

SCHEDULES

SCHEDULE 14

Section 102

LICENSING AUTHORITY'S POWERS OF INTERVENTION

Introductory

- 1 (1) This Schedule applies—
- (a) where, in relation to a licensed body and the relevant licensing authority, one or more of the intervention conditions is satisfied;
 - (b) where a licence granted to a body has expired (and has not been renewed or replaced by the relevant licensing authority).
- (2) The intervention conditions are—
- (a) that the licensing authority is satisfied that one or more of the terms of the licensed body's licence have not been complied with;
 - (b) that a person has been appointed receiver or manager of property of the licensed body;
 - (c) that a relevant insolvency event has occurred in relation to the licensed body;
 - (d) that the licensing authority has reason to suspect dishonesty on the part of any manager or employee of the licensed body in connection with—
 - (i) that body's business,
 - (ii) any trust of which that body is or was a trustee,
 - (iii) any trust of which the manager or employee of the body is or was a trustee in that person's capacity as such a manager or employee, or
 - (iv) the business of another body in which the manager or employee is or was a manager or employee, or the practice (or former practice) of the manager or employee;
 - (e) that the licensing authority is satisfied that there has been undue delay—
 - (i) on the part of the licensed body in connection with any matter in which it is or was acting for a client or with any trust of which it is or was a trustee, or
 - (ii) on the part of a person who is or was a manager or employee of the licensed body in connection with any trust of which that person is or was a trustee in that person's capacity as such a manager or employee,and the notice conditions are satisfied;
 - (f) that the licensing authority is satisfied that it is necessary to exercise the powers conferred by this Schedule (or any of them) in relation to a licensed body to protect—
 - (i) the interests of clients (or former or potential clients) of the licensed body,
 - (ii) the interests of the beneficiaries of any trust of which the licensed body is or was a trustee, or

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- (iii) the interests of the beneficiaries of any trust of which a person who is or was a manager or employee of the licensed body is or was a trustee in that person’s capacity as such a manager or employee.
- (3) For the purposes of sub-paragraph (2) a relevant insolvency event occurs in relation to a licensed body if—
- (a) a resolution for a voluntary winding-up of the body is passed without a declaration of solvency under section 89 of the Insolvency Act 1986 (c. 45);
 - (b) the body enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act;
 - (c) an administrative receiver within the meaning of section 251 of that Act is appointed;
 - (d) a meeting of creditors is held in relation to the body under section 95 of that Act (creditors’ meeting which has the effect of converting a members’ voluntary winding up into a creditors’ voluntary winding up);
 - (e) an order for the winding up of the body is made.
- (4) The notice conditions referred to in sub-paragraph (2)(e) are—
- (a) that the licensing authority has given the licensed body a notice inviting it to give an explanation within such period (of not less than 8 days) following the giving of the notice as may be specified in it;
 - (b) that the licensed body has failed within that period to give an explanation which the licensing authority regards as satisfactory; and
 - (c) that the licensing authority gives notice of the failure to the licensed body and (at the same time or later) notice that this Schedule applies in its case by virtue of sub-paragraph (2)(e).
- (5) Where this Schedule applies in relation to a licensed body by virtue of sub-paragraph (1)(a) it continues to apply after the body’s licence has been revoked or has otherwise ceased to have effect.
- (6) For the purposes of this Schedule “licensed body” includes—
- (a) a body whose licence is suspended;
 - (b) a body to whom this Schedule continues to apply by virtue of sub-paragraph (5);
 - (c) except in this paragraph, a body whose licence has ceased to have effect as mentioned in sub-paragraph (1)(b).

Money: prohibition on payment

- 2 (1) The licensing authority may apply to the High Court for an order under sub-paragraph (2), and the High Court may make the order if it thinks fit.
- (2) The order is that a person holding money on behalf of the licensed body may not make any payment of the money, except with the leave of the court.
- (3) An order under sub-paragraph (2) may take effect in relation to a person—
- (a) whether or not the person is named in the order;
 - (b) however the money is held;
 - (c) whether the money was received before or after the order was made.
- (4) But an order under sub-paragraph (2) does not take effect in relation to a person until the licensing authority—

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- (a) has given the person a copy of the order, and
 - (b) (in the case of a bank or other financial institution) has indicated the branches at which it believes money to which the order relates is held.
- (5) A person is not to be treated as having disobeyed an order under sub-paragraph (2) by making a payment of money if the court is satisfied that the person—
- (a) exercised due diligence to ascertain whether it was money to which the order related, and
 - (b) failed to ascertain that the order related to it.

Money etc: vesting in licensing authority

- 3 (1) The sums of money to which this paragraph applies, and the right to recover or receive them, vest in the licensing authority if the licensing authority decides that they should do so.
- (2) This paragraph applies to all sums of money held by or on behalf of the licensed body in connection with—
- (a) its activities as a licensed body,
 - (b) any trust of which it is or was a trustee, or
 - (c) any trust of which a person who is or was a manager or employee of the licensed body is or was a trustee in that person's capacity as such a manager or employee.
- (3) Sub-paragraph (1) applies whether the sums were received by the person holding them before or after the licensing authority's decision.
- (4) Those sums and that right are held by the licensing authority—
- (a) on trust to exercise the powers conferred by this Schedule in relation to them, and
 - (b) subject to that and to rules under paragraph 6, on trust for the persons beneficially entitled.
- (5) The licensing authority must give the licensed body, and any other person in possession of sums of money to which this paragraph applies—
- (a) a copy of the licensing authority's decision, and
 - (b) a notice prohibiting the payment out of those sums.
- (6) A person to whom a notice under sub-paragraph (5) is given may apply to the High Court for an order directing the licensing authority to withdraw the notice.
- (7) An application under sub-paragraph (6) must be made within 8 days of the licensing authority giving the person notice under sub-paragraph (5).
- (8) The person must give not less than 48 hours notice of any application under sub-paragraph (6)—
- (a) to the licensing authority, and
 - (b) if the notice under sub-paragraph (5) gives the name of a solicitor instructed by the licensing authority, to that solicitor.
- (9) If the court makes the order, it may make any other order it thinks fit with respect to the matter.

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- (10) It is an offence for a person to whom a notice has been given under sub-paragraph (5) to pay out sums of money at a time when such payment is prohibited by the notice.
- (11) A person who is guilty of an offence under sub-paragraph (10) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- 4 (1) Any rights to which this paragraph applies shall vest in the licensing authority if the licensing authority decides that they should do so.
- (2) This paragraph applies to any right to recover or receive debts due to the licensed body in connection with its business.
- (3) Any sums recovered by the licensing authority by virtue of the exercise of rights vested under sub-paragraph (1) vest in the licensing authority and are held by it—
- (a) on trust to exercise the powers conferred by this Schedule in relation to them, and
 - (b) subject to that and to rules under paragraph 6, on trust for the persons beneficially entitled.
- (4) The licensing authority must give the licensed body, and any other person who owes a debt to which the order applies a copy of the licensing authority's decision.
- 5 (1) If the licensing authority takes possession of any sum of money to which paragraph 3 applies or by virtue of paragraph 4, it must pay it into a special account in the name of the licensing authority or a person nominated on its behalf.
- (2) A person nominated under sub-paragraph (1) holds that sum—
- (a) on trust to permit the licensing authority to exercise the powers conferred by this Schedule in relation to it, and
 - (b) subject to that and rules under paragraph 6, on trust for the persons beneficially entitled.
- (3) A bank or other financial institution at which a special account is kept is under no obligation to ascertain whether it is being dealt with properly.
- 6 (1) The licensing authority may make rules governing its treatment of sums vested in it under paragraph 3 or 4(3).
- (2) The rules may, in particular, make provision in respect of cases where the licensing authority, having taken such steps to do so as are reasonable in all the circumstances of the case, is unable to trace the person or persons beneficially entitled to any sum vested in the licensing authority under paragraph 3 or 4(3) (including provision which requires amounts to be paid into or out of any fund maintained by the licensing authority in connection with its compensation arrangements).

Money: information

- 7 (1) The licensing authority may apply to the High Court for an order requiring a person to give the licensing authority—
- (a) information about any money held by the person on behalf of the licensed body, and the accounts in which it is held, or
 - (b) information relevant to identifying any money held by the licensed body or by another person on its behalf.
- (2) The High Court may make the order if it is satisfied that there is reason to suspect—

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- (a) in a case within sub-paragraph (1)(a), that the person holds money on behalf of the licensed body, and
- (b) in a case within sub-paragraph (1)(b), that the person has the information in question.

(3) This paragraph is without prejudice to paragraphs 2 to 6.

Notice to produce or deliver documents

- 8
- (1) The licensing authority may give notice to the licensed body requiring it to produce or deliver all documents in its possession or under its control in connection with—
 - (a) its activities as a licensed body,
 - (b) any trust of which it is or was a trustee, or
 - (c) any trust of which a person who is or was a manager or employee of the licensed body is or was a trustee in that person's capacity as such a manager or employee.
 - (2) The notice may require the documents to be produced—
 - (a) to any person appointed by the licensing authority;
 - (b) at a time and place to be fixed by the licensing authority.
 - (3) The person appointed by the licensing authority may take possession of any such documents on behalf of the licensing authority.
 - (4) It is an offence for a person having possession of such documents to refuse, neglect or otherwise fail to comply with a notice under sub-paragraph (1).
 - (5) Sub-paragraph (4) does not apply where an application has been made to the High Court under paragraph 9(1)(a).
 - (6) A person who is guilty of an offence under sub-paragraph (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Order to produce or deliver documents

- 9
- (1) The High Court may, on the application of the licensing authority, make an order for production or delivery—
 - (a) in relation to a person required to produce documents under paragraph 8 and the documents the person was required to produce;
 - (b) if it is satisfied that there is reason to suspect that documents in relation to which the powers in paragraph 8 are exercisable have come into the possession or under the control of some person other than the licensed body, in relation to that person and those documents.
 - (2) An order for production or delivery is an order—
 - (a) requiring a person to produce or deliver documents to any person appointed by the licensing authority, at a time and place specified in the order, and
 - (b) authorising the appointed person to take possession of the documents on behalf of the licensing authority.
 - (3) The court may, on the application of the licensing authority, authorise a person appointed by the licensing authority to enter any premises (using such force as is reasonably necessary) to search for and take possession of—

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- (a) any documents to which an order for production or delivery relates;
- (b) any property—
 - (i) in the possession of or under the control of the licensed body, or
 - (ii) in the case of an order under sub-paragraph (1)(b), which was in the possession or under the control of that body and has come into the possession or under the control of the person in respect of whom the order is made,
 which the licensing authority reasonably requires for the purpose of accessing information contained in any such documents, and to use property obtained under paragraph (b) for that purpose.
- (4) It may do so on making the order for production or delivery, or at any later time.

Taking possession of documents etc under notice or order

- 10 (1) This paragraph applies where the licensing authority takes possession of documents or any other property under paragraph 8 or 9.
- (2) On taking possession, it must give a notice to—
- (a) the licensed body, and
 - (b) any other person from whom the documents or property were received or from whose possession they were taken.
- (3) The notice must state that possession has been taken and specify the date on which possession was taken.
- (4) A person to whom a notice under sub-paragraph (2) is given may apply to the High Court for an order directing the licensing authority to deliver the documents or other property to such person as the applicant requires.
- (5) An application under sub-paragraph (4) must be made within 8 days of the licensing authority giving the person notice under sub-paragraph (2).
- (6) The person must give not less than 48 hours notice of the application—
- (a) to the licensing authority, and
 - (b) if the notice under sub-paragraph (2) gives the name of a solicitor instructed by the licensing authority, to that solicitor.
- (7) The court may make any order it thinks fit.

Mail and other forms of communication

- 11 (1) The High Court, on the application of the licensing authority, may from time to time make a communications redirection order.
- (2) A communications redirection order is an order that specified communications to the licensed body are to be directed, in accordance with the order, to the licensing authority or any person appointed by the licensing authority.
- (3) For the purposes of this paragraph—
- (a) “specified communications” means communications of such description as are specified in the order;
 - (b) the descriptions of communications which may be so specified include—

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- (i) communications in the form of a postal packet;
 - (ii) electronic communications;
 - (iii) communications by telephone.
- (4) A communications redirection order has effect for such time not exceeding 18 months as is specified in the order.
- (5) Where a communications redirection order has effect, the licensing authority or the person appointed by the licensing authority may take possession or receipt of the communications redirected in accordance with the order.
- (6) Where a communications redirection order is made the licensing authority must pay to the designated payee the like charges (if any) as would have been payable for the redirection of the communications to which the order relates if the addressee—
 - (a) had permanently ceased to occupy or use the premises or other destination of the communications, and
 - (b) had applied to the designated payee to redirect the communications as mentioned in the order.
- (7) For this purpose “the designated payee” means—
 - (a) in the case of an order relating to postal packets, the postal operator concerned, and
 - (b) in any other case, the person specified in the order as the designated payee.
- (8) The High Court may, on the application of the licensing authority, authorise the licensing authority, or a person appointed by it, to take such steps as may be specified in the order in relation to any website purporting to be or have been maintained by or on behalf of the licensed body, if the High Court is satisfied that the taking of those steps is necessary to protect the public interest or the interests of clients (or potential or former clients) of the licensed body.
- (9) In this paragraph “postal operator” and “postal packet” have the meaning given by section 125(1) of the Postal Services Act 2000 (c. 26).
- (10) This paragraph does not apply where the powers conferred by this Part of this Schedule are exercisable by virtue of paragraph 1(2)(e).

Use of documents in licensing authority’s possession

- 12 (1) The licensing authority may apply to the High Court for an order as to the disposal or destruction of any document or other property in its possession by virtue of paragraph 8, 9 or 11.
 - (2) The court may make any order it thinks fit.
- 13 (1) The licensing authority may take copies of or extracts from any documents in its possession by virtue of paragraph 8, 9 or 11.
 - (2) If the licensing authority proposes to deliver such documents to any person, it may make the delivery conditional on the person giving a reasonable undertaking to supply copies or extracts to the licensing authority.
 - (3) Sub-paragraphs (1) and (2) are subject to any order made by the court under paragraph 10 or 12.

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Trusts

- 14 (1) If the licensed body is a trustee of any trust, the licensing authority may apply to the High Court for an order for the appointment of a new trustee in substitution for it.
- (2) If a person who is a manager or employee of the licensed body is a trustee of any trust in that person's capacity as such a manager or employee, the licensing authority may apply to the High Court for an order for the appointment of a new trustee in substitution for that person.
- (3) The Trustee Act 1925 (c. 19) has effect in relation to an appointment of a new trustee under this paragraph as it has effect in relation to an appointment under section 41 of that Act.

General powers of licensing authority

- 15 The powers conferred by this Schedule in relation to sums of money, documents or other property may be exercised despite any lien on them or right to their possession.
- 16 The licensing authority may do all things which are reasonably necessary to facilitate the exercise of its powers under this Schedule.

Licensing authority's costs

- 17 (1) Any costs incurred by the licensing authority for the purposes of this Schedule (including the costs of any person exercising powers under this Schedule on behalf of the licensing authority)—
- (a) are to be paid by the licensed body, and
 - (b) may be recovered from the licensed body as a debt owing to the licensing authority.
- (2) Sub-paragraph (1) is subject to any order for payment of costs that may be made on an application to the court under this Schedule.
- 18 (1) The High Court, on the application of the licensing authority, may order a liable party to pay a specified proportion of the costs mentioned in paragraph 17.
- (2) For this purpose a "liable party" means—
- (a) if the licensed body is a partnership, any former partner in the licensed body,
 - (b) in any other case, any manager or former manager of the licensed body.
- (3) The High Court may make an order under this paragraph in respect of a liable party only if it is satisfied that the conduct (or any part of the conduct) by reason of which this Schedule applies was conduct carried on with the consent or connivance of, or was attributable to any neglect on the part of, the liable party.
- (4) In this paragraph "specified" means specified in the order made by the High Court.