may be, association) commits the offence and is liable to be proceeded against and punished accordingly.
- (3) In subsection (1) “relevant individual” means—
- (a) in relation to a body corporate (other than a limited liability partnership)—
 - (i) a director, manager, secretary or other similar officer of the body,
 - (ii) where the affairs of the body are managed by its members, a member,
 - (b) in relation to a limited liability partnership, a member,
 - (c) in relation to a Scottish partnership, a partner,

- (d) in relation to an unincorporated association other than a Scottish partnership, a person who is concerned in the management or control of the association.

Scottish Referendum Commission

13 Scottish Referendum Commission

- (1) The Scottish Referendum Commission (the “Commission”) is established.
- (2) Schedule 6 makes further provision about the Commission.

14 Information for voters

The Commission may issue information for voters—

- (a) about the proposals to be voted on in the referendum,
- (b) about voting in the referendum.

15 Guidance by Commission

- (1) The Commission may, with the consent of the Chief Counting Officer, issue guidance to counting officers and registration officers about the exercise of their functions under this Act.
- (2) The Commission may issue guidance to permitted participants and persons who may become permitted participants about the campaign rules set out in schedule 4 to this Act.

16 Advice by Commission

The Commission may, if asked to do so by any person, provide the person with advice about—

- (a) the application of this Act, or
- (b) any other matter relating to the referendum.

17 Report on the conduct of the referendum

- (1) As soon as reasonably practicable after the referendum, the Commission must prepare a report on the conduct of the referendum.
- (2) The Commission must—
 - (a) publish the report, and
 - (b) lay the report before the Scottish Parliament.

18 Power to dissolve the Commission

- (1) Her Majesty may by Order in Council dissolve the Commission.
- (2) An order under subsection (1) may make consequential, supplementary, incidental and transitional provision in relation to the dissolution of the Commission.

Legal proceedings

19 Legal proceedings

No court may entertain any proceedings for questioning the number of ballot papers counted or votes cast as certified by the Chief Counting Officer or by a counting officer.

Final provisions

20 Interpretation

Schedule 7 provides definitions for words and expressions used in this Act.

21 Short title

The short title of this Act is the Referendum (Scotland) Act 2010.

SCHEDULE 1
(introduced by section 1(2))

FORM OF BALLOT PAPERS

[Forms of ballot papers to be inserted]

SCHEDULE 2
(introduced by section 3)

FURTHER PROVISION ABOUT VOTING IN THE REFERENDUM

PART 1

MANNER OF VOTING

Manner of voting

- 1 (1) This paragraph applies to determine the manner of voting of a voter.
- (2) A voter may vote in person at the polling station allotted to the voter under rule 10(1)(b) of the conduct rules, unless the voter is entitled to an absent vote in the referendum.
- (3) A voter may vote by post if the voter is entitled to vote by post in the referendum.
- (4) If a voter is entitled to vote by proxy in the referendum, the voter may so vote unless, before a ballot paper is issued for the voter to vote by proxy, the voter applies at the polling station allotted to the voter under rule 10(1)(b) of the conduct rules for a ballot paper for the purpose of voting in person, in which case the voter may vote in person there.
- (5) If a voter—
 - (a) is not entitled to an absent vote in the referendum, and
 - (b) cannot reasonably be expected to go in person to the polling station allotted to the voter under rule 10(1)(b) of the conduct rules because of the particular circumstances of the voter's employment, either as a constable or by the counting officer, on the date of the referendum for a purpose connected with the referendum,the voter may vote in person at any polling station in the local government area in which the polling station allotted to the voter is situated.
- (6) Nothing in the preceding provisions of this paragraph applies to—
 - (a) a voter to whom section 7 of the 1983 Act (mental patients who are not detained offenders) applies and who is liable, by virtue of any enactment, to be detained in the mental hospital in question, whether the voter is registered by virtue of that provision or not, and such a voter may vote—
 - (i) in person at the polling station allotted to the voter under rule 10(1)(b) of the conduct rules (if granted permission to be absent from the hospital and voting in person does not breach any condition attached to the permission), or
 - (ii) by post or by proxy (if entitled so to vote in the referendum), or
 - (b) a voter to whom section 7A of that Act (person remanded in custody) applies, whether the voter is registered by virtue of that provision or not, and such a voter may only vote by post or by proxy (if entitled so to vote in the referendum).
- (7) Sub-paragraph (2) does not prevent a voter, at the polling station allotted to the voter under rule 10(1)(b) of the conduct rules, marking a tendered ballot paper in pursuance of rule 24 of those rules.

- (8) For the purposes of this schedule—
 - (a) references to a voter being entitled to an absent vote in the referendum are references to the voter being entitled to vote by post or by proxy in the referendum, and
 - (b) a voter is entitled to vote—
 - (i) by post in the referendum if the voter is shown in the postal voters list (see paragraph 4(2)) for the referendum as so entitled,
 - (ii) by proxy in the referendum if the voter is shown in the list of proxies (see paragraph 4(3)) for the referendum as so entitled.

Existing absent voters

- 2 (1) A person is taken to have been granted a vote by post in the referendum if, at the cut-off date, the person is—
 - (a) shown in the record maintained under paragraph 3(4) of Schedule 4 to the Representation of the People Act 2000 (c.2) as voting by post at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or
 - (b) shown in the record maintained under article 9(4) of the Scottish Parliament (Elections etc.) Order 2007 (SI 2007/937) as voting by post for an indefinite period or for a period which extends beyond the referendum date.
- (2) Such a person is referred to in this schedule as an “existing postal voter”.
- (3) A person is taken to have been granted a vote by proxy in the referendum if, at the cut-off date, the person is—
 - (a) shown in the record maintained under paragraph 3(4) of Schedule 4 to the Representation of the People Act 2000 (c.2) as voting by proxy at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or
 - (b) shown in the record maintained under article 9(4) of the Scottish Parliament (Elections etc.) Order 2007 (SI 2007/937) as voting by proxy for an indefinite period or for a period which extends beyond the referendum date.
- (4) Such a person is referred to in this schedule as an “existing proxy voter”.
- (5) Sub-paragraph (1) does not apply to a person if the person is granted a vote by proxy by virtue of an application under paragraph 3.
- (6) Sub-paragraph (3) does not apply to a person if the person is granted a vote by post by virtue of an application under paragraph 3.

Applications for absent vote

- 3 (1) Where a person applies to the registration officer to vote by post in the referendum, the registration officer must grant the application if—
 - (a) the registration officer is satisfied that the applicant is or will be registered in the register of electors maintained by the officer, and
 - (b) the application meets the requirements set out in paragraph 7.

- (2) Where a person applies to the registration officer to vote by proxy at the referendum, the registration officer must grant the application if—
 - (a) the registration officer is satisfied that the applicant’s circumstances on the date of the referendum will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted, or likely to be allotted, to the applicant under rule 10(1)(b) of the conduct rules,
 - (b) the registration officer is satisfied that the applicant is or will be registered in the register of electors maintained by the officer, and
 - (c) the application meets the requirements set out in paragraph 7.
- (3) Where a person who has an anonymous entry in the register of electors maintained by a registration officer applies to the registration officer to vote by proxy in the referendum, the registration officer must grant the application if it meets the requirements set out in paragraph 7.
- (4) Sub-paragraphs (1) and (2) do not apply to a person who is an existing postal voter or an existing proxy voter.
- (5) If an existing postal voter applies to the appropriate registration officer—
 - (a) for the person’s ballot paper to be sent to a different address from that shown in the record referred to in paragraph 2(1) in relation to that existing postal voter, or
 - (b) to vote by proxy in the referendum,the registration officer must grant the application if it meets the requirements set out in paragraph 7.
- (6) If an existing proxy voter applies to the appropriate registration officer to vote by post in the referendum, the registration officer must grant the application if—
 - (a) the registration officer is satisfied that the applicant’s circumstances on the date of the referendum will be or are likely to be such that the person cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the person under rule 10(1)(b) of the conduct rules, and
 - (b) the application meets the requirements set out in paragraph 7.
- (7) In sub-paragraphs (5) and (6), “appropriate registration officer” means, in relation to an existing postal voter or an existing proxy voter, the registration officer responsible for keeping the record mentioned in paragraph 2(1) or (3) by virtue of which the person is such a voter.

Absent voters lists

- 4 (1) Each registration officer must keep the 2 lists mentioned in sub-paragraphs (2) and (3).
- (2) The first of those lists (the “postal voters list”) is a list of—
 - (a) those who are existing postal voters by reason of an entry in a record mentioned in paragraph 2(1) kept by the registration officer, together with the addresses—
 - (i) shown in the record mentioned in that paragraph, or
 - (ii) provided in any application by them under paragraph 3(5)(a),as the addresses to which their ballot papers are to be sent, and

- (b) those granted a vote by post in the referendum by the registration officer by virtue of an application under paragraph 3 together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.
- (3) The second of those lists (the “list of proxies”) is a list of—
 - (a) those who are existing proxy voters by reason of an entry in a record mentioned in paragraph 2(3) kept by the registration officer, and
 - (b) those granted a vote by proxy in the referendum by the registration officer by virtue of an application under paragraph 3,
 together (in each case) with the names and addresses of those appointed as their proxies.
- (4) In the case of a person who has an anonymous entry in the register of electors, any entry in the postal voters list or list of proxies must show in relation to the person only the person’s electoral number.

Proxies

- 5 (1) Subject to the provisions of this paragraph, any person is capable of being appointed proxy to vote for another in the referendum and may vote in pursuance of the appointment.
- (2) A person (“A”) cannot have more than one person at a time appointed as proxy to vote for A in the referendum.
 - (3) A person is not capable of being appointed to vote, or of voting, as proxy at the referendum—
 - (a) if the person is subject to any legal incapacity (age apart) to vote in the referendum, or
 - (b) if the person is not a Commonwealth citizen, a citizen of the Republic of Ireland or a relevant citizen of the Union.
 - (4) A person is not capable of voting as a proxy in the referendum unless, on the date of the referendum, the person is of voting age.
 - (5) A person is not entitled to vote as proxy in the referendum on behalf of more than 2 others of whom that person is not the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild.
 - (6) If there is an existing proxy for an existing proxy voter, the existing proxy is taken to have been appointed as proxy to vote for the existing proxy voter in the referendum.
 - (7) In sub-paragraph (6), “existing proxy” means, in relation to an existing proxy voter—
 - (a) a person appointed under paragraph 6(7) of Schedule 4 to the Representation of the People Act 2000 (c.2) as a proxy to vote for the existing proxy voter at local government elections, or
 - (b) if there is no such person, a person appointed under article 11(6) of the Scottish Parliament (Elections etc.) Order 2007 (SI 2007/937) as proxy to vote for the existing proxy voter at Scottish parliamentary elections.
 - (8) Where a person applies to the registration officer for the appointment of a proxy to vote for the person in the referendum, the registration officer must make the appointment if—
 - (a) the registration officer is satisfied that the applicant is or will be—
 - (i) registered in the register of electors maintained by the officer, and

- (ii) entitled to vote by proxy in the referendum by virtue of paragraph 2(3) or an application under paragraph 3,
 - (b) the registration officer is satisfied that the proxy is capable of being and willing to be appointed, and
 - (c) the application meets the requirements in paragraph 7.
- (9) The appointment of a proxy under this paragraph is to be made by means of a proxy paper issued by the registration officer.
- (10) The appointment of a proxy to vote for a person (“A”) in the referendum—
 - (a) may be cancelled by A by giving notice to the registration officer, and
 - (b) ceases to have effect on the issue of a proxy paper appointing a different person to vote for A in the referendum.

Voting as proxy

- 6 (1) A person entitled to vote as proxy for another (A) in the referendum may do so in person at the polling station allotted to A under rule 10(1)(b) of the conduct rules unless the person is entitled to vote by post as proxy in the referendum, in which case the person may vote by post.
- (2) Where a person is entitled to vote by post as proxy for another (“A”) in the referendum, A may not apply for a ballot paper for the purpose of voting in person at the referendum.
 - (3) For the purposes of this schedule, a person entitled to vote as proxy for another in the referendum is entitled so to vote by post if the person is included in the proxy postal voters list (see sub-paragraph (7)).
 - (4) An existing proxy is taken to have been granted a vote by post as proxy if the existing proxy is, at the cut-off date—
 - (a) shown in the record kept under paragraph 7(4) of Schedule 4 to the Representation of the People Act 2000 (c.2) as voting by post as proxy at local government elections for an indefinite period or for a period which extends beyond the date of the referendum, or
 - (b) shown in the record kept under article 9(4) of the Scottish Parliament (Elections etc.) Order 2007 (SI 2007/937) as voting by post as proxy for an indefinite period or for a period which extends beyond the referendum date.
 - (5) In sub-paragraph (4), “existing proxy” means a person who is taken to have been appointed as proxy by virtue of paragraph 5(6).
 - (6) Where a person applies to the registration officer to vote by post as proxy for another (“A”) in the referendum, the registration officer must grant the application if—
 - (a) the registration officer is satisfied that A is or will be registered in the register of electors maintained by the officer,
 - (b) there is in force an appointment of the applicant as A’s proxy to vote for A in the referendum, and
 - (c) the application meets the requirements in paragraph 7.
 - (7) The registration officer must keep a special list (the “proxy postal voters list”) of—

- (a) those taken to have been granted a vote by post as proxy by virtue of sub-paragraph (4) by reason of an entry in a record mentioned in that sub-paragraph kept by the registration officer, together with the addresses shown in the record as the addresses to which their ballot papers are to be issued, and
 - (b) those whose applications under sub-paragraph (6) have been granted, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be issued.
- (8) In the case of a person who has an anonymous entry in the register of electors, the proxy postal voters list must contain only the person's electoral number.
- (9) Sub-paragraph (2) does not prevent a person, at the polling station allotted to A under rule 10(1)(b) of the conduct rules, from marking a tendered ballot paper in pursuance of rule 24 of those rules.

Requirements as to applications

- 7 (1) This paragraph applies in relation to applications under paragraph 3, 5(8) or 6(6).
- (2) An application must be made—
- (a) in writing,
 - (b) before the cut-off date, and
 - (c) in the form determined by the registration officer.
- (3) An application to vote by post (including an application to vote by post as a proxy) must contain—
- (a) the applicant's full name and date of birth,
 - (b) the applicant's signature, and
 - (c) the address to which the ballot paper is to be sent.
- (4) An application to vote by proxy must contain—
- (a) the applicant's full name and date of birth,
 - (b) the applicant's signature,
 - (c) a statement of the reasons why the applicant's circumstances on the date of the referendum will be or are likely to be such that the applicant cannot reasonably be expected to vote in person at the polling station allotted or likely to be allotted to the applicant, and
 - (d) an application under paragraph 5(8) for the appointment of a proxy.
- (5) The registration officer may, in relation to any application to which sub-paragraph (3) or (4) applies, dispense with the requirement to include the applicant's signature if the officer is satisfied that the applicant is unable—
- (a) to provide a signature because—
 - (i) of any disability the applicant has, or
 - (ii) the applicant is unable to read or write, or
 - (b) to sign in a consistent and distinctive way because of any such disability or inability.

- (6) An application for the appointment of a proxy must state the full name and address of the person whom the applicant wishes to appoint as proxy, together with that person's family relationship, if any, with the applicant and—
 - (a) if the application is signed only by the applicant, the application must contain a statement signed by the applicant that the applicant has consulted the person so named and that that person is capable of being and willing to be appointed to vote as the applicant's proxy, or
 - (b) if the application is signed also by the person to be appointed as proxy, must contain a statement by that person that the person is capable of being and willing to be appointed to vote as the applicant's proxy.

Personal identifiers

- 8 (1) Each registration officer must keep a record in relation to persons granted applications to which paragraph 7(3) or (4) applies showing—
 - (a) their dates of birth, and
 - (b) except in cases where the officer has, under paragraph 7(5), dispensed with the requirement for a signature, their signatures.
- (2) The registration officer must, as soon as possible after the cut-off date, either—
 - (a) provide the relevant counting officer with a copy of the information contained in the record, or
 - (b) give the relevant counting officer access to the information.
- (3) A registration officer may disclose information contained in the record to any other registration officer if the registration officer disclosing it thinks that to do so would assist the other registration officer in the performance of the other officer's duties.

Appeals

- 9 (1) An appeal under section 56 of the 1983 Act (registration appeals) which is pending when notice of the referendum is given does not prejudice the operation as respects the referendum of the decision appealed against, and anything done in pursuance of the decision is as good as if no such appeal had been brought and is not affected by the decision on the appeal.
- (2) Where, as a result of the decision on an appeal under section 56 of the 1983 Act, an alteration in the register of electors is made which takes effect under section 13(5), 13A(2) or 13B(3) or (3B) of the 1983 Act on or before the date of the referendum, sub-paragraph (1) does not apply to that appeal.

PART 2

REGISTRATION

Effect of register

- 10 (1) A person registered in the register of electors or entered in the list of proxies is not to be excluded from voting in the referendum on any ground set out in sub-paragraph (2), but this does not prevent the rejection of the vote on a scrutiny, or affect the person's liability to any penalty for voting.

- (2) The grounds referred to in sub-paragraph (1) are—
- (a) that the person is not of voting age,
 - (b) that the person is not or, on the relevant date or (in the case of a proxy) the date of the proxy's appointment, was not—
 - (i) a Commonwealth citizen,
 - (ii) a citizen of the Republic of Ireland, or
 - (iii) a relevant citizen of the Union,
 - (c) that the person is or, on the relevant date or (in the case of a proxy) the date of the proxy's appointment, was otherwise subject to any other legal incapacity to vote in the referendum.
- (3) In sub-paragraph (2), the “relevant date” means—
- (a) in relation to a person registered in the register of electors as published in accordance with section 13(1) of the 1983 Act, the 15th October immediately preceding the date of publication of the register,
 - (b) in relation to any other person registered in the register of electors, the relevant date for the purposes of section 4 of the 1983 Act.

Effect of misdescription

- 11 No misnomer or inaccurate description of any person or place named—
- (a) in the register of electors, or
 - (b) in any list, proxy paper, ballot paper, notice or other document required for the purposes of this Act,
- affects the full operation of the document with respect to that person or place in any case where the description of the person or place is such as to be commonly understood.

Discharge of registration duties

- 12 (1) A registration officer must carry out the registration officer's functions under this Act in accordance with any directions given by the Chief Counting Officer.
- (2) The Chief Counting Officer must not give a direction that is inconsistent with this Act or any other enactment under which a registration officer exercises functions.
- (3) Any of the functions of a registration officer under this Act may be carried out by a deputy for the time being approved by the council which appointed the registration officer, and the provisions of this Act apply to any such deputy so far as respects any functions to be carried out by the deputy as they apply to the registration officer.
- (4) Each council must assign such officers to assist the registration officer appointed by the council as may be required for carrying out the registration officer's functions under this Act.

Alterations in the register of electors

- 13 (1) An alteration in the register of electors under section 13A(2) (alteration of registers) or 56 (registration appeals) of the 1983 Act which is to take effect after the fifth day before the date of the referendum does not have effect for the purposes of the referendum.

- (2) Section 13B(2) to (6) of the 1983 Act applies in relation to the referendum as it applies in relation to an election to which that section applies but as if—
 - (a) any reference to the appropriate publication date were a reference to the fifth day before the date of the referendum,
 - (b) any reference to the date of the poll at such an election were a reference to the date of the referendum,
 - (c) any reference to the relevant election area were a reference to the area for which the registration officer acts,
 - (d) any reference to the prescribed time on the day of the poll were to 5pm on the date of the referendum,
 - (e) any reference to the issuing of a notice in the prescribed manner were a reference to the issuing of the notice in such manner and form as the registration officer may determine.

Payment of expenses of registration

- 14 (1) Any expenses properly incurred by a registration officer in the carrying out of functions under this Act are to be paid by the Chief Counting Officer.
- (2) The Chief Counting Officer is entitled to recover from the SPCB sums payable by the Chief Counting Officer under sub-paragraph (1).
- (3) Sums recoverable by the Chief Counting Officer under sub-paragraph (2) are payable by the SPCB on the submission of an account for the sums to the SPCB by the Chief Counting Officer.
- (4) Before making any payment to the Chief Counting Officer, the SPCB may send the account to the Auditor General for Scotland for auditing.
- (5) If the Chief Counting Officer requests an advance on account of expenses referred to in sub-paragraph (1), the SPCB may make such advance on such terms as it thinks fit.
- (6) Sums required by the SPCB for payments by it under this paragraph are charged on the Scottish Consolidated Fund.

Supply of free copy of register, lists and notices for referendum purposes

- 15 (1) Each registration officer must, not later than 21 days before the date of the referendum, supply free of charge to the relevant counting officer as many printed copies of—
 - (a) the latest version of the register of electors published under section 13(1) or (3) of the 1983 Act, as the case may be,
 - (b) any notice setting out an alteration to that version of the register issued under—
 - (i) section 13A(2) of that Act, or
 - (ii) section 13B(3), (3B) or (3D) of that Act (as those provisions are applied by paragraph 13(2)), and
 - (c) any record of anonymous entries,as the counting officer may reasonably require for the purposes of the referendum.
- (2) Each registration officer must, as soon as practicable after the cut-off date, supply free of charge to the relevant counting officer as many printed copies of—

- (a) the postal voters list,
 - (b) the list of proxies, and
 - (c) the proxy postal voters list,
- as the counting officer may reasonably require for the purposes of the referendum.
- (3) If, after supplying copies of the register and notices in accordance with sub-paragraph (1), any further notices of the kind referred to in paragraph (b) of that sub-paragraph are issued by a registration officer, the registration officer must, as soon as reasonably practicable after issuing the notices, supply the relevant counting officer with as many printed copies as the counting officer may reasonably require for the purposes of the referendum.
 - (4) The duty under sub-paragraph (1) to supply as many printed copies of the register and notices as the counting officer may reasonably require includes a duty to supply one copy in data form.
 - (5) If a designated organisation so requests, a registration officer must supply free of charge to the organisation a copy of—
 - (a) the latest version of the register of electors published under section 13(1) or (3) of the 1983 Act, as the case may be,
 - (b) any notice setting out an alteration to that version of the register issued under—
 - (i) section 13A(2) of that Act, or
 - (ii) section 13B(3), (3B) or (3D) of that Act (as those provisions are applied by paragraph 13(2)),
 - (c) the postal voters list,
 - (d) the list of proxies, and
 - (e) the proxy postal voters list.
 - (6) A request under sub-paragraph (5) must—
 - (a) be made in writing,
 - (b) specify the documents requested,
 - (c) state whether the request is made only in respect of the current documents or whether it includes a request for the supply of any subsequent documents issued, and
 - (d) state whether a printed copy of any of the documents is requested instead of the version in data form.
 - (7) Unless a request has been made in advance of supply under sub-paragraph (6)(d) the copy of a document supplied under sub-paragraph (5) is to be in data form.
 - (8) No person to whom a copy of the register has been supplied under this paragraph may—
 - (a) supply a copy of the full register,
 - (b) disclose any information contained in it (that is not contained in the edited register), or
 - (c) make use of any such information,except for the purposes of the referendum.

SCHEDULE 3
(introduced by section 9)

CONDUCT RULES

Publication of notice of the referendum

- 1 (1) Each counting officer must publish notice of the referendum not earlier than the forty-second day before the date of the referendum and not later than the thirty-fifth day before the date of the referendum.
- (2) The notice must—
- (a) be in the form prescribed by the Chief Counting Officer, and
 - (b) set out—
 - (i) the date of the referendum,
 - (ii) the hours of polling, and
 - (iii) a description of who is entitled to vote.
 - (3) The notice must also state the day by which—
 - (a) applications to vote by post or by proxy,
 - (b) other applications and notices about postal or proxy voting,must reach the registration officer in order that they may be effective for the referendum.

Computation of time

- 2 In calculating the period of time mentioned in rule 1(1), the following days are to be disregarded—
- (a) a Saturday or Sunday, and
 - (b) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 (c.80).

Hours of polling

- 3 The hours of polling are between 7am and 10pm.

The ballot

- 4 (1) The votes at the referendum are to be given by ballot.
- (2) The ballot of every voter consists of a ballot paper.
 - (3) There is to be a separate ballot paper for each proposal.
 - (4) The ballot paper for the first proposal is to be of a colour differing from that of the ballot paper for the second proposal.
 - (5) The ballot papers are to be of colours prescribed by the Chief Counting Officer.

The corresponding number list

- 5 (1) The counting officer must prepare a list (the “corresponding number list”) which complies with paragraph (2).
- (2) The corresponding number list must—
- (a) contain the unique identifying numbers of all ballot papers issued, and
 - (b) be in the form prescribed by the Chief Counting Officer.

Security marking

- 6 (1) Every ballot paper must bear or contain—
- (a) a unique identifying number, and
 - (b) an official mark.
- (2) The official mark must be kept secret.

Use of schools and public rooms for polling and counting votes

- 7 (1) The counting officer may use, free of charge, for the purpose of taking the poll or counting the votes—
- (a) a suitable room in the premises of a school to which this rule applies in accordance with paragraph (2), and
 - (b) any meeting room to which this rule applies in accordance with paragraph (3).
- (2) This rule applies to any school maintained by an education authority.
- (3) This rule applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—
- (a) the Scottish Ministers or any other part of the Scottish Administration,
 - (b) the SPCB, or
 - (c) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998 (c.46)).
- (4) The counting officer must defray—
- (a) any expenses incurred in preparing, warming, lighting and cleaning the room and restoring the room to its usual condition after use for the referendum, and
 - (b) any expenses incurred by damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises by reason of its being used for the purposes of taking the poll or counting the votes.
- (5) For the purposes of this rule (except those of paragraph (4)(b)), the premises of a school are not to be taken to include any private dwelling.
- (6) In this rule—
- “dwelling” includes any part of a building where that part is occupied separately as a dwelling,
 - “meeting room” means any room which it is the practice to let for public meetings, and
 - “room” includes a hall, gallery or gymnasium.

Notice of poll

- 8 (1) Each counting officer must publish notice of the poll not later than the fourteenth day before the date of the referendum.
- (2) The notice of poll must—
- (a) be in the form prescribed by the Chief Counting Officer, and
 - (b) set out—
 - (i) the date of the referendum,
 - (ii) the hours of polling,
 - (iii) the situation of each polling station in the local government area, and
 - (iv) the description of voters entitled to vote at each polling station.

Postal ballot papers

- 9 (1) The counting officer must, as soon as reasonably practicable, issue to those entitled to vote by post—
- (a) ballot papers,
 - (b) a postal voting statement in the form prescribed by the Chief Counting Officer, and
 - (c) an envelope for their return.
- (2) The counting officer must also, as soon as reasonably practicable, issue to those entitled to vote by post information about how to obtain—
- (a) translations into languages other than English of any directions to or guidance for voters sent with the ballot papers,
 - (b) a translation into Braille of such directions or guidance,
 - (c) graphical representation of such directions or guidance, and
 - (d) the directions or guidance in any other form (including in audible form).

Provision of polling stations

- 10 (1) The counting officer must—
- (a) provide a sufficient number of polling stations, and
 - (b) allot the voters to the polling stations.
- (2) One or more polling stations may be provided in the same room.
- (3) The counting officer must provide each polling station with such number of compartments as may be necessary in which the voters can mark their votes screened from observation.

Appointment of presiding officers and clerks

- 11 (1) The counting officer must appoint and pay—
- (a) a presiding officer to attend at each polling station, and

- (b) such clerks as may be necessary for the purposes of the referendum.
- (2) The counting officer may not appoint any person who is or has been involved in campaigning for a particular outcome in the referendum.
- (3) The counting officer may preside at a polling station and the provisions of these rules relating to a presiding officer apply to a counting officer who so presides with the necessary modifications as to things done by the counting officer to the presiding officer or by the presiding officer to the counting officer.
- (4) A presiding officer may authorise a clerk appointed under paragraph (1) to do any act which the presiding officer is required or authorised by these rules to do at a polling station, except ordering the removal and exclusion of any person from the polling station.

Issue of poll cards

- 12 (1) The counting officer must, as soon as reasonably practicable after publishing the notice of poll, send to voters whichever of the following is appropriate—
 - (a) an official poll card,
 - (b) an official postal poll card,
 - (c) an official poll card issued to the proxy of a voter, or
 - (d) an official postal poll card issued to the proxy of a voter.
- (2) A voter's official poll card is to be sent or delivered to the voter's qualifying address.
- (3) A voter's official postal poll card is to be sent or delivered to the address to which the voter has stated that ballot papers are to be sent.
- (4) A proxy's official poll card is to be sent or delivered to the proxy's address as shown in the list of proxies.
- (5) The cards mentioned in paragraph (1) are to be in the form prescribed by the Chief Counting Officer.
- (6) The cards must set out—
 - (a) the voter's name, qualifying address and number in the register (unless the voter is registered anonymously),
 - (b) the date of the referendum,
 - (c) the hours of polling, and
 - (d) the situation of the voter's polling station (in the case of the cards mentioned in paragraph (1)(a) and (c)).
- (7) Where a poll card is sent to a voter who has appointed a proxy, the card must also notify the voter of the appointment of the proxy.

Loan of equipment for referendum

- 13 (1) A council must, if requested to do so by a counting officer, loan to the counting officer any ballot boxes, fittings and compartments provided by or belonging to the council.
- (2) Paragraph (1) does not apply if the council requires the equipment for immediate use by that council.

- (3) A loan under paragraph (1) is to be on such terms and conditions as the council and the counting officer may agree.

Equipment of polling stations

- 14 (1) The counting officer must provide each presiding officer with such number of ballot boxes and ballot papers as the counting officer considers necessary.
- (2) Each ballot box is to be constructed so that the ballot papers can be put in, but cannot be withdrawn from it, without the box being opened.
- (3) The counting officer must provide each polling station with—
 - (a) materials to enable voters to mark the ballot papers,
 - (b) copies of the register of electors or such part of it as contains the entries relating to the voters allotted to the station,
 - (c) the parts of any lists of persons entitled to vote by post or by proxy prepared for the referendum corresponding to the register of electors or the part of it provided under sub-paragraph (b),
 - (d) copies of forms of declarations and other documents required for the purpose of the poll, and
 - (e) the part of the corresponding number list which contains the numbers corresponding to those on the ballot papers provided to the presiding officer of the polling station.
- (4) The reference in paragraph (3)(b) to the copies of the registers of electors includes a reference to copies of any notices issued under section 13B(3B) or (3D) of the 1983 Act in respect of alterations to the register.
- (5) A notice giving directions for the guidance of voters in voting is to be displayed—
 - (a) inside and outside every polling station, and
 - (b) in every compartment of every polling station.
- (6) The notice under paragraph (5) is to be in the form prescribed by the Chief Counting Officer.
- (7) The counting officer must also provide each polling station with—
 - (a) an enlarged hand-held sample copy of the ballot papers for the assistance of voters who are partially-sighted, and
 - (b) a device for enabling voters who are blind or partially-sighted to vote without any need for assistance from the presiding officer or any companion.
- (8) The counting officer may cause to be displayed at every polling station an enlarged sample copy of the ballot papers and may include a translation of those words into such other languages as the counting officer considers appropriate.
- (9) The sample copy mentioned in paragraphs (7)(a) and (8) must be clearly marked as a specimen provided only for the guidance of voters in voting.

Admission to polling station

- 15 (1) No person other than the persons mentioned in paragraph (2) may attend a polling station.

- (2) Those persons are—
 - (a) voters,
 - (b) persons under the age of 16 accompanying voters,
 - (c) the companions of voters with disabilities,
 - (d) the Member of Parliament for the constituency in which the polling station is situated,
 - (e) the member of the Scottish Parliament for the constituency in which the polling station is situated,
 - (f) a member of the Scottish Parliament for the region in which the polling station is situated,
 - (g) a member of the council for the local government area in which the polling station is situated,
 - (h) a member of the European Parliament for the electoral region of Scotland,
 - (i) the clerks appointed to attend at the polling station,
 - (j) the Chief Counting Officer and members of the Chief Counting Officer's staff,
 - (k) a counting officer and members of the counting officer's staff,
 - (l) constables on duty,
 - (m) members of the Scottish Referendum Commission,
 - (n) staff of the Scottish Referendum Commission (whether appointed by the Commission or shared by virtue of arrangements under paragraph 17 of schedule 6),
 - (o) observers, and
 - (p) any other person the presiding officer permits to attend.
- (3) The presiding officer may regulate the total number of voters and persons under the age of 16 accompanying voters who may be admitted to the polling station at the same time.
- (4) Not more than one observer is to be admitted at the same time to a polling station on behalf of the same permitted participant.
- (5) A constable or a person employed by a counting officer may only be admitted to vote in person elsewhere than at the polling station allotted under these rules, in accordance with paragraph 1(5) of schedule 2, on production of a certificate which satisfies the requirements set out in paragraph (6).
- (6) A certificate must—
 - (a) be signed by—
 - (i) an officer of police of the rank of inspector or above, or
 - (ii) the counting officer, and
 - (b) be in the form prescribed by the Chief Counting Officer.
- (7) A certificate produced under paragraph (5) must be immediately cancelled.

Notification of requirement of secrecy

- 16 (1) The counting officer must make such arrangements as are reasonably practicable to ensure that—
- (a) every person attending at a polling station has been given a copy of the provisions of sub-paragraphs (1), (3), (5), (7) and (8) of paragraph 7 of schedule 5,
 - (b) every person attending at the counting of the votes has been given a copy of sub-paragraphs (4) and (8) of that paragraph.
- (2) Paragraph (1) does not require the provision of that information to—
- (a) a person attending the polling station for the purpose of voting,
 - (b) a person under the age of 16 accompanying a voter,
 - (c) a companion of a voter with disabilities, or
 - (d) a constable on duty at a polling station or at the count.

Keeping of order in polling station

- 17 (1) The presiding officer must keep order at the polling station.
- (2) If a person—
- (a) obstructs the operation of the polling station,
 - (b) obstructs any voter in polling, or
 - (c) does anything else which the presiding officer considers may adversely affect proceedings at the polling station,
- the presiding officer may order the person to be removed from the polling station.
- (3) A person may be removed—
- (a) by a constable, or
 - (b) by the presiding officer.
- (4) A person removed under paragraph (2) must not enter the polling station again during that day without the presiding officer's permission.
- (5) A person removed under paragraph (2) may, if charged with the commission in the polling station of an offence, be dealt with as a person taken into custody by a constable for an offence without a warrant.
- (6) The power to remove a person from the polling station is not to be exercised so as to prevent a voter who is otherwise entitled to vote at a polling station from having an opportunity of voting at that station.

Sealing of ballot boxes

- 18 Immediately before the commencement of the poll, the presiding officer must—
- (a) show each ballot box proposed to be used for the purposes of the poll to such persons (if any) who are present in the polling station so that they may see that each box is empty,
 - (b) place the presiding officer's seal on each box in such a manner as to prevent it being opened without breaking the seal,

- (c) place each box in the presiding officer's view for the receipt of ballot papers, and
- (d) keep each box sealed until it is delivered to the counting officer following the close of the poll.

Questions to be put to voters

- 19 (1) At the time a voter applies for ballot papers (but not afterwards), the presiding officer—
- (a) must put the questions mentioned in paragraph (2) to the voter if required to do so by an observer,
 - (b) may put the questions mentioned in paragraph (2) to the voter if the presiding officer considers it appropriate to do so.
- (2) The questions referred to in paragraph (1) are—

<i>Type of person applying for ballot papers</i>	<i>Questions</i>
1. A person applying as a voter	<p>(a) "Are you the person registered in the register of local government electors as follows?" (<i>read the whole entry from the register</i>)</p> <p>(b) "Have you already voted at this referendum otherwise than as proxy for some other person?"</p>
2. A person applying as proxy	<p>(a) "Are you the person whose name appears as A.B. in the list of proxies for this referendum as entitled to vote as proxy on behalf of C.D.?"</p> <p>(b) "Have you already voted at this referendum as proxy on behalf of C.D.?"</p> <p>(c) "Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of C.D.?"</p>
3. A person applying as proxy for a voter with an anonymous entry (instead of the questions in entry 2)	<p>(a) "Are you the person entitled to vote as proxy on behalf of the voter whose number on the register of local government electors is (<i>read out the number from the register</i>)?"</p> <p>(b) "Have you already voted here or elsewhere as proxy on behalf of the voter whose number on the register of local government electors is (<i>read out the number from the register</i>)?"</p> <p>(c) "Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of the person whose number on the register of local government electors is (<i>read out the number from the register</i>)?"</p>
4. A person applying as proxy if the answer to the question at 2(c) or 3(c) is not "yes"	"Have you already voted at this referendum on behalf of two persons of whom you are not the spouse, civil partner, parent, grandparent,

	brother, sister, child or grandchild?”
5. A person applying as a voter in relation to whom there is an entry in the postal voters list	(a) “Why did you apply to vote by post?” (b) “Why have you not voted by post?”
6. A person applying as proxy who is named in the proxy postal voters list	(a) “Did you apply to vote by post as proxy?” (b) “Why have you not voted by post as proxy?”

- (3) In the case of a voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, the reference in the question in entry 1(a) to reading from the register is to be read as a reference to reading from the notice issued under that section.
- (4) Ballot papers must not be delivered to any person required to answer a question under this rule unless the person answers the question satisfactorily.
- (5) Except as authorised by this rule, no enquiry is permitted as to the right of any person to vote.

Challenge of voter

- 20 A person (“A”) is not to be prevented from voting by reason only that—
- (a) another person (“B”)—
 - (i) has reasonable cause to believe that A has committed an offence of personation, and
 - (ii) B makes a declaration to that effect, or
 - (b) A is arrested on the grounds of being suspected of committing or of being about to commit such an offence.

Voting procedure

- 21 (1) Subject to rule 19(4), ballot papers must be delivered to a voter who applies for them.
- (2) Immediately before delivering ballot papers to the voter—
 - (a) the number and (unless paragraph (3) applies) name of the voter as stated in the copy of the register of electors is to be called out,
 - (b) the number of the voter is to be marked on the list mentioned in rule 14(3)(e) beside the numbers of the ballot papers to be issued to the voter,
 - (c) a mark is to be placed in the register of electors against the number of the voter to note that ballot papers have been received but without showing the particular ballot papers which have been received, and
 - (d) in the case of a person applying for ballot papers as proxy, a mark is also to be placed against that person’s name in the list of proxies.
 - (3) In the case of a voter who has an anonymous entry, the voter’s official poll card must be shown to the presiding officer and only the voter’s number is to be called out in pursuance of paragraph (2)(a).
 - (4) In the case of a voter who is added to the register of electors in pursuance of a notice issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (2) is modified as follows—

- (a) in sub-paragraph (a), for “copy of the register of electors” substitute “copy of the notice issued under section 13B(3B) or (3D) of the 1983 Act”,
 - (b) in sub-paragraph (c), for “in the register of electors” substitute “on the copy of the notice issued under section 13B(3B) or (3D) of the 1983 Act”.
- (5) On receiving the ballot papers, the voter must without delay—
- (a) proceed into a compartment in the polling station,
 - (b) there secretly mark the voter’s ballot papers,
 - (c) show the unique identifying number on each ballot paper to the presiding officer, and
 - (d) put the ballot papers into the ballot box in the presiding officer’s presence.
- (6) The voter must leave the polling station as soon as the voter has put the ballot papers into the ballot box.

Votes marked by presiding officer

- 22 (1) On the application of a voter—
- (a) who is incapacitated by blindness or other disability from voting in the manner required by rule 21, or
 - (b) who declares orally an inability to read,
- the presiding officer must, in the presence of any observers, cause the voter’s vote to be marked on a ballot paper in the manner directed by the voter and the ballot paper to be put into the ballot box.
- (2) The name and number in the register of electors of every voter whose vote is marked in pursuance of this rule, and the reason why it is so marked, is to be entered on a list (the “marked votes list”) and in the case of a person voting as proxy for a voter, the number to be entered is the voter’s number.
- (3) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (2) applies as if for “in the register of electors of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act”.

Voting by persons with disabilities

- 23 (1) If a voter applies to the presiding officer to be allowed to vote with the assistance of another person by whom the voter is accompanied (the “companion”), on the ground of—
- (a) blindness or other physical disability, or
 - (b) inability to read,
- the presiding officer must require the voter to declare (orally or in writing) whether the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance.
- (2) The presiding officer must grant the application if the presiding officer—
- (a) is satisfied that the voter is so disabled by blindness or other disability, or by inability to read, as to be unable to vote without assistance, and

- (b) is also satisfied, by a declaration made by the companion (a “companion declaration”) which complies with paragraph (3), that the companion—
 - (i) meets the requirements set out in paragraph (3)(c)(i) or (ii), and
 - (ii) has not previously assisted more than one voter with disabilities to vote at the referendum.
- (3) A companion declaration must—
 - (a) be in the form prescribed by the Chief Counting Officer,
 - (b) be made before the presiding officer at the time when the voter applies to vote with the assistance of the companion, and
 - (c) state that the companion—
 - (i) is a person who is entitled to vote as a voter at the referendum, or
 - (ii) is the parent, brother, sister, spouse, civil partner or child of the voter, and has attained the age of 16.
- (4) The presiding officer must sign the companion declaration and keep it.
- (5) No fee or other payment may be charged in respect of the declaration.
- (6) A person is a “voter with disabilities” for the purposes of paragraph (2)(b)(ii) if the person has made a declaration mentioned in paragraph (1).
- (7) Where an application is granted under paragraph (2), anything which is required by these rules to be done to or by the voter in connection with the giving of that voter’s vote may be done to, or by, or with the assistance of, the companion.
- (8) The name and number in the register of electors of every voter whose vote is given in accordance with this rule and the name and address of the companion is to be entered on a list (the “assisted voters list”) and, in the case of a person voting as proxy for a voter, the number to be entered is the voter’s number.
- (9) In paragraph (8), where the voter being assisted by a companion has an anonymous entry, only the voter’s number in the register of electors is to be entered on the assisted voters list.
- (10) In the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act, paragraph (8) applies as if for “in the register of electors of every voter” there were substituted “relating to every voter in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act”.

Tendered ballot papers

- 24 (1) Paragraph (6) applies if any of situations A to D exist.
 - (2) Situation A exists if a person, claiming to be—
 - (a) a particular voter named on the register and not named in the proxy postal voters list, or
 - (b) a particular person named in the list of proxies as proxy for a voter and not entitled to vote by post as proxy,applies for a ballot paper after another person has voted in person either as the voter or the voter’s proxy.
 - (3) Situation B exists if—

- (a) a person applies for a ballot paper claiming that the person is a particular voter named on the register,
 - (b) the person is also named in the postal voters list, and
 - (c) the person claims that—
 - (i) no application to vote by post in the referendum was made by that person, or
 - (ii) the person is not an existing postal voter within the meaning of paragraph 2(2) of schedule 2.
- (4) Situation C exists if—
- (a) a person applies for a ballot paper claiming that the person is a particular person named as a proxy in the list of proxies,
 - (b) the person is also named in the proxy postal voters list, and
 - (c) the person claims that—
 - (i) no application to vote by post as proxy was made by that person, or
 - (ii) the person is not an existing proxy to whom paragraph 6(4) of schedule 2 applies.
- (5) Situation D exists if, before the close of the poll but after the last time at which a person may apply for a replacement postal ballot paper—
- (a) a person claims that the person is—
 - (i) a particular voter named on the register who is also named in the postal voters list, or
 - (ii) a particular person named as proxy in the list of proxies who is also named in the proxy postal voters list, and
 - (b) the person claims that the person has lost or has not received the postal ballot paper.
- (6) Where this paragraph applies, the person is entitled, on satisfactorily answering the questions permitted by rule 19 to be asked at the poll, to mark a tendered ballot paper in the same manner as any other voter.
- (7) A tendered ballot paper must—
- (a) be of a colour—
 - (i) differing from that of the other ballot papers, and
 - (ii) prescribed by the Chief Counting Officer,
 - (b) instead of being put into the ballot box, be given to the presiding officer and endorsed by the presiding officer with the name of the voter and the voter's number in the register of electors, and
 - (c) be set aside in a separate packet.
- (8) The name of the voter and the voter's number in the register of electors is to be entered on a list (the "tendered votes list") and the voter must sign the list opposite the entry relating to that voter.
- (9) In the case of a person voting as proxy for a voter, the number to be endorsed or entered is to be the voter's number.

- (10) This rule applies to a voter who has an anonymous entry subject to the following modifications—
- (a) in paragraphs (7)(b) and (8), the references to the voter’s name are to be ignored, and
 - (b) otherwise, a reference to a person named in a register or list are to be construed as a reference to a person whose number appears on the register or list (as the case may be).
- (11) This rule applies in the case of a person in respect of whom a notice has been issued under section 13B(3B) or (3D) of the 1983 Act as if—
- (a) in paragraphs (2)(a), (3)(a) or (5)(a)(i), for “named on the register” there were substituted “in respect of whom a notice under section 13B(3B) or (3D) of the 1983 Act has been issued”, and
 - (b) in paragraphs (7)(b) and (8), for “the voter’s number in the register of electors” there were substituted “the number relating to that person on a notice issued under section 13B(3B) or (3D) of the 1983 Act”.

Spoilt ballot papers

- 25 (1) A voter who has inadvertently dealt with a ballot paper in such manner that it cannot be conveniently used as a ballot paper may—
- (a) by returning it to the presiding officer, and
 - (b) proving to the presiding officer’s satisfaction the fact of the inadvertence,
- obtain another ballot paper in the place of the returned ballot paper (the “spoilt ballot paper”).
- (2) The spoilt ballot paper must be immediately cancelled.

Correction of errors on the day of poll

- 26 (1) The presiding officer must keep a list of persons to whom ballot papers are delivered in consequence of an alteration to the register made by virtue of section 13B(3B) or (3D) of the 1983 Act which takes effect on the day of the poll.
- (2) The list kept under paragraph (1) is referred to as the “polling day alterations list”.

Adjournment of poll in case of riot

- 27 (1) Where the proceedings at any polling station are interrupted by riot or open violence, the presiding officer must—
- (a) adjourn the proceedings until the following day, and
 - (b) inform the counting officer without delay.
- (2) Where the poll is adjourned at any polling station—
- (a) the hours of polling on the day to which it is adjourned are to be the same as for the original day, and
 - (b) references in these rules to the close of the poll are to be construed accordingly.

Procedure on close of poll

- 28 (1) As soon as reasonably practicable after the close of the poll, the presiding officer must, in the presence of any observers—
- (a) seal each ballot box in use at the station so as to prevent the introduction of additional ballot papers,
 - (b) separate and make up into separate sealed packets the papers mentioned in paragraph (2), and
 - (c) deliver the sealed ballot boxes and packets (or arrange for them to be delivered) to the counting officer to be taken charge of by the counting officer.
- (2) The papers referred to in paragraph (1) are—
- (a) the unused and spoilt ballot papers placed together,
 - (b) the tendered ballot papers,
 - (c) the marked copies of the register of electors (including any marked copy notices issued under section 13B(3B) or (3D) of the 1983 Act) and of the list of proxies,
 - (d) any certificates produced under rule 15(5),
 - (e) the corresponding number list completed in accordance with rule 21(2)(b) (the “completed corresponding number list”),
 - (f) the tendered votes list, the assisted voters list, the marked votes list, the polling day alterations list and the companion declarations,
 - (g) any postal ballot paper or postal voting statement returned to the station.
- (3) The marked copies of the register of electors and of the list of proxies are to be in one packet but must not be in the same packet as the certificates mentioned in paragraph (2)(d) or the lists mentioned in paragraph (2)(e).
- (4) The packets must be accompanied by a statement (the “ballot paper account”) made by the presiding officer, showing the number of ballot papers entrusted to the presiding officer and accounting for them under the following heads—
- (a) ballot papers issued and not otherwise accounted for,
 - (b) unused ballot papers,
 - (c) spoilt ballot papers, and
 - (d) tendered ballot papers.
- (5) If the sealed ballot boxes and packets are not delivered to the counting officer by the presiding officer personally, the arrangements for their delivery require the counting officer’s approval.
- (6) In paragraph (1), references to “sealing” mean sealing using the presiding officer’s own seal.

Attendance at counting of votes

- 29 (1) The counting officer must make arrangements for counting of the votes as soon as reasonably practicable after the close of the poll.
- (2) The counting officer must publish notice of the time and place at which the counting officer will begin to count the votes.

- (3) The counting officer must take proper precautions for the security of the ballot boxes and packets in the period between taking charge of them and the beginning of the count.
- (4) No person other than the persons mentioned in paragraph (5) may attend the counting of the votes.
- (5) Those persons are—
 - (a) the Member of Parliament for the constituency which contains all or part of the area in which the votes being counted have been cast,
 - (b) the member of the Scottish Parliament for the constituency which contains all or part of the area in which the votes being counted have been cast,
 - (c) a member of the Scottish Parliament for the region which contains all or part of the area in which the votes being counted have been cast,
 - (d) a member of the council for the local government area which contains all or part of the area in which the votes being counted have been cast,
 - (e) a member of the European Parliament for the electoral region of Scotland,
 - (f) the Chief Counting Officer and members of the Chief Counting Officer's staff,
 - (g) a counting officer and members of the counting officer's staff,
 - (h) constables on duty,
 - (i) members of the Scottish Referendum Commission,
 - (j) staff of the Scottish Referendum Commission (whether appointed by the Commission or shared by virtue of arrangements under paragraph 17 of schedule 6),
 - (k) observers, and
 - (l) any other person the counting officer permits to attend.
- (6) A person mentioned in paragraph (5) may only be permitted to attend the counting of the votes if the counting officer is satisfied that the efficient counting of the votes will not be impeded.
- (7) The counting officer must give any observers such reasonable facilities for overseeing the proceedings and such information with respect to the proceedings as the counting officer can give consistently with the orderly conduct of the proceedings and the discharge of the counting officer's duties in connection with them.

The count

- 30 (1) The counting officer must—
 - (a) in the presence of any observers, open each ballot box and count and record the number of ballot papers in it, checking the number against the ballot paper account,
 - (b) verify each ballot paper account in the presence of any observers, and
 - (c) count such of the postal ballot papers as have been duly returned and record the number counted.
- (2) For the purposes of paragraph (1)(b), a counting officer must—

- (a) verify the ballot paper account by comparing it with the number of ballot papers recorded, the unused and spoilt ballot papers in the counting officer's possession and the tendered votes list (opening and resealing the packets containing the unused and spoilt ballot papers and the tendered votes list), and
 - (b) prepare a statement as to the result of the verification (the "verification statement").
- (3) For the purposes of paragraph (1)(c), a postal ballot paper is not to be considered as having been duly returned unless it—
 - (a) is returned—
 - (i) by hand to a polling station in the same local government area, or
 - (ii) by hand or post to the counting officer, before the close of the poll, and
 - (b) is accompanied by a postal voting statement which is duly signed and states the date of birth of the voter or the voter's proxy.
- (4) The counting officer must not count the votes given on any ballot papers until—
 - (a) in the case of postal ballot papers, they have been mixed with ballot papers from at least one ballot box, and
 - (b) in the case of ballot papers from a ballot box, they have been mixed with ballot papers from at least one other ballot box.
- (5) The counting officer must not count any tendered ballot paper.
- (6) The counting officer must not count any postal ballot paper if, having taken steps to verify the signature and date of birth of the voter or the voter's proxy, the counting officer is not satisfied that the postal voting statement has been properly completed.
- (7) The counting officer, while counting and recording the number of ballot papers and counting the votes, must take all proper precautions for preventing any person from identifying the voter who cast the vote.
- (8) The counting officer must, so far as reasonably practicable, proceed continuously with counting the votes, allowing only time for refreshment, except that the counting officer may exclude any hours between 7pm and 9am on the following morning.
- (9) During the time excluded, the counting officer must take proper precautions for the security of the papers.

Rejected ballot papers

- 31 (1) Any ballot paper to which paragraph (2) applies is void and is not to be counted, subject to paragraph (3).
- (2) This paragraph applies to a ballot paper—
 - (a) which does not bear the official mark,
 - (b) which indicates a vote both for and against a proposal,
 - (c) on which anything is written or marked by which the voter can be identified (other than by the printed number on the back), or
 - (d) which is unmarked or void for uncertainty.
- (3) A ballot paper on which the vote is marked—

- (a) elsewhere than in the proper place,
- (b) otherwise than by means of a cross, or
- (c) by more than one mark,

is not for such reason to be considered to be void by reason only of indicating a vote by means of figures or words (or any other mark) instead of a cross if, in the counting officer's opinion, the mark clearly indicates the voter's intention.

- (4) Paragraph (3) does not apply if—
 - (a) the way in which the ballot paper is marked identifies the voter, or
 - (b) it can be shown that the voter can be identified from it.
- (5) The counting officer must endorse the word “rejected” on any ballot paper which falls not to be counted under this rule.
- (6) The counting officer must prepare a statement showing the number of ballot papers rejected under each of sub-paragraphs (a) to (d) of paragraph (2).

Counting the votes

32 The counting officer must count the votes for and against each proposal.

Decisions on ballot papers

33 The decision of the counting officer on any question arising in respect of a ballot paper is final.

Re-counts

- 34 (1) The Chief Counting Officer may require a counting officer to have the votes re-counted (or again re-counted).
- (2) A counting officer may have the votes re-counted (or again re-counted) if the counting officer considers it appropriate to do so.

Declaration of result

- 35 (1) When the result of the poll has been ascertained, the counting officer must, without delay, send to the Chief Counting Officer—
 - (a) the total number of votes cast in the counting officer's area,
 - (b) the number of votes cast for and against each proposal in the area,
 - (c) the verification statement prepared under rule 30, and
 - (d) the number of rejected ballot papers under each head shown in the statement of rejected ballot papers prepared under rule 31.
- (2) After the Chief Counting Officer—
 - (a) has received the information set out in paragraph (1) for every area, and
 - (b) is satisfied that no re-count (or additional re-count) is required,the Chief Counting Officer must declare the result for the whole of Scotland (the “national declaration”).

- (3) The national declaration must contain—
 - (a) the total number of votes cast in the whole of Scotland,
 - (b) the number of votes cast for and against each proposal in the whole of Scotland, and
 - (c) the number of rejected ballot papers for the whole of Scotland.
- (4) After the Chief Counting Officer has made the national declaration, the Chief Counting Officer may direct the counting officer for each area to declare the result for the counting officer's area (a "local declaration").
- (5) A local declaration must contain—
 - (a) the total number of votes cast in the counting officer's area,
 - (b) the number of votes cast for and against each proposal in the area, and
 - (c) the number of rejected ballot papers in the area.

Sealing up of ballot papers

- 36 (1) As soon as reasonably practicable after the Chief Counting Officer has confirmed that no re-count is required, the counting officer must seal up in separate packets—
 - (a) the counted ballot papers,
 - (b) the rejected ballot papers, and
 - (c) the postal ballot papers together with the envelopes relating to them.
- (2) The counting officer must not open the sealed packets of—
 - (a) tendered ballot papers,
 - (b) the completed corresponding number lists,
 - (c) the certificates mentioned in rule 15(5), or
 - (d) marked copies of the register of electors (including any marked copy notices issued under section 13B(3B) or (3D) of the 1983 Act) and lists of proxies.

Delivery of papers

- 37 (1) After sealing the papers in accordance with rule 36, the counting officer must send the papers mentioned in paragraph (2) to the proper officer of the council for the local government area in which the votes being counted have been cast, endorsing on each packet a description of its contents and the date of the referendum.
- (2) Those papers are—
 - (a) the packets of ballot papers in the counting officer's possession,
 - (b) the ballot paper accounts, the statements of rejected ballot papers and the verification statements,
 - (c) the tendered votes list, the assisted voters list, the marked votes list, the polling day alterations lists and the companion declarations,
 - (d) the packets of the completed corresponding numbers lists,
 - (e) the packets of the certificates mentioned in rule 15(5), and

- (f) the packets containing marked copies of registers (including any marked copy notices issued under section 13B(3B) or (3D) of the 1983 Act) and of the postal voters list, of lists of proxies and of the proxy postal voters list.

Retention and public inspection of papers

- 38 (1) The proper officer of the council must retain for one year all papers received by virtue of rule 37.
- (2) Those papers, except ballot papers, completed corresponding number lists and the certificates mentioned in rule 15(5), are to be made available for public inspection at such times and in such manner as the proper officer may determine.
 - (3) A person inspecting marked copies of the register of electors may not—
 - (a) make copies of any part of them, or
 - (b) record any particulars included in them,otherwise than by means of hand-written notes.
 - (4) A person who makes a copy of marked copies of the register of electors, or records any particulars included in them, otherwise than by means of hand-written notes commits an offence and is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
 - (5) After the expiry of one year, the proper officer must ensure that the papers are destroyed, unless otherwise directed by an order of a sheriff principal.

Orders for production of documents

- 39 (1) Any sheriff principal may make an order mentioned in paragraph (2) if the sheriff principal is satisfied by evidence on oath that the order is required for the purpose of instituting or maintaining a prosecution for an offence in relation to ballot papers.
- (2) An order referred to in paragraph (1) is an order for—
 - (a) the inspection or production of any rejected ballot papers in the custody of a proper officer,
 - (b) the opening of a sealed packet of the completed corresponding number lists or of the certificates mentioned in rule 15(5), or
 - (c) the inspection of any counted ballot papers in the proper officer's custody.
 - (3) An order under this rule may be made subject to such conditions as to—
 - (a) persons,
 - (b) time,
 - (c) place and mode of inspection, and
 - (d) production or opening,as the sheriff principal considers expedient.
 - (4) In making and carrying out an order mentioned in paragraph (2)(b) or (c), care must be taken that the way in which the vote of any particular voter has been given will not be disclosed until it is proved—
 - (a) that such vote was given, and

- (b) that such vote has been declared by a competent court to be invalid.
- (5) Any power given to a sheriff principal under this rule may be exercised otherwise than in open court.
- (6) An appeal lies to the Court of Session from any order of a sheriff principal under this rule.
- (7) Where an order is made for the production by a proper officer of any document in that officer's custody relating to the referendum—
- (a) the production by such officer or the officer's agent of the document ordered in such manner as may be directed by that order is conclusive evidence that the document relates to the referendum, and
- (b) any endorsement on any packet of ballot papers so produced is *prima facie* evidence that the ballot papers are what they are stated to be by the endorsement.
- (8) The production from the proper officer's custody of—
- (a) a ballot paper purporting to have been used at the referendum, and
- (b) a completed corresponding number list with a number marked in writing beside the number of the ballot paper,
- is *prima facie* evidence that the voter whose vote was given by that ballot paper was the person whose entry in the register of electors (or on a notice issued under section 13B(3B) or (3D) of the 1983 Act) at the time of the referendum contained the same number as the number marked as mentioned in sub-paragraph (b).
- (9) Except as provided by this rule, no person is to be allowed to—
- (a) inspect any rejected or counted ballot papers in the custody of the proper officer, or
- (b) open any sealed packet of the completed corresponding number list or of the certificates mentioned in rule 15(5).

Power to prescribe forms

- 40 (1) The Chief Counting Officer must prescribe the forms to be used in the referendum.
- (2) A form which is prescribed under paragraph (1) may be used with such variations as the circumstances may require.
- (3) Paragraph (1) does not apply to the form of the ballot papers (for which section 1 and schedule 1 make provision).

SCHEDULE 4 (introduced by section 10)

CAMPAIGN RULES

PART 1

INTERPRETATION

Interpretation of schedule

- 1 (1) In this schedule, the following words and expressions have the same meanings as they have for the purposes of the 2000 Act—

“body”,
 “exempt trust donation”,
 “market value”,
 “property”,
 “qualified auditor”.

- (2) References in this schedule (in whatever terms) to payments out of public funds are references to any of the following—
- (a) payments out of—
 - (i) the Consolidated Fund of the United Kingdom, the Scottish Consolidated Fund, the Consolidated Fund of Northern Ireland or the Welsh Consolidated Fund, or
 - (ii) money provided by Parliament or appropriated by Act of the Northern Ireland Assembly,
 - (b) payments by—
 - (i) a Minister of the Crown, the Scottish Ministers, a Minister within the meaning of the Northern Ireland Act 1998 (c. 47) or the Welsh Ministers, or
 - (ii) a government department (including a Northern Ireland department) or a part of the Scottish Administration,
 - (c) payments by the Scottish Parliamentary Corporate Body, the Northern Ireland Assembly Commission or the National Assembly for Wales Commission, and
 - (d) payments by the Electoral Commission or the Commission.
- (3) References in this schedule (in whatever terms) to expenses met, or things provided, out of public funds are references to expenses met, or things provided, by means of payments out of public funds.

PART 2

PERMITTED PARTICIPANTS AND DESIGNATED ORGANISATIONS

Permitted participants

- 2 (1) For the purposes of this schedule, a registered party, a qualifying individual or a qualifying body may make a declaration to the Commission in accordance with this paragraph and paragraph 3 identifying the outcome for which the party, individual or body proposes to campaign at the referendum.
- (2) A registered party, individual or body which has made a declaration in accordance with this paragraph and paragraph 3 is referred to in this Act as a “permitted participant”.
- (3) An individual is a qualifying individual if the individual is—
- (a) resident in the United Kingdom, or
 - (b) registered in—
 - (i) a register of parliamentary or local government electors maintained under the Representation of the People Act 1983 (c.2),

- (ii) a register of relevant citizens of the European Union prepared under the European Parliamentary Elections (Franchise of Relevant Citizens of the Union) Regulations 2001 (SI 2001/1184), or
 - (iii) a register of peers prepared under regulations under section 3 of the Representation of the People Act 1985 (c.50).
- (4) A body is a qualifying body if the body is—
- (a) a company—
 - (i) registered under the Companies Act 2006 (c.46),
 - (ii) incorporated within the United Kingdom or another member State of the European Union, and
 - (iii) carrying on business in the United Kingdom,
 - (b) a trade union entered in the list kept under the Trade Union and Labour Relations (Consolidation) Act 1992 (c.52) or the Industrial Relations (Northern Ireland) Order 1992 (SI 1992/807),
 - (c) a building society within the meaning of the Building Societies Act 1986 (c.53),
 - (d) a limited liability partnership—
 - (i) registered under the Limited Liability Partnerships Act 2000 (c.12), and
 - (ii) carrying on business in the United Kingdom,
 - (e) a friendly society registered under the Friendly Societies Act 1974 (c.46) or a society registered (or deemed to be registered) under the Industrial and Provident Societies Act 1965 (c.12) or the Industrial and Provident Societies Act (Northern Ireland) 1969 (c.24), or
 - (f) an unincorporated association of two or more persons which—
 - (i) does not fall within any of the preceding paragraphs,
 - (ii) carries on business or other activities wholly or mainly in the United Kingdom, and
 - (iii) has its main office in the United Kingdom.

Further provision about declarations under paragraph 2

- 3 (1) A declaration under paragraph 2 by a registered party—
- (a) must be signed by the responsible officers of the party (within the meaning of section 64(7) of the 2000 Act), and
 - (b) if made by a minor party, must be accompanied by a notification which states the name of the person who will be responsible for compliance on the part of the party with the provisions of this schedule.
- (2) A declaration under paragraph 2 by a qualifying individual must—
- (a) state the individual's full name and home address, and
 - (b) be signed by the individual.
- (3) A declaration under paragraph 2 by a qualifying body must—
- (a) state—

- (i) all such details in respect of the body as are required by virtue of any of sub-paragraphs (4) and (6) to (10) of paragraph 2 of Schedule 6 to the 2000 Act to be given in respect of such a body as the donor of a recordable donation, and
 - (ii) the name of the person or officer who will be responsible for compliance on the part of the body with the provisions of this schedule, and
 - (b) be signed by the body's secretary or a person who acts in a similar capacity in relation to the body.
- (4) If at any time before the end of the compliance period any statement which is contained in a notification under sub-paragraph (1)(b) or, in accordance with any provision of sub-paragraph (2) or (3), is contained in a declaration under paragraph 2, ceases to be accurate, the permitted participant by whom the notification was given or declaration was made must give the Commission a notification ("a notification of alteration") replacing the statement with another statement—
- (a) contained in the notification of alteration, and
 - (b) conforming with sub-paragraph (1)(b), (2) or, as the case may be, (3).
- (5) For the purposes of sub-paragraph (4), "the compliance period" is the period during which any provision of this schedule remains to be complied with on the part of the permitted participant.

Register of declarations under paragraph 2

- 4 (1) The Commission must maintain a register of all declarations made to it under paragraph 2.
- (2) The register is to be maintained by the Commission in such form as the Commission may determine.
- (3) The register must contain, in relation to each declaration, all of the information supplied to the Commission in connection with the declaration in accordance with paragraph 3.
- (4) Where a declaration is made to the Commission under paragraph 2, the Commission must cause the information mentioned in sub-paragraph (3) to be entered in the register as soon as is reasonably practicable.
- (5) Where a notification of alteration is given to the Commission under paragraph 3(4) the Commission must cause any change required as a consequence of the notification to be made in the register as soon as is reasonably practicable.
- (6) The information to be entered in the register in respect of a permitted participant who is an individual must not include the individual's home address.

Designated organisations

- 5 (1) The Commission may designate permitted participants as designated organisations for the purposes of this schedule.
- (2) The Commission may make a designation under this paragraph only on an application made under paragraph 6.

- (3) The Commission may, in relation to each of the possible outcomes in the referendum, designate one permitted participant as representing those campaigning for the outcome in question.
- (4) A permitted participant designated under this paragraph is referred to in this Act as a “designated organisation”.

Applications for designation under paragraph 5

- 6 (1) A permitted participant seeking to be designated under paragraph 5 must make an application for that purpose to the Commission.
- (2) An application for designation must—
 - (a) be accompanied by information or statements designed to show that the applicant adequately represents those campaigning for the outcome in the referendum in relation to which the applicant seeks to be designated, and
 - (b) be made within the period of 28 days beginning with the first day of the referendum period.
- (3) Where an application for designation has been made to the Commission in accordance with this paragraph, the application must be determined by the Commission within the period of 14 days beginning with the day after the end of the period of 28 days mentioned in sub-paragraph (2)(b).
- (4) If there is only one application in relation to a particular outcome in the referendum, the Commission must designate the applicant unless it is not satisfied that the applicant adequately represents those campaigning for that outcome.
- (5) If there is more than one application in relation to a particular outcome in the referendum, the Commission must designate whichever of the applicants appears to it to represent to the greatest extent those campaigning for that outcome unless it is not satisfied that any of the applicants adequately represents those campaigning for that outcome.

Designated organisation’s right to send referendum address post free

- 7 (1) A designated organisation is, subject to such reasonable terms and conditions as the universal service provider concerned may specify, entitled to send free of any charge for postage which would otherwise be made by a universal service provider either—
 - (a) one unaddressed postal communication, containing matter relating to the referendum only and not exceeding 60 grammes in weight, to each place in Scotland which, in accordance with those terms and conditions, constitutes a delivery point for the purposes of this sub-paragraph, or
 - (b) one such postal communication addressed to each person entitled to vote at the referendum.
- (2) A designated organisation is also, subject to any such terms and conditions, entitled to send free of any such charge for postage to each person entered in the list of proxies for the referendum one such postal communication for each appointment in respect of which that person is so entered.

- (3) A universal service provider is entitled to be paid for having provided postal services under this paragraph free of charge at the rate fixed in relation to them by virtue of a scheme under section 89 of the Postal Services Act 2000 (c.26).
- (4) The Scottish Ministers are responsible for paying sums to which a universal service provider is entitled under sub-paragraph (3).
- (5) Sums required by the Scottish Ministers for payments under sub-paragraph (4) are charged on the Scottish Consolidated Fund.

Designated organisation's right to use rooms for holding public meetings

- 8 (1) Subject to the provisions of this paragraph, persons authorised by a designated organisation are entitled for the purpose of holding public meetings in furtherance of the organisation's referendum campaign to the use free of charge, at reasonable times during the relevant period, of—
- (a) a suitable room in the premises of a school to which this paragraph applies in accordance with sub-paragraph (2), and
 - (b) any meeting room to which this paragraph applies in accordance with sub-paragraph (3).

For this purpose, "the relevant period" means the period of 28 days ending with the day before the date of the referendum.

- (2) This paragraph applies to any school maintained by an education authority.
- (3) This paragraph applies to meeting rooms situated in Scotland the expense of maintaining which is payable wholly or mainly by—
 - (a) the Scottish Ministers or any other part of the Scottish Administration,
 - (b) the SPCB, or
 - (c) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998 (c.46)).
- (4) Where a room is used for a meeting in pursuance of the rights conferred by this paragraph, the person by whom or on whose behalf the meeting is convened—
 - (a) must defray any expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring the room to its usual condition after the meeting, and
 - (b) must defray any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises.
- (5) A person is not entitled to exercise the rights conferred by this paragraph except on reasonable notice; and this paragraph does not authorise any interference with the hours during which a room in school premises is used for educational purposes, or any interference with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its letting for any purpose.
- (6) For the purposes of this paragraph (except those of paragraph (b) of sub-paragraph (4)), the premises of a school are not to be taken to include any private dwelling.
- (7) In this paragraph—

"dwelling" includes any part of a building where that part is occupied separately as a dwelling,

“meeting room” means any room which it is the practice to let for public meetings, and

“room” includes a hall, gallery or gymnasium.

Supplementary provisions about use of rooms for public meetings

- 9 (1) This paragraph has effect with respect to the rights conferred by paragraph 8 and the arrangements to be made for their exercise.
- (2) Any arrangement for the use of a room in school premises is to be made with the education authority maintaining the school.
- (3) Any question as to the rooms in school premises which a person authorised by a designated organisation is entitled to use, or as to the times at which the person is entitled to use them, or as to the notice which is reasonable, is to be determined by the Scottish Ministers.
- (4) Any person authorised by a designated organisation is entitled at all reasonable hours to inspect—
- (a) any lists prepared in pursuance of paragraph 6 of Schedule 5 to the Representation of the People Act 1983 (use of rooms for parliamentary election meetings), or
 - (b) a copy of any such lists,
- in connection with exercising the rights conferred by paragraph 8.

PART 3

REFERENDUM EXPENSES

Referendum expenses

- 10 (1) The following provisions have effect for the purposes of this schedule.
- (2) “Referendum expenses” means expenses incurred by or on behalf of any individual or body which are—
- (a) expenses falling within paragraph 11, and
 - (b) incurred for referendum purposes.
- (3) Expenses are incurred for referendum purposes if they are incurred—
- (a) in connection with the conduct or management of a referendum campaign, or
 - (b) otherwise in connection with promoting or procuring any particular outcome in the referendum.

Expenses qualifying where incurred for referendum purposes

- 11 (1) For the purposes of paragraph 10(2)(a) the expenses falling within this paragraph are expenses incurred in respect of any of the matters set out in the following list:
1. Referendum campaign broadcasts.
(Expenses in respect of such broadcasts include agency fees, design costs and other costs in connection with preparing and producing such broadcasts.)
 2. Advertising of any nature (whatever the medium used).

(Expenses in respect of such advertising include agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it.)

3. Unsolicited material addressed to voters (whether addressed to them by name or intended for delivery to households within any particular area or areas).

(Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing or otherwise disseminating such material (including the cost of postage).)

4. Any material to which paragraph 26 applies.

(Expenses in respect of such material include design costs and other costs in connection with preparing, producing or distributing or otherwise disseminating such material.)

5. Market research or canvassing conducted for the purpose of ascertaining polling intentions.

6. The provision of any services or facilities in connection with press conferences or other dealings with the media.

7. Transport (by any means) of persons to any place or places with a view to obtaining publicity in connection with a referendum campaign.

(Expenses in respect of such transport include the costs of hiring a particular means of transport for the whole or part of the period during which the campaign is being conducted.)

8. Rallies and other events, including public meetings (but not annual or other party conferences) organised so as to obtain publicity in connection with a referendum campaign or for other purposes connected with a referendum campaign.

(Expenses in respect of such events include costs incurred in connection with the attendance of persons at such events, the hire of premises for the purposes of such events or the provision of goods, services or facilities at them.)

(2) Nothing in sub-paragraph (1) is to be taken as extending to—

(a) any expenses in respect of any property, services or facilities so far as those expenses fall to be met out of public funds,

(b) any expenses incurred in respect of the remuneration or allowances payable to any member of the staff (whether permanent or otherwise) of the campaign organiser, or

(c) any expenses incurred in respect of an individual (“A”) by way of travelling expenses (by any means of transport) or in providing for A’s accommodation or other personal needs to the extent that the expenses are paid by A from A’s own resources and are not reimbursed to A.

(3) The Commission may issue, and from time to time revise, a code of practice giving guidance as to the kinds of expenses which do, or do not, fall within this paragraph.

(4) As soon as practicable after issuing or revising a code of practice under sub-paragraph (3), the Commission must send a copy to the Scottish Ministers.

(5) The Scottish Ministers must lay before the Scottish Parliament a copy of the code or, as the case may be, the revised code.

Notional referendum expenses

- 12 (1) This paragraph applies where, in the case of any individual or body—
- (a) either—
 - (i) property is transferred to the individual or body free of charge or at a discount of more than 10 per cent of its market value, or
 - (ii) property, services or facilities is or are provided for the use or benefit of the individual or body free of charge or at a discount of more than 10 per cent of the commercial rate for the use of the property or for the provision of the services or facilities, and
 - (b) the property, services or facilities is or are made use of by or on behalf of the individual or body in circumstances such that, if any expenses were to be (or are) actually incurred by or on behalf of the individual or body in respect of that use, they would be (or are) referendum expenses incurred by or on behalf of the individual or body.
- (2) Where this paragraph applies, an amount of referendum expenses determined in accordance with this paragraph (“the appropriate amount”) is to be treated, for the purposes of this schedule, as incurred by the individual or body during the period for which the property, services or facilities is or are made use of as mentioned in sub-paragraph (1)(b).
- (3) Sub-paragraph (2) is subject to sub-paragraph (13).
- (4) Where sub-paragraph (1)(a)(i) applies, the appropriate amount is such proportion as is reasonably attributable to the use made of the property as mentioned in sub-paragraph (1)(b) of either—
- (a) the market value of the property (where the property is transferred free of charge), or
 - (b) the difference between the market value of the property and the amount of expenses actually incurred by or on behalf of the individual or body in respect of the property (where the property is transferred at a discount).
- (5) Where sub-paragraph (1)(a)(ii) applies the appropriate amount is such proportion as is reasonably attributable to the use made of the property, services or facilities as mentioned in sub-paragraph (1)(b) of either—
- (a) the commercial rate for the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided free of charge), or
 - (b) the difference between that commercial rate and the amount of expenses actually incurred by or on behalf of the individual or body in respect of the use of the property or the provision of the services or facilities (where the property, services or facilities is or are provided at a discount).
- (6) Sub-paragraph (7) applies where the services of an employee are made available by the employee’s employer for the use or benefit of an individual or body.

- (7) For the purposes of this paragraph, the amount which is to be taken as constituting the commercial rate for the provision of those services is the amount of the remuneration or allowances payable to the employee by the employer in respect of the period for which the employee's services are made available (but do not include any amount in respect of contributions or other payments for which the employer is liable in respect of the employee).
- (8) Where an amount of referendum expenses is treated, by virtue of sub-paragraph (2), as incurred by or on behalf of an individual or body during any period the whole or part of which falls within the referendum period then—
 - (a) the amount mentioned in sub-paragraph (10) is to be treated as incurred by or on behalf of the individual or body during the referendum period, and
 - (b) if a return falls to be prepared under paragraph 21 in respect of referendum expenses incurred by or on behalf of the individual or body during that period, the responsible person must make a declaration of that amount.
- (9) Sub-paragraph (8) does not apply if the amount referred to in sub-paragraph (8)(a) is not more than £200.
- (10) The amount referred to in sub-paragraph (8)(a) is such proportion of the appropriate amount (determined in accordance with sub-paragraph (4) or (5)) as reasonably represents the use made of the property, services or facilities as mentioned in sub-paragraph (1)(b) during the referendum period.
- (11) A person commits an offence if the person knowingly or recklessly makes a false declaration under sub-paragraph (8)(b).
- (12) A person guilty of an offence under sub-paragraph (11) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
- (13) No amount of referendum expenses is to be regarded as incurred by virtue of sub-paragraph (2) in respect of—
 - (a) the transmission by a broadcaster of a referendum campaign broadcast,
 - (b) the provision of any rights conferred on a designated organisation (or persons authorised by such an organisation) by virtue of paragraphs 7 to 9, or
 - (c) the provision by any individual of the individual's own services which are provided voluntarily in the individual's own time and free of charge.
- (14) Paragraph 31(5) and (6)(a) applies with any necessary modifications for the purpose of determining, for the purposes of sub-paragraph (1), whether property is transferred to an individual or body.

Restriction on incurring referendum expenses

- 13 (1) No amount of referendum expenses is to be incurred by or on behalf of a permitted participant except with the authority of—
 - (a) the responsible person, or
 - (b) a person authorised in writing by the responsible person.

- (2) A person commits an offence if, without reasonable excuse, the person incurs any expenses in contravention of sub-paragraph (1).
- (3) A person guilty of an offence under sub-paragraph (2) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (4) Where, in the case of a permitted participant that is a registered party, any expenses are incurred in contravention of sub-paragraph (1), the expenses do not count for the purposes of paragraphs 18 to 24 as referendum expenses incurred by or on behalf of the permitted participant.

Restriction on payments in respect of referendum expenses

- 14 (1) No payment (of whatever nature) may be made in respect of any referendum expenses incurred or to be incurred by or on behalf of a permitted participant except by—
- (a) the responsible person, or
 - (b) a person authorised in writing by the responsible person.
- (2) A payment made in respect of any such expenses by a person within paragraph (a) or (b) of sub-paragraph (1) must be supported by an invoice or a receipt unless it is not more than £200.
- (3) Where a person within paragraph (b) of sub-paragraph (1) makes a payment to which sub-paragraph (2) applies, the person must, as soon as possible after making the payment, deliver to the responsible person—
- (a) notification that the payment has been made, and
 - (b) the supporting invoice or receipt.
- (4) A person commits an offence if, without reasonable excuse, the person—
- (a) makes a payment in contravention of sub-paragraph (1), or
 - (b) contravenes sub-paragraph (3).
- (5) A person guilty of an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Restriction on making claims in respect of referendum expenses

- 15 (1) A claim for payment in respect of referendum expenses incurred by or on behalf of a permitted participant during the referendum period is not payable unless the claim is sent within 30 days after the end of the referendum period to—
- (a) the responsible person, or
 - (b) any other person authorised under paragraph 13 to incur the expenses.
- (2) A claim sent in accordance with sub-paragraph (1) must be paid within 60 days after the end of the referendum period.
- (3) A person commits an offence if, without reasonable excuse, the person—
- (a) pays a claim which by virtue of sub-paragraph (1) is not payable, or
 - (b) makes a payment in respect of a claim after the end of the period allowed under sub-paragraph (2).

- (4) A person guilty of an offence under sub-paragraph (3) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) In the case of a claim to which sub-paragraph (1) applies—
 - (a) the person making the claim, or
 - (b) the person with whose authority the expenses in question were incurred,may apply to the Court of Session or the sheriff for leave for the claim to be paid although sent in after the end of the period mentioned in that sub-paragraph; and the Court or sheriff, if satisfied that for any special reason it is appropriate to do so, may by order grant the leave.
- (6) Nothing in sub-paragraph (1) or (2) applies in relation to any sum paid in pursuance of the order granting leave.
- (7) Sub-paragraph (2) is without prejudice to any rights of a creditor of a permitted participant to obtain payment before the end of the period allowed under that sub-paragraph.
- (8) Subsections (7), (9) and (10) of section 77 of the 2000 Act apply for the purposes of this paragraph as if—
 - (a) any reference to subsection (1), (2) or (4) of that section were a reference to sub-paragraph (1), (2) or (5) above,
 - (b) any reference to campaign expenditure were a reference to referendum expenses, and
 - (c) any reference to the treasurer or deputy treasurer of the registered party were a reference to the responsible person in relation to the permitted participant.

Disputed claims

- 16 (1) This paragraph applies where—
 - (a) a claim for payment in respect of referendum expenses incurred by or on behalf of a permitted participant as mentioned in paragraph 15(1) is sent to—
 - (i) the responsible person, or
 - (ii) any other person with whose authority it is alleged that the expenses were incurred,within the period allowed under that provision, and
 - (b) the responsible person or other person to whom the claim is sent fails or refuses to pay the claim within the period allowed under paragraph 15(2).
- (2) A claim to which this paragraph applies is referred to in this paragraph as “the disputed claim”.
- (3) The person by whom the disputed claim is made may bring an action for the disputed claim, and nothing in paragraph 15(2) applies in relation to any sum paid in pursuance of any judgment or order made by a court in the proceedings.
- (4) For the purposes of this paragraph—

- (a) sub-paragraphs (5) and (6) of paragraph 15 apply in relation to an application made by the person mentioned in sub-paragraph (1)(b) above for leave to pay the disputed claim as they apply in relation to an application for leave to pay a claim (whether it is disputed or otherwise) which is sent in after the period allowed under paragraph 15(1), and
- (b) subsection (7) of section 77 of the 2000 Act applies as if the reference to subsection (4) of that section were a reference to paragraph 15(5) as applied by paragraph (a) above.

Rights of creditors

17 Nothing in this schedule which prohibits—

- (a) payments and contracts for payments,
- (b) the payment or incurring of referendum expenses in excess of the maximum amount allowed by this schedule, or
- (c) the incurring of expenses not authorised as mentioned in paragraph 13,

affects the right of any creditor, who, when the contract was made or the expense was incurred, was ignorant of that contract or expense being in contravention of this schedule.

General restriction on referendum expenses

18 (1) This paragraph applies in relation to an individual or body that is not a permitted participant.

- (2) The total referendum expenses incurred by or on behalf of an individual or a body to which this paragraph applies during the referendum period must not exceed £3,000.
- (3) Where, during the referendum period, any referendum expenses are incurred by or on behalf of an individual to which this paragraph applies in excess of the limit imposed by sub-paragraph (2), the individual is guilty of an offence if the individual knew, or ought reasonably to have known, that the expenses were being incurred in excess of that limit.
- (4) An individual guilty of an offence under sub-paragraph (3) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
- (5) Where, during the referendum period, any referendum expenses are incurred by or on behalf of a body to which this paragraph applies in excess of the limit imposed by sub-paragraph (2), then—
 - (a) the body is guilty of an offence, and
 - (b) any person who authorised the expenses to be incurred by or on behalf of the body is also guilty of an offence if the person knew, or ought reasonably to have known, that the expenses would be incurred in excess of that limit.
- (6) A person guilty of an offence under sub-paragraph (5) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),

- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
- (7) It is a defence for an individual, body or other person charged with an offence under sub-paragraph (3) or (5) to show—
 - (a) that any code of practice for the time being issued under paragraph 11(3) was complied with in determining whether to incur any expenses, and
 - (b) that the limit would not have been exceeded on the basis of compliance with the code of practice as it had effect at that time.
- (8) Sub-paragraph (9) applies where—
 - (a) before the beginning of the referendum period, any expenses are incurred by or on behalf of an individual or body to which this paragraph applies in respect of any property, services or facilities, and
 - (b) the property, services or facilities is or are made use of by or on behalf of the individual or body during the referendum period in circumstances such that, had any expenses been incurred in respect of that use during that period, they would by virtue of paragraph 10(2) have constituted referendum expenses incurred by or on behalf of the individual or body during that period.
- (9) The appropriate proportion of the expenses mentioned in sub-paragraph (8)(a) is to be treated for the purposes of this paragraph as referendum expenses incurred by or on behalf of the individual or body during that period.
- (10) For the purposes of sub-paragraph (9) the appropriate proportion of the expenses mentioned in paragraph (a) of sub-paragraph (8) is such proportion of those expenses as is reasonably attributable to the use made of the property, services or facilities as mentioned in paragraph (b) of that sub-paragraph.

Special restrictions on referendum expenses by permitted participants

- 19 (1) The total referendum expenses incurred by or on behalf of a permitted participant during the referendum period must not exceed—
 - (a) if the permitted participant is a designated organisation, £750,000 plus whichever of the limits in paragraphs (b) and (c) applies,
 - (b) if the permitted participant is a registered party represented in the Scottish Parliament at the start of the referendum period, £100,000, or
 - (c) if the permitted participant is not such a registered party, £37,000.
- (2) Where any referendum expenses are incurred by or on behalf of a permitted participant during the referendum period in excess of the limit imposed by sub-paragraph (1), then—
 - (a) if the permitted participant is a registered party—
 - (i) the party is guilty of an offence, and
 - (ii) the responsible person or any deputy treasurer of the party is also guilty of an offence if the person or deputy treasurer authorised the expenses to be incurred by or on behalf of the party and knew or ought reasonably to have known that the expenses would be incurred in excess of that limit,

- (b) if the permitted participant is an individual, that individual is guilty of an offence if the individual knew or ought reasonably to have known that the expenses would be incurred in excess of that limit,
 - (c) if the permitted participant is a body other than a registered party—
 - (i) the body is guilty of an offence, and
 - (ii) the responsible person is also guilty of an offence if the person authorised the expenses to be incurred by or on behalf of the body and knew or ought reasonably to have known that the expenses would be incurred in excess of that limit.
- (3) A person guilty of an offence under sub-paragraph (2) is liable—
- (a) on summary conviction, to a fine not exceeding the statutory maximum,
 - (b) on conviction on indictment, to a fine.
- (4) It is a defence for a permitted participant or other person charged with an offence under sub-paragraph (2) to show—
- (a) that any code of practice for the time being issued under paragraph 11(3) was complied with in determining the items and amounts of referendum expenses to be entered in the relevant return under paragraph 21, and
 - (b) that the limit would not have been exceeded on the basis of the items and amounts entered in that return.
- (5) For the purposes of sub-paragraph (1)(b), a registered party is represented in the Scottish Parliament at the start of the referendum period if at that time there is a member of the Parliament who—
- (a) was returned at the previous general election for membership of the Parliament after contesting it as a candidate (whether for return as a constituency member or as regional member) of the party,
 - (b) was returned since that general election at an election held under section 9 of the Scotland Act 1998 (c.46) (constituency vacancies) after contesting it as a candidate of the party, or
 - (c) was included in the regional list for any region submitted by the party for that general election and as such became a member of the Parliament since that general election by virtue of a notification under section 10 of that Act (regional vacancies).
- (6) Sub-paragraphs (8) to (10) of paragraph 18 apply for the purposes of this paragraph and paragraphs 21 to 24 as they apply for the purposes of paragraph 18, but as if references in them to an individual or body to which that paragraph applies were references to a permitted participant.
- (7) For the purposes of this paragraph and paragraphs 21 to 24 any reference to referendum expenses incurred by or on behalf of a permitted participant during the referendum period includes any referendum expenses so incurred at any time before the individual or body became a permitted participant.

Referendum expenses incurred as part of common plan

- 20 (1) This paragraph applies where—

- (a) referendum expenses are incurred by or on behalf of an individual or body during the referendum period,
 - (b) the expenses are incurred as part of a common plan or other arrangement with one or more other individuals or bodies, and
 - (c) the common plan or arrangement is one whereby referendum expenses are to be incurred by or on behalf of both or all of the individuals or bodies involved in the common plan or arrangement with a view to, or otherwise in connection with, promoting or procuring one particular outcome in the referendum.
- (2) The expenses referred to in sub-paragraph (1)(a) are to be treated for the purposes of paragraphs 18 and 19 and 21 to 24 as having also been incurred by each of the other individuals or bodies involved in the common plan or arrangement.
- (3) This paragraph applies whether or not any of the individuals or bodies involved in the common plan or arrangement is a permitted participant.

Returns as to referendum expenses

- 21 (1) The responsible person in relation to a permitted participant must make a return under this paragraph in respect of any referendum expenses incurred by or on behalf of the permitted participant during the referendum period.
- (2) A return under this paragraph must contain—
- (a) a statement of all payments made in respect of referendum expenses incurred by or on behalf of the permitted participant during the referendum period,
 - (b) a statement of all disputed claims (within the meaning of paragraph 16),
 - (c) a statement of all the unpaid claims (if any) of which the responsible person is aware in respect of which an application has been made, or is about to be made, to a court under paragraph 15(5), and
 - (d) in a case where the permitted participant either is not a registered party or is a minor party, the statement required by paragraph 40.
- (3) A return under this paragraph must be accompanied by—
- (a) all invoices or receipts relating to the payments mentioned in sub-paragraph (2)(a), and
 - (b) in the case of any referendum expenses treated as incurred by virtue of paragraph 12, any declaration falling to be made with respect to those expenses in accordance with paragraph 12(8).
- (4) Sub-paragraphs (2) and (3) do not apply to any referendum expenses incurred at any time before the individual or body became a permitted participant, but the return must be accompanied by a declaration made by the responsible person of the total amount of such expenses incurred at any such time.
- (5) The Commission may issue guidance about the form of return to be used for the purposes of this paragraph.

Auditor's report on return

- 22 (1) A report must be prepared by a qualified auditor on the return prepared under paragraph 21 in respect of the referendum expenses incurred by a permitted participant that is a designated organisation.
- (2) If it appears to the Commission that the permitted participant has failed to appoint a qualified auditor within the period of 3 months beginning with the end of the referendum period to carry out an audit under this paragraph, the Commission may appoint a qualified auditor to carry out the audit.
- (3) The expenses of any audit carried out under this paragraph by a qualified auditor appointed by the Commission, including the auditor's remuneration, may be recovered by the Commission from the permitted participant.
- (4) An auditor appointed by the Commission to carry out an audit under this paragraph—
- (a) has a right of access at all reasonable times to the books, documents and other records of the permitted participant,
 - (b) is entitled to require from the responsible person in relation to the permitted participant such information and explanations as the auditor thinks necessary for the carrying out of the audit.
- (5) If a person fails to provide the auditor with any access, information or explanation to which the auditor has a right or is entitled by virtue of sub-paragraph (4), the Commission may give the person such written directions as it considers appropriate for ensuring that the failure is remedied.
- (6) If the person fails to comply with the directions, the Court of Session may, on the application of the Commission, deal with the person as if the person had failed to comply with an order of the Court.
- (7) A person commits an offence if the person knowingly or recklessly makes to an auditor appointed by the Commission to carry out an audit under this paragraph a statement (whether written or oral) which—
- (a) conveys or purports to convey any information or explanation to which the auditor is entitled by virtue of sub-paragraph (4), and
 - (b) is misleading, false or deceptive in a material particular.
- (8) A person guilty of an offence under sub-paragraph (7) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Delivery of returns to Commission

- 23 (1) Sub-paragraph (2) applies where—
- (a) any return falls to be prepared under paragraph 21 in respect of referendum expenses incurred by or on behalf of a permitted participant, and
 - (b) an auditor's report on it falls to be prepared under paragraph 22.

- (2) The responsible person must deliver the return to the Commission, together with a copy of the auditor's report, within the period of 6 months beginning with the end of the referendum period.
- (3) In the case of any other return falling to be prepared under paragraph 21, the responsible person must deliver the return to the Commission within the period of 3 months beginning with the end of the referendum period.
- (4) Where, after the date on which a return is delivered to the Commission under this paragraph, leave is given by a court under paragraph 15(5) for any claim to be paid, the responsible person must, within 7 days after the payment, deliver to the Commission a return of any sums paid in pursuance of the leave accompanied by a copy of the court order giving the leave.
- (5) The responsible person commits an offence if, without reasonable excuse, the person—
 - (a) fails to comply with the requirements of sub-paragraph (2) or (3) in relation to a return under paragraph 21,
 - (b) delivers a return which does not comply with the requirements of paragraph 21(2) or (3), or
 - (c) fails to comply with the requirements of sub-paragraph (4) in relation to a return under that sub-paragraph.
- (6) A person guilty of an offence under sub-paragraph (5)(a) or (c) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A person guilty of an offence under sub-paragraph (5)(b) is liable—
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Declaration of responsible person as to return under paragraph 21

- 24 (1) Each return prepared under paragraph 21 in respect of referendum expenses incurred by or on behalf of a permitted participant must be accompanied by a declaration which complies with sub-paragraph (2) and is signed by the responsible person.
- (2) The declaration must state—
 - (a) that the responsible person has examined the return in question, and
 - (b) that to the best of the responsible person's knowledge and belief—
 - (i) it is a complete and correct return as required by law, and
 - (ii) all expenses shown in it as paid have been paid by the responsible person or a person authorised by the responsible person.
- (3) The declaration must also state, in a case where the permitted participant either is not a registered party or is a minor party—
 - (a) that all relevant donations recorded in the return as having been accepted by the permitted participant are from permissible donors falling within section 54(2) of the 2000 Act, and
 - (b) that no other relevant donations have been accepted by the permitted participant.
- (4) A person commits an offence if—

- (a) the person knowingly or recklessly makes a false declaration under this paragraph, or
 - (b) sub-paragraph (1) is contravened at a time when the person is the responsible person in the case of the permitted participant to which the return relates.
- (5) A person guilty of an offence under sub-paragraph (4) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
- (6) In this paragraph “relevant donation” has the same meaning as in paragraph 30.

Public inspection of returns under paragraph 21

- 25 (1) Where the Commission receives any return under paragraph 21 it must—
- (a) as soon as reasonably practicable after receiving the return, make a copy of the return and of the documents accompanying it available for public inspection, and
 - (b) keep any such copy available for public inspection for the period for which the return or other document is kept by it.
- (2) If the return contains a statement of relevant donations in accordance with paragraph 21(2)(d) the Commission must secure that the copy of the statement made available for public inspection does not include, in the case of any donation by an individual, the donor’s address.
- (3) At the end of the period of two years beginning with the date when any return or other document mentioned in sub-paragraph (1) is received by the Commission—
- (a) it may cause the return or other document to be destroyed, but
 - (b) if requested to do so by the responsible person in the case of the permitted participant concerned, it must arrange for the return or other document to be returned to that person.

PART 4

PUBLICATIONS AND BROADCASTS

Restriction on publication etc. of promotional material by central and local government etc.

- 26 (1) This paragraph applies to any material which—
- (a) provides general information about the referendum,
 - (b) deals with any of the issues raised by the proposals to be voted on in the referendum,
 - (c) puts any arguments for or against any such proposal, or
 - (d) is designed to encourage voting at the referendum.
- (2) Subject to sub-paragraph (3), no material to which this paragraph applies is to be published during the relevant period by or on behalf of—
- (a) the Scottish Ministers or any other part of the Scottish Administration,

- (b) the SPCB, or
 - (c) any Scottish public authority with mixed functions or no reserved functions (within the meaning of the Scotland Act 1998 (c.46)).
- (3) Sub-paragraph (2) does not apply to—
- (a) material made available to persons in response to specific requests for information or to persons specifically seeking access to it,
 - (b) anything done by or on behalf of the Commission or a designated organisation, or
 - (c) the publication of information relating to the holding of the poll.
- (4) In this paragraph—
- “publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means (and “publication” is to be construed accordingly),
- “the relevant period” means the period of 28 days ending with the day before the date of the referendum.

Details to appear on referendum material

- 27 (1) No material wholly or mainly relating to the referendum is to be published during the referendum period unless—
- (a) in the case of material which is, or is contained in, such a printed document as is mentioned in sub-paragraph (3), (4) or (5), the requirements of that sub-paragraph are complied with, or
 - (b) in the case of any other material, the requirements of sub-paragraph (6) are complied with.
- (2) For the purposes of sub-paragraphs (3) to (5) the following details are “the relevant details” in the case of any material falling within sub-paragraph (1)(a), namely—
- (a) the name and address of the printer of the document,
 - (b) the name and address of the promoter of the material, and
 - (c) the name and address of any person on behalf of whom the material is being published (and who is not the promoter).
- (3) Where the material is a document consisting (or consisting principally) of a single side of printed matter, the relevant details must appear on the face of the document.
- (4) Where the material is a printed document other than one to which sub-paragraph (3) applies, the relevant details must appear either on the first or last page of the document.
- (5) Where the material is an advertisement contained in a newspaper or periodical—
- (a) the name and address of the printer of the newspaper or periodical must appear either on its first or last page, and
 - (b) the relevant details specified in sub-paragraph (2)(b) and (c) must be included in the advertisement.
- (6) In the case of material falling within sub-paragraph (1)(b), the following details, namely—
- (a) the name and address of the promoter of the material, and

- (b) the name and address of any person on behalf of whom the material is being published (and who is not the promoter),
- must be included in the material unless it is not reasonably practicable to include the details.
- (7) Where during the referendum period any material falling within sub-paragraph (1)(a) is published in contravention of sub-paragraph (1), then (subject to sub-paragraph (10)) the following persons are guilty of an offence, namely—
- (a) the promoter of the material,
 - (b) any other person by whom the material is so published, and
 - (c) the printer of the document.
- (8) Where during the referendum period any material falling within sub-paragraph (1)(b) is published in contravention of sub-paragraph (1), then (subject to sub-paragraph (10)) the following persons are guilty of an offence, namely—
- (a) the promoter of the material, and
 - (b) any other person by whom the material is so published.
- (9) A person guilty of an offence under sub-paragraph (7) or (8) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (10) It is a defence for a person charged with an offence under this paragraph to show—
- (a) that the offence arose from circumstances beyond the person's control, and
 - (b) that the person took all reasonable steps, and exercised all due diligence, to ensure that that an offence under this paragraph would not be committed.
- (11) Sub-paragraph (1) does not apply to any material published for the purposes of the referendum if the publication is required under or by virtue of any enactment.
- (12) In this paragraph—
- “print” means print by whatever means, and “printer” is to be construed accordingly,
 - “the promoter”, in relation to any material falling within sub-paragraph (1), means the person causing the material to be published,
 - “publish” means make available to the public at large, or any section of the public, in whatever form and by whatever means.

Referendum campaign broadcasts

- 28 (1) A broadcaster must not include in its broadcasting services any referendum campaign broadcast made on behalf of any person or body other than a designated organisation.
- (2) In this Part, “referendum campaign broadcast” means a broadcast the purpose (or main purpose) of which is or may reasonably be assumed to be—
- (a) to further any referendum campaign, or
 - (b) otherwise to promote or procure any particular outcome in the referendum.

Display of advertisements

- 29 The Town and Country Planning (Control of Advertisements) (Scotland) Regulations 1984 (SI 1984/467) have effect in relation to the display on any site in Scotland of an advertisement relating specifically to the referendum as they have effect in relation to the display of an advertisement relating specifically to a Parliamentary election.

PART 5

CONTROL OF DONATIONS

Operation and interpretation of this Part

- 30 (1) This Part has effect for controlling donations to permitted participants that either are not registered parties or are minor parties.
- (2) The following provisions have effect for the purposes of this Part.
- (3) In accordance with sub-paragraph (1) “permitted participant” does not include a permitted participant that is a registered party other than a minor party.
- (4) “Relevant donation”, in relation to a permitted participant, means a donation to the permitted participant for the purpose of meeting referendum expenses incurred by or on behalf of the permitted participant.
- (5) “Donation” is to be construed in accordance with paragraphs 31 to 33.
- (6) In relation to donations received by a permitted participant other than a designated organisation, references to a permissible donor falling within section 54(2) of the 2000 Act do not include a registered party.

Donations: general rules

- 31 (1) “Donation”, in relation to a permitted participant, means (subject to paragraph 33)—
- (a) a gift to the permitted participant of money or other property,
 - (b) any sponsorship provided in relation to the permitted participant (as defined by paragraph 32),
 - (c) any money spent (otherwise than by or on behalf of the permitted participant) in paying any referendum expenses incurred by or on behalf of the permitted participant,
 - (d) any money lent to the permitted participant otherwise than on commercial terms,
 - (e) the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the permitted participant (including the services of any person),
 - (f) in the case of a permitted participant other than an individual, any subscription or other fee paid for affiliation to, or membership of, the permitted participant.
- (2) Where—
- (a) any money or other property is transferred to a permitted participant pursuant to any transaction or arrangement involving the provision by or on behalf of the permitted participant of any property, services or facilities or other consideration of monetary value, and

- (b) the total value in monetary terms of the consideration so provided by or on behalf of the permitted participant is less than the value of the money or (as the case may be) the market value of the property transferred,

the transfer of the money or property is (subject to sub-paragraph (4)) to be taken to be a gift to the permitted participant for the purposes of sub-paragraph (1)(a).

- (3) In determining—
 - (a) for the purposes of sub-paragraph (1)(d) whether any money lent to a permitted participant is so lent otherwise than on commercial terms, or
 - (b) for the purposes of sub-paragraph (1)(e) whether any property, services or facilities provided for the use or benefit of a permitted participant is or are so provided otherwise than on such terms,

regard must be had to the total value in monetary terms of the consideration provided by or on behalf of the permitted participant in respect of the loan or the provision of the property, services or facilities.

- (4) Where (apart from this sub-paragraph) anything would be a donation both by virtue of sub-paragraph (1)(b) and by virtue of any other provision of this paragraph, sub-paragraph (1)(b) (together with paragraph 32) applies in relation to it to the exclusion of the other provision of this paragraph.
- (5) Anything given or transferred to any officer, member, trustee or agent of a permitted participant in the officer's, member's, trustee's or agent's capacity as such (and not for the officer's, member's, trustee's or agent's own use or benefit) is to be regarded as given or transferred to the permitted participant (and references to donations received by a permitted participant accordingly include donations so given or transferred).
- (6) In this paragraph—
 - (a) any reference to anything being given or transferred to a permitted participant or any other person is a reference to its being given or transferred either directly or indirectly through any third person,
 - (b) “gift” includes bequest.

Sponsorship

- 32 (1) For the purposes of this schedule sponsorship is provided in relation to a permitted participant if—
 - (a) any money or other property is transferred to the permitted participant or to any person for the benefit of the permitted participant, and
 - (b) the purpose (or one of the purposes) of the transfer is (or must, having regard to all the circumstances, reasonably be assumed to be)—
 - (i) to help the permitted participant with meeting, or to meet, to any extent any defined expenses incurred or to be incurred by or on behalf of the permitted participant, or
 - (ii) to secure that to any extent any such expenses are not so incurred.
- (2) In sub-paragraph (1) “defined expenses” means expenses in connection with—
 - (a) any conference, meeting or other event organised by or on behalf of the permitted participant,

- (b) the preparation, production or dissemination of any publication by or on behalf of the permitted participant, or
 - (c) any study or research organised by or on behalf of the permitted participant.
- (3) The following do not, however, constitute sponsorship by virtue of sub-paragraph (1)—
- (a) the making of any payment in respect of—
 - (i) any charge for admission to any conference, meeting or other event, or
 - (ii) the purchase price of, or any other charge for access to, any publication,
 - (b) the making of any payment in respect of the inclusion of an advertisement in any publication where the payment is made at the commercial rate payable for the inclusion of such an advertisement in any such publication.
- (4) In this paragraph “publication” means a publication made available in whatever form and by whatever means (whether or not to the public at large or any section of the public).

Payments etc. not to be regarded as donations

- 33 (1) None of the following is to be regarded as a donation—
- (a) any grant provided out of public funds,
 - (b) the provision of any rights conferred on a designated organisation (or persons authorised by a designated organisation) by virtue of paragraphs 7 to 9,
 - (c) the provision by an individual of the individual’s own services which the individual provides voluntarily in the individual’s own time and free of charge, or
 - (d) any interest accruing to a permitted participant in respect of any donation which is dealt with by the permitted participant in accordance with paragraph 36(3)(a) or (b)).
- (2) Any donation the value of which (as determined in accordance with paragraph 34) is not more than £500 is to be disregarded.

Value of donations

- 34 (1) The value of any donation falling within paragraph 31(1)(a) (other than money) is to be taken to be the market value of the property in question.
- (2) Where, however, paragraph 31(1)(a) applies by virtue of paragraph 31(2), the value of the donation is to be taken to be the difference between—
- (a) the value of the money, or the market value of the property, in question, and
 - (b) the total value in monetary terms of the consideration provided by or on behalf of the permitted participant.
- (3) The value of any donation falling within paragraph 31(1)(b) is to be taken to be the value of the money, or (as the case may be) the market value of the property, transferred as mentioned in paragraph 32(1) and accordingly any value in monetary terms of any benefit conferred on the person providing the sponsorship in question is to be disregarded.
- (4) The value of any donation falling within paragraph 31(1)(d) or (e) is to be taken to be the amount representing the difference between—

- (a) the total value in monetary terms of the consideration that would have had to be provided by or on behalf of the permitted participant in respect of the loan or the provision of the property, services or facilities if—
 - (i) the loan had been made, or
 - (ii) the property, services or facilities had been provided,
 on commercial terms, and
 - (b) the total value in monetary terms of the consideration (if any) actually so provided by or on behalf of the permitted participant.
- (5) Where a donation such as is mentioned in sub-paragraph (4) confers an enduring benefit on the donee over a particular period, the value of the donation—
- (a) is to be determined at the time when it is made, but
 - (b) is to be so determined by reference to the total benefit accruing to the donee over that period.

Prohibition on accepting donations from impermissible donors

- 35 (1) A relevant donation received by a permitted participant must not be accepted by the permitted participant if—
- (a) the person by whom the donation would be made is not, at the time of its receipt by the permitted participant, a permissible donor falling within section 54(2) of the 2000 Act, or
 - (b) the permitted participant is (whether because the donation is given anonymously or by reason of any deception or concealment or otherwise) unable to ascertain the identity of the person offering the donation.
- (2) For the purposes of this schedule, any relevant donation received by a permitted participant which is an exempt trust donation is to be regarded as a relevant donation received by the permitted participant from a permissible donor falling within section 54(2) of the 2000 Act.
- (3) But, for the purposes of this schedule, any relevant donation received by a permitted participant from a trustee of any property (in the trustee's capacity as such) which is not—
- (a) an exempt trust donation, or
 - (b) a relevant donation transmitted by the trustee to the permitted participant on behalf of beneficiaries under the trust who are—
 - (i) persons who at the time of its receipt by the permitted participant are permissible donors falling within section 54(2) of the 2000 Act, or
 - (ii) the members of an unincorporated association which at that time is such a permissible donor,
 is to be regarded as a relevant donation received by the permitted participant from a person who is not such a permissible donor.
- (4) Where any person (“the principal donor”) causes an amount (“the principal donation”) to be received by a permitted participant by way of a relevant donation—
- (a) on behalf of the principal donor and one or more other persons, or
 - (b) on behalf of two or more other persons,

then for the purposes of this schedule each individual contribution by a person falling within paragraph (a) or (b) of more than £500 is to be treated as if it were a separate donation received from that person.

- (5) In relation to each such separate donation, the principal donor must ensure that, at the time when the principal donation is received by the permitted participant, the responsible person is given—
- (a) (except in the case of a donation which the principal donor is treated as making) all such details in respect of the person treated as making the donation as are required by virtue of paragraph 41(1)(c) to be given in respect of the donor of a donation to which that paragraph applies, and
 - (b) (in any case) all such details in respect of the donation as are required by virtue of paragraph 41(1)(a).
- (6) Where—
- (a) any person (“the agent”) causes an amount to be received by a permitted participant by way of a donation on behalf of another person (“the donor”), and
 - (b) the amount of the donation is more than £500,
- the agent must ensure that, at the time when the donation is received by the permitted participant, the responsible person is given all such details in respect of the donor as are required by virtue of paragraph 41(1)(c) to be given in respect of the donor of a donation to which that paragraph applies.
- (7) A person commits an offence if, without reasonable excuse, the person fails to comply with sub-paragraph (5) or (6).
- (8) A person guilty of an offence under sub-paragraph (7) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Acceptance or return of donations

- 36 (1) Sub-paragraph (2) applies where—
- (a) a donation is received by a permitted participant, and
 - (b) it is not immediately decided that the permitted participant should (for whatever reason) refuse the donation.
- (2) All reasonable steps must be taken forthwith by or on behalf of the permitted participant to verify (or, so far as any of the following is not apparent, ascertain)—
- (a) the identity of the donor,
 - (b) whether the donor is a permissible donor falling within section 54(2) of the 2000 Act, and
 - (c) if it appears that the donor is such a permissible donor, all such details in respect of the donor as are required by virtue of paragraph 41(1)(c) to be included in a statement under paragraph 40 in respect of a relevant donation.

- (3) If a permitted participant receives a donation which the permitted participant is prohibited from accepting by virtue of paragraph 35(1), or which it is decided the permitted participant should refuse, then—
- (a) unless the donation falls within paragraph 35(1)(b), the donation, or a payment of an equivalent amount, must be sent back to the person who made the donation or any person appearing to be acting on that person's behalf,
 - (b) if the donation falls within that paragraph, the required steps (see paragraph 37(1)) must be taken in relation to the donation,
- within the period of 30 days beginning with the date when the donation is received by the permitted participant.
- (4) The permitted participant and the responsible person are each guilty of an offence if—
- (a) sub-paragraph (3)(a) applies in relation to a donation, and
 - (b) the donation is not dealt with in accordance with that sub-paragraph.
- (5) It is a defence for a permitted participant or responsible person charged with an offence under sub-paragraph (4) to show that—
- (a) all reasonable steps were taken by or on behalf of the permitted participant to verify (or ascertain) whether the donor was a permissible donor within section 54(2) of the 2000 Act, and
 - (b) as a result, the responsible person believed the donor to be such a permissible donor.
- (6) The responsible person in relation to a permitted participant is guilty of an offence if—
- (a) sub-paragraph (3)(b) applies in relation to a donation, and
 - (b) the donation is not dealt with in accordance with that sub-paragraph.
- (7) A person guilty of an offence under sub-paragraph (4) or (6) is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).
- (8) For the purposes of this schedule, a donation received by a permitted participant is to be taken to have been accepted by the permitted participant unless—
- (a) it is dealt with in accordance with sub-paragraph (3), and
 - (b) a record can be produced of the receipt of the donation and of its having been dealt in accordance with that sub-paragraph.
- (9) Where a donation is received by a permitted participant in the form of an amount paid into an account held by the permitted participant with a financial institution, it is to be taken for the purposes of this schedule to have been received by the permitted participant at the time when the permitted participant is notified in the usual way of the payment into the account.

Return of donation where donor unidentifiable

- 37 (1) For the purposes of paragraph 36(3)(b), the required steps are—

- (a) if the donation was transmitted by a person other than the donor and the identity of that person is apparent, to return the donation to that person,
 - (b) if paragraph (a) does not apply but it is apparent that the donor has, in connection with the donation, used any facility provided by an identifiable financial institution, to return the donation to that institution, or
 - (c) in any other case, to send the donation to the Commission.
- (2) In sub-paragraph (1) any reference to returning or sending a donation to any person or body includes a reference to sending a payment of an equivalent amount to that person or body.
- (3) Any amount sent to the Commission in pursuance of sub-paragraph (1)(c) is to be paid by the Commission into the Scottish Consolidated Fund.

Forfeiture of donations made by impermissible or unidentifiable donors

- 38 (1) This paragraph applies to any donation received by a permitted participant—
- (a) which, by virtue of paragraph 35(1), the permitted participant is prohibited from accepting, but
 - (b) which has been accepted by the permitted participant.
- (2) The sheriff may, on the application of the Commission, order the forfeiture by the permitted participant of an amount equal to the value of the donation.
- (3) An order may be made under this paragraph whether or not proceedings are brought against any person for an offence connected with the donation.
- (4) Proceedings on an application for an order under this paragraph are civil proceedings and, accordingly, the standard of proof that applies is that applicable in civil proceedings.
- (5) The permitted participant may appeal to the Court of Session against an order made under this paragraph.
- (6) Provision may be made by rules of court—
- (a) with respect to applications and appeals under this paragraph,
 - (b) for the giving of notice of such applications or appeals to person affected by them,
 - (c) for the sisting of such persons as parties.
- (7) An amount forfeited by virtue of an order under this paragraph is to be paid into the Scottish Consolidated Fund.
- (8) Sub-paragraph (7) does not apply—
- (a) where an appeal is made under sub-paragraph (5), before the appeal is determined or otherwise disposed of, or
 - (b) in any other case, before the end of any period within which, in accordance with rules of court, an appeal under sub-paragraph (5) is to be made.

Evasion of restrictions on donations

- 39 (1) A person commits an offence if the person—
- (a) knowingly enters into, or

- (b) knowingly does any act in furtherance of,
any arrangement which facilitates or is likely to facilitate, whether by means of any concealment or disguise or otherwise, the making of relevant donations to a permitted participant by any person or body other than a permissible donor falling within section 54(2) of the 2000 Act.
- (2) A person commits an offence if the person—
- (a) knowingly gives the responsible person in relation to a permitted participant any information relating to—
- (i) the amount of any relevant donation made to the permitted participant, or
 - (ii) the person or body making such a donation,
- which is false in a material particular, or
- (b) with intent to deceive, withholds from the responsible person in relation to a permitted participant any material information relating to a matter within paragraph (a)(i) or (ii).
- (3) A person guilty of an offence under this paragraph is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

Statement of relevant donations

- 40 The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 21 a statement of relevant donations which complies with paragraphs 41 and 42.

Donations from permissible donors

- 41 (1) The statement must record, in relation to each relevant donation falling within sub-paragraph (2) which is accepted by the permitted participant—
- (a) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 34,
 - (b) the date when the donation was accepted by the permitted participant, and
 - (c) the information about the donor which is, in connection with recordable donations to registered parties, required to be recorded in donation reports by virtue of paragraph 2 of Schedule 6 to the 2000 Act.
- (2) Sub-paragraph (1) applies to a relevant donation where—
- (a) the value of the donation is more than £7,500, or
 - (b) the value of the donation, when added to the value of any other donation or donations made by the same donor (whether or not falling within paragraph (a)), is more than that amount.
- (3) The statement must also record the total value of any relevant donations, other than those falling within sub-paragraph (2), which are accepted by the permitted participant.

- (4) In the case of a donation made by an individual who has an anonymous entry in an electoral register (within the meaning of the 1983 Act) if the statement states that the permitted participant has seen evidence that the individual has such an anonymous entry, the statement must be accompanied by a copy of the evidence.

Donations from impermissible or unidentifiable donors

- 42 (1) This paragraph applies to relevant donations falling within paragraph 35(1)(a) or (b).
- (2) Where paragraph 35(1)(a) applies, the statement must record—
 - (a) the name and address of the donor,
 - (b) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 34, and
 - (c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with paragraph 36(3)(a).
- (3) Where paragraph 35(1)(b) applies, the statement must record—
 - (a) details of the manner in which the donation was made,
 - (b) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 34, and
 - (c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with paragraph 36(3)(b).

SCHEDULE 5

(introduced by section 11)

OFFENCES

Personation

- 1 (1) A person is guilty of a corrupt practice if the person commits, or aids, abets, counsels or procures the commission of, the offence of personation at the referendum.
- (2) A person (A) is guilty of personation at the referendum if—
 - (a) A votes in person or by post 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—
 - (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.
- (3) For the purposes of this paragraph, a person who has applied for a ballot paper for the purpose of voting in person or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted.

Other voting offences

- 2 (1) A person (A) is guilty of 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 in the referendum knowing that A is subject to a legal incapacity to vote in the referendum, or
 - (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) is guilty of 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 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) is guilty of 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, or
 - (c) A votes in person as proxy for a voter in the referendum knowing that the voter has already voted in person in the referendum.
- (5) A person (A) is guilty of 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) is guilty of an offence if A knowingly induces or procures some other person to do an act which is, or but for that other person's want 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 who has applied for a ballot paper for the purpose of voting in person, or who has marked, whether validly or not, and returned a ballot paper issued for the purpose of voting by post, is deemed to have voted, but for the purpose of determining whether an application for a ballot paper constitutes an offence under sub-paragraph (4), 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.

- (8) A person is not guilty of 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.
- (9) 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.

Imitation poll cards

- 3 (1) A person commits an offence if the person, for the purpose of promoting or procuring a particular outcome at 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.

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, to deprive another of an opportunity to vote in the referendum or to make for A or another a gain of a vote in the referendum to which A or the other is not otherwise entitled or a gain of money or property.
- (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,
 - (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) above, 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 guilty an offence under sub-paragraph (1), or who aids, abets, counsels or procures the commission of such an offence, is guilty of a corrupt practice.

Breach of official duty

- 5 (1) If a person to whom this paragraph applies is, without reasonable cause, guilty of any act or omission in breach of the person's official duty, the person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

- (2) 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.
- (3) The persons to whom this paragraph applies are—
 - (a) any proper officer, registration officer, counting officer or presiding officer,
 - (b) any official designated by a universal postal service provider, and
 - (c) any deputy of a person mentioned in sub-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 or the law relating to the registration of local government electors.

Tampering with ballot papers etc.

- 6 (1) A person (A) is guilty of an offence if, at 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 foregoing acts.
- (2) A person is guilty of an offence if, at 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 at the referendum, is guilty of an offence under this paragraph, the officer or clerk is liable—
 - (a) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both,
 - (b) on summary conviction, to a fine not exceeding the statutory maximum, or to imprisonment for a term not exceeding 12 months, or to both.
- (4) If any other person is guilty of an offence under this paragraph the person is liable on summary conviction to a fine not exceeding level 5 on the standard scale, or to imprisonment for a term not exceeding 12 months, or to both.

Requirement of secrecy

- 7 (1) Every person (other than one mentioned in sub-paragraph (2)) attending at a polling station at the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not, except for some 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,
 - (c) a companion of a voter with disabilities, or
 - (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 electors of any voter who, or whose proxy, has or has not applied for a ballot paper or voted at a polling station, or
 - (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 number or other unique identifying mark 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 at the referendum as to the outcome for which a voter in that station is about to vote or has voted, or as to the number or other unique identifying mark 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) 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 the voting in the referendum and must not—
- (a) except for some 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 some purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the number or other unique identifying mark on the back of any ballot paper sent to any person,
 - (c) except for some purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the number or other unique identifying mark 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 information with respect thereto obtained at those proceedings.
- (7) A person having undertaken to assist a voter with disabilities to vote in the referendum 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 number or other unique identifying mark on the back of a ballot paper given for the use of that voter.
- (8) If a person acts in contravention of this paragraph the person is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale or to imprisonment for a term not exceeding 12 months or both.
- (9) In this paragraph a voter with disabilities is a voter who has made a declaration under rule 23(1) of the conduct rules.

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 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding 12 months or a fine not exceeding level 5 on the standard scale or both.
- (3) 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,
 - 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 subparagraph (1) (whether before, during or after the referendum)—
- (a) the person who makes the payment or enters into the contract, and
 - (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 subparagraph (1)),
- is guilty of an illegal practice.

Treating

- 10 (1) A person is guilty of a corrupt practice if the person is guilty of treating at the referendum.
- (2) A person (A) is guilty of treating at the referendum if A, personally or by another person on A's behalf, either before, during or after the referendum, directly or indirectly, 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
 - (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.
- (3) A voter or proxy who corruptly accepts or takes any such meat, drink, entertainment or provision is also be guilty of treating at the referendum.

Undue influence

- 11 (1) A person is guilty of a corrupt practice if the person is guilty of undue influence at the referendum.
- (2) A person (A) is guilty of undue influence if—
- (a) A, directly or indirectly, personally or by any other person on A's behalf, 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.

Bribery

- 12 (1) A person is guilty of a corrupt practice if the person is guilty of bribery at the referendum.

- (2) A person is guilty of bribery at the referendum if the person—
 - (a) gives any money or procures any office—
 - (i) to or for any voter, or
 - (ii) to or for any other person on behalf of any voter, or
 - (iii) to or for any other person in order to induce any voter to vote or refrain from voting,
 - (b) corruptly makes any gift or procurement as mentioned in sub-paragraph (a) on account of any voter having voted or refrained from voting,
 - (c) makes any gift or procurement as mentioned in sub-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
 - (d) upon or in consequence of any such gift or procurement as mentioned in sub-paragraph (a), procures or engages, promises or endeavours to procure any particular outcome in the referendum.
- (3) A person is guilty of bribery at 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 that money or any part of it is to be expended in bribery at 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 at the referendum.
- (4) A voter is guilty of bribery at 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, or
 - (b) for refraining or agreeing to refrain from voting.
- (5) A person is guilty of bribery at 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, or
 - (b) having induced any other person to vote or refrain from voting.
- (6) Sub-paragraphs (2) to (5) 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.
- (7) For the purposes of sub-paragraph (2)—
 - (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.
- (8) Sub-paragraphs (2) and (3) 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.

- (9) In this paragraph, the expression “voter” includes any person who has or claims to have a right to vote in the referendum.

Disturbances at public meetings

- 13 (1) A person is guilty of an illegal practice 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.

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 guilty of an offence under sub-paragraph (1) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Prosecutions for corrupt practices

- 15 A person guilty of a corrupt practice under any provision of this schedule is liable—
- (a) on conviction on indictment—
- (i) in the case of a corrupt practice under paragraph 1 or 4 above, to imprisonment for a term not exceeding 2 years, or to a fine, or to both,
- (ii) in any other case, to imprisonment for a term not exceeding 12 months, or to a fine, or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

Prosecutions for illegal practices

- 16 (1) A person guilty of 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 was guilty of 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 found guilty 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 found guilty of that offence notwithstanding that the act constituting the offence amounted to a corrupt practice.

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 five 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) above applies in addition to any punishment imposed on the person under paragraph 15 or 16 above.

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 so engaging or employing the canvasser, and
 - (b) the canvasser,
- is guilty 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 is guilty of an illegal payment.

Prosecutions for illegal employment or illegal payment

- 21 (1) A person guilty of—
- (a) illegal employment under paragraph 19, or
 - (b) an 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 was guilty of an 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 found guilty of that offence, notwithstanding that the act constituting the offence amounted to a corrupt or illegal practice.

SCHEDULE 6
(introduced by section 13(2))

THE SCOTTISH REFERENDUM COMMISSION

Status of Commission

- 1 (1) The Commission is a body corporate.
- (2) The Commission—
 - (a) is not to be regarded as a servant or agent of the Crown,
 - (b) has no status, immunity or privilege of the Crown.
- (3) The Commission's property is not to be regarded as property of, or property held on behalf of, the Crown.

Independence of Commission

- 2 (1) The Commission, in the exercise of its functions, is not to be subject to the direction of—
 - (a) any member of the Scottish Parliament,
 - (b) any member of the Scottish Executive, or
 - (c) the SPCB.
- (2) Sub-paragraph (1) is subject to—
 - (a) paragraph 10(2)(b) (consent for acquisition and disposal of land),
 - (b) paragraph 12(1) and (4) (consent as to appointment and terms and conditions of staff), and
 - (c) paragraph 16(2) (directions relating to annual reports).

Membership of Commission

- 3 The Commission consists of three persons (the "Commissioners")—
 - (a) a person to chair the Commission (the "Chair"), and
 - (b) two other persons.

Appointment of Commissioners

- 4 Commissioners are to be individuals appointed by Her Majesty on the nomination of the Scottish Parliament.

Disqualification from appointment as Commissioner

- 5 (1) A person is disqualified from appointment, and from holding office, as a Commissioner if the person is—
 - (a) a member of the House of Commons,
 - (b) a member of the Scottish Parliament,
 - (c) a member of the European Parliament,

- (d) a holder of any of the relevant elective offices mentioned in paragraph 1(8)(d) to (g) of Schedule 7 to the 2000 Act,
 - (e) a member, officer or employee of a registered party (or of any accounting unit of such a party),
 - (f) named as a donor in the register of donations, or
 - (g) named as a participant in the register of recordable transactions.
- (2) A person is also disqualified from appointment as a Commissioner if the person has, at any time in the period of five years preceding the date of nomination—
- (a) held any of the offices set out in sub-paragraph (1)(a) to (d),
 - (b) been a member, officer or employee as set out in sub-paragraph (1)(e),
 - (c) been named as a donor as set out in sub-paragraph (1)(f), or
 - (d) been named as a participant as set out in sub-paragraph (1)(g).

Terms of office and remuneration

- 6 (1) A Commissioner holds office on such terms and conditions as the SPCB may determine.
- (2) A Commissioner is entitled to such remuneration and allowances as the SPCB may determine.

Removal from office of Commissioner

- 7 (1) A Commissioner may be removed from office by Her Majesty if condition A or B is satisfied.
- (2) Condition A is that—
- (a) the SPCB is satisfied that the Commissioner has breached the Commissioner's terms of appointment, and
 - (b) the Parliament resolves that the Commissioner should be removed from office for that reason.
- (3) Condition B is that the Parliament resolves that it has lost confidence in the Commissioner.
- (4) A resolution under sub-paragraph (2)(b) or (3), if passed on division, must be voted for by not less than two thirds of those voting.

Proceedings

- 8 (1) The Commission may regulate its own procedure (including any quorum).
- (2) Where the Chair is not present at a meeting of the Commission, any other Commissioner may chair the meeting.

Validity of acts

- 9 The validity of any act of the Commission is not affected by—
- (a) any defect in the nomination by the Parliament for a Commissioner's appointment,

- (b) any disqualification from appointment as Commissioner, or
- (c) any vacancy in the membership of the Commission.

General powers

- 10 (1) The Commission may do anything which appears to it to be necessary or expedient for the purpose of, or in connection with, the exercise of its functions.
- (2) In particular, the Commission may—
- (a) enter into contracts, and
 - (b) with the consent of the SPCB, acquire and dispose of land.

Delegation

- 11 (1) Any function of the Commission may be exercised on its behalf—
- (a) by any person (whether or not a Commissioner or a member of the staff of the Commission) authorised to do so, and
 - (b) to the extent so authorised.
- (2) Sub-paragraph (1) does not affect the Commission's responsibility for the exercise of its functions.

Appointment of staff

- 12 (1) The Commission may, with the consent of the SPCB, appoint staff.
- (2) A person may not be appointed as a member of the staff of the Commission if the person is—
- (a) a member of the House of Commons,
 - (b) a member of the Scottish Parliament,
 - (c) a member of the European Parliament,
 - (d) a holder of any of the relevant elective offices mentioned in paragraph 1(8)(d) to (g) of Schedule 7 to the 2000 Act,
 - (e) an officer or employee of a registered party (or of any accounting unit of such a party),
 - (f) named as a donor in the register of donations, or
 - (g) named as a participant in the register of recordable transactions.
- (3) A person may not be appointed as a member of the staff of the Commission if the person has, at any time in the period of 12 months preceding the date of appointment—
- (a) held any of the offices set out in sub-paragraph (2)(a) to (d),
 - (b) been an officer or employee as set out in sub-paragraph (2)(e),
 - (c) been named as a donor as set out in sub-paragraph (2)(f), or
 - (d) been named as a participant as set out in sub-paragraph (2)(g).
- (4) Staff may be appointed on such terms and conditions as the Commission may, with the consent of the SPCB, determine.

Finance

- 13 (1) The SPCB is to pay—
- (a) the remuneration and allowances of Commissioners,
 - (b) the remuneration and allowances of members of staff of the Commission, and
 - (c) any expenses incurred by the Commission in the exercise of its functions.
- (2) Sums required by the SPCB for payments under sub-paragraph (1) are charged on the Scottish Consolidated Fund.

Accounts

- 14 (1) The Commission must—
- (a) maintain proper accounts and accounting records,
 - (b) prepare annual accounts in respect of each financial year, and
 - (c) send a copy of the annual accounts to the Auditor General for Scotland for auditing.
- (2) The Commission must make its audited accounts available so that they may be inspected by any person.
- (3) The audited accounts are to be made available—
- (a) at any reasonable time, and
 - (b) without charge.
- (4) In this paragraph and paragraph 16, “financial year” means—
- (a) the period beginning with the date on which the Commission is established and ending with 31 March in the following calendar year, and
 - (b) each subsequent period of 12 months ending with 31 March.

Accountable officer

- 15 (1) The SPCB must designate a Commissioner or a member of the staff of the Commission as the accountable officer for the purposes of this paragraph.
- (2) The functions of the accountable officer are—
- (a) signing the accounts of the expenditure and receipts of the Commission,
 - (b) ensuring the propriety and regularity of the finances of the Commission,
 - (c) ensuring that the resources of the Commission are used economically, efficiently and effectively, and
 - (d) where the accountable officer is not a Commissioner, the duty in sub-paragraph (4).
- (3) The accountable officer is answerable to the Parliament for the exercise of those functions.
- (4) Where the accountable officer is required to act in some way but considers that to do so would be inconsistent with the proper performance of the functions set out in sub-paragraph (2)(a) to (c), the accountable officer must—

- (a) obtain written authority from the Commission before taking the action, and
- (b) send a copy of the authority as soon as possible to the Auditor General for Scotland.

Annual report

- 16 (1) As soon as reasonably practicable after the end of each financial year, the Commission must prepare a report on the exercise of its functions during that year and must—
- (a) publish the report, and
 - (b) lay the report before the Scottish Parliament.
- (2) In preparing and publishing a report under sub-paragraph (1), the Commission must comply with any directions that the SPCB may give.

Sharing of premises etc.

- 17 (1) The Commission may enter into arrangements with any other public body or office-holder for the sharing of premises, staff, services or other resources.
- (2) In considering its requirements as to premises, staff, services or other resources, the Commission must have regard, with a view to ensuring the economic, efficient and effective use of resources, to the desirability of entering into arrangements under sub-paragraph (1).

Freedom of Information (Scotland) Act 2002

- 18 In the Freedom of Information (Scotland) Act 2002 (asp 13), in Part 7 of schedule 1 (Scottish public authorities) at the appropriate place, insert—
- “The Scottish Referendum Commission”.

SCHEDULE 7 (introduced by section 20)

INTERPRETATION

In this Act—

- “the 1983 Act” means the Representation of the People Act 1983 (c.2),
- “the 2000 Act” means the Political Parties, Elections and Referendums Act 2000 (c.41),
- “accounting unit” has the meaning given by section 26(11) of the 2000 Act,
- “anonymous entry” in relation to a register of electors, is to be construed in accordance with section 9B of the 1983 Act and the “record of anonymous entries” means the record prepared in pursuance of regulations made by virtue of paragraph 8A of Schedule 2 to the 1983 Act,
- “assisted voters list” has the meaning given in rule 23(8) of the conduct rules,
- “ballot paper account” has the meaning given in rule 28(4) of the conduct rules,
- “broadcaster” means the holder of a licence under the Broadcasting Act 1990 or 1996,

“campaign organiser”, in relation to referendum expenses, means the individual or body by whom or on whose behalf the expenses are incurred,

“Chief Counting Officer” means the person appointed under section 4(1) or (4),

“Commission” means the Scottish Referendum Commission established by section 13,

“companion” has the meaning given in rule 23(1) of the conduct rules,

“companion declaration” has the meaning given in rule 23(2) of the conduct rules,

“completed corresponding number list” has the meaning given in rule 28(2)(e) of the conduct rules,

“conduct rules” means the rules set out in schedule 3,

“corresponding number list” means the list prepared in accordance with rule 5 of the conduct rules,

“council” means a council constituted by section 2 of the Local Government etc. (Scotland) Act 1994 (c.39),

“counting officer” means a person appointed under section 4(6) or (9),

“cut-off date” means 5pm on the eleventh day before the date of the referendum,

“date of the referendum” means the date on which the poll at the referendum is to be held in accordance with section 1(3),

“designated organisation” means a permitted participant that has been designated under paragraph 5 of schedule 4,

“education authority” has the same meaning as in the Education (Scotland) Act 1980 (c.44),

“list of proxies” means the list kept under paragraph 4(3) of schedule 2,

“local government area” is to be construed in accordance with section 1 of the Local Government etc. (Scotland) Act 1994,

“marked votes list” has the meaning given in rule 22(2) of the conduct rules,

“minor party” has the same meaning as in the 2000 Act,

“money” and “pecuniary reward” (except in paragraphs 10 and 12 of schedule 5) include—

- (a) any office, place or employment,
- (b) any valuable security or other equivalent of money, and
- (c) any valuable consideration,

and expressions referring to money are to be construed accordingly,

“observers” means persons appointed under section 8,

“outcome” means a particular outcome in relation to the proposals to be voted on in the referendum,

“payment” includes any pecuniary or other reward,

“permitted participant” means a registered party, individual or body that has made a declaration under paragraph 2 of schedule 4,

“polling day alterations list” has the meaning given in rule 26(2) of the conduct rules,

“postal services” has the same meaning as in the Postal Services Act 2000 (c.26),

“postal voters list” means the list kept under paragraph 4(2) of schedule 2,

“postal voting statement” has the meaning given in rule 9 of the conduct rules,

“presiding officer” has the meaning given in rule 11 of the conduct rules,

“proper officer” has the meaning given in section 235(3) of the Local Government (Scotland) Act 1973 (c.65),

“proxy postal voters list” means the list kept under paragraph 6(7) of schedule 2,

“qualifying address” in relation to a person registered in the register of electors, is the address in respect of which that person is entitled to be so registered,

“referendum campaign” means a campaign conducted with a view to promoting or procuring a particular outcome in the referendum,

“referendum campaign broadcast” has the meaning given by paragraph 28(2) of schedule 4,

“referendum expenses” is to be construed in accordance with paragraph 10 of schedule 4,

“referendum period” means the period beginning on the day 2 weeks after the day on which the Bill for this Act receives Royal Assent and ending on the day of the referendum,

“register of donations” means the register of donations reported under Chapter 3 or 5 of Part 4 of the 2000 Act,

“register of electors” means the register of local government electors for any area maintained under section 9 of the 1983 Act,

“register of recordable transactions” means the register maintained under section 71V of the 2000 Act,

“registered party” means a party registered under Part 2 of the 2000 Act,

“registration officer” means a registration officer appointed under section 8(3) of the 1983 Act,

“relevant citizen of the Union” has the meaning given by section 202(1) of the 1983 Act,

“relevant counting officer”, in relation to a registration officer, means the counting officer for the local government area for which the registration officer is appointed,

“responsible person” means, in relation to a permitted participant—

(a) if the permitted participant is a registered party—

(i) the treasurer of the party, or

(ii) in the case of a minor party, the person for the time being notified to the Commission by the party in accordance with paragraph 3(1)(b) of schedule 4,

(b) if the permitted participant is an individual, that individual, and

(c) otherwise, the person or officer for the time being notified to the Commission by the permitted participant in accordance with paragraph 3(3)(a)(ii) of schedule 4,

“SPCB” means the Scottish Parliamentary Corporate Body,

“spoilt ballot paper” has the meaning given in rule 25(1) of the conduct rules,

“tendered ballot paper” has the meaning given in rule 24 of the conduct rules,

“tendered votes list” has the meaning given in rule 24(8) of the conduct rules,

“treasurer”, in relation to a registered party, has the same meaning as in the 2000 Act,

“unique identifying number” means the number on a ballot paper which is unique to that ballot paper and which identifies that ballot paper as a ballot paper to be issued by the counting officer,

“universal service provider” has the same meaning as in the Postal Services Act 2000 (c.26),

“verification statement” has the meaning given in rule 30(2) of the conduct rules,

“voter” (except in the conduct rules) means a person entitled to vote in the referendum in the person’s own right (as opposed to a person entitled to vote as proxy for another),

“voter” (in the conduct rules) means a person voting at the referendum and includes a person voting as proxy and “vote” (whether as noun or verb) is to be construed accordingly except that any reference to a voter voting or a voter’s vote includes a reference to a voter voting by proxy or a voter’s vote given by proxy,

“voting age” is to be construed in accordance with section 2(2).

For further copies of this report or for more information on the draft Referendum (Scotland) Bill Consultation please email referendum@scotland.gsi.gov.uk or visit the Referendum website at www.scotland.gov.uk/referendum

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