

SCHEDULES

SCHEDULE 2

RESTRICTIONS ON THE HOLDING OF LICENCES

PART I

GENERAL

1 (1) In this Schedule—

“advertising agency” means an individual or a body corporate who carries on business as an advertising agent (whether alone or in partnership) or has control over any body corporate which carries on business as an advertising agent, and any reference to an advertising agency includes a reference to an individual who—

- (a) is a director or officer of any body corporate which carries on such a business, or
- (b) is employed by any person who carries on such a business;

“associate”—

- (a) in relation to a body corporate, means a director of that body corporate or a body corporate which is a member of the same group as that body corporate, and
- (b) in relation to an individual, shall be construed in accordance with sub-paragraph (2);

“control”—

- (a) in relation to a body corporate, shall be construed in accordance with sub-paragraph (3), and
- (b) in relation to any body other than a body corporate, means the power of a person to secure, by virtue of the rules regulating that or any other body, that the affairs of the first-mentioned body are conducted in accordance with the wishes of that person;

“equity share capital” has the same meaning as in the Companies Act 1985;

“local authority”—

- (a) in relation to England and Wales, means any of the following, that is to say, the council of a county, district or London borough, the Common Council of the City of London and the Council of the Isles of Scilly;
- (b) in relation to Scotland, means a regional, islands or district council; and
- (c) in relation to Northern Ireland, means a district council;

“local delivery licence” has the meaning given by section 72(5), and “local delivery service” has the meaning given by section 72(1);

“participant”, in relation to a body corporate, means a person who holds or is beneficially entitled to shares in that body or who possesses voting power in that body.

Status: This is the original version (as it was originally enacted).

(2) For the purpose of determining the persons who are an individual's associates for the purposes of this Schedule, the following persons shall be regarded as associates of each other, namely—

- (a) any individual and that individual's husband or wife and any relative, or husband or wife of a relative, of that individual or of that individual's husband or wife;
- (b) any individual and any body corporate of which that individual is a director;
- (c) any person in his capacity as trustee of a settlement and the settlor or grantor and any person associated with the settlor or grantor;
- (d) persons carrying on business in partnership and the husband or wife and relatives of any of them;
- (e) any two or more persons acting together to secure or exercise control of a body corporate or other association or to secure control of any enterprise or assets;

and in this sub-paragraph "relative" means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild or illegitimate child of any person, or anyone adopted by a person, whether legally or otherwise, as his child, being regarded as a relative or taken into account to trace a relationship in the same way as that person's child); and references to a wife or husband shall include a former wife or husband and a reputed wife or husband.

(3) For the purposes of this Schedule a person controls a body corporate if—

- (a) he has a controlling interest in the body, or
- (b) (although not having such an interest in the body) he is able, by virtue of the holding of shares or the possession of voting power in or in relation to the body or any other body corporate, to secure that the affairs of the body are conducted in accordance with his wishes, or
- (c) he has the power, by virtue of any powers conferred by the articles of association or other document regulating the body or any other body corporate, to secure that the affairs of the body are so conducted;

and for this purpose a person has a controlling interest in a body corporate if he holds, or is beneficially entitled to, more than 50 per cent. of the equity share capital in that body, or possesses more than 50 per cent. of the voting power in it.

(4) It is hereby declared that a person may be regarded as controlling a body corporate by virtue of paragraph (b) of sub-paragraph (3) despite the fact that—

- (a) he does not have a controlling interest in any such other body corporate as is mentioned in that paragraph, or
- (b) any such other body corporate does not have a controlling interest in the body in question, or
- (c) he and any such other body corporate together do not have a controlling interest in that body.

(5) For the purposes of any provision of this Schedule which refers to a body controlled by two or more persons or bodies of any description taken together, the persons or bodies in question shall not be regarded as controlling the body by virtue of paragraph (b) of sub-paragraph (3) unless they are acting together in concert.

(6) In this Schedule any reference to a participant with more than a 5 per cent. or (as the case may be) 20 per cent. interest in a body corporate is a reference to a person who—

Status: This is the original version (as it was originally enacted).

- (a) holds or is beneficially entitled to more than 5 or (as the case may be) 20 per cent. of the shares in that body, or
- (b) possesses more than 5 or (as the case may be) 20 per cent. of the voting power in that body;

and, where any such reference has been amended by an order under this Schedule varying the percentage in question, this sub-paragraph shall have effect in relation to it subject to the necessary modifications.

- 2 (1) Any reference in paragraph 1 above to a person—
- (a) holding or being entitled to shares, or any amount of the shares or equity share capital, in a body corporate, or
 - (b) possessing voting power, or any amount of the voting power, in a body corporate,
- is a reference to his doing so, or being so entitled, whether alone or jointly with one or more other persons and whether directly or through one or more nominees.
- (2) For the purposes of that paragraph two bodies corporate shall be treated as members of the same group if—
- (a) one of them is a body corporate of which the other is a subsidiary, or
 - (b) both of them are subsidiaries of another body corporate.
- (3) In sub-paragraph (2) “subsidiary” has the meaning given by section 736 of the Companies Act 1985.
- 3 For the purposes of this Schedule the following persons are connected with each other in relation to a particular licence, namely—
- (a) the licence holder;
 - (b) a person who controls the licence holder;
 - (c) an associate of the licence holder or of a person falling within sub-paragraph (b); and
 - (d) a body which is controlled by the licence holder or by an associate of the licence holder.
- 4 An order under this Schedule shall not be made by the Secretary of State unless a draft of it has been laid before and approved by a resolution of each House of Parliament.