

## SCHEDULE 1

Regulation 3

### Commencement Information

**II** Sch. 1 in force at 21.3.2009, see [reg. 1](#)

### *“Notices of acquisitions of control over UK authorised persons*

#### **Obligation to notify the Authority: acquisitions of control**

**178.**—(1) A person who decides to acquire or increase control over a UK authorised person must give the Authority notice in writing before making the acquisition.

(2) For the purposes of calculations relating to this section, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.

(3) In this Part, a notice given under this section is a “section 178 notice” and a person giving notice is a “section 178 notice-giver”.

#### **Requirements for section 178 notices**

**179.**—(1) A section 178 notice must be in such form, include such information and be accompanied by such documents as the Authority may reasonably require.

(2) The Authority must publish a list of its requirements as to the form, information and accompanying documents for a section 178 notice.

(3) The Authority may impose different requirements for different cases and may vary or waive requirements in particular cases.

#### **Acknowledgment of receipt**

**180.**—(1) The Authority must acknowledge receipt of a completed section 178 notice in writing before the end of the second working day following receipt.

(2) If the Authority receives an incomplete section 178 notice it must inform the section 178 notice-giver as soon as reasonably practicable.

### *Acquiring control and other changes of holding*

#### **Acquiring control**

**181.**—(1) For the purposes of this Part, a person (“A”) acquires control over a UK authorised person (“B”) if any of the cases in subsection (2) begin to apply.

(2) The cases are where A holds—

- (a) 10% or more of the shares in B or in a parent undertaking of B (“P”);
- (b) 10% or more of the voting power in B or P; or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

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### **Increasing control**

**182.—**(1) For the purposes of this Part, a person (“A”) increases control over a UK authorised person (“B”) whenever—

- (a) the percentage of shares which A holds in B or in a parent undertaking of B (“P”) increases by any of the steps mentioned in subsection (2);
- (b) the percentage of voting power A holds in B or P increases by any of the steps mentioned in subsection (2); or
- (c) A becomes a parent undertaking of B.

(2) The steps are—

- (a) from less than 20% to 20% or more;
- (b) from less than 30% to 30% or more;
- (c) from less than 50% to 50% or more.

### **Reducing or ceasing to have control**

**183.—**(1) For the purposes of this Part, a person (“A”) reduces control over a UK authorised person (“B”) whenever—

- (a) the percentage of shares which A holds in B or in a parent undertaking of B (“P”) decreases by any of the steps mentioned in subsection (2);
- (b) the percentage of voting power which A holds in B or P decreases by any of the steps mentioned in subsection (2); or
- (c) A ceases to be a parent undertaking of B.

(2) The steps are—

- (a) from 50% or more to less than 50%;
- (b) from 30% or more to less than 30%;
- (c) from 20% or more to less than 20%.

(3) For the purposes of this Part, a person (“A”) ceases to have control over a UK authorised person (“B”) if A ceases to be in the position of holding—

- (a) 10% or more of the shares in B or in a parent undertaking of B (“P”);
- (b) 10% or more of the voting power in B or P; or
- (c) shares or voting power in B or P as a result of which A is able to exercise significant influence over the management of B.

### **Disregarded holdings**

**184.—**(1) For the purposes of sections 181 to 183, shares and voting power that a person holds in a UK authorised person (“B”) or in a parent undertaking of B (“P”) are disregarded in the following circumstances.

(2) Shares held only for the purposes of clearing and settling within a short settlement cycle are disregarded.

(3) Shares held by a custodian or its nominee in a custodian capacity are disregarded, provided that the custodian or nominee is only able to exercise voting power represented by the shares in accordance with instructions given in writing.

(4) Shares representing no more than 5% of the total voting power in B or P held by an investment firm are disregarded, provided that it—

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- (a) holds the shares in the capacity of a market maker (as defined in article 4.1(8) of the markets in financial instruments directive);
  - (b) is authorised by its home state regulator under the markets in financial instruments directive; and
  - (c) neither intervenes in the management of B or P nor exerts any influence on B or P to buy the shares or back the share price.
- (5) Shares held by a credit institution or investment firm in its trading book are disregarded, provided that—
- (a) the shares represent no more than 5% of the total voting power in B or P; and
  - (b) the credit institution or investment firm ensures that the voting power is not used to intervene in the management of B or P.
- (6) Shares held by a credit institution or an investment firm are disregarded, provided that—
- (a) the shares are held as a result of performing the investment services and activities of—
    - (i) underwriting a share issue; or
    - (ii) placing shares on a firm commitment basis in accordance with Annex I, section A.6 of the markets in financial instruments directive; and
  - (b) the credit institution or investment firm—
    - (i) does not exercise voting power represented by the shares or otherwise intervene in the management of the issuer; and
    - (ii) retains the holding for a period of less than one year.
- (7) Where a management company (as defined in Article 1a.2 of the UCITS directive) and its parent undertaking both hold shares or voting power, each may disregard holdings of the other, provided that each exercises its voting power independently of the other.
- (8) But subsection (7) does not apply if the management company—
- (a) manages holdings for its parent undertaking or an undertaking in respect of which the parent undertaking is a controller;
  - (b) has no discretion as to the exercise of the voting power attached to such holdings; and
  - (c) may only exercise the voting power in relation to such holdings under direct or indirect instruction from—
    - (i) the parent undertaking; or
    - (ii) an undertaking in respect of which of the parent undertaking is a controller.
- (9) Where an investment firm and its parent undertaking both hold shares or voting power, the parent undertaking may disregard holdings managed by the investment firm on a client by client basis and the investment firm may disregard holdings of the parent undertaking, provided that the investment firm—
- (a) has permission to provide portfolio management;
  - (b) exercises its voting power independently from the parent undertaking; and
  - (c) may only exercise the voting power under instructions given in writing, or has appropriate mechanisms in place for ensuring that individual portfolio management services are conducted independently of any other services.

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### *Assessment procedure*

#### **Assessment: general**

- 185.**—(1) Where the Authority receives a section 178 notice, it must—
- (a) determine whether to approve the acquisition to which it relates unconditionally; or
  - (b) propose to—
    - (i) approve the acquisition subject to conditions (see section 187); or
    - (ii) object to the acquisition.
- (2) The Authority must—
- (a) consider the suitability of the section 178 notice-giver and the financial soundness of the acquisition in order to ensure the sound and prudent management of the UK authorised person;
  - (b) have regard to the likely influence that the section 178 notice-giver will have on the UK authorised person; and
  - (c) disregard the economic needs of the market.
- (3) The Authority may only object to an acquisition—
- (a) if there are reasonable grounds for doing so on the basis of the matters set out in section 186; or
  - (b) if the information provided by the section 178 notice-giver is incomplete.

#### **Assessment criteria**

- 186.** The matters specified in section 185(3)(a) are—
- (a) the reputation of the section 178 notice-giver;
  - (b) the reputation and experience of any person who will direct the business of the UK authorised person as a result of the proposed acquisition;
  - (c) the financial soundness of the section 178 notice-giver, in particular in relation to the type of business that the UK authorised person pursues or envisages pursuing;
  - (d) whether the UK authorised person will be able to comply with its prudential requirements (including the threshold conditions in relation to all of the regulated activities for which it has or will have permission);
  - (e) if the UK authorised person is to become part of a group as a result of the acquisition, whether that group has a structure which makes it possible to—
    - (i) exercise effective supervision;
    - (ii) exchange information among regulators; and
    - (iii) determine the allocation of responsibility among regulators; and
  - (f) whether there are reasonable grounds to suspect that in connection with the proposed acquisition—
    - (i) money laundering or terrorist financing (within the meaning of Article 1 of Directive [2005/60/EC](#) of the European Parliament and of the Council of 26th October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>(1)</sup>) is being or has been committed or attempted; or

(1) OJ. L 309, 25.11.2005, p.15.

- (ii) the risk of such activity could increase.

### **Approval with conditions**

**187.**—(1) The Authority may impose conditions on its approval of an acquisition.

(2) The Authority may only impose conditions where, if it did not impose those conditions, it would propose to object to the acquisition.

(3) The Authority may not impose conditions requiring a particular level of holding to be acquired.

(4) The Authority may vary or cancel the conditions.

### **Assessment: consultation with EC competent authorities**

**188.**—(1) The Authority must consult any appropriate home state regulator before making a determination under section 185 and, in doing so, must comply with such requirements as to consultation as may be prescribed.

(2) Where the Authority makes a determination under section 185, it must indicate any views or reservations received from any home state regulator it consults in accordance with subsection (1).

(3) The Authority must cooperate with any equivalent consultation by a host state regulator in relation to a UK authorised person.

(4) In order to comply with an obligation under subsection (1) or (3), the Authority must provide the regulator with—

- (a) any relevant information that it requests; and
- (b) any information that the Authority considers that it needs.

### **Assessment: Procedure**

**189.**—(1) The Authority must act under section 185 within a period of 60 working days beginning with the day on which the Authority acknowledges receipt of the section 178 notice (“the assessment period”).

(2) The assessment period may be interrupted, no more than once, in accordance with section 190.

(3) The Authority must inform the section 178 notice-giver in writing of—

- (a) the duration of the assessment period;
- (b) its expiry date; and
- (c) any change to the expiry date by virtue of section 190.

(4) The Authority must, within two working days of acting under section 185 (and in any event no later than the expiry date of the assessment period)—

- (a) notify the section 178 notice-giver that it has determined to approve the acquisition unconditionally; or
- (b) give a warning notice stating that it proposes to—
  - (i) approve the acquisition subject to conditions; or
  - (ii) object to the acquisition.

(5) Where the Authority gives a warning notice stating that it proposes to approve the acquisition subject to conditions—

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- (a) it must, in the warning notice, specify those conditions; and
  - (b) the conditions take effect as interim conditions.
- (6) The Authority is treated as having approved the acquisition if, at the expiry of the assessment period, it has neither—
- (a) given notice under subsection (4); nor
  - (b) informed the section 178 notice-giver that the section 178 notice is incomplete.
- (7) If the Authority decides to approve an acquisition subject to conditions or to object to an acquisition it must give the section 178 notice-giver a decision notice.
- (8) Following receipt of a decision notice under this section, the section 178 notice-giver may refer the Authority's decision to the Tribunal.

### **Requests for further information**

**190.**—(1) The Authority may, no later than the 50th working day of the assessment period, in writing ask the section 178 notice-giver to provide any further information necessary to complete its assessment.

(2) On the first occasion that the Authority asks for further information, the assessment period is interrupted from the date of the request until the date the Authority receives the requested information (“the interruption period”).

(3) But the interruption period may not exceed 20 working days, unless subsection (4) applies.

(4) The interruption period may not exceed 30 working days if the notice-giver—

- (a) is situated or regulated outside the European Community; or
- (b) is not subject to supervision under—
  - (i) the UCITS directive;
  - (ii) the insurance directives;
  - (iii) the markets in financial instruments directive;
  - (iv) the reinsurance directive; or
  - (v) the banking consolidation directive.

(5) The Authority may make further requests for information (but a further request does not result in a further interruption of the assessment period).

(6) The Authority must acknowledge in writing receipt of further information before the end of the second working day following receipt.

### **Duration of approval**

**191.**—(1) Approval of an acquisition (whether granted unconditionally or subject to conditions) is effective for such period as the Authority may specify in writing.

(2) Where the Authority has specified a period under subsection (1), it may extend the period.

(3) Where the Authority has not specified a period, the approval is effective for one year beginning with the date—

- (a) of the notice given under section 189(4)(a) or (b)(i);
- (b) on which the Authority is treated as having given approval under section 189(6); or

- (c) of a decision on a reference to the Tribunal which results in the person receiving approval.

### *Enforcement procedures*

#### **Objection by the Authority**

**191A.**—(1) The Authority may object to a person’s control over a UK authorised person in any of the circumstances specified in subsection (2).

(2) The circumstances are that the Authority reasonably believes that—

- (a) the person acquired or increased control without giving notice under section 178(1) in circumstances where notice was required;
- (b) the person is in breach of a condition imposed under section 187; or
- (c) there are grounds for objecting to control on the basis of the matters in section 186.

(3) The Authority—

- (a) must take into account whether influence exercised by the person is likely to operate to the detriment of the sound and prudent management of the UK authorised person; and
- (b) may take into account whether the person has co-operated with any information requests made or requirements imposed by the Authority.

(4) If the Authority proposes to object to a person’s control over a UK authorised person, it must give that person a warning notice.

(5) The Authority must consult any appropriate home state regulator before giving a warning notice under this section and, in doing so, must comply with such requirements as to consultation as may be prescribed.

(6) If the Authority decides to object to a person’s control over a UK authorised person, it must give that person a decision notice.

(7) A person to whom the Authority gives a decision notice under this section may refer the matter to the Tribunal.

#### **Restriction notices**

**191B.**—(1) The Authority may give notice in writing (a “restriction notice”) to a person in the following circumstances.

(2) The circumstances are that—

- (a) the person has control over a UK authorised person by virtue of holding shares or voting power; and
- (b) in relation to the shares or voting power, the Authority has given the person a warning notice or a decision notice under section 189 or 191A or a final notice which confirms a decision notice given under section 189 or 191A.

(3) In a restriction notice, the Authority may direct that shares or voting power to which the notice relates are, until further notice, subject to one or more of the following restrictions—

- (a) except by court order, an agreement to transfer or a transfer of any such shares or voting power or, in the case of unissued shares, any agreement to transfer or transfer of the right to be issued with them, is void;
- (b) no voting power is to be exercisable;

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- (c) no further shares are to be issued in pursuance of any right of the holder of any such shares or voting power or in pursuance of any offer made to their holder;
  - (d) except in a liquidation, no payment is to be made of any sums due from the body corporate on any such shares, whether in respect of capital or otherwise.
- (4) A restriction notice takes effect—
- (a) immediately; or
  - (b) on such date as may be specified in the notice.
- (5) A restriction notice does not extinguish rights which would be enjoyable but for the notice.
- (6) A copy of the restriction notice must be served on—
- (a) the UK authorised person in question; and
  - (b) in the case of shares or voting power held in a parent undertaking of a UK authorised person, the parent undertaking.
- (7) A person to whom the Authority gives a restriction notice may refer the matter to the Tribunal.

#### **Orders for sale of shares**

**191C.**—(1) The court may, on the application of the Authority, order the sale of shares or the disposition of voting power in the following circumstances.

- (2) The circumstances are that—
- (a) a person has control over a UK authorised person by virtue of holding the shares or voting power; and
  - (b) the acquisition or continued holding of the shares or voting power by that person is in contravention of a final notice which confirms a decision notice given under section 189 or section 191A.
- (3) Where the court orders the sale of shares or disposition of voting power it may—
- (a) if a restriction notice has been given in relation to the shares or voting power, order that the restrictions cease to apply; and
  - (b) make any further order.
- (4) Where the court makes an order under this section, it must take into account the level of holding that the person would have been entitled to acquire, or to continue to hold, without contravening the final notice.
- (5) If shares are sold or voting power disposed of in pursuance of an order under this section, any proceeds, less the costs of the sale or disposition, must be paid into court for the benefit of the persons beneficially interested in them; and any such person may apply to the court for payment of a whole or part of the proceeds.
- (6) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

#### *Notice of reductions of control of UK authorised persons*

#### **Obligation to notify the Authority: dispositions of control**

**191D.**—(1) A person who decides to reduce or cease to have control over a UK authorised person must give the Authority notice in writing before making the disposition.



(2) For the purposes of calculations relating to this section, the holding of shares or voting power by a person (“A1”) includes any shares or voting power held by another (“A2”) if A1 and A2 are acting in concert.

### **Requirements for notices under section 191D**

**191E.**—(1) A notice under section 191D must be in such form, include such information and be accompanied by such documents as the Authority may reasonably require.

(2) The Authority must publish a list of its requirements as to the form, information and accompanying documents for a notice under section 191D.

(3) The Authority may impose different requirements for different cases and may vary or waive requirements in particular cases.

## *Offences*

### **Offences under this Part**

**191F.**—(1) A person who fails to comply with an obligation to notify the Authority under section 178(1) or 191D(1) is guilty of an offence.

(2) A person who gives notice to the Authority under section 178(1) and makes the acquisition to which the notice relates before the expiry date of the assessment period is guilty of an offence unless the Authority has approved the acquisition or given a warning notice under section 189(4)(b)(i).

(3) A person who contravenes an interim condition in a warning notice given under section 189(4)(b)(i) or a condition in a decision notice given under section 189(7) or a final notice which confirms a decision notice under that section is guilty of an offence.

(4) A person who makes an acquisition in contravention of a warning notice given under section 189(4)(b)(ii) or a decision notice given under section 189(7) or a final notice which confirms a decision notice under that section is guilty of an offence.

(5) A person who makes an acquisition after the Authority’s approval for the acquisition has ceased to be effective by virtue of section 191 is guilty of an offence.

(6) A person who provides information to the Authority which is false in a material particular is guilty of an offence.

(7) A person who breaches a direction contained in a restriction notice given under section 191B is guilty of an offence.

(8) A person guilty of an offence under subsection (1) to (3) or (5) to (7) is liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(9) A person guilty of an offence under subsection (4) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.

## *Interpretation*

### **Interpretation**

**191G.**—(1) In this Part—

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“acquisition” means the acquisition of control or of an increase in control over a UK authorised person;

“credit institution” means—

- (a) a credit institution authorised under the banking consolidation directive; or
- (b) an institution which would satisfy the requirements for authorisation as a credit institution under that directive if it had its registered office (or if it does not have a registered office, its head office) in an EEA State;

“shares” has the same meaning as in section 422;

“UK authorised person” means an authorised person who—

- (a) is a body incorporated in, or an unincorporated association formed under the law of, any part of the United Kingdom; and
- (b) is not a person authorised as a result of paragraph 1 of Schedule 5; and

“voting power” has the same meaning as in section 422.

(2) For the purposes of this Part, a “working day” is a day other than—

- (a) a Saturday or a Sunday; or
- (b) a day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971(2).”

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(2) 1971 c.80.

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**Changes and effects yet to be applied to :**

- Regulations power to modify conferred by [2023 c. 29 s. 3 Sch. 1 Pt. 2](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)