

YOUR SCOTLAND, YOUR REFERENDUM

Consultation, January 2012

© Crown copyright 2012

You may re-use this information (excluding logos and images) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit <http://www.nationalarchives.gov.uk/doc/open-government-licence/> or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

ISBN: 978-1-78045-633-1

The Scottish Government
St Andrew's House
Edinburgh
EH1 3DG

Produced for the Scottish Government by APS Group Scotland

DPPAS12506 (01/12)

Published by the Scottish Government, January 2012

Contents

Foreword		2
Summary		4
Chapter 1	Introduction	8
Chapter 2	Mechanics of the Referendum	16
Chapter 3	Campaign Rules	23
Chapter 4	After the Referendum	28
Chapter 5	How to Comment	30
Chapter 6	Consultation Questionnaire	34
Chapter 7	Draft Referendum (Scotland) Bill	35

Foreword



The people who live in Scotland are the best people to make decisions about Scotland's future. They gave the Scottish Government an overwhelming majority in May 2011 because of a record of good government, a clear vision of the future and the promise of a referendum on independence.

The referendum will be held in autumn 2014 in the same way as any Scottish election, to the same standards and with the same guarantee of fairness. We will decide our future in a vote which is beyond challenge or doubt.

This consultation paper seeks views on what the ballot paper should say, what spending limits should be set on campaign groups and how the referendum should be managed and regulated. It sets out the timetable for parliamentary and public debate which will ensure that the Scottish people are able to take an informed decision about their future.

Voting day will be just like any other election. The people will go to local polling stations, mark the ballot paper and later the result will be declared. If the people vote yes, the Scottish Government would negotiate with the UK and move to secure the transfer of sovereignty and powers to the people of Scotland.

Much of what Scotland will be like the day after independence will be similar to the day before: people will go to work, pensions and benefits will be collected, children will go out to play and life will be as normal. What independence will mean is that decisions about what happens in Scotland and for Scotland are taken by the people who care most about Scotland – that is the people living, working and bringing up their families in Scotland. The people of Scotland will be in charge. Our future, our resources, our opportunities will be in our hands.

Ours is a lucky nation, blessed with natural resources, bright people and a united society. We have an independent education system, legal system and NHS. They are respected worldwide. I believe that if we connect the wealth of our land to the well-being of our people, we can create a better country.

Scotland is not oppressed and we have no need to be liberated. Independence matters because we do not have the powers to reach our potential. We are limited in what we can do to create jobs, grow the economy and help the vulnerable. We shouldn't have a constitution which constrains us, but one which frees us to build a better society. Our politics should be judged on the health of our people, the welfare of young and old and the strength of our economy.

Under independence Scotland would take its place as a responsible member of the international community while continuing as a friend and good neighbour to the other nations of these islands, continuing the strong social union which will always bind us together.

We take this journey at a time of great change in the world. Environmental, financial and geo-political factors are in flux. It is our duty to create a modern nation that is fit for these new times, flexible and dynamic. We must renew democracy and strike a new bond between government and the people based on trust and humility. That duty amounts to creating a stable society with dependable welfare structures which is open in outlook and responsible in conduct.

This is a peaceful and inclusive quest to find the system of government that best suits the needs of the people of Scotland and which will bring fairness and prosperity to us and our children.

It is our future and our choice.

A handwritten signature in black ink, appearing to read 'Alex Salmond', with a stylized flourish at the end.

The Rt Hon. Alex Salmond MSP

First Minister of Scotland

Summary

The people who live in Scotland are the best people to make decisions about Scotland's future. The independence referendum will be Scotland's most important decision for 300 years. Under independence, Scotland would have the rights and responsibilities of a normal, sovereign state and continue its membership in the European Union. Scotland would forge a new partnership with the rest of the former United Kingdom where the nations co-operate on shared interests. Some things would stay the same and others would change. Her Majesty The Queen would remain as Head of State. The Scottish Parliament would gain full responsibility for governing Scotland. The ability to make choices about how the country is governed would lie with those who care most about Scotland.

The referendum must be trusted and clear. This paper sets out the Scottish Government's proposals for the question to be asked and the rules governing the campaign and the vote. Those are based on the rules in place for normal elections. They are designed to ensure that the referendum will meet the highest standards of fairness, transparency and propriety and deliver a decisive result.

In developing the referendum, the Scottish Government will listen to society as a whole. The referendum will be conducted in the interests of the people who live in Scotland, not those of any individual or party.

This consultation paper invites views on the proposals for how the referendum will be run. A draft Referendum Bill is set out as an appendix to the document. The Scottish Government will publish the contributions it receives (except where respondents request anonymity) and use them to inform the further development of the Bill before it is debated in the Scottish Parliament during 2013. The referendum will be held in the autumn of 2014.

This timetable is set out on page 14. It will allow for full public and parliamentary consideration of the proposals. It will ensure compliance with the Gould Report into the 2007 Scottish elections. Gould recommended that the regulations governing a poll should be in place at least six months before polling day. The timetable will also avoid clashes with major international sporting events in Scotland, such as the Commonwealth Games.

Chapter 1 introduces the principles on which the referendum will be conducted and sets out a proposed ballot paper with the following question:

Do you agree that Scotland should be an independent country?

In developing the ballot paper and other aspects of the referendum process further, the Scottish Government will take advice from electoral professionals (returning officers and registration officers), the Electoral Commission and independent experts.

A wide range of opinion has been expressed about whether or not the Scottish Parliament has the power to hold a referendum consulting the Scottish people about independence. The Scottish Government has previously published a referendum question asking whether the

powers of the Scottish Parliament should be extended to enable independence to be achieved. That question was carefully phrased to comply with the requirements of the Scotland Act 1998. Much independent legal opinion supports the Scottish Government's view.

What is beyond any question is the ability of the Scottish Parliament to legislate for a referendum about changes to the powers of the Scottish Parliament within the framework of devolution. Legislation to hold a referendum on "devolution max", for example, is clearly within the existing powers of the Scottish Parliament.

The Scottish Government's preference is for a short, direct question about independence as set out above. The UK Government has made public its view that legislation providing for a referendum on independence, even an advisory one, would be outside the existing powers of the Scottish Parliament. As outlined above, the Scottish Government contends that there are suitable questions which are entirely within the legislative competence of the Scottish Parliament. The Scottish Government is nevertheless ready to work with the UK Government to remove their doubts about the competence of the Scottish Parliament and put the referendum effectively beyond legal challenge by the UK Government or any other party.

Whichever legislative approach were taken, any change to the definition of the Scottish Parliament's competence would require the consent of the Scottish Parliament as well as the UK Parliament and should be made without conditions. The Scottish Government's electoral mandate to hold a referendum is clear. It is for the Scottish Government to propose to the Scottish Parliament the timing and terms of the referendum and the rules under which it is to be conducted. The Scottish Parliament should decide these matters.

A principle underpinning the referendum is that of informed choice. The Scottish Government will ensure that voters have the information they need to participate in the national debate and to make an informed decision. Following Royal Assent to the Referendum Bill (expected in November 2013) the Scottish Government will publish a comprehensive white paper setting out full details of the offer to the people of Scotland.

In line with established practice for elections, restrictions will apply to publicity by the Scottish Government and public bodies in the run-up to the referendum. The Scottish Government would expect the UK Government and UK public bodies to commit in advance to comply with the same restrictions. Scottish and UK Ministers will, of course, be able to play a full part in the referendum campaign in an individual capacity or as members of campaign organisations.

While the Scottish Government's preferred policy is independence, it recognises that there is considerable support across Scotland for increased responsibilities for the Scottish Parliament short of independence. One option, full devolution (or "devolution max") was set out in some detail in the Scottish Government white paper *Your Scotland, Your Voice* published in 2009¹. The Scottish Government has consistently made it clear in that paper

¹ Your Scotland, Your Voice. Scottish Government white paper, November 2009. ISBN 978-0-7559-8114-4
<http://www.scotland.gov.uk/Publications/2009/11/26155932/0>

and its 2010 consultation paper on a draft referendum Bill² that it is willing to include a question on further devolution in the referendum. That remains the Scottish Government's position. It will listen carefully to the views and arguments put forward on this issue in response to this consultation.

Chapter 2 covers the management and regulation of the referendum and the franchise.

The referendum will be administered using the same arrangements as local and parliamentary elections in Scotland, making use of Scotland's unique electoral management structure, co-ordinated by the Electoral Management Board. The poll and the count will be managed in the same way as those for elections, by local returning officers (designated for the referendum as "counting officers") directed by a Chief Counting Officer (CCO) who will be responsible for ensuring the proper and effective conduct of the referendum. Returning officers, electoral registration officers and their staff will be responsible for managing the registration, poll and count processes within their local areas. The detailed rules about the conduct of the poll will be based on those applying to the conduct of all elections in Scotland.

The regulation and monitoring of the referendum campaign will be undertaken by the Electoral Commission which will also issue a range of guidance. The Commission will also report on the referendum process after it has been completed. In its responsibilities for this referendum the Commission will report to the Scottish Parliament.

In line with international best practice, the franchise for the referendum on Scotland's constitutional future will reflect residency in Scotland. Eligibility to vote will be the same as for Scottish Parliament and local government elections and for the 1997 referendum on devolution. The Scottish Government also proposes to extend the franchise to include those 16 and 17 year olds who are on the electoral register on the day of the poll.

A detailed financial memorandum will be provided to the Scottish Parliament in the usual way when the referendum legislation is introduced. The total cost is likely to be around £10 million, the bulk of which will be spent on running the poll and the count. This cost is broadly in line with the cost (per voter) of the Welsh Assembly and AV Referendums in 2011.

Chapter 3 describes the rules which will be in place to ensure that the referendum campaign is run in a fair and transparent manner.

The rules are based on UK legislation (the Political Parties, Elections and Referendums Act 2000), although the proposed spending limits have been tailored to reflect the context of a Scottish referendum on independence. It is essential that the rules are followed and policed. The Scottish Government proposes that the Electoral Commission should take on this role and, in doing so, report to the Scottish Parliament.

An individual or organisation wishing to spend more than £5,000 on campaigning for a particular outcome will need to register with the Commission as a permitted participant.

² Scotland's Future: Draft Referendum (Scotland) Bill Consultation Paper. Scottish Government, February 2010. ISBN 978-0-7559-8244-8.

A permitted participant may apply to the Commission to be the principal campaigner (the designated organisation) for an outcome in the referendum. The draft Referendum Bill sets out the following spending limits:

Type of Organisation	Proposed Spending Limit
Designated Organisation	£750,000
Political Party in Scottish Parliament	£250,000
Other Permitted Participants	£50,000
Individuals/Bodies, Not Permitted Participants	£5,000

No public funding will be provided for those who wish to campaign.

Chapter 4 summarises what would follow a vote for independence in the referendum.

The Scottish Government would open negotiations with the UK Government. The negotiations would deal with the terms of independence as well as the transfer of powers and transition. There would also be agreement on areas of common interest. A transitional period would allow the necessary preparations to ensure that an independent Scottish Parliament and Government could fulfil the full range of their responsibilities from the moment of independence.

Following that process the final requirement for independence to have effect would be for both the Scottish and UK Parliaments to pass independence legislation to enact the negotiated settlement. In particular, the legislation would give effect to the transfer of the power to legislate for Scotland from the UK Parliament to the Scottish Parliament, and would define the effective date of Scotland's re-establishment as an independent, sovereign state.

Chapter 5 explains how to respond to the consultation.

The deadline for responses is Friday 11 May 2012.

1 Introduction

Chapter Summary

- The referendum will be held in the Autumn of 2014. The timetable allows for full public and parliamentary consideration of the referendum proposals and legislation and allows a proper interval between the finalisation of the rules and polling day.
- A draft Referendum Bill is set out in the appendix to this consultation paper. As drafted it provides for a single-question referendum on independence. The Scottish Government is willing to include an additional question on further substantial devolution if there is sufficient support for such a move.
- The Scottish Government is ready to work with the UK Government to agree a clarification of the Scotland Act 1998 that would remove their doubts about the competence of the Scottish Parliament to legislate for a referendum. Decisions on the timing and form of the referendum and its regulation should be for the Scottish Parliament.

1.1 The Scottish Government was re-elected in 2011 with a mandate to hold a democratic referendum on Scotland's future. This paper is the first step in the process which will lead to the referendum, which will be held in the Autumn of 2014.

1.2 The Scottish Government's vision for the future of Scotland is one where decisions on how it is governed are made in Scotland by the people who care most for the country. An independent Scotland would take its place in the community of nations. Her Majesty The Queen would remain as Head of State. Scotland would have the rights and responsibilities of a normal, sovereign state and continue in membership of the European Union. It would enter a new partnership with the rest of the former United Kingdom where the nations co-operate on shared interests. The Scottish Parliament would gain full responsibility for governing Scotland.

1.3 The decision on Scotland's future should be taken through a process which is beyond reproach. The Scottish Government is committed to a referendum that is conducted to the highest standards of fairness, transparency and propriety. As a step towards achieving that aim, this paper gives people the opportunity to examine and comment on the proposals for the referendum before they are put to the Scottish Parliament. A draft Referendum Bill is set out as an appendix to this consultation paper.

1.4 The proposals in this paper build on those in the Scottish Government’s consultation paper *Scotland’s Future* published in February 2010 and take account of the responses which were received to that³.

Powers of the Scottish Parliament to legislate for a referendum

1.5 A wide range of opinion has been expressed about whether or not the Scottish Parliament has the power to hold a referendum consulting the Scottish people about independence. The Scottish Government’s February 2010 paper set out a referendum question asking whether the powers of the Scottish Parliament should be extended to enable independence to be achieved. The Scottish Parliament has the power to legislate for a referendum as long as that would not change any reserved law or relate to those aspects of the constitution which are reserved by the Scotland Act 1998. The referendum question proposed in 2010 was carefully phrased to comply with that requirement. Much independent legal opinion supports the Scottish Government’s view.

1.6 What is not in question is the competence of the Scottish Parliament to legislate for a referendum about changes to the powers of the Scottish Parliament within the framework of devolution. Legislation to hold a referendum on “devolution max” for example (see paragraph 1.25 below), is clearly within the existing powers of the Scottish Parliament.

1.7 In a paper published on 10 January 2012 the UK Government stated its view that legislation providing for a referendum on independence – even on the basis proposed by the Scottish Government in 2010 – would be outside the existing powers of the Scottish Parliament⁴. The UK paper sets out two possible mechanisms to transfer the power to hold a referendum on independence: an Order in Council under Section 30 of the Scotland Act 1998, or an amendment to the Scotland Bill currently under consideration by the House of Lords. The UK paper goes on to seek views on a series of proposed conditions for the transfer of power, including a role for the Electoral Commission and limits on the timing, on the franchise (to exclude 16 and 17 year olds) and on the number of questions to be asked. It also seeks views on whether, as an alternative to the proposed transfer of power, the UK Parliament should itself legislate directly for a referendum.

1.8 The Scottish Government’s preference is for a short, direct question about independence as set out in paragraph 1.10 below. It is ready to work with the UK Government to agree a clarification of the Scotland Act 1998 that would remove their doubts about the competence of the Scottish Parliament and put the referendum effectively beyond legal challenge by the UK Government or any other party. Its preference is for a Section 30 order, but whichever legislative approach were taken, any change to the definition of the Scottish Parliament’s competence would require the consent of the Scottish Parliament as well as the UK Parliament⁵.

3 *Scotland’s Future: Draft Referendum (Scotland) Bill Consultation Paper*. Scottish Government, February 2010. ISBN 978-0-7559-8244-8.

4 *Scotland’s Constitutional Future*. UK Government Command Paper 8203, January 2012. ISBN 978-0-1018-2032-5

5 Section 30 orders are subject to the consent of the Scottish Parliament and both Houses of Parliament at Westminster. Changes to the competence of the Scottish Parliament under primary legislation (such as the Scotland Bill) require the legislative consent of the Scottish Parliament under the Sewel Convention.

1.9 The Scottish Government does not accept the proposed imposition of conditions on the Section 30 order. The Scottish Government's mandate to hold a referendum is clear and the UK Government has denied any wish to put obstacles in the way⁶. As a matter of democratic principle it is for the Scottish Parliament to decide on the timing and terms of the referendum and the rules under which it is to be conducted.

Ballot paper

1.10 A proposed ballot paper is set out below for comment. It has been designed to comply with the Electoral Commission's guidelines which state that referendum questions should present the options clearly, simply and neutrally⁷. In line with a recommendation of the Gould Report⁸ into the problems experienced by the Scottish elections in 2007 the design of the referendum ballot paper will be subject to testing using a sample of voters. The Scottish Government will also seek advice on this and other aspects of the referendum from electoral professionals (returning officers and registration officers) through the Electoral Management Board for Scotland, from the Electoral Commission and from a panel of independent expert advisers.

6 "As a UK Government we will not be putting obstacles in the way of any referendum." (Michael Moore, Secretary of State for Scotland, quoted by PA Newswire, 8 May 2011). "We could, I suppose, try to make a constitutional issue about where the powers lie or don't, but I don't think that would be a sensible use of anybody's time." (Michael Moore, quoted by the BBC News web-site, 8 May 2011.)

7 Referendum Question Assessment Guidelines. Electoral Commission, November 2009.

8 Report into the joint Scottish Parliament and local government elections in Scotland. Ron Gould for the Electoral Commission, October 2007. The Scottish Government commissioned intelligibility testing of the ballot paper to be used in the 2012 local government elections. A report of the testing carried out by Ipsos MORI was published in March 2011.

BALLOT PAPER	
Vote (X) ONLY ONCE	
Do you agree that Scotland should be an independent country?	
YES	<input type="checkbox"/>
NO	<input type="checkbox"/>

1.11 Any changes to Scotland's position within the United Kingdom will require negotiation with the UK Government and legislation in the UK and Scottish Parliaments. However, the Scottish Government would expect the UK and Scottish Parliaments and the respective Governments to listen to the views of the people of Scotland.

1.12 An adjustment of legislative competence under Section 30 of the Scotland Act 1998 would enable the Scottish Parliament to legislate for a referendum on the basis set out above. If the UK Government is unwilling to agree to such an adjustment without dictating unacceptable conditions, the Scottish Government will have the option of a referendum on the basis set out in paragraph 1.5.

QUESTION 1:

What are your views on the referendum question and the design of the ballot paper?

Informed choice

1.13 The choice which the Scottish electorate makes on the future of the country must be based on complete and clear information, following a full and informed debate.

1.14 The Scottish Government published a series of documents during the 2007-2011 parliamentary session which set out options for Scotland's constitutional future and the opportunities which further devolution and independence could create. *Your Scotland, Your*

*Voice*⁹, published on St Andrew's Day 2009, built on the two-year National Conversation on the future of Scotland. It provided examples and explanation of how more powers and responsibilities for the Scottish Parliament could allow Scotland to do things differently and better. The Scottish Government will ensure that voters have the information they need to participate in the national debate and to make an informed decision in the referendum.

1.15 As part of the process the Scottish Government will set out full details of the offer to the people of Scotland in a comprehensive white paper on independence. This will be published following Royal Assent to the Referendum Bill, expected in November 2013 (see timetable following paragraph 1.24). To ensure that voters are fully informed about the proposals, a factual information leaflet about the process of the referendum will be sent to every household. This was exactly the approach taken by the UK Government in the lead-up to the 1997 referendum about the Scottish Parliament. Comprehensive factual information will also be made available on the Internet. This information will be distinct from material produced by those campaigning for a particular outcome in the referendum.

1.16 There will be a role, described in Chapter 2 of this paper, for the Electoral Commission and the Chief Counting Officer and local counting officers in distributing information about the need to register to vote and the process of voting in the referendum. Provision of such guidance to voters is usual ahead of elections. It will not refer to the arguments on either side of the referendum.

1.17 The Scottish Government's aim is that the campaign should be fair. Although the Scottish Government has a clear preferred outcome, as did the then UK Government in the 1997 referendum, there should be no undue government influence on the campaign itself. The draft Bill therefore provides that, for the 28-day period before 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 question to be voted on, or which is designed to encourage voting in the referendum. This mirrors the requirements for referendums held under the Political Parties, Elections and Referendums Act 2000 (PPERA) and the arrangements which apply to parliamentary elections. Government Ministers will, of course, be able to play their part in the campaign in an individual capacity or as members of campaign organisations.

1.18 The Scottish Government expects the UK Government and UK public bodies to commit in advance to respect the same limitation. In the context of the referendum, the purpose of this restriction is to ensure a level playing field for the two sides of the argument. Any restriction on Scottish Government publications would not achieve this aim if it was not matched by a similar restriction on the UK Government.

1.19 It will also be important to ensure fairness and an impartial approach to media coverage (including any referendum campaign broadcasts). The Scottish Government will work with broadcasters and other media and the Electoral Commission in this important area. Due weight will need to be given to the designated campaign organisations in coverage during the referendum period although broadcasters will also need to consider

⁹ Your Scotland, Your Voice. Scottish Government white paper, November 2009. ISBN 978-0-7559-8114-4
<http://www.scotland.gov.uk/Publications/2009/11/26155932/0>

giving appropriate coverage to other permitted participants with significant views and perspectives.

1.20 There are established procedures for ensuring an acceptable approach for elections in relation to the coverage given to political parties. Different considerations will apply in a referendum where there are two competing outcomes which will need to be treated fairly and impartially although there may be numerous parties and other groups or individuals campaigning for these outcomes.

A simple majority

1.21 The referendum 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 UK¹⁰ and across Western Europe¹¹ 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.

1.22 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 states that minimum turnout requirements and abnormal majority thresholds are not advisable. In the Scottish Government's view this is the correct approach.

Timetable

1.23 The Scottish Government has been consistent and clear on the matter of timescales. In line with commitments made during the 2011 election campaign, the Scottish Government will bring forward the Referendum Bill in time for the referendum to be held in the second half of the current session of the Scottish Parliament. Simple good sense, and a respect for due process, all point to the Autumn of 2014 as being the right time for the referendum. That will ensure that there is sufficient time for the fullest debate on what will be the most important decision in Scotland in 300 years.

1.24 The timetable between now and Autumn 2014 is shown in the table which follows. The timetable will allow full Parliamentary and public consideration. It will also meet the

¹⁰ 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.

¹¹ 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.

Gould recommendation that electoral contests should not take place within six months of the regulations for the contest coming into force. That recommendation was designed to ensure that those charged with organising and managing the poll had sufficient time to do so. It will also avoid clashes with major international sporting events in Scotland.

Public consultation on draft Referendum Bill begins	25 January 2012
<i>Local Government elections</i>	<i>3 May 2012</i>
Close of consultation period	11 May 2012
Analysis of consultation responses	Summer 2012
Practical preparations including testing of the ballot paper	Autumn/Winter 2012
Scottish Government Legislative Programme Statement	Autumn 2012
Finalisation of Referendum Bill and development of implementation plan	Autumn/Winter 2012
Introduction of Referendum Bill to Scottish Parliament	Early 2013
Parliamentary consideration of the Bill: Stages 1 and 2 (including committee consideration and public evidence sessions)	Early to mid 2013
Summer Recess	July to August 2013
Referendum Bill passed after Stage 3	October 2013
Royal Assent to the Referendum Bill	November 2013
Publication of White Paper on Independence	November 2013
<i>European Elections</i>	<i>June 2014</i>
<i>Commonwealth Games</i>	<i>July 2014</i>
Start of regulated period (see Chapter 3)	Summer 2014 (16 weeks before referendum)
Pre-referendum period (no Government publications etc)	(28 days before referendum)
Referendum	Autumn 2014

QUESTION 2:

What are your views on the proposed timetable and voting arrangements?

Possible inclusion of a second question

1.25 While the Scottish Government's preferred policy is independence, it recognises that there is support across Scotland – from individuals and organisations – for increased responsibilities for the Scottish Parliament short of independence. One option, full devolution (or “devolution max”) was set out in some detail in *Your Scotland, Your Voice* and associated, more detailed publications (see paragraph 1.14). Under this option, the Scottish Parliament would, with certain exceptions, be responsible for all laws, taxes and duties in Scotland. The main exceptions, which would continue to be the responsibility of the UK Parliament, would include defence and foreign affairs, financial regulation, monetary policy and the currency. Short of independence, this option would confer significant economic powers on the Scottish Parliament.

1.26 The Scottish Government has consistently made it clear that it is willing to include a question on further substantial devolution in the referendum. The UK Government's January 2012 consultation paper seeks views on this matter¹². The Scottish Government's position remains that it is willing to include a question about further devolution on the lines of “devolution max” if there is sufficient support for such a move. In designing a referendum on this basis the Scottish Government would take expert advice. However, it notes that a two-question referendum was held successfully in 1997 prior to the establishment of the Scottish Parliament and there are other examples internationally¹³.

QUESTION 3:

What are your views on the inclusion of a second question in the referendum and the voting system that could be used?

¹² Scotland's Constitutional Future. UK Government Command Paper 8203, January 2012. ISBN 978-0-1018-2032-5

¹³ For example two-question referendums were held in New Zealand in 1993 and 2011 on the parliamentary electoral system. On both occasions the first (or “gateway”) question was about whether the existing system should change and the second gave a choice of alternative systems.

2 Mechanics of the Referendum

Chapter Summary

- The proposals for the management and regulation of the referendum are intended to reflect what happens for local and parliamentary elections in Scotland. They make use of Scotland’s unique electoral management structure, co-ordinated by the Electoral Management Board.
- The proposed split of responsibilities is as follows:
 - the poll and the count will be managed in the same way as those for elections, by local returning officers (designated for the referendum as “counting officers”) directed by a Chief Counting Officer
 - regulation of the referendum campaign, and reporting on the referendum process, will be the responsibility of the Electoral Commission. In this role the Electoral Commission will report to the Scottish Parliament.
- Eligibility to vote will be the same as for Scottish Parliament and local government elections and for the 1997 referendum on devolution, with the exception that the vote will be extended to 16 and 17 year olds who are eligible to be on the electoral register on the day of the poll.
- The total cost of the referendum is likely to be around £10 million. This cost is broadly in line with the cost (per voter) of the Welsh Assembly and AV Referendums in 2011.

Management of elections in Scotland

2.1 The Scottish Government’s proposals for the operational management and regulation of the referendum take account of recent reforms taken forward by the Scottish Parliament. Uniquely, within the UK, the activities of returning and registration officers for Scottish local elections are now co-ordinated by a statutory Electoral Management Board (EMB) for Scotland. The EMB was established in 2009 in response to one of the key findings of the Gould Report that there needed to be a more formal structure to provide greater co-ordination of the administration of elections in Scotland. The Scottish Government has worked closely with electoral professionals, the Electoral Commission and others to develop the Board. The Local Electoral Administration (Scotland) Act 2011 established the Board in statute and gave the Convener of the Board a power of direction over local returning officers. The Electoral Commission report into the Scottish Parliament

elections in 2011 concluded that the EMB had added value to the planning and delivery of elections in Scotland and built upon the positive support it enjoys among the various stakeholders in the electoral community. The Commission welcomed the decision to establish the EMB for local elections and noted that, although only given statutory authority for its work in relation to local government elections, the improved working practices, etc. that the Board would develop for this work would be likely to spread to its work in relation to other elections. The Electoral Commission concluded that the Board and the appointment of a Convener with power of direction was a welcome development for electoral administrators in the future.

Management of the referendum

2.2 In the Scottish Government's view, the arrangements which are now in place for the management of local elections in Scotland provide a sound approach which should be followed for the referendum. Accordingly, it proposes that the poll and the count will be managed in the same way as those for elections, by the returning officer (designated for the referendum as "counting officers") for each of Scotland's 32 local government areas under the overall direction of a Chief Counting Officer. Further detail is set out in paragraphs 2.5 to 2.7.

Regulation and oversight

2.3 The Scottish Government's February 2010 consultation paper proposed the establishment of a Scottish Referendum Commission (SRC) to oversee and report on the referendum and regulate campaign expenditure. The proposed commission was based on the model of the Electoral Commission, but would have reported on its activities and the discharge of its statutory functions to the Scottish Parliament rather than to Westminster. Since then, the Electoral Commission has overseen the Welsh Assembly and AV Referendums held in March and May 2011 respectively¹⁴. In the light of that experience and the fact that the Scottish Parliament has since legislated to give the Electoral Commission a role in supervising the devolved Scottish local government elections¹⁵, the Scottish Government now proposes that the referendum should be regulated by the Electoral Commission rather than a specially established commission. Crucially, the Electoral Commission will be responsible to the Scottish Parliament for the role that it will play. Further detail of the role is set out in paragraphs 2.7 and 2.8 below.

2.4 The division of responsibilities outlined above mirrors precisely the system established for elections in Scotland in response to the Gould Report. Under that,

¹⁴ The Electoral Commission report into the AV Referendum was published on 19 October 2011. It contained 25 recommendations, most of which were addressed specifically at the UK Government and suggested changes to the PPERA framework for referendums. The Scottish Government will consider these recommendations with the Commission between now and the introduction of the Referendum (Scotland) Bill.

¹⁵ The Local Electoral Administration (Scotland) Act 2011 gave the Electoral Commission a statutory role in relation to local government elections in Scotland for the first time. The Act places an obligation on the Commission to report to the Scottish Parliament on its activities in this area.

guidance and regulatory functions are for the Electoral Commission while the operational role is for returning officers, electoral registration officers and their staff. In deciding on this approach the Scottish Government has also had regard to the July 2011 report of the Association of Electoral Administrators into the administration of the referendums and elections across the UK in 2011. That noted that concerns had been expressed about the role placed upon the the Electoral Commission for referendums held under the Political Parties, Elections and Referendums Act 2000 (PPERA). Under PERA the Electoral Commission has responsibility both for organising referendums and for their regulation and monitoring¹⁶. For the AV Referendum, for example, the Chief Executive of the Commission was appointed Chief Counting Officer with the power of direction over local counting officers, but the Commission was also required to undertake a full range of monitoring and regulatory functions. The Scottish Government considers that it is preferable to avoid the potential tensions inherent in combining the organisational and supervisory roles.

The conduct of the poll and the count

2.5 The draft Bill provides for the appointment of a Chief Counting Officer (CCO) who will be responsible for ensuring the proper and effective conduct of the referendum, including the conduct of the poll and the counting of the votes. The CCO will have a power of direction over local counting officers. The CCO is likely to be the Convener of the Electoral Management Board. The draft Bill confers a range of functions on the CCO and local counting officers, including:

- making arrangements for the issue of poll cards and to allow for absent or proxy voting
- making arrangements for the designation and management of polling stations and appointing presiding officers and clerks
- publishing notice of the referendum
- ensuring the security of the ballot
- counting the votes and declaring the result. Votes will be counted in each local authority area and reported to the Chief Counting Officer. He or she will make a declaration of the national results after which local counting officers will make “local declarations” of the result for each local government area.

2.6 Votes will be counted by hand in the traditional way. The detailed rules about the conduct of the poll are based on those applying to the conduct of elections. In the time

¹⁶ The Association of Electoral Administrators in its report into the administration of the referendums and elections across the UK in 2011 (14 July 2011) discussed the role of the Electoral Commission in the Welsh Assembly and AV Referendums in March and May 2011. It noted that “administrators have expressed concerns about whether it is appropriate for a body established to provide advice and keep electoral matters under review – including reporting on the administration of the referendum – to have operational responsibility for that referendum”. The report concluded that “... a debate is needed on the management structure for future referendums, including the respective roles and powers of the Chief Counting Officer and the Electoral Commission.

between the publication of this document and the introduction of the Referendum Bill, the Scottish Government will discuss the detailed referendum rules further with the Electoral Management Board and others. In particular, it will work with the Scottish Assessors' Association on the proposals to extend the franchise to those 16 and 17 year olds who are eligible to be on the attainers register (see paragraph 2.15).

QUESTION 4:

What are your views on the proposal to give the Electoral Management Board and its Convener responsibility for the operational management of the referendum?

Role of the Electoral Commission

2.7 The draft bill confers a range of guidance, regulatory and monitoring functions on the Commission:

- publishing guidance for voters
- publishing guidance for counting officers
- publishing guidance for permitted participants
- recording the money spent and donations received by permitted participants and making that information available for public inspection
- observing the conduct of the referendum at polling stations
- observing the conduct of the count
- publishing a report on the conduct and administration of the referendum.

2.8 The Electoral Commission will be expected to take a fair and balanced approach to its activities and to be seen to be operating in this manner. The functions are specified in the Bill in a way which will ensure that the Commission is at no risk of Scottish or UK Government influence in its affairs.

QUESTION 5:

What are your views on the proposed division of roles between the Electoral Management Board and the Electoral Commission?

Turnout

2.9 On 4 June 2010 the Scottish Government and the Scottish Parliament's Local Government and Communities Committee held a joint seminar in the Scottish Parliament on the subject of voter turnout. Over 50 organisations took part in the seminar including

the Electoral Commission, COSLA, the Scottish Youth Parliament and the Electoral Reform Society. Those present discussed the possible causes of low turnout in elections and ways to increase the number of people who register and use their votes in elections in Scotland. Among the ideas discussed was the suggestion that elections could be held on a Saturday in order to make it easier for people to vote. Other proposals included voting in places other than the traditional polling stations (shops, libraries or other accessible public buildings) and encouraging the greater use of mobile polling stations. The Scottish Government would welcome views about feasible means to make voting easier.

QUESTION 6:

What are your views on the idea that the referendum could be held on a Saturday or on other ways which would make voting easier?

Eligibility to vote

2.10 As proposed in the Scottish Government's 2010 consultation paper, and following the precedent of the 1997 referendum, eligibility to vote in the referendum will be based on that for Scottish Parliament and Scottish local government elections. The franchise for these elections (which is set out in UK legislation) most closely reflects residency in Scotland and has been chosen for that reason. The choice of this franchise reflects the internationally accepted principle that the franchise for constitutional referendums should be determined by residency and the Scottish Government's view that sovereignty lies with the people of Scotland. The Scottish Government notes that the UK Government has also concluded that this is the most appropriate franchise for the referendum¹⁷.

2.11 The following groups of people will therefore be entitled to vote in the referendum:

- British citizens resident in Scotland
- Commonwealth citizens resident in Scotland
- citizens of the Republic of Ireland and other EU countries resident in Scotland
- members of the House of Lords resident in Scotland
- 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.

Voters aged 16 and 17

2.12 The only difference from the franchise used in 1997 relates to those aged 16 or 17. 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

¹⁷ Scotland's Constitutional Future. UK Government Command Paper 8203, January 2012. ISBN 978-0-1018-2032-5

responsibilities such as getting married, serving in the Armed Forces or paying tax. Reducing the voting age to 16 would encourage participation by young people in Scotland's democratic processes and would give them a voice on matters that affect them.

2.13 The principle of lowering the voting age enjoys wide support. The Liberal Democrat and Green Parties have expressed support for lowering the voting age for elections, as have major youth organisations. The Labour Party supported a move to allow 16 and 17 year olds to vote in the 2011 referendum on the Alternative Vote. 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.

2.14 Although it is currently outwith the powers of the Scottish Parliament to legislate about the franchise for local and parliamentary elections, the Parliament has already legislated to give the vote for 16 and 17 year olds where it has the power to do so. The Health Boards (Membership and Elections) (Scotland) Act 2009 enabled 16 and 17 year olds to vote in the pilot Health Board elections on 10 June 2010. The Labour, Liberal Democrat and Green Parties all supported these proposals when they were put before the Scottish Parliament. More recently, on 21 December 2011, the Scottish Parliament unanimously passed the Crofting Commission (Elections) (Scotland) Regulations 2011 which enabled those aged 16 or over to vote in elections to the Crofting Commission.

2.15 For the referendum, the Scottish Government is constrained by the fact that the franchise for elections is reserved to Westminster. The electoral register is established and maintained under Westminster legislation. The system currently allows 16 and 17 year olds to apply to be on the register if they will become 18 during the twelve months beginning on 1 December after their application. The draft Bill therefore provides that those 16 and 17 year olds who are eligible to be registered under the existing UK legislation will be able to vote in the referendum.

QUESTION 7:

What are your views on extending the franchise to those aged 16 and 17 years who are eligible to be registered on the electoral register?

Equalities

2.16 The draft Bill is designed so as 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 counting officers 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.

2.17 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 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. This issue will be covered in further detail by guidance issued by the Electoral 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
- 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.

2.18 In addition, there is a requirement in the draft Bill for the Counting Officer 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.

Costs

2.19 A detailed financial memorandum will be provided to the Scottish Parliament when the Referendum legislation is introduced. However, the total cost of the referendum is likely to be around £10 million, the bulk of which will be spent on running the poll and the count. The Electoral Commission report into the Welsh Assembly Referendum in March 2011 put the total cost of the referendum at £5.89 million. The electorate in Scotland is 1.7 times greater than in Wales so a comparable figure for the cost of a referendum in Scotland would be approximately £10 million. The Commission’s report into the AV Referendum, while not reporting final costs, suggested the total cost of that referendum could be around £96.2 million.

3 Campaign Rules

Chapter Summary

- The draft Bill includes rules to ensure that the referendum campaigns are run in a fair and transparent manner. The rules are based on UK legislation (the Political Parties, Elections and Referendums Act 2000), although the spending limits have been tailored to reflect the context of a Scottish referendum on independence.
- The Electoral Commission will have responsibility for policing these rules and, in doing so, report to the Scottish Parliament. Any individual or organisation wishing to spend more than £5,000 on campaigning must register with the Commission in order to be a “permitted participant”.
- The Scottish Government seeks views on proposed spending limits of £750,000 for the designated lead campaign organisations, £250,000 for each political party represented in the Scottish Parliament and £50,000 for other permitted participants.
- There will be no public funding for campaign organisations.

The need for campaign rules

3.1 The current UK legislation for running a referendum has its origins in the Fifth Report of the Committee on Standards in Public Life. That led to the Political Parties, Elections and Referendums Act 2000 (PPERA). The procedures set out in PERA apply only to referendums held in consequence of an Act of the UK Parliament and so separate legislation is required for this referendum.

3.2 It is essential that there are rules in place to ensure that the referendum campaigns are run in a fair and open manner. The proposals in the draft Bill are 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.

3.3 It is also essential that the campaign rules are followed and policed. The Scottish Government proposes that the Electoral Commission should take on this role as explained in the previous chapter and, in doing so, report to the Scottish Parliament as it now does for its activities in monitoring local elections in Scotland.

Participants in the referendum campaign

3.4 In line with the approach taken in Part 7 of PPERA, the draft Bill provides that any individual or an organisation (including a political party) who wishes to spend more than £5,000 on campaigning will have to notify the Commission that they wish to be a “permitted participant”. The purpose of having declared permitted participants is to help to ensure an open process where those who wish to campaign for a particular outcome must register that intention.

3.5 The draft Bill provides that a permitted participant may apply to the Electoral Commission to be the principal campaigner representing one of the outcomes of the referendum. These permitted participants are called “designated organisations”. 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 meeting rooms in schools or other public buildings for public campaign meetings during the four-week period before the referendum is held.

No public funding

3.6 It is not proposed that there should be any grants of public money to those who wish to campaign.

Spending limits for participants in the referendum campaign

3.7 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’s 2010 consultation suggested that the limit should be scaled down to £3,000. The draft Bill now provides a higher £5,000 limit on the basis that this is the comparable limit for elections to the Scottish Parliament.

3.8 The limits set out in PPERA are for UK-wide referendums, the first of which was that on the Alternative Vote in May 2011. For referendums covering parts of the UK lower limits have been set. Those 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 only just over half the amount set as its limit). For the Welsh referendum campaign in 2011 the three political parties registered to take part in were allocated spending limits of £666,000, £480,000 and £360,000. The parties spent around £10,000, £10,000 and £7,000 respectively. Twenty other individuals or organisations registered as permitted participants which gave them limits of £100,000 each. Only one organisation spent more than £10,000 (£81,000)¹⁸.

¹⁸ Report on the Referendum on the Law-making Powers of the National Assembly for Wales. Electoral Commission, July 2011.

3.9 The Scottish Government considers that the best starting point for the design of spending limits for the referendum are those for Scottish Parliament election campaigns. 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. The Scottish Government proposes that designated organisations should each have a campaign spending limit of £750,000 (i.e. half of the maximum limit for Scottish Parliament elections).

3.10 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 for the referendum. Therefore, while political parties should not be prevented from campaigning outside 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 £250,000, 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.

3.11 For other permitted participants – groups and political parties which wish to campaign outside of the designated organisations (whether or not they also form part of such an organisation) – the Scottish Government has taken as a starting point 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 spending limit for such groups of £50,000, two-thirds of the comparable maximum limit for Scottish Parliament elections. While this figure is lower than that for the Welsh referendum the figures in paragraph 3.8 show that those limits were not reached by any of the participants. A limit of £50,000 will allow other participants to have national impact, but is also restrictive enough to encourage people to join the designated organisations if they wish to contribute more substantially.

3.12 The table summarises the campaign spending limits that would apply during the 16-week regulated period before the referendum.

Type of Organisation	Proposed Spending Limit
Designated Organisation	£750,000
Party Represented in Scottish Parliament	£250,000
Other Registered Permitted Participants	£50,000
Other individuals or bodies	£5,000

3.13 Breach of these limits would be 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

3.14 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 those of:

- 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
- rallies and other forms of public meetings.

3.15 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.

3.16 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

3.17 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.

3.18 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

3.19 Permitted participants will be required to provide a report to the Commission about their finances. The draft Bill includes 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 Electoral Commission within six 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.

QUESTION 8:

What are your views on the proposed spending limits?

4 After the Referendum

Chapter Summary

- Following a yes vote for independence, negotiations would take place on the transfer of powers and transitional arrangements.
- In due course both the Scottish and UK Parliaments would pass and bring into force independence legislation to enact the negotiated settlement.

4.1 Following a vote for independence, the Scottish Parliament and Government would carry forward the people's will. This would involve negotiations with the UK Government. These negotiations would deal with the terms of independence as well as with the arrangements for the transition. The terms of independence would include agreement on the scope and arrangements for future cross-border bodies and cross-border co-operation, both transitional and ongoing.

4.2 Formal negotiations would also be opened on Scotland's international responsibilities, in the European Union and more widely. Other bodies such as relevant international partners would be involved in such discussions as needed.

4.3 Agreement on the arrangements for transition would allow Scotland to move forward to independence. There would be a transitional period to allow for necessary legal and practical preparations. These preparations would ensure that systems and arrangements were in place to allow an independent Scottish Parliament and Government to fulfil the full range of their responsibilities from the moment of independence.

4.4 The final requirement for independence to have effect would be for both the Scottish and UK Parliaments to pass and bring into force independence legislation which would enact the negotiated settlement. In particular, the legislation would effect the transfer of the power to legislate for Scotland from the UK Parliament to the Scottish Parliament and would define the effective date of Scotland's re-establishment as an independent, sovereign state.

4.5 May 2016 will see the election of the next Scottish Parliament which would become the Parliament of an independent Scotland. This election will give the people of Scotland the chance to decide the future policy direction of Scotland.

Question 9:

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

5 How to Comment

- This consultation is your opportunity to shape the referendum on Scotland's constitutional future. Responses should be made by Friday 11 May 2012.
- It would be helpful to have your response by email or using the electronic response form. The electronic response form can be accessed at the following website address: <https://consult.scotland.gov.uk>. You can also email your response to the mailbox below.
- We are, of course, happy to receive written submissions too.

It would be helpful to have your response using the electronic response form. The electronic response form can be accessed at the following website address: <https://consult.scotland.gov.uk>. You can also email your response to referendum@scotland.gsi.gov.uk

Written submissions:

Referendum Consultation
Elections and Constitutional Development Division
Area 3D (South)
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 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.

Next steps

If you tell us we can make your response public, we will put it in the Scottish Government Library 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:

Elections and Constitutional Development Division, Victoria Quay, Edinburgh EH6 6QQ.



RESPONDENT INFORMATION FORM

Please Note 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

3. Which country are you resident in? (tick one box only)

Scotland	
Rest of the UK	
Rest of the World	

4. If you are responding on behalf of an organisation, please indicate which type (tick one box only):

Electoral organisation	
Political party	
Voluntary organisation	
Commercial organisation	
Other (please state)	

5. If you are an individual, please indicate whether any of the following categories apply to yourself (tick all that apply):

MSP	
MP	
MEP	
Councillor	
Academic	
None of the above	

5. Permissions - I am responding as...

Individual / Group/Organisation

Please tick as appropriate

- (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)?

Please tick as appropriate Yes No

- (b)** Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick **ONE** of the following boxes

Yes, make my response, name and address all available

or

Yes, make my response available, but not my name and address

or

Yes, make my response and name available, but not my address

- (c)** The name and address of your organisation **will be** made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your **response** to be made available?

Please tick as appropriate Yes No

- (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?

Please tick as appropriate Yes No

6 Consultation Questionnaire

QUESTION 1:

What are your views on the referendum question and the design of the ballot paper?

QUESTION 2:

What are your views on the proposed timetable and voting arrangements?

QUESTION 3:

What are your views on the inclusion of a second question in the referendum and the voting system that could be used?

QUESTION 4:

What are your views on the proposal to give the Electoral Management Board and its Convener responsibility for the operational management of the referendum?

QUESTION 5:

What are your views on the proposed division of roles between the Electoral Management Board and the Electoral Commission?

QUESTION 6:

What are your views on the idea that the referendum could be held on a Saturday or on other ways which would make voting easier?

QUESTION 7:

What are your views on extending the franchise to those aged 16 and 17 years who are eligible to be registered on the electoral register?

QUESTION 8:

What are your views on the proposed spending limits?

QUESTION 9:

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

7 Draft Referendum (Scotland) Bill

Draft Referendum (Scotland) Bill

[CONSULTATION DRAFT - JANUARY 2012]

CONTENTS

Section

Referendum

1 Referendum

Franchise

2 Those who are entitled to vote

3 Further provision about voting

Conduct

4 Chief Counting Officer and other counting officers

5 Functions of the Chief Counting Officer and other counting officers

6 Correction of procedural errors

7 Expenses of Chief Counting Officer and other counting officers

8 Appointment of observers

9 Conduct rules

Campaign

10 Campaign rules

Offences

11 Offences

12 Offences by bodies corporate etc.

Electoral Commission's functions

13 Attendance at proceedings and observation of working practices

14 Information for voters

15 Guidance

16 Advice

17 Report on the conduct of the referendum

18 Reimbursement of Commission's costs by Scottish Ministers

19 Report on Commission's functions

20 Maladministration

Legal proceedings

21 Legal proceedings

Final provisions

22 Interpretation

23 Commencement

24 Short title

-
- Schedule 1—Form of ballot paper
 - Schedule 2—Further provision about voting in the referendum
 - Part 1—Manner of voting
 - Part 2—Registration
 - Schedule 3—Conduct rules
 - Schedule 4—Campaign rules
 - Part 1—Interpretation
 - Part 2—Permitted participants and designated organisations
 - Part 3—Referendum expenses
 - Part 4—Publications
 - Part 5—Control of donations
 - Schedule 5—Offences
 - Schedule 6—Interpretation

Draft Referendum (Scotland) Bill

[CONSULTATION DRAFT - JANUARY 2012]

An Act of the Scottish Parliament to make provision for the holding of a referendum in Scotland seeking the views of people in Scotland on a proposal about the way Scotland is governed.

Referendum

1 Referendum

- (1) A referendum is to be held in Scotland on a proposal about the way Scotland is governed.
- (2) The question to be voted on in the referendum and the front of the ballot paper 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 in favour of each answer to the referendum question.
- (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 in favour of each answer to the referendum question.
- (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—
 - (a) appoint such staff,
 - (b) 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 cast 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) may make different provision for different functions, cases or areas,
 - (b) 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) 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.
- (7) 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 do either or both of the following—
 - (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 (3) and (4),is referred to in this Act as an “observer”.
- (3) 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.
- (4) Notice under subsection (3) must—
 - (a) be in writing,
 - (b) include the name and address of the observer, and
 - (c) be given not later than one week before the date of the referendum.

9 Conduct rules

Schedule 3 makes provision about the conduct of the referendum.

*Campaign***10 Campaign rules**

Schedule 4 makes provision about 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 about offences in 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.

*Electoral Commission’s functions***13 Attendance at proceedings and observation of working practices**

- (1) A representative of the Electoral Commission may attend proceedings relating to the referendum that are the responsibility of—
 - (a) the Chief Counting Officer, or

- (b) a counting officer.
- (2) The right conferred by subsection (1) is subject to any other provision of this Act which regulates attendance at the proceedings in question.
- (3) A representative of the Electoral Commission may observe the working practices of each of the following in carrying out functions under this Act—
 - (a) a registration officer,
 - (b) the Chief Counting Officer,
 - (c) a counting officer,
 - (d) any person acting under the direction of a person mentioned in paragraphs (a) to (c).
- (4) In this section, “representative of the Electoral Commission” means any of the following—
 - (a) a member of the Electoral Commission,
 - (b) a member of staff of the Electoral Commission,
 - (c) a person appointed by the Electoral Commission for the purposes of this section.

14 Information for voters

The Electoral Commission may issue information for voters about—

- (a) the referendum question,
- (b) voting in the referendum.

15 Guidance

- (1) The Electoral Commission may issue guidance to the Chief Counting Officer about the exercise of the Chief Counting Officer’s functions under this Act.
- (2) The Electoral Commission may, with the consent of the Chief Counting Officer, issue guidance to counting officers about the exercise of their functions under this Act.
- (3) The Electoral 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

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

- (a) the application of this Act,
- (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 Electoral Commission must prepare and lay before the Scottish Parliament a report on the conduct of the referendum.

- (2) On laying the report, the Commission must publish the report in such manner as they may determine.

18 Reimbursement of Commission's costs by Scottish Ministers

- (1) The Scottish Ministers must reimburse the Electoral Commission for any expenditure incurred by the Commission which is attributable to the exercise of the Commission's functions under this Act.
- (2) The total expenditure incurred in any financial year by the Commission in exercising functions under this Act must not exceed such sum as is for the time being specified by an order made by the Scottish Ministers.
- (3) An order under subsection (2) is subject to the negative procedure.
- (4) In the 2000 Act, in Schedule 1, paragraph 14(1) (financing of the Electoral Commission) has effect as if paragraph (a) included a reference to expenditure reimbursed under subsection (1) of this section.

19 Report on Commission's functions

- (1) As soon as reasonable practicable after the end of each financial year, the Electoral Commission must prepare and lay before the Scottish Parliament a report on the exercise of the Commission's functions under this Act during the year.
- (2) On laying the report, the Commission must publish the report in such manner as they may determine.
- (3) In the 2000 Act, in Schedule 1, in paragraph 20(1) (report on Electoral Commission's functions), the reference to the Commission's functions does not include a reference to the Commission's functions under this Act.

20 Maladministration

In the Scottish Public Services Ombudsman Act 2002, in section 7 (restrictions on investigations), subsection (6D) does not prevent the investigation under that Act of action taken by or on behalf of the Electoral Commission in the exercise of the Commission's functions under this Act.

Legal proceedings

21 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

22 Interpretation

Schedule 6 provides definitions for words and expressions used in this Act.

23 Commencement

This Act comes into force on the day after Royal Assent.

24 Short title

The short title of this Act is the Referendum (Scotland) Act 2012.

SCHEDULE 1
(introduced by section 1(2))

FORM OF BALLOT PAPER

[Ballot paper 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 9(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 9(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 9(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 9(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 9(1)(b) of the conduct rules, marking a tendered ballot paper in pursuance of rule 23 of those rules.
- (8) For the purposes of this Act—

- (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 8(4) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by post at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.
- (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 8(4) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by proxy at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.
- (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 registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum, 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 9(1)(b) of the conduct rules,
 - (b) the registration officer is satisfied that the applicant is registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum, 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 9(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 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 10(6) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) 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 9(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 8(4) of the Scottish Parliament (Elections etc.) Order 2010 (SI 2010/2999) as voting by post as proxy at Scottish parliamentary elections for an indefinite period or for a period which extends beyond the date of the referendum.
- (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 registered in the register of electors maintained by the officer or will be registered in that register on the date of the referendum,
 - (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 sent, and
 - (b) those whose applications under sub-paragraph (6) have been granted by the registration officer, together with the addresses provided by them in their applications as the addresses to which their ballot papers are to be sent.
- (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 9(1)(b) of the conduct rules, from marking a tendered ballot paper in pursuance of rule 23 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, and
 - (b) before the cut-off date.
- (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 under rule 9(1)(b) of the conduct rules, 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) For the purposes of sub-paragraphs (3)(a) and (b) and (4)(a) and (b), the applicant's date of birth and signature must be set out in a manner that is sufficiently clear and unambiguous as to be capable of electronic scanning and, in particular—

- (a) the date of birth must be set out numerically in the sequence day, month, year (for example, the date 30th July 1965 must be set out 30071965),
 - (b) the signature—
 - (i) must be written within an area of white, unlined paper no smaller than 5 centimetres by 2 centimetres,
 - (ii) must not exceed 5 centimetres by 2 centimetres.
- (7) 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.
- (8) Sub-paragraph (9) applies in relation to an application to vote by proxy (and an application under paragraph 5(8) for the appointment of a proxy contained in such an application to vote by proxy)—
- (a) made after the cut-off date and on the grounds that the applicant cannot reasonably be expected to vote in person at the polling station allotted under rule 9(1)(b) of the conduct rules because of a disability suffered after that date, or
 - (b) by a person to whom paragraph 1(6)(a) applies.
- (9) Sub-paragraph (2)(b) does not apply in relation to the application and instead the application must be made before 5pm on the date of the referendum.

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), 13B(3) or (3B) or 13BB(4) or (5) 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 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 a reference to 9pm 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.
- (3) Section 13BB of the 1983 Act applies in relation to the referendum as it applies in relation to an election mentioned in subsection (1)(b) of that section but as if—
 - (a) any reference to notice of such an election were a reference to notice of the referendum,
 - (b) any reference to the appropriate publication date for such an election were a reference to the fifth day before the date of the referendum,
 - (c) 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,
 - (d) subsection (2)(c) were omitted.

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) 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.
- (5) 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, at the request of the relevant counting officer, supply free of charge to the 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) or 13BB(4) or (5) of that Act (as those provisions are applied by paragraph 13(2) and (3)), 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, 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.

Restriction on use of the full register and information contained in it

- 16 (1) This paragraph applies to—

- (a) any person to whom a copy of the full register has been supplied under paragraph 15,
 - (b) any person to whom information contained in the full register has been disclosed,
 - (c) any person to whom a person referred to in paragraph (a) or (b) has supplied a copy of the full register or information contained in it, and
 - (d) any person who has obtained access to a copy of the full register or information contained in it otherwise than by virtue of paragraph 15 or this paragraph.
- (2) No person to whom this paragraph applies 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.
- (3) A person (“A”) is guilty of an offence—
- (a) if A contravenes sub-paragraph (2), or
 - (b) if A is an appropriate supervisor of another person (“B”) who contravenes that sub-paragraph and A failed to take appropriate steps.
- (4) B is not guilty of an offence under sub-paragraph (3) if—
- (a) B has an appropriate supervisor, and
 - (b) B complied with all the requirements imposed on B by the appropriate supervisor.
- (5) A is not guilty of an offence under sub-paragraph (3) if—
- (a) A is not, and does not have, an appropriate supervisor, and
 - (b) A took all reasonable steps to ensure that A did not contravene sub-paragraph (2).
- (6) In this paragraph—
- “appropriate supervisor” means a person who is a director of a company, or concerned in the management of an organisation, in which B is employed or under whose direction or control B is, and
- “appropriate steps” are such steps as it was reasonable for the appropriate supervisor to take to secure the operation of procedures designed to prevent, so far as reasonably practicable, any contravention of sub-paragraph (2).
- (7) 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.

The cut-off date

- 17 (1) In paragraphs 2(1) and (3), 6(4), 7(2)(b) and (8)(a) and 8(2), the cut-off date means 5pm on the eleventh day before the date of the referendum.
- (2) For the purpose of ascertaining the cut-off date, the following days are to be disregarded—
- (a) a Saturday or Sunday,
 - (b) Christmas Eve, Christmas Day, Good Friday or Easter Monday,

- (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971 (c.80).

SCHEDULE 3
(introduced by section 9)

CONDUCT RULES

Publication of notice of the referendum

- 1 (1) The counting officer must publish notice of the referendum not later than two weeks after the beginning of the referendum period.
- (2) The notice must—
 - (a) be in the form prescribed, 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.

Hours of polling

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

The ballot

- 3 (1) The votes at the referendum are to be given by ballot.
- (2) The ballot of every voter consists of a ballot paper.
- (3) The ballot paper is to be of the prescribed colour.

The corresponding number list

- 4 (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 to be issued in accordance with rule 8(1) or provided in accordance with rule 13(1), and
 - (b) be in the form prescribed.

Security marking

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

Use of schools and public rooms for polling and counting votes

- 6 (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

- 7 (1) The 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, 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

- 8 (1) The counting officer must, as soon as reasonably practicable, issue to those entitled to vote by post—
- (a) a ballot paper,
 - (b) a postal voting statement in the form prescribed, 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 paper,
 - (b) a translation into Braille of such directions or guidance,
 - (c) a 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

- 9 (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

- 10 (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)(b) 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

- 11 (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 the ballot paper is to be sent.
- (4) A proxy's official poll card or official postal 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.
- (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 polling station allotted to the voter under rule 9(1)(b) (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

- 12 (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

- 13 (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) or 13BB(4) or (5) 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.
- (7) The counting officer must also provide each polling station with—
 - (a) an enlarged hand-held sample copy of the ballot paper 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 paper and may include a translation of it 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

- 14 (1) No person other than the presiding officer and 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) members of the Scottish Parliament for the region in which the polling station is situated,
 - (g) members of the council for the local government area in which the polling station is situated,
 - (h) members 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) the counting officer and members of the counting officer's staff,
 - (l) constables on duty,
 - (m) persons entitled to attend by virtue of section 13,
 - (n) observers, and
 - (o) 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 member of the counting officer's staff may only be admitted to vote in person elsewhere than at the polling station allotted under rule 9(1)(b), 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) in the case of a constable, an officer of police of the rank of inspector or above, or
 - (ii) in the case of a member of the counting officer's staff, the counting officer, and
 - (b) be in the form prescribed.
- (7) A certificate produced under paragraph (5) must be immediately cancelled.

Notification of requirement of secrecy

- 15 (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

- 16 (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

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

Questions to be put to voters

- 18 (1) At the time a voter applies for a ballot paper (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 paper</i>	<i>Questions</i>
1. A person applying as a voter	(a) "Are you the person registered in the register of local government electors as follows?" (<i>read the whole entry from the register</i>) (b) "Have you already voted in this referendum otherwise than as proxy for some other person?"
2. A person applying as proxy	(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.?" (b) "Have you already voted in this referendum as proxy on behalf of C.D.?" (c) "Are you the spouse, civil partner, parent, grandparent, brother, sister, child or grandchild of C.D.?"
3. A person applying as proxy for a voter with an anonymous entry (instead of the questions in entry 2)	(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>)?" (b) "Have you already voted in this referendum 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>)?" (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>)?"
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 in 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) or 13BB(4) 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) A ballot paper 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

- 19 (1) 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.
- (2) Paragraph (1) does not affect A’s liability to any penalty for voting.

Voting procedure

- 20 (1) Subject to rule 18(4), a ballot paper must be delivered to a voter who applies for one.
- (2) Immediately before delivering the ballot paper 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 13(3)(e) beside the number of the ballot paper to be delivered to the voter,
 - (c) a mark is to be placed in the register of electors against the number of the voter to note that a ballot paper has been received but without showing the particular ballot paper which has been received, and
 - (d) in the case of a person applying for a ballot paper 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 in respect of whom a notice has been issued under section 13B(3B) or (3D) or 13BB(4) 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) or 13BB(4) 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) or 13BB(4) of the 1983 Act”.
- (5) On receiving the ballot paper, the voter must without delay—
 - (a) proceed into a compartment in the polling station,
 - (b) there secretly mark the voter’s ballot paper,
 - (c) show the unique identifying number on the ballot paper to the presiding officer, and

- (d) put the ballot paper into the ballot box in the presiding officer's presence.
- (6) Where—
 - (a) a voter attends the polling station before 10pm, and
 - (b) the voter is still waiting to vote at 10pm,
 the presiding officer must permit the voter to vote without delay after 10pm and must close the poll immediately after the last such voter has voted.
- (7) The voter must leave the polling station as soon as the voter has put the ballot paper into the ballot box.

Votes marked by presiding officer

- 21 (1) On the application of a voter—
- (a) who is incapacitated by blindness or other disability from voting in the manner required by rule 20, 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) or 13BB(4) 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) or 13BB(4) of the 1983 Act".

Voting by persons with disabilities

- 22 (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,
 - (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 spouse, civil partner, parent, grandparent, brother, sister, child or grandchild 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) or 13BB(4) 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) or 13BB(4) of the 1983 Act”.

Tendered ballot papers

- 23 (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 postal voters list or the list of proxies, 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 a postal ballot paper.
- (6) Where this paragraph applies, the person is entitled, on satisfactorily answering the questions permitted by rule 18 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 prescribed colour differing from that of the ballot paper issued in accordance with rule 8(1) or provided in accordance with rule 13(1),
 - (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) or 13BB(4) 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) or 13BB(4) 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) or 13BB(4) of the 1983 Act”.

Spoilt ballot papers

- 24 (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

- 25 (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) or 13BB(4) 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

- 26 (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

- 27 (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 (as a single packet),
 - (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) or 13BB(4) of the 1983 Act) and of the list of proxies (as a single packet),
 - (d) any certificates produced under rule 14(5),
 - (e) the corresponding number list completed in accordance with rule 20(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 (as a single packet),
 - (g) any postal ballot papers or postal voting statements 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

- 28 (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 any 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 any constituency which contains all or part of the area in which the votes being counted have been cast,
 - (c) members of the Scottish Parliament for any region which contains all or part of the area in which the votes being counted have been cast,
 - (d) members of the council for any local government area which contains all or part of the area in which the votes being counted have been cast,
 - (e) members 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 a counting officer's staff,
 - (h) constables on duty,
 - (i) persons entitled to attend by virtue of section 13,
 - (j) observers, and
 - (k) any other person the counting officer permits to attend.
- (6) The counting officer may exclude persons from the counting of the votes if the counting officer considers that the efficient counting of the votes would be impeded.
- (7) Paragraph (6) does not permit the counting officer to exclude the persons mentioned in paragraph (5)(f) or (i).
- (8) The counting officer may limit the number of observers who are permitted to be present at the counting of the votes on behalf of a permitted participant, but the same limit is to apply to each permitted participant.
- (9) 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

- 29 (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—
 - (i) is duly signed (unless the requirement for signature has been dispensed with in accordance with paragraph 7(5) of schedule 2), and
 - (ii) 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

- 30 (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 in favour of both answers to the referendum question,
 - (c) on which anything is written or marked by which the voter can be identified (other than by the unique identifying number), 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

- 31 The counting officer must count the votes in favour of each answer to the referendum question.

Decisions on ballot papers

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

Re-counts

- 33 (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

- 34 (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 in the area in favour of each answer to the referendum question,
 - (c) the verification statement prepared under rule 29, and
 - (d) the number of rejected ballot papers under each head shown in the statement of rejected ballot papers prepared under rule 30.
- (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 in the whole of Scotland in favour of each answer to the referendum question, 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 in the area in favour of each answer to the referendum question, and
 - (c) the number of rejected ballot papers in the area.

Sealing up of ballot papers

- 35 (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 14(5), or
 - (d) marked copies of the register of electors (including any marked copy notices issued under section 13B(3B) or (3D) or 13BB(4) of the 1983 Act) and lists of proxies.

Delivery of papers

- 36 (1) After sealing the papers in accordance with rule 35, 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 14(5), and

- (f) the packets containing marked copies of registers (including any marked copy notices issued under section 13B(3B) or (3D) or 13BB(4) 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

- 37 (1) The proper officer of the council must retain for one year all papers received by virtue of rule 36.
- (2) Those papers, except ballot papers, completed corresponding number lists and the certificates mentioned in rule 14(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

- 38 (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 14(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) or 13BB(4) 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 14(5).

Power of Chief Counting Officer to prescribe

- 39 (1) In this schedule, "prescribed" means prescribed by the Chief Counting Officer.
- (2) Where a form is prescribed under paragraph (1), the form may be used with such variations as the circumstances may require.
- (3) Paragraphs (1) and (2) do not apply to the form of the ballot paper (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 (including the First Minister for Wales or the Counsel General to the Welsh Assembly Government), or
- (ii) a government department (including a Northern Ireland department) or a part of the Scottish Administration,
- (c) payments by the SPCB, the Northern Ireland Assembly Commission or the National Assembly for Wales Commission, and
- (d) payments by the Electoral 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 Electoral 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) A “qualifying individual” is an individual who is—
- (a) resident in the United Kingdom, or
- (b) registered in—
- (i) a register of parliamentary or local government electors maintained under the 1983 Act,

- (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 “qualifying body” is a body which 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 Electoral 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 Electoral Commission must maintain a register of all declarations made to them under paragraph 2.
- (2) The register is to be maintained by the Electoral Commission in such form as the Electoral Commission may determine.
- (3) The register must contain, in relation to each declaration, all of the information supplied to the Electoral Commission in connection with the declaration in accordance with paragraph 3.
- (4) Where a declaration is made to the Electoral Commission under paragraph 2, the Electoral 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 Electoral Commission under paragraph 3(4) the Electoral 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 Electoral Commission may designate permitted participants as designated organisations for the purposes of this schedule.
- (2) The Electoral Commission may make a designation under this paragraph only on an application made under paragraph 6.

- (3) The Electoral 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 Electoral 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 Electoral Commission in accordance with this paragraph, the application must be determined by the Electoral 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 Electoral Commission must designate the applicant unless they are 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 Electoral Commission must designate whichever of the applicants appears to them to represent to the greatest extent those campaigning for that outcome unless they are 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 may recover from the Electoral Commission the costs of sending 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 constitutes a postal 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 may also recover from the Electoral Commission the costs of sending 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) The costs recoverable under sub-paragraphs (1) and (2) are the costs of postage of the postal communication.

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 1983 Act (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 voting 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 Electoral 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 Electoral 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) does not exceed £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 provision of any rights conferred on a designated organisation (or persons authorised by such an organisation) by virtue of paragraphs 7 to 9, or
 - (b) 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 30(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 the amount of the payment does not exceed £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 £5,000.
 - (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 body or 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, £250,000, or
 - (c) if the permitted participant is not such a registered party, £50,000.
- (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 39.
- (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 Electoral 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) Where the return prepared under paragraph 21 in respect of the referendum expenses incurred by a permitted participant that is a designated organisation indicates that the expenses incurred exceed £250,000, a report must be prepared by a qualified auditor on the return.
- (2) If it appears to the Electoral 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 Electoral 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 Electoral Commission, including the auditor's remuneration, may be recovered by the Electoral Commission from the permitted participant.
- (4) An auditor appointed by the Electoral 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 Electoral Commission may give the person such written directions as they consider 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 Electoral 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 Electoral 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 Electoral 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 Electoral 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 Electoral 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 Electoral 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 Electoral 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 29.

Public inspection of returns under paragraph 21

- 25 (1) Where the Electoral Commission receives any return under paragraph 21 they 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 them.
- (2) If the return contains a statement of relevant donations in accordance with paragraph 21(2)(d) the Electoral 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 Electoral Commission—
- (a) they 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, they must arrange for the return or other document to be returned to that person.

PART 4

PUBLICATIONS

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 referendum question,
 - (c) puts any arguments for or against any outcome, 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 a designated organisation or on behalf of the Electoral Commission, 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 on either 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 on either 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.

Display of advertisements

- 28 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

- 29 (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 30 to 32.
 - (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.
 - (7) Where any provision of this Part refers to a donation for the purpose of meeting a particular kind of expenses incurred by or on behalf of a permitted participant—
 - (a) the reference includes a reference to a donation for the purpose of securing that any such expenses are not so incurred, and

- (b) a donation is to be taken to be a donation for either of those purposes if, having regard to all the circumstances, it must reasonably be assumed to be such a donation.
- (8) Sub-paragraphs (9) and (10) apply to any provision of this Part which provides, in relation to a permitted participant, that money spent (otherwise than by or on behalf of the permitted participant) in paying expenses incurred directly or indirectly by the permitted participant is to constitute a donation to the permitted participant.
- (9) The reference in any such provision to money so spent is a reference to money so spent by a person, other than the permitted participant, out of the person's own resources (with no right to reimbursement out of the resources of the permitted participant).
- (10) Where by virtue of any such provision any amount of money so spent constitutes a donation to the permitted participant, the permitted participant is to be treated as receiving an equivalent amount on the date on which the money is paid to the creditor in respect of the expenses in question.
- (11) For the purposes of this Part, it is immaterial whether a donation received by a permitted participant is so received in Scotland or elsewhere.

Donations: general rules

- 30 (1) "Donation", in relation to a permitted participant, means (subject to paragraph 32)—
- (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 31),
 - (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 31) 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

- 31 (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

- 32 (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 35(3)(a) or (b)).
- (2) Any donation the value of which (as determined in accordance with paragraph 33) does not exceed £500 is to be disregarded.

Value of donations

- 33 (1) The value of any donation falling within paragraph 30(1)(a) (other than money) is to be taken to be the market value of the property in question.
- (2) Where, however, paragraph 30(1)(a) applies by virtue of paragraph 30(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 30(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 31(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 30(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

- 34 (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) which exceeds £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 40(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 40(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 exceeds £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 40(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

- 35 (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 40(1)(c) to be included in a statement under paragraph 39 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 34(1), or which it is decided the permitted participant should refuse, then—
- (a) unless the donation falls within paragraph 34(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 36(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

- 36 (1) For the purposes of paragraph 35(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 Electoral 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 Electoral Commission in pursuance of sub-paragraph (1)(c) is to be paid by the Electoral Commission into the Scottish Consolidated Fund.

Forfeiture of donations made by impermissible or unidentifiable donors

- 37 (1) This paragraph applies to any donation received by a permitted participant—
- (a) which, by virtue of paragraph 34(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 Electoral 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

- 38 (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

- 39 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 40 and 41.

Donations from permissible donors

- 40 (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 33,
 - (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 exceeds £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)), exceeds 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

- 41 (1) This paragraph applies to relevant donations falling within paragraph 34(1)(a) or (b).
- (2) Where paragraph 34(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 33, 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 35(3)(a).
- (3) Where paragraph 34(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 33, 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 35(3)(b).

SCHEDULE 5
(introduced by section 11)

OFFENCES

Personation

- 1 (1) A person (“A”) is guilty of personation in the referendum if—
- (a) A votes in person or by post in the referendum as some other person, whether as a voter or as proxy, and whether that other person is living or dead or is a fictitious person, or
 - (b) A votes, as proxy, in person or by post in the referendum—
 - (i) for a person whom A knows or has reasonable grounds for supposing to be dead or to be a fictitious person, or
 - (ii) when A knows or has reasonable grounds for supposing that A’s appointment as proxy is no longer in force.
- (2) For the purposes of this paragraph, a person 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.
- (3) A person is guilty of a corrupt practice if the person commits the offence of personation in the referendum or aids, abets, counsels or procures the commission of that offence.

Other voting offences

- 2 (1) A person (“A”) 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.
- (8) 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.
- (9) 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 23 of the conduct rules.
- (10) An offence under this paragraph is an illegal practice, but the court before which a person is convicted of any such offence may, if the court thinks it just in the special circumstances of the case, mitigate or entirely remit any incapacity imposed by virtue of paragraph 18.

Imitation poll cards

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

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 or providing false information in, or in connection with, such an application,
 - (c) inducing the registration officer or counting officer to send a postal ballot paper or any communication relating to a postal or proxy vote to an address which has not been agreed to by the person entitled to the vote,
 - (d) causing a communication relating to a postal or proxy vote or containing a postal ballot paper not to be delivered to the intended recipient.
- (3) In sub-paragraph (1)(b), 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 is guilty of a corrupt practice if the person commits an offence under sub-paragraph (1), or aids, abets, counsels or procures the commission of that offence.

Breach of official duty

- 5 (1) If a person to whom this paragraph applies without reasonable cause (and whether by act or omission) breaches the person’s official duty, the person 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) the Chief Counting Officer,
 - (b) any proper officer, registration officer, counting officer or presiding officer, and

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

Requirement of secrecy

- 7 (1) Every person (other than one mentioned in sub-paragraph (2)) attending at a polling station in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not, except for a purpose authorised by law, communicate to any person before the close of the poll the information described in sub-paragraph (3).
- (2) Sub-paragraph (1) does not apply to—
- (a) a person attending at the polling station for the purpose of voting,

- (b) a person under the age of 16 accompanying a voter,
 - (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 5 of the conduct rules.
- (4) Every person attending at the counting of the votes in the referendum must maintain and aid in maintaining the secrecy of voting in the referendum and must not—
- (a) ascertain or attempt to ascertain at the counting of the votes the unique identifying number on the back of any ballot paper,
 - (b) communicate any information obtained at the counting of the votes as to the outcome for which any vote is given on any particular ballot paper.
- (5) A person must not—
- (a) interfere with or attempt to interfere with a voter when recording the voter's vote in the referendum,
 - (b) otherwise obtain or attempt to obtain in a polling station information as to the outcome for which a voter in that station is about to vote or has voted in the referendum,
 - (c) communicate at any time to any person any information obtained in a polling station in the referendum as to the outcome for which a voter in that station is about to vote or has voted, or as to the unique identifying number on the back of a ballot paper given to a voter at that station, or
 - (d) directly or indirectly induce a voter to display a ballot paper after the voter has marked it so as to make known to any person any outcome for which the voter has or has not voted in the referendum.
- (6) 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 a purpose authorised by law, communicate, before the poll is closed, to any person any information obtained at those proceedings as to the official mark,
 - (b) except for a purpose authorised by law, communicate to any person at any time any information obtained at those proceedings as to the unique identifying number on the back of any ballot paper sent to any person,
 - (c) except for a purpose authorised by law, attempt to ascertain at the proceedings in connection with the receipt of ballot papers the unique identifying number on the back of any ballot paper, or
 - (d) attempt to ascertain at the proceedings in connection with the receipt of the ballot papers the outcome for which any vote is given in any particular ballot paper or communicate any information with respect thereto obtained at those proceedings.

- (7) A companion of a voter with disabilities must not communicate at any time to any person any information as to the outcome for which that voter intends to vote or has voted, or as to the unique identifying number on the back of a ballot paper given for the use of that voter.
- (8) 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 to a fine not exceeding level 5 on the standard scale (or both).
- (9) In this paragraph a voter with disabilities is a voter who has made a declaration under rule 22(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 to 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 sub-paragraph (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 sub-paragraph (1)),

is guilty of an illegal practice.

Treating

- 10 (1) A person (“A”) is guilty of treating in connection with the referendum if A, whether before, during or after the referendum, corruptly gives or provides, or pays wholly or in part the expense of giving or providing, any meat, drink, entertainment or provision to or for any person—
- (a) for the purpose of corruptly influencing that person or any other person to vote or refrain from voting in the referendum, or
 - (b) on account of that person or any other person having voted or refrained from voting, or being about to vote or refrain from voting, in the referendum.
- (2) Sub-paragraph (1) applies regardless of whether an act is done—
- (a) directly or indirectly,
 - (b) by the person or by another person on the person’s behalf.
- (3) A voter or proxy who corruptly accepts or takes any such meat, drink, entertainment or provision is also guilty of treating in connection with the referendum.
- (4) A person is guilty of a corrupt practice if the person is guilty of treating in connection with the referendum.

Undue influence

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

Bribery

- 12 (1) A person is guilty of bribery in connection with 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 paragraph (a) on account of any voter having voted or refrained from voting,
 - (c) makes any gift or procurement as mentioned in paragraph (a) to or for any person in order to induce that person to procure, or endeavour to procure, any particular outcome in the referendum, or
 - (d) upon or in consequence of any such gift or procurement as mentioned in paragraph (a), procures or engages, promises or endeavours to procure any particular outcome in the referendum.
- (2) A person is guilty of bribery in connection with the referendum if the person—
- (a) advances or pays or causes to be paid any money to or for the use of any other person with the intent that that money or any part of it is to be expended in bribery in connection with the referendum, or
 - (b) knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or partly expended in bribery in connection with the referendum.
- (3) A voter is guilty of bribery in connection with the referendum if, whether before or during the referendum, the voter receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment for the voter or for any other person for—
- (a) voting or agreeing to vote, or
 - (b) for refraining or agreeing to refrain from voting.
- (4) A person is guilty of bribery in connection with the referendum if, after the referendum, the person receives any money or valuable consideration on account of any person—
- (a) having voted or refrained from voting, or
 - (b) having induced any other person to vote or refrain from voting.
- (5) Sub-paragraphs (1) to (4) apply regardless of whether an act is done—
- (a) directly or indirectly,
 - (b) by the person or by another person on the person's behalf.
- (6) For the purposes of sub-paragraph (1)—
- (a) references to giving money include references to giving, lending, agreeing to give or lend, offering, promising, or promising to procure or to endeavour to procure any money or valuable consideration,
 - (b) references to procuring any office include references to giving, procuring, agreeing to give or procure, offering, promising, or promising to procure or to endeavour to procure any office, place or employment.
- (7) Sub-paragraphs (1) and (2) do not apply to any money paid or agreed to be paid for or on account of any legal expenses incurred in good faith at or concerning the referendum.
- (8) A person is guilty of a corrupt practice if the person is guilty of bribery in connection with 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 summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum (or both),
- (b) on conviction on indictment—
- (i) in the case of a corrupt practice under paragraph 1 or 4, to imprisonment for a term not exceeding 2 years, or to a fine (or both),
- (ii) in any other case, to imprisonment for a term not exceeding 12 months, or to a fine (or both).

Prosecutions for illegal practices

- 16 (1) A person 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) applies in addition to any punishment imposed on the person under paragraph 15 or 16.

Prohibition of paid canvassers

- 19 If a person is, whether before or during the referendum, engaged or employed for payment or promise of payment as a canvasser for the purpose of promoting a particular outcome in the referendum—
- (a) the person 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 22)

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),

“absent vote” is to be construed in accordance with paragraph 1(8)(a) of schedule 2,

“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 22(8) of the conduct rules,

“ballot paper account” has the meaning given in rule 27(4) of the conduct rules,

“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),

“companion” has the meaning given in rule 22(1) of the conduct rules,

“companion declaration” has the meaning given in rule 22(2) of the conduct rules,

“completed corresponding number list” has the meaning given in rule 27(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 4 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” has the meaning given in paragraph 17(1) of schedule 2,

“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 21(2) of the conduct rules,

“members of the Chief Counting Officer’s staff” means staff appointed or provided under section 5(8),

“members of the counting officer’s staff” means staff provided under section 5(9),

“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,

“observer” has the meaning given in section 8(2),

“outcome” means a particular outcome in relation to the referendum question,

“payment” includes any pecuniary or other reward,

“permitted participant” has the meaning given in paragraph 2 of schedule 4,

“polling day alterations list” has the meaning given in rule 25(2) of the conduct rules,

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

“postal voting statement” has the meaning given in rule 8 of the conduct rules,

“prescribed”, in the conduct rules, means prescribed by the Chief Counting Officer,

“presiding officer” has the meaning given in rule 10 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” 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,

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

“referendum period” means the period of 16 weeks ending on the date of the referendum,

“referendum question” means the question to be voted on in the referendum (as mentioned in section 1(2)),

“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 Electoral 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 Electoral 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 24(1) of the conduct rules,

“tendered ballot paper” has the meaning given in rule 23 of the conduct rules,

“tendered votes list” has the meaning given in rule 23(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 the back of 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,

“verification statement” has the meaning given in rule 29(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).

