

SCHEDULES

SCHEDULE 2

APPROVED SHARE INCENTIVE PLANS

PART 5

FREE SHARES

Free shares: introduction

- 34 (1) If a SIP provides for free shares, it must meet the plan requirements contained in—
paragraph 35 (maximum annual award), and
paragraph 36 (the holding period).
- (2) If a SIP provides for free shares and for performance allowances, the requirements of the following paragraphs also apply—
paragraph 38 (performance allowances: general application),
paragraph 39 (performance allowances: targets and measures),
paragraph 40 (performance allowances: information to be given to employees),
and
either paragraph 41 or 42 (performance allowances: methods of awarding shares).
- (3) The plan must meet any plan requirements contained in those paragraphs.
- (4) For the purpose of the SIP code a plan provides for performance allowances if it provides for—
(a) whether or not free shares will be awarded to an individual, or
(b) the number or value of free shares awarded,
to be conditional on performance targets being met.

Maximum annual award

- 35 (1) The plan must provide that the initial market value of the free shares awarded to a participant in a tax year is not to exceed £3,000.
- (2) The “initial market value” of shares means their market value on the date on which they are awarded.
- (3) For the purposes of this paragraph the market value of shares subject to restrictions or risk of forfeiture is to be determined as if there were no such restrictions or risk.
- (4) Shares are “subject to risk of forfeiture” if the interest that may be acquired is only conditional within the meaning of section 424 (conditional interests in shares).

Status: This is the original version (as it was originally enacted).

The holding period

- 36 (1) The plan must require the company in respect of each award of free shares to specify a period (“the holding period”) during which a participant is bound by contract with the company—
- (a) to permit the free shares awarded to the participant to remain in the hands of the trustees, and
 - (b) not to assign, charge or otherwise dispose of the beneficial interest in the shares.
- (2) The holding period—
- (a) must be a period of at least 3 years but not more than 5 years, beginning with the date on which the shares in question are awarded to the participant, and
 - (b) must be the same for all shares in the same award.
- (3) The plan—
- (a) may authorise the company to specify different holding periods from time to time, but
 - (b) must prevent the company from increasing the holding period specified in respect of free shares that have been awarded under the plan.
- (4) The participant’s obligations with respect to the holding period are subject to—
- (a) paragraph 37 (power to authorise trustees to accept general offers etc.),
 - (b) paragraph 79 (meeting by trustees of PAYE obligations), and
 - (c) paragraph 90(5) (termination of plan: early removal of shares with participant’s consent).
- (5) If at any time in the holding period the participant ceases to be in relevant employment, the participant’s obligations with respect to that period come to an end.

Holding period: power of participant to direct trustees to accept general offers etc.

- 37 (1) A participant may direct the trustees to do any of the following during the holding period.
- (2) The participant may direct the trustees to accept an offer for any of the participant’s free shares (“the original shares”) if the acceptance or agreement will result in a new holding being equated with the original shares for the purposes of capital gains tax.
 - (3) The participant may direct the trustees to agree to a transaction affecting the participant’s free shares, or such of them as are of a particular class, if the transaction would be entered into as a result of a compromise, arrangement or scheme applicable to or affecting—
 - (a) all the ordinary share capital of the company or, as the case may be, all the shares of the class in question, or
 - (b) all the shares, or all the shares of the class in question, which are held by a class of shareholders identified otherwise than by reference to their employment or their participation in an approved SIP.
 - (4) The participant may direct the trustees to accept an offer for the participant’s free shares of—
 - (a) cash, with or without other assets, or

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

- (b) a qualifying corporate bond (whether alone or with other assets or cash or both),
if the offer forms part of a general offer falling within sub-paragraph (5).
- (5) A general offer falls within this sub-paragraph if—
 - (a) it is made to holders of shares of the same class as the participant’s or to holders of shares in the same company, and
 - (b) it is made in the first instance on a condition such that if it is satisfied the person making the offer will have control of that company.
- (6) In sub-paragraph (5) “control” has the meaning given by section 416 of ICTA.

Performance allowances: general application

- 38 A plan that provides for performance allowances in relation to an award must make provision for such allowances for all qualifying employees in relation to that award.

Performance allowances: targets and measures

- 39 (1) A plan that provides for performance allowances must comply with the following requirements with respect to performance targets and performance measures.
- (2) The performance targets must be set for performance units comprising one or more employees.
 - (3) The performance measures used must—
 - (a) be based on business results or other objective criteria, and
 - (b) be fair and objective measures of the performance of the units to which they are or may be applied.
 - (4) For the purposes of an award of free shares under the plan an employee must not be a member of more than one performance unit.

Performance allowances: information to be given to employees

- 40 (1) A plan that provides for performance allowances in relation to an award of shares must require the company—
 - (a) to notify each qualifying employee who has accepted an invitation to participate in the award of the performance targets and measures which, under the plan, will be used to determine the number or value of free shares awarded to the employee, and
 - (b) to notify all qualifying employees—
 - (i) of the company, or
 - (ii) in the case of a group plan, of any constituent company,
in general terms, of the performance measures to be used to determine the number or value of free shares to be awarded to each employee participating in the award.
- (2) The notices must be given as soon as reasonably practicable.
 - (3) The company may exclude from the notice mentioned in sub-paragraph (1)(b) any information whose disclosure the company reasonably considers would prejudice commercial confidentiality.

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

Performance allowances: method one

- 41 (1) The requirements of this paragraph are those contained in sub-paragraph (2).
- (2) In the case of an award in relation to which the plan provides for performance allowances—
- (a) at least 20% of the shares in the award must be awarded without reference to performance in accordance with the requirement of paragraph 9 (participation on same terms),
 - (b) the remaining shares must be awarded by reference to performance, and
 - (c) the highest number of shares within paragraph (b) awarded to an individual must not be more than four times the highest number of shares within paragraph (a) awarded to an individual.
- (3) In determining for the purposes of sub-paragraph (2)(a) whether the requirement of paragraph 9 is met, the shares to which sub-paragraph (2)(a) applies are to be treated as a separate award of free shares.
- (4) If the plan meets the requirements of this paragraph, the requirement of paragraph 9 does not apply to any provision of the plan relating to the awarding of shares within sub-paragraph (2)(b).
- (5) If free shares of different classes are awarded, the requirements of this paragraph apply separately in relation to each class.

Performance allowances: method two

- 42 (1) The requirements of this paragraph are those contained in sub-paragraphs (2) and (3).
- (2) In the case of an award in relation to which the plan provides for performance allowances—
- (a) some or all of the shares in the award must be awarded by reference to performance, and
 - (b) the awarding of the shares to qualifying employees who are members of the same performance unit must meet the requirement of paragraph 9 (participation on same terms).
- (3) The performance targets set in connection with such an award must be consistent targets (see sub-paragraph (6)).
- (4) In determining for the purposes of sub-paragraph (2)(b) whether the requirement of paragraph 9 is met, the free shares awarded in respect of each performance unit are to be treated as a separate award of free shares.
- (5) If this method is used, nothing in paragraph 9 requires the awarding of shares to members of different performance units to be on the same terms.
- (6) In sub-paragraph (3) “consistent targets” means targets which, at the time when they are set in accordance with the plan, can reasonably be viewed as being comparable in terms of the likelihood of their being met by the performance units to which they apply.