

SCHEDULE 1

Regulation 7

SPECIFIED PERSONS, DESCRIPTIONS OF DISCLOSURES ETC. FOR THE PURPOSES OF REGULATION 7

PART 1

SPECIFIED PERSONS

1. The Secretary of State.
2. The Department of Enterprise, Trade and Investment for Northern Ireland.
3. The Treasury.
4. The Bank of England.
5. The Financial Services Authority.
6. The Commissioners for Her Majesty's Revenue and Customs.
7. The Lord Advocate.
8. The Director of Public Prosecutions.
9. The Director of Public Prosecutions for Northern Ireland.
10. A constable.
11. A procurator fiscal.
12. The Scottish Ministers.

PART 2

SPECIFIED DESCRIPTIONS OF DISCLOSURES

13. A disclosure for the purpose of enabling or assisting a person authorised under section 245C of the Companies Act 1985(1) (persons authorised to apply to court) to exercise his functions.
14. A disclosure for the purpose of enabling or assisting an inspector appointed under Part 14 of the Companies Act 1985 (investigation of companies and their affairs, etc.) to exercise his functions.
15. A disclosure for the purpose of enabling or assisting a person authorised under section 447 of the Companies Act 1985(2) (power to require production of documents) or section 84 of the Companies Act 1989(3) (exercise of powers by officer etc.) to exercise his functions.
16. A disclosure for the purpose of enabling or assisting a person appointed under section 167 of the Financial Services and Markets Act 2000(4) (general investigations) to conduct an investigation to exercise his functions.

(1) 1985 c. 6; section 245C was inserted by section 12 of the Companies Act 1989 (c. 40) and by section 10 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27) and was amended by regulation 3 of, and by paragraphs 1 and 11 of Schedule 1 to, S.I. 2004/2947, by regulation 17 of S.I. 2005/1011 and by regulation 2(2)(a) of, and by paragraph 12 of Schedule 1 to, S.I. 2005/3442.

(2) Section 447 was substituted by section 21 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).

(3) 1989 c. 40.

(4) 2000 c. 8.

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17. A disclosure for the purpose of enabling or assisting a person appointed under section 168 of the Financial Services and Markets Act 2000 (investigations in particular cases) to conduct an investigation to exercise his functions.

18. A disclosure for the purpose of enabling or assisting a person appointed under section 169(1) (b) of the Financial Services and Markets Act 2000 (investigation in support of overseas regulator) to conduct an investigation to exercise his functions.

19. A disclosure for the purpose of enabling or assisting the body corporate responsible for administering the scheme referred to in section 225 of the Financial Services and Markets Act 2000 (the ombudsman scheme) to exercise its functions.

20. A disclosure for the purpose of enabling or assisting a person appointed under paragraph 4 (the panel of ombudsmen) or 5 (the Chief Ombudsman) of Schedule 17 to the Financial Services and Markets Act 2000 to exercise his functions.

21. A disclosure for the purpose of enabling or assisting a person appointed under regulations made under section 262(1) and (2)(k) of the Financial Services and Markets Act 2000 (investigations into open-ended investment companies) to conduct an investigation to exercise his functions.

22. A disclosure for the purpose of enabling or assisting a person appointed under section 284 of the Financial Services and Markets Act 2000 (investigations into affairs of certain collective investment schemes) to conduct an investigation to exercise his functions.

23. A disclosure for the purpose of enabling or assisting the investigator appointed under paragraph 7 of Schedule 1 to the Financial Services and Markets Act 2000 (arrangements for investigation of complaints) to exercise his functions.

24. A disclosure for the purpose of enabling or assisting a person appointed by the Treasury to hold an inquiry into matters relating to financial services (including an inquiry under section 15 of the Financial Services and Markets Act 2000) to exercise his functions.

25. A disclosure for the purpose of enabling or assisting the Secretary of State or the Treasury to exercise any of their functions under any of the following—

- (a) the Companies Acts;
- (b) Part 5 of the Criminal Justice Act 1993⁽⁵⁾ (insider dealing);
- (c) the Insolvency Act 1986⁽⁶⁾;
- (d) the Company Directors Disqualification Act 1986⁽⁷⁾;
- (e) Part 2 of the Companies Act 1989 (eligibility for appointment as company auditor);
- (f) Part 3 (investigations and powers to obtain information) or 7 (financial markets and insolvency) of the Companies Act 1989;
- (g) the Financial Services and Markets Act 2000.

26. A disclosure for the purpose of enabling or assisting the Scottish Ministers to exercise their functions under the enactments relating to insolvency.

27. A disclosure for the purpose of enabling or assisting the Department of Enterprise, Trade and Investment for Northern Ireland to exercise any powers conferred on it by the enactments relating to companies or insolvency.

28. A disclosure for the purpose of enabling or assisting a person appointed or authorised by the Department of Enterprise, Trade and Investment for Northern Ireland under the enactments relating to companies or insolvency to exercise his functions.

(5) 1993 c. 36.

(6) 1986 c. 45.

(7) 1986 c. 46.

29. A disclosure for the purpose of enabling or assisting the Pensions Regulator to exercise the functions conferred on it by or by virtue of any of the following—

- (a) the Pension Schemes Act 1993**(8)**;
- (b) the Pensions Act 1995**(9)**;
- (c) the Welfare Reform and Pensions Act 1999**(10)**;
- (d) the Pensions Act 2004**(11)**;
- (e) any enactment in force in Northern Ireland corresponding to any of those enactments.

30. A disclosure for the purpose of enabling or assisting the Board of the Pension Protection Fund to exercise the functions conferred on it by or by virtue of Part 2 of the Pensions Act 2004 or any enactment in force in Northern Ireland corresponding to that Part.

31. A disclosure for the purpose of enabling or assisting—

- (a) the Bank of England,
- (b) the European Central Bank, or
- (c) the central bank of any country or territory outside the United Kingdom,

to exercise its functions.

32. A disclosure for the purpose of enabling or assisting the Commissioners for Her Majesty's Revenue and Customs to exercise their functions.

33. A disclosure for the purpose of enabling or assisting organs of the Society of Lloyd's (being organs constituted by or under the Lloyd's Act 1982**(12)**) to exercise their functions under or by virtue of the Lloyd's Acts 1871 to 1982.

34. A disclosure for the purpose of enabling or assisting the Office of Fair Trading to exercise its functions under any of the following—

- (a) the Fair Trading Act 1973**(13)**;
- (b) the Consumer Credit Act 1974**(14)**;
- (c) the Estate Agents Act 1979**(15)**;
- (d) the Competition Act 1980**(16)**;
- (e) the Competition Act 1998**(17)**;
- (f) the Financial Services and Markets Act 2000;
- (g) the Enterprise Act 2002**(18)**;
- (h) the Control of Misleading Advertisements Regulations 1988**(19)**;
- (i) the Unfair Terms in Consumer Contracts Regulations 1999**(20)**.

35. A disclosure for the purpose of enabling or assisting the Competition Commission to exercise its functions under any of the following—

(8) 1993 c. 48.
(9) 1995 c. 26.
(10) 1999 c. 30.
(11) 2004 c. 35.
(12) 1982 c.xiv.
(13) 1973 c. 41.
(14) 1974 c. 39.
(15) 1979 c. 38.
(16) 1980 c. 21.
(17) 1998 c. 41.
(18) 2002 c. 40.
(19) S.I. 1998/915.
(20) S.I. 1999/2083.

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- (a) the Fair Trading Act 1973;
- (b) the Competition Act 1980;
- (c) the Competition Act 1998;
- (d) the Enterprise Act 2002.

36. A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Competition Appeal Tribunal.

37. A disclosure for the purpose of enabling or assisting an enforcer under Part 8 of the Enterprise Act 2002 (enforcement of consumer legislation) to exercise its functions under that Part.

38. A disclosure for the purpose of enabling or assisting the Charity Commissioners (or in the case of Northern Ireland, the Department for Social Development) to exercise their functions.

39. A disclosure for the purpose of enabling or assisting the Attorney General to exercise his functions in connection with charities.

40. A disclosure for the purpose of enabling or assisting the National Lottery Commission to exercise its functions under sections 5 to 10 (licensing) and 15 (power of Secretary of State to require information) of the National Lottery etc. Act 1993**(21)**.

41. A disclosure by the National Lottery Commission to the National Audit Office for the purpose of enabling or assisting the Comptroller and Auditor General to carry out an examination under Part 2 of the National Audit Act 1983**(22)** into the economy, effectiveness and efficiency with which the National Lottery Commission has used its resources in discharging its functions under sections 5 to 10 of the National Lottery etc. Act 1993.

42. A disclosure for the purpose of enabling or assisting a qualifying body under the Unfair Terms in Consumer Contracts Regulations 1999**(23)** to exercise its functions under those Regulations.

43. A disclosure for the purpose of enabling or assisting an enforcement authority under the Consumer Protection (Distance Selling) Regulations 2000**(24)** to exercise its functions under those Regulations.

44. A disclosure for the purpose of enabling or assisting an enforcement authority under the Financial Services (Distance Marketing) Regulations 2004**(25)** to exercise its functions under those Regulations.

45. A disclosure for the purpose of enabling or assisting a local weights and measures authority in England and Wales to exercise its functions under section 230(2) of the Enterprise Act 2002 (notice of intention to prosecute, etc.).

46. A disclosure for the purpose of enabling or assisting the Financial Services Authority to exercise its functions under any of the following—

- (a) the legislation relating to friendly societies or to industrial and provident societies;
- (b) the Building Societies Act 1986**(26)**;
- (c) Part 7 of the Companies Act 1989 (financial markets and insolvency);
- (d) the Financial Services and Markets Act 2000.

(21) 1993 c. 39; sections 5 to 10 and 15 were amended by section 1(5) of, and by paragraph 4 of Schedule 1 to the National Lottery Act 1998 (c. 22).

(22) 1983 c. 44.

(23) S.I. 1999/2083; as amended by section 2 of the Enterprise Act 2002 (c. 40).

(24) S.I. 2000/2334; as amended by section 2 of the Enterprise Act 2002 (c. 40).

(25) S.I. 2004/2095

(26) 1986 c. 53.

47. A disclosure for the purpose of enabling or assisting the competent authority for the purposes of Part 6 of the Financial Services and Markets Act 2000 (official listing) to exercise its functions under that Part.

48. A disclosure for the purpose of enabling or assisting a body corporate established in accordance with section 212(1) of the Financial Services and Markets Act 2000 (compensation scheme manager) to exercise its functions.

49. A disclosure for the purpose of enabling or assisting a recognised investment exchange or a recognised clearing house to exercise its functions as such.

“Recognised investment exchange” and “recognised clearing house” have the same meaning as in section 285 of the Financial Services and Markets Act 2000.

50. A disclosure for the purpose of enabling or assisting a person approved under the Uncertificated Securities Regulations 2001⁽²⁷⁾ as an operator of a relevant system (within the meaning of those Regulations) to exercise his functions.

51. A disclosure for the purpose of enabling or assisting a body designated under section 326(1) of the Financial Services and Markets Act 2000 (designated professional bodies) to exercise its functions in its capacity as a body designated under that section.

52. A disclosure with a view to the institution of, or otherwise for the purposes of, civil proceedings arising under or by virtue of the Financial Services and Markets Act 2000.

53. A disclosure for the purpose of enabling or assisting a body designated by order under section 46 of the Companies Act 1989⁽²⁸⁾ (delegation of functions of Secretary of State) to exercise its functions under Part 2 of that Act (eligibility for appointment as company auditor).

54. A disclosure for the purpose of enabling or assisting a recognised supervisory or qualifying body, within the meaning of Part 2 of the Companies Act 1989.

55. A disclosure for the purpose of enabling or assisting an official receiver (including the Accountant in Bankruptcy in Scotland and the Official Assignee in Northern Ireland) to exercise his functions under the enactments relating to insolvency.

56. A disclosure for the purpose of enabling or assisting the Insolvency Practitioners Tribunal to exercise its functions under the Insolvency Act 1986⁽²⁹⁾.

57. A disclosure for the purpose of enabling or assisting a body that is for the time being a recognised professional body for the purposes of section 391 of the Insolvency Act 1986 (recognised professional bodies) to exercise its functions as such.

58. A disclosure for the purpose of enabling or assisting an overseas regulatory authority to exercise its regulatory functions.

“Overseas regulatory authority” and “regulatory functions” have the same meaning as in section 82 of the Companies Act 1989⁽³⁰⁾.

59. A disclosure for the purpose of enabling or assisting the Regulator of Community Interest Companies to exercise functions under the Companies (Audit, Investigations and Community Enterprise) Act 2004⁽³¹⁾.

⁽²⁷⁾ [S.I. 2001/3755](#).

⁽²⁸⁾ Section 46 was substituted by section 3(1) and (2) of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27).

⁽²⁹⁾ 1986 c. 45.

⁽³⁰⁾ Section 82 was amended by article 76(1) to (3) of [S.I. 2001/3649](#) and by section 79(13) of, and by paragraph 16 of Schedule 5 to the Criminal Justice Act 1993 (c. 36).

⁽³¹⁾ 2004 c. 27.

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60. A disclosure with a view to the institution of, or otherwise for the purposes of, criminal proceedings.

61. A disclosure for the purpose of enabling or assisting a person authorised by the Secretary of State under Part 2, 3 or 4 of the Proceeds of Crime Act 2002⁽³²⁾ to exercise his functions.

62. A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings on an application under section 6, 7 or 8 of the Company Directors Disqualification Act 1986⁽³³⁾ (disqualification for unfitness).

63. A disclosure with a view to the institution of, or otherwise for the purposes of, proceedings before the Financial Services and Markets Tribunal.

64. A disclosure for the purposes of proceedings before the Financial Services Tribunal by virtue of the Financial Services and Markets Act 2000 (Transitional Provisions) (Partly Completed Procedures) Order 2001⁽³⁴⁾.

65. A disclosure for the purposes of proceedings before the Pensions Regulator Tribunal.

66. A disclosure for the purpose of enabling or assisting a body appointed under section 14 of the Companies (Audit, Investigations and Community Enterprise) Act 2004 (supervision of periodic accounts and reports of issuers of listed securities) to exercise functions mentioned in subsection (2) of that section⁽³⁵⁾.

67. A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a solicitor, barrister, advocate, foreign lawyer, auditor, accountant, valuer or actuary of his professional duties.

“Foreign lawyer” has the meaning given by section 89(9) of the Courts and Legal Services Act 1990⁽³⁶⁾.

68. A disclosure with a view to the institution of, or otherwise for the purposes of, disciplinary proceedings relating to the performance by a public servant of his duties.

“Public servant” means an officer or employee of the Crown.

69. A disclosure for the purpose of the provision of a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained.

70. A disclosure in pursuance of any Community obligation.

PART 3

OVERSEAS REGULATORY BODIES

71. A disclosure is made in accordance with this Part of this Schedule if—

- (a) it is made to a person or body within paragraph 72; and
- (b) it is made for the purpose of enabling or assisting that person or body to exercise the functions mentioned in that paragraph.

⁽³²⁾ 2002 c. 29.

⁽³³⁾ 1986 c. 46.

⁽³⁴⁾ S.I. 2001/3592.

⁽³⁵⁾ Section 14 was amended by regulation 2(3) of, and by paragraph 3 of Schedule 3 to S.I. 2005/1433.

⁽³⁶⁾ 1990 c. 41.

72. The persons or bodies that are within this paragraph are those exercising functions of a public nature, under legislation in any country or territory outside the United Kingdom, that appear to the Panel to be similar to its own functions or those of the Financial Services Authority.

73. In determining whether to disclose information to a person or body in accordance with this Part of this Schedule, the Panel must have regard to the following considerations—

- (a) whether the use that the person or body is likely to make of the information is sufficiently important to justify making the disclosure;
- (b) whether the person or body has adequate arrangements to prevent the information from being used or further disclosed otherwise than for the purposes of carrying out the functions mentioned in paragraph 72 or any other purposes substantially similar to those for which information disclosed to the Panel could be used or further disclosed.

SCHEDULE 2

Regulation 30

SQUEEZE-OUT AND SELL-OUT

Meaning of takeover offer

1.—(1) In this Schedule “a takeover offer” means an offer to acquire all the shares, or all the shares of any class or classes, in a company (other than shares which at the date of the offer are already held by the offeror), being an offer on terms which are the same in relation to all the shares to which the offer relates or, where those shares include shares of different classes, in relation to all the shares of each class.

(2) In sub-paragraph (1) “shares” means shares (other than relevant treasury shares) which have been allotted on the date of the offer, but a takeover offer may include among the shares to which it relates—

- (a) all or any shares that are allotted after the date of the offer but before a specified date;
- (b) all or any relevant treasury shares that cease to be held as treasury shares before a specified date;
- (c) all or any other relevant treasury shares.

(3) In this paragraph—

“relevant treasury shares” means shares which—

- (a) are held by the company as treasury shares on the date of the offer; or
- (b) become shares held by the company as treasury shares after that date but before a specified date;

“specified date” means a date specified in or determined in accordance with the terms of the offer.

(4) The terms offered in relation to any shares shall for the purposes of this paragraph be treated as being the same in relation to all the shares or, as the case may be, all the shares of a class to which the offer relates notwithstanding—

- (a) any difference permitted by sub-paragraph (5); or
- (b) any variation permitted by sub-paragraph (6).

(5) A difference is permitted by this sub-paragraph where—

- (a) shares carry an entitlement to a particular dividend which other shares of the same class, by reason of being allotted later, do not carry; and

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- (b) the difference is the value of consideration offered for the shares allotted earlier as against that offered for those allotted later, and merely reflects the difference in entitlement to the dividend.
- (6) A variation is permitted by this sub-paragraph where—
 - (a) the law of a country or territory outside the United Kingdom precludes an offer of consideration in the form or any of the forms specified in the terms in question or precludes it except after compliance by the offeror with conditions with which he is unable to comply or which he regards as unduly onerous; and
 - (b) the variation is such that the persons to whom an offer of consideration in that form is precluded are able to receive consideration otherwise than in that form but of substantially equivalent value.
- (7) Where there are holders of shares in a company to whom an offer to acquire shares in the company is not communicated, that does not prevent the offer from being a takeover offer for the purposes of this Schedule if—
 - (a) those shareholders have no registered address in the United Kingdom;
 - (b) the offer was not communicated to those shareholders in order not to contravene the law of a country or territory outside the United Kingdom; and
 - (c) either—
 - (i) the offer is published in the Gazette; or
 - (ii) the offer can be inspected, or a copy of it obtained, at a place in an EEA State or on a website, and a notice is published in the Gazette specifying the address of that place or website.
- (8) Where an offer is made to acquire shares in a company and there are persons for whom, by reason of the law of a country or territory outside the United Kingdom, it is impossible to accept the offer, or more difficult to do so, that does not prevent the offer from being a takeover offer for the purposes of this Schedule.
- (9) It is not to be inferred—
 - (a) that an offer which is not communicated to every holder of shares in the company cannot be a takeover offer for the purposes of this Schedule unless the requirements of sub-paragraphs (7)(a) to (c) are met; or
 - (b) that an offer which is impossible, or more difficult, for certain persons to accept cannot be a takeover offer for those purposes unless the reason for the impossibility or difficulty is the one mentioned in sub-paragraph (8).
- (10) The reference in sub-paragraph (1) to shares already held by the offeror includes a reference to shares which he has contracted to acquire (whether unconditionally or subject to conditions being met) but that shall not be construed as including shares which are the subject of a contract binding the holder to accept the offer when it is made, being a contract entered into by the holder either for no consideration and under seal or for no consideration other than a promise by the offeror to make the offer.
- (11) In the application of sub-paragraph (10) to Scotland, the words “and under seal” shall be omitted.
- (12) Where the terms of an offer make provision for their revision and for acceptances on the previous terms to be treated as acceptances on the revised terms, the revision shall not be regarded for the purposes of this Schedule as the making of a fresh offer and references in paragraph 11(1) to the offer shall accordingly be construed as references to the original offer.

Right of offeror to buy out minority shareholders

2.—(1) Sub-paragraph (2) applies in a case where a takeover offer does not relate to shares of different classes.

(2) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—

- (a) not less than nine-tenths in value of the shares to which the offer relates, and
- (b) in a case where the shares to which the offer relates are voting shares, not less than nine-tenths of the voting rights carried by those shares,

he may give notice to the holder of any shares to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.

(3) Sub-paragraph (4) applies in a case where a takeover offer relates to shares of different classes.

(4) If the offeror has, by virtue of acceptances of the offer, acquired or unconditionally contracted to acquire—

- (a) not less than nine-tenths in value of the shares of any class to which the offer relates, and
- (b) in a case where the shares of that class are voting shares, not less than nine-tenths of the voting rights carried by those shares,

he may give notice to the holder of any shares of that class to which the offer relates which the offeror has not acquired or unconditionally contracted to acquire that he desires to acquire those shares.

(5) No notice shall be given under sub-paragraph (2) or (4) after the end of the period of three months beginning with the day after the last day on which the offer can be accepted.

(6) Sub-paragraph (7) applies where—

- (a) the requirements for the giving of a notice under sub-paragraph (2) or (4) are satisfied; and
- (b) there are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional.

(7) The offeror's entitlement to give a notice under sub-paragraph (2) or (4) shall be determined as if—

- (a) the shares to which the offer relates included shares falling within sub-paragraph (6)(b); and
- (b) in relation to shares falling within that paragraph, the words “by virtue of acceptances of the offer” in sub-paragraph (2) or (4) were omitted.

(8) Any notice under this paragraph shall be given in the manner prescribed by regulation 4 of the Companies (Forms) Regulations 1985⁽³⁷⁾ (“the 1985 Regulations”) for a notice given for the purposes of section 429(4) of the Companies Act 1985 (or in the case of Northern Ireland by regulation 4 of the Companies (Forms) Regulations (Northern Ireland) 1986⁽³⁸⁾ (“the 1986 Regulations”) for a notice given for the purposes of Article 422(4) of the Companies (Northern Ireland) Order 1986); and when the offeror gives the first notice in relation to an offer he shall send a copy of it to the company together with a statutory declaration by him in the form prescribed by regulation 5(2) of the 1985 Regulations (or in the case of Northern Ireland by regulation 5(2) of the 1986 Regulations), stating that the conditions for the giving of the notice are satisfied.

(9) Where the offeror is a company (whether or not a company within the meaning of the Companies Act 1985 or, in the case of Northern Ireland, the Companies (Northern Ireland) Order 1986) the statutory declaration shall be signed by a director.

⁽³⁷⁾ S.I. 1985/854 amended by S.I. 1987/752; there are other amending instruments but none is relevant.

⁽³⁸⁾ S.R. 1986/287 amended by S.R. 1991/412; there are other amending instruments but none is relevant.

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(10) Any person who fails to send a copy of a notice or a statutory declaration as required by sub-paragraph (8) or makes such a declaration for the purposes of that sub-paragraph knowing it to be false or without having reasonable grounds for believing it to be true commits an offence.

(11) A person who commits an offence under sub-paragraph (10), but would have committed an offence under section 429(6)(**39**) of the Companies Act 1985 (or as the case may be, Article 422(6)(**40**) of the Companies (Northern Ireland) Order 1986) had that section (or Article) not been disapplied by regulation 30, is liable on conviction to the penalties in that section (or Article).

(12) In all other cases a person who commits an offence under sub-paragraph (10) is liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or a fine or both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum or both;
- (c) for continued contravention, to a daily default fine not exceeding £100.

(13) If any person is charged with an offence for failing to send a copy of a notice as required by sub-paragraph (8) it is a defence for him to prove that he took reasonable steps for securing compliance with that sub-paragraph.

(14) Sub-paragraph (15) applies where a takeover offer is made and, during the period beginning with the date of the offer and ending when the offer can no longer be accepted, the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates but otherwise than by virtue of acceptances of the offer.

(15) If—

- (a) the value of the consideration for which the shares are acquired or contracted to be acquired (“the acquisition consideration”) does not at that time exceed the value of the consideration specified in the terms of the offer; or
- (b) those terms are subsequently revised so that when the revision is announced the value of the acquisition consideration, at the time mentioned in paragraph (a), no longer exceeds the value of the consideration specified in those terms,

the offeror shall be treated for the purposes of this paragraph as having acquired or contracted to acquire those shares by virtue of acceptances of the offer; but in any other case those shares shall be treated as excluded from those to which the offer relates.

Effect of notice under paragraph 2

3.—(1) The following provisions shall, subject to paragraph 6, have effect where a notice is given in respect of any shares under paragraph 2.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer.

(3) Where the terms of an offer are such as to give the holder of any shares a choice of consideration the notice shall give particulars of the choice and state—

- (a) that the holder of the shares may within six weeks from the date of the notice indicate his choice by a written communication sent to the offeror at an address specified in the notice, and
- (b) which consideration specified in the offer is to be taken as applying in default of his indicating a choice as aforesaid,

and the terms of the offer mentioned in sub-paragraph (2) shall be determined accordingly.

(39) Section 429(6) was substituted by section 172 of, and by Schedule 12 to, the Financial Services Act 1986 (c. 60).

(40) Article 422(6) was substituted by Article 26 of S.I. 1989/2404 (N.I. 18).

(4) Sub-paragraph (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.

(5) If the consideration offered to or (as the case may be) chosen by the holder of the shares—

(a) is not cash and the offeror is no longer able to provide it, or

(b) was to have been provided by a third party who is no longer bound or able to provide it, the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date of the notice is equivalent to the consideration offered or (as the case may be) chosen.

(6) At the end of six weeks from the date of the notice the offeror shall forthwith—

(a) send a copy of the notice to the company; and

(b) pay or transfer to the company the consideration for the shares to which the notice relates.

(7) If the shares to which the notice relates are registered the copy of the notice sent to the company under sub-paragraph (6)(a) shall be accompanied by an instrument of transfer executed on behalf of the shareholder by a person appointed by the offeror; and on receipt of that instrument the company shall register the offeror as the holder of those shares.

(8) If the shares to which the notice relates are transferable by the delivery of warrants or other instruments the copy of the notice sent to the company under sub-paragraph (6)(a) shall be accompanied by a statement to that effect; and the company shall on receipt of the statement issue the offeror with warrants or other instruments in respect of the shares and those already in issue in respect of the shares shall become void.

(9) Where the consideration referred to in paragraph (b) of sub-paragraph (6) consists of shares or securities to be allotted by the offeror the reference in that paragraph to the transfer of the consideration shall be construed as a reference to the allotment of the shares or securities to the company.

(10) Any sum received by a company under paragraph (b) of sub-paragraph (6) and any other consideration received under that paragraph shall be held by the company on trust for the person entitled to the shares in respect of which the sum or other consideration was received.

(11) Any sum received by a company under paragraph (b) of sub-paragraph (6), and any dividend or other sum accruing from any other consideration received by a company under that paragraph, shall be paid into a separate bank account, being an account the balance on which bears interest at an appropriate rate and can be withdrawn by such notice (if any) as is appropriate.

(12) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of sub-paragraph (10) cannot be found and twelve years have elapsed since the consideration was received or the company is wound up the consideration (together with any interest, dividend or other benefit that has accrued from it) shall be paid into court.

(13) In relation to a company registered in Scotland, sub-paragraphs (14) and (15) shall apply in place of sub-paragraph (12).

(14) Where after reasonable enquiry made at such intervals as are reasonable the person entitled to any consideration held on trust by virtue of sub-paragraph (10) cannot be found and twelve years have elapsed since the consideration was received or the company is wound up—

(a) the trust shall terminate;

(b) the company or, as the case may be, the liquidator shall sell any consideration other than cash and any benefit other than cash that has accrued from the consideration; and

(c) a sum representing—

(i) the consideration so far as it is cash,

(ii) the proceeds of any sale under paragraph (b), and

(iii) any interest, dividend or other benefit that has accrued from the consideration,

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shall be deposited in the name of the Accountant of Court in a bank account such as is referred to in sub-paragraph (11) and the receipt for the deposit shall be transmitted to the Accountant of Court.

(15) Section 58 of the Bankruptcy (Scotland) Act 1985⁽⁴¹⁾ (so far as consistent with the Companies Act 1985) shall apply with any necessary modifications to sums deposited under sub-paragraph (14) as that sub-paragraph applies to sums deposited under section 57(1)(a) of the Bankruptcy (Scotland) Act 1985.

(16) The expenses of any such enquiry as is mentioned in sub-paragraph (12) or (14) may be defrayed out of the money or other property held on trust for the person or persons to whom the enquiry relates.

Right of minority shareholder to be bought out by offeror

4.—(1) Sub-paragraphs (2) and (3) apply in a case where a takeover offer relates to all the shares in a company.

For this purpose a takeover offer relates to all the shares in a company if it is an offer to acquire all the shares in the company within the meaning of paragraph 1.

(2) The holder of any voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates; and
- (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met)—
 - (i) amount to not less than nine-tenths in value of all the voting shares in the company (or would do so but for paragraph 10(1)); and
 - (ii) carry not less than nine-tenths of the voting rights in the company (or would do so but for paragraph 10(1)).

(3) The holder of any non-voting shares to which the offer relates who has not accepted the offer may require the offeror to acquire those shares if, at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares to which the offer relates; and
- (b) those shares, with or without any other shares in the company which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met), amount to not less than nine-tenths in value of all the shares in the company (or would do so but for paragraph 10(1)).

(4) If a takeover offer relates to shares of any class or classes and at any time before the end of the period within which the offer can be accepted—

- (a) the offeror has by virtue of acceptances of the offer acquired or unconditionally contracted to acquire some (but not all) of the shares of any class to which the offer relates, and
- (b) those shares, with or without any other shares of that class which he has acquired or contracted to acquire (whether unconditionally or subject to conditions being met)—
 - (i) amount to not less than nine-tenths in value of all the shares of that class, and
 - (ii) in a case where the shares of that class are voting shares, carry not less than nine-tenths of the voting rights carried by the shares of that class,

⁽⁴¹⁾ 1985 c. 66.

the holder of any shares of that class to which the offer relates who has not accepted the offer may require the offeror to acquire those shares.

(5) For the purposes of sub-paragraphs (2), (3) and (4), in calculating nine-tenths of the value of all the shares in the company, or all the shares of any class or classes of shares of the company, any shares held by the company as treasury shares shall be treated as having been acquired by the offeror.

(6) Rights conferred on the holder of shares by sub-paragraph (2), (3) or (4) are exercisable by a written communication addressed to the offeror.

(7) Rights conferred on the holder of shares by sub-paragraph (2), (3) or (4) are not exercisable after the end of the period of three months from—

- (a) the end of the period within which the offer can be accepted; or
- (b) if later, the date of the notice that must be given under sub-paragraph (8).

(8) Within one month of the time specified in sub-paragraph (2), (3) or (4), as the case may be, the offeror shall give any shareholder who has not accepted the offer notice in the manner prescribed by regulation 4 of the Companies (Forms) Regulations 1985⁽⁴²⁾ for the purposes of section 430A(3) of the Companies Act 1985, (or in the case of Northern Ireland by regulation 4 of the Companies (Forms) Regulations (Northern Ireland) 1986⁽⁴³⁾ for the purposes of Article 423A(3) of the Companies (Northern Ireland) Order 1986), of—

- (a) the rights that are exercisable by the shareholder under that sub-paragraph, and
- (b) the period within which the rights are exercisable,

and if the notice is given before the end of the period within which the offer can be accepted, it shall state that the offer is still open for acceptance.

(9) Sub-paragraph (10) applies where—

- (a) a shareholder exercises rights conferred on him by sub-paragraph (2), (3) or (4);
- (b) at the time when he does so, there are shares in the company which the offeror has contracted to acquire subject to conditions being met, and in relation to which the contract has not become unconditional; and
- (c) the requirement imposed by paragraph (b) of sub-paragraph (2), (3) or (4) (as the case may be) would not be satisfied if those shares were not taken into account.

(10) The shareholder shall be treated for the purposes of paragraph 5 as not having exercised his rights under this paragraph unless the requirement imposed by paragraph (b) of sub-paragraph (2), (3) or (4) (as the case may be) would be satisfied if—

- (a) the reference in paragraph (b) of that sub-paragraph to other shares in the company which the offeror has contracted to acquire unconditionally or subject to conditions being met were a reference to such shares which he has unconditionally contracted to acquire; and
- (b) the reference in that sub-paragraph to the period within which the offer can be accepted were a reference to the period referred to in sub-paragraph (7).

(11) Sub-paragraph (8) does not apply if the offeror has given the shareholder a notice in respect of the shares in question under paragraph 2.

(12) If the offeror fails to comply with sub-paragraph (8) he and, if the offeror is a company, every officer of the company who is in default or to whose neglect the failure is attributable, commits an offence.

(13) A person who commits an offence under sub-paragraph (12), but would have committed an offence under section 430A(6)⁽⁴⁴⁾ of the Companies Act 1985 (or as the case may be, Article

⁽⁴²⁾ S.I. 1985/854 as amended by S.I. 1987/752.

⁽⁴³⁾ S.R. 1986/287 as amended by S.R. 1991/412.

⁽⁴⁴⁾ Section 430A(6) was substituted by section 172 of, and by Schedule 12 to, the Financial Services Act 1986 (c. 60).

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423A(6)(45) of the Companies (Northern Ireland) Order 1986 had that section (or Article) not been disapplied by regulation 30, is liable on conviction to the penalties in that section (or Article).

(14) In all other cases a person who commits an offence under sub-paragraph (12) is liable—

- (a) on conviction on indictment, to a fine;
- (b) on summary conviction, to a fine not exceeding the statutory maximum;
- (c) for continued contravention, to a daily default fine not exceeding £100.

(15) If an offeror other than a company is charged with an offence for failing to comply with sub-paragraph (8) it is a defence for him to prove that he took all reasonable steps for securing compliance with that sub-paragraph.

Effect of requirement under paragraph 4

5.—(1) The following provisions shall, subject to paragraph 6, have effect where a shareholder exercises his rights in respect of any shares under paragraph 4.

(2) The offeror shall be entitled and bound to acquire those shares on the terms of the offer or on such other terms as may be agreed.

(3) Where the terms of an offer are such as to give the holder of shares a choice of consideration the holder of the shares may indicate his choice when requiring the offeror to acquire them and the notice given to the holder under paragraph 4(8)—

- (a) shall give particulars of the choice and of the rights conferred by this sub-paragraph, and
- (b) may state which consideration specified in the offer is to be taken as applying in default of his indicating a choice,

and the terms of the offer mentioned in sub-paragraph (2) shall be determined accordingly.

(4) Sub-paragraph (3) applies whether or not any time-limit or other conditions applicable to the choice under the terms of the offer can still be complied with.

(5) If the consideration offered to or (as the case may be) chosen by the holder of the shares—

- (a) is not cash and the offeror is no longer able to provide it, or
- (b) was to have been provided by a third party who is no longer bound or able to provide it,

the consideration shall be taken to consist of an amount of cash payable by the offeror which at the date when the holder of the shares requires the offeror to acquire them is equivalent to the consideration offered or (as the case may be) chosen.

Applications to the court

6.—(1) Where a notice is given under paragraph 2 to the holder of any shares the court may, on an application made by him within six weeks from the date on which the notice was given—

- (a) order that the offeror shall not be entitled and bound to acquire the shares; or
- (b) specify terms of acquisition different from those of the offer.

(2) If an application to the court under sub-paragraph (1) is pending at the end of the period mentioned in sub-paragraph (6) of paragraph 3 that sub-paragraph shall not have effect until the application has been disposed of.

(3) Where the holder of any shares exercises his rights under paragraph 4 the court may, on an application made by him or the offeror, order that the terms on which the offeror is entitled and bound to acquire the shares shall be such as the court thinks fit.

(4) On an application under sub-paragraph (1) or (3)—

(45) Article 423A(6) was substituted by Article 26 of [S.I. 1989/2404 \(N.I. 18\)](#).

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- (a) the court shall not require consideration of a higher value than that specified in the terms of the offer (“the offer value”) to be given for the shares to which the application relates unless the holder of the shares shows that the offer value would be unfair;
 - (b) the court shall not require consideration of a lower value than the offer value to be given for the shares.
- (5) No order for costs or expenses shall be made against a shareholder making an application under sub-paragraph (1) or (3) unless the court considers—
- (a) that the application was unnecessary, improper or vexatious; or
 - (b) that there has been unreasonable delay in making the application or unreasonable conduct on his part in conducting the proceedings on the application.
- (6) Where a takeover offer has not been accepted to the extent necessary for entitling the offeror to give notices under sub-paragraph (2) or (4) of paragraph 2 the court may, on the application of the offeror, make an order authorising him to give notices under that sub-paragraph if satisfied—
- (a) that the offeror has after reasonable enquiry been unable to trace one or more of the persons holding shares to which the offer relates,
 - (b) that the requirements of that sub-paragraph would have been met if the person, or all the persons, mentioned in paragraph (a) had accepted the offer, and
 - (c) that the consideration offered is fair and reasonable,
- but the court shall not make an order under this sub-paragraph unless it considers that it is just and equitable to do so having regard, in particular, to the number of shareholders who have been traced but who have not accepted the offer.

Joint offers

7.—(1) A takeover offer may be made by two or more persons jointly and in that event this Schedule has effect with the following modifications.

(2) The conditions for the exercise of the rights conferred by paragraph 2 shall be satisfied by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly (as respects acquisitions by virtue of acceptances of the offer) and either jointly or separately (in other cases).

(3) The conditions for the exercise of the rights conferred by paragraph 4 shall be satisfied—

- (a) as respects acquisitions by virtue of acceptances of the offer, by the joint offerors acquiring or unconditionally contracting to acquire the necessary shares jointly;
- (b) in other cases, by the joint offerors acquiring or contracting (whether conditionally or subject to conditions being met) to acquire the necessary shares either jointly or separately.

(4) Subject to the following provisions, the rights and obligations of the offeror under paragraphs 2 to 5 shall be respectively joint rights and joint and several obligations of the joint offerors.

(5) It shall be a sufficient compliance with any provision of paragraphs 2 to 6 requiring or authorising a notice or other document to be given or sent by or to the joint offerors that it is given or sent by or to any of them; but the statutory declaration required by paragraph 2(8) shall be made by all of them and, in the case of a joint offeror being a company, signed by a director of that company.

(6) In paragraphs 1, 3(9) and 8 references to the offeror shall be construed as references to the joint offerors or any of them.

(7) In paragraph 3(7) and (8) references to the offeror shall be construed as references to the joint offerors or such of them as they may determine.

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(8) In paragraphs 3(5)(a) and 5(5)(a) references to the offeror being no longer able to provide the relevant consideration shall be construed as references to none of the joint offerors being able to do so.

(9) In paragraph 6 references to the offeror shall be construed as references to the joint offerors except that any application under sub-paragraph (3) or (6) may be made by any of them and the reference in sub-paragraph (6)(a) to the offeror having been unable to trace one or more of the persons holding shares shall be construed as a reference to none of the offerors having been able to do so.

Associates

8.—(1) The requirement in paragraph 1(1) that a takeover offer must extend to all the shares, or all the shares of any class or classes, in a company shall be regarded as satisfied notwithstanding that the offer does not extend to shares which associates of the offeror hold or have contracted to acquire; but, subject to sub-paragraph (3), shares which any such associate holds or has contracted to acquire, whether at the date of the offer or subsequently, shall be disregarded for the purposes of any reference in this Schedule to the shares to which a takeover offer relates.

(2) In sub-paragraph (1) “contracted” means contracted unconditionally or subject to conditions being met.

(3) Where during the period mentioned in paragraph 2(14) any associate of the offeror acquires or unconditionally contracts to acquire any of the shares to which the offer relates, then, if the condition specified in paragraph 2(15)(a) or (b) is satisfied as respects those shares they shall be treated for the purposes of that paragraph as shares to which the offer relates.

(4) A reference in paragraph 2(6) or paragraph 4(2)(b), (3)(b), (4)(b), (9) or (10) to shares which the offeror has acquired or contracted to acquire shall include a reference to shares which any associate of his has acquired or contracted to acquire.

(5) In this paragraph “associate”, in relation to an offeror, means—

- (a) a nominee of the offeror;
- (b) a holding company, subsidiary or fellow subsidiary of the offeror or a nominee of such a holding company, subsidiary or fellow subsidiary;
- (c) a body corporate in which the offeror is substantially interested; or
- (d) any person who is, or is a nominee of, a party to an agreement with the offeror for the acquisition of, or of an interest in, the shares which are the subject of the takeover offer, being an agreement which includes provisions imposing obligations or restrictions such as are mentioned in section 204(2)(a) of the Companies Act 1985 or as the case may be Article 212(2)(a) of the Companies (Northern Ireland) Order 1986(46).

(6) For the purposes of sub-paragraph (5)(b) a company is a fellow subsidiary of another body corporate if both are subsidiaries of the same body corporate but neither is a subsidiary of the other.

(7) For the purposes of sub-paragraph (5)(c) an offeror has a substantial interest in a body corporate if—

- (a) that body or its directors are accustomed to act in accordance with his directions or instructions; or
- (b) he is entitled to exercise or control the exercise of one-third or more of the voting power at general meetings of that body.

(8) Subsections (5) and (6) of section 204 of the Companies Act 1985 or as the case may be paragraphs (5) and (6) of Article 212 of the Companies (Northern Ireland) Order 1986 shall apply to sub-paragraph (5)(d) above as they apply to that section and Article and subsections (3) and (4) of

(46) S.I. 1986/1032 (N.I.6).

section 203 of the Companies Act 1985 or as the case may be paragraphs (3) and (4) of Article 211 of the Companies (Northern Ireland) Order 1986 shall apply for the purposes of sub-paragraph (7) above as they apply for the purposes of subsection (2)(b) of that section and paragraph (2)(b) of that Article.

(9) Where the offeror is an individual his associates shall also include his spouse or civil partner and any minor child or step-child of his.

Convertible securities

9.—(1) For the purposes of this Schedule securities of a company shall be treated as shares in the company if they are convertible into or entitle the holder to subscribe for such shares; and references to the holder of shares or a shareholder shall be construed accordingly.

(2) Sub-paragraph (1) shall not be construed as requiring any securities to be treated—

- (a) as shares of the same class as those into which they are convertible or for which the holder is entitled to subscribe; or
- (b) as shares of the same class as other securities by reason only that the shares into which they are convertible or for which the holder is entitled to subscribe are of the same class.

Debentures carrying voting rights

10.—(1) For the purposes of this Schedule debentures issued by a company to which sub-paragraph (2) applies shall be treated as shares in the company if they carry voting rights.

(2) This sub-paragraph applies to a company that has voting shares, or debentures carrying voting rights, which are admitted to trading on a regulated market.

(3) In this Schedule, in relation to debentures treated as shares by virtue of sub-paragraph (1)—

- (a) references to the holder of shares or a shareholder shall be construed accordingly;
- (b) references to shares being allotted shall be construed as references to debentures being issued.

Interpretation

11.—(1) In this Schedule—

“the company” means the company whose shares are the subject of the offer;

“date of the offer” means—

- (a) the date of publication; or
- (b) where any notices of the offer are given before the date of publication, the date when notices of the offer (or the first such notices) are given;

“non-voting shares” means shares that are not voting shares;

“the offeror” means, subject to paragraph 7, the person making a takeover offer.

(2) For the purposes of this Schedule a person contracts unconditionally to acquire shares if his entitlement under the contract to acquire them is not (or is no longer) subject to conditions or if all conditions to which it was subject have been met.

A reference to a contract becoming unconditional is to be construed accordingly.