



# Financial Services and Markets Act 2000

## 2000 CHAPTER 8

### PART XII

#### CONTROL OVER AUTHORISED PERSONS

##### Modifications etc. (not altering text)

- C1** Pt. 12 modified (1.12.2001) by [S.I. 2001/3592](#), [arts. 1\(2\)](#), [114\(3\)\(a\)](#) (with [art. 23\(2\)](#))
- C2** Pt. 12 applied (with modifications) (30.4.2011) by [The Electronic Money Regulations 2011](#) (S.I. 2011/99), [reg. 62](#), [Sch. 3 para. 4](#) (with [reg. 3](#)) (as amended (1.4.2013) by [The Financial Services Act 2012](#) (Consequential Amendments and Transitional Provisions) Order 2013 (S.I. 2013/472), [Sch. 2 para. 196\(5\)\(d\)\(e\)](#))

VALID FROM 21/03/2009

#### *[<sup>F1</sup>Enforcement procedures*

##### Textual Amendments

- F1** Ss. 178-191G and cross-headings substituted (21.3.2009) for ss. 178-191 and cross-headings by [The Financial Services and Markets Act 2000 \(Controllers\) Regulations 2009](#) (S.I. 2009/534), [reg. 3](#), [Sch. 1](#) (with [reg. 8](#))

#### **191A Objection by the Authority**

- (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;

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- (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.

#### **191B Restriction notices**

- (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;
  - (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.

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- (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.

### **191C Orders for sale of shares**

- (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.

VALID FROM 21/03/2009

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

### **191D Obligation to notify the Authority: dispositions of control**

- (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.

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- (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.

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

- (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.

VALID FROM 21/03/2009

### *Offences*

#### **191F Offences under this Part**

- (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—

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- (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.

VALID FROM 21/03/2009

### *Interpretation*

#### **191G Interpretation**

(1) In this Part—

“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 <sup>M1</sup>Banking and Financial Dealings Act 1971.]

#### **Marginal Citations**

M1 1971 c.80.

### *Notice of control*

#### **<sup>x1</sup>178 Obligation to notify the Authority.**

(1) If a step which a person proposes to take would result in his acquiring—

- (a) control over a UK authorised person,
- (b) an additional kind of control over a UK authorised person, or
- (c) an increase in a relevant kind of control which he already has over a UK authorised person,

he must notify the Authority of his proposal.

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- (2) A person who, without himself taking any such step, acquires any such control or additional or increased control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that he has acquired it.
- (3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give notice to the Authority on acquiring, or increasing, the control in question.
- (4) In this Part “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.
- (5) A notice under subsection (1) or (2) is referred to in this Part as “a notice of control”.

#### Editorial Information

- X1** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Modifications etc. (not altering text)

- C3** S. 178 excluded (1.12.2001) by S.I. 2001/2638, **arts. 1, 2(1)(b)**; S.I. 2001/3538, **art. 2(1)**  
S. 178 excluded (1.12.2001) by S.I. 2001/3338, **arts. 1, 2(1)(4)**; S.I. 2001/3538, **art. 2(1)**  
S. 178 extended (1.12.2001) by S.I. 2001/2637, **arts. 1, 5(2)**; S.I. 2001/3538, **art. 2(1)**
- C4** S. 178(1) extended (1.12.2001) by S.I. 2001/2637, **arts. 1, 3(1)(d)**; S.I. 2001/3538, **art. 2(1)**

### *Acquiring, increasing and reducing control*

#### <sup>x2</sup>179 Acquiring control.

- (1) For the purposes of this Part, a person (“the acquirer”) acquires control over a UK authorised person (“A”) on first falling within any of the cases in subsection (2).
- (2) The cases are where the acquirer—
  - (a) holds 10% or more of the shares in A;
  - (b) is able to exercise significant influence over the management of A by virtue of his shareholding in A;
  - (c) holds 10% or more of the shares in a parent undertaking (“P”) of A;
  - (d) is able to exercise significant influence over the management of P by virtue of his shareholding in P;
  - (e) is entitled to exercise, or control the exercise of, 10% or more of the voting power in A;
  - (f) is able to exercise significant influence over the management of A by virtue of his voting power in A;
  - (g) is entitled to exercise, or control the exercise of, 10% or more of the voting power in P; or
  - (h) is able to exercise significant influence over the management of P by virtue of his voting power in P.
- (3) In subsection (2) “the acquirer” means—

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- (a) the acquirer;
  - (b) any of the acquirer’s associates; or
  - (c) the acquirer and any of his associates.
- (4) For the purposes of this Part, each of the following is to be regarded as a kind of control—
- (a) control arising as a result of the holding of shares in A;
  - (b) control arising as a result of the holding of shares in P;
  - (c) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in A;
  - (d) control arising as a result of the entitlement to exercise, or control the exercise of, voting power in P.
- (5) For the purposes of this section and sections 180 and 181, “associate”, “shares” and “voting power” have the same meaning as in section 422.

#### Editorial Information

**X2** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

### <sup>x3</sup>180 Increasing control.

- (1) For the purposes of this Part, a controller of a person (“A”) who is a UK authorised person increases his control over A if—
- (a) the percentage of shares held by the controller in A increases by any of the steps mentioned in subsection (2);
  - (b) the percentage of shares held by the controller in a parent undertaking (“P”) of A increases by any of the steps mentioned in subsection (2);
  - (c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in A increases by any of the steps mentioned in subsection (2);
  - (d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P increases by any of the steps mentioned in subsection (2); or
  - (e) the controller becomes a parent undertaking of A.
- (2) The steps are—
- (a) from below 10% to 10% or more but less than 20%;
  - (b) from below 20% to 20% or more but less than 33%;
  - (c) from below 33% to 33% or more but less than 50%;
  - (d) from below 50% to 50% or more.
- (3) In paragraphs (a) to (d) of subsection (1) “the controller” means—
- (a) the controller;
  - (b) any of the controller’s associates; or
  - (c) the controller and any of his associates.

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- (4) In the rest of this Part “acquiring control” or “having control” includes—
- (a) acquiring or having an additional kind of control; or
  - (b) acquiring an increase in a relevant kind of control, or having increased control of a relevant kind.

#### **Editorial Information**

- X3** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### **<sup>x4</sup>181 Reducing control.**

- (1) For the purposes of this Part, a controller of a person (“A”) who is a UK authorised person reduces his control over A if—
- (a) the percentage of shares held by the controller in A decreases by any of the steps mentioned in subsection (2),
  - (b) the percentage of shares held by the controller in a parent undertaking (“P”) of A decreases by any of the steps mentioned in subsection (2),
  - (c) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in A decreases by any of the steps mentioned in subsection (2),
  - (d) the percentage of voting power which the controller is entitled to exercise, or control the exercise of, in P decreases by any of the steps mentioned in subsection (2), or
  - (e) the controller ceases to be a parent undertaking of A,
- unless the controller ceases to have the kind of control concerned over A as a result.
- (2) The steps are—
- (a) from 50% or more to 33% or more but less than 50%;
  - (b) from 33% or more to 20% or more but less than 33%;
  - (c) from 20% or more to 10% or more but less than 20%;
  - (d) from 10% or more to less than 10%.
- (3) In paragraphs (a) to (d) of subsection (1) “the controller” means—
- (a) the controller;
  - (b) any of the controller’s associates; or
  - (c) the controller and any of his associates.

#### **Editorial Information**

- X4** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.



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### *Acquiring or increasing control: procedure*

#### <sup>x5</sup>**182 Notification.**

- (1) A notice of control must—
  - (a) be given to the Authority in writing; and
  - (b) include such information and be accompanied by such documents as the Authority may reasonably require.
- (2) The Authority may require the person giving a notice of control to provide such additional information or documents as it reasonably considers necessary in order to enable it to determine what action it is to take in response to the notice.
- (3) Different requirements may be imposed in different circumstances.

#### **Editorial Information**

**X5** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### **Modifications etc. (not altering text)**

**C5** [S. 182\(2\)](#) extended (1.12.2001) by [S.I. 2001/2637](#), [arts. 1, 4\(1\)](#); [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### **Commencement Information**

**I1** [S. 182](#) wholly in force at 1.12.2001; [s. 182](#) not in force at Royal Assent see [s. 431\(2\)](#); [s. 182](#) in force for specified purposes at 18.6.2001 by [S.I. 2001/1820](#), [art. 2](#), [Sch.](#); [s. 182](#) in force in so far as not already in force at 1.12.2001 by [S.I. 2001/3538](#), [art. 2\(1\)](#)

#### <sup>x6</sup>**183 Duty of Authority in relation to notice of control.**

- (1) The Authority must, before the end of the period of three months beginning with the date on which it receives a notice of control (“the period for consideration”), determine whether—
  - (a) to approve of the person concerned having the control to which the notice relates; or
  - (b) to serve a warning notice under subsection (3) or section 185(3).
- (2) Before doing so, the Authority must comply with such requirements as to consultation with competent authorities outside the United Kingdom as may be prescribed.
- (3) If the Authority proposes to give the person concerned a notice of objection under section 186(1), it must give him a warning notice.

#### **Editorial Information**

**X6** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

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#### Modifications etc. (not altering text)

- C6** S. 183 modified (1.12.2001) by S.I. 2001/2637, **arts. 1, 4(2)**; S.I. 2001/3538, **art. 2(1)**  
S. 183 modified (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 50(2), 51(2)** (with **art. 23(2)**)
- C7** S. 183(3) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 110(4), 115(3)** (With **art. 23(2)**)

#### Commencement Information

- I2** S. 183 wholly in force at 1.12.2001; s. 183 not in force at Royal Assent see s. 431(2); s. 183(2) in force for certain purposes at 25.2.2001 by S.I. 2001/516, **art. 2(b), Sch. Pt. 2**; s. 183 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

### <sup>x7</sup>184 Approval of acquisition of control.

- (1) If the Authority decides to approve of the person concerned having the control to which the notice relates it must notify that person of its approval in writing without delay.
- (2) If the Authority fails to comply with subsection (1) of section 183 it is to be treated as having given its approval and notified the person concerned at the end of the period fixed by that subsection.
- (3) The Authority's approval remains effective only if the person to whom it relates acquires the control in question—
  - (a) before the end of such period as may be specified in the notice; or
  - (b) if no period is specified, before the end of the period of one year beginning with the date—
    - (i) of the notice of approval;
    - (ii) on which the Authority is treated as having given approval under subsection (2); or
    - (iii) of a decision on a reference to the Tribunal which results in the person concerned receiving approval.

#### Editorial Information

- X7** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Modifications etc. (not altering text)

- C8** S. 184(1) extended (1.12.2001) by S.I. 2001/2637, **arts. 1, 5(2)**; S.I. 2001/3538, **art. 2(1)**
- C9** S. 184(2) extended (1.12.2001) by S.I. 2001/2637, **arts. 1, 5(3)**; S.I. 2001/3538, **art. 2(1)**
- C10** S. 184(3) applied (with modifications) (1.12.2001) by S.I. 2001/2637, **arts. 1, 5(4)(5)**; S.I. 2001/3538, **art. 2(1)**

### <sup>x8</sup>185 Conditions attached to approval.

- (1) The Authority's approval under section 184 may be given unconditionally or subject to such conditions as the Authority considers appropriate.
- (2) In imposing any conditions, the Authority must have regard to its duty under section 41.

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- (3) If the Authority proposes to impose conditions on a person it must give him a warning notice.
- (4) If the Authority decides to impose conditions on a person it must give him a decision notice.
- (5) A person who is subject to a condition imposed under this section may apply to the Authority—
  - (a) for the condition to be varied; or
  - (b) for the condition to be cancelled.
- (6) The Authority may, on its own initiative, cancel a condition imposed under this section.
- (7) If the Authority has given its approval to a person subject to a condition, he may refer to the Tribunal—
  - (a) the imposition of the condition; or
  - (b) the Authority’s decision to refuse an application made by him under subsection (5).

#### Editorial Information

**X8** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Modifications etc. (not altering text)

**C11** S. 185(1) extended (1.12.2001) by S.I. 2001/2637, **arts. 1, 10(1)**; S.I. 2001/3538, **art. 2(1)**

**C12** S. 185(3) extended (1.12.2001) by S.I. 2001/2637, **arts. 1, 9(1)(3)**; S.I. 2001/3538, **art. 2(1)**  
S. 185(3) excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2)**; 110(4), 115(3) (with art. 23)

### <sup>x9</sup>186 Objection to acquisition of control.

- (1) On considering a notice of control, the Authority may give a decision notice under this section to the person acquiring control (“the acquirer”) unless it is satisfied that the approval requirements are met.
- (2) The approval requirements are that—
  - (a) the acquirer is a fit and proper person to have the control over the authorised person that he has or would have if he acquired the control in question; and
  - (b) the interests of consumers would not be threatened by the acquirer’s control or by his acquiring that control.
- (3) In deciding whether the approval requirements are met, the Authority must have regard, in relation to the control that the acquirer—
  - (a) has over the authorised person concerned (“A”), or
  - (b) will have over A if the proposal to which the notice of control relates is carried into effect,to its duty under section 41 in relation to each regulated activity carried on by A.

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- (4) If the Authority gives a notice under this section but considers that the approval requirements would be met if the person to whom a notice is given were to take, or refrain from taking, a particular step, the notice must identify that step.
- (5) A person to whom a notice under this section is given may refer the matter to the Tribunal.
- (6) “Consumers” means persons who are consumers for the purposes of section 138.

#### Editorial Information

**X9** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Modifications etc. (not altering text)

**C13** S. 186(6) modified (18.6.2001) by S.I. 2001/1821, **arts. 1(1), 3(5)**

### <sup>X10</sup>187 Objection to existing control.

- (1) If the Authority is not satisfied that the approval requirements are met, it may give a decision notice under this section to a person if he has failed to comply with a duty to notify imposed by section 178.
- (2) If the failure relates to subsection (1) or (2) of that section, the Authority may (instead of giving a notice under subsection (1)) approve the acquisition of the control in question by the person concerned as if he had given it a notice of control.
- (3) The Authority may also give a decision notice under this section to a person who is a controller of a UK authorised person if the Authority becomes aware of matters as a result of which it is satisfied that—
  - (a) the approval requirements are not met with respect to the controller; or
  - (b) a condition imposed under section 185 required that person to do (or refrain from doing) a particular thing and the condition has been breached as a result of his failing to do (or doing) that thing.
- (4) A person to whom a notice under this section is given may refer the matter to the Tribunal.
- (5) “Approval requirements” has the same meaning as in section 186.

#### Editorial Information

**X10** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Modifications etc. (not altering text)

**C14** S. 187(1)(2) extended (1.12.2001) by S.I. 2001/2637, **arts. 1, 7(1)(d)**; S.I. 2001/3538, **art. 2(1)**

**C15** S. 187(3) explained and modified (1.12.2001) by S.I. 2001/2637, **arts. 1, 12**; S.I. 2001/3538, **art. 2(1)**

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### <sup>XII</sup>188 Notices of objection under section 187: procedure.

- (1) If the Authority proposes to give a notice of objection to a person under section 187, it must give him a warning notice.
- (2) Before doing so, the Authority must comply with such requirements as to consultation with competent authorities outside the United Kingdom as may be prescribed.
- (3) If the Authority decides to give a warning notice under this section, it must do so before the end of the period of three months beginning—
  - (a) in the case of a notice to be given under section 187(1), with the date on which it became aware of the failure to comply with the duty in question;
  - (b) in the case of a notice to be given under section 187(3), with the date on which it became aware of the matters in question.
- (4) The Authority may require the person concerned to provide such additional information or documents as it considers reasonable.
- (5) Different requirements may be imposed in different circumstances.
- (6) In this Part “notice of objection” means a notice under section 186 or 187.

#### Editorial Information

**X11** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Modifications etc. (not altering text)

**C16** S. 188 excluded (1.12.2001) by S.I. 2001/3592, **arts. 1(2), 110(4), 115(3)** (with **art. 23(2)**)

**C17** S. 188(1) extended (1.12.2001) by S.I. 2001/2637, **arts. 1, 8(1), 11(1)**; S.I. 2001/3538, **art. 2(1)**

**C18** S. 188(3) applied (with modifications) (1.12.2001) by S.I. 2001/2637, **arts. 1, 7(2)**; S.I. 2001/3538, **art. 2(1)**

#### Commencement Information

**I3** S. 188 wholly in force at 1.12.2001; s. 188 not in force at Royal Assent see s. 431(2); s. 188(2) in force for certain purposes at 25.2.2001 by S.I. 2001/516, **art. 2(b), Sch. Pt. 2**; s. 188 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, **art. 2(1)**

### *Improperly acquired shares*

### <sup>XII</sup>189 Improperly acquired shares.

- (1) The powers conferred by this section are exercisable if a person has acquired, or has continued to hold, any shares in contravention of—
  - (a) a notice of objection; or
  - (b) a condition imposed on the Authority’s approval.
- (2) The Authority may by notice in writing served on the person concerned (“a restriction notice”) direct that any such shares which are specified in the notice are, until further notice, subject to one or more of the following restrictions—

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- (a) a transfer of (or agreement to transfer) those shares, or in the case of unissued shares any transfer of (or agreement to transfer) the right to be issued with them, is void;
  - (b) no voting rights are to be exercisable in respect of the shares;
  - (c) no further shares are to be issued in right of them 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 the shares, whether in respect of capital or otherwise.
- (3) The court may, on the application of the Authority, order the sale of any shares to which this section applies and, if they are for the time being subject to any restriction under subsection (2), that they are to cease to be subject to that restriction.
- (4) No order may be made under subsection (3)—
- (a) until the end of the period within which a reference may be made to the Tribunal in respect of the notice of objection; and
  - (b) if a reference is made, until the matter has been determined or the reference withdrawn.
- (5) If an order has been made under subsection (3), the court may, on the application of the Authority, make such further order relating to the sale or transfer of the shares as it thinks fit.
- (6) If shares are sold in pursuance of an order under this section, the proceeds of sale, less the costs of the sale, 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 the whole or part of the proceeds to be paid to him.
- (7) This section applies—
- (a) in the case of an acquirer falling within section 178(1), to all the shares—
    - (i) in the authorised person which the acquirer has acquired;
    - (ii) which are held by him or an associate of his; and
    - (iii) which were not so held immediately before he became a person with control over the authorised person;
  - (b) in the case of an acquirer falling within section 178(2), to all the shares held by him or an associate of his at the time when he first became aware that he had acquired control over the authorised person; and
  - (c) to all the shares in an undertaking (“C”)—
    - (i) which are held by the acquirer or an associate of his, and
    - (ii) which were not so held before he became a person with control in relation to the authorised person,
 where C is the undertaking in which shares were acquired by the acquirer (or an associate of his) and, as a result, he became a person with control in relation to that authorised person.
- (8) A copy of the restriction notice must be served on—
- (a) the authorised person to whose shares it relates; and
  - (b) if it relates to shares held by an associate of that authorised person, on that associate.
- (9) The jurisdiction conferred by this section may be exercised by the High Court and the Court of Session.

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#### Editorial Information

**X12** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Modifications etc. (not altering text)

- C19** S. 189(2) power extended (1.12.2001) by S.I. 2001/2637, **arts. 1, 13(4)(5)**; S.I. 2001/3538, **art. 2(1)**  
S. 189(2) extended (1.12.2001) by S.I. 2001/2637, **arts. 1, 13(2)(5)**; S.I. 2001/3538, **art. 2(1)**
- C20** S. 189(2)(b) extended (1.12.2001) by S.I. 2001/2637, **arts. 1, 13(1)**; S.I. 2001/3538, **art. 2(1)**
- C21** S. 189(3) applied (with modifications) by S.I. 2001/2637, **arts. 1, 13(2)(5)**; S.I. 2001/3538, **art. 2(1)**

### *Reducing control: procedure*

#### <sup>X13</sup>**190 Notification.**

- (1) If a step which a controller of a UK authorised person proposes to take would result in his—
  - (a) ceasing to have control of a relevant kind over the authorised person, or
  - (b) reducing a relevant kind of control over that person,he must notify the Authority of his proposal.
- (2) A controller of a UK authorised person who, without himself taking any such step, ceases to have that control or reduces that control must notify the Authority before the end of the period of 14 days beginning with the day on which he first becomes aware that—
  - (a) he has ceased to have the control in question; or
  - (b) he has reduced that control.
- (3) A person who is under the duty to notify the Authority imposed by subsection (1) must also give a notice to the Authority—
  - (a) on ceasing to have the control in question; or
  - (b) on reducing that control.
- (4) A notice under this section must—
  - (a) be given to the Authority in writing; and
  - (b) include details of the extent of the control (if any) which the person concerned will retain (or still retains) over the authorised person concerned.

#### Editorial Information

**X13** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Modifications etc. (not altering text)

- C22** S. 190 excluded (1.12.2001) by S.I. 2001/2638, **arts. 1, 2(2)(b)**; S.I. 2001/3538, **art. 2(1)**  
S. 190 excluded (1.12.2001) by S.I. 2001/3338, **arts. 1(1), 3**; S.I. 2001/3538, **art. 2(1)**



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- C23** S. 190(1) applied (1.12.2001) by S.I. 2001/2637, **arts. 1, 15(1)**; S.I. 2001/3538, **art. 2(1)**  
**C24** S. 190(2) applied (with modifications) (1.12.2001) by S.I. 2001/2637, **arts. 1, 15(2)-(4)**; S.I. 2001/3538, **art. 2(1)**

## Offences

### <sup>x14</sup>191 Offences under this Part.

- (1) A person who fails to comply with the duty to notify the Authority imposed on him by section 178(1) or 190(1) is guilty of an offence.
- (2) A person who fails to comply with the duty to notify the Authority imposed on him by section 178(2) or 190(2) is guilty of an offence.
- (3) If a person who has given a notice of control to the Authority carries out the proposal to which the notice relates, he is guilty of an offence if—
  - (a) the period of three months beginning with the date on which the Authority received the notice is still running; and
  - (b) the Authority has not responded to the notice by either giving its approval or giving him a warning notice under section 183(3) or 185(3).
- (4) A person to whom the Authority has given a warning notice under section 183(3) is guilty of an offence if he carries out the proposal to which the notice relates before the Authority has decided whether to give him a notice of objection.
- (5) A person to whom a notice of objection has been given is guilty of an offence if he acquires the control to which the notice applies at a time when the notice is still in force.
- (6) A person guilty of an offence under subsection (1), (2), (3) or (4) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (7) A person guilty of an offence under subsection (5) is liable—
  - (a) on summary conviction, to a fine not exceeding the statutory maximum; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine, or both.
- (8) A person guilty of an offence under subsection (5) is also liable on summary conviction to a fine not exceeding one tenth of the statutory maximum for each day on which the offence has continued.
- (9) It is a defence for a person charged with an offence under subsection (1) to show that he had, at the time of the alleged offence, no knowledge of the act or circumstances by virtue of which the duty to notify the Authority arose.
- (10) If a person—
  - (a) was under the duty to notify the Authority imposed by section 178(1) or 190(1) but had no knowledge of the act or circumstances by virtue of which that duty arose, but
  - (b) subsequently becomes aware of that act or those circumstances,
 he must notify the Authority before the end of the period of 14 days beginning with the day on which he first became so aware.



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- (11) A person who fails to comply with the duty to notify the Authority imposed by subsection (10) is guilty of an offence and liable, on summary conviction, to a fine not exceeding level 5 on the standard scale.

#### Editorial Information

**X14** The substitution of ss. 178-191G for ss. 178-191 on 21.3.2009 which involves the insertion of several new headings in Pt. XII gives rise to a change in the structure of this legislation on SLD which breaks the continuity of historical versions of the existing provisions which are now brought under those new headings.

#### Modifications etc. (not altering text)

**C25** S. 191(10) applied (with modifications) (1.12.2001) by S.I. 2001/2637, arts. 1, 14; S.I. 2001/3538, art. 2(1)

### Miscellaneous

## 192 Power to change definitions of control etc.

The Treasury may by order—

- (a) provide for exemptions from the obligations to notify imposed by sections 178 and 190;
- (b) amend section 179 by varying, or removing, any of the cases in which a person is treated as having control over a UK authorised person or by adding a case;
- (c) amend section 180 by varying, or removing, any of the cases in which a person is treated as increasing control over a UK authorised person or by adding a case;
- (d) amend section 181 by varying, or removing, any of the cases in which a person is treated as reducing his control over a UK authorised person or by adding a case;
- (e) amend section 422 by varying, or removing, any of the cases in which a person is treated as being a controller of a person or by adding a case.

#### Commencement Information

**I4** S. 192 wholly in force at 1.12.2001; s. 192 not in force at Royal Assent see s. 431(2); s. 192(a) in force at 25.2.2001 by S.I. 2001/516, art. 2(a), Sch. Pt. 1; s. 192 in force in so far as not already in force at 1.12.2001 by S.I. 2001/3538, art. 2(1)

**Status:**

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**Changes to legislation:**

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