

## SCHEDULES

### SCHEDULE 3

Section 516

#### APPROVED SAYE OPTION SCHEMES

##### PART 1

##### INTRODUCTION

###### *Approval of SAYE option schemes*

- 1 (1) This Schedule makes provision for the approval of SAYE option schemes by the Inland Revenue.
- (2) Parts 2 to 7 of this Schedule contain requirements that have to be met in order for schemes to be approved under this Schedule.
- (3) The requirements consist of general requirements (see Part 2) and requirements as to—
  - the eligibility of individuals to participate in a scheme (see Part 3),
  - the shares to which schemes can apply (see Part 4),
  - the existence of a linked savings scheme (see Part 5),
  - the share options that may be granted under the scheme (see Part 6), and
  - the exchange of share options (see Part 7).
- (4) Part 8 of this Schedule deals with the approval of schemes and the withdrawal of approval.

###### *SAYE option schemes*

- 2 (1) In the SAYE code an “SAYE option scheme” means (in accordance with section 516(4)) a scheme established by a company which provides—
  - (a) for share options to be granted to employees and directors, and
  - (b) for the shares acquired by the exercise of the share options to be paid for in the way mentioned in paragraph 24 (payments for shares to be linked to approved savings schemes).
- (2) In the SAYE code, in relation to an SAYE option scheme—
  - “participant” means an individual who has been granted (but has not yet exercised) share options under the scheme (“the options”);
  - “participate” means obtain and exercise share options under the scheme;
  - “the scheme organiser” means the company which has established the scheme.

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*Group schemes*

- 3 (1) An SAYE option scheme established by a company that controls one or more other companies (a “parent scheme company”) may extend to all or any of those other companies.
- (2) In the SAYE code an SAYE option scheme established by a parent scheme company which so extends is called a “group scheme”.
- (3) In relation to a group scheme a “constituent company” means—
- (a) the parent scheme company, or
  - (b) any other company to which for the time being the scheme is expressed to extend.
- (4) Paragraph 46 deals with jointly owned companies and companies controlled by them.

**PART 2**

GENERAL REQUIREMENTS FOR APPROVAL

*General requirements for approval: introduction*

- 4 An SAYE option scheme must meet the requirements of—
- paragraph 5 (general restriction on contents of scheme),
  - paragraph 6 (all-employee nature of scheme),
  - paragraph 7 (participation on similar terms), and
  - paragraph 8 (no preferential treatment for directors and senior employees).

*General restriction on contents of scheme*

- 5 The scheme must not contain features which are neither essential nor reasonably incidental to the purpose of providing benefits for employees and directors in the nature of share options.

*All-employee nature of scheme*

- 6 (1) The scheme must provide that every person who meets the conditions in sub-paragraph (2) is eligible to participate in the scheme.
- (2) A person (“E”) meets the conditions in this sub-paragraph if—
- (a) E is an employee or a full-time director of the scheme organiser or (in the case of a group scheme) of a constituent company,
  - (b) E has been such an employee or director at all times during a qualifying period of not more than 5 years,
  - (c) E’s earnings from the office or employment within paragraph (a) are (or would be if there were any) general earnings to which section 15 or 21 applies (earnings for year when employee resident and ordinarily resident in the UK), and
  - (d) E is not ineligible under paragraph 11 (the “no material interest” requirement).

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- (3) The scheme must not contain any feature which has or is likely to have the effect of discouraging any description of persons who—
- (a) meet the conditions in sub-paragraph (2), or
  - (b) met those conditions before ceasing to be persons within sub-paragraph (2)
- (a),
- from actually participating in the scheme.
- (4) Sub-paragraph (3) does not apply to any provision required or authorised by a provision of this Schedule.

#### *Participation on similar terms*

- 7 (1) The requirements of this paragraph are—
- (a) that every person who meets the conditions in paragraph 6(2) (all-employee nature of scheme) must be eligible to participate in the scheme on similar terms, and
  - (b) that every person who participates in the scheme must actually do so on similar terms.
- (2) The requirements of this paragraph are not infringed by the fact that the rights of those participating in the scheme to obtain and exercise share options vary according to—
- (a) the levels of their remuneration,
  - (b) the length of their service, or
  - (c) any similar factors.

#### *No preferential treatment for directors and senior employees*

- 8 (1) The requirement of this paragraph is that, if the scheme organiser is a member of a group of companies, the scheme does not and is not likely to have the effect of conferring benefits wholly or mainly—
- (a) on directors of companies in the group, or
  - (b) on employees of companies in the group who receive the higher or highest levels of remuneration.
- (2) “A group of companies” means a company and any other companies of which it has control.

### **PART 3**

#### ELIGIBILITY OF INDIVIDUALS TO PARTICIPATE IN SCHEME

#### *Requirements relating to the eligibility of individuals: introduction*

- 9 An SAYE option scheme must meet the requirements of—
- paragraph 10 (the employment requirement), and
  - paragraph 11 (the “no material interest” requirement).

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*The employment requirement*

- 10 (1) The scheme must ensure that an individual is not eligible to participate in the scheme at a particular time unless the individual is then a director or employee of—
- (a) the scheme organiser, or
  - (b) in the case of a group scheme, a constituent company.
- (2) The requirement of this paragraph is not infringed by a provision of the scheme required or authorised by a provision of this Schedule.

*The “no material interest” requirement*

- 11 (1) The scheme must ensure that an individual is not eligible to participate in the scheme on any date if the individual has on that date, or has had within the 12 months ending with that date, a material interest in a close company—
- (a) whose shares may be acquired as a result of exercising share options granted under the scheme, or
  - (b) which has control of a company whose shares may be acquired as a result of exercising share options granted under the scheme, or
  - (c) which is a member of a consortium which owns a company within paragraph (b).
- (2) For the purposes of this paragraph an individual is to be regarded as having a material interest in a company if—
- (a) the individual, or
  - (b) the individual together with one or more of the individual’s associates, or
  - (c) any such associate, with or without any other such associates,
- has a material interest in the company.
- (3) This paragraph is supplemented—
- (a) as regards the meaning of “material interest”, by paragraphs 12 and 13, and
  - (b) as regards the meaning of “associate”, by paragraph 14 (read with paragraphs 15 and 16).
- (4) In this paragraph and paragraph 12 “close company” includes a company that would be a close company but for—
- (a) section 414(1)(a) of ICTA (exclusion of companies not resident in the United Kingdom), or
  - (b) section 415 of ICTA (exclusion of certain quoted companies).

*Meaning of “material interest”*

- 12 (1) In paragraph 11 (the “no material interest” requirement) references to a “material interest” in a company are to—
- (a) a material interest in the share capital of the company, or
  - (b) a material interest in its assets.
- (2) A material interest in the share capital of a company means—
- (a) beneficial ownership of, or
  - (b) the ability to control (directly or through the medium of other companies or by any other indirect means),
- more than 25% of the ordinary share capital of the company.

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- (3) A material interest in the assets of a company means—
- (a) possession of, or
  - (b) an entitlement to acquire,
- such rights as would, in the event of the winding up of the company or in any other circumstances, give an entitlement to receive more than 25% of the assets that would then be available for distribution among the participators.
- (4) In this paragraph “participator” has the meaning given by section 417(1) of ICTA.
- (5) This paragraph is supplemented by paragraph 13 (material interest: options etc.).

*Material interest: options and interests in SIPs*

- 13 (1) For the purposes of paragraph 12 (meaning of “material interest”) a right to acquire shares (however arising) is to be treated as a right to control them.
- (2) Sub-paragraph (3) also applies for the purposes of paragraph 12 in a case where—
- (a) the shares to be attributed to an individual consist of or include shares which the individual or another person has a right to acquire, and
  - (b) the circumstances are such that, if that right were to be exercised, the shares acquired would be shares which were previously unissued and which the company would be contractually bound to issue in the event of the exercise of the right.
- (3) In determining at any time prior to the exercise of the right whether the number of shares to be attributed to the individual exceeds 25% of the ordinary share capital of the company, that ordinary share capital is to be treated as increased by the number of unissued shares referred to in sub-paragraph (2)(b).
- (4) The references in sub-paragraphs (2) and (3) to the shares to be attributed to an individual are to the shares which—
- (a) for the purposes of paragraph 12(2) (material interest in share capital), and
  - (b) in accordance with paragraph 11(2) (material interest can consist of or include that of individual’s associates),
- fall to be brought into account in the individual’s case so that it can be determined whether their number exceeds 25% of the company’s ordinary share capital.
- (5) In applying paragraph 12 the following are to be disregarded—
- (a) the interest of the trustees of any approved SIP (within the meaning of the SIP code: see section 488(4)) in any shares which are held by them in accordance with the plan but which have not been appropriated to, or acquired on behalf of, an individual, and
  - (b) any rights exercisable by the trustees as a result of that interest.

*Meaning of “associate”*

- 14 (1) In paragraph 11(2) (the “no material interest” requirement) “associate”, in relation to an individual, means—
- (a) any relative or partner of that individual,
  - (b) the trustee or trustees of any settlement in relation to which that individual, or any of the individual’s relatives (living or dead), is or was a settlor, or

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- (c) where that individual is interested in any shares or obligations of the company mentioned in paragraph 11(2) which are subject to any trust or are part of the estate of a deceased person—
  - (i) the trustee or trustees of the settlement concerned, or
  - (ii) the personal representatives of the deceased,
 as the case may be.
- (2) Sub-paragraph (1)(c) needs to be read with paragraphs 15 and 16 (which relate to employee benefit trusts and discretionary trusts).
- (3) In this paragraph—
  - “relative” means—
    - (a) spouse,
    - (b) parent, child or remoter relation in the direct line, or
    - (c) brother or sister;
  - “settlor” and “settlement” have the same meaning as in Chapter 1A of Part 15 of ICTA (see section 660G(1) and (2)).

*Meaning of “associate”: trustees of employee benefit trust*

- 15 (1) This paragraph applies for the purposes of paragraph 14(1)(c) (meaning of “associate”: trustees of settlement) where the individual is interested as a beneficiary of an employee benefit trust in shares or obligations of the company mentioned in paragraph 11(2).
- (2) The trustees of the employee benefit trust are not to be regarded as associates of the individual as a result only of the individual’s being so interested if neither—
- (a) the individual, nor
  - (b) the individual together with one or more of the individual’s associates, nor
  - (c) any such associate, with or without any other such associates,
- has at any time after 13th March 1989 been the beneficial owner of, or been able (directly or through the medium of other companies or by any other indirect means) to control, more than 25% of the ordinary share capital of the company.
- (3) In sub-paragraph (2)(b) and (c) “associate” has the meaning given by paragraph 14(1), but does not include the trustees of an employee benefit trust as a result only of the individual’s having an interest in shares or obligations of the trust.
- (4) Chapter 11 of Part 7 of this Act (which deals with the attribution of interests in companies to beneficiaries of employee benefit trusts) applies for the purposes of sub-paragraph (2).
- (5) In this paragraph “employee benefit trust” has the same meaning as in that Chapter (see sections 550 and 551).

*Meaning of “associate”: trustees of discretionary trust*

- 16 (1) This paragraph applies for the purposes of paragraph 14(1)(c) (meaning of “associate”: trustees of settlement) where—
- (a) the individual (“the beneficiary”) is one of the objects of a discretionary trust,
  - (b) the property subject to the trust has at any time consisted of, or included, shares or obligations of the company mentioned in paragraph 11(2),

- (c) the beneficiary has ceased to be eligible to benefit under the trust as a result of—
    - (i) an irrevocable disclaimer or release executed by the beneficiary, or
    - (ii) the irrevocable exercise by the trustees of a power to exclude the beneficiary from the objects of the trust,
  - (d) immediately after the beneficiary ceased to be so eligible, no associate of the beneficiary was interested in the shares or obligations of the company that were subject to the trust, and
  - (e) during the period of 12 months ending with the date on which the beneficiary ceased to be so eligible, neither the beneficiary nor any associate of the beneficiary received any benefit under the trust.
- (2) The beneficiary is not, as a result only of the matters referred to in sub-paragraph (1) (a) and (b), to be regarded as having been interested in the shares or obligations of the company at any time during that period of 12 months.
- (3) In sub-paragraph (1) “associate” has the meaning given by paragraph 14(1) but with the omission of paragraph (c).

#### PART 4

##### SHARES TO WHICH SCHEMES CAN APPLY

###### *Requirements relating to shares that may be subject to share options: introduction*

- 17 (1) An SAYE option scheme must meet the requirements of—  
paragraph 18 (shares must be ordinary shares of certain companies),  
paragraph 19 (requirements as to listing),  
paragraph 20 (shares must be fully paid up and not redeemable),  
paragraph 21 (only certain kinds of restrictions allowed), and  
paragraph 22 (requirements as to other shareholdings).
- (2) In this Part “eligible shares” means shares which may be acquired by the exercise of share options under the scheme.

###### *Shares must be ordinary shares of certain companies*

- 18 Eligible shares must form part of the ordinary share capital of—  
(a) the scheme organiser,  
(b) a company which has control of the scheme organiser, or  
(c) a company which either is, or has control of, a company which is a member of a consortium owning either the scheme organiser or a company having control of the scheme organiser.

###### *Requirements as to listing*

- 19 (1) Eligible shares must be—  
(a) shares of a class listed on a recognised stock exchange,  
(b) shares in a company which is not under the control of another company, or  
(c) shares in a company which is under the control of a listed company.

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- (2) A “listed company” is a company whose shares are listed on a recognised stock exchange, other than—
- (a) a close company, or
  - (b) a company that would be a close company if resident in the United Kingdom.

*Shares must be fully paid up and not redeemable*

- 20 Eligible shares must be—
- (a) fully paid up, and
  - (b) not redeemable.

*Only certain kinds of restriction allowed*

- 21 (1) Eligible shares must not be subject to any restrictions (see sub-paragraph (4)) other than—
- (a) those attaching to all shares of the same class, or
  - (b) those permitted by sub-paragraph (2).
- (2) If the conditions of sub-paragraph (3) are met, eligible shares may be subject to a restriction imposed by the company’s articles of association—
- (a) requiring all shares held by directors or employees—
    - (i) of the company, or
    - (ii) of any other company of which it has control,
 to be disposed of, or offered for sale, on ceasing to be so held, and
  - (b) requiring all shares acquired, as a result of rights or interests obtained by such directors or employees, by persons who—
    - (i) are not such directors or employees, or
    - (ii) have ceased to be such directors or employees,
 to be disposed of, or offered for sale, when they are acquired.
- (3) The conditions of this sub-paragraph are—
- (a) that a disposal required by the restriction will be by way of sale for a consideration in money on terms specified in the articles of association, and
  - (b) that under general conditions contained in the articles of association anyone disposing of shares of the same class (whether or not held or acquired as mentioned in sub-paragraph (2)) may be required to sell them on terms which are the same as those mentioned in paragraph (a).
- (4) For the purposes of this paragraph shares are subject to a restriction if there is any contract, agreement, arrangement or condition—
- (a) by which a person’s freedom to dispose of the shares or of any interest in them or of the proceeds of their sale, or to exercise any right conferred by them, is restricted, or
  - (b) by which such a disposal or exercise may result in any disadvantage to the person or to a person connected with the person.

This is subject to sub-paragraphs (5) and (6).

- (5) Sub-paragraph (4) does not extend to so much of any contract, agreement, arrangement or condition as contains provisions similar in purpose and effect to any of the provisions of the Model Code as (for the time being) set out in the listing



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rules issued by the competent authority for listing in the United Kingdom under section 74(4) of the Financial Services and Markets Act 2000 (c. 8).

- (6) Any discretion of the directors under the articles of association of the company to refuse to accept the transfer of shares is to be disregarded for the purposes of this paragraph if the directors—
- (a) have undertaken to the Inland Revenue not to exercise it in such a way as to discriminate against persons participating in the scheme, and
  - (b) have notified all those who are eligible to do so of the existence of the undertaking.
- (7) In this paragraph “articles of association” includes, in the case of a company incorporated under the law of a country outside the United Kingdom, any equivalent document relating to the company.

#### *Requirements as to other shareholdings*

- 22 (1) The majority of the issued shares of the same class as the eligible shares must be—
- (a) employee-control shares, or
  - (b) open market shares,
- unless the eligible shares are shares in a company whose ordinary share capital consists of shares of one class only.
- (2) Shares in a company are “employee-control shares” if—
- (a) the persons holding the shares are, by virtue of their holding, together able to control the company, and
  - (b) those persons are or have been employees or directors of the company or of another company which is under the control of the company.
- (3) Shares in a company are “open market shares” if the persons holding the shares are not—
- (a) persons who acquired their shares as a result of a right conferred on them or an opportunity afforded to them as a director or employee of the scheme organiser or any other company, and not as a result of an offer to the public, or
  - (b) trustees holding shares on behalf of persons who acquired their beneficial interests in the shares as mentioned in paragraph (a), or
  - (c) in the case of shares which—
    - (i) are not of a class listed on a recognised stock exchange, and
    - (ii) are in a company which is under the control of a listed company (as defined by paragraph 19(2)),companies which have control of the company whose shares are in question or of which that company is an associated company.

## **PART 5**

### **REQUIREMENT FOR LINKED SAVINGS SCHEME**

#### *Requirements as to linked savings scheme: introduction*

- 23 An SAYE option scheme must meet the requirements of—

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paragraph 24 (payments for shares to be linked to approved savings schemes),  
and

paragraph 25 (requirements as to contributions to savings schemes).

*Payments for shares to be linked to approved savings schemes*

- 24 (1) The scheme must provide for shares acquired by the exercise of share options granted under the scheme to be paid for with money not exceeding the amount of repayments made and any interest paid under a CCS scheme which has been approved by the Inland Revenue for the purposes of this Schedule (“the CCS scheme”).
- (2) In the SAYE code “CCS scheme” means certified contractual savings scheme.

*Requirements as to contributions to savings schemes*

- 25 (1) The scheme must provide for a person’s contributions under the CCS scheme to be of an amount that will secure, as nearly as possible, repayment of an amount equal to the option price.
- (2) The “option price” means the amount payable, on exercising share options granted under the scheme, in order to acquire the maximum number of shares that may be acquired under them (see paragraph 28).
- (3) The scheme must neither—
- (a) permit the aggregate amount of a person’s contributions under CCS schemes linked to approved SAYE schemes to exceed £250 per month, nor
  - (b) impose a minimum on the amount of a person’s contributions which exceeds £10 per month.
- (4) The Treasury may by order amend sub-paragraph (3) by substituting for any amount for the time being specified there an amount specified in the order.

*Repayments under a savings scheme: whether bonuses included*

- 26 (1) For the purposes of this Schedule repayments under a CCS scheme may be taken as including, or as not including, a bonus.
- (2) The bonus may either be the maximum bonus under that scheme or a lesser bonus.
- (3) An SAYE option scheme must require the question whether repayments are to be taken as including bonuses to be determined at the time when share options are granted.

## PART 6

### REQUIREMENTS ETC. RELATING TO SHARE OPTIONS

*Requirements etc. relating to share options: introduction*

- 27 (1) An SAYE option scheme must meet the requirements of—
- paragraph 28 (requirements as to price for acquisition of shares),
  - paragraph 29 (share options must not be transferable),
  - paragraph 30 (time for exercising options: general),

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paragraph 31 (requirement to have a “specified age”),  
paragraph 32 (exercise of options: death),  
paragraph 33 (exercise of options: reaching specified age without retiring), and  
paragraph 34 (exercise of options: scheme-related employment ends).

- (2) An SAYE option scheme may make any provision authorised by—  
paragraph 36 (exercise of options: employment in associated company at bonus date), and  
paragraph 37 (exercise of options: company events).

#### *Requirements as to price for acquisition of shares*

- 28 (1) The price at which shares may be acquired by the exercise of a share option granted under the scheme—  
(a) must be stated at the time when the option is granted, and  
(b) must not be manifestly less than 80% of the market value of shares of the same class at that time.

This is subject to sub-paragraphs (2) and (3).

- (2) The Inland Revenue and the scheme organiser may agree in writing that sub-paragraph (1)(b) is to apply as if the reference to the time when the option is granted were to an earlier time or times stated in the agreement.
- (3) The scheme may provide for one or more of the following—  
(a) the price at which shares may be acquired by the exercise of a share option granted under the scheme,  
(b) the number of shares which may be so acquired, or  
(c) the description of shares which may be so acquired,  
to be varied so far as necessary to take account of a variation in the share capital of which the shares form part.
- (4) But the scheme must provide that no such variation is to be made without the prior approval of the Inland Revenue.

#### *Share options must not be transferable*

- 29 (1) The scheme must ensure that share options granted to a participant are not capable of being transferred by the participant.
- (2) Paragraph 32 provides for the exercise of the options where the participant has died.

#### *Time for exercising options: general*

- 30 (1) The scheme must ensure that share options granted under it must not be capable of being exercised—  
(a) before the bonus date, or  
(b) later than 6 months after that date.
- (2) However, in sub-paragraph (1)—  
(a) paragraph (a) is subject to paragraphs 32 to 34 and 37 (exercise of options in the event of death, reaching the specified age without retiring, scheme-

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related employment ending or certain events occurring in relation to the company), and

(b) paragraph (b) is subject to paragraph 32.

(3) In the SAYE code “the bonus date” means the date on which repayments under the CCS scheme are due.

(4) For this purpose repayments are to be regarded as due as follows—

(a) if the repayments are to be taken as including the maximum bonus (see paragraph 26(2)), on the earliest date on which that bonus is payable, and

(b) in any other case, on the earliest date on which a bonus is payable.

*Requirement to have a “specified age”*

31 (1) The scheme must specify the age that is to be the specified age for the purposes of the scheme (see paragraphs 33(1) and 34(2)).

(2) The age specified must be—

(a) the same for men and women,

(b) not less than 60, and

(c) not more than 75.

*Exercise of options: death*

32 The scheme must provide that, if a participant dies before exercising the options, they may be exercised on or after the date of death but not later than—

(a) 12 months after the date of death, in a case where the participant dies before the bonus date, or

(b) 12 months after the bonus date, in a case where the participant dies on or within 6 months after that date.

*Exercise of options: reaching specified age without retiring*

33 (1) The scheme must provide that, if a participant (“P”) continues to hold the office or employment by reference to which P satisfies the condition in paragraph 10(1) (the employment requirement) after the date on which P reaches the specified age, P may exercise the options within 6 months of that date.

(2) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date).

*Exercise of options: scheme-related employment ends*

34 (1) The scheme must provide that, if a participant (“P”) no longer holds scheme-related employment (see paragraph 35), the options are exercisable as set out in subparagraphs (2) to (4).

(2) In a case where P ceases to hold the scheme-related employment because of—

(a) injury or disability or redundancy within the meaning of ERA 1996, or

(b) retirement on reaching the specified age, or any other age at which P is bound to retire in accordance with the terms of P’s contract of employment,

the options may only be exercised within 6 months after the termination date.

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- (3) In a case where P ceases to hold the scheme-related employment for any other reason, share options granted more than 3 years before the termination date either—
- (a) may not be exercised, or
  - (b) may only be exercised within 6 months after the termination date,
- according to which of these alternatives is specified in the scheme.
- (4) Subject to any provision made under sub-paragraph (5), in a case where P ceases to hold the scheme-related employment for any reason other than one within sub-paragraph (2)(a) or (b), share options granted 3 years or less before the termination date may not be exercised at all.
- (5) The scheme may provide that, in a case where P ceases to hold the scheme-related employment only because—
- (a) it is in a company of which the scheme organiser ceases to have control, or
  - (b) it relates to a business or part of a business which is transferred to a person who is not an associated company of the scheme organiser,
- the options may be exercised within 6 months after the termination date.
- (6) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date).
- (7) In this paragraph—
- “scheme-related employment” means the office or employment by reference to which the person satisfies the condition in paragraph 10(1) (“the employment requirement”);
  - “the termination date” means the date when P ceases to hold the scheme-related employment (see paragraph 35).

#### *Time when scheme-related employment ends*

- 35 (1) This paragraph applies for the purposes of paragraph 34 (exercise of options: scheme-related employment ends).
- (2) Unless sub-paragraph (3) applies, a participant (“P”) is to be regarded as ceasing to hold scheme-related employment on the date when the office or employment in question terminates.
- (3) If—
- (a) P’s scheme-related employment terminates, but
  - (b) P continues to hold an office or employment in the scheme organiser or any associated company,
- P is to be regarded as ceasing to hold the scheme-related employment on the date when P no longer holds any office or employment within paragraph (b), and not at any earlier time.
- (4) For the purposes of sub-paragraph (3) one company is an “associated company” of another company if—
- (a) one has control of the other, or
  - (b) both are under the control of the same person or persons;
- and for this purpose the question of whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA (“control” in the context of close companies).

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- (5) Nothing in paragraph 34 or this paragraph applies where a person's scheme-related employment terminates on that person's death (see instead paragraph 32).
- (6) In this paragraph "scheme-related employment" has the same meaning as in paragraph 34.

*Exercise of options: employment in associated company at bonus date*

- 36 The scheme may provide that if at the bonus date a participant holds an office or employment in a company which is—
- (a) an associated company of the scheme organiser, but
  - (b) not a constituent company,
- the options may be exercised within 6 months after that date.

*Exercise of options: company events*

- 37 (1) The scheme may provide that share options relating to shares in a company may be exercised within 6 months after the relevant date for the purposes of sub-paragraph (2), (4) or (5).
- (2) The relevant date for the purposes of this sub-paragraph is the date when—
- (a) a person has obtained control of the company as a result of making an offer falling within sub-paragraph (3), and
  - (b) any condition subject to which the offer is made has been satisfied.
- (3) An offer falls within this sub-paragraph if it is—
- (a) a general offer to acquire the whole of the issued ordinary share capital of the company, which is made on a condition such that, if it is met, the person making the offer will have control of the company, or
  - (b) a general offer to acquire all the shares in the company which are of the same class as the shares in question obtained under the scheme.
- (4) The relevant date for the purposes of this sub-paragraph is the date when the court sanctions under—
- (a) section 425 of the Companies Act 1985 (c. 6) (power to compromise with creditors and members), or
  - (b) Article 418 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (corresponding provision for Northern Ireland),
- a compromise or arrangement proposed for the purposes of or in connection with a scheme for the reconstruction or amalgamation of the company.
- (5) The relevant date for the purposes of this sub-paragraph is the date when the company passes a resolution for voluntary winding up.
- (6) The scheme may provide that share options relating to shares in a company may be exercised at any time when any person is bound or entitled to acquire shares in the company under—
- (a) sections 428 to 430 of the Companies Act 1985 (c. 6) (power to acquire shares of shareholders dissenting from schemes or contract approved by majority), or
  - (b) Articles 421 to 423 of the Companies (Northern Ireland) Order 1986 (S.I. 1986/1032 (N.I. 6)) (corresponding provision for Northern Ireland).

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- (7) For the purposes of this paragraph—
- (a) “share options” means share options granted under the scheme; and
  - (b) a person is to be treated as obtaining control of a company if that person and others acting in concert together obtain control of it.
- (8) This paragraph has effect subject to paragraph 30(1)(b) (options must not be capable of being exercised later than 6 months after bonus date).

## PART 7

### EXCHANGE OF SHARE OPTIONS

#### *Exchange of options on company reorganisation*

- 38 (1) An SAYE option scheme may provide that if—
- (a) there is a company reorganisation affecting a scheme company (that is, a company whose shares may be acquired by the exercise of share options obtained under the scheme: see paragraph 18), and
  - (b) a participant has obtained share options under the scheme which are to acquire shares of the scheme company (“the old options”),
- the participant may agree with the acquiring company to release the old options in consideration of the participant being granted new share options.
- (2) For the purposes of this paragraph there is a company reorganisation affecting a scheme company if another company (“the acquiring company”)—
- (a) obtains control of the scheme company—
    - (i) as a result of making a general offer to acquire the whole of the issued ordinary share capital of the scheme company which is made on a condition such that, if it is met, the person making the offer will have control of that company, or
    - (ii) as a result of making a general offer to acquire all the shares in the scheme company which are of the same class as those subject to the old options;
  - (b) obtains control of the scheme company as a result of a compromise or arrangement sanctioned by the court under—
    - (i) section 425 of the Companies Act 1985 (power to compromise with creditors and members), or
    - (ii) Article 418 of the Companies (Northern Ireland) Order 1986 (corresponding provision for Northern Ireland); or
  - (c) becomes bound or entitled to acquire shares in the scheme company under—
    - (i) sections 428 to 430 of that Act (power to acquire shares of shareholders dissenting from schemes or contract approved by majority), or
    - (ii) Articles 421 to 423 of that Order (corresponding provision for Northern Ireland).
- (3) A scheme that makes provision under sub-paragraph (1) must require the agreement referred to in that sub-paragraph to be made—
- (a) where control is obtained in the way set out in sub-paragraph (2)(a)(i) or (ii), within the period of 6 months beginning with the time when the acquiring

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- company obtains control and any condition subject to which the offer is made is met,
- (b) where control is obtained in the way set out in sub-paragraph (2)(b), within the period of 6 months beginning with the time when the court sanctions the compromise or arrangement, and
- (c) where sub-paragraph (2)(c) applies, within the period during which the acquiring company remains bound or entitled as mentioned in that provision.

*Requirements about share options granted in exchange*

- 39 (1) This paragraph applies to a scheme that makes provision under paragraph 38 (exchange of options on company reorganisation).
- (2) The scheme must require the new share options to relate to shares in a company which—
- (a) is different from the company whose shares are subject to the old options, and
  - (b) is either the acquiring company itself or some other company within sub-paragraph (b) or (c) of paragraph 18 (shares must be ordinary shares of certain companies), namely—
    - (i) a company which has control of the scheme organiser, or
    - (ii) a company which is, or has control of a company which is, a member of a consortium owning either the scheme organiser or a company having control of the scheme organiser.

For this purpose the control in question may be through the medium of the acquiring company.
- (3) The scheme must also require the new share options to be equivalent to the old options.
- (4) For the new options to be regarded as equivalent to the old options—
- (a) the shares to which they relate must meet the conditions in paragraphs 18 to 22 (types of share that may be used),
  - (b) they must be exercisable in the same manner as the old options and subject to the provisions of the scheme as it had effect immediately before the release of the old options,
  - (c) the total market value of the shares subject to the old options immediately before the release of those options by the participant must equal the total market value, immediately after the grant of the new options to the participant, of the shares subject to those options, and
  - (d) the total amount payable by the participant for the acquisition of shares under the new options must be equal to the total amount that would have been so payable under the old options.
- (5) For the purposes of the SAYE code, new share options granted under the terms of a provision included in a scheme under paragraph 38 are to be treated as having been granted at the time when the corresponding old options were granted.
- (6) This also applies for the purposes of the provisions of the scheme in their operation, after the grant of the new options, by virtue of a condition complying with sub-paragraph (4)(b).



## PART 8

### APPROVAL OF SCHEMES

#### *Application for approval*

- 40 (1) Where—
- (a) an SAYE option scheme has been established, and
  - (b) the scheme organiser makes an application to the Inland Revenue for approval of the scheme,
- the Inland Revenue must approve the scheme if they are satisfied that it meets the requirements of Parts 2 to 7 of this Schedule.
- (2) An application for approval—
- (a) must be in writing, and
  - (b) must contain such particulars and be supported by such evidence as the Inland Revenue may require.
- (3) Once the Inland Revenue have decided whether or not to approve the scheme, they must give notice of their decision to the scheme organiser.

#### *Appeal against refusal of approval*

- 41 (1) If the Inland Revenue refuse to approve the scheme, the scheme organiser may appeal to the Special Commissioners.
- (2) The notice of appeal must be given to the Inland Revenue within 30 days after the date on which notice of their decision was given to the scheme organiser.
- (3) If the Special Commissioners allow the appeal, they may direct the Inland Revenue to approve the scheme with effect from a date specified by the Commissioners.
- (4) The date so specified must not be earlier than that of the application for approval.

#### *Withdrawal of approval*

- 42 (1) If any disqualifying event occurs in connection with an approved SAYE option scheme, the Inland Revenue may by a notice given to the scheme organiser withdraw the approval with effect from—
- (a) the time at which the disqualifying event occurred, or
  - (b) a later time specified by the Inland Revenue in the notice.
- (2) A “disqualifying event” occurs in connection with a scheme if—
- (a) any of the requirements of Parts 2 to 7 of this Schedule ceases to be met; or
  - (b) the scheme organiser fails to provide information requested by the Inland Revenue under paragraph 45.
- (3) If share options granted under an SAYE option scheme before the withdrawal of approval under this paragraph are exercised after the withdrawal, the scheme is to be treated for the purposes of—
- (a) section 519 (exemption in respect of exercise of share option), and
  - (b) section 520 (exemption in respect of post-acquisition benefits),

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in their application to such options, as if it were still approved at the time of the exercise.

*Approval ineffective after unapproved alteration*

- 43 (1) If—
- (a) an alteration is made in an SAYE option scheme that has been approved, and
  - (b) the alteration has not been approved by the Inland Revenue,
- the approval of the scheme is ineffective after the date of the alteration.
- (2) Where the Inland Revenue—
- (a) have been requested to approve any alteration in such a scheme, and
  - (b) have decided whether or not to approve the alteration,
- they must give notice of their decision to the scheme organiser.

*Appeal against withdrawal of approval etc.*

- 44 (1) This paragraph applies if an SAYE option scheme has been approved by the Inland Revenue and they—
- (a) decide to withdraw approval of the scheme under paragraph 42, or
  - (b) decide not to approve an alteration in the scheme under paragraph 43.
- (2) The scheme organiser may appeal against the decision to the Special Commissioners.
- (3) The notice of appeal must be given to the Inland Revenue within 30 days after the date on which notice of their decision was given to the scheme organiser.

## PART 9

### SUPPLEMENTARY PROVISIONS

*Power to require information*

- 45 (1) The Inland Revenue may by notice require any person to provide them with any information—
- (a) which they reasonably require for the performance of their functions under the SAYE code, and
  - (b) which the person to whom the notice is addressed has or can reasonably obtain.
- (2) The power conferred by this paragraph extends, in particular, to—
- (a) information to enable the Inland Revenue—
    - (i) to decide whether to approve an SAYE option scheme or to withdraw an approval already given, or
    - (ii) to determine the liability to tax, including capital gains tax, of any person who has participated in a scheme, and
  - (b) information about the administration of a scheme and any alteration of the terms of a scheme.
- (3) The notice must require the information to be provided within a specified time, which must not end earlier than 3 months after the date when the notice is given.

### *Jointly owned companies*

- 46 (1) This paragraph applies for the purposes of the provisions of the SAYE code relating to group schemes.
- (2) Each joint owner of a jointly owned company is to be treated as controlling every company within sub-paragraph (3).
- (3) The companies within this sub-paragraph are—
- (a) the jointly owned company, and
  - (b) any company controlled by that company.
- (4) However, no company within sub-paragraph (3) may be—
- (a) a constituent company in more than one group scheme, or
  - (b) a constituent company in a particular group scheme if another company within that sub-paragraph is a constituent company in a different group scheme.
- (5) In this paragraph a “jointly owned company” means a company which (apart from sub-paragraph (2)) is not controlled by any one person and—
- (a) of which 50% of the issued share capital is owned by one person and 50% by another, or
  - (b) which is otherwise controlled by two persons taken together.
- (6) In this paragraph “joint owner” means one of the persons mentioned in sub-paragraph (5)(a) or (b).

### *Meaning of “associated company”*

- 47 (1) For the purposes of the SAYE code, except in paragraph 35(3) (time when “scheme-related employment” ends), one company is an “associated company” of another company at a given time if, at that time or at any other time within one year previously—
- (a) one has control of the other, or
  - (b) both are under the control of the same person or persons.
- (2) For the purposes of sub-paragraph (1) the question whether a person controls a company is to be determined in accordance with section 416(2) to (6) of ICTA.

### *Minor definitions*

- 48 (1) In the SAYE code—
- “certified contractual savings scheme” has the meaning given in section 326(2) to (6) of ICTA;
  - “company” means a body corporate;
  - “market value” has the same meaning as it has for the purposes of TCGA 1992 by virtue of Part 8 of that Act.
- (2) For the purposes of the SAYE code a company is a member of a consortium owning another company if it is one of a number of companies—
- (a) which between them beneficially own not less than 75% of the other company’s ordinary share capital, and
  - (b) each of which beneficially owns not less than 5% of that capital.

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*Index of defined expressions*

49 In the SAYE code the following expressions are defined or otherwise explained by the provisions indicated below:

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approved	section 516(4) (and see paragraph 42(3))
associated company	paragraph 47(1)
the bonus date	paragraph 30(3)
certified contractual savings scheme (CCS scheme)	paragraph 48(1)
child	section 832(5) of ICTA, (and see section 721(6) of this Act)
close company	section 832(1) of ICTA, (and see paragraph 11(4))
company	paragraph 48(1)
connected person	section 718
constituent company	paragraph 3(3)
control	section 719 (and see paragraphs 35(4) and 47(2))
distribution	section 832(1) of ICTA
earnings	section 62 and see section 721(7)
eligible shares (in Part 4 of this Schedule)	paragraph 17(2)
employee and employment	section 4
group scheme	paragraph 3(2) (and see paragraph 46)
the Inland Revenue	section 720(1)
interest	section 832(1) of ICTA
market value	paragraph 48(1)
member of a consortium	paragraph 48(2)
notice	section 832(1) of ICTA
the options (in relation to a participant)	paragraph 2(2)
ordinary share capital	section 832(1) of ICTA
participant	paragraph 2(2)
participate	paragraph 2(2)
personal representatives	section 721(1)
recognised stock exchange	section 841 of ICTA
the SAYE code	section 516(3)
SAYE option scheme	section 516(4)

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the scheme organiser	paragraph 2(2)
share option	section 516(4)
shares	section 516(4)
Special Commissioners	section 4 of TMA 1970
specified age	paragraph 31
tax	section 832(3) of ICTA
United Kingdom	section 830 of ICTA

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