

Draft Order laid before Parliament under section 156(4A) of the Political Parties, Elections and Referendums Act 2000 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2010 No.

REPRESENTATION OF THE PEOPLE

**The Political Parties, Elections and
Referendums (Civil Sanctions) Order 2010**

Made - - - - *****
Coming into force - - *1st July 2010*

The Secretary of State makes the following Order in exercise of the powers conferred by paragraphs 1, 2, 5, 9, 10, 15, 16, 18, 19, and 21 of Schedule 19C to the Political Parties, Elections and Referendums Act 2000(1).

The Secretary of State has consulted the Electoral Commission pursuant to paragraphs 17(1) and (3) of Schedule 19C to the Political Parties, Elections and Referendums Act 2000(2).

In accordance with section 156(4A) of the Political Parties, Elections and Referendums Act 2000, a draft of these Regulations has been laid before and approved by a resolution of each House of Parliament.

Citation and commencement

1.—(1) This Order may be cited as the Political Parties, Elections and Referendums (Civil Sanctions) Order 2010 and comes into force on 1st July 2010.

Interpretation

2. In this Order,

“the 2000 Act” means the Political Parties, Elections and Referendums Act 2000;

“a compliance notice” means a notice imposing a requirement under paragraph 5(5)(b) of Schedule 19C;

“a final notice” means a notice under paragraphs 2(4) or 6(5) of Schedule 19C;

“a notice of intent” means a notice under paragraphs 2(1) or 6(1) of Schedule 19C; and

(1) 2000 c.41. Schedule 19C is inserted by section 3(2) of and Schedule 2 to the Political Parties and Elections Act 2009.

(2) Paragraph 17(1) of Schedule 19C Act requires the Secretary of State to consult with the Commission and such other persons as he considers appropriate. With reference to paragraph 17(3), the Secretary of State consulted with the Electoral Commission both prior to and after Schedule 19C came into effect.

“a restoration notice” means a notice imposing a requirement under paragraph 5(5)(c) of Schedule 19C; and

“Schedule 19C” means Schedule 19C to the 2000 Act.

Provision made by Schedule 1

- 3.—(1) Part 1 of Schedule 1 makes provision for fixed monetary penalties⁽³⁾.
- (2) Part 2 of Schedule 1 makes provision for discretionary requirements⁽⁴⁾.
- (3) Part 3 of Schedule 1 makes provision for stop notices⁽⁵⁾.
- (4) Part 4 of Schedule 1 makes provision for enforcement undertakings⁽⁶⁾.

Prescribed offences and prescribed restrictions and requirements

4.—(1) The offences prescribed for the purposes of paragraphs 1(1)(a) (fixed monetary penalties), 5(1)(a) (discretionary requirements), 10(2)(b)(i) and 10(3)(b)(i) (stop notices), and 15(1)(a)(i) (enforcement undertakings) of Schedule 19C are specified in Part 1 of Schedule 2.

(2) The requirements or restrictions prescribed for the purposes of paragraphs 1(1)(b), 5(1)(b), 10(2)(b)(ii) and 10(3)(b)(ii), and 15(1)(a)(ii) of Schedule 19C are specified in Part 2 of Schedule 2.

(3) The offences, requirements or restrictions prescribed for the purposes of paragraph 1(2), (3) and (4) (fixed monetary penalties) and 5(2), (3) and (4) (discretionary requirements) of Schedule 19C are specified in Part 3 of Schedule 2.

Recovery of payments

5.—(1) In England and Wales and Northern Ireland, the Commission⁽⁷⁾ may recover a monetary penalty, any interest or other financial penalty for late payment on the order of a court, as if payable under a court order.

(2) In Scotland, the Commission may recover a monetary penalty, any interest or other financial penalty for late payment as a civil debt.

Non-compliance penalties

6.—(1) The amount of a non-compliance penalty must be determined by the Commission having regard to all the circumstances of the case and must be not less than £500 or more than £20,000.

- (2) The notice imposing a non-compliance penalty must include information as to—
 - (a) the grounds for imposing the non-compliance penalty;
 - (b) the amount to be paid;
 - (c) the period in which payment must be made, which must not be less than 28 days beginning with the date on which the notice imposing the penalty was received;
 - (d) rights of appeal; and
 - (e) the consequences of failure to make payment in the specified time.
- (3) A non-compliance penalty must be paid to the Commission.

(3) “Fixed monetary penalty” is defined at paragraph 1(5) of Schedule 19C.

(4) “Discretionary requirement” is defined at paragraph 5(5) of Schedule 19C.

(5) “Stop notice” is defined at paragraph 10(1) of Schedule 19C.

(6) “Enforcement undertaking” is defined at paragraph 15(1)(b) of Schedule 19C.

(7) “The Commission” is defined in section 1(1) of the 2000 Act.

(4) If the steps specified in the compliance notice or restoration notice are completed (and a certificate is issued by the Commission under paragraph 7 of Part 2 of Schedule 1) before the time set for payment of the non-compliance penalty the Commission may by notice waive, or reduce the amount of, any penalty imposed under paragraph 9(1) of Schedule 19C.

(5) An appeal under paragraph 9(3) of Schedule 19C against a notice imposing a non-compliance penalty must be made within 28 days of the day on which the notice was received.

Withdrawal or variation of notices

7.—(1) The Commission may by notice at any time withdraw, reduce the monetary amount payable under, or reduce the steps to be taken under, any final notice.

(2) The Commission may by notice at any time withdraw a stop notice (without prejudice to their power to serve another in respect of the activity specified in the withdrawn notice).

Appeals

8.—(1) Where an appeal under paragraph 13(1) or (2) of Schedule 19C is made, the stop notice is not suspended unless suspended or varied on the order of the county court or (in Scotland) the sheriff.

(2) On an appeal under paragraph 2(6), 6(6), 9(3), 13(1) or (2) of Schedule 19C or under paragraph 16 of Part 4 of Schedule 1 to this Order the county court or (in Scotland) the sheriff may—

- (a) withdraw the requirement or notice;
- (b) confirm the requirement or notice;
- (c) vary the requirement or notice;
- (d) take such steps as the Commission could take in relation to the act or omission giving rise to the requirement or notice;
- (e) remit the decision whether to confirm the requirement or notice, or any matter relating to that decision, to the Commission.

Transitional arrangements

9.—(1) A fixed monetary penalty or discretionary requirement may not be imposed on, nor an enforcement undertaking accepted from, a person in relation to any offence, or the contravention of any restriction or requirement, which constitutes an offence or contravention by reason of any act or omission which occurs before 1st July 2010.

(2) A stop notice may not be imposed on a person in relation to any offence, or the contravention of any restriction or requirement, which the Commission reasonably believe has occurred or will occur before 1st July 2010.

Signed by authority of the Secretary of State

Date

Name
Minister of State
Ministry of Justice

SCHEDULE 1

Article 3

PART 1

Fixed monetary penalties

Prescribed amount

1. For the purposes of paragraph 1(5) of Schedule 19C (fixed monetary penalty) the amount prescribed is £200.

Discharge of liability

2. For the purposes of paragraph 2(2) of Schedule 19C (sum by which penalty may be discharged) the amount prescribed is £200.

Appeals

3.—(1) An appeal under paragraph 2(6) of Schedule 19C against the decision to impose a fixed monetary penalty must be made within 28 days of the day on which the final notice was received.

(2) The notice is suspended from the date that the appeal is made.

(3) The suspension has effect until the date that the appeal is determined or withdrawn.

Late payment

4.—(1) Subject to sub-paragraphs (4) and (5), the fixed monetary penalty must be paid within 28 days of the date on which the final notice was received.

(2) If the penalty is not paid within that period the amount payable is increased by 25%.

(3) If the penalty (as increased by sub-paragraph (2)) remains unpaid after 56 days from the date on which the final notice was received the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.

(4) In the case of an appeal, any penalty which falls to be paid, whether because the court upheld the penalty or varied it, is payable within 28 days of the date of determination of the appeal, and if not paid within that period the amount payable is increased by 25%.

(5) If the penalty (as increased by sub-paragraph (4)) remains unpaid after 56 days from the date of the determination of an unsuccessful appeal the amount payable is the amount of the fixed monetary penalty originally imposed increased by 50%.

PART 2

Discretionary Requirements

Variable monetary penalties: maximum amount

5. The maximum amount that the Commission may impose as a variable monetary penalty is £20,000.

Appeals

6.—(1) An appeal under paragraph 6(6) of Schedule 19C against the decision to impose a discretionary requirement must be made within 28 days of the day on which the final notice was received.

(2) The notice is suspended from the date that the appeal is made.

(3) The suspension has effect until the date that the appeal is determined or withdrawn.

Completion

7.—(1) Where, after the service of a compliance notice or a restoration notice on a person, the Commission is satisfied that the person has taken the steps specified in the notice, they must issue a certificate to that effect.

(2) A compliance notice or a restoration notice ceases to have effect on the issue of a certificate relating to that notice.

(3) A person on whom a compliance notice or a restoration notice is served may at any time apply for a certificate and the Commission must make a decision whether to issue a certificate within 28 days of the day on which they receive such an application.

(4) An application under paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine that the compliance notice or restoration notice has been complied with.

(5) Where the Commission decides not to issue a certificate they must notify the person and provide that person with information as to—

(a) the grounds for the decision not to issue a certificate; and

(b) rights of appeal.

(6) A person may appeal against a decision not to issue a certificate, and any such appeal must be made within 28 days of the day on which notification of the decision was received.

(7) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information, and if the Commission revoke a certificate, the compliance notice or restoration notice has effect as if the certificate had not been issued.

Late payment

8.—(1) Subject to sub-paragraphs (4) and (5), in the case of a variable monetary penalty, the penalty must be paid within 28 days of the date on which the final notice was received.

(2) If the penalty is not paid within that period the amount payable is increased by 25%.

(3) If the penalty (as increased by sub-paragraph (2)) remains unpaid after 56 days from the final notice being received the amount payable is the amount of the variable monetary penalty originally imposed increased by 50%.

(4) In the case of an appeal, any penalty which falls to be paid, whether because the court upheld the penalty or varied it, is payable within 28 days of the date of determination of the appeal, and if it is not paid within that period the amount payable is increased by 25%.

(5) If the penalty (as increased by sub-paragraph (4)) remains unpaid after 56 days from the date of determination of an unsuccessful appeal the amount payable is the level of the variable monetary penalty originally imposed increased by 50%.

PART 3

Stop notices

Completion Certificates

9.—(1) An application for a completion certificate must be accompanied by such information as is reasonably necessary to enable the Commission to determine that the stop notice has been complied with.

(2) Where the Commission decide not to issue a completion certificate they must notify the person and provide that person with information as to—

- (a) the grounds for the decision not to issue a completion certificate; and
- (b) rights of appeal.

10. The Commission may revoke a completion certificate if it was granted on the basis of inaccurate, incomplete or misleading information, and if the Commission revoke a completion certificate, the stop notice has effect as if the certificate had not been issued.

Appeals

11.—(1) An appeal under paragraph 13(1) of Schedule 19C against the decision to serve a stop notice must be made within 28 days of the date on which the notice was received.

(2) An appeal under paragraph 13(2) of Schedule 19C against a decision not to issue a completion certificate must be made within 28 days of the date on which notification of the decision was received.

PART 4

Enforcement undertakings

Contents of an enforcement undertaking

12.—(1) An enforcement undertaking must be in writing and include—

- (a) a statement that the undertaking is an enforcement undertaking regulated by the 2000 Act and this Order;
- (b) the terms of the undertaking;
- (c) the period within which the action specified in the undertaking must be completed;
- (d) details of how and when a person is considered to have complied with the undertaking; and
- (e) information as to the consequences of failure to comply in full or in part with the undertaking, including reference to the effect of paragraph 15(2) of Schedule 19C.

(2) The enforcement undertaking may be varied or extended if both parties agree.

Publication of enforcement undertakings

13. The Commission may publish any enforcement undertaking which they accept in whatever manner that they see fit.

Compliance with an enforcement undertaking

14.—(1) If satisfied that an enforcement undertaking has been complied with in full the Commission must issue a certificate to that effect.

(2) An enforcement undertaking ceases to have effect on the issue of a certificate relating to that notice.

(3) A person who gave the undertaking may at any time apply for a certificate, and the Commission must make a decision whether to issue a certificate within 28 days of the day on which they receive such an application.

(4) An application under paragraph (3) must be accompanied by such information as is reasonably necessary to enable the Commission to determine that the undertaking has been complied with.

(5) Where the Commission decides not to issue a certificate they must notify the person and provide that person with information as to—

- (a) the grounds for the decision not to issue a certificate; and
- (b) rights of appeal.

(6) The Commission may revoke a certificate if it was granted on the basis of inaccurate, incomplete or misleading information and if the Commission revoke a certificate, the enforcement undertaking has effect as if the certificate had not been issued.

Appeals

15. An appeal under paragraph 16 is to a county court or (in Scotland) the sheriff.

16. A person who has given an enforcement undertaking may appeal against a decision not to issue a certificate within 28 days of the date of the decision on the grounds that—

- (a) the decision was based on an error of fact;
- (b) the decision was wrong in law;
- (c) the decision was unfair or unreasonable.

SCHEDULE 2

Prescribed Offences, Restrictions and Requirements

Article 4(1)

PART 1

Prescribed Offences

<i>Provision creating offence</i>	<i>Offence</i>
section 24(8)	registration as treasurer where convicted of certain offences
section 43(7)	failure to deliver statement relating to auditor's resignation etc.
section 47(1)(a)	failure to deliver proper statement of accounts
section 47(1)(b)	failure to deliver accounts within time limits
section 54(7)	failure to provide information about donors

<i>Provision creating offence</i>	<i>Offence</i>
section 56(3), (3B) or (4)	failure to return donations
section 65(3)	failure to deliver donation reports to Commission within time limits
section 65(4)	failure to comply with requirements for recording donations in donation report
section 71L(1)	registered party entering into regulated transaction with unauthorised participant
section 71L(2)	treasurer of party entering into regulated transaction with unauthorised participant
section 71L(3)	party liable if treasurer fails to repay money obtained under regulated transaction with unauthorised participant
section 71L(4)	treasurer failing to repay money obtained under regulated transaction with unauthorised participant
section 71L(5)	party benefiting from connected transaction to which an unauthorised participant is a party
section 71L(6)	treasurer of registered party which benefits from connected transaction to which an unauthorised participant is a party
section 71L(7)	party liable if treasurer fails to repay benefit obtained in consequence of security given by unauthorised participant
section 71L(8)	treasurer failing to repay benefit obtained in consequence of security given by unauthorised participant
section 71S(4)	failure to deliver transaction reports to Commission within time limits
section 71S(5)	failure to comply with requirements for recording transactions in transaction report
section 74(4)	acceptance by ineligible person of office of deputy treasurer
section 75(2)	incurring campaign expenditure without authority
section 76(4)(a)	making payments in respect of campaign expenditure without authority
section 76(4)(b)	failure to notify treasurer of payments in respect of campaign expenditure
section 77(3)(a)	paying claim in respect of campaign expenditure where failure to comply with procedure
section 77(3)(b)	paying claim in respect of campaign expenditure outside specified time period
section 79(2)	exceeding limits on campaign expenditure
section 82(4)(a)	failure of treasurer to deliver return and auditor's report to Commission
section 82(4)(b)	failure to comply with requirements for returns

<i>Provision creating offence</i>	<i>Offence</i>
section 82(4)(c)	failure of treasurer to deliver return and court order to Commission
section 83(3)(b)	failure to deliver signed declaration with return to Commission
section 90(2)	incurring controlled expenditure without authority
section 91(4)(a)	making payments in respect of controlled expenditure without authority
section 91(4)(b)	failure to notify responsible person of payments in respect of controlled expenditure
section 92(3)(a)	paying claim in respect of controlled expenditure where failure to comply with procedure
section 92(3)(b)	paying claim in respect of controlled expenditure outside specified time period
section 94(2) or (4)	exceeding limits on controlled expenditure
section 98(4)(a)	failure of responsible person to deliver return and auditor's report to Commission
section 98(4)(b)	failure to comply with requirements for returns
section 98(4)(c)	failure to deliver return and court order to Commission
section 99(4)(b)	failure to deliver signed declaration with return to Commission
section 113(2)	incurring referendum expenses without authority
section 114(4)(a)	making payments in respect of referendum expenses without authority
section 114(4)(b)	failure to notify responsible person of payments in respect of referendum expenses
section 115(3)(a)	paying claim in respect of referendum expenses where failure to comply with procedure
section 115(3)(b)	paying claim in respect of referendum expenses outside specified time period
section 117(2)	individual (other than permitted participant) exceeding limits on referendum expenses
section 117(3) or (4)	body (other than permitted participant) exceeding limits on referendum expenses
section 118(2)	permitted participant exceeding limits on referendum expenses
section 122(4)(a)	failure to deliver return and auditor's report to Commission
section 122(4)(b)	failure to comply with requirements for returns
section 122(4)(c)	failure to deliver return and court order to Commission
section 123(4)(b)	failure to deliver signed declaration with return to Commission
section 126(8) and (9)	printing or publishing referendum material without details of printer or publisher

Draft Legislation: This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, *The Political Parties, Elections and Referendums (Civil Sanctions) Order 2010* ISBN 978-0-11-149816-3

<i>Provision creating offence</i>	<i>Offence</i>
section 143(8) or (9)	printing or publishing election material without details of printer or publisher
section 148(2)(a)	failure to supply relevant person with information
Paragraph 1B of Schedule 7	failure by members association to comply with requirement to appoint responsible person
Paragraph 6(5) of Schedule 7	failure to provide information about donors
Paragraph 12(1) of Schedule 7	failure to deliver donation report to Commission within time limit
Paragraph 12(2) of Schedule 7	failure to comply with requirements for recording donations in donation reports
Paragraph 8(3) of Schedule 7A	individual regulated participant failing to repay money obtained under controlled transaction with unauthorised participant
Paragraph 8(4) of Schedule 7A	responsible person failing to repay money obtained by members association under controlled transaction with unauthorised participant
Paragraph 8(7) of Schedule 7A	individual regulated participant failing to repay value of benefit obtained in consequence of connected transaction involving unauthorised participant
Paragraph 8(8) of Schedule 7A	responsible person failing to repay value of benefit obtained by members association in consequence of connected transaction involving unauthorised participant
Paragraph 12(1) of Schedule 7A	failure to deliver transaction report to Commission within time limit
Paragraph 12(2) of Schedule 7A	failure to comply with requirements for recording transactions on transaction reports
Paragraph 6(7) of Schedule 11	failure to provide information about donors
Paragraph 6(8) of Schedule 15	failure to provide information about donors
Paragraph 6(1) of Schedule 19A	failure to give notification or report within specified period
Paragraph 6(2) of Schedule 19A	giving notification or report that fails to comply with requirements of that Schedule
Paragraph 13 (1) of Schedule 19B	failure to comply with investigation requirement

Article 4(2)

PART 2

Prescribed Restrictions and Requirements

<i>Provision containing restriction or requirement</i>	<i>Restriction or requirement</i>
the requirements of section 31(1) or (3A)	notification required to be given by the treasurer of a registered party
section 34 (3)	failure to submit annual notification of minor party details on time
the requirements of section 41(1)	requirement to keep accounts
the requirements of section 41(4) or (5)	requirement to maintain accounts for six years
the requirements of section 74(6)	requirement for the treasurer to notify the Commission of change of details
the requirements of paragraph 4(1) and (3) of Schedule 6	requirement to give details of the nature of a non-cash donation

Article 4(3)

PART 3

Prescribed Offences, restrictions or requirements for which party or organisation may be liable for actions of an office holder or responsible person

<i>Column header</i>	
the requirements of section 31(1) or (3A)	notification required to be given by the treasurer of a registered party
section 34 (3)	failure to submit annual notification of minor party details on time
the requirements of section 41(1)	requirement to keep accounts
the requirements of section 41(4) or (5)	requirement to maintain accounts for six years
the requirements of section 45(1) or (2)	requirement to deliver any statement of accounts, notification or auditor's report relating to a registered party or any accounting unit of such a party;
the requirements of section 65(1) or (2)	requirement to deliver any donation report relating to a registered party
the requirements of section 74(6)	requirement for the treasurer to notify the Commission of change of details
the requirements of section 82(1), (2) or (3)	requirement in relation to any return or auditor's report relating to a registered party

Column header

the requirements of section 98(1), (2) or (3)	requirement in relation to any return or auditor's report relating to a recognised third party
the requirements of section 122(1), (2) or (3)	requirement in relation to any return or auditor's report relating to a permitted participant
the requirements of paragraph 4(1) and (3) of Schedule 6	requirement in relation to any requirement to give details of the nature of a non-cash donation

EXPLANATORY NOTE

(This note is not part of the Order)

This Order is made under Schedule 19C to the Political Parties, Elections and Referendums Act 2000. It permits the Electoral Commission to impose civil sanctions in relation to the offences and the restrictions and requirements prescribed in Schedule 2 to the Order.

The Order prescribes the offences, restrictions and requirements for which a civil sanction may be imposed by the Commission.

The civil sanctions are:

- fixed monetary penalties (for which supplementary provision is made at Part 1 of Schedule 1);
- discretionary requirements (variable monetary penalties, compliance notices or restoration notices) (Part 2 of Schedule 1);
- stop notices (Part 3 of Schedule 1); and
- enforcement undertakings (Part 4 of Schedule 1).

In relation to monetary penalties, the Order makes provision to—

- prescribed or minimum and maximum amounts (article 6 and paragraphs 1, 2 and 5 of Schedule 1);
- provide for late payment penalties (paragraphs 4 and 8 of Schedule 1).

The Order also makes provision—

- allowing the Commission to withdraw, or to reduce the penalty or steps to be taken under a notice,
- for appeals against notices imposing a civil sanction, and decisions of the Commission not to certify completion, including time limits for the making of such appeals (article 8 and paragraphs 3, 6, 11, 15 and 16 of Schedule 1);
- setting out the procedure for entering into an enforcement undertaking and the terms to be included in such an undertaking (paragraphs 12 and 13 of Schedule 1); and
- providing that the Commission must issue certificates to person certifying that the Commission are satisfied that a discretionary requirement of enforcement undertaking has been complied with (paragraphs 7 and 14 of Schedule 1).

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Draft Legislation: *This is a draft item of legislation and has not yet been made as a UK Statutory Instrument. This draft has been replaced by a new draft, The Political Parties, Elections and Referendums (Civil Sanctions) Order 2010 ISBN 978-0-11-149816-3*