

SCHEDULES

SCHEDULE 5

Control of donations to candidates

PART 1

Introductory

Operation and interpretation of Schedule

1.—(1) This Schedule has effect for controlling donations to candidates at a PCC election.

(2) The following provisions have effect for the purposes of this Schedule.

(3) “Relevant donation”, in relation to a candidate at a PCC election, means a donation to the candidate or the candidate’s election agent for the purpose of meeting election expenses incurred by or on behalf of the candidate.

(4) In sub-paragraph (3) the reference to a donation for the purpose of meeting election expenses incurred by or on behalf of a candidate includes a reference to a donation for the purpose of securing that any such expenses are not so incurred; and a donation is to be taken as being a donation for either of those purposes if, having regard to all the circumstances, it must be reasonably assumed to be such a donation.

(5) “Donation” is to be construed in accordance with paragraphs 2 to 4.

(6) In relation to a donation received by a candidate at a PCC election, references to a permissible donor falling within section 54(2) of the 2000 Act are to be read as if section 54(2) did not include a party registered in the Northern Ireland register maintained by the Commission under Part 2 of that Act.

Donations: general rules

2.—(1) “Donation”, in relation to a candidate at a PCC election, means (subject to paragraph 4)—

- (a) any gift to the candidate or the candidate’s election agent of money or other property;
- (b) any sponsorship provided in relation to the candidate (as defined by paragraph 3);
- (c) any money spent (otherwise than by the candidate, the candidate’s election agent or any sub-agent) in paying any election expenses incurred by or on behalf of the candidate;
- (d) any money lent to the candidate or the candidate’s election agent 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 candidate (including the services of any person).

(2) Where—

- (a) any money or other property is transferred to a candidate or the candidate’s election agent pursuant to any transaction or arrangement involving the provision by or on behalf of the candidate 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 candidate 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 (subject to sub-paragraph (4)) constitutes a gift to the candidate or (as the case may be) the candidate's election agent 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 candidate or the candidate's election agent 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 candidate is or are so provided otherwise than on such terms,

regard is to be had to the total value in monetary terms of the consideration provided by or on behalf of the candidate 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 3) applies in relation to it to the exclusion of the other provision of this paragraph.

(5) The reference in sub-paragraph (1)(c) to money spent as mentioned in that provision is a reference to money so spent by a person (other than the candidate, the candidate's election agent or any sub-agent) out of the person's own resources (with no right to reimbursement out of the resources of the candidate, the candidate's election agent or any sub-agent); and where, by virtue of sub-paragraph (1)(c), money so spent constitutes a donation to the candidate, the candidate is 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.

(6) In this paragraph—

- (a) any reference to anything being given or transferred to a candidate or the candidate's election agent includes a reference to its being given or transferred either directly or indirectly through any third person;
- (b) "gift" includes a bequest or any other form of testamentary disposition.

Sponsorship

3.—(1) For the purposes of this Schedule, sponsorship is provided in relation to a candidate if—

- (a) any money or other property is transferred to the candidate or to any person for the benefit of the candidate, 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 candidate with meeting, or to meet, to any extent any defined expenses incurred or to be incurred by or on behalf of the candidate, 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 candidate,
- (b) the preparation, production or dissemination of any publication by or on behalf of the candidate, or
- (c) any study or research organised by or on behalf of the candidate.

(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) The Secretary of State may, on the recommendation of the Commission, by order made by statutory instrument amend sub-paragraph (2) or (3).
- (5) Any order under sub-paragraph (4) may not be made unless a draft of the order has been laid before, and approved by a resolution of, each House of Parliament.
- (6) For the purposes of section 1 of the Statutory Instruments Act 1946⁽¹⁾ (definition of “Statutory Instrument”), the power to make an order which is conferred by sub-paragraph (4) is to be taken to be conferred by an Act of Parliament.
- (7) 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

4.—(1) None of the following is to be regarded as a donation—

- (a) the provision of any facilities provided in pursuance of any right conferred on a candidate at a PCC election by this Order;
- (b) the provision by an individual of the individual’s own services which are provided voluntarily in the individual’s own time and free of charge;
- (c) any interest accruing to a candidate or the candidate’s election agent in respect of any donation which is dealt with by the candidate or (as the case may be) the candidate’s election agent in accordance with section 56(2)(a) or (b) of the 2000 Act (as applied by paragraph 7).

(2) There is also to be disregarded any donation whose value (determined in accordance with paragraph 5) is not more than £50.

Value of donations

5.—(1) The value of any donation falling within paragraph 2(1)(a) (other than money) is to be taken as being the market value of the property in question.

(2) Where, however, paragraph 2(1)(a) applies by virtue of paragraph 2(2), the value of the donation is to be taken as being 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 candidate or the candidate’s election agent.

(3) The value of any donation falling within paragraph 2(1)(b) is to be taken as being the value of the money, or (as the case may be) the market value of the property, transferred as mentioned in paragraph 3(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 2(1)(d) or (e) is to be taken as being 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 candidate or the candidate’s election agent in respect of the loan or the provision of the property, services or facilities if—

⁽¹⁾ 1946 9&10 Geo.6 (c.36).

Draft Legislation: This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Police and Crime Commissioner Elections Order 2012 No. 1917

- (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 candidate or the candidate's election agent.
- (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.
- (6) In this paragraph “market value” in relation to any property, means the price which might reasonably be expected to be paid for the property on a sale in the open market.