SCHEDULES

SCHEDULE 13

Section 102.

EMPLOYEE SHARE OWNERSHIP TRUSTS

Introduction

1 The Finance Act 1989 shall be amended as provided in this Schedule.

Trustees

2 In Schedule 5, in paragraph 3 (trustees) the following sub-paragraph shall be inserted after sub-paragraph (4)—

"(5) This paragraph applies in relation to trusts established on or before the day on which the Finance Act 1994 was passed."

3 In Schedule 5, the following paragraphs shall be inserted after paragraph 3—

"3A Where a trust is established after the day on which the Finance Act 1994 was passed, the trust deed must make provision as mentioned in one of paragraphs (a) to (c) below—

(a) provision for the establishment of a body of trustees and complying with paragraph 3(2) to (4) above;

(b) provision for the establishment of a body of trustees and complying with paragraph 3B(2) to (9) below;

(c) provision that at any time while the trust subsists there must be a single trustee.

3B (1) The following are the provisions that must be complied with under paragraph 3A(b) above.

(2) The trust deed must—

(a) appoint the initial trustees;

(b) contain rules for the retirement and removal of trustees;

(c) contain rules for the appointment of replacement and additional trustees.

(3) The trust deed must be so framed that at any time while the trust subsists the conditions set out in sub-paragraph (4) below are fulfilled as regards the persons who are then trustees; and in that sub-paragraph "the relevant time" means that time.

(4) The conditions are that—

(a) the number of trustees is not less than three;

(b) all the trustees are resident in the United Kingdom;

(c) the trustees include at least one person who is a professional trustee and at least two persons who are non-professional trustees;

(d) at least half of the non-professional trustees were, before being appointed as trustees, selected in accordance with sub-paragraph (7) or (8) below;

(e) all the trustees so selected are persons who are employees of companies which fall within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company.

(5) For the purposes of this paragraph a trustee is a professional trustee at a particular time if—

(a) the trustee is then a trust corporation, a solicitor, or a member of such other professional body as the Board may at that time allow for the purposes of this sub-paragraph,

(b) the trustee is not then an employee or director of any company then falling within the founding company's group, and

(c) the trustee meets the requirements of sub-paragraph (6) below;

and for the purposes of this paragraph a trustee is a non-professional trustee at a particular time if the trustee is not then a professional trustee for those purposes.

(6) A trustee meets the requirements of this sub-paragraph if—

(a) he was appointed as an initial trustee and, before being appointed as trustee, was selected by (and only by) the persons who later became the non-professional initial trustees, or

(b) he was appointed as a replacement or additional trustee and, before being appointed as trustee, was selected by (and only by) the persons who were the non-professional trustees at the time of the selection.

(7) Trustees are selected in accordance with this sub-paragraph if the process of selection is one under which—

(a) all the persons who are employees of the companies which fall within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are (so far as is reasonably practicable) given the opportunity to stand for selection,

(b) all the employees of the companies falling within the founding company's group at the time of the selection are (so far as is reasonably practicable) given the opportunity to vote, and

(c) persons gaining more votes are preferred to those gaining less.

(8) Trustees are selected in accordance with this sub-paragraph if they are selected by persons elected to represent the employees of the companies falling within the founding company's group at the time of the selection.

(9) For the purposes of this paragraph a company falls within the founding company's group at a particular time if—

(a) it is at that time resident in the United Kingdom, and

(b) it is the founding company or it is at that time controlled by the founding company.

3C (1) This paragraph applies where the trust deed provides that at any time while the trust subsists there must be a single trustee.

(2) The trust deed must—

(a) be so framed that at any time while the trust subsists the trustee is a company which at that time is resident in the United Kingdom and controlled by the founding company;

(b) appoint the initial trustee;

(c) contain rules for the removal of any trustee and for the appointment of a replacement trustee.

(3) The trust deed must be so framed that at any time while the trust subsists the company which is then the trustee is a company so constituted that the conditions set out in sub-paragraph (4) below are then fulfilled as regards the persons who are then directors of the company; and in that sub-paragraph "the relevant time" is that time and "the trust company" is that company.

(4) The conditions are that—

(a) the number of directors is not less than three;

(b) all the directors are resident in the United Kingdom;

(c) the directors include at least one person who is a professional director and at least two persons who are non-professional directors;

(d) at least half of the non-professional directors were, before being appointed as directors, selected in accordance with sub-paragraph (7) or (8) below;

(e) all the directors so selected are persons who are employees of companies which fall within the founding company's group at the relevant time, and who do not have and have never had a material interest in any such company.

(5) For the purposes of this paragraph a director is a professional director at a particular time if—

(a) the director is then a solicitor or a member of such other professional body as the Board may at that time allow for the purposes of this sub-paragraph,

(b) the director is not then an employee of any company then falling within the founding company's group,

(c) the director is not then a director of any such company (other than the trust company), and

(d) the director meets the requirements of sub-paragraph (6) below;

and for the purposes of this paragraph a director is a non-professional director at a particular time if the director is not then a professional director for those purposes.

(6) A director meets the requirements of this sub-paragraph if—

(a) he was appointed as an initial director and, before being appointed as director, was selected by (and only by) the persons who later became the non-professional initial directors, or

(b) he was appointed as a replacement or additional director and, before being appointed as director, was selected by (and only by) the persons who were the non-professional directors at the time of the selection.

(7) Directors are selected in accordance with this sub-paragraph if the process of selection is one under which—

(a) all the persons who are employees of the companies which fall within the founding company's group at the time of the selection, and who do not have and have never had a material interest in any such company, are (so far as is reasonably practicable) given the opportunity to stand for selection,

(b) all the employees of the companies falling within the founding company's group at the time of the selection are (so far as is reasonably practicable) given the opportunity to vote, and

(c) persons gaining more votes are preferred to those gaining less.

(8) Directors are selected in accordance with this sub-paragraph if they are selected by persons elected to represent the employees of the companies falling within the founding company's group at the time of the selection.

(9) For the purposes of this paragraph a company falls within the founding company's group at a particular time if—

(a) it is at that time resident in the United Kingdom, and

(b) it is the founding company or it is at that time controlled by the founding company."

4 In Schedule 5, the following shall be inserted at the end of paragraph 12 (position after trust's establishment)—

"This paragraph applies in relation to trusts established on or before the day on which the Finance Act 1994 was passed."

5 In Schedule 5, the following paragraph shall be inserted after paragraph 12—

"12A (1) Subject to sub-paragraphs (2) and (3) below, a trust which was at the time it was established a qualifying employee share ownership trust shall continue to be one.

(2) If the trust deed makes provision under paragraph 3A(a) above, the trust shall not be a qualifying employee share ownership trust at any time when the requirements mentioned in paragraph 3(3)(a) to (f) above are not satisfied.

(3) If the trust deed makes provision under paragraph 3A(b) above, the trust shall not be a qualifying employee share ownership trust at any time when the conditions mentioned in paragraph 3B(4)(a) to (e) above are not satisfied.

(4) If the trust deed makes provision under paragraph 3A(c) above, the trust shall not be a qualifying employee share ownership trust at any time when—

(a) there is not a single trustee,

(b) the trustee is not a company which is resident in the United Kingdom and controlled by the founding company, or

(c) the conditions mentioned in paragraph 3C(4)(a) to (e) above are not satisfied as regards the directors of the trustee.

(5) This paragraph applies in relation to trusts established after the day on which the Finance Act 1994 was passed."

Securities

6 (1) Section 69 (chargeable events) shall be amended as follows.

(2) In subsection (1)(c) (retention of securities at expiry of seven years from acquisition) for "period of seven years" there shall be substituted "qualifying period".

(3) After subsection (4) there shall be inserted—

"(4A) For the purposes of subsection (1)(c) above the qualifying period is—

(a) seven years, in the case of trusts established on or before the day on which the Finance Act 1994 was passed;

(b) twenty years, in the case of other trusts;

and for this purpose a trust is established when the deed under which it is established is executed."

7 (1) Paragraph 9 of Schedule 5 (transfer of securities) shall be amended as follows.

(2) In sub-paragraph (1)(b) for "period of seven years" there shall be substituted "qualifying period".

(3) After sub-paragraph (2) there shall be inserted—

"(2A) For the purposes of sub-paragraph (1) above the qualifying period is—

(a) seven years, in the case of trusts established on or before the day on which the Finance Act 1994 was passed;

(b) twenty years, in the case of other trusts."

Interpretation

8 In Schedule 5, the following paragraph shall be inserted after paragraph 16—

"17 For the purposes of this Schedule a trust is established when the deed under which it is established is executed."