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SCOTTISH STATUTORY INSTRUMENTS

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**2001 No. 128**

**PARTNERSHIPS**

**Limited Liability Partnerships (Scotland) Regulations 2001**

*Made* - - - - - *28th March 2001*

*Coming into force* - - - - - *6th April 2001*

The Scottish Ministers, in exercise of the powers conferred by sections 14(1) and (2), 15, 16 and 17(1) and (3) of the Limited Liability Partnerships Act 2000<sup>(1)</sup> and all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 17(4) of that Act, been approved by resolution of the Scottish Parliament:

**PART I**

**CITATION, COMMENCEMENT EXTENT AND INTERPRETATION**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Limited Liability Partnerships (Scotland) Regulations 2001 and shall come into force on 6th April 2001.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—

“the 1985 Act” means the Companies Act 1985<sup>(2)</sup>;

“the 1986 Act” means the Insolvency Act 1986<sup>(3)</sup>;

“limited liability partnership agreement”, in relation to a limited liability partnership, means any agreement, express or implied, made between the members of the limited liability partnership or between the limited liability partnership and the members of the limited liability partnership which determines the mutual rights and duties of the members, and their rights and duties in relation to the limited liability partnership;

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(1) 2000 c. 12. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) as read with section 19(3) of the Limited Liability Partnership Act 2000 (“the 2000 Act”) which deemed the 2000 Act to be a pre-commencement enactment within the meaning of the Scotland Act 1998.

(2) 1985 c. 6.

(3) 1986 c. 45.

“the principal Act” means the Limited Liability Partnerships Act 2000; and  
“shadow member”, in relation to a limited liability partnership, means a person in accordance with whose directions or instructions the members of the limited liability partnership are accustomed to act (but so that a person is not deemed a shadow member by reason only that the members of the limited liability partnership act on advice given by that person in a professional capacity).

## PART II COMPANIES ACT

### **Application of the 1985 Act to limited liability partnerships**

3. The provisions of the 1985 Act specified in the first column of Schedule 1 to these Regulations shall apply to limited liability partnerships, with the following modifications—

- (a) references to a company shall include references to a limited liability partnership;
- (b) references to the Companies Acts shall include references to the principal Act and any regulations made thereunder;
- (c) references to the 1986 Act shall include references to that Act as it applies to limited liability partnerships by virtue of Part III of these Regulations;
- (d) references in a provision of the 1985 Act to other provisions of that Act shall include references to those other provisions as they apply to limited liability partnerships by virtue of these Regulations; and
- (e) the modifications, if any, specified in the second column of Schedule 1 of the provision specified opposite them in the first column.

## PART III WINDING UP AND INSOLVENCY

### **Application of the 1986 Act to limited liability partnerships**

4.—(1) Subject to paragraph (2), the provisions of the 1986 Act(4) listed in Schedule 2 shall apply in relation to limited liability partnerships as they apply in relation to companies.

(2) The provisions of the 1986 Act referred to in paragraph (1) shall so apply, with the following modifications—

- (a) references to a company shall include references to a limited liability partnership;
- (b) references to a director or to an officer of a company shall include references to a member of a limited liability partnership;
- (c) references to a shadow director shall include references to a shadow member;
- (d) references to the 1985 Act, the Company Directors Disqualification Act 1986(5), the Companies Act 1989(6) or to any provisions of those Acts or to any provisions of the 1986

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(4) The provisions of the Insolvency Act 1986 applied by this regulation have been amended as follows: -section 57 was amended by section 3 of, the Insolvency Act 1994 (c. 7); section 162 was amended by section 52 of, and Part III of Schedule 2 to, the Court of Session Act 1988 (c. 36).

(5) 1986 c. 46.

(6) 1989 c. 40.

- Act shall include references to those Acts or provisions as they apply to limited liability partnerships by virtue of the principal Act or these Regulations; and
- (e) the modifications set out in Schedule 3 to these Regulations.

## PART IV

### MISCELLANEOUS

#### **General and consequential amendments**

5. The enactments referred to in Schedule 4 shall have effect subject to the amendments specified in that Schedule.

#### **Application of subordinate legislation**

6.—(1) The Insolvency (Scotland) Rules 1986(7) shall apply to limited liability partnerships with such modifications as the context requires for the purpose of giving effect to the provisions of the Insolvency Act 1986 which are applied by these Regulations.

(2) In the case of any conflict between any provision of the subordinate legislation applied by paragraph (1) and any provision of these Regulations, the latter shall prevail.

St Andrew's House,  
Edinburgh  
28th March 2001

*JAMES R WALLACE*  
A member of the Scottish Executive

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## SCHEDULE 1

Regulation 3

## MODIFICATIONS TO PROVISIONS OF THE 1985 ACT

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*Formalities of Carrying on Business*


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36B(8) (execution of documents by companies)

**Floating charges and Receivers (Scotland)**

462 (power of incorporated company to create floating charge)(9) In subsection (1), for the words “an incorporated company (whether a company within the meaning of this Act or not),” substitute “a limited liability partnership”, and the words “(including uncalled capital)” are omitted.

463 (effect of floating charge on winding up)(10)

466(11) (alteration of floating charges)  
Subsections (1), (2), (3) and (6)

486 (interpretation for Part XVIII generally)(12) For the definition of “company” substitute ““company” means a limited liability partnership;”

487 (extent of Part XVIII)

## SCHEDULE 2

Regulation 4(1)

## PROVISIONS OF THE 1986 ACT

The relevant provisions of the 1986 Act are as follows:

Sections 50 to 52;

Section 53(1) and (2), to the extent that those subsections do not relate to the requirement for a copy of the instrument and notice being delivered to the registrar of companies;

Section 53(4), (6) and (7);

Section 54(1), (2), (3) (to the extent that that subsection does not relate to the requirement for a copy of the interlocutor to be delivered to the registrar of companies), and subsections (5), (6) and (7);

Sections 55 to 58;

Section 60, other than subsection (1);

Section 61, including subsections (6) and (7) to the extent that those subsections do not relate to anything to be done or which may be sent to the registrar of companies;

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- (8) Section 36B was inserted by section 130(3) of the Companies Act 1989 and was substituted by section 14(1), Schedule 14 of the Requirements of Writing (Scotland) Act 1995 (c. 7)
- (9) Section 462 was amended by section 74(1), (2), Schedule 8, paragraph 33(6), Schedule 9 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 14(2) and Schedule 5 of the Requirements of Writing (Scotland) Act 1985 (c. 7) and section 439(1), Schedule 13, Part I of the Insolvency Act 1986.
- (10) Section 463 was amended by section 140 of the Companies Act 1989 (c. 40) and sections 439(1), Schedule 13, Part I and section 438 and Schedule 12 of the Insolvency Act 1986.
- (11) Section 466 was amended by sections 130, 140 and 212 of, and paragraph 9 of Schedule 17 and Schedule 24 to, the Companies Act 1989 (c. 40).
- (12) Section 486 was amended by section 438 of and Schedule 12 to the Insolvency Act 1986.

Section 62, including subsection (5) to the extent that that subsection does not relate to anything to be done or which may be sent to the registrar of companies;

Sections 63 to 66;

Section 67, including subsections (1) and (8) to the extent that those subsections do not relate to anything to be sent to the registrar of companies;

Section 68;

Section 69, including subsections (1) and (2) to the extent that those subsections do not relate to anything to be done or which may be done by the registrar of companies;

Sections 70 and 71;

Subsection 84(3) to the extent that it does not concern the copy of the resolution being forwarded to the registrar of companies within 15 days;

Sections 91 to 93;

Section 94, including subsections (3) and (4) to the extent that those subsections do not relate to the liquidator being required to send to the registrar of companies a copy of the account and a return of the final meeting;

Section 95;

Section 97;

Sections 100 to 102;

Sections 104 to 105;

Section 106, including subsections (3), (4) and (5) to the extent that those subsections do not relate to the liquidator being required to send to the registrar of companies a copy of the account of winding up and a return of the final meeting/quorum;

Sections 109 to 111;

Section 112, including subsection (3) to the extent that that subsection does not relate to the liquidator being required to send to the registrar of companies a copy of the order made by the court;

Sections 113 to 115;

Sections 126 to 128;

Section 130(1) to the extent that that subsection does not relate to a copy of the order being forwarded by the court to the registrar of companies;

Section 131;

Sections 133 to 135;

Sections 138 to 140;

Sections 142 to 146;

Section 147, including subsection (3) to the extent that that subsection does not relate to a copy of the order being forwarded by the company to the registrar of companies;

Section 162 to the extent that the section concerns the matters set out in Section C.2 of Schedule 5 to the Scotland Act 1998 as being exceptions to the reservation of insolvency;

Sections 163 to 167;

Section 169;

Section 170, including subsection (2) to the extent that that subsection does not relate to an application being made by the registrar to make good the default;

Section 171;

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Section 172, including subsection (8) to the extent that that subsection does not relate to the liquidator being required to give notice to the registrar of companies;

Sections 173 and 174;

Section 177;

Sections 185 to 189;

Sections 191 to 194;

Section 196;

Section 199;

Section 200;

Sections 206 to 215;

Section 218 subsections (1), (2),(4) and (6);

Sections 231 to 232 to the extent that the sections apply to administrative receivers, liquidators and provisional liquidators;

Section 233 to the extent that that section applies in the case of the appointment of an administrative receiver, of a voluntary arrangement taking effect, of a company going into liquidation or where a provisional liquidator is appointed;

Section 234 to the extent that that section applies to situations other than those where an administration order applies;

Section 235 to the extent that that section applies to situations other than those where an administration order applies;

Sections 236 to 237 to the extent that those sections apply to situations other than administration orders and winding up;

Sections 242 to 243;

Section 244 to the extent that that section applies in circumstances other than a company which is subject to an administration order;

Section 245;

Section 251;

Section 416(1) and (4) to the extent that those subsections apply to section 206(1)(a) and (b) in connection with the offence provision relating to the winding up of a limited liability partnership;

Section 430;

Section 436;

Schedule 2;

Schedule 3;

Schedule 4;

Schedule 8 to the extent that that Schedule does not apply to voluntary arrangements or administrations within the meaning of Parts I and II of the 1986 Act;

Schedule 10 to the extent that it refers to any of the sections referred to above.

SCHEDULE 3

Regulation 4(2)

MODIFICATIONS TO PROVISIONS OF THE 1986 ACT

<i>Provisions</i>	<i>Modifications</i>
Section 84 (circumstances in which company may be wound up voluntarily)	
Subsection (3)	For subsection (3) substitute the following— “(3) Within 15 days after a limited liability partnership has determined that it be wound up there shall be forwarded to the registrar of companies either a printed copy or a copy in some other form approved by the registrar of the determination.”
Subsection (4)	After subsection (3) insert a new subsection— “(4) If a limited liability partnership fails to comply with this regulation the limited liability partnership and every designated member of it who is in default is liable on summary conviction to a fine not exceeding level 3 on the standard scale.”
Section 91 (appointment of liquidator)	
Subsection (1)	Delete “in general meeting”.
Subsection (2)	For subsection (2) substitute the following— “(2) On the appointment of a liquidator the powers of the members of the limited liability partnership shall cease except to the extent that a meeting of the members of the limited liability partnership summoned for the purpose or the liquidator sanctions their continuance.” After subsection (2) insert— “(3) Subsections (3) and (4) of section 92 shall apply for the purposes of this section as they apply for the purposes of that section.”
Section 92 (power to fill vacancy in office of liquidator)	
Subsection (1)	For “the company in general meeting” substitute “a meeting of the members of the limited liability partnership summoned for the purpose”.
Subsection (2)	For “a general meeting” substitute “a meeting of the members of the limited liability partnership”.
Subsection (3)	In subsection (3), for “articles” substitute “limited liability partnership agreement”.
new subsection (4)	Add a new subsection (4) as follows— “(4) The quorum required for a meeting of the members of the limited liability partnership

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<i>Provisions</i>	<i>Modifications</i>
	shall be any quorum required by the limited liability partnership agreement for meetings of the members of the limited liability partnership and if no requirement for a quorum has been agreed upon the quorum shall be 2 members.”
Section 93 (general company meeting at each year’s end)	
subsection (1)	For “a general meeting of the company” substitute “a meeting of the members of the limited liability partnership”.
new subsection (4)	Add a new subsection (4) as follows– “(4) Subsections (3) and (4) of section 92 shall apply for the purposes of this section as they apply for the purposes of that section.”
Section 94 (final meeting prior to dissolution)	
subsection (1)	For “a general meeting of the company” substitute “a meeting of the members of the limited liability partnership”.
new subsection (5A)	Add a new subsection (5A) as follows– “(5A) Subsections (3) and (4) of section 92 shall apply for the purposes of this section as they apply for the purposes of that section.”
subsection (6)	For “a general meeting of the company” substitute “a meeting of the members of the limited liability partnership”.
Section 95 (effect of company’s insolvency)	
subsection (1)	For “directors” substitute “designated members”.
subsection (7)	For subsection (7) substitute the following– “(7) In this section ‘the relevant period’ means the period of 6 months immediately preceding the date on which the limited liability partnership determined that it be wound up voluntarily.”
Section 100 (appointment of liquidator)	
subsection (1)	For “The creditors and the company at their respective meetings mentioned in section 98” substitute “The creditors at their meeting mentioned in section 98 and the limited liability partnership”.
subsection (3)	Delete “director.”.
Section 101( appointment of liquidation committee)	
subsection (2)	For subsection (2) substitute the following–



<i>Provisions</i>	<i>Modifications</i>
	<p>“(2) If such a committee is appointed, the limited liability partnership may, when it determines that it be wound up voluntarily or at any time thereafter, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.”</p>
Section 105 (meetings of company and creditors at each year’s end)	
subsection (1)	For “a general meeting of the company” substitute “a meeting of the members of the limited liability partnership”.
new subsection (5)	Add a new subsection (5) as follows– “(5) Subsections (3) and (4) of section 92 shall apply for the purposes of this section as they apply for the purposes of that section.”
Section 106 (final meeting prior to dissolution)	
subsection (1)	For “a general meeting of the company” substitute “a meeting of the members of the limited liability partnership”.
new subsection (5A)	After subsection (5) insert a new subsection (5A) as follows– “(5A) Subsections (3) and (4) of section 92 shall apply for the purposes of this section as they apply for the purposes of that section.”
subsection (6)	For “a general meeting of the company” substitute “a meeting of the members of the limited liability partnership”.
Sections 110 ( acceptance of shares, etc, as consideration for sale of company property)	
	For the existing section substitute the following: “(1) This section applies, in the case of a limited liability partnership proposed to be, or being, wound up voluntarily, where the whole or part of the limited liability partnership’s business or property is proposed to be transferred or sold to another company whether or not it is a company within the meaning of the Companies Act (“the transferee company”) or to a limited liability partnership (“the transferee limited liability partnership”). (2) With the requisite sanction, the liquidator of the limited liability partnership being, or proposed to be, wound up (“the transferor limited liability partnership”) may receive, in compensation or part compensation for the transfer or sale, shares, policies or other like interests in the transferee company or

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<i>Provisions</i>	<i>Modifications</i>
	<p>the transferee limited liability partnership for distribution among the members of the transferor limited liability partnership.</p> <p>(3) he sanction required under subsection (2) is–</p> <p>(a) in the case of a members' voluntary winding up, that of a determination of the limited liability partnership at a meeting of the members of the limited liability partnership conferring either a general authority on the liquidator or an authority in respect of any particular arrangement, (subsections (3) and (4) of section 92 to apply for this purpose as they apply for the purposes of that section), and</p> <p>(b) in the case of a creditor’s voluntary winding up, that of either court or the liquidation committee.</p> <p>(4) Alternatively to subsection (2), the liquidator may (with the sanction) enter into any other arrangement whereby the members of the transferor limited liability partnership may, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto), participate in the profits, or receive any other benefit from the transferee company or the transferee limited liability partnership.</p> <p>(5) A sale or arrangement in pursuance of this section is binding on members of the transferor limited liability partnership.</p> <p>(6) A determination by the limited liability partnership is not invalid for the purposes of this section by reason that it is made before or concurrently with a determination by the limited liability partnership that it be wound up voluntarily or for appointing liquidators; but, if an order is made within a year for winding up the limited liability partnership by the court, the determination by the limited liability partnership is not valid unless sanctioned by the court.”</p>
<p>Section 111 (dissent from arrangement under section 110) subsections (1) - (3)</p>	<p>For subsections (1) - (3) substitute the following–</p> <p>“(1) This section applies in the case of a voluntary winding up where, for the purposes of section 110(2) or (4), a determination of the</p>

<i>Provisions</i>	<i>Modifications</i>
	limited liability partnership has provided the sanction requisite for the liquidator under that section.
	(2) If a member of the transferor limited liability partnership who did not vote in favour of providing the sanction required for the liquidator under section 110 expresses his dissent from it in writing addressed to the liquidator and left at the registered office of the limited liability partnership within 7 days after the date on which that sanction was given, he may require the liquidator either to abstain from carrying the arrangement so sanctioned into effect or to purchase his interest at a price to be determined by agreement or arbitration under this section.
	(3) If the liquidator elects to purchase the member's interest, the purchase money must be paid before the limited liability partnership is dissolved and be raised by the liquidator in such manner as may be determined by the limited liability partnership."
subsection (4)	Omit subsection (4).
Section 126 (power to stay or restrain proceedings against company)	
subsection (2)	Delete subsection (2).
Section 127 ( avoidance of property dispositions, etc)	
	For "any transfer of shares" substitute "any transfer by a member of the limited liability partnership of his interest in the property of the limited liability partnership".
Section 165 ( voluntary winding up)	
subsection (2)	In paragraph (a) for "an extraordinary resolution of the company" substitute "a determination by a meeting of the members of the limited liability partnership".
subsection (4)	For paragraph (c) substitute the following— “(c) summon meetings of the members of the limited liability partnership for the purpose of obtaining their sanction or for any other purpose he may think fit.”
new subsection (4A)	Insert a new subsection (4A) as follows— “(4A) Subsections (3) and (4) of section 92 shall apply for the purposes of this section as they apply for the purposes of that section.”
Section 166 (creditors' voluntary winding up)	

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<i>Provisions</i>	<i>Modifications</i>
subsection (5)	In paragraph (b) for “directors” substitute “designated members”.
Section 171 (removal, etc (voluntary winding up))	
subsection (2)	For paragraph (a) substitute the following— “(a) in the case of a members' voluntary winding up, by a meeting of the members of the limited liability partnership summoned specially for that purpose, or”.
subsection (6)	In paragraph (a) for “final meeting of the company” substitute “final meeting of the members of the limited liability partnership” and in paragraph (b) for “final meetings of the company” substitute “final meetings of the members of the limited liability partnership”.
new subsection (7)	Insert a new subsection (7) as follows— “(7) Subsections (3) and (4) of section 92 apply for the purposes of this section as they apply for the purposes of that section .”
Section 173 (release (voluntary winding up))	
subsection (2)	In paragraph (a) for “a general meeting of the company” substitute “a meeting of the members of the limited liability partnership”
Section 187 (power to make over assets to employees)	Delete section 187
Section 194 (resolutions passed at adjourned meetings)	After “contributories” insert “or of the members of a limited liability partnership”.
Section 206 (fraud, etc in anticipation of winding up)(13)	
subsection (1)	For “passes a resolution for voluntary winding up” substitute “makes a determination that it be wound up voluntarily”.
Section 207 (transactions in fraud of creditors)	
subsection (1)	For “passes a resolution for voluntary winding up” substitute “makes a determination that it be wound up voluntarily”.
Section 210 (material omissions from statement relating to company’s affairs)	
subsection (2)	For “passed a resolution for voluntary winding up” substitute “made a determination that it be wound up voluntarily”.

(13) Section 206 was amended by article 2 of, and Part I of the Schedule to, S.I. 1986/1996.

<i>Provisions</i>	<i>Modifications</i>
Section 214 (wrongful trading)	
subsection (2)	Delete from “but the court shall not” to the end of the subsection.
After section 214	Insert the following new section 214A
	<p><b>“Adjustment of withdrawals</b></p> <p><b>214A.—(1)</b> This section has effect in relation to a person who is or has been a member of a limited liability partnership where, in the course of the winding up of that limited liability partnership, it appears that subsection (2) of this section applies in relation to that person.</p> <p>(2) This subsection applies in relation to a person if—</p> <ul style="list-style-type: none"><li>(a) within the period of two years ending with the commencement of the winding up, he was a member of the limited liability partnership who withdrew property of the limited liability partnership, whether in the form of a share of profits, salary, repayment of or payment of interest on a loan to the limited liability partnership or any other withdrawal of property, and</li><li>(b) it is proved by the liquidator to the satisfaction of the court that at the time of the withdrawal he knew or had reasonable grounds for believing that the limited liability partnership—<ul style="list-style-type: none"><li>(i) was at the time of the withdrawal unable to pay its debts within the meaning of section 123 of the Act, or</li><li>(ii) would become so unable to pay its debts after the assets of the limited liability partnership had been depleted by that withdrawal taken together with all other withdrawals (if any) made by any members</li></ul></li></ul>

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	<p>contemporaneously with that withdrawal or in contemplation when that withdrawal was made.</p> <p>(3) Where this section has effect in relation to any person the court, on the application of the liquidator, may declare that that person is to be liable to make such contribution (if any) to the limited liability partnership's assets as the court thinks proper.</p> <p>(4) The court shall not make a declaration in relation to any person the amount of which exceeds the aggregate of the amounts or values of all the withdrawals referred to in subsection (2) made by that person within the period of 2 years referred to in that subsection.</p> <p>(5) The court shall not make a declaration under this section with respect to any person unless that person knew or ought to have concluded that after each withdrawal referred to in subsection (2) there was no reasonable prospect that the limited liability partnership would avoid going into insolvent liquidation.</p> <p>(6) For the purposes of subsection (5) the facts which a member ought to know or ascertain, the conclusions which he ought to reach and the steps which he ought to have taken are those which would be known or ascertained, or reached or taken, by a reasonably diligent person having both:</p> <ul style="list-style-type: none"> <li>(a) the general knowledge, skill and experience that may reasonably be expected of a person carrying out the same functions as are carried out by that member in relation to the limited liability partnership, and</li> <li>(b) the general knowledge, skill and experience that that member has.</li> </ul> <p>(7) For the purposes of this section a limited liability partnership goes into insolvent liquidation if it goes into liquidation at a time when its assets are insufficient for the payment of its debts</p>

<i>Provisions</i>	<i>Modifications</i>
	and other liabilities and the expenses of the winding up.
	(8) In this section “member” includes a shadow member.
	(9) This section is without prejudice to section 214.”
Section 215 (proceedings under ss 213, 214)	
subsection (1)	Omit the word “or” between the words “213” and “214” and insert after “214” “or 214A”.
subsection (2)	For “either section” substitute “any of those sections”.
subsection (4)	For “either section” substitute “any of those sections”.
subsection (5)	For “Sections 213 and 214” substitute “Sections 213, 214 or 214A”.
Section 218 (prosecution of delinquent officers and members of company)(14)	
subsection (1)	For “officer, or any member, of the company” substitute “member of the limited liability partnership”
subsections (4) and (6)	For “officer of the company, or any member of it,” substitute “officer or member of the limited liability partnership”.
Section 233 (supplies of gas, water, electricity etc.)(15)	
subsection (1)	For paragraph (c) substitute the following— “(c) a voluntary arrangement under Part I has taken effect in accordance with section 5”.
subsection (4)	For paragraph (c) substitute the following— “(c) the date on which the voluntary arrangement took effect in accordance with section 5”.
Section 251 (expressions used generally)	
	Delete the word “and” appearing after the definition of “the rules” and insert the word “and” after the definition of “shadow director”.
	After the definition of “shadow director” insert the following—

(14) Section 218 was amended by section 78 of the Companies Act 1989 (c. 40).

(15) Section 233 was amended by section 112 of, and paragraph 35 of Schedule 16 to, the Electricity Act 1989 (c. 29), by section 190 of, and paragraph 78 of Schedule 25 to, the Water Act 1989 (c. 15), by section 190 of, and paragraph 78 of Schedule 25 to, the Water Act 1989 (c. 15), by section 203 of, and paragraph 43 of Schedule 20 to, the Broadcasting Act 1990 (c. 42) and by sections 16 and 17 of, and paragraph 14 of Schedule 4 and Schedule 6 to, the Gas Act 1995 (c. 45).

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<i>Provisions</i>	<i>Modifications</i>
	<p>““shadow member”, in relation to a limited liability partnership, means a person in accordance with whose directions or instructions the members of the limited liability partnership are accustomed to act (but so that a person is not deemed a shadow member by reason only that the members of the limited liability partnership act on advice given by him in a professional capacity);”</p>
Section 416 (monetary limits (companies winding up))	
subsection (1)	<p>In subsection (1), omit the words “section 117(2) (amount of company’s share capital determining whether county court has jurisdiction to wind it up);” and the words “section 120(3) (the equivalent as respects sheriff court jurisdiction in Scotland);”.</p>
Section 436 (expressions used generally)	
	<p>The following expressions and definitions shall be added to the section–</p> <p>“designated member” has the same meaning as it has in the Limited Liability Partnerships Act 2000;</p> <p>“limited liability partnership” means a limited liability partnership formed and registered under the Limited Liability Partnership Act 2000;</p> <p>“limited liability partnership agreement”, in relation to a limited liability partnership, means any agreement, express or implied, made between the members of the limited liability partnership or between the limited liability partnership and the members of the limited liability partnership which determines the mutual rights and duties of the members, and their rights and duties in relation to the limited liability partnership.</p>
Schedule 2	
Paragraph 17	<p>For paragraph 17 substitute the following–</p> <p>“17. Power to enforce any rights the limited liability partnership has against the members under the terms of the limited liability partnership agreement”</p>



<i>Provisions</i>	<i>Modifications</i>
Schedule 10(16)	
Section 93(3)	In the entry relating to section 93(3) for “general meeting of the company” substitute “meeting of members of the limited liability partnership”.
Section 105(3)	In the entry relating to section 105(3) for “company general meeting” substitute “meeting of the members of the limited liability partnership”.
Section 106(6)	In the entry relating to section 106(6) for “company” substitute “the members of the limited liability partnership”

SCHEDULE 4

Regulation 5

GENERAL AND CONSEQUENTIAL AMENDMENTS IN OTHER LEGISLATION

*Insolvency Act 1986 c. 45*

1.—(1) Section 110 is amended as follows.

(2) In subsection (1), after “sold” insert “(a)” and at the end insert – “, or (b) to a limited liability partnership (the “transferee limited liability partnership”).”

In subsection (2), for the words “sale”, onwards substitute

“sale–

- (a) in the case of the transferee company, shares, policies or other like interests in the company for distribution among the members of the transferor company, or
- (b) in the case of the transferee limited liability partnership, membership in the limited liability partnership for distribution among the members of the transferor company.”

In subsection (4), for the words “may,” onwards substitute

“may–

- (a) in the case of the transferee company, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto) participate in the profits of, or receive any other benefit from, the company, or
- (b) in the case of the transferee limited liability partnership, in lieu of receiving cash, or membership (or in addition thereto) participate in some other way in the profits of, or receive any other benefit from, the limited liability partnership.”

*Criminal Procedure (Scotland) Act 1995 c. 46*

1. In section 70 (8) insert at the end–

“; and “officer” and “any person having or being one of the persons having the management of the affairs of the body corporate”, in relation to a limited liability partnership, means a member of the limited liability partnership”.

(16) Certain entries in Column 5 of Schedule 10 were repealed by section 212 of and Schedule 24 to, the Companies Act 1989 (c. 40).

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2. In section 141(2), insert at the end—  
“; and in sub-paragraph (b)(i) of this subsection references to the director or secretary or other official, in relation to a limited liability partnership, are to any member of the limited liability partnership”.
3. In section 143(3), insert at the end—  
“; and in paragraph 3(b) of this subsection references to the managing director or the secretary, in relation to a limited liability partnership, are to any member of the limited liability partnership”.

*Requirements of Writing (Scotland) Act 1995 c. 7*

4. In section 7 (7) after “companies,” insert “limited liability partnerships,”.
5. After paragraph 3 of Schedule 2, insert—

**“Limited Liability Partnerships**

**3A.—**(1) Except where an enactment expressly provides otherwise, where a granter of a document is a limited liability partnership, the document is signed by the limited liability partnership if it is signed on its behalf by a member of the limited liability partnership.

(2) This Act is without prejudice to paragraph 9 of Schedule 1, paragraph 9 of Schedule 2, and paragraph 7 of Schedule 4, to the Insolvency Act 1986.

(3) Sub-paragraphs (1) and (2) of this paragraph apply in relation to the signing of an alteration made to a document as they apply in relation to the signing of a document.

(4) Where a granter of a document is a limited liability partnership, section 3 of and Schedule 1 to this Act shall have effect subject to the modifications set out in sub-paragraphs (5) and (6) below.

(5) In section 3—

(a) for subsection (1) there shall be substituted the following subsections—

“(1) Subject to subsections (1A) to (7) below, where—

- (a) a document bears to have been subscribed on behalf of a limited liability partnership by a member of the limited liability partnership;
- (b) the document bears to have been signed by a person as a witness of the subscription of the member of the limited liability partnership and to state the name and address of the witness; and
- (c) nothing in the document, or in the testing clause or its equivalent, indicates—
  - (i) that it was not subscribed on behalf of the limited liability partnership as it bears to have been so subscribed; or
  - (ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of subsection (4) below,

the document shall be presumed to have been subscribed by the limited liability partnership.

(1A) Where a document does not bear to have been signed by a person as a witness of the subscription of the member of the limited liability partnership it shall be presumed to have been subscribed by the limited liability partnership if it bears to have been subscribed on behalf of the limited liability partnership by two members of the limited liability partnership.

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(1B) A presumption under subsection (1) or (1A) above as to subscription of a document does not include a presumption that a person bearing to subscribe the document as a member of the limited liability partnership was such member.”;

(b) in subsection (4) after paragraph (g) there shall be inserted the following paragraph—

“(h) if the document does not bear to have been witnessed, but bears to have been subscribed on behalf of the limited liability partnership by two of the members of the limited liability partnership, that a signature bearing to be the signature of a member is not such a signature, whether by reason of forgery or otherwise;”.

(6) In paragraph 1 of Schedule 1—

(a) for sub-paragraph (1) there shall be substituted the following sub-paragraphs—

“(1) Subject to sub-paragraphs (1A) to (7) below, where—

(a) an alteration to a document bears to have been signed on behalf of a limited liability partnership by a member of the limited liability partnership;

(b) the alteration bears to have been signed by a person as a witness of the signature of the member of the limited liability partnership and to state the name and address of the witness; and

(c) nothing in the document or alteration, or in the testing clause or its equivalent, indicates—

(i) that the alteration was not signed on behalf of the limited liability partnership as it bears to have been so signed; or

(ii) that the alteration was not validly witnessed for any reason specified in paragraphs (a) to (e) of sub-paragraph (4) below,

the alteration shall be presumed to have been signed by the limited liability partnership.

(1A) Where an alteration does not bear to have been signed by a person as a witness of the signature of the member of the limited liability partnership it shall be presumed to have been signed by the limited liability partnership if it bears to have been signed on behalf of the limited liability partnership by two members of the limited liability partnership.

(1B) For the purposes of sub-paragraph (1)(b) above, the name and address of the witness may bear to be stated in the alteration itself or in the testing clause or its equivalent.

(1C) A presumption under sub-paragraph (1) or (1A) above as to signing of an alteration to a document does not include a presumption that a person bearing to sign the alteration as a member of the limited liability partnership was such member”;

(b) in sub-paragraph (4) after paragraph (g) there shall be inserted the following—

“; or

(h) if the alteration does not bear to have been witnessed, but bears to have been signed on behalf of the limited liability partnership by two of the members of the limited liability partnership, that a signature bearing to be the signature of a member is not such a signature, whether by reason of forgery or otherwise;”.

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### *Culpable officer provision*

6.—(1) A culpable officer provision applies in the case of a limited liability partnership as if the reference in the provision to a director (or a person purporting to act as a director) were a reference to a member (or a person purporting to act as a member) of the limited liability partnership.

(2) A culpable officer provision is a devolved provision in any Act or subordinate legislation (within the meaning of the Interpretation Act 1978 or the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999(17)) to the effect that where—

- (a) a body corporate is guilty of a particular offence, and
- (b) the offence is proved to have been committed with the consent or connivance of, or to be attributable to the neglect on the part of, (among others) a director of the body corporate,

he (as well as the body corporate) is guilty of the offence.

(3) In this paragraph “devolved provision” means any provision that would be within devolved competence for the purposes of section 101 of the Scotland Act 1998.

### **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

The Limited Liability Partnerships Act 2000 c. 12. (“the 2000 Act”) provided for the creation of limited liability partnerships (“LLPs”) and for the making of regulations concerning them. These Regulations, which are made under sections 14(1) and (2), 15, 16 and 17(1) and (3) of that Act, regulate LLPs by applying to them, with appropriate modifications, the appropriate provisions of the existing law which relate to companies and partnerships.

The 2000 Act is of application to Great Britain. Section 19(3) of the 2000 Act provides that the Act shall be a pre-commencement enactment for the purposes of the Scotland Act 1998. Specifically, these Regulations:

- (a) Apply Scots law in relation to winding up and insolvency of LLPs;
- (b) Extend certain provisions of the Companies Act 1985, as appropriate, to LLPs registered in Scotland to ensure that such an LLP should be able to create floating charges over its assets.

The Regulations are structured in four parts accompanied by four schedules. They apply to LLPs, with appropriate modifications to reflect the structure of LLPs, a large number of the provisions contained within the Companies Act 1985 and the Insolvency Act 1986.

The Regulations amend the relevant primary legislation by way of general modifications which, provide that references to a company includes references to a limited liability partnership, and references to a director or officer include a reference to a member of an LLP. Throughout the Schedules to the Regulations there are references to designated members. This category of member is responsible for a number of administrative and filing duties of the LLP but is also representative

of the LLP and its membership in circumstances such as the appointment, removal and remuneration of auditors.

**Part I of the Regulations** contains the citation, commencement, extent and interpretation provisions to be applied to the Regulations, and gives the date on which they come into force.

**Part II of, and Schedule 1 to, the Regulations** apply to LLPs certain provisions of the Companies Act 1985.

**Part III of, and Schedules 2 and 3 to, the Regulations** apply to LLPs the provisions of the First and Third Groups of Parts of the Insolvency Act 1986, with appropriate modifications. **Schedule 2 to the Regulations** lists those provisions contained in the First and Third Group of Parts of the Insolvency Act 1986. Schedule 3 lists those sections which have been modified or omitted in their application to LLPs.

The insolvency provisions as applied to LLPs include provisions for voluntary arrangements, receivership, winding-up and liquidations. The most notable modification of the provisions which apply to companies is, an additional section, section 214A.

The new section 214A provides that withdrawals made by members during the two years prior to the commencement of winding-up will be subject to claw back if it is proved that at the time of the withdrawal the member knew or had reasonable grounds for believing that the LLP was, or would be made, insolvent.

**Part IV of, and Schedule 4 to, the Regulations** apply a number of general and consequential amendments to other enactments.

**Part IV of** the Regulations apply to LLPs the Insolvency (Scotland) Rules 1986.

The Regulations apply to Scotland only.