

SCHEDULES

SCHEDULE 1

Section 10

TRIGGER EVENTS: HOLDING OF INTERESTS AND RIGHTS

Joint interests

- 1 If two or more persons each hold an interest or right jointly, each of them is treated as holding that interest or right.

Joint arrangements

- 2 (1) If interests or rights held by a person and interests or rights held by another person are the subject of a joint arrangement between those persons, each of them is treated as holding the combined interests or rights of both of them.
- (2) A “joint arrangement” is an arrangement between the holders of interests or rights that they will exercise all or substantially all the rights conferred by their respective interests, or their respective rights, jointly in a way that is pre-determined by the arrangement.

Indirect holdings

- 3 (1) An interest or right held indirectly by a person is to be treated as held by the person.
- (2) A person holds an interest or right “indirectly” if the person has a majority stake in an entity and that entity—
- (a) holds the interest or right, or
 - (b) is part of a chain of entities—
 - (i) each of which (other than the last) has a majority stake in the entity immediately below it in the chain, and
 - (ii) the last of which holds the interest or right.
- (3) For these purposes, A has a “majority stake” in B if—
- (a) A holds a majority of voting rights in B,
 - (b) A is a member of B and has the right to appoint or remove a majority of the board of directors of B,
 - (c) A is a member of B and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in B, or
 - (d) A has the right to exercise, or actually exercises, dominant influence or control over B.
- (4) In the application of this paragraph to the right to appoint or remove a majority of the board of directors, an entity is to be treated as having the right to appoint a director if—
- (a) a person’s appointment as director follows necessarily from that person’s appointment as director of the entity, or

Status: This is the original version (as it was originally enacted).

(b) the directorship is held by the entity itself.

(5) In this paragraph—

- (a) the reference to the right to appoint or remove a majority of the board of directors of an entity is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all or substantially all matters,
- (b) the reference to the board of directors, in the case of an entity that does not have such a board, is to be read as a reference to the equivalent management body of that entity,
- (c) references to “voting rights” are to be read in accordance with section 8(7).

Interests held by nominees

4 An interest held by a person as nominee for another is to be treated as held by the other (and not by the nominee).

Rights treated as held by person who controls their exercise

- 5 (1) Where a person controls a right, the right is to be treated as held by that person (and not by the person who in fact holds the right, unless that person also controls it).
- (2) A person “controls” a right if, by virtue of any arrangement between that person and others, the right is exercisable only—
- (a) by that person,
 - (b) in accordance with that person’s directions or instructions, or
 - (c) with that person’s consent or concurrence.

Rights exercisable only in certain circumstances etc

- 6 (1) Rights that are exercisable by a person only in certain circumstances are to be treated as held by the person only—
- (a) when the circumstances have arisen, and for so long as they continue to obtain, or
 - (b) when the circumstances are within the control of the person.
- (2) But rights that are exercisable by an administrator or by creditors while an entity is in relevant insolvency proceedings are not to be regarded as held by the administrator or creditors even while the entity is in those proceedings.
- (3) “Relevant insolvency proceedings” means—
- (a) administration within the meaning of the Insolvency Act 1986,
 - (b) administration within the meaning of the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19)), or
 - (c) proceedings under the insolvency law of another country or territory during which an entity’s assets and affairs are subject to the control or supervision of a third party or creditor.
- (4) Rights that are normally exercisable but are temporarily incapable of exercise are not for that reason to be treated as not being held.

Rights attached to shares held by way of security

- 7 Rights attached to shares held by way of security provided by a person are to be treated as held by that person—
- (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with that person’s instructions, and
 - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in that person’s interests.

Connected persons

- 8 Two or more persons who are connected with each other (within the meaning given by paragraph 9 or 10) are each to be treated as holding the combined interests or rights of both or all of them.
- 9 (1) Two or more undertakings are connected if they are group undertakings in respect of each other.
- (2) In sub-paragraph (1), “undertaking” and “group undertaking” have the same meanings as in the Companies Act 2006 (see section 1161 of that Act).
- 10 (1) An individual, A, is connected with another individual, B, if—
- (a) A is B’s spouse, civil partner or cohabitee,
 - (b) A is a relative of B,
 - (c) A is the spouse, civil partner or cohabitee of a relative of B,
 - (d) A is a relative of B’s spouse, civil partner or cohabitee, or
 - (e) A is the spouse, civil partner or cohabitee of a relative of B’s spouse, civil partner or cohabitee.
- (2) For the purposes of sub-paragraph (1)—
- (a) two persons who are living together as if they were a married couple or civil partners are cohabitees,
 - (b) references to a spouse, civil partner or cohabitee include a former spouse, civil partner or cohabitee, and
 - (c) “relative” means a brother, sister, uncle, aunt, nephew, niece, lineal ancestor or descendant (the stepchild of any person, or anyone adopted by a person, whether legally or otherwise, as their child, being regarded as a relative or taken into account to trace a relationship in the same way as that person’s child).

Common purpose

- 11 (1) Two or more persons who share a common purpose in relation to an asset or entity are each to be treated as holding the combined interests or rights of both or all of them.
- (2) The cases in which persons share a common purpose in relation to an entity include (but are not limited to) cases in which the persons co-ordinate their influence on the activities, operations, governance or strategy of the entity.
- (3) The cases in which persons share a common purpose in relation to an asset include (but are not limited to) cases in which the persons co-ordinate their influence on the

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

way in which the asset is used, and section 9(2) applies for the purposes of this subparagraph.

Arrangements

- 12 (1) In this Schedule “arrangement” includes—
- (a) any scheme, agreement or understanding, whether or not it is legally enforceable, and
 - (b) any convention, custom or practice of any kind.
- (2) But something does not count as an arrangement unless there is at least some degree of stability about it (whether by its nature or terms, the time it has been in existence or otherwise).

SCHEDULE 2

Section 58

MINOR AND CONSEQUENTIAL AMENDMENTS AND REVOCATIONS

- 1 The Enterprise Act 2002 is amended in accordance with paragraphs 2 to 10.
- 2 (1) Section 23 (relevant merger situations) is amended as follows.
- (2) For subsections (1) and (2) substitute—
- “(1) For the purposes of this Part, a relevant merger situation has been created if—
- (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and
 - (b) the value of the turnover in the United Kingdom of the enterprise being taken over exceeds £70 million.
- (2) For the purposes of this Part, a relevant merger situation has also been created if—
- (a) two or more enterprises have ceased to be distinct enterprises at a time or in circumstances falling within section 24; and
 - (b) as a result, one or both of the conditions mentioned in subsections (3) and (4) below prevails or prevails to a greater extent.”

(3) Omit subsections (2A), (4A) and (4B).

(4) In subsection (5), for “(3), (4), (4A) or (4B)” substitute “(3) or (4)”.

(5) In subsection (6), for “(3), (4), (4A) and (4B)” substitute “(3) and (4)”.

(6) Omit subsection (10).

3 Omit section 23A.

4 In section 35(7) (questions to be decided in relation to completed mergers), for “, for the purposes of section 23(2)(b), the share of supply test is met,” substitute “any such result as is mentioned in section 23(2)(b) has arisen,”.

5 In section 36(6) (questions to be decided in relation to anticipated mergers), for “, for the purposes of section 23(2)(b), the share of supply test will be met,” substitute “any such result as is mentioned in section 23(2)(b) will arise,”.

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

- 6 In section 48(3) (cases where references or certain questions need not be decided), for “, for the purposes of section 23(2)(b), the share of supply test is or will be met,” substitute “any such result as is mentioned in section 23(2)(b) has arisen or the question whether any such result will arise,”.
- 7 In section 58 (specified considerations), omit subsections (1) and (2).
- 8 In section 59 (intervention by Secretary of State in special public interest cases), omit subsections (3)(b)(i), (3B), (8) and (9).
- 9 In section 153 (specified considerations), omit subsection (2).
- 10 In paragraph 20(1) of Schedule 8 (national security) omit “(within the meaning of section 58(1))”.
- 11 In consequence of the preceding paragraphs, the following are revoked—
- (a) the Enterprise Act 2002 (Share of Supply Test) (Amendment) Order 2018 ([S.I. 2018/578](#)),
 - (b) the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2018 ([S.I. 2018/593](#)),
 - (c) the Enterprise Act 2002 (Share of Supply) (Amendment) Order 2020 ([S.I. 2020/748](#)), and
 - (d) the Enterprise Act 2002 (Turnover Test) (Amendment) Order 2020 ([S.I. 2020/763](#)).