



TURKS AND CAICOS ISLANDS

CHAPTER 21.12
POLITICAL ACTIVITIES ORDINANCE
and Subsidiary Legislation

Revised Edition
showing the law as at 31 March 2018

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Ordinance.

This edition contains a consolidation of the following laws—

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Amended by Ordinance 4 of 2016 .. in force 15 March 2016 (L. N. 13/2016)	
PUBLICATION OF DONATIONS BY POLITICAL PARTIES ORDER- Section 24(16)	107
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CHAPTER 21.12
POLITICAL ACTIVITIES ORDINANCE
(Ordinances 22 of 2012 and 4 of 2016)

AN ORDINANCE TO PROVIDE FOR THE REGISTRATION OF POLITICAL PARTIES AND FOR THE REGULATION OF THE CONDUCT OF POLITICAL PARTIES AND OTHERS IN RELATION TO POLITICAL ACTIVITY.

Commencement

[28 August 2012]

PART I

PRELIMINARY

Short title

1. This Ordinance may be cited as the Political Activities Ordinance.

Interpretation

2. (1) In this Ordinance, unless the context otherwise requires—
 - “agent”, in relation to a candidate for election, includes a polling agent or counting agent appointed by the candidate pursuant to the Elections Ordinance;
 - “bequest” includes any form of testamentary disposition;
 - “body”, without more, means a body corporate or any combination of persons or other unincorporated association;
 - “business” includes every trade, profession and occupation;
 - “Commission” means the Integrity Commission;
 - “document” means a document in whatever form it is kept;
 - “donation” must be construed in accordance with section 20;
 - “election” means an election for one or more Members of the House of Assembly;
 - “election proclamation” means the proclamation published under section 60 of the Constitution; *(Inserted by Ord. 4 of 2016)*
 - “functions” includes powers and duties;
 - “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;
 - “modifications” includes additions, omissions and amendments;
 - “organisation” includes any body corporate and any combination of persons or other unincorporated association;

“property” includes any description of property, and references to the provision of property accordingly include the supply of goods;

“qualified auditor” means (subject to subsection (2)) a person who is an auditor within the meaning of the Companies Ordinance;

“record” means a record in whatever form it is kept;

“Register of Electors” means the register kept in accordance with the Elections Ordinance;

“registered party” means a political party registered under Part II;

“treasurer”, in relation to a registered party, means registered treasurer.

(2) A person is not a qualified auditor in relation to a registered party or any other body or individual if he is—

(a) a member of the party or body or the individual himself; or

(b) an officer or employee of the party, body or individual, and for this purpose “officer or employee” does not include an auditor.

(3) References in this Ordinance to a person standing for election in the name of a registered party are to be construed in accordance with section 4(3).

(4) References in this Ordinance (in whatever terms) to payments out of public funds are references to any of the following, namely—

(a) payments out of the Consolidated Fund;

(b) payments made by a Minister;

(c) payments made by a Government Department,

and references in this Ordinance (in whatever terms) to expenses met, or things provided, out of public funds are references to expenses met, or things provided, by means of any such payments.

(5) References in this Ordinance to conditions, in the context of grants being made subject to conditions, include conditions requiring repayment of the grants in specified circumstances.

(6) A reference to a Part, Chapter or section of this Ordinance includes a reference to so much of a Schedule as has effect for the purposes of the Part, Chapter or section.

PART II

REGISTRATION OF POLITICAL PARTIES

Register of political parties

3. (1) The Commission must establish and maintain a register of political parties and independent candidates that intend to contest elections to the House of Assembly. (*Amended by Ord. 4 of 2016*)

(2) The register is to be maintained in such form as the Commission determines.

Parties fielding candidates must be registered

4. (1) No nomination may be made in relation to an election for the House of Assembly unless the nomination is in respect of—

- (a) a person who stands in the name of a registered party; or
- (b) a person who does not purport to represent any party and who is registered under this Ordinance. (*Amended by Ord. 4 of 2016*)

(2) For the purposes of subsection (1), a person does not purport to represent a party if either—

- (a) the description of the candidate given in his nomination paper is “Independent”; or
- (b) no description of the candidate is given in his nomination paper.

(3) For the purposes of this Ordinance, a person stands for election in the name of a registered party if he is endorsed by the party within the meaning of section 27(6) of the Elections Ordinance.

Office-holders to be registered

5. (1) For each registered party there must be—

- (a) a person registered as the party’s leader; and
- (b) a person registered as the party’s treasurer.

(2) The person registered as leader may also be registered as the treasurer.

(3) The person registered as the party’s leader must have responsibility for the arrangements for—

- (a) the issuing of endorsements as mentioned in section 4(3); and
- (b) the approval of descriptions and symbols used on nomination and ballot papers at elections.

(4) The person registered as the treasurer is responsible for compliance on the part of the party with Parts III and IV.

(5) Subsection (6) applies if—

- (a) the person registered as a party’s treasurer dies; or
- (b) his appointment terminates for any other reason.

(6) Until such time as another person is registered as the party’s treasurer, the person registered as the party’s leader is to be treated for all purposes as if he were registered as treasurer.

(7) A person commits an offence if—

- (a) he is registered as treasurer of a registered party; and
- (b) he has been convicted, at any time within the period of five years ending with the date of registration, of an offence under this Ordinance or under the Elections Ordinance.

(8) A person who commits an offence under this section is liable on summary conviction to a fine of \$5,000.

(9) If a person registered as treasurer of a registered party is convicted of an offence falling within subsection (7), his appointment as treasurer terminates on the date of the conviction.

Registration of parties

6. (1) A party may apply to be registered under this Part by sending to the Commission an application in the form of Form 1 in Schedule 6.

(2) Where a party sends an application to the Commission in accordance with subsection (1), the Commission must grant the application unless in its opinion the party proposes a registered name which—

- (a) would be the same as that of a party which is already registered or has fielded candidates or otherwise participated in previous elections in the Islands; (*Amended by Ord. 4 of 2016*)
- (b) would be likely to result in electors confusing that party with a party which is already registered;
- (c) comprises more than six words;
- (d) is obscene or offensive;
- (e) includes words the publication of which would be likely to amount to the commission of an offence;
- (f) would be likely, were it to appear on a ballot paper issued at an election—
 - (i) to result in an elector being misled as to the effect of his vote; or
 - (ii) to contradict, or hinder an elector's understanding of, any directions for his guidance in voting given on the ballot paper or elsewhere;
- (g) includes script other than Roman script; or
- (h) includes a word or expression prohibited by order made by the Governor after consulting the Commission.

(3) An order under subsection (2)(h) may except the use of a word or expression from the prohibition in specified circumstances.

(4) If the Commission grants an application by a party under this section, it must include in the party's entry in the register—

- (a) the particulars, apart from home addresses, given in the application in accordance with paragraphs 2 to 4 and 6 of Schedule 1; and
- (b) the date of registration.

(5) If the Commission refuses an application under this section, it must notify the party of the reasons for refusing the application.

(6) An application for registration under this section shall be made to the Commission no later than five days from the date of the election proclamation. (*Inserted by Ord. 4 of 2016*)

(7) A party applying to be registered under this section must, on the date of the application, file a donation report and a campaign expenditure return with the Commission of any donation received and campaign expenditure incurred during the 365 days prior to the date of the application. (*Inserted by Ord. 4 of 2016*)

(8) If no donation is received or campaign expenditure incurred during the period stated in subsection (7) it shall be so stated in the report or return, as the case may be.

(9) Chapters I and II of Part IV apply to any donation received by an unregistered political party. (*Inserted by Ord. 4 of 2016*)

(10) Sections 40, 41, 43, 44, 45, 46 and 47 apply to campaign expenditure incurred by an unregistered political party, with such modification as may be necessary, and for the purposes of such application, any reference to the treasurer or deputy treasurer shall be construed as a reference to the leader of the political party. (*Inserted by Ord. 4 of 2016*)

(11) In this section “campaign expenditure” has the meaning given to that expression in section 40. (*Inserted by Ord. 4 of 2016*)

Changes to the registered name

7. (1) A party may apply to the Commission to have its entry in the register altered by changing its registered name.

(2) The Commission must grant an application under this section unless, in its opinion, any of paragraphs (a) to (h) of section 6(2) applies to the new name.

(3) If the Commission refuses an application by a party under this section, it must notify the party of its reasons for refusing the application.

(4) Part II of Schedule 1 applies to applications under this section.

Notification of changes in party’s officers etc.

8. (1) If at any time the particulars in a party’s entry in the register which relate to a relevant matter cease to be accurate, the person registered as treasurer of the party must give the Commission a notification under this section.

(2) For the purposes of this section “relevant matter” means any of the following—

(a) the name of a registered officer of the party;

(b) the home address of any such officer;

(c) the address of the party’s headquarters (or, if it has no headquarters, the address to which communications to the party may be sent).

(3) Notification under this section must specify the relevant matter in respect of which the registered particulars have ceased to be accurate and, if that matter is specified in subsection (2)(a)—

(a) specify the name of the officer replacing the person currently registered as holder of the office in question; and

- (b) if that person is so registered as an officer of the party, include an application for the registration of the replacement officer which complies with Part III of Schedule 1.
- (4) If the relevant matter referred to in subsection (3) is not specified within subsection (2)(a), notification under this section must specify accurate particulars in respect of that matter.
- (5) Notification under this section must be given to the Commission—
- (a) if subsection (1) applies by reason of the death or the termination for any other reason of the appointment of a registered officer of the party, within the period of fourteen days beginning with the date of his death or the termination of his appointment;
 - (b) if that subsection applies by reason of any other change in circumstances, within the period of twenty-eight days beginning with the date when the change occurs.
- (6) If the Commission receives a notification under this section, it must cause any change required as a consequence of the notification to be made in the party's entry in the register.
- (7) For the purposes of this section, particulars held by the Commission in respect of the home address of a registered officer of the party are taken to be particulars contained in the party's entry in the register.

Confirmation of registered particulars etc.

9. (1) The person registered as treasurer of a party must, within the specified period, give a notification under this section to the Commission.
- (2) In subsection (1), "the specified period" means the period—
- (a) beginning on the first day of the period within which the statement of accounts for any financial year of the party is required to be delivered to the Commission by virtue of section 16; and
 - (b) ending six months after the last day of that period.
- (3) A notification under this section must—
- (a) state that the particulars in the party's entry in the register remain accurate and include any information prescribed under paragraph 6 of Schedule 1 since the relevant time; or
 - (b) so far as necessary to secure that such particulars will both be accurate and include any information prescribed in the manner mentioned in paragraph (a), contain one or more of the following, namely—
 - (i) an application under section 7;
 - (ii) a notification under section 8; or
 - (iii) any information so prescribed.
- (4) A notification under this section must also give particulars of any change occurring in the party's constitution since the relevant time.

- (5) In subsections (3) and (4) “the relevant time” means—
- (a) the time when the party applied for registration; or
 - (b) if a notification has been previously given under this section in relation to the party, the time when the last such notification was given.

(6) A notification under this section must be accompanied by any fee prescribed by order made by the Governor.

(7) For the purposes of this section, particulars held by the Commission in respect of the home address of a registered officer of the party are taken to be particulars contained in the party’s entry in the register.

(8) In this section “constitution”, in relation to a party, means the document or documents (of whatever name) by which the structure and organisation of the party is determined.

Party ceasing to be registered

10. (1) Once a party is registered, its entry may only be removed from the register in accordance with subsection (2) or (3).

- (2) Where—
- (a) a party applies to have its entry removed from the register; and
 - (b) the application includes a declaration on behalf of the party that it does not intend to have any candidates at an election,

the Commission must remove the party’s entry from the register.

(3) Where the Commission does not receive a notification required by virtue of section 9(1) on or before the last day of the specified period, the Commission must remove the party's entry from the register.

(4) On the removal of a party's entry from the register by virtue of subsection (2) or (3), the party ceases to be a registered party.

- (5) However, until the relevant time—
- (a) the Commission must, when considering applications made by other parties under this Part, treat the entry as if it were still contained in the register; and
 - (b) the requirements of Parts III to V continue to apply to the party as if it were still registered.

- (6) In subsection (5), “the relevant time” means—
- (a) the end of the financial year of the party which follows that in which the entry is removed if—
 - (i) the party's entry is removed by virtue of subsection (2); and
 - (ii) its gross income or total expenditure in its financial year preceding the year in which the entry is removed is \$25,000 or more; or
 - (b) otherwise, the end of the financial year of the party in which the entry is removed.

(7) Part IV of Schedule 1 applies to applications under subsection (2).

False statements: offence

11. (1) A person commits an offence if—

- (a) he knowingly or recklessly makes a statement which is false in any material particular; and
- (b) the statement is made, or purports to be made, on behalf of a party for the purposes of this Part.

(2) A person who commits an offence under this section is liable on summary conviction to a fine of \$5,000.

PART III

ACCOUNTING REQUIREMENTS FOR REGISTERED PARTIES

Accounting records

Duty to keep accounting records

12. (1) The treasurer of a registered party must ensure that accounting records are kept with respect to the party which are sufficient to show and explain the party's transactions.

(2) The accounting records must be such as to—

- (a) disclose at any time, with reasonable accuracy, the financial position of the party at that time; and
- (b) enable the treasurer to ensure that any statement of accounts prepared by him under section 13 complies with the requirements of regulations under section 13(2)(a).

(3) The accounting records must in particular contain—

- (a) entries showing from day to day all sums of money received and expended by the party, and the matters in respect of which the receipt and expenditure take place; and
- (b) a record of the assets and liabilities of the party.

(4) The treasurer must ensure that any accounting records made for the purposes of this section in respect of the party are preserved for at least six years from the end of the financial year of the party in which they are made.

(5) Where a party ceases to be registered within the period of six years mentioned in subsection (4) as it applies to accounting records, the obligation to ensure that the records are preserved in accordance with that subsection must continue to be discharged by the last treasurer of the party unless—

- (a) the Commission consents in writing to the records being destroyed; or
- (b) the Commission directs in writing that the records may be otherwise disposed of and the records are disposed of in accordance with the direction.

(6) In this Part “financial year”, in relation to a registered party, means such period as may be determined by the Commission under subsection (7), whether in relation to—

- (a) registered parties generally;
- (b) any description of registered parties which includes the party; or
- (c) the party itself.

(7) The Commission may determine that the period which is to be a financial year of a registered party shall be—

- (a) a period of twelve months specified by the Commission; or
- (b) a shorter period specified by them for any transitional purposes,

and different determinations may be made under this subsection in respect of financial years beginning on different dates.

(8) The Commission must notify registered parties of any determination under subsection (7) which affects them.

Annual statements of accounts

13. (1) The treasurer of a registered party must prepare a statement of accounts in respect of each financial year of the party.

(2) A statement of accounts under this section must—

- (a) comply with such requirements as to its form and contents as may be prescribed by regulations made by the Governor; and
- (b) be approved—
 - (i) by the management committee of the party, if there is one; and
 - (ii) otherwise by the registered leader of the party.

(3) Regulations under subsection (2)(a) may in particular—

- (a) require any such statement to be prepared in accordance with such methods and principles as are specified or referred to in the regulations;
- (b) specify information which is to be provided by way of notes to the accounts.

(4) The treasurer of a registered party must ensure that any statement of accounts prepared under this section in respect of the party is preserved for at least six years from the end of the financial year to which the statement relates.

(5) Section 12(5) applies in relation to the preservation of any such statement as it applies in relation to the preservation of accounting records (the references to section 12(4) being read as references to subsection (4) above).

(6) In this Part “gross income” means gross recorded income from all sources.

Annual audits

14. (1) Where a registered party's gross income or total expenditure in any financial year exceeds \$500,000, the accounts of the party for that year must be audited by a qualified auditor.

(2) Where—

- (a) a registered party's gross income or total expenditure in any financial year does not exceed \$500,000; but
- (b) the Commission considers it desirable that the accounts of the party for that year should be audited,

the Commission may (at any time) give the treasurer of the party a direction requiring those accounts to be audited by a qualified auditor.

(3) An audit under this section must be carried out—

- (a) if it is required by subsection (1), before the end of the period of six months from the end of the financial year in question; or
- (b) if it is required by a direction under subsection (2), by the later of—
 - (i) the end of the period of six months from the end of the financial year in question; and
 - (ii) the end of the period of three months from the date of the direction.

(4) If it appears to the Commission that any accounts required to be audited by virtue of—

- (a) subsection (1); or
- (b) a direction under subsection (2),

have not been duly audited by the time mentioned in subsection (3)(a) or (b) (as the case may be), the Commission may appoint a qualified auditor to audit those accounts.

(5) The expenses of an audit carried out by an auditor appointed by the Commission, including the auditor's remuneration, may be recovered by the Commission from the funds of the party concerned as a debt due to the Commission.

(6) Regulations made by the Governor (after consultation with the Commission) may make provision with respect to—

- (a) the appointment of auditors to carry out audits under this section;
- (b) the duties of auditors so appointed; and
- (c) the removal or resignation of such auditors and matters connected with their removal or resignation.

(7) Regulations under subsection (6)(c) may make provision requiring such person as is specified in the regulations to deliver to the Commission, in a case where such an auditor is removed or resigns, a copy of such document relating to the auditor's removal or resignation as is specified.

(8) A person commits an offence if he fails to comply with a requirement under subsection (7).

(9) A person who commits an offence under subsection (8) is liable on summary conviction, to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

(10) Subsection (6)(a) does not apply in relation to the appointment of auditors by the Commission under subsection (4).

Supplementary provisions about auditors

15. (1) An auditor appointed to carry out an audit under section 14—

(a) has a right of access at all reasonable times to the party's books, documents and other records; and

(b) is entitled to require from the treasurer or any other officer of the party, or from a former treasurer or officer of the party, such information and explanations as he thinks necessary for the performance of his duty as auditor.

(2) If any person fails to provide an auditor with any access, information or explanation to which the auditor is entitled by virtue of subsection (1), the Commission may give the person such written directions as it thinks appropriate for securing that the default is made good.

(3) A person guilty of disobedience to any directions of the Commission under subsection (2) may, on an application of the Commission to the Supreme Court, be dealt with as for disobedience to an order of the Court.

(4) A person commits an offence if he knowingly or recklessly makes to an auditor appointed to carry out an audit under section 14 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 subsection (1); and

(b) is misleading, false or deceptive in a material particular.

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

Delivery of statements of accounts etc. to Commission

16. (1) The treasurer of a registered party must, if the party's accounts for a financial year are not required to be audited by virtue of section 14(1) or (2), within 4 months of the end of that financial year, deliver to the Commission—

(a) the statement of accounts prepared for that year under section 13; and

(b) the notification required to be sent with that statement by virtue of section 9(1).

(2) If a registered party's accounts for a financial year are required to be audited by virtue of section 14(1) or (2), the treasurer of the party must, no later than seven days after the end of the period allowed under section 14(3) for the audit of the accounts, deliver to the Commission—

- (a) the documents mentioned in subsections (1)(a) and (1)(b); and
- (b) a copy of the auditor's report (unless the auditor was appointed by the Commission under section 14(4)).

(3) If for any special reason the Commission thinks it fit to do so it may, on an application made before the end of the period otherwise allowed under this section for delivering a party's documents within subsection (1) or (2) for any financial year, by notice extend that period by a further period specified in the notice.

(4) Documents delivered to the Commission under this section must be kept by the Commission for such period as it thinks fit.

Public inspection of parties' statements of accounts

17. If the Commission receives a statement of accounts under section 16, it must—

- (a) make a copy of the statement available for public inspection; and
- (b) keep such copy available for public inspection for the period for which the statement is kept by it or, if it so decides, during such shorter period as it may specify.

Criminal penalty for failure to submit proper statement of accounts

18. (1) If in the case of a registered party—

- (a) a requirement of regulations referred to in section 13(2)(a) is, without reasonable excuse, not complied with in relation to a statement of accounts delivered to the Commission under section 16; or
- (b) a statement of accounts, notification or auditor's report required to be delivered to the Commission under that section is, without reasonable excuse, not delivered to it before the end of the relevant period,

the person who was the treasurer of the party immediately before the end of that period commits an offence.

(2) A person who commits an offence under this section is liable, on summary conviction, to a fine of \$5,000.

(3) In this section "the relevant period" means the period allowed by section 16(1) or (2) for delivering the statement, notification or report to the Commission or, if that period has been extended (or further extended) under section 16(3), that period as so extended.

Revision of statement of accounts

Revision of defective statements of accounts

19. (1) If it appears to the treasurer of a registered party that a statement of accounts for a financial year of the party has not complied with the requirements of regulations made under section 13(2)(a) ("the prescribed requirements"), he may prepare a revised statement of accounts.

(2) If the statement of accounts has been delivered to the Commission, the revisions must be confined to—

- (a) the correction of those respects in which the statement did not comply with the prescribed requirements; and
- (b) the making of any necessary consequential alterations.

(3) If it appears to the Commission that there is, or may be, a question whether any statement of accounts delivered to it under section 16 complies with the prescribed requirements, it may give notice to the treasurer of the party in question indicating the respects in which it appears that such a question arises or may arise.

(4) The notice shall specify a period of not less than one month for the treasurer to give the Commission an explanation of the statement of accounts or prepare a revised statement.

(5) The Commission may make an application to the Supreme Court under subsection (6) if at the end of the specified period, or such longer period as the Commission allows, it appears to the Commission—

- (a) that no satisfactory explanation of the statement of accounts has been given; and
- (b) that the statement has not been revised so as to comply with the prescribed requirements.

(6) The Commission may under this subsection make an application to the Supreme Court—

- (a) for a declaration that the statement of accounts does not comply with the prescribed requirements; and
- (b) for an order requiring the treasurer of the party to prepare a revised statement of accounts.

(7) If the Court orders the preparation of revised accounts, it may—

- (a) give such directions as it thinks fit;
- (b) order that all or part of the costs of and incidental to the application are to be borne by the registered leader and the treasurer of the party.

(8) In making an order under subsection (7)(b) the Court is to have regard to whether the officers mentioned in that paragraph knew or ought to have known that the statement did not comply with the prescribed requirements, and it may—

- (a) order the payment of different amounts by different officers;
- (b) exclude one of the officers from the order; or
- (c) exclude both officers from the order and instead order the payment of all or part of the costs mentioned in that paragraph out of the funds of the party.

(9) Regulations made by the Governor may make provision with respect to the application of provisions of this Part in relation to the preparation and

auditing of revised statements of accounts, and their delivery to the Commission, and may in particular make provision—

- (a) for any matter for which provision may be made by regulations under section 14(6);
- (b) for disapplying section 18(1) to such extent or in such circumstances as the regulations may specify.

(10) Section 17 applies in relation to any revised statement of accounts received by the Commission in accordance with regulations made under subsection (9) as it applies in relation to a statement of accounts received by it under section 16.

(11) The provisions of this section apply equally to statements of accounts that have already been revised, in which case the references to revised statements of accounts are to be read as references to further revised statements.

PART IV

CONTROL OF DONATIONS TO POLITICAL PARTIES

CHAPTER I

DONATIONS TO REGISTERED PARTIES

Donations for purposes of this Part

20. (1) The following provisions have effect for the purposes of this Part.

(2) “Donation”, in relation to a registered party, means (subject to section 22)—

- (a) a gift to the party of money or other property;
- (b) sponsorship provided in relation to the party (as defined by section 21);
- (c) a subscription or other fee paid for affiliation to, or membership of, the party;
- (d) money spent (otherwise than by or on behalf of the party) in paying any expenses incurred directly or indirectly by the party;
- (e) any money lent to the party otherwise than on commercial terms;
- (f) the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the party (including the services of any person).

(3) Where—

- (a) money or other property is transferred to a registered party pursuant to a transaction or arrangement involving the provision by or on behalf of the party of any property, services or facilities or other consideration of monetary value; and

- (b) the total value in monetary terms of the consideration 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 constitutes a gift to the party for the purposes of subsection (2)(a).

(4) In determining—

- (a) for the purposes of subsection (2)(e), whether money lent to a party is lent otherwise than on commercial terms; or
- (b) for the purposes of subsection (2)(f), whether property, services or facilities provided for the use or benefit of a registered party 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 party in respect of the provision of the property, services or facilities.

(5) Where (apart from this subsection) anything would be a donation both by virtue of subsection (2)(b) and by virtue of any other provision of this section, subsection (2)(b) (together with section 21) applies in relation to it, to the exclusion of the other provisions of this section.

(6) Anything given or transferred to an officer, member, trustee or agent of a registered party in his capacity as such (and not for his own use or benefit) is to be regarded as given or transferred to the party (and references to donations received by a party accordingly include donations so given or transferred).

(7) In this section—

- (a) a reference to anything being given or transferred to a party or person is a reference to its being so given or transferred either directly or indirectly through a third person;
- (b) “gift” includes bequest.

Sponsorship

21. (1) For the purposes of this Part sponsorship is provided in relation to a registered party if—

- (a) money or other property is transferred to the party or to any person for the benefit of the party; 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 party with meeting, or to meet, to any extent defined expenses incurred or to be incurred by or on behalf of the party; or
 - (ii) to secure that to any extent any such expenses are not so incurred.

(2) In subsection (1) “defined expenses” means expenses in connection with—

- (a) a conference, meeting or other event organised by or on behalf of the party;
- (b) the preparation, production or dissemination of a publication by or on behalf of the party; or
- (c) any study or research organised by or on behalf of the party.

(3) The following do not, however, constitute sponsorship by virtue of subsection (1)—

- (a) making a payment in respect of—
 - (i) a charge for admission to a conference, meeting or other event; or
 - (ii) the purchase price of, or any other charge for access to, a publication;
- (b) making a payment in respect of the inclusion of an advertisement in a publication where the payment is made at the commercial rate payable for the inclusion of such an advertisement in such publication,

and subsection (1) also has effect subject to section 23(3).

(4) The Governor may by order made on the recommendation of the Commission amend subsection (2) or (3).

(5) In this section “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, services etc. not to be regarded as donations

22. (1) For the purposes of this Part none of the following is a donation—

- (a) the transmission by a broadcaster, free of charge, of a party political broadcast;
- (b) any other facilities provided in pursuance of any right conferred on candidates or a party at an election by any law;
- (c) the provision by an individual of his own services which he provides voluntarily in his own time and free of charge;
- (d) interest accruing to a registered party in respect of a donation which is dealt with by the party in accordance with section 26(3)(a) or (b).

(2) This Part does not apply to a donation which (in accordance with any law) falls to be included in a return as to election expenses in respect of a candidate or candidates at a particular election.

Value of donations

23. (1) The value of a donation falling within section 20(2)(a) (other than money) is the market value of the property in question.

(2) If, however, section 20(2)(a) applies by virtue of section 20(3), the value of the donation is 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 party.

(3) The value of a donation falling within section 20(2)(b) is the value of the money, or (as the case may be) the market value of the property, transferred as mentioned in section 21(1), and accordingly any value in monetary terms of a benefit conferred on the person providing the sponsorship in question must be disregarded.

(4) The value of a donation falling within section 20(2)(f) is 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 party 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 party.

(5) Subsection (6) applies if a donation such as is mentioned in subsection (3) confers an enduring benefit on the party during the whole or part of—

- (a) any period for which a report is to be prepared under this Part; or
- (b) two or more such periods.

(6) In such a case, the amount to be recorded in any such report shall be so much of the total value of the donation (as determined in accordance with subsection (3)) as accrues during the whole or part of the period to which the report relates.

CHAPTER II

RESTRICTIONS ON DONATIONS TO REGISTERED PARTIES

Permissible donors

24. (1) A donation received by a registered party must not be accepted by the party if—

- (a) the person by whom the donation would be made is not, at the time of its receipt by the party, a permissible donor;
- (b) the party is (whether because the donation is given anonymously or by reason of any deception or concealment or otherwise) unable to ascertain the identity of that person;
- (c) the party has any reason to suspect that the donation represents the proceeds of unlawful activity or is given for a corrupt or otherwise unlawful purpose; or
- (d) the amount of the donation exceeds the maximum permitted amount.

(2) For the purposes of this Part the following are permissible donors—

- (a) an individual registered in the Register of Electors;
- (b) an individual who is not so registered but is ordinarily resident in the Turks and Caicos Islands;
- (c) an individual who is neither registered in the Register of Electors nor ordinarily resident in the Turks and Caicos Islands but who is a Turks and Caicos Islander;
- (d) a company formed and registered under the Companies Ordinance which, for a period of not less than twelve months before the donation is accepted, has continuously carried on business in the Turks and Caicos Islands;
- (e) a registered party;
- (f) a trade union registered under the Trade Unions Ordinance; and
- (g) a limited partnership registered under the Limited Partnerships Ordinance which carries on business in the Turks and Caicos Islands.

(3) In relation to a donation in the form of a bequest of subsections (2) (a) to (c) must be read as referring to an individual who, at any time within the period of five years ending with the date of his death, fell within that paragraph.

(4) For the purposes of this section the maximum permitted amount in the case of a donor is \$30,000 (whether given as one or more than one donation) in any financial year of the party.

(5) Where a person (“the principal donor”) causes an amount (“the principal donation”) to be received by a registered party by way of a donation—

- (a) on behalf of himself and one or more other persons; or
- (b) on behalf of two or more other persons,

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

(6) In relation to each such separate donation, the principal donor must ensure that, at the time when the principal donation is received by the party, the party 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 3 of Schedule 2 to be given in respect of the donor of a recordable donation; and
- (b) (in any case) all such details in respect of the donation as are required by virtue of paragraph 5 of Schedule 2 to be given in respect of a recordable donation.

(7) Where a person (“the agent”) causes an amount to be received by a registered party by way of a donation on behalf of another person (“the donor”), the agent must ensure that, at the time when the donation is received by the party, the party is given all such details in respect of the donor as are required by

virtue of paragraph 3 of Schedule 2 to be given in respect of the donor of a recordable donation.

(8) A person commits an offence if, without reasonable excuse, he fails to comply with subsection (6) or (7).

(9) If subsection (1)(c) applies to a donation, the registered treasurer of the party must report the whole circumstances of the donation (including the grounds for its belief) to the Commission not later than 24 hours after the donation is offered to it.

(10) Any money received by a party in respect of a donation to which subsection (1)(c) applies must be placed in an escrow account until the Commission has completed its investigation into the matter.

(11) For the purposes of subsection (4), if two or more donations are received in a financial year of a party from companies which are closely connected each donation must be treated as having been received from the same donor.

(12) For the purposes of subsection (11) a company has a close connection with another if—

(a) one company is the beneficial owner of a majority of the shares in the other; or

(b) one company is entitled to appoint a majority of the directors of the other.

(13) In the case of a donation which does not exceed \$150, it is presumed that the donor is a permissible donor for the purposes of subsection (1)(a) unless the party knew, or had reasonable grounds to believe, that the donor was not a permissible donor.

(14) In the case of a donation which exceeds \$150 but does not exceed \$3,000, the party must verify that the donor is a permissible donor.

(15) In the case of a donation which exceeds \$3,000—

(a) the party must verify that the donor is a permissible donor; and

(b) the party must comply with such requirements for publicising the amount of the donation and the identity of the donor as the Governor, after consultation with the Commission, may prescribe.
(Amended by Ord. 4 of 2016)

(16) The Governor, after consultation with the Commission, may by order vary the requirements of subsections (13) to (15).

(17) A person commits an offence if he fails to comply with subsection (9).

(18) A person who commits an offence under subsection (8) or (17) is liable, on summary conviction, to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

Payments treated as donations by permissible donors (or not)

25. (1) A payment out of public funds received by a registered party must be regarded as a donation received by the party from a permissible donor.

(2) A donation received by a registered party is (if it would not otherwise fall to be so regarded) to be regarded as a donation received by the party from a permissible donor if and to the extent that—

- (a) the purpose of the donation is to meet qualifying costs incurred or to be incurred in connection with a visit by a member or officer of the party to a country or territory outside the Turks and Caicos Islands; and
- (b) the amount of the donation does not exceed a reasonable amount in respect of such costs.

(3) A donation received from a company as mentioned in section 24(2)(d) must not be treated as a donation from a permissible donor unless, before the donation is accepted, the party is provided with a copy of the resolution of the directors of the company authorising the making of the donation.

(4) In subsection (2) “qualifying costs”, in relation to a member or officer of the party, means costs relating to the person in respect of—

- (a) travelling between the Turks and Caicos Islands and the country or territory in question; or
- (b) travelling, accommodation or subsistence while within that country or territory.

Acceptance or return of donations: general

26. (1) Subsection (2) applies if—

- (a) a donation is received by a registered party; and
- (b) it is not immediately decided that the party should (for whatever reason) refuse the donation.

(2) All reasonable steps must be taken forthwith by or on behalf of the party to verify (or, so far as any of the following is not apparent, to ascertain)—

- (a) the identity of the donor;
- (b) whether he is a permissible donor; and (if that appears to be the case);
- (c) all such details in respect of him as are required by virtue of paragraph 3 of Schedule 2 to be given in respect of the donor of a recordable donation.

(3) If a registered party receives a donation which it is prohibited from accepting by virtue of section 24(1), or which it is decided that the party should for any other reason refuse, then—

- (a) unless the donation is within section 24(1)(c), 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 his behalf;
- (b) if the donation is within section 24(1)(c), the required steps (as defined by section 27(1)) must be taken in relation to the donation,

within thirty days from the date when the donation is received by the party.

(4) Where—

- (a) subsection (3)(a) applies in relation to a donation; and
- (b) the donation is not dealt with in accordance with that provision,

the party and the treasurer of the party each commit an offence.

(5) If a party or its treasurer is charged with an offence under subsection (4), it is a defence to prove that—

- (a) all reasonable steps were taken by or on behalf of the party to verify (or ascertain) whether the donor was a permissible donor; and
- (b) as a result, the treasurer believed the donor to be a permissible donor.

(6) If—

- (a) subsection (3)(b) applies in relation to a donation; and
- (b) the donation is not dealt with in accordance with that provision,

the treasurer of the party commits an offence.

(7) For the purposes of this Part a donation received by a registered party is taken to have been accepted by the party unless—

- (a) the steps mentioned in subsection (3)(a) or (b) are taken in relation to the donation within the period of thirty days mentioned in that subsection; and
- (b) a record can be produced of the receipt of the donation and—
 - (i) of the return of the donation, or the equivalent amount, as mentioned in subsection (3)(a); or

(ii) of the required steps being taken in relation to the donation as mentioned in subsection (3)(b).

(8) Where a donation is received by a registered party in the form of an amount paid into any account held by the party with a financial institution, it is taken for the purposes of this Part to have been received by the party at the time when the party is notified in the usual way of the payment into the account.

(9) A person who commits an offence under this section is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

Return of donations where donor unidentifiable

27. (1) For the purposes of section 26(3)(b) the required steps are as follows—

- (a) if the donation mentioned in that provision 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; and

(c) in any other case, to send the donation to the Commission.

(2) In subsection (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 money received by the Commission by virtue of this section must be paid into the Consolidated Fund not later than fourteen days after the end of the financial year in which the money is received.

Forfeiture of donations made by impermissible or unidentifiable donors

28. (1) This section applies to a donation received by a registered party—

(a) which, by virtue of section 24(1)(a) or (c), the party is prohibited from accepting; but

(b) which has been accepted by the party.

(2) The court, on application made by the Commission, may order the forfeiture by the party of an amount equal to the full value of the donation.

(3) The standard of proof in proceedings on an application under this section shall be that applicable to civil proceedings.

(4) An order may be made under this section whether or not proceedings are brought against any person for an offence connected with the donation.

(5) The court is—

(a) the Magistrate's Court, if the value of the donation does not exceed \$25,000;

(b) the Supreme Court, in any other case.

(6) An appeal lies—

(a) to the Supreme Court from a decision of the Magistrate's Court;

(b) to the Court of Appeal from a decision of the Supreme Court.

Forfeiture orders: supplementary provision

29. (1) Provision may be made by rules of court—

(a) with respect to applications under section 28;

(b) for the giving of notice of applications to persons affected;

(c) for the joinder of such persons as parties; and

(d) with respect to appeals under section 28(6); and

(e) generally with respect to the procedure under section 28.

(2) Subsection (1) is without prejudice to the generality of any existing power to make rules.

(3) In the case of a registered party which is not a body corporate—

- (a) proceedings under section 28 are to be brought against or by the party in its own name (and not in that of any of its members);
- (b) for the purposes of such proceedings, rules of court relating to the service of documents apply as if the party were a body corporate; and
- (c) any amount forfeited by an order under section 28 must be paid out of the funds of the party.

Evasion of restrictions on donations: offences

30. (1) A person commits an offence if he knowingly enters into or does any act in furtherance of an arrangement which facilitates or is likely to facilitate, whether by means of concealment or disguise or otherwise, the making of donations to a registered party by a person or body other than in accordance with section 24(1).

(2) A person commits an offence if—

- (a) he knowingly gives the treasurer of a registered party any information relating to—
 - (i) the amount of any donation made to the party; 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 treasurer of a registered party any material information relating to a matter within paragraph (a)(i) or (ii).

(3) A person who commits an offence under this section is liable, on summary conviction, to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

CHAPTER III

REPORTING OF DONATIONS TO REGISTERED PARTIES

Bi-annual donation reports

31. (1) The treasurer of a registered party must each year prepare a report under this subsection in respect of each of the following periods—

- (a) January to June;
- (b) July to December.

(2) The donation report for a reporting period must, in the case of each permissible donor from whom a donation is accepted by the party during the reporting period, record every relevant benefit obtained by the party during that period.

(3) A donation report must also record every donation within section 24(1)(a) or (c) and dealt with during the reporting period in accordance with section 26(2).

(4) If during a reporting period—

(a) no donations have been accepted by the party which, by virtue of the preceding provisions of this section, are required to be recorded in the donation report for that period; and

(b) no donations have been dealt with as mentioned in subsection (9),

the report must contain a statement to that effect.

(5) Schedule 2 has effect with respect to the information to be given in donation reports.

(6) In this section—

“donation report” means a report prepared under subsection (1);

“relevant benefit”, in relation to any person and any year, means—

(a) a relevant donation accepted by the party from that person as a donor; or

(b) a relevant transaction within the meaning of section 25(2) entered into by the party and that person as a participant,

and a relevant benefit accrues when it is accepted (if it is a donation) or entered into (if it is a transaction);

“reporting period”, in relation to a donation report, means the period mentioned in section 31(a) or (b) to which the report relates.

Exemption from requirement to prepare bi-annual reports

32. (1) This section applies if each of two consecutive donation reports prepared by the treasurer of a registered party in pursuance of section of section 31(1) contains a statement under section 31(4).

(2) The treasurer is not required to prepare any further donation reports in pursuance of section 31(1) until a recordable donation—

(a) is accepted by the registered party; or

(b) is dealt with by the registered party in accordance with section 26(2).

(3) A recordable donation is a donation which is required to be recorded by virtue of section 31(3) or (4).

(4) If a recordable donation is accepted or (as the case may be) dealt with in accordance with section 26(2), nothing in this section affects the operation of section 31 in relation to—

(a) the reporting period in which the recordable donation is so accepted or dealt with; or

(b) any subsequent reporting period which falls before the time (if any) when this section again applies in relation to the party.

(5) In this section, “donation report” and “reporting period” have the same meaning as in section 31.

Weekly donation reports during general election periods

33. (1) In relation to a general election period, the treasurer of a registered party must prepare a report under this section in respect of each of the following periods—

- (a) the period of seven days beginning with the first day of the general election period;
- (b) each succeeding period of seven days falling within the general election period; and
- (c) any final period of less than seven days falling within that period.

(2) The weekly report for a reporting period must record each donation received during that period by the party.

(3) If during a reporting period no donations are received during a reporting period, the weekly report for that period must contain a statement to that effect.

(4) Schedule 2 has effect with respect to the information to be given in weekly reports.

(5) In this section—

“general election period” means the period—

- (a) beginning with the date on which a proclamation is published in the *Gazette* announcing the dissolution of the House of Assembly; and
- (b) ending with the date of the poll at the next general election;

“reporting period”, in relation to a weekly report, means the period mentioned in any of subsections (1)(a) to (c) to which the report relates;

“weekly report” means a report prepared under subsection (1).

Exemptions from section 33

34. (1) Section 33(1) does not apply in relation to a registered party in respect of a general election period if the party has made an exemption declaration which covers the general election in question.

(2) A registered party is taken to have made an exemption declaration which covers a particular general election if a declaration that the party does not intend to have any candidates at that election—

- (a) is signed by the responsible officers of the party; and
- (b) is sent to the Commission not later than seven days after the date mentioned in section 33(1)(a). (*Amended by Ord. 4 of 2016*)

(3) An exemption declaration does not cover a particular general election if the party in question withdraws its declaration by a notice—

- (a) signed by the registered leader of the party; and
- (b) sent to the Commission,

before the beginning of the general election period.

(4) If—

(a) a registered party has made an exemption declaration which (apart from this subsection) would cover a particular general election; but

(b) the party has one or more candidates at that election,

the exemption declaration is treated as if it had been withdrawn at the beginning of the general election period and the requirements of section 33 accordingly apply retrospectively as from the beginning of that period.

(5) If the registered leader is unable to sign a declaration or notice for the purposes of this section—

(a) the holder of some other office in the party may sign in his place; and

(b) the declaration or notice must include a statement of the reason why the responsible officer is unable to sign and a declaration that the holder of the other office is authorised to sign in his place.

(6) For the purposes of this section and section 35 a registered party is taken to have a candidate at a general election if the party has endorsed the candidate pursuant to section 27(6) of the Elections Ordinance.

(7) In this section “general election period” means the period—

(a) beginning with the date on which a proclamation is published in the Gazette announcing the dissolution of the House of Assembly; and

(b) ending with the date of the poll at the next general election.

Submission of donation reports to Commission

35. (1) A donation report under section 31 must be delivered to the Commission by the treasurer of the party in question within the period of thirty days beginning with the end of the reporting period to which it relates.

(2) A donation report under section 33 must be delivered to the Commission by the treasurer of the party in question—

(a) within the period of seven days beginning with the end of the reporting period to which it relates; or

(b) if compliance with paragraph (a) is not possible for any party to which section 33(1) applies by virtue of section 34(4), not later than seven days after the first day on which the party has a candidate at the election in question.

(3) The treasurer of a registered party commits an offence if, without reasonable excuse, he fails to comply with the requirements of subsection (1) or (2) in relation to a donation report.

(4) The treasurer of a registered party also commits an offence if, without reasonable excuse, he delivers a donation report to the Commission which does not comply with any requirements of this Part as regards the recording of donations in such a report.

(5) If the Supreme Court is satisfied, on application made by the Commission, that failure to comply with such requirements in relation to a donation to a registered party was attributable to an intention on the part of any person to conceal the existence or true amount of the donation, the Court may order the forfeiture by the party of an amount equal to the value of the donation.

(6) Subsections 28(3) and (4) and section 29 apply for the purposes, or in connection with the operation, of subsection (5) above as they apply for the purposes or in connection with the operation of section 28.

(7) A person who commits an offence—

(a) under subsection (3) is liable, on summary conviction, to a fine of \$5,000;

(b) under subsection (4) is liable, on summary conviction, to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

(8) Section 34(6) applies for the purposes of this section.

Declaration by treasurer in donation report

36. (1) A donation report under section 31 or 33 must, when delivered to the Commission, be accompanied by a declaration made by the treasurer which complies with subsection (2), (3) or (5).

(2) In the case of a report under section 31 (other than one making a nil return), the declaration must state that, to the best of the treasurer's knowledge and belief—

(a) all the donations recorded in the report as having been accepted by the party are from permissible donors; and

(b) during the reporting period—

(i) no other donations required to be recorded in the report have been accepted by the party; and

(ii) no donation from a person or body other than a permissible donor has been accepted by the party.

(3) For the purposes of subsection (2) a return under section 31 makes a nil return if it contains such a statement mentioned in section 31(4).

(4) In the case of such a report the declaration must state that, to the best of the treasurer's knowledge and belief—

(a) that statement is accurate; and

(b) during the reporting period no donation from a person or body other than a permissible donor has been accepted by the party.

(5) In the case of a report under section 33, the declaration must state that, to the best of the treasurer's knowledge and belief, no donations have been received by the party during the reporting period which—

(a) are required to be recorded in the report; but

(b) are not so recorded.

(6) A person commits an offence if he knowingly or recklessly makes a false declaration under this section.

(7) A person who commits an offence under subsection (6) is liable, on summary conviction, to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

Weekly donation reports in connection with a by-election

37. (1) The Governor may, after consultation with the Commission and all registered parties, by order, make provision for—

- (a) sections 33 and 34, together with Schedule 2;
- (b) sections 35 and 36; and
- (c) section 75 in so far as applying in relation to section 35(1) or (2),

to apply in relation to the specified election period in the case of a by-election with such modifications as are specified in the order.

(2) In this section—

- (a) “specified election period”, in relation to a by-election, means such period ending with the date of the poll for the election as may be specified in an order under subsection (1); and
- (b) “by election” means an election other than a general election.
(Inserted by Ord. 4 of 2016)

Register of recordable donations

38. (1) The Commission shall maintain a register of all donations reported to it under this Chapter.

(2) The register is to be maintained by the Commission in such form as it decides and must contain the following details in the case of each donation—

- (a) the amount or value of the donation;
- (b) whether the donation is in the form of sponsorship, within the meaning of section 21;
- (c) subject to subsection (3), such other details as have been given in relation to the donation in pursuance of paragraph 3, 4, 5 or 7(a) or (c) of Schedule 2; and
- (d) the relevant date for the donation within the meaning of paragraph 6 of Schedule 2; and (in the case of a donation falling within subparagraph (2) of that paragraph the details given in pursuance of that subparagraph.

(3) The details required by virtue of subsection (2) do not include, in the case of any donation by an individual, the donor’s address.

Donations to individuals and members associations

39. Schedule 3 has effect in relation to donations to individual members of registered parties, associations of such members and certain elected officer holders.

PART V

CONTROL OF CAMPAIGN EXPENDITURE

Definitions

40. In this Part—

“campaign expenditure”, in relation to a registered party, means expenses incurred by or on behalf of the party which are expenses falling within Part I of Schedule 4 (and so incurred for election purposes) but does not include anything which (in accordance with any law) falls to be included in a return as to election expenses in respect of a candidate (including future candidates, whether identifiable or not) at a particular election;

“election campaign”, in relation to a registered party, means a campaign conducted by the party for election purposes;

“for election purposes”, in relation to a registered party, means for the purpose of or in connection with—

- (a) promoting or procuring electoral success for the party at an election, that is to say, the return at the election of candidates standing in the name of the party; or
- (b) otherwise enhancing the standing of the party or of any such candidates with the electorate in connection with future elections (whether imminent or otherwise),

and for the purposes of this definition—

- (c) the reference to doing any of the things mentioned in paragraph (a) or paragraph (b) includes doing so by prejudicing the electoral prospects at the election of other parties or candidates or (as the case may be) by prejudicing the standing with the electorate of other parties or candidates;
- (d) a course of conduct may constitute the doing of one of those things even though it does not involve any express mention being made of the name of any party or candidate; and
- (e) it is immaterial that any candidates standing in the name of the party also stand in the name of one or more other registered parties;
- (f) “candidates” includes future candidates, whether identifiable or not.

Notional campaign expenditure

41. (1) This section applies where, in the case of a registered party—

- (a) either—
 - (i) property is transferred to the party free of charge or at a discount of more than 10% of its market value; or
 - (ii) property, services or facilities is or are provided for the use or benefit of the party free of charge or at a discount of more

than 10% 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 party in circumstances such that, if any expenses were to be (or are) actually incurred by or on behalf of the party in respect of that use, they would be (or are) campaign expenditure incurred by or on behalf of the party.

(2) Where this section applies, an amount of campaign expenditure determined in accordance with this section (“the appropriate amount”) is treated, for the purposes of this Part, as incurred by the party during the period for which the property, services or facilities is or are made use of as mentioned in subsection (1)(b).

(3) Where subsection (1)(a)(i) applies, the appropriate amount is such proportion 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 party in respect of the property (where the property is transferred at a discount),

as is reasonably attributable to the use made of the property as mentioned in subsection (1)(b).

(4) Where subsection (1)(a)(ii) applies, the appropriate amount is such proportion 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 party 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),

as is reasonably attributable to the use made of the property, services or facilities as mentioned in subsection (1)(b).

(5) Where the services of an employee are made available by his employer for the use or benefit of a registered party, then for the purposes of this section the amount to be taken as constituting the commercial rate for the provision of those services—

- (a) is the amount of the remuneration or allowances payable to the employee by his employer in respect of the period for which his services are made available; but
- (b) does not include any amount in respect of contributions or other payments for which the employer is liable in respect of the employee.

(6) Where an amount of campaign expenditure is treated, by virtue of subsection (2), as incurred by or on behalf of a party during any period the whole or part of which falls within any period which is, in relation to the party, a relevant campaign period for the purposes of section 48, then—

- (a) the amount mentioned in subsection (7) is treated as incurred by or on behalf of the party during the relevant campaign period, unless that amount is not more than \$200; and
- (b) the treasurer or a deputy treasurer appointed under section 42 must make a declaration of that amount.

(7) The amount referred to in subsection (6) is such proportion of the appropriate amount (determined in accordance with subsection (3) or (4)) as reasonably represents the use made of the property, services or facilities as mentioned in subsection (1)(b) during the relevant campaign period.

(8) A person commits an offence if he knowingly or recklessly makes a false declaration under subsection (6).

(9) No amount of campaign expenditure is to be regarded as incurred by virtue of subsection (2) in respect of—

- (a) the transmission by a broadcaster of a party political broadcast;
- (b) any facilities provided in accordance with any right conferred on candidates or a party at an election by any enactment; or,

the provision by any individual of his own services which he provides voluntarily in his own time and free of charge.

Officers of registered party with responsibility for campaign expenditure

42. (1) The treasurer of a registered party may appoint, on such terms as he may determine, one or more deputy treasurers of the party for the purposes of this Part, but not more than five persons may hold such appointments at the same time.

(2) The appointment of a person as deputy treasurer of a party is effective for those purposes once the treasurer has given the Commission a notification of the appointment which—

- (a) contains the name of the person so appointed and the address of his office; and
- (b) is accompanied by a declaration of acceptance of office signed by that person.

(3) A person is not, however, eligible to be appointed as deputy treasurer of a registered party if, at any time within the last five years, he has been convicted of an offence under this Ordinance or the Elections Ordinance.

(4) A person commits an offence if he accepts the office of deputy treasurer of a registered party when, by virtue of subsection (3), he is not eligible to be so appointed.

(5) Where a deputy treasurer of a registered party is convicted of an offence under subsection (4), his appointment as deputy treasurer terminates on the date of the conviction.

(6) If, after the appointment of any deputy treasurer of a registered party has been notified to the Commission under subsection (2)—

- (a) the deputy treasurer dies or his appointment terminates for any other reason; or
- (b) any change occurs in the address of his office,

the treasurer of the party must notify the Commission of that fact within the appropriate period.

(7) In subsection (6) “the appropriate period” means—

- (a) the period of fourteen days beginning with the date of the deputy treasurer’s death or the termination of his appointment; or
- (b) the period of twenty-eight days beginning with the date when the change of address occurs,

as the case may be.

(8) The name of any deputy treasurer of a registered party and the address of his office, as notified to the Commission in accordance with this section, must be included in the party’s entry in the register.

(9) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine of \$5,000.

(10) For the purposes of this Part—

- (a) the address of the treasurer of a registered party is to be regarded as being the registered address of the party; and
- (b) the address of a deputy treasurer of such a party is to be regarded as being the address for the time being registered in relation to him in accordance with subsection (8).

Restriction on incurring campaign expenditure

43. (1) No campaign expenditure is to be incurred by or on behalf of a registered party unless it is incurred with the authority of—

- (a) the treasurer of the party;
- (b) a deputy treasurer of the party; or
- (c) a person authorised in writing by the treasurer or a deputy treasurer.

(2) A person commits an offence if, without reasonable excuse, he incurs any expenses in contravention of subsection (1).

(3) Where any expenses are incurred in contravention of subsection (1), the expenses do not count for the purposes of sections 47 to 52 as campaign expenditure incurred by or on behalf of the party.

(4) A person who commits an offence under subsection (2) is liable, on summary conviction, to a fine of \$5,000.

Restriction on payments in respect of campaign expenditure

44. (1) No payment of whatever nature may be made in respect of campaign expenditure incurred or to be incurred by or on behalf of a registered party unless it is made by—

- (a) the treasurer of the party;
- (b) a deputy treasurer of the party; or
- (c) a person authorised in writing by the treasurer or a deputy treasurer.

(2) A payment made in respect of any such expenditure by a person described in subsection (1)(a), (b) or (c) must be supported by an invoice or a receipt, unless it is not more than \$200.

(3) Where a person described in subsection (1)(b) or (c) makes a payment to which subsection (2) applies, he must deliver to the treasurer, as soon as possible after making the payment—

- (a) notification that he has made the payment; and
- (b) the supporting invoice or receipt.

(4) A person commits an offence if, without reasonable excuse—

- (a) he makes any payment in contravention of subsection (1); or
- (b) he contravenes subsection (3).

(5) A person who commits an offence under subsection (4) is liable, on summary conviction, to a fine of \$5,000.

Restriction on making claims in respect of campaign expenditure

45. (1) A claim for payment in respect of campaign expenditure incurred by or on behalf of a registered party during any period which is, in relation to the party, a relevant campaign period within the meaning of section 48 is not payable if the claim is not sent to—

- (a) the treasurer or a deputy treasurer of the party; or
- (b) any other person authorised under section 44 to incur the expenditure,

not later than thirty days after the end of the relevant campaign period.

(2) A claim sent in accordance with subsection (1) must be paid not later than sixty days after the end of the relevant campaign period.

(3) A person commits an offence if, without reasonable excuse—

- (a) he pays a claim which by virtue of subsection (1) is not payable; or
- (b) he makes a payment in respect of a claim after the end of the period allowed under subsection (2).

(4) In the case of a claim to which subsection (1) applies—

- (a) the person making the claim; or

- (b) the person with whose authority the expenditure in question was incurred,

may apply to the Supreme Court for leave for the claim to be paid although sent in after the end of the period mentioned in that subsection, and the Court, if satisfied that for any special reason it is appropriate to do so, may by order grant the leave.

(5) Nothing in subsection (1) or (2) applies in relation to any sum paid in pursuance of the order of leave.

(6) Subsection (2) does not affect any rights of a creditor of a registered party to obtain payment before the end of the period allowed under that subsection.

(7) Where, in the case of campaign expenditure, the period allowed under subsection (1) or (2) would (apart from this subsection) end on—

- (a) a Saturday or Sunday or Christmas Eve, Christmas Day, Maundy Thursday or Good Friday; or
- (b) a public holiday,

the period instead ends on the first day following that day which is not one of those days.

(8) A person who commits an offence under subsection (3) is liable on summary conviction to a fine of \$5,000.

Disputed claims

46. (1) This section applies if—

- (a) a claim for payment in respect of campaign expenditure incurred by or on behalf of a registered party as mentioned in section 45(1) is sent, within the period allowed under that provision, to—
- (i) the treasurer of the party; or
- (ii) any other person with whose authority it is alleged that the expenditure was incurred; and
- (b) the treasurer or other person to whom the claim is sent fails or refuses to pay the claim within the period allowed under section 45(2),

and the claim is referred to in this section as the “disputed claim”.

(2) The person by whom the disputed claim is made may bring an action for the disputed claim, and nothing in section 45(2) applies in relation to any sum paid in pursuance of a judgment or order made by a court in the proceedings.

(3) Section 45(4) to (7) apply in relation to an application made by the person mentioned in subsection (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 section 51(1).

*Financial limits***Limits on campaign expenditure**

47. (1) If, in an election for members of the House of Assembly, a registered party contests one or more electoral districts, the limit applying to campaign expenditure which is incurred by or on behalf of the party in the relevant period is the specified amount.

(2) If, during the relevant period, campaign expenditure is incurred by or on behalf of a registered party in excess of that limit—

(a) the treasurer or a deputy treasurer of the party commits an offence if—

(i) he authorised the expenditure to be incurred by or on behalf of the party; and

(ii) he knew or ought reasonably to have known that the expenditure would be incurred in excess of that limit; and

(b) the party also commits an offence.

(3) It is a defence for a person or registered party charged with an offence under subsection (2) to show—

(a) that a code of practice for the time being issued under paragraph 3 of Schedule 4 was complied with in determining the items and amounts of campaign expenditure to be entered in the relevant return under section 48; and

(b) that the limit would not have been exceeded on the basis of the items and amounts entered in that return.

(4) Where—

(a) at any time before the beginning of the relevant period, any campaign expenditures, within the meaning of section 40, are incurred by or on behalf of a registered party in respect of any property, services or facilities; but

(b) the property, services or facilities is or are made use of by or on behalf of the party during the relevant period in circumstances such that, had any expenses been incurred in respect of that use during that period, they would by virtue of section 40 have constituted campaign expenditures incurred by or on behalf of the party during that period,

the appropriate proportion of the expenses mentioned in paragraph (a) shall be treated for the purposes of this section and sections 48 to 51 as campaign expenditure incurred by or on behalf of the party during that period.

(5) For the purposes of subsection (4), the appropriate proportion of the expenses mentioned in paragraph (a) of that subsection 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) thereof.

(6) A person who commits an offence under subsection (2) is liable, on summary conviction, to a fine of \$5,000.

(7) The “relevant period” in relation to an election for members of the House of Assembly is the period of 365 days ending with the date of the poll at that election.

(8) The specified amount is—

- (a) in relation to an electoral district which is not the all Islands electoral district (within the meaning of the Elections Ordinance), \$30,000 for each district contested by the party;
- (b) in relation to the all Islands district, \$40,000 per candidate;
- (c) in relation to the leader of the party, \$100,000.

(9) Subsection (8) does not prohibit a party from incurring expenditure in excess of the specified amount set out in any paragraph of that subsection, provided that the total amount of expenditure incurred by the party during the relevant period does not exceed the amount that represents the sum of the amounts permitted under each paragraph of that subsection.

Returns

Returns as to campaign expenditure

48. (1) In this section and sections 49 and 50, “relevant campaign period”, in relation to the limit imposed by section 47 is the relevant period for the purposes of that section.

(2) Where—

- (a) the limit imposed by section 47 applies to campaign expenditure incurred by or on behalf of a registered party during the relevant campaign period; and
- (b) that period ends,

the treasurer of the party must prepare a return under this section in respect of campaign expenditure incurred by or on behalf of the party during that period.

(3) A return under this section must specify the poll for the election that took place during the relevant campaign period, and must contain—

- (a) a statement of all payments made in respect of campaign expenditure incurred by or on behalf of the party during the relevant period;
- (b) a statement of all disputed claims within the meaning of section 46 of which the treasurer is aware; and
- (c) a statement of all the unpaid claims (if any) of which the treasurer is aware in respect of which an application has been made, or is about to be made, to the Court under section 45(4).

(4) A return under this section must be accompanied by—

- (a) all invoices or receipts relating to the payments mentioned in subsection (3)(a); and

(b) in the case of campaign expenditure treated as incurred by the party by virtue of section 41, any declaration falling to be made with respect to that expenditure in accordance with section 41(6).

(5) Where, however, any payments or claims falling to be dealt with in a return by virtue of subsection (3) have already been dealt with in an earlier return under this section—

(a) it shall be sufficient for the later return to deal with those payments or claims by specifying overall amounts in respect of them; and

(b) the requirement imposed by subsection (4) does not apply to any invoices, receipts or declarations which accompanied the earlier return and are specified as such in the later return.

(6) The Commission may specify a form of return which may be used for the purposes of this section.

Auditor's report on return

49. (1) Where during a relevant campaign period the campaign expenditure incurred by or on behalf of a registered party exceeds \$250,000, a report must be prepared by a qualified auditor on the return prepared under section 48 in respect of that expenditure.

(2) Sections 14(6) and (7) and 15 apply in relation to the appointment of an auditor to prepare a report under subsection (1) or (as the case may be) to an auditor so appointed as they apply in relation to the appointment of an auditor to carry out an audit under section 14 or (as the case may be) to an auditor so appointed.

Delivery of returns to the Commission

50. (1) Where—

(a) a return is required to be prepared under section 48; and

(b) an auditor's report on it is required to be prepared under section 49(1),

the treasurer of the party must deliver the return to the Commission, together with a copy of the auditor's report, within six months of the end of the relevant campaign period.

(2) In the case of any other return falling to be prepared under section 48, the treasurer of the party must deliver the return to the Commission within three months of the end of the relevant campaign period.

(3) Where, after the date on which a return is delivered to the Commission under this section, leave is given by a court under section 45(4) for any claim to be paid, the treasurer of the party in question must, within seven days after the payment, deliver to the Commission a return of any sums paid in pursuance of the leave accompanied by a copy of the order of the court giving the leave.

(4) The treasurer of a registered party commits an offence if, without reasonable excuse, he—

- (a) fails to comply with the requirements of subsection (1) or (2) in relation to any return or report to which that subsection applies;
 - (b) delivers a return which does not comply with the requirements of section 48(3) or (4); or
 - (c) fails to comply with the requirements of subsection (3) in relation to a return under that subsection.
- (5) A person who commits an offence under subsection (4) is liable, on summary conviction—
- (a) to a fine of \$5,000; or
 - (b) in respect of an offence under subsection (4)(b) to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

Declaration by treasurer as to return under section 48

51. (1) A return under section 48 must, when delivered to the Commission, be accompanied by a declaration which complies with subsection (2) and is signed by the treasurer.

- (2) The declaration must state—
- (a) that the treasurer has examined the return; and
 - (b) that to the best of his 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 him or a deputy treasurer of the party or a person authorised under section 44.
- (3) A person commits an offence if—
- (a) he knowingly or recklessly makes a false declaration under this section; or
 - (b) subsection (1) is contravened at a time when he is treasurer of the registered party to which the return relates.

(4) A person who commits an offence under subsection (3) is liable, on summary conviction, to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

Public inspection of returns under section 48

- 52.** (1) Where the Commission receives a return under section 48, it must—
- (a) make a copy of the return, and of any documents accompanying it, available for public inspection; and
 - (b) keep the copy available for public inspection for the period for which the return or other document is kept by it.
- (2) At the end of the period of two years beginning with the date when any return or other document mentioned in subsection (1) is received by the Commission—
- (a) it may cause the return or other document to be destroyed; but

- (b) if requested to do so by the treasurer of the party concerned, it must arrange for the return or other document to be returned to the treasurer.

PART VI

CONTROLS RELATING TO THIRD PARTY ELECTION CAMPAIGNS

CHAPTER I

PRELIMINARY

Controlled expenditure by third parties

Controlled expenditure by third parties

53. (1) In this Part—

“controlled expenditure”, in relation to a third party, means (subject to section 55) expenses incurred by or on behalf of the third party in connection with the production or publication of election material which is made available to the public at large or any section of the public (in whatever form and by whatever means).

“election material” is material which can reasonably be regarded as intended to—

- (a) promote or procure electoral success at an election for—
- (i) one or more particular registered parties;
 - (ii) one or more registered parties who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of such parties; or
 - (iii) candidates (including future candidates, whether identifiable or not) who hold (or do not hold) particular opinions or who advocate (or do not advocate) particular policies or who otherwise fall within a particular category of candidates; or
- (b) otherwise enhance the standing of any such party, parties or candidates with the electorate in connection with future elections (whether imminent or otherwise),

and any such material is election material even though it can reasonably be regarded as intended to achieve any other purpose as well.

“recognised third party” means a third party for the time being recognised under section 56 for the purposes of this Part;

“responsible person”, in relation to a recognised third party, means—

- (a) if the third party is an individual, that individual;
- (b) if the third party is a registered party, the treasurer of the party;
- and

- (c) otherwise, the person or officer for the time being notified to the Commission by the third party in accordance with section 56(3)(c)(ii).

“third party”, in relation to an election, means—

- (a) a person or body other than a registered party; or
 - (b) subject to subsection (3), any registered party. (*Amended by Ord. 4 of 2016*)
- (2) For the purposes of the definition of “election material”—
- (a) the reference to electoral success at an election is a reference—
 - (i) in relation to a registered party, to the return at any such election of candidates (including future candidates, whether identifiable or not) standing in the name of the party or included in a list of candidates submitted by the party in connection with the election; and
 - (ii) in relation to such candidates, to their return at the election; and
 - (b) the reference to doing any of the things mentioned in paragraph (a) or (b) of that definition includes doing so by prejudicing the electoral prospects at the election of other parties or candidates (including future candidates, whether identifiable or not) or (as the case may be) by prejudicing the standing with the electorate of other parties or candidates,

and, for the purpose of determining whether any material is election material, it is immaterial that it does not expressly mention the name of any party or candidate.

(3) In connection with the application of the definition of “controlled expenditure” in relation to expenses incurred by or on behalf of a third party which is a registered party, a reference in the definition of “election material” to a registered party or registered parties or to any candidates does not include

- (a) the party itself; or
- (b) any candidates standing in the name of the party at an election or included in any list submitted by the party in connection with the election,

as the case may be.

Notional controlled expenditure

54. (1) This section applies where, in the case of a third party—

- (a) either—
 - (i) property is transferred to the third party free of charge or at a discount of more than 10% of its market value; or
 - (ii) property, services or facilities is or are provided for the use or benefit of the third party free of charge or at a discount of more than 10% 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 third party in circumstances such that, if any expenses were to be (or are) actually incurred by or on behalf of the third party in respect of that use, they would be (or are) controlled expenditure incurred by or on behalf of the third party.

(2) Where this section applies, an amount of controlled expenditure determined in accordance with this section (“the appropriate amount”) is treated, for the purposes of this Part, as incurred by the third party during the period for which the property, services or facilities is or are made use of as mentioned in subsection (1)(b).

(3) Subsection (2) has effect subject to section 55.

(4) Where subsection (1)(a)(i) applies, the appropriate amount is such proportion 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 third party in respect of the property (where the property is transferred at a discount),

as is reasonably attributable to the use made of the property as mentioned in subsection (1)(b).

(5) Where subsection (1)(a)(ii) applies, the appropriate amount is such proportion 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 third party 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),

as is reasonably attributable to the use made of the property, services or facilities as mentioned in subsection (1)(b).

(6) Where the services of an employee are made available by his employer for the use or benefit of a third party, then for the purposes of this section the amount which is to be taken as constituting the commercial rate for the provision of those services—

- (a) is the amount of the remuneration and allowances payable to the employee by his employer in respect of the period for which his services are so made available; but
- (b) does not include any amount in respect of any contributions or other payments for which the employer is liable in respect of the employee.

(7) Where an amount of controlled expenditure is treated, by virtue of subsection (3), as incurred by or on behalf of a third party during any period the

whole or part of which falls within any period which is a regulated period (as defined by section 62(10)(a)), then—

- (a) the amount mentioned in subsection (8) is treated as incurred by or on behalf of the third party during the regulated period, unless that amount is not more than \$200; and
- (b) if a return falls to be prepared under section 64 in respect of controlled expenditure incurred by or on behalf of the third party during that period, the responsible person shall make a declaration of that amount.

(8) The amount referred to in subsection (7) is such proportion of the appropriate amount (determined in accordance with subsection (4) or (5)) as reasonably represents the use made of the property, services or facilities as mentioned in subsection (1)(b) during the regulated period.

(9) A person commits an offence if he knowingly or recklessly makes a false declaration under subsection (7).

(10) A person who commits an offence under subsection (9) is liable, on summary conviction, to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

(11) Paragraphs 3(5) and 3(6)(a) of Schedule 5 apply with any necessary modifications for the purpose of determining, for the purposes of subsection (1), whether property is transferred to a third party.

Expenditure by third parties which is not controlled expenditure

55. (1) No amount of controlled expenditure is regarded as incurred by a third party by virtue of section 53 or 54 in respect of—

- (a) any of the matters mentioned in subsection (2); or
 - (b) property, services or facilities to the extent that the property, services or facilities is or are used in circumstances in which, in respect of that use—
 - (i) an amount of campaign expenditure is to be regarded as incurred by or on behalf of a registered party for the purposes of Part V; or
 - (ii) an amount of expenses falls (in accordance with any enactment) to be included in a return as to election expenses in respect of a candidate or candidates at a particular election.
- (2) The matters mentioned in subsection (1)(a) are—
- (a) the publication of any matter relating to an election, other than an advertisement, in a newspaper or periodical or a broadcast;
 - (b) reasonable personal expenses incurred by an individual in travelling or in providing for his accommodation or other personal needs; and
 - (c) the provision by an individual of his own services which he provides voluntarily in his own time and free of charge.

Recognised third parties

Third parties recognised for the purposes of this Part

- 56.** (1) A third party is recognised for the purposes of this Part if—
- (a) the third party has given the Commission a notification under this subsection which complies with subsection (3); and
 - (b) the notification is for the time being in force.
- (2) A third party may only give a notification under subsection (1) if the third party is
- (a) an individual resident in the Turks and Caicos Islands or registered in the Register of Electors;
 - (b) a registered party; or
 - (c) a body falling within any of paragraphs (b) and (d) to (f) of section 24(2).
- (3) A notification under subsection (1) must—
- (a) if given by an individual, be signed by him and state—
 - (i) his full name; and
 - (ii) his home address in the Turks and Caicos Islands, or (if he has no such address) his home address elsewhere ;
 - (b) if given by a registered party, be signed by the responsible officers of the party (within the meaning of section 34) and state—
 - (i) the party’s registered name; and
 - (ii) the address of its registered headquarters; and
 - (c) if given by a body falling within any of paragraphs (b) and (d) to (f) of section 24(2), be signed by the body’s secretary or a person who acts in a similar capacity in relation to the body and state—
 - (i) all such details in respect of the body as are required by virtue of any of subparagraphs 2(4) and (6) to (8) of Schedule 2 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 Chapter II.
- (4) A notification under subsection (1) (“the original notification”)—
- (a) is in force as from the date on which it is received by the Commission; but
 - (b) subject to subsection (5), lapses at the end of the period of three months beginning with any anniversary of that date unless the third party notifies the Commission that the third party wishes the original notification to continue in force.

(5) Where—

- (a) the original notification would apart from this subsection lapse under subsection (4)(b) at the end of the period of three months mentioned in that provision; but
- (b) the end of that period falls within a regulated period at the end of which a return will fall to be prepared under section 64 in respect of controlled expenditure incurred by or on behalf of the third party during the regulated period,

the original notification is to be treated, for all purposes connected with controlled expenditure so incurred during the regulated period, as lapsing at the end of that period instead.

(6) A notification under subsection (4)(b) must either—

- (a) confirm that all the statements contained in the original notification, as it has effect for the time being, are accurate; or
- (b) indicate that any statement contained in that notification, as it so has effect, is replaced by some other statement conforming with subsection (3).

(7) A notification under subsection (4)(b) must be received by the Commission during the period beginning one month before the relevant anniversary for the purposes of that provision and ending three months after it.

(8) A third party may, at any time after giving the original notification, give the Commission a notification (“a notification of alteration”) indicating that any statement contained in the original notification, as it has effect for the time being, is replaced by some other statement—

- (a) contained in the notification of alteration; and
- (b) conforming with subsection (3).

Register of notifications for purposes of section 56

57. (1) The Commission must maintain a register of all notifications given to it under section 56(1) which are for the time being in force.

(2) The register is to be maintained by the Commission in such form as it decides and must contain, in the case of each such notification, all the information contained in the notification as it has effect for the time being in accordance with section 56.

(3) The information to be entered in the register in respect of a third party who is an individual does, however, not include his home address.

CHAPTER II

FINANCIAL CONTROLS

Controlled expenditure by recognised third parties: General restrictions

Restriction on incurring controlled expenditure

58. (1) No amount of controlled expenditure is to be incurred by or on behalf of a recognised third party unless it is incurred 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, he incurs any expenses in contravention of subsection (1).

(3) A person who commits an offence under subsection (2) is liable, on summary conviction, to a fine of \$5,000.

(4) Where, in the case of a recognised third party that is a registered party, expenses are incurred in contravention of subsection (1), the expenses do not count for the purposes of sections 62 to 67 as controlled expenditure incurred by or on behalf of the recognised third party.

Restriction on payments in respect of controlled expenditure

59. (1) No payment of whatever nature may be made in respect of controlled expenditure incurred or to be incurred by or on behalf of a recognised third party unless it is made by—

- (a) the responsible person; or
- (b) a person authorised in writing by the responsible person.

(2) A payment made in respect of such expenditure by a person referred to in subsection (1)(a) or (b) must be supported by an invoice or a receipt, unless it is not more than \$200.

(3) If a person within subsection (1)(b) makes a payment to which subsection (2) applies, he must deliver to the responsible person, as soon as possible after making the payment—

- (a) notification that he has made the payment; and
- (b) the supporting invoice or receipt.

(4) A person commits an offence who, without reasonable excuse—

- (a) makes any payment in contravention of subsection (1); or
- (b) contravenes subsection (3).

(5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine of \$5,000.

Restriction on making claims in respect of controlled expenditure

60. (1) A claim for payment in respect of controlled expenditure incurred by or on behalf of a recognised third party during any period which is a regulated period (as defined by section 62(10)(a)) is not payable if the claim is not sent within thirty days after the end of the regulated period to—

- (a) the responsible person; or
- (b) any other person authorised under section 58 to incur the expenditure.

(2) A claim sent in accordance with subsection (1) must be paid not later than sixty days after the end of the regulated period.

(3) A person commits an offence who, without reasonable excuse—

- (a) pays a claim which by virtue of subsection (1) is not payable; or
- (b) makes a payment in respect of a claim after the end of the period allowed under subsection (2).

(4) A person who commits an offence under subsection (3) is liable on summary conviction to a fine of \$5,000.

(5) In the case of a claim to which subsection (1) applies—

- (a) the person making the claim; or
- (b) the person with whose authority the expenditure in question was incurred,

may apply to the Supreme Court for leave for the claim to be paid although sent in after the end of the period mentioned in that subsection, and the Court, if satisfied that for any special reason it is appropriate to do so, may by order grant the leave.

(6) Nothing in subsection (1) or (2) applies in relation to a sum paid in pursuance of the order of leave.

(7) Subsection (2) does not affect any rights of a creditor of a recognised third party to obtain payment before the end of the period allowed under that subsection.

(8) Where, in the case of campaign expenditure, the period allowed under subsection (1) or (2) would (apart from this subsection) end on—

- (a) a Saturday or Sunday or Christmas Eve, Christmas Day, Maundy Thursday or Good Friday; or
- (b) a public holiday,

the period instead ends on the first day following that day which is not one of those days.

Disputed claims

61. (1) This section applies if—

- (a) a claim for payment in respect of controlled expenditure incurred by or on behalf of a recognised third party as mentioned in

section 60(1) is sent, within the period allowed under that provision, to—

- (i) the responsible person; or
 - (ii) any other person with whose authority it is alleged that the expenditure was incurred; 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 section 60(2),

and the claim is referred to in this section as “the disputed claim”.

(2) The person by whom the disputed claim is made may bring an action for the disputed claim, and nothing in section 60(2) applies in relation to a sum paid in pursuance of a judgment or order made by a court in the proceedings.

(3) For the purposes of this section, sections 60(5) and (6) apply in relation to an application made by the person mentioned in subsection (1)(b) 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 section 60(1).

Financial limits

Limits on controlled expenditure by third parties

62. (1) The limit on controlled expenditure incurred by or on behalf of a recognised third party during a regulated period in relation to an election is \$50,000.

(2) Where during a regulated period controlled expenditure is incurred by or on behalf of a recognised third party in excess of the limit imposed by subsection (1), then—

- (a) if the third party is not an individual—
 - (i) the responsible person commits an offence if he authorised the expenditure to be incurred by or on behalf of the third party and he knew or ought reasonably to have known that the expenditure would be incurred in excess of that limit; and
 - (ii) the third party also commits an offence;
- (b) if the third party is an individual, he commits an offence if he knew or ought reasonably to have known that the expenditure would be incurred in excess of that limit.

(3) Subsection (4) applies if—

- (a) during a regulated period controlled expenditure is incurred by or on behalf of a third party in excess of \$50,000; and (*Amended by Ord. 4 of 2016*)
- (b) the third party is not a recognised third party.

(4) In a case referred to in subsection (3)—

- (a) if the third party is not an individual—

- (i) any person who authorised the expenditure to be incurred by or on behalf of the third party commits an offence if he knew or ought reasonably to have known that the expenditure would be incurred in excess of that limit; and
 - (ii) the third party also commits an offence;
 - (b) if the third party is an individual, he commits an offence if he knew or ought reasonably to have known that the expenditure would be incurred in excess of that limit.
- (5) Where—
- (a) during a regulated period controlled expenditure is incurred by or on behalf of a third party; and
 - (b) the expenditure is so incurred in pursuance of a plan or other arrangement whereby controlled expenditure is to be incurred by or on behalf of that third party and one or more other third parties in connection with the production or publication of election material which can reasonably be regarded as intended to achieve a common purpose falling within the definition of “election material” in section 53,

the expenditure mentioned in paragraph (a) is to be treated for the purposes of this section as having also been incurred, during the period, by or on behalf of the other third party or, as the case may be, each of the other third parties mentioned in paragraph (b).

(6) Subsection (5) applies whether or not any of the third parties in question is a recognised third party.

- (7) Where—
- (a) at any time before the beginning of any regulated period any expenses within the definition of “controlled expenditure” in section 53 are incurred by or on behalf of a third party in respect of any property, services or facilities; but
 - (b) the property, services or facilities is or are made use of by or on behalf of the third party during the regulated period in circumstances such that, had any expenses been incurred in respect of that use during that period, they would by virtue of the definition of “controlled expenditure” in section 53 have constituted controlled expenditure incurred by or on behalf of the third party during that period,

the appropriate proportion of the expenses mentioned in paragraph (a) shall be treated for the purposes of this section and sections 58 to 61 as controlled expenditure incurred by or on behalf of the third party during that period.

(8) For the purposes of subsection (7) the appropriate proportion of the expenses mentioned in subsection (7) (a) 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).

(9) A person who commits an offence under this section is liable, on summary conviction, to a fine of \$5,000.

- (10) For the purposes of this section and sections 58 to 61—
- (a) a “regulated period” in relation to an election for Members of the House of Assembly is a period of 365 days ending with the date of the poll at the election;
 - (b) a reference to controlled expenditure incurred by or on behalf of a recognised third party during a regulated period includes controlled expenditure so incurred during that period at any time before the third party became a recognised third party.

Donations to recognised third parties

Control of donations to recognised third parties

63. Schedule 5 has effect for controlling donations to recognised third parties which are not registered parties.

Returns

Returns as to controlled expenditure

64. (1) Where—

- (a) during a regulated period controlled expenditure is incurred by or on behalf of a recognised third party; and
- (b) that period ends,

the responsible person must prepare a return under this section in respect of the controlled expenditure incurred by or on behalf of the third party during that period.

(2) A return under this section must specify the poll for any election that took place during the regulated period in question, and must contain—

- (a) a statement of all payments made in respect of controlled expenditure incurred by or on behalf of the third party during that period;
- (b) a statement of all disputed claims (within the meaning of section 61) of which the responsible person is aware;
- (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 the Supreme Court under section 60(5); and
- (d) in a case where the third party is not a registered party, a statement of relevant donations received by the third party in respect of the election or elections which complies with the requirements of paragraphs 11 and 12 of Schedule 5.

(3) A return under this section must be accompanied by—

- (a) all invoices or receipts relating to the payments mentioned in subsection (2)(a); and
- (b) in the case of any controlled expenditure treated as incurred by the third party by virtue of section 54, any declaration falling to

be made with respect to that expenditure in accordance with section 54(7).

(4) If payments or claims falling to be dealt with in a return by virtue of subsection (2) have already been dealt with in an earlier return under this section—

- (a) it is sufficient for the later return to deal with those payments or claims by specifying overall amounts in respect of them; and
- (b) the requirement imposed by subsection (3) does not apply to invoices, receipts or declarations which accompanied the earlier return and are specified as such in the later return.

(5) Subsections (2) to (4) do not apply to controlled expenditure incurred at any time before the third party became a recognised third party, but the return must be accompanied by a declaration made by the responsible person of the total amount of such expenditure incurred at any such time.

(6) The Commission may, by notice published in the Gazette, specify a form of return which may be used for the purposes of this section.

(7) Where subsection (1)(a) applies in relation to a recognised third party and a regulated period—

- (a) the requirements as to the preparation of a return under this section in respect of controlled expenditure falling within subsection (1)(a) have effect in relation to the third party despite the third party ceasing to be a recognised third party at or after the end of the regulated period by virtue of the lapse of the third party's notification under section 56(1); and
- (b) for the purposes of, or in connection with, the discharge of obligations of the responsible person under this section and sections 66 and 67 in relation to any such return, references to the responsible person must be read as references to the person who was the responsible person in relation to the third party immediately before the notification lapsed.

(8) In this section “relevant donation” has the same meaning as in Schedule 5.

Auditor's report on return

65. (1) Where during any regulated period the controlled expenditure incurred by or on behalf of a recognised third party exceeds \$250,000, a report must be prepared by a qualified auditor on the return prepared under section 64 in respect of that expenditure.

(2) Sections 14(6) and (7) and 15 apply in relation to the appointment of an auditor to prepare a report under subsection (1) or (as the case may be) an auditor so appointed as they apply in relation to the appointment of an auditor to carry out an audit under section 14 or (as the case may be) an auditor so appointed.

Delivery of returns to the Commission

66. (1) Where—

(a) a return falls to be prepared under section 64 in respect of controlled expenditure incurred by or on behalf of a recognised third party during a regulated period; and

(b) an auditor's report on it falls to be prepared under section 65(1),

the responsible person must deliver the return to the Commission, together with a copy of the auditor's report, within six months of the end of that period.

(2) In the case of any other return falling to be prepared under section 64 in respect of controlled expenditure incurred by or on behalf of a recognised third party during a regulated period, the responsible person must deliver the return to the Commission within three months of the end of that period.

(3) Where, after the date on which a return is delivered to the Commission under this section, leave is given by the Supreme Court under section 60(5) for a claim to be paid, the responsible person must, within seven days after the payment, deliver to the Commission a return of any sums paid in pursuance of the leave accompanied by a copy of the order of the Court giving the leave.

(4) The responsible person, in the case of a recognised third party, commits an offence who, without reasonable excuse,—

(a) fails to comply with the requirements of subsection (1) or (2) in relation to a return or report to which that subsection applies; or

(b) delivers a return which does not comply with the requirements of section 64(2) or (3); or

(c) fails to comply with the requirements of subsection (3) in relation to a return under that subsection.

(5) A person who commits an offence under subsection (4) is liable on summary conviction—

(a) to a fine of \$5,000; and

(b) in the case of an offence under paragraph (b), to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

Declaration by responsible person as to return under section 64

67. (1) A return prepared under section 64 in respect of controlled expenditure incurred by or on behalf of a recognised third party during a regulated period must, when delivered to the Commission, be accompanied by a declaration which complies with subsections (2) and (3) and is signed by the responsible person.

(2) The declaration must state that—

(a) the responsible person has examined the return in question;

(b) 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 him or a person authorised by him.
- (3) The declaration must also state, in a case where the third party is not a registered party, that—
- (a) all relevant donations recorded in the return as having been accepted by the third party are from permissible donors; and
 - (b) no other relevant donations have been accepted by the third party in respect of the election or elections which took place during the regulated period.
- (4) A person commits an offence if—
- (a) he knowingly or recklessly makes a false declaration under this section; or
 - (b) subsection (1) is contravened at a time when the person is the responsible person in the case of the recognised third party to which the return relates.
- (5) A person who commits an offence under subsection (4) is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.
- (6) In this section “relevant donation” has the same meaning as in Schedule 5.

Public inspection of returns under section 64

- 68.** (1) Where the Commission receives a return under section 64, it must—
- (a) make a copy of the return and of any documents accompanying it available for public inspection; and
 - (b) keep the 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 section 64(2)(d), the Commission must ensure that the copy of the statement made available for public inspection does not include, in the case of a donation by an individual, the donor’s address.
- (3) At the end of the period of two years beginning with the date when a return or other document mentioned in subsection (1) is received by the Commission, the Commission—
- (a) 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 third party concerned, must arrange for the return or other document to be returned to that person.

Registration of independent candidate

69. (1) An individual may apply for registration as an independent candidate by sending to the Commission an application signed by the individual, along with supporting documents, and setting out—

- (a) the full name and date of birth of the individual;
- (b) the name of the electoral district in which he intends to be an independent candidate; and
- (c) the address to which communications intended for him may be addressed and where his books, records and accounts pertaining to contributions to and expenditures by him are or will be maintained,

in the form of Form 1 of Schedule 6 with such modifications as may be necessary.

(2) Where the Commission receives an application from an individual in accordance with subsection (1), it shall grant the application unless at the date of the application, the applicant—

- (a) has been adjudged or otherwise declared bankrupt under any law in force in any country and has not been discharged;
- (b) is a person certified to be insane or otherwise adjudged to be of unsound mind under any law in force in the Islands;
- (c) is serving or has at any time within the period of fifteen years immediately preceding that date been serving any part of a sentence of imprisonment (by whatever name called) of at least twelve months imposed on him by a court in any country or substituted by a competent authority for some other sentence imposed on him by such a court; or is under such a sentence of imprisonment the execution of which has been suspended;
- (d) has been convicted of an offence of corruption or an offence relating to political party regulation or the misuse of public money under any law in force in the Islands;
- (e) has not made a report or return as required by subsection (7); or
- (f) is disqualified for election by any law by reason of his holding or acting in any office the functions of which involve—
 - (i) any responsibility for, or in connection with, the conduct of any election; or
 - (ii) any responsibility for the compilation or revision of any register of electors.

(3) For the purposes of subsection (2)(c)—

- (a) where a person is serving two or more sentences of imprisonment that are required to be served consecutively he shall, throughout the whole time during which he so serves, be regarded as serving a sentence exceeding twelve months if (but not unless) any one of those sentences exceeds that term; and

- (b) no account shall be taken of a sentence of imprisonment imposed as an alternative to or in default of the payment of a fine.
- (4) If the Commission grants an application by an individual under this section, it shall include in the individual's entry in the register—
- (a) the particulars given in the application; and
 - (b) the date of registration.
- (5) If the Commission refuses an application under this section, it shall notify the individual of the reasons for refusing the application.
- (6) An application for registration under this section shall be made to the Commission no later than five days from the date of the election proclamation.
- (7) An individual applying to be registered under this section shall, on the date of the application, file a donation report and a campaign expenditure return with the Commission of any donation received and campaign expenditure incurred during the 365 days prior to the date of the application.
- (8) If no donation is received or campaign expenditure incurred during that period stated in subsection (7) it shall be so stated in the report or return, as the case may be.
- (9) Chapters I and II of Part IV apply to any donation received by an unregistered independent candidate.
- (10) Sections 40, 41, 43, 44, 45, 46 and 47 apply to campaign expenditure incurred by an unregistered independent candidate, with such modification as may be necessary, and for the purposes of such application, any reference to the treasurer or deputy treasurer shall be construed as a reference to the independent candidate.
- (11) In this section “campaign expenditure” has the same meaning as in section 40. (Inserted by Ord. 4 of 2016)

PART VII

MISCELLANEOUS AND GENERAL

Independent candidates

Independent candidates

- 70.** (1) A person who stands as an independent candidate for election to the House of Assembly (including election as a member for the all Islands district) must, not later than ten days after the date of the poll at the election, submit to the Commission a record of—
- (a) all money paid or other property transferred to him during the relevant period; and
 - (b) the identity of the person who paid the money or transferred the property.
- (2) Such a person must, at the same time submit to the Commission a record of all expenditure incurred by him during the relevant period in respect of a matter listed in paragraph 1 of Schedule 4.

(3) The following provisions apply to an independent candidate as they apply to a registered party, and for the purposes of such application, any reference to a registered party or an officer of a registered party must be construed as a reference to the independent candidate—

- (a) subject to subsection (5), Part III;
- (b) Part IV, Chapters I and II;
- (c) subject to subsection (4), Part V;
- (d) Part VI.

(4) Section 47 applies to an independent candidate as if for subsections (8) and (9) of that section there were substituted—

“(8) In the case of an independent candidate, the specified amount is—

- (a) in relation to an electoral district which is not the all Islands electoral district (within the meaning of the Elections Ordinance), \$30,000;
- (b) in relation to the all Islands district, \$100,000.”

(5) Part III applies to an independent candidate as if for the terms “treasurer of a registered party”, “treasurer “ and “registered party” there were substituted the term “independent candidate.” (*Inserted by Ord. 4 of 2016*)

(6) For the purposes of subsection (1), it is immaterial that the money is paid or other property transferred by way of a loan or other temporary arrangement.

(7) In this section, “relevant period” has the same meaning as in section 47.

Election material

Details to appear on election material

71. (1) No election material is to be published unless—

- (a) in the case of material which is, or is contained in, a printed document as mentioned in subsection (3), (4) or (5), the requirements of that subsection are complied with; or
- (b) in the case of any other material, any requirements falling to be complied with in relation to the material by virtue of regulations under subsection (6) are complied with.

(2) For the purposes of subsections (3) to (5), the following details are “the relevant details” in the case of any material falling within subsection (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 whose behalf 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 subsection (3) applies, the relevant details must appear either on the first or the last page of the document.

(5) Where the material is an advertisement contained in a newspaper or periodical—

- (a) the name and address of the printer of the newspaper or periodical must appear either on its first or last page; and
- (b) the relevant details specified in subsection (2)(b) and (c) must be included in the advertisement.

(6) The Governor may, after consulting the Commission, make regulations for and in connection with the imposition of requirements as to the inclusion in material falling within subsection (1)(b) of 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).

(7) Regulations under subsection (6) may in particular specify—

- (a) the manner and form in which such details must be included in any such material for the purpose of complying with any such requirement;
- (b) circumstances in which—
 - (i) any such requirement does not have to be complied with by a person of any description specified in the regulations; or
 - (ii) a breach of any such requirement by a person of any description so specified is not to result in the commission of an offence under this section by that person or by a person of any other such description;
- (c) circumstances in which material is, or is not, to be taken for the purposes of the regulations to be published or published by a person of any description so specified.

(8) Where material falling within subsection (1)(a) is published in contravention of subsection (1) then, subject to subsection (10), the following persons commit an offence—

- (a) the promoter of the material;
- (b) any other person by whom the material is so published; and
- (c) the printer of the document.

(9) Where material falling within subsection (1)(b) is published in contravention of subsection (1) then, subject to regulations made by virtue of subsection (7)(b) and to subsection (10), the following persons commit an offence—

- (a) the promoter of the material; and
- (b) any other person by whom the material is so published.

(10) It is a defence for a person charged with an offence under this section to prove—

- (a) that the contravention of subsection (1) arose from circumstances beyond his control; and
- (b) that he took all reasonable steps, and exercised all due diligence, to ensure that the contravention would not arise.

(11) A person who commits an offence under this section is liable on summary conviction to a fine of \$5,000.

(12) In this section—

“election material” has the meaning given by section 53;

“print” means print by whatever means, and “printer” must be construed accordingly;

“promoter”, in relation to election material, 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.

Travel expenses etc. to vote

Prohibition on payments to travel etc. to vote

72. (1) A person (A) must not, wholly or mainly for the purposes of enabling or assisting another (B) to travel to or be in the Islands for the purpose of voting in an election—

- (a) make any payment;
- (b) make or participate in any arrangement whereby another makes any payment.

(2) For the purposes of subsection (1) it is immaterial whether the payment is made directly to B or to a third person on B’s behalf.

(3) Subsection (1) does not apply if B is a member of A’s close family or A regularly makes provision for B’s maintenance.

(4) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

Enforcement of Ordinance

Monitoring function and supervisory powers of Commission

73. (1) The Commission has the general function of monitoring compliance with—

- (a) the restrictions and other requirements imposed under Parts III to V; and
 - (b) the restrictions and other requirements imposed by any other law in relation to—
 - (i) election expenses incurred by or on behalf of candidates at elections; or
 - (ii) donations to such candidates or their agents.
- (2) The Commission may by notice require the relevant person in the case of supervised organisation or individual, or former supervised organisation or individual—
- (a) to produce, for inspection by the Commission or a person authorised by it such books, documents or other records relating to the income and expenditure of the organisation or individual as the Commission reasonably requires for the purposes of carrying out its functions; or
 - (b) to furnish to the Commission or a person authorised by it such information or explanation relating to the income and expenditure of the organisation or individual as the Commission reasonably so requires,
- and to do so within such reasonable time as is specified in the notice.
- (3) The Commission or a person authorised by the Commission may—
- (a) make copies or records of information contained in any books, documents or other records produced under subsection (2)(a);
 - (b) make copies or records of any information or explanation furnished under subsection (2)(b).
- (4) A person authorised in writing by the Commission may, for the purposes of the carrying out by the Commission of its functions, enter at any reasonable time premises occupied by a supervised organisation or individual and having entered the premises may—
- (a) inspect books, documents or other records relating to the income and expenditure of the organisation or individual; and
 - (b) make copies of, or records of information contained in, such books, documents or other records.
- (5) Where any such records as are mentioned in subsection (2) or (4) are kept in electronic form, then—
- (a) the power of the Commission under subsection (3) to require records to be produced for inspection includes power to require a copy of the records to be made available for inspection in legible form, and subsection (4)(a) accordingly applies in relation to any copy so made available; and
 - (b) the power of a person authorised under subsection (4) to inspect such records includes power to require any person on the premises in question to give the authorised person such assistance as he may reasonably require to enable him—

- (i) to inspect and make copies of the records in legible form or to make records of information contained in them; or
- (ii) to inspect and check the operation of any computer, and any associated apparatus or material, that is or has been in use in connection with the keeping of the records.

(6) A person who fails, without reasonable excuse, to comply with any requirement imposed under this section commits an offence.

(7) A person who intentionally obstructs a person authorised under subsection (4) in the carrying out of the authorised person's functions under that subsection commits an offence.

(8) Subject to subsection (9), subsection (2) applies in relation to—

- (a) a regulated donee (or former regulated donee); or
- (b) a person who is (or has been) a candidate at an election or the agent for such a candidate,

as it applies to a supervised organisation or individual (or former supervised organisation or individual), and subsections (3), (5) and (6) apply accordingly.

(9) The powers conferred by virtue of subsection (8) may only be exercised by the Commission or a person authorised by it for or in connection with obtaining—

- (a) such information or explanations relating to the income and expenditure of regulated donees in connection with their political activities as the Commission reasonably requires for the purpose of monitoring compliance on the part of regulated donees with the requirements imposed under Schedule 3; or
- (b) such information or explanations relating to the income and expenditure of candidates referred to in subsection (8)(b) and their agents as the Commission reasonably requires for the purpose of monitoring their compliance with restrictions and other requirements falling within subsection (1)(b) above.

(9) In this section—

“regulated donee” and “political activities”, in relation to a regulated donee, each have the same meaning as in Schedule 3;

“relevant person”, in relation to a supervised organisation or individual, means—

- (a) in the case of an organisation, any person who is or has been the treasurer or another officer of the organisation; and
- (b) in the case of an individual, that individual;

“supervised organisation or individual” means a registered party or a recognised third party, within the meaning of Part VI.

General offences

74. (1) A person commits an offence who—

- (a) alters, suppresses, conceals or destroys or causes or permits the alteration, suppression, concealment or destruction of any

document or other record relating to the financial affairs or transactions of a supervised organisation or individual which is or is liable to be required to be produced for inspection under section 73(2); and

- (b) does so with the intention of falsifying the document or record or enabling that organisation or individual to evade any of the provisions of this Ordinance.

(2) Where the relevant person in the case of a supervised organisation, or a person acting on his behalf, requests a person holding an office in any such organisation to supply the relevant person with any information reasonably required for the purposes of this Ordinance, the person holding the office commits an offence if—

- (a) without reasonable excuse, he fails to supply the relevant person with that information as soon as is reasonably practicable; or
- (b) in purporting to comply with the request, he knowingly supplies the relevant person with any information which is false in a material particular.

(3) A person commits an offence who, with intent to deceive, withholds—

- (a) from the relevant person in the case of a supervised organisation; or
- (b) from a supervised individual,

information required by the relevant person or that individual for the purposes of this Ordinance.

(4) In subsections (1) to (3) a reference to a supervised organisation or individual includes a reference to a former supervised organisation or individual.

(5) Subsections (1) and (3) apply in relation to a person who is or has been)

- (a) a candidate at an election; or
- (b) the agent for such a candidate,

as they apply in relation to a supervised individual (or a former supervised individual), except that in their application in relation to such a person a reference to a provision of this Ordinance includes a reference to any other law imposing any restriction or other requirement falling within section 73(1)(b).

(6) A person who commits an offence under this section is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

(7) In this section—

“recognised third party” has the same meaning as in Part VI;

“regulated donee” and “members association” have the same meaning as in Schedule 3;

“relevant person” means a person who is or has been—

- (a) in relation to a registered party, the treasurer of the party;

(b) in relation to a regulated donee which is a members association, the responsible person for the purposes of Schedule 3;

(c) in relation to a recognised third party, the responsible person for the purposes of Part VI;

“supervised individual” means an individual who is a regulated donee, a recognised third party or a permitted participant;

“supervised organisation” means—

(a) a registered party;

(b) a regulated donee which is a members association; or

(c) a recognised third party other than an individual.

Civil penalty for failure to deliver documents etc.

75. (1) This section applies where—

(a) the requirements of section 8(5) are not complied with in relation to a notification required to be given by the treasurer of a registered party;

(b) the requirements of section 16(1) or (2) are not complied with in relation to a statement of accounts, notification or auditor’s report relating to a registered party;

(c) the requirements of section 35(1) or (2) are not complied with in relation to a donation report relating to a registered party;

(d) the requirements of section 42(6) are not complied with in relation to a notification required to be given by the treasurer of a registered party;

(e) the requirements of section 50(1), (2) or (3) are not complied with in relation to a return or auditor’s report relating to a registered party;

(f) the requirements of section 66(1), (2) or (3) are not complied with in relation to any return or auditor’s report relating to a recognised third party (within the meaning of Part IV);

(g) the requirements of section 70(1) or (2) are not complied with by an independent candidate.

(2) In a case where this section applies—

(a) the relevant person is liable to a civil penalty under this section; and

(b) the civil penalty is in addition to any criminal liability of any person under any other provision of this Ordinance.

(3) The amount of the penalty is to be determined by reference to—

(a) the length of the period between the end of the period within which—

(i) the notification mentioned in subsection (1)(a) or (d) was required to be given to the Commission; or

- (ii) the document mentioned in subsection (1)(b), (c), (e), (f) or (g) was required to be delivered to them,
and the day on which the requirements are complied with; and
(b) the following table—

Length of period	Penalty
Not more than 3 months	\$500
More than 3 months but not more than 6 months	\$1,000
More than 6 months but less than 12 months	\$2,000

(4) If the requirements are not complied with by the end of the period of 12 months after the end of the period referred to in subsections (3)(a)(i) and (ii), a penalty of \$5,000 is payable—

- (a) in respect of that period of twelve months; and
(b) in respect of each subsequent period of twelve months during any part of which the requirements are not complied with.

(5) A penalty imposed by this section—

- (a) is recoverable in proceedings brought by the Commission as a debt due to it; and
(b) once so recovered, must be paid by it into the Consolidated Fund.

(6) Where the relevant person is an unincorporated association, any such penalty is to be paid out of the funds of the association.

(7) In the application of this section in relation to any such document as is mentioned in subsection (1)(b), subsection (3)(a) must be read as referring to the end of the relevant period within the meaning of section 18.

(8) For the purposes of this section “the relevant person” is—

- (a) in a case within subsection (1)(a) to (e), the registered party concerned;
(b) in a case within subsection (1)(f), the recognised third party concerned; and
(c) in a case within subsection (1)(g), the independent candidate.

Inspection of registers etc.

Inspection of Commission’s registers etc.

76. (1) This section applies to a register kept by the Commission under section 3, 38 or 57.

(2) The Commission must make a copy of the register available for public inspection during ordinary office hours, either at the Commission's offices or at some convenient place appointed by it.

(3) The Commission may make other arrangements for members of the public to have access to the contents of the register.

(4) If requested to do so by any person, the Commission must supply him with a copy of the register or any part of it.

(5) The Commission may charge such reasonable fee as it determines in respect of—

(a) inspection or access allowed under subsection (2) or (3); or

(b) a copy supplied under subsection (4).

(6) Subsections (2) to (5) apply in relation to a document a copy of which the Commission are for the time being required to make available for public inspection by virtue of section 17, 52 or 68, as they apply in relation to any register within subsection (1).

(7) Where a register within subsection (1) or a document within subsection (6) is held by the Commission in electronic form, a copy—

(a) made available for public inspection under subsection (2); or

(b) supplied under subsection (4),

must be made available or supplied in a legible form.

Provisions relating to offences

Offences committed by bodies corporate

77. (1) If an offence under this Ordinance committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

(a) a director, manager, secretary or other similar officer of the body corporate; or

(b) a person who was purporting to act in any such capacity,

he, as well as the body corporate, commits the offence and is liable to be proceeded against and punished accordingly.

(2) If the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Offences committed by unincorporated associations

78. (1) Proceedings for an offence alleged to have been committed under this Ordinance by an unincorporated association must be brought against the association in its own name (and not in that of any of its members) and, for the purposes of any such proceedings, any rules of court relating to the service of documents have effect as if the association were a corporation.

(2) A fine imposed on an unincorporated association on its conviction of an offence under this Ordinance is to be paid out of the funds of the association.

(3) Where a partnership commits an offence under this Ordinance and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership commits the offence and is liable to be proceeded against and punished accordingly.

(4) Where any other unincorporated association commits an offence under this Ordinance and the offence is proved to have been committed with the consent or connivance of, or to be attributable to neglect on the part of—

(a) an officer of the association; or

(b) a member of the committee or other similar governing body of the association,

he, as well as the association, commits that offence and is liable to be proceeded against and punished accordingly.

Duty of court to report convictions to Commission

79. The court by or before which a person is convicted of—

(a) an offence under this Ordinance; or

(b) an offence committed in connection with an election,

must notify the Commission of his conviction as soon as is practicable.

Disqualification from standing for election

80. (1) This section applies to a person who is convicted of an offence under this Ordinance.

(2) A person to whom this section applies, in addition to any other punishment, is, during the period of eight years from the date of the conviction—

(a) disqualified for being registered as an elector;

(b) not entitled to vote at an election; and

(c) disqualified for being a member of the House of Assembly.

(3) If a person appeals against his conviction for the offence subsection (2) continues to have effect until the appeal is determined.

(4) Unless the conviction is quashed, subsection (2) has effect and the period of eight years must be counted from—

(a) the date the appeal is determined; or

(b) if the Court which hears the appeal so directs, the date of conviction.

*Supplementary***Orders and regulations**

81. (1) A power of the Governor to make an order or regulations under this Ordinance is to be exercised by publishing the order or regulations in the Gazette.

(2) The Governor may, after consultation with the Commission, make regulations in respect of the winding down or closing down of operations of a political party or independent candidate who has ceased to be registered under this Ordinance. (*Inserted by Ord. 4 of 2016*)

(3) An order or regulations made by the Governor under this Ordinance may—

- (a) contain such consequential, incidental, supplementary or transitional provisions or savings as the Governor thinks appropriate; and
- (b) make different provision for different purposes.

Documents for purposes of the Ordinance

82. (1) An application, notice or notification required or authorised to be made or given under this Ordinance must be in writing.

(2) A document required or authorised to be given or sent under this Ordinance may be sent by post or by electronic means.

(3) A document sent by electronic means must be capable of being reproduced in legible form.

Interpretation: donations

83. (1) This section has effect for the purposes of the provisions of this Ordinance relating to donations.

(2) Where a provision of this Ordinance refers to a donation for the purpose of meeting a particular kind of expenses incurred by or on behalf of a person of a particular description—

- (a) the reference includes a reference to a donation for the purpose of securing that such expenses are not so incurred; and
- (b) a donation is taken to be a donation for either of those purposes if, having regard to all the circumstances, it must be reasonably assumed to be such a donation.

(3) Subsections (4) and (5) apply to any provision of this Ordinance which provides, in relation to a person of a particular description (“the donee”), that money spent (otherwise than by or on behalf of the donee) in paying any expenses incurred directly or indirectly by the donee is to constitute a donation to the donee.

(4) The reference in any such provision to money so spent is a reference to money so spent by a person, other than the donee, out of his own resources (with no right to reimbursement out of the resources of the donee).

(5) Where by virtue of any such provision an amount of money so spent constitutes a donation to the donee, the donee must 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.

(6) For the purposes of this Ordinance it is immaterial whether a donation received by a registered party or a person of any other description is so received in the Turks and Caicos Islands or elsewhere.

Guidance

84. (1) The Governor, after consultation with the Commission, may issue guidance as to—

- (a) circumstances in which a loan or other transaction is to be regarded as having been or not having been on commercial terms;
- (b) the steps to be taken for the purpose of verifying whether a donor is a permissible donor for the purposes of section 24.

(2) In any question as to whether—

- (a) a loan or other transaction was on commercial terms; or
- (b) a donor is a permissible donor,

the court must take into account whether the guidance was adhered to.

Electronic submission of documents etc.

85. The Governor, after consultation with the Commission, may, by order, make such provision as he thinks appropriate for the submission or delivery of any document required to be delivered under this Ordinance to enable it to be delivered by such electronic means and in such form as the Governor may prescribe.

SCHEDULE 1

(Sections 6 to 10)

APPLICATIONS UNDER PART II

PART I

APPLICATION FOR REGISTRATION

Introductory

1. (1) Paragraphs 2 to 7 must be complied with in relation to an application under section 6
- (2) Such an application must be accompanied by any fee prescribed by order made by the Governor.
- (3) In this Part of this Schedule “an application” means an application under section 6.

Names

2. (1) An application for registration must specify a name to be the party’s registered name.
- (2) If a name to be registered in that register is in a language other than English, the application must include an English translation.

Headquarters

3. An application must specify—
 - (a) the address of the party’s headquarters; or
 - (b) if the party has no headquarters, an address to which communications to the party may be sent.

Registered officers

4. (1) An application must give the name and home address of each of the following—
 - (a) a person to be registered as the party’s leader;
 - (b) a person to be registered as the party’s treasurer.
- (2) If the person to be registered as the party’s leader is (as mentioned in section 5(3)) the leader of the party for some particular purpose, the application must specify that purpose.
- (3) If one person is named in an application as leader and treasurer, the application must also give the name and home address of the holder of some other specified office in the party.

Party organisation

5. An application must be accompanied by a copy of the party’s constitution (within the meaning of section 9); and *(Amended by Ord. 4 of 2016)*

Additional information

6. An application must include any other information prescribed by regulations made by the Governor.

Signature

7. (1) An application must be signed by—
- (a) the proposed registered leader; and
 - (b) the proposed registered treasurer;

and must include a declaration by each person signing the application that he is authorised to sign it on behalf of the party.

(2) An application may be signed by the same person in his capacity as proposed registered leader and in his capacity as proposed registered treasurer or as proposed registered campaigns officer, but in that case it must be apparent from the application that he is signing it in both of those capacities.

PART II**APPLICATION FOR ALTERATION OF ENTRY****Introductory**

8. (1) Paragraph 9 must be complied with in relation to an application under section 10. (*Amended by Ord. 4 of 2016*)

(2) Such an application must be accompanied by any fee prescribed by order made by the Governor.

(3) In paragraph 9 “an application” means an application under section 10. (*Amended by Ord. 4 of 2016*)

Signature

9. (1) Subject to subparagraph (3), an application must be signed by the responsible officers of the party.

(2) For the purposes of this paragraph, the “responsible officers” are—

- (a) the registered leader;
- (b) the registered treasurer;
- (c) where the leader and the treasurer are the same person, any other registered officer.

(3) If any responsible officer is unable to sign an application—

- (a) the holder of some other office in the party may sign in his place; and
- (b) the application must include a statement of the reason why the responsible officer is unable to sign and a declaration that the holder of the other office is authorised to sign in his place.

PART III

NOTIFICATION OF REPLACEMENT OFFICER

Introductory

10. (1) Paragraphs 11 and 12 must be complied with in relation to a notification under section 8(3)(a). (*Amended by Ord. 4 of 2016*)

(2) In paragraphs 11 and 12, a “notification” means a notification under section 8(3)(a). (*Amended by Ord. 4 of 2016*)

Details of replacement etc.

11. (1) If as a result of a notification one person will be registered as leader and treasurer, the application must request the addition of the name of the holder of some other specified office in the party.

(2) If a notification requests—

- (a) the substitution of the name of a leader, treasurer or other officer; or
- (b) an addition in accordance with subparagraph (1),

the application must give the home address of the person whose name is to be substituted or added.

Signature

12. (1) Subject to subparagraph (3), a notification must be signed by—

- (a) each person (other than the person to be registered in pursuance of the application) who is one of the responsible officers of the party; and
- (b) the person who is to be so registered.

(2) For the purposes of this paragraph, “responsible officers” has the same meaning as in paragraph 9.

(3) If any such person as is mentioned in subparagraph (1)(a) is unable to sign a notification—

- (a) the holder of some other office in the party may sign in his place; and
- (b) the application must include a statement of the reason why the person in question is unable to sign and a declaration that the holder of the other office is authorised to sign in his place.

PART IV

APPLICATION FOR REMOVAL OF ENTRY

Signature

13. Paragraph 9 applies in relation to an application under section 10 as it applies in relation to an application under section 7. (*Amended by Ord. 4 of 2016*)

SCHEDULE 2

(Sections 24, 26, 31, 33, 38 and 56)

DETAILS TO BE GIVEN IN DONATION REPORTS**Preliminary**

1. In this Schedule—

“bi-annual report” means a report required to be prepared by virtue of section 31;

“weekly report” means a report required to be prepared by virtue of section 33;

“recordable donation”, in relation to a bi-annual or weekly report, means a donation required to be recorded in that report.

Identity of donors: bi-annual reports

2. (1) In relation to each recordable donation (other than one to which paragraph 6 or 7 applies) a bi-annual report must give the following information—

- (a) the information required by whichever of subparagraphs (2) to (8) applies to the donation; and
- (b) except in the case of a donation within subparagraph (9), such other information as may be required by regulations made by the Governor after consulting the Commission.

(2) If the donor is an individual the report must give his full name and—

- (a) if his address is, at the date of receipt of the donation, shown in the Register of Electors, that address; and
- (b) otherwise, his home address, whether in the Turks and Caicos Islands or elsewhere.

(3) Subparagraph (2) does not apply in the case of a donation in the form of a bequest, and in such a case the report must state that the donation was received in pursuance of a bequest and give—

- (a) the full name of the person who made the bequest; and
- (b) his address at the time of his death or, if he was not then registered in the Register of Electors at that address, the last address at which he was so registered during the period of five years ending with the date of his death.

(4) In the case of a company falling within section 24(2)(d) the report must give—

- (a) the company’s registered name;
- (b) the address of its registered office; and
- (c) the number with which it is registered.

(5) In the case of a registered party the report must give—

- (a) the party’s registered name; and
- (b) the address of its registered headquarters.

(6) In the case of a trade union falling within section 24(2)(f) the report must give—

- (a) the name of the union; and

(b) the address of its head or main office.

(7) In the case of a limited partnership within section 24(2)(g), the report must give—

(a) the partnership's registered name; and

(b) the address of its registered office.

(8) In the case of a donation to which section 25(2) applies, the report must give the full name and address of the donor.

Identity of donors: weekly reports

3. In relation to each recordable donation a weekly report must give all such details of the name and address of the donor as are for the time being known to the party.

Value of donation

4. In relation to each recordable donation a bi-annual or weekly report must give the following details about the donation—

(a) if the donation was a donation of money (in cash or otherwise), the amount of the donation;

(b) otherwise, details of the nature of the donation and its value as determined in accordance with section 23.

Circumstances in which donation made

5. (1) In relation to each recordable donation a bi-annual or weekly report must give the relevant date for the donation.

(2) In the case of a donation to which section 25(2) applies, the report must in addition give—

(a) the date or dates on or between which the visit to which the donation relates took place; and

(b) the destination and purpose of the visit.

(3) For the purposes of this paragraph as it applies to a bi-annual report, the relevant date for a donation is the date when the donation was received.

(4) For the purposes of this paragraph as it applies to a weekly report, the relevant date for a donation is the date when the donation was received by the party as mentioned in section 33(2).

Donations from impermissible donors

6. In relation to each recordable donation to which section 24(1)(a) applies a bi-annual report must—

(a) give the name and address of the donor; and

(b) give the date when, and the manner in which, the donation was dealt with in accordance with section 26(3)(a).

Donations from unidentifiable donors

7. In relation to each recordable donation to which section 24(1)(c) applies a bi-annual report must give—

- (a) details of the manner in which it was made;
- (b) details of any element of deception or concealment employed by the donor of which the registered party or any accounting unit of the party became aware and the means by which it was revealed; and
- (c) the date when, and the manner in which, the donation was dealt with in accordance with section 26(3)(b).

Other details

8. A bi-annual or weekly report must give such other information (if any) as is required by regulations made by the Governor.

SCHEDULE 3

(Sections 24, 39, 73 and 74)

CONTROL OF DONATIONS TO INDIVIDUALS AND MEMBERS ASSOCIATIONS

PART I

INTRODUCTORY

Operation and interpretation of Schedule

1. (1) In this Schedule,

“controlled donation”—

(a) in relation to a member of a registered party, means a donation received by that person which is—

(i) offered to him; or

(ii) where it has been accepted, retained by him,

for his use or benefit in connection with any of his political activities as a member of the party;

(b) in relation to a members association, means a donation received by the association which is—

(i) offered to the association; or

(ii) where it has been accepted, retained by the association,

for its use or benefit in connection with any of its political activities;

(c) in relation to a holder of a relevant elective office, means a donation received by that person which is—

(i) offered to him; or

(ii) where it has been accepted, retained by him,

for his use or benefit (as the holder of such an office) in connection with any of his political activities;

“members association” means any organisation whose membership consists wholly or mainly of members of a registered party;

“regulated donee” means—

(a) a member of a registered party;

(b) a members association; or

(c) the holder of a relevant elective office, whether or not he is a member of a registered party;

“relevant elective office” means the office of member of the House of Assembly;

“responsible person”, in relation to a members association, means—

(a) the treasurer, if there is one; and

(b) otherwise, the person who is the responsible person by virtue of a notice in force under paragraph 3.

(2) For the purposes of this Schedule the political activities of a party member or (as the case may be) of a members association include, in particular—

- (a) promoting or procuring the election of any person to any position in, or to any committee of, the party in question;
- (b) promoting or procuring the selection of any person as the party's candidate for election to a relevant elective office; and
- (c) promoting or developing policies with a view to their adoption by the party;

and in the application of paragraph (a) or (b) to a party member the reference to any person includes that member.

(3) "Donation" shall be construed in accordance with the paragraphs 3 and 4, and (in the absence of any express indication) a donation shall be taken to have been offered to, or retained by, a person or organisation as mentioned in subparagraph (2) if, having regard to all the circumstances, it must reasonably be assumed to have been so offered or retained.

Effect of Schedule

2. This Schedule has effect for controlling donations to—

- (a) members of registered parties;
- (b) members associations; and
- (c) holders of relevant elective offices.

Appointment of responsible person by members association with no treasurer

3. (1) A members association which does not have a treasurer—

- (a) may appoint an individual to be the responsible person in relation to the association by giving notice to the Commission;
- (b) must do so within the period of thirty days beginning with the date on which the association—
 - (i) accepts a controlled donation which is a recordable donation for the purposes of paragraph 12; or
 - (ii) receives a controlled donation falling within paragraph 8(1)(a) or (b),

if a notice under this subparagraph is not in force on that date.

(2) A notice under subparagraph (1)—

- (a) must be signed on behalf of the members association;
- (b) must contain a statement signed by the individual to be appointed as the responsible person confirming that the individual is willing to be appointed.

(3) A notice under subparagraph (1) must state—

- (a) the name and address of the members association;
- (b) the full name of the individual to be appointed as the responsible person;
- (c) the individual's home address in the Islands or, if there is no such home address, the individual's home address elsewhere.

(4) Subject to the following provisions of this paragraph, a notice under subparagraph (1) ("the original notice")—

- (a) is in force as from the date on which it is received by the Commission; but
 - (b) lapses at the end of the period of twelve months beginning with that date unless the members association or the responsible person gives the Commission a notice (a “renewal notice”) that they both wish the original notice to remain in force.
- (5) A renewal notice—
 - (a) has the effect of extending the validity of the original notice for a further twelve months beginning with the time when it would otherwise have lapsed (whether under subparagraph (4)(b) or on the expiry of a previous extension under this subparagraph);
 - (b) must be received by the Commission during the period of one month ending at that time.
- (6) A renewal notice must either—
 - (a) confirm that all the statements contained in the original notice, as it has effect for the time being, are accurate; or
 - (b) indicate that any statement contained in that notice, as it so has effect, is replaced by some other statement conforming with the relevant provision of subparagraph (3).
- (7) A renewal notice must be signed on behalf of the members association and by the responsible person.
- (8) The members association or the responsible person may, at any time after giving the original notice, give the Commission a notice (a “notice of alteration”) indicating that any statement contained in the original notice, as it has effect for the time being, is replaced by some other statement—
 - (a) contained in the notice of alteration; and
 - (b) conforming with the relevant provision of subparagraph (3).
- (9) A notice of alteration takes effect on the day on which it is received by the Commission or (if later) on such date as may be specified in the notice.
- (10) A notice of alteration must be signed—
 - (a) on behalf of the members association; and
 - (b) by the responsible person or, in the case of a notice substituting a different individual as the responsible person, by that individual.
- (11) A notice under subparagraph (1) that has been in force for at least twelve months ceases to have effect on receipt by the Commission of a notice terminating it (a “notice of termination”)—
 - (a) given by and signed on behalf of the members association; or
 - (b) given and signed by the responsible person.
- (12) On receipt of a notice of termination given by the members association or by the responsible person, the Commission must inform the other party as soon as is reasonably practicable (unless the notice was signed both on behalf of the members association and by the responsible person).

(13) A reference in this paragraph to a notice being signed on behalf of a members association is to the notice being signed by the secretary of the association or by a person who acts in a similar capacity in relation to the association.

(14) A members association commits an offence if—

(a) it is subject to the requirement in subparagraph (1)(b); and

(b) without reasonable excuse it fails to comply with the requirement, subparagraph and is liable on summary conviction to a fine of \$5,000.

Donations: general rules

4. (1) “Donation”, in relation to a regulated donee, means (subject to paragraph 6)—

(a) a gift to the donee of money or other property;

(b) sponsorship provided in relation to the donee (as defined by paragraph 5);

(c) money spent (otherwise than by or on behalf of the donee) in paying any expenses incurred directly or indirectly by the donee;

(d) the provision otherwise than on commercial terms of any property, services or facilities for the use or benefit of the donee (including the services of any person);

(e) (where the donee is a members association) a subscription or other fee paid for affiliation to, or membership of, the donee.

(2) Where—

(a) money or other property is transferred to a regulated donee pursuant to a transaction or arrangement involving the provision by or on behalf of the donee of 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 donee 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 constitutes (subject to subparagraph (4)) a gift to the donee for the purposes of subparagraph (1)(a).

(3) In determining for the purposes of subparagraph (1)(e) whether property, services or facilities provided for the use or benefit of a regulated donee 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 donee in respect of the provision of the property, services or facilities.

(4) Where (apart from this subparagraph) anything would be a donation both by virtue of subparagraph (1)(b) and by virtue of any other provision of this paragraph, subparagraph (1)(b) (together with paragraph 5) applies in relation to it to the exclusion of the other provision of this paragraph.

(5) Anything given or transferred to an officer, member, trustee or agent of a members association in his capacity as such (and not for his own use or benefit) is to be regarded as given or transferred to the association (and references to donations received by a regulated donee accordingly include, in the case of a members association, donations so given or transferred).

(6) In this paragraph—

- (a) a reference to anything being given or transferred to a regulated donee or another person is a reference to its being so given or transferred either directly or indirectly through any third person;
- (b) “gift” includes bequest.

Sponsorship

5. (1) For the purposes of this Schedule sponsorship is provided in relation to a regulated donee if—

- (a) money or other property is transferred to the donee or to any person for the benefit of the donee; 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 donee with meeting, or to meet, to any extent any defined expenses incurred or to be incurred by or on behalf of the donee; or
 - (ii) to secure that to any extent any such expenses are not so incurred.

(2) In subparagraph (1) “defined expenses” means expenses in connection with—

- (a) a conference, meeting or other event organised by or on behalf of the donee;
- (b) the preparation, production or dissemination of any publication by or on behalf of the donee; or
- (c) any study or research organised by or on behalf of the donee.

(3) The following do not, however, constitute sponsorship by virtue of subparagraph (1)—

- (a) the making of any payment in respect of—
 - (i) a charge for admission to a conference, meeting or other event; or
 - (ii) the purchase price of, or any other charge for access to, a publication;
- (b) the making of a payment in respect of the inclusion of an advertisement in a publication where the payment is made at the commercial rate payable for the inclusion of such an advertisement in the publication.

(4) The Governor may by order made on the recommendation of the Commission amend subparagraph (2) or (3).

(5) 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

6. (1) None of the following shall be regarded as a donation—

- (a) any facility provided in pursuance of a right conferred on candidates at an election by any enactment;
- (b) the provision by any individual of his own services which he provides voluntarily and in his own time;
- (c) any interest accruing to a regulated donee in respect of any donation which is dealt with by the donee in accordance with section 26(3)(a) or (b) (as applied by paragraph 10);

(d) money or other property, or any services or facilities, provided out of public funds for the personal security of a regulated donee who is an individual.

(2) No remuneration or allowances paid to the holder of a relevant elective office in his capacity as such is to be regarded as a donation.

(3) There shall also be disregarded a donation which (in accordance with any enactment) falls to be included in a return as to election expenses in respect of a candidate or candidates at a particular election.

Value of donations

7. (1) The value of a donation within paragraph 4(1)(a) (other than money) is the market value of the property in question.

(2) If, however, paragraph 4(1)(a) applies by virtue of paragraph 4(2) the value of the donation is 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 donee.

(3) The value of a donation falling within paragraph 4(1)(b) is the value of the money, or (as the case may be) the market value of the property, transferred as mentioned in paragraph 5(1); and accordingly any value in monetary terms of any benefit conferred on the person providing the sponsorship in question must be disregarded.

(4) The value of a donation within paragraph 4(1)(e) is 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 donee 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 donee.

(5) If a donation such as is mentioned in subparagraph (4) confers an enduring benefit on the donee over a particular period, the value of the donation—

(a) must be determined at the time when it is made; but

(b) must be so determined by reference to the total benefit accruing to the donee over that period.

PART II

CONTROLS ON DONATIONS

Prohibition on accepting donations from impermissible donors

8. (1) A controlled donation received by a regulated donee must not be accepted by the donee if—

(a) the person by whom the donation would be made is not, at the time of its receipt by the donee, a permissible donor; or

(b) the donee is (whether because the donation is given anonymously or by reason of deception or concealment or otherwise) unable to ascertain the identity of that person.

(2) If a person (“the principal donor”) causes an amount (“the principal donation”) to be received by a regulated donee by way of a donation—

(a) on behalf of himself 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 within paragraph (a) or (b) must be treated as if it were a separate donation received from that person.

(3) In relation to each such separate donation, the principal donor must ensure that, at the time when the principal donation is received by the regulated donee, 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 2 of Schedule 2 to be given in respect of the donor of a recordable donation to a registered party; and

(b) (in any case) all such details in respect of the donation as are required by virtue of paragraph 4 of Schedule 2 to be given in respect of a recordable donation to a registered party.

(4) If a person (“the agent”) causes an amount to be received by a regulated donee by way of a donation on behalf of another person (“the donor”), the agent must ensure that, at the time when the donation is received by the regulated donee, the responsible person is given all such details in respect of the donor as are required by virtue of paragraph 2 of Schedule 2 to be given in respect of the donor of a recordable donation to a registered party.

(5) A person commits an offence if, without reasonable excuse, he fails to comply with subparagraph (3) or (4).

(6) A person who commits an offence under subparagraph (5) is liable, on summary conviction, to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

Payments etc. which are (or are not) to be treated as donations by permissible donors

9. (1) A payment out of public funds received by a regulated donee which is a members association, for its use and benefit in connection with any of its political activities, is to be regarded as a controlled donation received by the association from a permissible donor.

(2) A donation received by a regulated donee is (if it would not otherwise fall to be so regarded) to be regarded as a controlled donation received by the donee from a permissible donor if and to the extent that—

(a) the purpose of the donation is to meet qualifying costs incurred or to be incurred in connection with any visit—

(i) by the donee in connection with any of the donee’s political activities; or

(ii) in the case of a members association, by any member or officer of the association in connection with any of its political activities,

to a country or territory outside the Islands, and

(b) the amount of the donation does not exceed a reasonable amount in respect of such costs.

(3) In subparagraph (2) “qualifying costs”, in relation to the donee or (as the case may be) any member or officer of the donee, means costs relating to that person in respect of—

(a) travelling between the Islands and the country or territory in question; or

(b) travelling, accommodation or subsistence while within that country or territory.

(4) But a controlled donation received by a regulated donee from a trustee of any property (in his capacity as such) which is not a controlled donation transmitted by the trustee to the donee on behalf of beneficiaries under the trust who are—

(a) persons who at the time of its receipt by the donee are permissible donors falling within section 24(2); or

(b) the members of an unincorporated association which at that time is a permissible donor,

is to be regarded as a controlled donation received by the donee from a person who is not a permissible donor.

Acceptance or return of donations

10. (1) Sections 26 to 29 apply for the purposes of this Schedule in relation to a regulated donee and any controlled donation received by a regulated donee as they apply for the purposes of this Part in relation to a registered party and any donation received by a registered party.

(2) In its application in accordance with subparagraph (1), section 26(4) and (6) each have effect as if the reference to the treasurer of the party were construed—

(a) in relation to a regulated donee other than a members association, as a reference to the donee; and

(b) in relation to a members association, as a reference to the responsible person.

Evasion of restrictions on donations

11. Section 30 applies for the purposes of this Schedule as if—

(a) a reference to donations were to controlled donations;

(b) a reference to a registered party were to a regulated donee; and

(c) a reference to the treasurer of such a party were construed as mentioned in paragraph 10(2)(a) or (b).

PART III

REPORTING OF DONATIONS BY REGULATED DONEES

Donation reports: donations from permissible donors

12. (1) A regulated donee must—

(a) prepare a report under this paragraph in respect of each controlled donation accepted by the donee; and

- (b) deliver the report to the Commission within the period of 30 days beginning with the date of acceptance of the donation.
- (2) Each report prepared by virtue of subparagraph (1) must—
 - (a) give the name and address of the donee; and
 - (b) if he is the holder of a relevant elective office, specify the office in question.
- (3) Each such report must also give—
 - (a) such information as is required to be given, in the case of a report prepared by virtue of section 31 by virtue of paragraphs 2 and 4 of Schedule 2;
 - (b) the date when the donation was accepted by the donee; and
 - (c) such other information as is required by regulations made by the Commission.
- (4) In the application of paragraphs 2 and 4 of Schedule 2 in accordance with subparagraph (3) above—
 - (a) a reference to a recordable donation within the meaning of that Schedule is to be construed as a reference to a controlled donation accepted as mentioned in subparagraph (1);
 - (b) a reference to section 25(1) or (2) is to be construed as a reference to paragraph 9(1) or (2) respectively; and
 - (c) a reference to section 29 is to be construed as a reference to paragraph 7 above.

Donation reports: donations from impermissible or unidentifiable donors

13. (1) A regulated donee must—
- (a) prepare a report under this paragraph in respect of each donation received by the donee and falling within paragraph 8(1)(a) or (b); and
 - (b) deliver the report to the Commission within the period of thirty days beginning with the date when the donation was dealt with in accordance with section 26(3)(a) or (b).
- (2) Each such report must—
- (a) give the name and address of the donee; and
 - (b) if he is the holder of a relevant elective office, specify the office in question.
- (3) Each such report in respect of a donation falling within paragraph 8(1)(a) must also give—
- (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 7;
 - (c) the date when the donation was received and the date when, and the manner in which, it was dealt with in accordance with section 26(3)(a); and
 - (d) such other information as is required by regulations made by the Governor.
- (4) Each such report in respect of a donation falling within paragraph 8(1)(b) must also give—

- (a) details of the manner in which it 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 7;
- (c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with section 26(3)(b); and
- (d) such other information as is required by regulations made by the Governor.

Offence of failing to deliver donation report

14. (1) Where a report required to be delivered to the Commission under paragraph 12(1) or 13(1) is, without reasonable excuse not delivered by the end of the period of thirty days mentioned in paragraph 12(2) or 13(1)—

- (a) in the case of a regulated donee other than a members association, the regulated donee commits an offence;
- (b) in the case of a members association, the association and the responsible person commit an offence.

(2) If such a report is delivered to the Commission which, without reasonable excuse, does not comply with any requirements of paragraph 12 or 13 as regards the information to be given in such a report—

- (a) in the case of a regulated donee other than a members association, the regulated donee commits an offence;
- (b) in the case of a members association, the association and the responsible person commit an offence.

(3) An individual who commits an offence—

- (a) under subparagraph (1), is liable on summary conviction to a fine of \$5,000;
- (b) under subparagraph (2) is liable on summary conviction to a fine of \$5,000 or to imprisonment for a term of twelve months, or both.

(4) A members association that commits an offence under subparagraph (1) or (2) is liable, on summary conviction, to a fine of \$5,000.

(5) If the Supreme Court is satisfied, on an application made by the Commission, that a failure to comply with any such requirements in relation to a donation to the regulated donee was attributable to an intention on the part of any person to conceal the existence or true amount of the donation, the court may order the forfeiture by the donee of an amount equal to the value of the donation.

(6) Sections 28(3) and (4) and 29 apply for the purposes, or in connection with the operation, of subparagraph (5) in relation to a regulated donee as they apply for the purposes, or in connection with the operation, of section 28 in relation to a registered party.

Declaration in donation report

15. (1) Each report under paragraph 12 or 13 must, when delivered to the Commission, be accompanied by a declaration made by—

- (a) the regulated donee; or
- (b) (if a members association) the responsible person,

which complies with subparagraph (2) or (3).

(2) In the case of a report under paragraph 12, the declaration must state that, to the best of the declarant's knowledge and belief, any donation recorded in the report as having been accepted by the donee was from a permissible donor.

(3) In the case of a report under paragraph 13, the declaration must state that, to the best of the declarant's knowledge and belief, the donation recorded in the report as having been received by the donee, or a payment of an equivalent amount, has been returned to the donor or otherwise dealt with in accordance with the provisions of Chapter II of Part IV of this Ordinance.

(4) A person commits an offence if he knowingly or recklessly makes a false declaration under this paragraph.

(5) A person who commits an offence under subparagraph (4) is liable, on summary conviction, to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

PART IV

REGISTER OF DONATIONS

Register of recordable donations

16. (1) Section 38 applies in relation to donations reported to the Commission under this Schedule ("relevant donations") as it applies to donations reported to it under Chapter III of Part IV of this Ordinance.

(2) But in its application in accordance with subparagraph (1), section 38(2) has effect in relation to a relevant donation as if (instead of requiring the register to contain the details mentioned in paragraphs (a) to (c) of that subsection) it required the register to contain such details as have been given in relation to the donation in pursuance of paragraph 12(3), 12(4), 13(2), 13(3) or 13(4).

SCHEDULE 4

(Section 40, 47 and 70)

CAMPAIGN EXPENDITURE: QUALIFYING EXPENSES**PART I****QUALIFYING EXPENSES****Expenses qualifying where incurred for election purposes**

1. For the purposes of the definition of “campaign expenditure” in section 40, the expenses falling within this Part are expenses incurred in respect of any of the matters set out in the following list.

LIST OF MATTERS

(1) Party political broadcasts—

expenses in respect of such broadcasts include agency fees, design costs and other costs in connection with preparing or 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 electors (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 such material (including the cost of postage).

(4) A manifesto or other document setting out the party’s policies—

expenses in respect of such a document include design costs and other costs in connection with preparing or producing or distributing or otherwise disseminating any such document.

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

(6) The provision of 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 an election campaign—

expenses in respect of the transport of such persons include the costs of hiring a particular means of transport for the whole or part of the period during which the election 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 an election campaign or for other purposes connected with an election 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.

(9) Temporary election staff—

expenses in respect of persons employed or otherwise engaged by a party to carry out functions wholly or mainly related to an election.

Exclusions

2. Nothing in paragraph 1 is to be taken as extending to—

- (a) expenses in respect of newsletters or similar publications issued by or on behalf of the party with a view to giving electors in a particular electoral area information about the opinions or activities of, or other personal information relating to, their elected representatives or existing or prospective candidates;
- (b) expenses incurred in respect of unsolicited material addressed to party members;
- (c) expenses in respect of property, services or facilities so far as those expenses fall to be met out of public funds;
- (d) expenses incurred in respect of the remuneration or allowances payable to a member of the staff of the party (not being a person within paragraph 1(9)); or
- (e) expenses incurred in respect of an individual who is not a candidate by way of travelling expenses (by any means of transport) or in providing for his accommodation or other personal needs to the extent that the expenses are paid by the individual from his own resources and are not reimbursed to him.

PART II

SUPPLEMENTAL

Guidance by Commission

3. The Governor, after consultation with the Commission, may prepare, 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 Part I of this Schedule.

Power to amend Part I

4. (1) The Governor may by order make such amendments of Part I of this Schedule as he considers appropriate.

(2) The Governor may make such an order either—

- (a) where the order gives effect to a recommendation of the Commission; or
- (b) after consultation with the Commission.

SCHEDULE 5*(Sections 54, 63, 64 and 67)***CONTROL OF DONATIONS TO RECOGNISED THIRD PARTIES****PART I****INTRODUCTORY****Interpretation**

1. (1) In this Schedule, “relevant donation”, in relation to a recognised third party, means a donation to the recognised third party for the purpose of meeting controlled expenditure incurred by or on behalf of the third party.

(2) “Donation” must be construed in accordance with paragraphs 3 to 5.

(3) References to a permissible donor falling within section 24(2) do not include a registered party.

Operation of Schedule

2. This Schedule has effect for controlling donations to recognised third parties which are not registered parties

Donations: general rules

3. (1) “Donation”, in relation to a recognised third party, means (subject to paragraph 5)—

(a) a gift to the recognised third party of money or other property;

(b) sponsorship provided in relation to the recognised third party (as defined by paragraph 4);

(c) money spent (otherwise than by or on behalf of the recognised third party) in paying any controlled expenditure incurred by or on behalf of the recognised third party;

(d) money lent to the recognised third party otherwise than on commercial terms;

(e) the provision otherwise than on commercial terms of property, services or facilities for the use or benefit of the recognised third party (including the services of any person); and

(f) in the case of a recognised third party, other than an individual, a subscription or other fee paid for affiliation to, or membership of, the third party.

(2) Where—

(a) any money or other property is transferred to a recognised third party pursuant to a transaction or arrangement involving the provision by or on behalf of the recognised third party of 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 recognised third party 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 subparagraph (4)) constitutes a gift to the recognised third party for the purposes of subparagraph (1)(a).

(3) In determining—

- (a) for the purposes of subparagraph (1)(d) whether any money lent to a recognised third party is so lent otherwise than on commercial terms; or
- (b) for the purposes of subparagraph (1)(e) whether any property, services or facilities provided for the use or benefit of a recognised third party 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 recognised third party in respect of the loan or the provision of the property, services or facilities.

(4) Where (apart from this subparagraph) anything would be a donation both by virtue of subparagraph (1)(b) and by virtue of any other provision of this paragraph, subparagraph (1)(b) (together with paragraph 4) applies in relation to it to the exclusion of the other provision of this paragraph.

(5) Anything given or transferred to an officer, member, trustee or agent of a recognised third party in his capacity as such (and not for his own use or benefit) is to be regarded as given or transferred to the recognised third party (and references to donations received by a recognised third party accordingly include donations so given or transferred).

(6) In this paragraph—

- (a) a reference to anything being given or transferred to a recognised third party includes a reference to its being given or transferred either directly or indirectly through any third person;
- (b) “gift” includes bequest.

Sponsorship

4. (1) For the purposes of this Schedule, sponsorship is provided in relation to a recognised third party if—

- (a) money or other property is transferred to the recognised third party or to a person for the benefit of the recognised third party; 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 recognised third party with meeting, or to meet, to any extent defined expenses incurred or to be incurred by or on behalf of the recognised third party; or
 - (ii) to secure that to any extent such expenses are not so incurred.

(2) In subparagraph (1) “defined expenses” means expenses in connection with—

- (a) a conference, meeting or other event organised by or on behalf of the recognised third party;
- (b) the preparation, production or dissemination of any publication by or on behalf of the recognised third party; or
- (c) any study or research organised by or on behalf of the recognised third party.

- (3) The following do not, however, constitute sponsorship by virtue of subparagraph (1)—
- (a) making a payment in respect of—
 - (i) a charge for admission to a conference, meeting or other event; or
 - (ii) the purchase price of, or any other charge for access to, a publication;
 - (b) making a payment in respect of the inclusion of an advertisement in a publication where the payment is made at the commercial rate payable for the inclusion of such an advertisement in such publication.
- (4) The Governor may by order made on the recommendation of the Commission amend subparagraph (2) or (3).
- (5) 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 a section of the public).

Payments etc. not to be regarded a donations

5. (1) None of the following is regarded as a donation—
- (a) the provision by an individual of his own services which he provides voluntarily in his own time and free of charge;
 - (b) interest accruing to a recognised third party in respect of any donation which is dealt with by the responsible person in accordance with section 26(3)(a) or (b) (as applied by paragraph 8).
- (2) A donation whose value (as determined in accordance with paragraph 6) is not more than \$200 is to be disregarded.

Value of donations

6. (1) The value of a donation within paragraph 3(1)(a) (other than money) is the market value of the property in question.
- (2) Where, however, paragraph 3(1)(a) applies by virtue of paragraph 3(2), the value of the donation is 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 recognised third party.
- (3) The value of a donation within paragraph 3(1)(b) is the value of the money, or (as the case may be) the market value of the property, transferred as mentioned in paragraph 4(1); and accordingly any value in monetary terms of any benefit conferred on the person providing the sponsorship in question is disregarded.
- (4) The value of a donation within paragraph 3(1)(d) or (e) is 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 recognised third party in respect of the loan or the provision of the property, services or facilities if the loan had been made or 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 recognised third party.

(5) Where a donation such as is mentioned in subparagraph (4) confers an enduring benefit on the donee over a particular period, the value of the donation—

- (a) is determined at the time when it is made; but
- (b) is so determined by reference to the total benefit accruing to the donee over that period.

PART II

CONTROLS ON DONATIONS

Prohibition on accepting donations from impermissible donors

7. (1) A relevant donation received by a recognised third party must not be accepted if—

- (a) the person by whom the donation would be made is not, at the time of its receipt by the recognised third party, a permissible donor within section 24(2); or (*Amended by Ord. 4 of 2016*)
- (b) the recognised third party 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) But, for the purposes of this Schedule, a relevant donation received by a recognised third party from a trustee of any property (in his capacity as such) which is not a relevant donation transmitted by the trustee to the recognised third party on behalf of beneficiaries under the trust who are—

- (a) persons who at the time of its receipt by the recognised third party are permissible donors falling within section 24(2); or
- (b) the members of an unincorporated association which at that time is such a permissible donor,

is regarded as a relevant donation received by the recognised third party from a person who is not such a permissible donor.

(4) Where a person (“the principal donor”) causes an amount (“the principal donation”) to be received by a recognised third party by way of a relevant donation—

- (a) on behalf of himself 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 within paragraph (a) or (b) of more than \$200 is 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 recognised third party, 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 11(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 11(1)(a).

(6) Where—

- (a) any person (“the agent”) causes an amount to be received by a recognised third party by way of a donation on behalf of another person (“the donor”); and
- (b) the amount of the donation is more than \$200,

the agent must ensure that, at the time when the donation is received by the recognised third party, the responsible person is given all such details in respect of the donor as are required by virtue of paragraph 11(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, he fails to comply with subparagraph (5) or (6).

(8) A person who commits an offence under subparagraph (7) is liable, on summary conviction, to a fine of \$5,000 or to imprisonment for a term of twelve months, or to both.

Acceptance or return of donations

8. (1) Sections 26 to 29 apply for the purposes of this Schedule in relation to a recognised third party and a relevant donation received by a recognised third party as they apply in relation to a registered party and a donation received by a registered party.

(2) In the application of sections 26 to 29 in accordance with subparagraph (1)—

- (a) section 26(2) has effect as if the reference to the particulars relating to a donor which would be required to be included in a donation report by virtue of paragraph 3 of Schedule 2 (if the donation were a recordable donation within the meaning of that Schedule) were construed as a reference to the particulars which are required to be included in a return by virtue of paragraph 11(1)(c) (in relation to a donation to which that paragraph applies); and
- (b) section 26(4) and (6) each have effect as if any reference to the treasurer of the party were construed as a reference to the responsible person.

Evasion of restrictions on donations

9. Section 30 applies for the purposes of this Schedule as if—

- (a) a reference to donations were to relevant donations;
- (b) a reference to a registered party were a reference to a recognised third party; and
- (c) a reference to the treasurer of a registered party were, in relation to a recognised third party, a reference to the responsible person.

PART III

REPORTING OF DONATIONS

Statement of relevant donations

10. The recognised third party must include in a return required to be prepared under section 64 a statement of relevant donations received in respect of the relevant election or elections (within the meaning of that section) which complies with paragraphs 11 and 12.

Donations from permissible donors

11. (1) The statement must record, in relation to each relevant donation falling within subparagraph (2) which is accepted by the recognised third party—

- (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 6;
- (b) the date when the donation was accepted by the recognised third party; 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 3 of Schedule 2.

(2) Subparagraph (1) applies to a relevant donation where—

- (a) the value of the donation is more than \$5,000; or
- (b) the value of the donation, when added to the value of any other donation or donations made by the same donor (whether or not falling within paragraph (a)), is more than that amount.

(3) The statement must also record—

- (a) the total value of any relevant donations, other than those falling within subparagraph (2), which are accepted by the recognised third party; and
- (b) such other information as may be required by regulations made by the Governor.

Donations from impermissible donors

12. (1) This paragraph applies to relevant donations falling within paragraph 7(1)(a) or (b).

(2) Where paragraph 7(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 6;
- (c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with section 26(3)(a); and
- (d) such other information as is required by regulations made by the Governor.

(3) Where paragraph 7(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 section 26;
- (c) the date when the donation was received, and the date when, and the manner in which, it was dealt with in accordance with section 26(3)(b); and
- (d) such other information as is required by regulations made by the Commission.

(4) In this paragraph a reference to a provision of section 26 is a reference to that provision as applied by paragraph 8.

SCHEDULE 6

(Section 6)

FORMS

FORM 1

APPLICATION FOR REGISTRATION OF A POLITICAL PARTY

To: The Integrity Commission

I, _____
(Give full first name and surname in block letters)

(State position in political party – leader or treasurer)
hereby apply for registration of the following political party:

(Name of political party – not more than 6 words)

If the leader of the party is the applicant, here state the name and address of the treasurer, if the treasurer is the applicant, here state the name of the leader:

of

Attach a copy of the party's constitution (see section 9(8)).

(Signature of applicant)

Date of application

FORM 2

(Section 48) (Inserted by Ord. 4 of 2016)

CAMPAIGN EXPENDITURE RETURN

A1 Details of registered party/third party

Party name

Regulated period Election

A2 Declaration and signature:

I declare that I have examined the information in this return and that, to the best of my knowledge and belief, it is a complete and correct return as required by law, and that all expenses shown in it as paid have been paid by me or one of my deputies or by a person authorised under section 44 of the Political Activities Ordinance.

Signed Date

Printed name

Registered treasurer

A3 Audited return:

Name of auditor

Address

Return audited Yes No (tick as appropriate)

Party name Regulated period Election

B Summary of expenditure (to nearest \$)

B1 Types of payment: Total of payments made: \$.....

Total of notional expenditure incurred: \$.....

Total of unpaid claims: \$.....

Total of disputed claims: \$.....

Total \$.....

B2 Number of districts contested**B3 Categories of expenditure (to nearest \$)**

Summary information required

A. Party political broadcasts: \$.....

B. Advertising and publicity material \$.....

C. Unsolicited material to electors \$.....

D. Manifesto/party policy documents \$.....

E. Market research/Canvassing \$.....

F. Media \$.....

G. Transport \$.....

H. Rallies and other events \$.....

I. Overheads and general administration \$.....

Total expenditure \$.....

C Payments made

Number of entries in this section

C1 Actual payments made

For each payment made a copy of the information below must be provided:

No Date expense incurred

Category of expense (A-I) Date of claim for payment

Date claim paid Amount \$..... c.....

Supplier (name and address)

Name

Address

Invoice/receipt submitted Yes No (tick as appropriate)

C2 Notional expenditure – statement of individual items

Number of entries in this section

For each notional item of expenditure, a copy of the information specified below must be provided:

Item number Category of expense (A-I) Amount (\$,cc)

Nature of expenditure Period/.....

Date incurred

Supplier name and address:

Name

Address

Declaration submitted if over \$200* Yes No (Tick as appropriate)

* A declaration signed by the Treasurer must be provided in respect of each item with a value exceeding \$200.

D Statement of unpaid claims

(where an application has been made or is about to be made to a court under section 45(4) of the Political Activities Ordinance)

Number of entries

For each unpaid claim, the information specified below must be provided

Item number Category of expense (A-I) Amount (\$,cc) ...

Expense incurred (date) Invoice (date)

Supplier (name and address)

Name

Address

Comments

E Statement of disputed claims

Number of entries in this section

For each disputed claim, the information specified below must be provided

Item number Category of expense Amount (\$,cc)

Date of disputed claim Date of invoice

Supplier (name and address)

Name

Address

Comments

F Declaration of notional expenditure

I declare that the individual amounts listed below are a fair assessment of the notional expenditure incurred by the party

Item number	Item	Value	Suppliers details	Date/period incurred		
				dd	mm	yyyy

Signed

Printed name Date

Please return form to:
The Integrity Commission
Address etc.

FORM 3

(Section 56) (Inserted by Ord. 4 of 2016)

NOTIFICATION OF RECOGNITION OF THIRD PARTY STATUS

1 Details of individual or body submitting a notification

Dr/Mr/Mrs/Ms/Miss/Other First Name(s)
Surname
Address
Tel No. Email

2 Status (tick as appropriate)

..... individual building society
..... company limited liability partnership
..... registered party trade union
..... unincorporated association
Company registration number (if applicable)

3 Responsible person

Dr/Mr/Mrs/Ms/Miss/Other First Name(s)
Surname
Address

4 Declaration and signature

I (we) hereby give notification to the Integrity Commission that the individual or body named above wishes to be a recognised third party for the purposes of Part VI of the Political Parties Ordinance.

Signed
Printed name Date
Position held

Signed
Printed name Date
Position held

Please return the form to:

The Integrity Commission
Address etc.

FORM 4

(Sections 31 and 33) (Inserted by Ord. 4 of 2016)

DONATION RETURN BY A REGISTERED POLITICAL PARTY

A1 Details of Registered party

Party name

Period Party reference

A2 Declaration and signature

I declare to the best of my knowledge and belief that all the donations recorded in this report as having been accepted (by the above party) are from permissible donors. I further declare to the best of my knowledge and belief that during the said reporting period no other donations required to be recorded in the report have been accepted (by the party) and that no donations from any person or body other than a permissible donor have been accepted (by the above party).

Submitted by party treasurer

Signed Date

Printed name

For Integrity Commission use

Date of receipt Checked by

Date entered in database Checked by.....

Date of compliance check Checked by

File reference

Party name Period

B Accepted donations**B1 Cash donations (cash, cheque, bankers order, credit card, other transfer)**

Number of entries in this section

For each donation the information specified below must be separately provided

Full name

Address

Donor status Company reg, no,

Request Yes No (tick as appropriate) Cash amount (\$,cc) .

Date received Date accepted

Received by

B2 Non-cash donations

Number of entries in this section

For each donation the information specified below must be separately provided

Full name
Address

Donor status Company reg. no,

Bequest Yes No (tick as appropriate) Value (\$..cc)

Date received Date accepted

Nature of non-cash bequest or donation

Received by

B3 Payment from Public Funds

Number of entries in this section

For each receipt the information specified below must be separately provided

Full name
Address

Donor status Company reg. no,

Bequest Yes No (tick as appropriate) Value (\$..cc)

Date received Date accepted

Nature of non-cash bequest or donation

Received by

B4 Visits provided

Number of entries in this section

For each visit the information specified below must be separately provided

Full name
Address

Visit start date Visit end date,

Bequest Yes No (tick as appropriate) Value (\$..cc)

Destination

Cash amount (\$..cc) Non-cash value (\$..cc)

Purpose

Date received Date accepted

Received by

C Donations from impermissible donors

Number of entries in this section

For each donation the information specified below must be separately provided

Full name

Type of organisation or individual and reason for impermissibility
.....

Address

Donor status Company reg, no,

Cash amount (\$.cc) Non-cash value (\$.cc)

Nature of donation

Received by Date

Returned to Date

D Donations from unidentifiable donors

Number of entries in this section

For each donation the information specified below must be separately provided

Maner in which made

Attempt at concealment Yes No

Received by Date

Nature of donation

Details of how concealment revealed

Returned to financial institution or person other than donor (give name and address and return date)

Full name

Address

Sent to Integrity Commission Yes No

Return/Date sent

Return the form to:

The Integrity Commission

Address etc.

PUBLICATION OF DONATIONS BY POLITICAL PARTIES ORDER
– **SECTION 24(16)**

(Legal Notice 62/2012)

1. It is hereby prescribed that political parties are required to publish all donations which exceed \$3,000.
2. All registered political parties shall publish details of all donations received, which exceed \$3,000 in an appropriate form.
3. The information shall be published in a format at the party's discretion, but it should be readily available to all members of the public. This can include publication on the party's website or any other means of ensuring the details are widely available to the public at large.
4. Publication shall take place within thirty days of receiving the donation. For the purposes of 2012 donations, all donations over \$3,000 shall be published within thirty days of the making of this Order.
5. The details required to be published by political parties concerning a donation which exceeds \$3,000 shall include—
 - (a) the amount or value of the donation;
 - (b) the name of the donor – if a company, its registered name;
 - (c) the date the donation was received and accepted by the party.