

Subsidiary Legislation made under s.83.

Crimes (Amendment) Act Referendum Regulations 2021

LN.2021/267

Commencement

14.5.2021

ARRANGEMENT OF REGULATIONS.

Regulation

1. Title.
2. Commencement and revocation.
3. Interpretation.
4. Application.
5. Duty to publish information on the referendum.
6. Permitted Participants.
7. Notifications for the purposes of regulation 6.
8. General restriction on referendum expenses.
9. Special restrictions on referendum expenses by permitted participants.
10. Designation of organisations.
11. Applying to become a designated organisation.
12. Register of applications.
13. Grants to designated organisations.
14. Referendum expenses to be capped.
15. Referendum expenses.
16. Restriction on incurring referendum expenses.
17. Expenses incurred by persons acting in concert.
18. Returns as to referendum expenses.
19. Right to use rooms for holding public meetings.
20. Referendum campaign broadcasts.
21. Penalty for following illegal practices.
22. Revocation, transitional and savings.

SCHEDULE

Referendum Expenses

2015-08

Referendum

2021/267 Crimes (Amendment) Act Referendum Regulations 2021

In exercise of the powers conferred upon him by sections 83 of the Referendum act 2015, and all other enabling powers, the Chief Minister has made the following Regulations—

Title.

1. These Regulations may be cited as the Crimes (Amendment) Act Referendum Regulations 2021.

Commencement and revocation.

2.(1) These Regulations come into operation on the day of publication.

(2) Subject to subregulation (3), these Regulations are revoked on the day 12 months after the day on which the referendum is held.

(3) Notwithstanding the revocation of these Regulations by subregulation (2)-

(a) any right which may have been enforced prior to the revocation of these Regulations shall continue to be enforceable; and

(b) any offence which may be prosecuted prior to the revocation of these Regulations or is being prosecuted at the time of the revocation of these Regulations may be so prosecuted.

Interpretation.

3. In these Regulations—

“Act” means the Referendum Act 2015;

“body” means any body falling within any of the descriptions in regulation 6(1)(c);

“designated organisation” means a permitted participant that has been designated under regulation 10;

“referendum” has the meaning given in regulation 4;

“Referendum Administrator” means the person appointed as such by Notice in the Gazette under section 5(1) of the Act;

“referendum expenses” has the meaning given in regulation 15(2);

“referendum period” means the period commencing on the day the Order for the Referendum is made and concluding at 10pm on 24 June 2021.

“unincorporated association” has the meaning given in regulation 6(1)(b).

Application.

4. These Regulations apply in relation to the referendum being held on 24 June 2021 pursuant to the Order for a Referendum issued on 14 May 2021 on the question of whether the Crimes (Amendment) Act 2019, that defines the circumstances which would allow abortion in Gibraltar, should come into force.

Duty to publish information on the referendum.

5.(1) The Referendum Administrator must provide to every person eligible to vote in the referendum in accordance with section 7 of the Act, a neutral information document setting out the relevant provisions of the Crimes (Amendment) Act 2019.

(2) The neutral information document shall–

- (a) be in simple language;
- (b) be approved by motion in Parliament.

(3) The requirement in subregulation (1) may be satisfied by sending the neutral information document to every household.

Permitted Participants.

6.(1) In these Regulations “permitted participant”, in relation to the referendum, means any of the following by whom a notification has been given under regulation 7, namely –

- (a) any individual eligible to vote in a referendum under section 7 of the Act;
- (b) any unincorporated association of two or more individuals who are eligible to vote in the referendum and propose to campaign together for the same outcome; and
- (c) any of the following bodies`–
 - (i) a company registered under the Companies Act 2014 which carries on business in Gibraltar;

- (ii) a trade union registered under the Trade Unions and Trade Disputes Act;
- (iii) a charity registered under the Charities Act;
- (iv) a limited liability partnership registered under the Limited Liability Partnerships Act 2009; or
- (v) a friendly society registered under the Friendly Societies Act.

(2) In these Regulations “responsible person” means—

- (a) if the permitted participant is an individual falling within subregulation (1)(a), that individual;
- (b) if the permitted participant is an unincorporated association or body in accordance with subregulations (1)(b) or (c), two individuals being notified to the Referendum Administrator in accordance with regulation 7.

Notifications for the purposes of regulation 6.

7.(1) For the purposes of regulation 6(1), a permitted participant gives a notification to the Referendum Administrator under this regulation by submitting to the Referendum Administrator a notification in such form as the Referendum Administrator may require and which identifies—

- (a) the referendum;
- (b) the outcome for which the giver of the notification proposes to campaign.

(2) A notification under this regulation must—

- (a) if given by an individual or unincorporated association falling within regulation 6(1)(a) or (b), state the responsible person’s—
 - (i) full name;
 - (ii) home address in Gibraltar,

and be signed by the responsible person (and in the case of an unincorporated association the details for both persons);

(b) if given by a body falling within regulation 6(1)(c), the responsible person must state—

(i) in the case of a company falling within regulation 6(1)(c)(i)-

- (aa) the company's registered name;
- (bb) the address of its registered office;
- (cc) the number with which it is registered;
- (dd) the responsible person's full name;
- (ee) the responsible person's home address in Gibraltar,

and be signed by the responsible person;

(ii) in the case of a trade union falling within regulation 6(1)(c)(ii)-

- (aa) the name of the trade union;
- (bb) the address of its head or main office;
- (cc) the responsible person's full name;
- (dd) the responsible person's home address in Gibraltar,

and be signed by the responsible person;

(iii) in the case of a charity falling within regulation 6(1)(c)(iii)-

- (aa) the name of the charity;
- (bb) the address of its head or main office;
- (cc) the number with which it is registered;
- (dd) the responsible person's full name;
- (ee) the responsible person's home address in Gibraltar,

and be signed by the responsible person;

(iv) in the case of a limited liability partnership falling within regulation 6(1)(c)(iv)-

- (aa) the partnership's registered name;
- (bb) the address of its registered office;
- (cc) his full name;
- (dd) his home address in Gibraltar,

and be signed by the responsible person;

(v) in the case of a friendly or other registered society falling within regulation 6(1)(c)(v)-

- (aa) the name of the society;
- (bb) the address of its registered office;
- (cc) the responsible person's full name;
- (dd) the responsible person's home address in Gibraltar,

and be signed by the responsible person.

General restriction on referendum expenses.

8.(1) The total referendum expenses incurred by or on behalf of any individual, unincorporated association, or body during the referendum period must not exceed £500 unless the individual, unincorporated association or body is a permitted participant.

(2) Where-

- (a) during the referendum period any referendum expenses are incurred by or on behalf of any individual (whether acting in the individual's own right or as part of an unincorporated association) in excess of the limit imposed by subregulation (1);
- (b) the individual (or, unincorporated association, as the case may be) is not a permitted participant; and

- (c) the individual or individual who authorised the expenses to be incurred by or on behalf of the unincorporated association, knew or ought reasonably to have known, that the expenses were being incurred in excess of that limit,

that individual is guilty of an illegal practice.

(3) Where-

- (a) during the referendum period any referendum expenses are incurred by or on behalf of any body in excess of the limit imposed by subregulation (1);
- (b) the body is not a permitted participant; and
- (c) any person who authorised the expenses to be incurred by or on behalf of the body knew, or ought reasonably to have known, that the expenses would be incurred in excess of that limit,

that individual and that body are each guilty of an illegal practice.

Special restrictions on referendum expenses by permitted participants.

9.(1) The limit on referendum expenses incurred by or on behalf of a permitted participant during the referendum period is £5,000 but this does not apply to designated organisations.

(2) Where any referendum expenses are incurred by or on behalf of a permitted participant during the referendum period in excess of the limit imposed by subregulation (1), then, subject to regulation 15, the responsible person is guilty of an illegal practice if the person knew or ought reasonably to have known that the expenses would be incurred in excess of that limit.

(3) Where the permitted participant under subregulation (2) is a body, then that body is also guilty of an illegal practice.

Designation of organisations.

10.(1) The Referendum Administrator may—

- (a) in relation to each of the two outcomes of the referendum, designate a permitted participant as representing those campaigning for the outcome in question (“the designated organisation”); or

2021/267 Crimes (Amendment) Act Referendum Regulations 2021

(b) if the condition in subregulation (2) is met as regards one of those outcomes (“outcome A”) but not the other (“outcome B”), designate a permitted participant as representing those campaigning for outcome B.

(2) The condition in this subregulation is met as regards an outcome if either–

(a) no permitted participant makes an application to be designated under regulation 11 as representing those campaigning for that outcome; or

(b) the Referendum Administrator is not satisfied that there is a permitted participant who has made an application under that regulation who adequately represents those campaigning for that outcome.

(3) Assistance is to be made available to a designated organisation in accordance with regulation 13.

Applying to become a designated organisation.

11.(1) A permitted participant seeking to be designated under regulation 10 must make an application for the purpose to the Referendum Administrator in such form as the Referendum Administrator may require.

(2) An application for designation must–

(a) be accompanied by information or statements designed to show that the applicant adequately represents those campaigning for the outcome at the referendum in relation to which the applicant seeks to be designated;

(b) include details and be signed by the responsible person; and

(c) be made within the period of 7 days beginning with the first day of the referendum period.

(3) Where an application for designation has been made to the Referendum Administrator in accordance with this regulation, the application must be determined by the Referendum Administrator within the period of 3 days beginning with the day after the end of the period mentioned in subregulation (2)(c).

(4) If there is more than one application in relation to a particular outcome at the referendum, the Referendum Administrator shall designate whichever of the applicants appears to him to represent to the greatest extent those campaigning for that outcome unless he is not satisfied that any of the applicants adequately represents those campaigning for that outcome.

Register of applications.

12.(1) The Referendum Administrator shall maintain a register of all applications made under these Regulations.

(2) The register shall be maintained by the Referendum Administrator in such form as he may determine and shall contain, in the case of each application, all of the information supplied to the Referendum Administrator in connection with it.

(3) The information to be entered in the register in respect of an applicant who is an individual shall not include the home address.

Grants to designated organisations.

13.(1) Where the Referendum Administrator has made any designation under these Regulations, assistance shall be available to the designated organisations in accordance with this regulation.

(2) The Referendum Administrator may make available to each designated organisation a grant not exceeding -

- (a) in respect of a designated organisation campaigning for the coming into force of the Crimes (Amendment) Act 2019, £19,580;
- (b) in respect of a designated organisation campaigning against the coming into force of the Crimes (Amendment) Act 2019, £14,090.

(3) The grant may only be used for referendum expenses as set out in regulation 15 and the Referendum Administrator may disburse it upon the presentation to, and acceptance by, the Referendum Administrator of receipts or invoices submitted by a responsible person of a designated organisation.

(4) Any payments may be withheld if the Referendum Administrator is satisfied that the designated organisation concerned has failed to comply with a condition imposed under subregulation (3).

(5) A designated organisation (or, as the case may be, a responsible person of a designated organisation) shall have the rights conferred by regulations 19 and 20.

Referendum expenses to be capped.

14.(1) A designated organisation may not incur referendum expenses in excess of –

- (a) in respect of a designated organisation campaigning for the coming into force of the Crimes (Amendment) Act 2019, £19,580;
- (b) in respect of a designated organisation campaigning against the coming into force of the Crimes (Amendment) Act 2019, £14,090.

(2) Where a designated organisation incurs referendum expenses that exceed the limit imposed by subregulation (1) for that particular organisation, the responsible person is guilty of an illegal practice.

(3) For the purposes of subregulation (1) all and any expenditure falling within the meaning of referendum expenses reckon towards the limit imposed by subregulation (1) irrespective of the sources of any of the funds expended.

(4) In any proceedings for an offence under this regulation every person that falls within the definition of responsible person and who either knows or ought reasonably to have known that the expenditure would exceed the limit imposed by subregulation (1) is liable to be proceeded against for the offence of an illegal practice.

Referendum expenses.

15.(1) The following provisions have effect for the purposes of the referendum.

(2) “Referendum expenses”, in relation to the referendum, means expenses incurred by or on behalf of any individual, unincorporated association or body which are expenses falling within the Schedule and incurred for referendum purposes.

(3) “For referendum purposes” means—

- (a) in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to the question asked in the referendum; or
- (b) otherwise in connection with promoting or procuring any such outcome.

Restriction on incurring referendum expenses.

16.(1) No amount of referendum expenses shall be incurred by or on behalf of a permitted participant (including any designated organisation) 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 who, without reasonable excuse, incurs any expenses in contravention of subregulation (1) commits an illegal practice.

(3) Where, in the case of a permitted participant (or, designated organisation, as the case may be) any expenses are incurred in contravention of subregulation (1), the expenses shall not count for the purposes of regulations 8, 9, 14 and 18 as referendum expenses incurred by or on behalf of the permitted participant (or designated organisation, as the case may be).

Expenses incurred by persons acting in concert.

17.(1) This regulation applies where-

- (a) referendum expenses are incurred by or on behalf of an individual, unincorporated association or body during the referendum period for the referendum or for referendum purposes; and
- (b) those expenses are incurred in pursuance of a plan or other arrangement by which referendum expenses are to be incurred by or on behalf of-
 - (i) that individual, unincorporated association or body, and
 - (ii) one or more other individuals or bodies,

with a view to, or otherwise in connection with, promoting or procuring a particular outcome in relation to the question asked in the referendum.

(2) In this regulation references to “common plan expenses” of an individual, unincorporated association or body are to referendum expenses which are incurred by or on behalf of that individual, unincorporated association or body -

- (a) as mentioned in subregulation (1)(a); and
- (b) in pursuance of a plan or other arrangement mentioned in subregulation (1)(b).

(3) Subject to subregulation (5), the common plan expenses of the individual, unincorporated association or body which is mentioned in subregulation (1)(a) are to be treated for the purposes of regulation 8 and 9 as having also been incurred during the referendum period by or on behalf of the other individual, unincorporated association or body (or, as the case may be, each of the other individual, unincorporated association or body) mentioned in sub-regulation (1)(b)(ii).

2021/267 Crimes (Amendment) Act Referendum Regulations 2021

(4) This regulation applies whether or not any of the individual, unincorporated association or body in question is a permitted participant.

(5) But if any of the individuals, unincorporated associations or bodies in question (“the persons involved”) is or becomes a designated organisation, the following referendum expenses are to be treated for the purposes of regulation 14 as having been incurred during the referendum period by or on behalf of the designated organisation only-

- (a) any referendum expenses incurred during the referendum period by or on behalf of the designated organisation;
- (b) where any of the other persons involved is a permitted participant, any common plan expenses of that permitted participant;
- (c) where any of the other persons involved is an individual, unincorporated association or body which is not a permitted participant but is below the expenses threshold in accordance with regulation 8, any common plan expenses of that individual or body.

Returns as to referendum expenses.

18.(1) Where-

- (a) any referendum expenses are incurred by or on behalf of a permitted participant during the referendum period; and
- (b) that period ends,

the responsible person shall make a return under this regulation in respect of the referendum expenses incurred by or on behalf of the permitted participant (or, designated organisation, as the case may be) during that period.

(2) A return under this regulation must specify the referendum to which the expenditure relates and must contain a statement of all payments made in respect of referendum expenses incurred by or on behalf of the permitted participant (or, designated organisation, as the case may be) during the referendum period.

(3) A return under this regulation must be accompanied by all invoices or receipts relating to the payments mentioned in subregulation (1)(a).

(4) The Referendum Administrator may prescribe a form of return which may be used for the purposes of this regulation.

(5) The responsible person commits an offence if the responsible person knowingly or recklessly makes a false declaration under this regulation and is liable on summary conviction to imprisonment for six months and to a fine not exceeding level 5 on the standard scale.

Right to use rooms for holding public meetings.

19.(1) Subject to the provisions of this regulation, persons authorised by a designated organisation are entitled for the purpose of holding public meetings in furtherance of the organisation's referendum campaign to the use free of charge, at reasonable times during the relevant period, of a suitable meeting room.

(2) In this regulation "the relevant period" means the period commencing on the day of the Referendum Order and terminating on the day before the date of the referendum.

(3) This regulation applies to meeting rooms situated in Gibraltar the expense of maintaining which is payable wholly or mainly out of public funds, or by a body whose expenses are so payable.

(4) Where a room is used for a meeting in pursuance of the rights conferred by this regulation, the person by whom or on whose behalf the meeting is convened –

- (a) shall defray any expenses incurred in preparing, warming, lighting and cleaning the room and providing attendance for the meeting and restoring the room to its usual condition after the meeting; and
- (b) shall defray any damage done to the room or the premises in which it is situated, or to the furniture, fittings or apparatus in the room or premises.

(5) A person is not entitled to exercise the rights conferred by this regulation except on reasonable notice; and this regulation does not authorise any interference with the use of a meeting room either for the purposes of the person maintaining it or under a prior agreement for its use or letting for any purpose.

Referendum campaign broadcasts.

20.(1) The Gibraltar Broadcasting Corporation shall have regard, in determining its policy with respect to referendum campaign broadcasts by designated organisations, to any views expressed by the Referendum Administrator for the purposes of this regulation.

(2) The Gibraltar Broadcasting Corporation shall not include in its broadcasting services any referendum campaign broadcast made on behalf of any individual, unincorporated

2021/267 Crimes (Amendment) Act Referendum Regulations 2021

association or body other than a designated organisation in respect of the referendum under regulation 10.

(3) In this regulation “referendum campaign broadcast” means any broadcast whose purpose (or main purpose) is or may reasonably be assumed to be –

- (a) to further any campaign conducted with a view to promoting or procuring a particular outcome in relation to the question asked in the referendum; or
- (b) otherwise to promote or procure any such outcome.

Penalty for following illegal practices.

21.(1) A person who is convicted of any offence declared to be an illegal practice under these Regulations is liable, on summary conviction to a fine not exceeding level 5 on the standard scale.

(2) If an offence under these regulations committed by a body corporate is proved-

- (a) to have been committed with the consent or connivance of an officer; or
- (b) to be attributable to any neglect on the part of an officer,

the officer, as well as the body corporate, is guilty of the offence and liable to be proceeded against and punished accordingly.

(3) In subregulation (2), “officer”, in relation to a body corporate, means-

- (a) a director, manager, secretary or other similar officer of the body; or
- (b) a person purporting to act in any such capacity.

(4) If the affairs of a body corporate are managed by its members, subregulation (2) applies in relation to the acts and defaults of a member in connection with the member’s functions of management as it applies to an officer of a body corporate.

(5) Proceedings for an offence under these regulations alleged to have been committed by a partnership or an unincorporated association must be brought against the partnership or association in the name of the partnership or association.

(6) A fine imposed on a partnership or unincorporated association on its conviction of an offence under these regulations is to be paid out of the funds of the partnership or association.

(7) If an offence under these regulations committed by a partnership is proved-

- (a) to have been committed with the consent or connivance of a partner; or
- (b) to be attributable to any neglect on the part of a partner,

the partner, as well as the partnership, is guilty of the offence and liable to be proceeded against and punished accordingly.

(8) If an offence under these regulations committed by an unincorporated association (other than a partnership) is proved-

- (a) to have been committed with the consent or connivance of an officer of the association; or
- (b) to be attributable to any neglect on the part of such an officer,

the officer, as well as the association, is guilty of the offence and liable to be proceeded against and punished accordingly.

(9) In subregulation (6), “officer”, in relation to an unincorporated association, means-

- (a) an officer of the association or a member of its governing body; or
- (b) a person purporting to act in such a capacity.

Revocation, transitional and savings.

22.(1) The Crimes (Amendment) Act Referendum Regulations 2020 (the “2020 Regulations”) are revoked.

(2) Notwithstanding the revocation of the 2020 Regulations, any offence which may have been prosecuted prior to the revocation of the 2020 Regulations or is being prosecuted at the time of the revocation of the 2020 Regulations may be so prosecuted as if the 2020 Regulations had not been revoked.

SCHEDULE

REFERENDUM EXPENSES

Expenses qualifying where incurred for referendum purposes

For the purposes of regulation 15 the expenses falling within this Schedule include expenses incurred in respect of any of the matters in the following list.

LIST OF MATTERS

1.(1) Referendum campaign 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) Market research or canvassing conducting for the purpose of ascertaining polling intentions.

(5) The provision of any services or facilities in connection with press conferences or other dealings with the media.

(6) Transport (by any means) of persons to any place or places with a view to obtaining publicity in connection with the referendum.

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 campaign is being conducted.

(7) Rallies and other events, including public meetings organised so as to obtain publicity in connection with the referendum campaign or for other purposes connected with the referendum.

Expenses in respect of such events include costs incurred in connection with the attendance of persons at such events, the hire of premises for the purposes of such events or the provision of goods, services or facilities at them.

2. The Referendum Administrator has full discretion to determine which expenses that are not listed in paragraph 1 qualify as expenses that are properly incurred for referendum purposes.