

SCHEDULE 7

Regulation 23(7).

RESTRICTIONS BY THE UK AUTHORITY

Preliminary

1. In this Schedule “restriction” means a restriction under regulation 23 of these Regulations.

Notice of restriction in non-urgent cases

2.—(1) Subject to paragraph 3 below, where the UK authority proposes, in relation to a UK subsidiary—

- (a) to impose a restriction; or
- (b) to vary a restriction otherwise than with the agreement of the institution,

the UK authority shall give notice of its proposal to the institution and to every other authority which it knows is a connected UK authority.

(2) A notice under sub-paragraph (1) above shall—

- (a) specify the proposed restriction or, as the case may be, the proposed variation; and
- (b) state the grounds on which the UK authority proposes to act and give particulars of the institution’s rights under sub-paragraph (4) below.

(3) Where—

- (a) a proposed restriction consists of or includes a condition requiring the removal of any person as director, controller or manager; or
- (b) the ground or a ground for a proposal to impose or vary a restriction is that it appears to the UK authority that the criterion in paragraph 1 of Schedule 3 to the Banking Act is not or has not been fulfilled, or may not or may not have been fulfilled, in the case of any person,

the UK authority shall give that person a copy of the notice mentioned in sub-paragraph (1) above, together with a statement of his rights under sub-paragraph (4) below.

(4) An institution which is given a notice under sub-paragraph (1) above and a person who is given a copy under sub-paragraph (3) above may, within the period of 14 days beginning with the day on which the notice was given, make representations to the UK authority.

(5) After giving a notice under sub-paragraph (1) above and taking into account any representations made under sub-paragraph (4) above, the UK authority shall decide whether—

- (a) to proceed with the action proposed in the notice;
- (b) to take no further action; or
- (c) to impose a different restriction or, as the case may be, make a different variation.

(6) The UK authority shall give—

- (a) the institution; and
- (b) any such person as is mentioned in sub-paragraph (4) above,

written notice of its decision and, except where the decision is to take no further action, the notice shall state the reasons for the decision and give particulars of the rights conferred by sub-paragraph (10) below and section 27 of the Banking Act or, as the case may be, section 46 of the Building Societies Act.

(7) A notice under sub-paragraph (6) above shall be given within the period of 28 days beginning with the day on which the notice under sub-paragraph (1) above was given.

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(8) If no notice under sub-paragraph (6) above is given within the period mentioned in subparagraph (7) above, the UK authority shall be treated as having at the end of that period given a notice under that sub-paragraph to the effect that no further action is to be taken.

(9) A notice under sub-paragraph (6) above imposing a restriction on an institution or varying a restriction shall have the effect of restricting the institution's activities or varying the restriction in the manner specified in the notice.

(10) Where the decision notified under sub-paragraph (6) above is to impose or vary a restriction otherwise than as stated in the notice given under sub-paragraph (1) above—

- (a) the institution concerned may, within the period of seven days beginning with the day on which the notice was given under sub-paragraph (6) above, make written representations to the UK authority with respect to the restriction or variation; and
- (b) the UK authority may, after taking those representations into account, alter the restriction.

(11) The UK authority may omit from the copy given to a person under sub-paragraph (4) above and from a notice given to him under sub-paragraph (6) above any matter which does not relate to him.

Notice of restriction in urgent cases

3.—(1) No notice need be given in accordance with paragraph 2 above in respect of—

- (a) the imposition of a restriction; or
- (b) the variation of a restriction otherwise than with the agreement of the institution concerned,

in any case in which the UK authority considers that the restriction should be imposed, or the variation should be made, as a matter of urgency.

(2) In any such case the UK authority may by written notice to the institution impose the restriction or make the variation.

(3) Any such notice shall state the reasons for which the UK authority has acted and particulars of the rights conferred by sub-paragraph (5) below and by section 27 of the Banking Act or, as the case may be, section 46 of the Building Societies Act.

(4) Where—

- (a) a restriction consists of or includes a condition requiring the removal of any person as director, controller or manager; or
- (b) the ground or a ground for a restriction or variation of a restriction is that it appears to the UK authority that the criterion in paragraph 1 of Schedule 3 to the Banking Act is not or has not been fulfilled, or may not or may not have been fulfilled, in the case of any person,

the UK authority shall give that person a copy of the notice mentioned in sub-paragraph (2) above, together with a statement of his rights under sub-paragraph (5) below.

(5) An institution to which a notice is given under this paragraph and a person who is given a copy of it by virtue of sub-paragraph (4) above may within the period of 14 days beginning with the day on which the notice was given make representations to the UK authority.

(6) After giving a notice under sub-paragraph (2) above and taking into account any representations made in accordance with sub-paragraph (5) above, the UK authority shall decide whether—

- (a) to confirm or rescind its original decision; or
- (b) to impose a different restriction or to vary the restriction in a different manner.

(7) The UK authority shall, within the period of 28 days beginning with the day on which the notice was given under sub-paragraph (2) above, give the institution written notice of its decision

under sub-paragraph (6) above and, except where the decision is to rescind the original decision, the notice shall state the reasons for the decision.

(8) Where the notice under sub-paragraph (7) above is of a decision to take the action specified in sub-paragraph (6)(b) above, the notice under sub-paragraph (7) shall have the effect of imposing the restriction, or making the variation specified in the notice, with effect from the date on which it is given.

Appeals

4. Section 27 of the Banking Act (rights of appeal) shall have effect as if the decisions mentioned in subsection (1) included a decision of the Bank to impose or vary a restriction.

5.—(1) Section 46 of the Building Societies Act (rights of appeal) shall have effect as if—

- (a) the decisions mentioned in subsection (1) included a decision of the Commission to impose or vary a restriction; and
- (b) in relation to such a decision, the reference in that subsection to a building society included a reference to a UK subsidiary.

(2) Section 47 of that Act⁽¹⁾ (determination of appeals) shall have effect as if it included provision enabling the tribunal to vary any decision of the Commission to impose or vary a restriction by directing the Commission to impose a different restriction or make a different variation.

Statement of principles

6.—(1) The Bank shall, as soon as practicable after the coming into force of these Regulations, publish in such manner as it thinks appropriate a statement of the principles in accordance with which it is acting or proposing to act in exercising its power to restrict the listed activities of a UK subsidiary.

(2) Subsection (2) of section 16 of the Banking Act (statement of principles) shall apply for the purposes of sub-paragraph (1) above as it applies for the purpose of subsection (1) of that section.

(1) 1986 c. 53; section 47(3) has been amended by paragraph 68 of Schedule 10 to the Courts and Legal Services Act 1990 (c. 41).