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## SCHEDULES

PROSPECTIVE

### SCHEDULE 3

Section 16

#### HORSERACE BETTING LEVY BOARD: TRANSFER OF PROPERTY

##### *Introductory*

- 1 In this Schedule—
- “the Board” means the Horserace Betting Levy Board,
  - “transfer direction” means a direction of the Secretary of State under section 16(2), and
  - “transfer scheme” means a transfer scheme under section 16.

##### *Board to assist Secretary of State*

- 2 The Board shall on request give the Secretary of State information or assistance in connection with—
- (a) a transfer direction which the Secretary of State has given or may give, or
  - (b) a transfer scheme which the Secretary of State has made or may make.

##### *Ancillary powers of Board*

- 3 (1) The Board may do anything that it thinks necessary or appropriate in connection with a transfer direction or a transfer scheme.
- (2) In particular, the Board may enter into an agreement which confers or imposes on the Board rights or liabilities in respect of anything which has been or is to be transferred by a transfer scheme; and those rights and liabilities may include—
- (a) rights to receive payments by way of consideration for transfer or otherwise, and
  - (b) liabilities to make payments.
- (3) But the Board may enter into an agreement by virtue of sub-paragraph (2) only with the consent of—
- (a) the Secretary of State, and
  - (b) the Treasury.

##### *Ancillary powers of Secretary of State*

- 4 The Secretary of State may with the consent of the Treasury enter into an agreement which confers or imposes on the Secretary of State rights or liabilities in respect of anything which has been or is to be transferred by a transfer scheme.

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*Content of transfer scheme*

- 5 A transfer scheme—
- (a) may transfer property, rights or liabilities whether or not they would otherwise be capable of being transferred,
  - (b) may dispense with a formality in relation to a transfer (whether or not it would otherwise be required by virtue of an enactment or instrument),
  - (c) may dispense with a requirement for consent (whether arising under an enactment, an instrument or an agreement),
  - (d) may provide for a transfer not to have an effect which it would otherwise have by virtue of an enactment, instrument or agreement, and
  - (e) may provide for a transfer to have an effect different to that which it would otherwise have by virtue of an enactment, instrument or agreement.
- 6 In specifying property, rights or liabilities to be transferred a transfer scheme—
- (a) may use any manner of description (which may include reference to criteria specified in the scheme or to be determined in accordance with the scheme),
  - (b) may provide for exceptions, and
  - (c) may provide for the division of property, rights or liabilities in a manner specified in the scheme or to be determined in accordance with the scheme.
- 7 A transfer scheme may transfer property, rights or liabilities which—
- (a) do not exist when the scheme is made but do exist when the transfer takes effect, or
  - (b) become property, rights or liabilities of the Board after the scheme is made and before the transfer takes effect.
- 8 A transfer scheme may transfer property, rights or liabilities to more than one person; and a scheme making provision under this paragraph may provide for property, rights or liabilities—
- (a) to vest jointly in a manner specified by the scheme or determined in accordance with the scheme, or
  - (b) to be divided in a manner specified by the scheme or determined in accordance with the scheme.
- 9 A transfer scheme—
- (a) may impose obligations on a person to whom property, rights or liabilities are transferred,
  - (b) may require a person to whom property, rights or liabilities are transferred to enter into an agreement of a specified kind or for a specified purpose,
  - (c) may make provision for the enforcement of an obligation imposed by virtue of this paragraph (which may, in particular, provide for an obligation to be treated as if it arose under a contract between specified persons), and
  - (d) may make provision for the enforcement of a requirement included in a scheme by virtue of this paragraph.
- 10 (1) A transfer scheme may include provision for the payment of compensation in a case where—
- (a) as a result of a provision of the scheme—

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- (i) a third-party right becomes enforceable partly against one transferee and partly against another, or
      - (ii) a third-party liability becomes enforceable partly by one transferee and partly by another, and
    - (b) an effect of that result is to reduce the value of—
      - (i) property of the third party, or
      - (ii) a right of the third party.
  - (2) Provision included under this paragraph may, in particular—
    - (a) provide for compensation to be paid by a transferee;
    - (b) provide for compensation to be paid by the transferor;
    - (c) provide for compensation to be paid by the Secretary of State;
    - (d) provide for arbitration (as to liability or quantum).
  - (3) In this paragraph—
    - (a) a reference to a third-party right, in relation to a provision of a transfer scheme, is a reference to a right of a person who under that provision is neither the transferor nor a transferee,
    - (b) a reference to a third-party liability, in relation to a provision of a transfer scheme, is a reference to a liability of a person who under that provision is neither the transferor nor a transferee,
    - (c) a reference to a right's being enforceable includes a reference to its being enforceable if certain events occur or circumstances appertain,
    - (d) “transferee” means a person to whom property, rights or liabilities are transferred under a transfer scheme, and
    - (e) “transferor” means the Board.
- 11 A transfer scheme may make consequential, incidental or transitional provision; in particular, a transfer scheme—
- (a) may provide for anything done by or in relation to the Board to have effect as if done by or in relation to another person,
  - (b) may permit anything (which may include legal proceedings), which is in the process of being done by or in relation to the Board when a provision of a transfer scheme takes effect, to be continued by or in relation to another person, and
  - (c) may provide for a reference to the Board in an agreement (whether written or not), instrument or other document to be treated as a reference to another person.

#### *Transfer of undertakings*

- 12 (1) Nothing in a transfer scheme shall affect the operation of the [F1Transfer of Undertakings (Protection of Employment) Regulations 2006].
- (2) The Secretary of State shall not approve, make or modify a transfer scheme unless satisfied that sufficient notice has been given to enable compliance with any applicable requirement of those regulations.

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### Textual Amendments

- F1** Words in Sch. 3 para. 12(1) substituted (with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), reg. 1(2), [Sch. 2 para. 1\(j\)](#)

#### *Certificate of title*

- 13 (1) The Secretary of State may certify that specified property, rights or liabilities vest in a specified person by virtue of a transfer scheme.
- (2) A certificate under this paragraph shall be conclusive.

#### *Modification of scheme*

- 14 (1) This paragraph applies where—
- (a) a transfer scheme provides for the transfer of specified property, rights or liabilities, and
  - (b) the transfer has not yet taken effect (whether or not another transfer under the scheme has taken effect).
- (2) The Secretary of State may modify the scheme in so far as it relates to the transfer.
- 15 (1) This paragraph applies where—
- (a) a transfer scheme provides for the transfer of specified property, rights or liabilities, and
  - (b) the transfer has taken effect.
- (2) The Secretary of State may modify the scheme in so far as it relates to the transfer.
- (3) Modification under this paragraph must be made by order of the Secretary of State made by statutory instrument.
- (4) An order under this paragraph may not be made without the consent of—
- (a) the person to whom the transfer is made, and
  - (b) any other person specified in or in relation to the provision to be modified.
- (5) An order under this paragraph shall not be made unless a draft has been laid before Parliament.

#### *Consultation and consent*

- 16 The Secretary of State shall consult the Board before—
- (a) giving a transfer direction,
  - (b) modifying a transfer scheme under section 16(2)(b) or paragraph 14 or 15,
  - (c) approving a transfer scheme, or
  - (d) making a transfer scheme.
- 17 The Secretary of State shall not approve or make a transfer scheme which provides for the transfer to a person of property, rights or liabilities unless satisfied that the person has consented to—
- (a) the transfer, and
  - (b) the terms of the scheme relevant to the transfer.

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#### *Accounts*

- 18 If the Secretary of State directs the Board to prepare accounts in respect of a specified period ending with the day on which a transfer scheme comes into force—
- (a) the Board shall comply with the request,
  - (b) the Board shall arrange for the accounts to be audited by qualified accountants,
  - (c) the Board shall submit the accounts and the auditors' report to the Secretary of State, and
  - (d) the Secretary of State shall lay a copy of the accounts and the auditors' report before Parliament.

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