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

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### SCHEDULE 3 CAMPAIGN RULES

#### PART 5

##### CONTROL OF DONATIONS

###### *Operation and interpretation of this Part*

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

- 31 (1) “Donation”, in relation to a permitted participant, means (subject to paragraph 33)—

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- (a) a gift to the permitted participant of money or other property,
- (b) any sponsorship provided in relation to the permitted participant (as defined by paragraph 32),
- (c) any money spent (otherwise than by or on behalf of the permitted participant) in paying any referendum expenses incurred by or on behalf of the permitted participant,
- (d) 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),
- (e) 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 for the purposes of sub-paragraph (1)(d) whether any property, services or facilities provided for the use or benefit of a permitted participant is or are so provided otherwise than on commercial 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 provision of the property, services or facilities.
- (4) Where (apart from this sub-paragraph) anything would be a donation both by virtue of sub-paragraph (1)(b) and by virtue of any other provision of this paragraph, sub-paragraph (1)(b) (together with paragraph 32) applies in relation to it to the exclusion of the other provision of this paragraph.
- (5) Anything given or transferred to any officer, member, trustee or agent of a permitted participant in the officer's, member's, trustee's or agent's capacity as such (and not for the officer's, member's, trustee's or agent's own use or benefit) is to be regarded as given or transferred to the permitted participant (and references to donations received by a permitted participant accordingly include donations so given or transferred).
- (6) In this paragraph—
  - (a) any reference to anything being given or transferred to a permitted participant or any other person is a reference to its being given or transferred either directly or indirectly through any third person,
  - (b) “gift” includes bequest.

### *Sponsorship*

- 32 (1) For the purposes of this schedule, sponsorship is provided in relation to a permitted participant if—
- (a) any money or other property is transferred to the permitted participant or to any person for the benefit of the permitted participant, and

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- (b) the purpose (or one of the purposes) of the transfer is (or must, having regard to all the circumstances, reasonably be assumed to be)—
  - (i) to help the permitted participant with meeting, or to meet, to any extent any defined expenses incurred or to be incurred by or on behalf of the permitted participant, or
  - (ii) to secure that to any extent any such expenses are not so incurred.
- (2) In sub-paragraph (1), “defined expenses” means expenses in connection with—
  - (a) any conference, meeting or other event organised by or on behalf of the permitted participant,
  - (b) the preparation, production or dissemination of any publication by or on behalf of the permitted participant, or
  - (c) any study or research organised by or on behalf of the permitted participant.
- (3) The following do not, however, constitute sponsorship by virtue of sub-paragraph (1)—
  - (a) the making of any payment in respect of—
    - (i) any charge for admission to any conference, meeting or other event, or
    - (ii) the purchase price of, or any other charge for access to, any publication,
  - (b) the making of any payment in respect of the inclusion of an advertisement in any publication where the payment is made at the commercial rate payable for the inclusion of such an advertisement in any such publication.
- (4) In this paragraph “publication” means a publication made available in whatever form and by whatever means (whether or not to the public at large or any section of the public).

*Payments etc. not to be regarded as donations*

- 33 (1) None of the following is to be regarded as a donation—
- (a) any grant provided out of public funds,
  - (b) the provision of any rights conferred on a designated organisation (or persons authorised by a designated organisation) by virtue of—
    - (i) paragraph 9 or 10 (right to use rooms for public meetings), or
    - (ii) any enactment conferring a right to send free of charge postal communications containing matter relating to the referendum,
  - (c) the transmission by a broadcaster of a referendum campaign broadcast,
  - (d) 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
  - (e) any interest accruing to a permitted participant in respect of any donation which is dealt with by the permitted participant in accordance with paragraph 36(3)(a) or (b).
- (2) Any donation the value of which (as determined in accordance with paragraph 34) does not exceed £500 is to be disregarded.

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*Value of donations*

- 34 (1) The value of any donation falling within paragraph 31(1)(a) (other than money) is to be taken to be the market value of the property in question.
- (2) Where, however, paragraph 31(1)(a) applies by virtue of paragraph 31(2), the value of the donation is to be taken to be the difference between—
- (a) the value of the money or (as the case may be) the market value of the property, in question, and
  - (b) the total value in monetary terms of the consideration provided by or on behalf of the permitted participant.
- (3) The value of any donation falling within paragraph 31(1)(b) is to be taken to be the value of the money or (as the case may be) the market value of the property, transferred as mentioned in paragraph 32(1) and accordingly any value in monetary terms of any benefit conferred on the person providing the sponsorship in question is to be disregarded.
- (4) The value of any donation falling within paragraph 31(1)(d) 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 provision of the property, services or facilities if the property, services or facilities had been provided on commercial terms, and
  - (b) the total value in monetary terms of the consideration (if any) actually so provided by or on behalf of the permitted participant.
- (5) Where a donation such as is mentioned in sub-paragraph (4) confers an enduring benefit on the donee over a particular period, the value of the donation—
- (a) is to be determined at the time when it is made, but
  - (b) is to be so determined by reference to the total benefit accruing to the donee over that period.

*Prohibition on accepting donations from impermissible donors*

- 35 (1) A relevant donation received by a permitted participant must not be accepted by the permitted participant if—
- (a) the person by whom the donation would be made is not, at the time of its receipt by the permitted participant, a permissible donor, 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.
- (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) is to be regarded as a relevant donation received by the permitted participant from a person who is not a permissible donor unless it is—
- (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—

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- (i) persons who at the time of its receipt by the permitted participant are permissible donors, or
  - (ii) the members of an unincorporated association which at that time is 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 41(1)(c) to be given in respect of the donor of a donation to which that paragraph applies, and
  - (b) (in any case) all such details in respect of the donation as are required by virtue of paragraph 41(1)(a).
- (6) Where—
  - (a) any person (“the agent”) causes an amount to be received by a permitted participant by way of a donation on behalf of another person (“the donor”), and
  - (b) the amount of the donation 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 41(1)(c) to be given in respect of the donor of a donation to which that paragraph applies.
- (7) A person commits an offence if, without reasonable excuse, the person fails to comply with sub-paragraph (5) or (6).
- (8) A person who commits an offence under sub-paragraph (7) is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

#### *Acceptance or return of donations*

- 36 (1) Sub-paragraph (2) applies where—
  - (a) a donation is received by a permitted participant, and
  - (b) it is not immediately decided that the permitted participant should (for whatever reason) refuse the donation.
- (2) All reasonable steps must be taken without delay 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,

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- (b) whether the donor is a permissible donor, and
  - (c) if it appears that the donor is a permissible donor, all such details in respect of the donor as are required by virtue of paragraph 41(1)(c) to be included in a statement under paragraph 40 in respect of a relevant donation.
- (3) If a permitted participant receives a donation which the permitted participant is prohibited from accepting by virtue of paragraph 35(1), or which it is decided the permitted participant should refuse, then—
- (a) unless the donation falls within paragraph 35(1)(b), the donation, or a payment of an equivalent amount, must be sent back to the person who made the donation or any person appearing to be acting on that person's behalf,
  - (b) if the donation falls within that paragraph, the required steps (see paragraph 37(1)) must be taken in relation to the donation,
- within the period of 30 days beginning with the date when the donation is received by the permitted participant.
- (4) The permitted participant and the responsible person each commit 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, and
  - (b) as a result, the responsible person believed the donor to be a permissible donor.
- (6) The responsible person in relation to a permitted participant commits 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 who commits 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 with in accordance with that sub-paragraph.
- (9) Where a donation is received by a permitted participant in the form of an amount paid into an account held by the permitted participant with a financial institution, it is to be taken for the purposes of this schedule to have been received by the permitted participant at the time when the permitted participant is notified in the usual way of the payment into the account.

*Return of donation where donor unidentifiable*

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

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- (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 Commission into the Scottish Consolidated Fund.

*Forfeiture of donations made by impermissible or unidentifiable donors*

- 38 (1) This paragraph applies to any donation received by a permitted participant—
- (a) which, by virtue of paragraph 35(1), the permitted participant is prohibited from accepting, but
  - (b) which has been accepted by the permitted participant.
- (2) A 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) Rules of court may make provision—
- (a) with respect to applications and appeals under this paragraph,
  - (b) for the giving of notice of such applications or appeals to persons affected by them,
  - (c) for the sisting of such persons as parties,
  - (d) generally with respect to procedure in such applications or appeals.
- (7) An amount forfeited by virtue of an order under this paragraph is to be paid into the Scottish Consolidated Fund.
- (8) Sub-paragraph (7) does not apply—
- (a) where an appeal is made under sub-paragraph (5), before the appeal is determined or otherwise disposed of, or
  - (b) in any other case, before the end of any period within which, in accordance with rules of court, an appeal under sub-paragraph (5) is to be made.

*Evasion of restrictions on donations*

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

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(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.

- (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 who commits an offence under this paragraph is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 12 months or to a fine not exceeding the statutory maximum (or both),
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine (or both).

#### *Statement of relevant donations*

40 The responsible person in relation to a permitted participant must include in any return required to be prepared under paragraph 22 a statement of relevant donations which complies with paragraphs 41 and 42.

#### *Donations from permissible donors*

- 41 (1) The statement must record, in relation to each relevant donation falling within sub-paragraph (3) which is accepted by the permitted participant—
- (a) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 34,
  - (b) the date when the donation was accepted by the permitted participant, and
  - (c) the information about the donor which is, in connection with recordable donations to registered parties, required to be recorded in donation reports by virtue of paragraph 2 of schedule 6 of the 2000 Act or, where the donor is within any of paragraphs (i) to (l) of paragraph 1(2), the information mentioned in sub-paragraph (2).
- (2) The information to be recorded in the case of a donor within any of paragraphs (i) to (l) of paragraph 1(2) is—
- (a) in the case of a body within paragraph 1(2)(i) (body incorporated by Royal Charter)—
    - (i) the name of the body, and
    - (ii) the address of its main office in the United Kingdom,
  - (b) in the case of a body within paragraph 1(2)(j) or (k) (charitable incorporated organisation)—
    - (i) the name of the body, and



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- (ii) the address of its principal office,
- (c) in the case of a body within paragraph 1(2)(l) (Scottish partnership)—
  - (i) the name of the body, and
  - (ii) the address of its main office in the United Kingdom.
- (3) Sub-paragraph (1) applies to a relevant donation where—
  - (a) the value of the donation exceeds £7,500, or
  - (b) the value of it and any other relevant benefit or benefits exceeds that amount.
- (4) In sub-paragraph (3)(b) “relevant benefit” means any relevant donation or regulated transaction (within the meaning of paragraph 46(4)) made by or entered into with the person who made the donation.
- (5) The statement must also record the total value of any relevant donations, other than those falling within sub-paragraph (3), which are accepted by the permitted participant.
- (6) In the case of a donation made by an individual who has an anonymous entry in an electoral register, if the statement states that the permitted participant has seen evidence that the individual has such an anonymous entry, the statement must be accompanied by a copy of the evidence.

*Donations from impermissible or unidentifiable donors*

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

*Donation reports during referendum period*

- 43 (1) The responsible person in relation to a permitted participant must prepare a report under this paragraph in respect of each of the following periods—
  - (a) the period starting with the relevant day and ending with the 14th day of the referendum period,
  - (b) the succeeding period of 4 weeks during the referendum period, and
  - (c) the period from the end of the succeeding 4 week period referred to in paragraph (b) until the end of the day before the date of the referendum.

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- (2) In sub-paragraph (1)(a), the “relevant day” is the day on which the Act of the Scottish Parliament referred to in section 1(2) is passed or regulations made under that Act are laid before the Scottish Parliament.
- (3) The report for a period must record, in relation to each relevant donation of more than £7,500 which is received by the permitted participant during the period—
  - (a) the amount of the donation (if a donation of money, in cash or otherwise) or (in any other case) the nature of the donation and its value as determined in accordance with paragraph 34,
  - (b) the date when the donation was received 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 weekly donation reports by virtue of paragraph 3 of schedule 6 of the 2000 Act.
- (4) If during any period no relevant donations of more than £7,500 were received by the permitted participant, the report for the period must contain a statement of that fact.
- (5) Where an individual or body becomes a permitted participant during a period mentioned in sub-paragraph (1)(b) or (c) (“the period in question”)—
  - (a) a separate report under this paragraph need not be prepared in respect of any preceding period, but
  - (b) for the purposes of sub-paragraphs (3) and (4), the report for the period in question must also cover the time from the relevant day (as defined in sub-paragraph (2)) to the start of the period, and references in those sub-paragraphs to the period are to be read accordingly.
- (6) Sub-paragraphs (3) and (4) apply to a relevant donation received by a permitted participant before the start of the referendum period only if the donation was for the purpose of meeting referendum expenses to be incurred by the permitted participant during the referendum period.
- (7) References in this paragraph and in paragraph 44 to a relevant donation received by a permitted participant include any donation received at a time before the individual or body concerned became a permitted participant, if the donation would have been a relevant donation had the individual or body been a permitted participant at that time.
- (8) A report under this paragraph must be delivered by the responsible person to the Electoral Commission within the period of 7 days beginning with the end of the period to which the report relates.
- (9) For the purpose of sub-paragraph (8), the following days are to be disregarded—
  - (a) a Saturday or Sunday,
  - (b) Christmas Eve, Christmas Day or Easter Monday,
  - (c) a day which is a bank holiday in Scotland under the Banking and Financial Dealings Act 1971,
  - (d) a day appointed for public thanksgiving or mourning.
- (10) If, in relation to a donation made by an individual who has an anonymous entry in an electoral register, a report under this paragraph contains a statement that the permitted participant has seen evidence that the individual has such an anonymous entry, the report must be accompanied by a copy of the evidence.
- (11) The responsible person commits an offence if, without reasonable excuse, the person—

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- (a) fails to comply with the requirements of sub-paragraph (8) in relation to a report under this paragraph,
  - (b) delivers a report to the Electoral Commission that does not comply with the requirements of sub-paragraphs (3), (4) or (10).
- (12) A person who commits 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).

*Declaration of responsible person as to donation reports under paragraph 43*

- 44 (1) Each report prepared under paragraph 43 in respect of relevant donations received by 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 report, and
  - (b) that to the best of the responsible person's knowledge and belief, it is a complete and correct report as required by law.
- (3) 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 report relates.
- (4) A person who commits 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).

*Public inspection of donation reports under paragraph 43*

- 45 (1) Where the Electoral Commission receive a report under paragraph 43 they must—
- (a) as soon as practicable after receiving the report, make a copy of the report and of any document accompanying it available for public inspection, and
  - (b) keep any such copy available for public inspection for the period for which the report or other document is held by them.
- (2) The Commission must secure that the copy of the report 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 2 years beginning with the date when any report under paragraph 43 or other document accompanying it is received by the Commission—
- (a) they may cause the report or other document to be destroyed, or
  - (b) if requested to do so by the responsible person in the case of the permitted participant concerned, they must arrange for the report or other document to be returned to that person.

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