

SCHEDULES

SCHEDULE 5

ENTERPRISE MANAGEMENT INCENTIVES

PART 5

REQUIREMENTS RELATING TO OPTIONS

Requirements relating to options: introduction

- 34 A share option is not a qualifying option unless the requirements of this Part of this Schedule as to the following are met at the appropriate time—
- the type of shares that may be acquired (see paragraph 35),
 - when the option is capable of being exercised (see paragraph 36),
 - the terms being agreed in writing (see paragraph 37), and
 - the non-assignability of rights (see paragraph 38).

Type of shares that may be acquired

- 35 (1) The option must confer a right to acquire shares that—
- (a) form part of the ordinary share capital of the relevant company,
 - (b) are fully paid up, and
 - (c) are not redeemable.
- (2) Shares are not fully paid up for the purposes of sub-paragraph (1)(b) if there is any undertaking to pay cash to the relevant company at a future date.
- (3) For the purposes of sub-paragraph (1)(c) “redeemable” shares include shares that may become redeemable at a future date.

Option to be capable of exercise within 10 years

- 36 (1) The option must be capable of being exercised within the period of 10 years beginning with the date on which it is granted.
- (2) Where the exercise of the option is dependent on the fulfilment of conditions, the option is to be taken to be capable of being exercised within the period mentioned in sub-paragraph (1) if the conditions may be fulfilled within that period.

Terms of option to be agreed in writing

- 37 (1) The option must take the form of a written agreement between the person granting the option and the employee which meets the following requirements.
- (2) The agreement must state—

Status: This is the original version (as it was originally enacted).

- (a) the date on which the option is granted;
 - (b) that it is granted under the provisions of this Schedule;
 - (c) the number, or maximum number, of shares that may be acquired;
 - (d) the price (if any) payable by the employee to acquire them, or the method by which that price is to be determined; and
 - (e) when and how the option may be exercised.
- (3) The agreement must set out any conditions, such as performance conditions, affecting the terms or extent of the employee's entitlement.
- (4) The agreement must contain details of any restrictions attaching to the shares.
- (5) Where the shares that may be acquired by the employee are subject to risk of forfeiture, the agreement must contain details of the conditions.
- (6) For the purposes of sub-paragraph (5) 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).

Non-assignability of rights

- 38 The terms on which the option is granted—
- (a) must prohibit the person to whom it is granted from transferring any of that person's rights under it, and
 - (b) if they permit it to be exercised after that person's death, must not permit it to be exercised more than one year after the date of the death.