

## SCHEDULES

### SCHEDULE 13

#### OWNERSHIP OF LICENSED BODIES

##### PART 5

##### ENFORCEMENT

##### *Divestiture*

##### *The divestiture condition*

- 41 (1) The divestiture condition is satisfied in relation to a non-authorised person and a licensed body if—
- (a) the person holds a restricted interest in the licensed body in the circumstances mentioned in sub-paragraph (2), and
  - (b) the person holds that interest, in whole or in part, by virtue of the person's shareholding in a body corporate with a share capital (in this Part of this Schedule referred to as "the relevant shares").
- (2) The circumstances are that the person holds the restricted interest—
- (a) as a result of the person taking a step in circumstances in which that constitutes an offence under paragraph 24(1) (whether or not the person is charged with or convicted of an offence under that paragraph),
  - (b) in breach of conditions imposed under paragraph 17, 28, or 33, or
  - (c) in contravention of an objection by the licensing authority under paragraph 31 or 36.
- (3) In sub-paragraph (1)(b), references to a person's shareholding are to be read in accordance with paragraph 3(3) or 4(2) (as the case may be).
- 42 (1) If the relevant licensing rules make the provision mentioned in paragraph 38(1)(a) or (b), the divestiture condition is also satisfied in relation to a non-authorised person and a licensed body if—
- (a) the person's shareholding in the body, or a parent undertaking of the body, exceeds the share limit, and the body or parent undertaking (as the case may be) is a body corporate with a share capital, or
  - (b) the person's entitlement to exercise or control the exercise of voting rights in the body, or a parent undertaking of the body, exceeds the voting limit by virtue of the person holding shares in a body corporate with a share capital.
- (2) In this Part of this Schedule, "excess shares" means
- (a) in a case within sub-paragraph (1)(a), the number of shares by which the person's shareholding exceeds the share limit, and

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- (b) in a case within sub-paragraph (1)(b), the number of shares held by the person in excess of the number of shares the person could hold without the person's entitlement to exercise, or control the exercise of, voting rights exceeding the voting limit.
- (3) References in this paragraph to a person's shareholding (or holding of shares) or entitlement are to be read in accordance with any applicable licensing rules made under paragraph 38(3).

#### *Application for divestiture*

- 43
- (1) If the divestiture condition is satisfied in relation to a non-authorized person and a licensed body, the licensing authority may give the person a restriction notice under paragraph 44 and apply to the High Court for an order under paragraph 45.
  - (2) The licensing authority may not make an application to the High Court for an order under paragraph 45 unless—
    - (a) it has notified the person that it intends to do so if the divestiture condition is satisfied in relation to the person and the body at the end of the relevant period, and
    - (b) the relevant period has expired.
  - (3) The relevant period is such period (not less than the prescribed period) as may be specified in the notice.

#### *Restriction notice*

- 44
- (1) A restriction notice is a notice directing that such of the relevant shares or excess shares (as the case may be) as are specified in the notice are, until further notice, subject to one or more of the following restrictions.
  - (2) The restrictions are—
    - (a) a transfer of (or agreement to transfer) those shares, or in the case of unissued shares a transfer of (or agreement to transfer) the right to be issued with them, is void;
    - (b) no voting rights are to be exercisable in respect of the shares;
    - (c) no further shares are to be issued in right of them or in pursuance of any offer made to their holder;
    - (d) except in a liquidation, no payment is to be made of any sums due from the company on the shares, whether in respect of capital or otherwise.
  - (3) A copy of the restriction notice must be given to the body to whose shares it relates.
  - (4) A restriction notice ceases to have effect—
    - (a) in accordance with an order of the High Court under paragraph 45(4);
    - (b) if no application has been made to the High Court for an order under paragraph 45 before the end of such period as may be prescribed, at the end of that period;
    - (c) if the licensed body ceases to be licensed by the licensing authority.

### *Divestiture by High Court*

- 45 (1) If the divestiture condition is satisfied by virtue of paragraph 41 the High Court may, on the application of the licensing authority, order the sale of the appropriate number of the relevant shares.
- (2) The appropriate number of the relevant shares is the number of those shares, the sale of which will result in the non-authorised person no longer holding—
- (a) a restricted interest in the licensed body, or
  - (b) if the non-authorised person holds more than one kind of restricted interest, a restricted interest the person's holding of which is within paragraph 41(2).
- (3) If the divestiture condition is satisfied by virtue of paragraph 42 the High Court may, on the application of the licensing authority, order the sale of the excess shares.
- (4) If shares are for the time being subject to any restriction under paragraph 44, the court may order that they are to cease to be subject to that restriction.
- (5) If the divestiture condition is satisfied by virtue of paragraph 41(2)(b) or (c), no order may be made under sub-paragraph (1) or (4)—
- (a) until the end of the period within which an appeal may be made against the imposition of the conditions or the objection, or
  - (b) if an appeal is made, until the appeal has been determined or withdrawn.
- (6) If an order has been made under sub-paragraph (1) or (3) the court may, on the application of the licensing authority, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (7) If shares are sold in pursuance of an order under this paragraph, the proceeds of sale, less the costs of sale, must be paid into court for the benefit of the persons beneficially interested in them.
- (8) Any such person may apply to the court for the whole or part of the proceeds to be paid to the person.

### ***Conditions***

#### *Enforcement of conditions*

- 46 (1) If a person holds a restricted interest in a licensed body in breach of conditions imposed under paragraph 17, 28 or 33, the licensing authority may make an application to the High Court for an order under this paragraph.
- (2) The licensing authority may not make such an application unless—
- (a) it has notified the person that it intends to do so if the conditions are not complied with before the end of the relevant period, and
  - (b) the relevant period has expired.
- (3) The relevant period is such period (not less than the prescribed period) as may be specified in the notice.
- (4) The High Court may, on the application of the licensing authority, make such order as the court thinks fit to secure compliance with the conditions to which the person's holding of the restricted interest is subject.

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- (5) No order may be made under this paragraph—
- (a) until the end of the period within which an appeal may be made against the imposition of the conditions, or
  - (b) if an appeal is made, until the appeal has been determined or withdrawn.

### ***Records of decisions***

#### *Duty to notify Board of decisions under this Schedule*

- 47 (1) The relevant licensing authority must notify the Board where—
- (a) it has objected under paragraph 19, 31, or 36 to a person’s holding of a restricted interest, or
  - (b) it has imposed conditions under paragraph 17, 28, or 33 on a person’s holding of a restricted interest.
- (2) The notification must state—
- (a) the reasons for the objection or imposition of conditions, and
  - (b) the kind of restricted interest to which the objection or conditions related.
- (3) If the licensing authority takes any action under paragraph 43 in relation to a person notified to the Board under sub-paragraph (1), it must notify the Board of that fact.
- (4) If there is an appeal to the relevant appellate body against the objection or imposition of conditions, the licensing authority must notify the Board of the outcome of that appeal (and any subsequent appeal to the High Court).
- (5) If the licensing authority has imposed conditions on a person’s holding of a restricted interest, it must notify the Board of any decision taken by it under paragraph 35 (variation and cancellation of conditions).
- (6) The licensing authority must give the person and the licensed body concerned a copy of any notification it gives the Board under this paragraph.
- 48 (1) A licensing authority must notify the Board where under paragraph 16, 17, 27 or 28 it approves the holding of a restricted interest in a licensed body by a person included in the list kept by the Board under paragraph 51.
- (2) The notification must state—
- (a) if the approval was under paragraph 17 or 28, the conditions to which the approval was subject, and
  - (b) the reasons for the licensing authority’s decision to approve the person’s holding of the interest.
- (3) If the approval was under paragraph 17 or 28 and there is an appeal to the relevant appellate body against the imposition of conditions, the licensing authority must notify the Board of the outcome of that appeal (and any subsequent appeal to the High Court).
- (4) If the approval was under paragraph 17 or 28, the licensing authority must notify the Board of any decision taken by it under paragraph 35 (variation and cancellation of conditions).
- (5) The licensing authority must give the person and the licensed body concerned a copy of any notification it gives the Board under this paragraph.

*Power to notify Board where share limit or voting limit breached*

- 49 (1) This paragraph applies if the relevant licensing rules make the provision mentioned in paragraph 38(1)(a) or (b).
- (2) The licensing authority may, if it considers it appropriate to do so in all the circumstances of the case, notify the Board where a non-authorised person acquires—
- (a) a shareholding in a licensed body or parent undertaking of a licensed body which exceeds the share limit, or
  - (b) an entitlement to exercise, or control the exercise of, voting rights in a licensed body or parent undertaking of a licensed body which exceeds the voting limit.
- (3) If the licensing authority proposes to make a notification under sub-paragraph (2), it must give the person and the licensed body a warning notice.
- (4) The warning notice must—
- (a) specify the reasons for the proposed notification, and
  - (b) state that representations may be made to the licensing authority within the prescribed period.
- (5) The licensing authority must consider any representations made within the prescribed period.
- (6) If the licensing authority notifies the Board under sub-paragraph (2), it must give the person concerned and the licensed body a copy of the notification and a notice stating the reasons for the notification.
- (7) If the share limit or voting limit is breached in relation to a parent undertaking of a licensed body, references in sub-paragraphs (3) and (6) to the licensed body include the parent undertaking.
- 50 (1) The person concerned and the licensed body may before the end of the prescribed period appeal to the relevant appellate body against the notification.
- (2) The relevant appellate body may—
- (a) dismiss the appeal, or
  - (b) allow the appeal and order the person's name to be removed from the list kept by the Board under paragraph 51.
- (3) A party to the appeal may before the end of the prescribed period appeal to the High Court on a point of law arising from the decision of the relevant appellant body, but only with the permission of the High Court.
- (4) The High Court may make such order as it thinks fit.
- (5) The licensing authority must notify the Board of the outcome of any appeal under this paragraph, and give the person concerned and the licensed body a copy of the notification.
- (6) If the share limit or voting limit is breached in relation to a parent undertaking of a licensed body, references in sub-paragraphs (1) and (5) to the licensed body include the parent undertaking.

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*Board's list of persons subject to objections and conditions*

- 51 (1) The Board must keep a list of the persons in respect of which it receives a notification under paragraph 47(1) or 49(2).
- (2) The list must record—
- (a) in relation to a person notified to the Board under paragraph 47(1), the information included in the notification by virtue of paragraph 47(2) and any notification under paragraph 47(3), and
  - (b) in relation to any person included in the list, the information included in any notification relating to that person under paragraph 48.
- (3) If the Board receives a notification under paragraph 47(4) or (5), 48(3) or (4) or 50(5) it must make such alterations to the list as it considers appropriate having regard to the decision of the licensing authority or the outcome of the appeal (which may include removing a person from the list).
- (4) The Board must make the list kept by it under this paragraph available to every licensing authority.