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STATUTORY INSTRUMENTS

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**2013 No. 1388**

**FINANCIAL SERVICES AND MARKETS**

**The Collective Investment in Transferable  
Securities (Contractual Scheme) Regulations 2013**

*Made - - - - 5th June 2013*

*Coming into force in accordance with regulation 1*

The Treasury are a government department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to financial services.

The Treasury make the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

A draft of these Regulations has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with paragraph 2 of Schedule 2 to the European Communities Act 1972.

**PART 1**

**CITATION, COMMENCEMENT AND INTERPRETATION**

**Citation and commencement**

**1.** These Regulations may be cited as the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013, and come into force on the day after the day on which they are made.

**Interpretation**

**2.** In these Regulations—

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

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989<sup>(4)</sup>;

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(1) [S.I. 2012/1759](#).

(2) [1972 c. 68](#). Section 2(2) was amended by the Legislative and Regulatory Reform Act [2006 \(c. 51\)](#), section 27(1)(a), and by the European Union (Amendment) Act [2008 \(c. 7\)](#), section 3 and the Schedule, Part 1.

(3) [1986 c. 45](#).

(4) [S.I. 1989/2405 \(N.I. 19\)](#).

“authorised contract” has the meaning given in section 261M(1) of FSMA(5);  
 “authorised contractual scheme” has the meaning given in section 237(3) of FSMA(6);  
 “depository” has the meaning given in section 237(2) of FSMA;  
 “the FCA” means the Financial Conduct Authority;  
 “FSMA” means the Financial Services and Markets Act 2000(7);  
 “operator” has the meaning given in section 237(2) of FSMA(8);  
 “participant” has the meaning given in section 235(2) of FSMA;  
 “partnership scheme” has the meaning given in section 235A(5) of FSMA(9);  
 “stand-alone co-ownership scheme” has the meaning given in section 237(8) of FSMA(10);  
 “sub-scheme” has the meaning given in section 237(7) of FSMA;  
 “umbrella co-ownership scheme” has the meaning given in section 237(5) of FSMA; and  
 “units” has the meaning given in section 237(2) of FSMA.

## PART 2

### AMENDMENTS TO PRIMARY LEGISLATION

#### Amendments to the Financial Services and Markets Act 2000

3.—(1) FSMA is amended as follows.

(2) In section 90ZA(11) (liability for key investor information), in subsection (1), after “section 248” insert “or 261J”.

(3) In section 133(12) (proceedings before Tribunal: general provision), in subsection (7A)(l), after “section 249” insert “or 261K”.

(4) In section 138A(13) (modification or waiver of rules), in subsection (2)(b), for “or section 248 (scheme particulars rules)” substitute “, section 248 (scheme particulars rules), section 261I (contractual scheme rules) or section 261J (contractual scheme particulars rules)”.

(5) After section 235 (collective investment schemes) insert—

#### “Contractual schemes

**235A.**—(1) In this Part “contractual scheme” means—

- (a) a co-ownership scheme; or
- (b) a partnership scheme.

(2) In this Part “co-ownership scheme” means a collective investment scheme which satisfies the conditions in subsection (3).

(5) Section 261M is inserted by regulation 3(12) of these Regulations.

(6) Section 237 was amended by S.I. 2011/1613 and by the Financial Services Act 2012 (c. 21), Schedule 18, paragraph 9(1) and (2)(a). This definition is inserted by regulation 3(6) of these Regulations.

(7) 2000 c. 8.

(8) The definition of “the operator” in section 237(2) is amended by regulation 3(6)(b) of these Regulations.

(9) Section 235A is inserted by regulation 3(5) of these Regulations.

(10) Subsections (5) to (8) of section 237 are inserted by regulation 3(6)(d) of these Regulations.

(11) Section 90ZA was inserted by S.I. 2011/1613.

(12) Section 133 was substituted by S.I. 2010/22. Subsection (7A) was inserted by section 23(2)(c) of the Financial Services Act 2012.

(13) Section 138A was substituted by section 24(1) of the Financial Services Act 2012.

- (3) The conditions are—
- (a) that the arrangements constituting the scheme are contractual;
  - (b) that they are set out in a deed that is entered into between the operator and a depositary and meets the requirements of subsection (4);
  - (c) that the scheme does not constitute a body corporate, a partnership or a limited partnership;
  - (d) that the property subject to the scheme is held by, or to the order of, a depositary; and
  - (e) that either—
    - (i) the property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants); or
    - (ii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, each part is beneficially owned by the participants in that part as tenants in common (or, in Scotland, is the common property of the participants in that part).
- (4) The deed—
- (a) must contain a statement that the arrangements are intended to constitute a co-ownership scheme as defined in section 235A of the Financial Services and Markets Act 2000;
  - (b) must make provision for the issue and redemption of units;
  - (c) must—
    - (i) prohibit the transfer of units,
    - (ii) allow units to be transferred only if specified conditions are met, or
    - (iii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, in relation to each separate part make provision falling within sub-paragraph (i) or (ii);
  - (d) must authorise the operator—
    - (i) to acquire, manage and dispose of property subject to the scheme; and
    - (ii) to enter into contracts which are binding on participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme; and
  - (e) must make provision requiring the operator and depositary to wind up the scheme in specified circumstances.
- (5) In this Part “partnership scheme” means a collective investment scheme which satisfies the conditions in subsection (6).
- (6) The conditions are—
- (a) that the scheme is a limited partnership;
  - (b) that the limited partnership—
    - (i) at any time has only one general partner; and
    - (ii) on formation has only one limited partner, who is a person nominated by the general partner (“the nominated partner”);
  - (c) that the arrangements constituting the partnership are set out in a deed that is entered into between the general partner and the nominated partner;

- (d) that the deed prohibits such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and
- (e) that the deed provides that if an authorisation order is made in respect of the limited partnership under section 261D(1)—
  - (i) the property subject to the scheme is to be held by, or to the order of, a person appointed to be a depositary;
  - (ii) the limited partners, other than the nominated partner, are to be the participants in the scheme; and
  - (iii) the partnership is not dissolved on any person ceasing to be a limited partner provided that there remains at least one limited partner.
- (7) In this section “general partner”, “limited partner” and “limited partnership” have the same meaning as in the Limited Partnerships Act 1907(14).
- (8) In this Part “contractual scheme deed” means—
  - (a) in relation to a co-ownership scheme, the deed referred to in subsection (3)(b); and
  - (b) in relation to a partnership scheme, the deed referred to in subsection (6)(c).”
- (6) In section 237(15) (other definitions)—
  - (a) in subsection (1), at the end insert “, except that it does not include a contractual scheme”;
  - (b) in subsection (2), in the definition of “the operator”, after paragraph (a) insert—
    - “(aa) in relation to a co-ownership scheme, means the operator appointed under the terms of the contractual scheme deed;
    - (ab) in relation to a partnership scheme, means the general partner;”;
  - (c) in subsection (3)—
    - (i) after the definition of “an authorised unit trust scheme” insert—
      - ““an authorised contractual scheme” means a contractual scheme which is authorised for the purposes of this Act by an authorisation order in force under section 261D(1);”;
    - (ii) in the definition of “UKUCITS”, after “a UCITS which is an authorised unit trust scheme” insert “, an authorised contractual scheme”; and
  - (d) after subsection (4) insert—
    - “(5) In this Part “umbrella co-ownership scheme” means an authorised contractual scheme which satisfies the conditions in subsection (6).
    - (6) The conditions are—
      - (a) that the scheme is a co-ownership scheme;
      - (b) that the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and
      - (c) that the participants are entitled under the terms of the scheme to exchange rights in one part for rights in another.
    - (7) In this Part “sub-scheme”, in relation to an umbrella co-ownership scheme, means the arrangements constituting the scheme so far as they relate to a separate part of the property.
    - (8) In this Part “stand-alone co-ownership scheme” means an authorised contractual scheme which—

(14) 1907 c.24.

(15) Section 237 was amended by S.I. 2011/1613 and by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(a).

- (a) is a co-ownership scheme; and
  - (b) is not an umbrella co-ownership scheme.”.
- (7) In section 238(16) (restrictions on promotion), in subsection (4), after paragraph (a) insert—
- “(aa) an authorised contractual scheme;”.
- (8) In section 249(17) (disciplinary measures), in subsection (1)(a), after “authorised unit trust scheme” insert “, authorised contractual scheme”.
- (9) In section 258A(18) (winding up or merger of master UCITS), in subsection (1)—
- (a) after “section 257” insert “or 261X”; and
  - (b) after “section 258” insert “or 261Y”.
- (10) In section 259(19) (procedure on giving directions under section 257 or 258A and varying them on FCA’s own initiative)—
- (a) in subsection (2)—
    - (i) after “A direction” insert “under section 257”; and
    - (ii) for “section 257” substitute “that section”; and
  - (b) in subsection (3), for the words “section 257, or gives such a direction” substitute “section 257 or 258A, or gives a direction under either section”.
- (11) In section 261B(20) (information for feeder UCITS), in subsection (1), after “feeder UCITS of an authorised unit trust scheme” insert “, an authorised contractual scheme”.
- (12) After section 261B insert—

### “CHAPTER 3A

### AUTHORISED CONTRACTUAL SCHEMES

#### *Applications for authorisation*

#### **Applications for authorisation of contractual schemes**

**261C.**—(1) Any application for an order declaring a contractual scheme to be an authorised contractual scheme must be made to the FCA by the operator and depositary, or proposed operator and depositary, of the scheme.

- (2) The application—
- (a) must be made in such manner as the FCA may direct;
  - (b) must state the name and the registered office, or if it does not have a registered office, the head office, of the operator or proposed operator and of the depositary or proposed depositary; and
  - (c) in the case of a partnership scheme, must be accompanied by a copy of the certificate of registration as a limited partnership under the Limited Partnerships Act 1907.

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(16) Section 238 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(a).

(17) Section 249 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(b) and paragraph 10.

(18) Section 258A was inserted by [S.I. 2011/1613](#) and amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(c).

(19) Section 259 was amended by [S.I. 2011/1613](#) and by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(c).

(20) Section 261B was inserted by [S.I. 2011/1613](#) and amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(c).

(3) At any time after receiving an application and before determining it, the FCA may require the applicants to provide it with such further information as it reasonably considers necessary to enable it to determine the application.

(4) Different directions may be given, and different requirements imposed, in relation to different applications.

(5) The FCA may require applicants to present information which they are required to give under this section in such form, or to verify it in such a way, as the FCA may direct.

### **Authorisation orders**

**261D.**—(1) If, on an application under section 261C in respect of a contractual scheme, the FCA—

- (a) is satisfied that the scheme complies with the requirements set out in this section and section 261E,
- (b) is satisfied that the scheme complies with the requirements of contractual scheme rules, and
- (c) has been provided with a copy of the contractual scheme deed and a certificate signed by a solicitor to the effect that it complies with such of the requirements of this section or those rules as relate to its contents,

the FCA may make an order declaring the scheme to be an authorised contractual scheme.

(2) If the FCA makes an order under subsection (1), it must give written notice of the order to the applicants.

(3) In this Chapter “authorisation order” means an order under subsection (1).

(4) The operator and the depositary must be persons who are independent of each other.

(5) The operator and the depositary must each be a body corporate incorporated in the United Kingdom or another EEA State, and the affairs of each must be administered in the country in which it is incorporated.

(6) The depositary must have a place of business in the United Kingdom, and the operator must have a place of business in the United Kingdom or in another EEA State.

(7) If the operator is incorporated in another EEA State, the scheme must not be one which satisfies the requirements prescribed for the purposes of section 264.

(8) The operator and the depositary must each be an authorised person, and the operator must have permission to act as operator and the depositary must have permission to act as depositary.

(9) The operator must be a fit and proper person to manage the scheme to which the application relates.

(10) The name of the scheme must not be undesirable or misleading.

(11) The purposes of the scheme must be reasonably capable of being successfully carried into effect.

### **Authorisation orders: holding of units**

**261E.**—(1) The participants in a contractual scheme must be entitled to have their units redeemed in accordance with the scheme at a price—

- (a) related to the net value of the property to which the units relate; and
- (b) determined in accordance with the scheme.

(2) The scheme must not allow units in the scheme to be issued to anyone other than—

- (a) a professional investor;
- (b) a large investor; or
- (c) a person who already holds units in the scheme.

(3) The scheme must require the operator, if it becomes aware that units have become vested in a person to whom as a result of subsection (2) the units could not have been issued, to redeem the units as soon as practicable.

(4) In subsection (2)—

“professional investor” means a person who falls within one of the categories (1) to (4) of Section I of Annex II to the markets in financial instruments directive (professional clients for the purpose of that directive); and

“large investor” means a person who, in exchange for units in the scheme, makes a payment of, or contributes property with a value of, not less than £1,000,000.

### **Determination of applications**

**261F.**—(1) Subject to subsection (2), an application under section 261C must be determined by the FCA before the end of the period of six months beginning with the date on which it receives the completed application.

(2) An application under section 261C for authorisation of a contractual scheme which is a UCITS must be determined by the FCA before the end of two months beginning with the date on which it receives the application.

(3) The FCA may determine an incomplete application if it considers it appropriate to do so; and it must in any event determine such an application within twelve months beginning with the date on which it first receives the application.

(4) The applicants may withdraw the application, by giving the FCA written notice, at any time before the FCA determines it.

### *Applications refused*

### **Procedure when refusing an application**

**261G.**—(1) If the FCA proposes to refuse an application made under section 261C, it must give each of the applicants a warning notice.

(2) If the FCA decides to refuse the application—

- (a) it must give each of the applicants a decision notice; and
- (b) either applicant may refer the matter to the Tribunal.

### *Certificates*

### **Certificates**

**261H.**—(1) If the operator of a contractual scheme which complies with the conditions necessary for it to enjoy the rights conferred by any relevant EU instrument so requests, the FCA may issue a certificate to the effect that the scheme complies with those conditions.

(2) Such a certificate may be issued on the making of an authorisation order in respect of the scheme or at any subsequent time.

## Rules

### Contractual scheme rules

**261I.**—(1) The FCA may by rules (“contractual scheme rules”) make in relation to authorised contractual schemes provision corresponding to that which may be made under section 247(21) in relation to authorised unit trust schemes.

(2) For the purposes of subsection (1), section 247 is to be read with the following modifications—

- (a) a reference to trust scheme rules is to be read as a reference to contractual scheme rules;
- (b) a reference to authorised unit trust schemes is to be read as a reference to authorised contractual schemes;
- (c) a reference to the manager is to be read as a reference to the operator;
- (d) a reference to the trustee is to be read as a reference to the depositary; and
- (e) a reference to the trust deed is to be read as a reference to the contractual scheme deed.

(3) The Treasury’s power by order under section 247(5) to modify the FCA’s power to make trust scheme rules shall also be exercisable in relation to the FCA’s power to make contractual scheme rules.

(4) For the purposes of subsection (3), section 247(5) is to be read as if the reference to authorised unit trust schemes were a reference to authorised contractual schemes.

### Contractual scheme particulars rules

**261J.**—(1) The FCA may by rules (“contractual scheme particulars rules”) make in relation to authorised contractual schemes provision corresponding to that which may be made under section 248(22) in relation to authorised unit trust schemes.

(2) For the purposes of subsection (1), section 248 is to be read with the following modifications—

- (a) a reference to scheme particulars rules is to be read as a reference to contractual scheme particulars rules;
- (b) a reference to scheme particulars is to be read as a reference to contractual scheme particulars; and
- (c) a reference to the manager of an authorised unit trust scheme is to be read as a reference to the operator of an authorised contractual scheme.

### Disciplinary measures

**261K.**—(1) If it appears to the FCA that an auditor has failed to comply with a duty imposed on the auditor by contractual scheme rules, it may do one or more of the following—

- (a) disqualify the auditor from being the auditor of any authorised unit trust scheme, authorised contractual scheme or authorised open-ended investment company;
- (b) publish a statement to the effect that it appears to the FCA that the auditor has failed to comply with the duty;

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(21) Section 247 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(b).

(22) Section 248 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(b).



(c) impose on the auditor a penalty, payable to the FCA, of such amount as the FCA considers appropriate.

(2) Sections 345B to 345E(23) have effect in relation to the taking of action under subsection (1) as they have effect in relation to the taking of action under section 345(2).

#### **Modification or waiver of rules**

**261L.**—(1) In this section “rules” means—

- (a) contractual scheme rules; or
- (b) contractual scheme particulars rules.

(2) The FCA may, on the application or with the consent of any person to whom rules apply, direct that all or any of the rules—

- (a) are not to apply to that person as respects a particular scheme; or
- (b) are to apply to that person, as respects a particular scheme, with such modifications as may be specified in the direction.

(3) The FCA may, on the application or with the consent of the operator and depositary of a particular scheme acting jointly, direct that all or any of the rules—

- (a) are not to apply to the scheme; or
- (b) are to apply to the scheme with such modifications as may be specified in the direction.

(4) Section 138A and subsections (1) to (3), (5) and (6) of section 138B(24) have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 138A(1) but with the following modifications—

- (a) any reference to the person is to be read as a reference to the person mentioned in subsection (2); and
- (b) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word “commercial” were omitted.

(5) Section 138A and subsections (1) to (3), (5) and (6) of section 138B have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 138A(1) but with the following modifications—

- (a) subsection (4)(a) of section 138A is to be read as if the words “by the person” were omitted;
- (b) section 138B(3)(c) and the definition of “immediate group” in section 421ZA(25) as it applies to that section are to be read as if references to the person were references to each of the operator and the depositary of the scheme;
- (c) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word “commercial” were omitted;
- (d) section 138B(5) is to be read as if the reference to the person concerned were a reference to the scheme concerned and to its operator and depositary; and
- (e) section 138A(7) is to be read as if the reference to the person were a reference to the operator and depositary of the scheme acting jointly.

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(23) Sections 345B to 345E were substituted by the Financial Services Act 2012, Schedule 13, paragraph 7.

(24) Sections 138A and 138B were substituted by section 24(1) of the Financial Services Act 2012.

(25) Section 421ZA was inserted by section 48(2) of the Financial Services Act 2012.

*Co-ownership schemes: rights and liabilities of participants***Contracts**

**261M.**—(1) In this section “authorised contract” means a contract which the operator of a co-ownership scheme is authorised to enter into on behalf of the relevant participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme (but does not include a contract by which a person becomes a participant in the scheme).

(2) The relevant participants are—

- (a) in the case of a contract relating to a stand-alone co-ownership scheme, the participants in the scheme;
- (b) in the case of a contract relating to an umbrella co-ownership scheme, the participants in the sub-scheme of the umbrella co-ownership scheme to which the contract relates.

(3) The operator on behalf of the relevant participants may—

- (a) exercise rights under an authorised contract;
- (b) bring and defend proceedings for the resolution of any matter relating to an authorised contract; and
- (c) take action in relation to the enforcement of any judgment given in such proceedings.

(4) The relevant participants may not themselves do any of the things mentioned in subsection (3), but this does not affect their rights as against the operator.

(5) A person who enters into a contract which purports to be an authorised contract is deemed to have actual knowledge of the scope of the authority given to the operator by the contractual scheme deed.

(6) The validity of an authorised contract is not to be called into question on the ground that a participant lacks capacity to authorise the operator to enter into such a contract.

(7) An authorised contract must make provision for any property which is acquired under or by virtue of the contract to be held by, or to the order of, the depository of the scheme concerned.

**Effect of becoming or ceasing to be a participant**

**261N.**—(1) A person who at any time becomes a participant in a relevant scheme acquires the rights and becomes subject to the liabilities to which the other participants in the relevant scheme are entitled or subject at that time under, or in connection with, authorised contracts.

(2) A person who ceases to be a participant in a relevant scheme ceases to have any of the rights and to be subject to any of the liabilities to which a participant in the relevant scheme is entitled or subject under, or in connection with, authorised contracts.

(3) In this section—

- (a) “authorised contract” has the meaning given in section 261M(1); and
- (b) each of the following is a “relevant scheme”—
  - (i) a stand-alone co-ownership scheme; and
  - (ii) a sub-scheme of an umbrella co-ownership scheme.

**Limited liability**

**261O.**—(1) The debts of a relevant scheme are to be paid by the operator out of the property subject to the relevant scheme.

(2) The participants in a relevant scheme are not liable for the debts of the relevant scheme beyond the amount of the property subject to the relevant scheme which is available to the operator to meet the debts.

(3) In this section—

- (a) a reference to the debts of a relevant scheme is a reference to debts and obligations incurred under, or in connection with, authorised contracts;
- (b) “authorised contract” has the meaning given in section 261M(1); and
- (c) “relevant scheme” has the meaning given in section 261N(3).

### **Segregated liability in relation to umbrella co-ownership schemes**

**261P.**—(1) The property subject to a sub-scheme of an umbrella co-ownership scheme must not be used to discharge any liabilities of, or meet any claims against, any person other than the participants in that sub-scheme.

(2) Any provision contained in any contract, agreement or other document is void in so far as it is inconsistent with subsection (1), and any transaction involving the application of property in contravention of that subsection is void.

(3) The FCA may give a direction under section 261X(2) in relation to a sub-scheme of an umbrella co-ownership scheme as if the sub-scheme were an authorised contractual scheme, but this subsection does not enable the FCA to apply to the court for an order under section 261Y in relation to a sub-scheme of an umbrella co-ownership scheme.

(4) Where such a direction is given, the reference in section 261Z1(6) to the scheme is to be read as a reference to the sub-scheme concerned.

### *Alterations*

### **Alteration of contractual schemes and changes of operator or depositary**

**261Q.**—(1) This section applies where the operator of an authorised contractual scheme proposes to make an alteration to the scheme, other than an alteration—

- (a) to which section 261S applies; or
- (b) to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011(26) (mergers) applies.

(2) The operator must give written notice of the proposal to the FCA.

(3) Any notice given in respect of a proposal to alter the scheme involving a change in the contractual scheme deed must be accompanied by a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the contractual scheme rules.

(4) The operator of an authorised contractual scheme must give written notice to the FCA of any proposal to replace the depositary of the scheme.

(5) The depositary of an authorised contractual scheme must give written notice to the FCA of any proposal to replace the operator of the scheme.

(6) Effect is not to be given to any proposal of which notice has been given under subsection (2), (4) or (5) unless—

- (a) the FCA, by written notice, has given its approval to the proposal; or

- (b) one month, beginning with the date on which the notice was given, has expired without the operator or the depositary having received from the FCA a warning notice under section 261R in respect of the proposal.

(7) The FCA must not approve a proposal to replace the operator or the depositary of an authorised contractual scheme unless it is satisfied that, if the proposed replacement is made, the scheme will continue to comply with the requirements of section 261D(4) to (9).

#### **Procedure when refusing approval of a proposal under section 261Q**

**261R.**—(1) If the FCA proposes to refuse approval of a proposal under section 261Q to replace the depositary or operator of an authorised contractual scheme, it must give a warning notice to the person by whom notice of the proposal was given under section 261Q(4) or (5).

(2) If the FCA proposes to refuse approval of a proposal under section 261Q to alter an authorised contractual scheme, it must give separate warning notices to the operator and the depositary of the scheme.

(3) To be valid the warning notice must be received by the person to whom it is given before the end of one month beginning with the date on which notice of the proposal was given.

(4) If, having given a warning notice to a person, the FCA decides to refuse approval—

- (a) it must give that person a decision notice; and
- (b) that person may refer the matter to the Tribunal.

#### **Proposal to convert to a non-feeder UCITS**

**261S.**—(1) This section applies where the operator of an authorised contractual scheme which is a feeder UCITS proposes to make an alteration to the scheme which—

- (a) involves a change in the contractual scheme deed, and
- (b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.

(2) The operator must give written notice of the proposal to the FCA.

(3) Any notice given in respect of such a proposal must be accompanied by—

- (a) a certificate signed by a solicitor to the effect that the change will not affect the compliance of the deed with the contractual scheme rules; and
- (b) the specified information.

(4) The FCA must, within 15 working days after the date on which it received the notice under subsection (2), give—

- (a) written notice to the operator of the scheme that the FCA approves the proposed amendments to the contractual scheme deed, or
- (b) separate warning notices to the operator and depositary of the scheme that the FCA proposes to refuse approval of the proposed amendments.

(5) Effect is not to be given to any proposal of which notice has been given under subsection (2) unless the FCA, by written notice, has given its approval to the proposal.

(6) If, having given a warning notice to a person, the FCA decides to refuse approval—

- (a) it must give that person a decision notice; and
- (b) that person may refer the matter to the Tribunal.

(7) Subsection (8) applies where—

- (a) the notice given under subsection (2) relates to a proposal to amend the contractual scheme deed of a feeder UCITS to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and
  - (b) the proceeds of the winding-up are to be paid to the feeder UCITS before the date on which the feeder UCITS proposes to start investing in accordance with the new investment objectives and policy provided for in its amended contractual scheme deed and contractual scheme rules.
- (8) Where this subsection applies, the FCA may only approve the proposal subject to the conditions set out in section 283A(5) and (6)(27).
- (9) In this section “specified” means—
- (a) specified in rules made by the FCA to implement the UCITS directive, or
  - (b) specified in any directly applicable EU regulation or decision made under the UCITS directive.

#### *Exclusion clauses*

#### **Avoidance of exclusion clauses**

**261T.** Any provision—

- (a) of the contractual scheme deed of an authorised contractual scheme, or
- (b) in the case of an authorised contractual scheme which is a partnership scheme, of the contract under which the depositary of the scheme is appointed,

is void in so far as it would have the effect of exempting the operator or the depositary from liability for any failure to exercise due care and diligence in the discharge of its functions in respect of the scheme.

#### *Ending of authorisation*

#### **Revocation of authorisation order otherwise than by consent**

**261U.**—(1) An authorisation order may be revoked by an order made by the FCA if it appears to the FCA that—

- (a) one or more of the requirements for the making of the order are no longer satisfied;
- (b) the operator or depositary of the scheme concerned has contravened a requirement imposed on the operator or depositary by or under this Act;
- (c) the operator or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular;
- (d) no regulated activity is being carried on in relation to the scheme and the period of that inactivity began at least twelve months earlier; or
- (e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.

(2) For the purposes of subsection (1)(e), the FCA may take into account any matter relating to—

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(27) Section 283A was inserted by [S.I. 2011/1613](#) and amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(f).

- (a) the scheme;
- (b) the operator or depositary;
- (c) any person employed by or associated with the operator or depositary in connection with the scheme;
- (d) any director of the operator or depositary;
- (e) any person exercising influence over the operator or depositary;
- (f) any body corporate in the same group as the operator or depositary;
- (g) any director of any such body corporate;
- (h) any person exercising influence over any such body corporate.

#### **Procedure for revoking authorisation order**

**261V.**—(1) If the FCA proposes to make an order under section 261U revoking an authorisation order (“a revoking order”), it must give separate warning notices to the operator and the depositary of the scheme.

(2) If the FCA decides to make a revoking order, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

#### **Requests for revocation of authorisation order**

**261W.**—(1) An authorisation order may be revoked by an order made by the FCA at the request of the operator or depositary of the scheme concerned.

(2) If the FCA makes an order under subsection (1), it must give written notice of the order to the operator and depositary of the scheme concerned.

(3) The FCA may refuse a request to make an order under this section if it considers that—

- (a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the authorisation order should be revoked; or
- (b) revocation would not be in the interests of the participants or would be incompatible with an EU obligation.

(4) If the FCA proposes to refuse a request under this section, it must give separate warning notices to the operator and the depositary of the scheme.

(5) If the FCA decides to refuse the request, it must without delay give each of them a decision notice and either of them may refer the matter to the Tribunal.

#### *Powers of intervention*

#### **Directions**

**261X.**—(1) The FCA may give a direction under this section if it appears to the FCA that—

- (a) one or more of the requirements for the making of an authorisation order are no longer satisfied;
- (b) the operator or depositary of an authorised contractual scheme has contravened, or is likely to contravene, a requirement imposed—
  - (i) by or under this Act; or
  - (ii) by any directly applicable EU regulation or decision made under the UCITS directive;

- (c) the operator or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular; or
  - (d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.
- (2) A direction under this section may—
- (a) require the operator of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;
  - (b) require the operator and depositary of the scheme to wind it up.
- (3) If the authorisation order is revoked, the revocation does not affect any direction under this section which is then in force.
- (4) A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked.
- (5) If a person contravenes a direction under this section, section 138D(28) applies to the contravention as it applies to a contravention mentioned in that section.
- (6) The FCA may revoke or vary a direction given under this section, either on its own initiative or on the application of a person to whom the direction was given, if it appears to the FCA—
- (a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;
  - (b) in the case of variation, that the direction should take effect or continue in force in a different form.

### **Applications to the court**

- 261Y.**—(1) If the FCA could give a direction under section 261X, it may also apply to the court for an order—
- (a) removing the operator or the depositary, or both the operator and the depositary, of the scheme; and
  - (b) replacing the person or persons removed with a suitable person or persons nominated by the FCA.
- (2) The FCA may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of section 261D(4) to (9) would be complied with.
- (3) If it appears to the FCA that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the court for an order—
- (a) removing the operator or the depositary, or both the operator and the depositary, of the scheme; and
  - (b) appointing an authorised person to wind up the scheme.
- (4) On an application under this section the court may make such order as it thinks fit.
- (5) The court may, on the application of the FCA, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).
- (6) The FCA must give written notice of the making of an application under this section to the operator and depositary of the scheme concerned.

- (7) The jurisdiction conferred by this section may be exercised by—
- (a) the High Court;
  - (b) in Scotland, the Court of Session.

### **Winding up or merger of master UCITS**

**261Z.**—(1) Subsection (2) applies if a master UCITS which has one or more feeder UCITS which are authorised contractual schemes is wound up, whether as a result of a direction given by the FCA under section 257(29) or 261X, an order of the court under section 258(30) or 261Y, rules made by the FCA or otherwise.

(2) The FCA must direct the operator and depositary of any authorised contractual scheme which is a feeder UCITS of the master UCITS to wind up the feeder UCITS unless—

- (a) the FCA approves under section 283A the investment by the feeder UCITS of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in units of another UCITS or master UCITS; or
- (b) the FCA approves under section 261S an amendment of the contractual scheme deed of the feeder UCITS which would enable it to convert into a UCITS which is not a feeder UCITS.

(3) Subsection (4) applies if a master UCITS which has one or more feeder UCITS which are authorised contractual schemes—

- (a) merges with another UCITS, or
- (b) is divided into two or more UCITS.

(4) The FCA must direct the operator and depositary of any authorised contractual scheme which is a feeder UCITS of the master UCITS to wind up the scheme unless—

- (a) the FCA approves under section 283A the investment by the scheme of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in the units of—
  - (i) the master UCITS which results from the merger;
  - (ii) one of the UCITS resulting from the division; or
  - (iii) another UCITS or master UCITS;
- (b) the FCA approves under section 261S an amendment of the contractual scheme deed of the scheme concerned which would enable it to convert into a UCITS which is not a feeder UCITS.

### **Procedure on giving directions under section 261X or 261Z and varying them on FCA's own initiative**

**261Z1.**—(1) A direction under section 261X or 261Z takes effect—

- (a) immediately, if the notice given under subsection (3) states that that is the case;
- (b) on such date as may be specified in the notice; or
- (c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

(2) A direction under section 261X may be expressed to take effect immediately (or on a specified date) only if the FCA, having regard to the ground on which it is exercising its power

(29) Section 257 was amended by the Financial Services Act 2012, Schedule 18, paragraphs 9(1) and (2)(c) and 12.

(30) Sections 258 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(c).



under that section, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the FCA proposes to give a direction under section 261X or 261Z, or gives a direction under either section with immediate effect, it must give separate written notice to the operator and the depositary of the scheme concerned.

(4) The notice must—

- (a) give details of the direction;
- (b) inform the person to whom it is given of when the direction takes effect;
- (c) state the FCA's reasons for giving the direction and for its determination as to when the direction takes effect;
- (d) inform the person to whom it is given that representations may be made to the FCA within such period as may be specified in it (whether or not the matter has been referred to the Tribunal); and
- (e) inform the person to whom it is given of the right to refer the matter to the Tribunal.

(5) If the direction imposes a requirement under section 261X(2)(a), the notice must state that the requirement has effect until—

- (a) a specified date; or
- (b) a further direction.

(6) If the direction is given under section 261X(2)(b) or section 261Z(2) or (4), the scheme must be wound up—

- (a) by a date specified in the notice; or
- (b) if no date is specified, as soon as practicable.

(7) The FCA may extend the period allowed under the notice for making representations.

(8) If, having considered any representations made by a person to whom the notice was given, the FCA decides—

- (a) to give the direction in the way proposed, or
- (b) if it has been given, not to revoke the direction,

it must give separate written notice to the operator and the depositary of the scheme concerned.

(9) If, having considered any representations made by a person to whom the notice was given, the FCA decides—

- (a) not to give the direction in the way proposed,
- (b) to give the direction in a way other than that proposed, or
- (c) to revoke a direction which has effect,

it must give separate written notice to the operator and the depositary of the scheme concerned.

(10) A notice given under subsection (8) must inform the persons to whom it is given of the right to refer the matter to the Tribunal.

(11) A notice under subsection (9)(b) must comply with subsection (4).

(12) If a notice informs a person of the right to refer a matter to the Tribunal, it must give an indication of the procedure on such a reference.

(13) This section applies to the variation of a direction on the FCA's own initiative as it applies to the giving of a direction.

(14) For the purposes of subsection (1)(c), whether a matter is open to review is to be determined in accordance with section 391(8).

**Procedure: refusal to revoke or vary direction**

**261Z2.**—(1) If on an application under section 261X(6) for a direction to be revoked or varied the FCA proposes—

- (a) to vary the direction otherwise than in accordance with the application, or
- (b) to refuse to revoke or vary the direction,

it must give the applicant a warning notice.

(2) If the FCA decides to refuse to revoke or vary the direction—

- (a) it must give the applicant a decision notice; and
- (b) the applicant may refer the matter to the Tribunal.

**Procedure: revocation of direction and grant of request for variation**

**261Z3.**—(1) If the FCA decides on its own initiative to revoke a direction under section 261X it must give separate written notice of its decision to the operator and the depositary of the scheme.

(2) If on an application under section 261X(6) for a direction to be revoked or varied the FCA decides to revoke the direction or vary it in accordance with the application, it must give the applicant written notice of its decision.

(3) A notice under this section must specify the date on which the decision takes effect.

(4) The FCA may publish such information about the revocation or variation, in such way, as it considers appropriate.

**Information for home state regulator**

**261Z4.**—(1) Subsection (2) applies if, in accordance with rules made by the FCA to implement Article 66 of the UCITS directive, the FCA is informed by the operator of an authorised contractual scheme which is a master UCITS that a feeder UCITS which invests in units of the scheme is an EEA UCITS.

(2) The FCA must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.

**Information for feeder UCITS**

**261Z5.**—(1) The FCA must immediately inform the operator of any authorised contractual scheme which is a feeder UCITS of an authorised unit trust scheme, an authorised contractual scheme or an authorised open-ended investment company (the master UCITS) of—

- (a) any failure of which the FCA becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;
- (b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the FCA;
- (c) any information reported to the FCA pursuant to rules of the FCA made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, or its management company, trustee, depositary or auditor.

(2) The FCA must immediately inform the operator of any authorised contractual scheme which is a feeder UCITS of an EEA UCITS of any information received from the home state regulator of the EEA UCITS in relation to—

- (a) any failure by the EEA UCITS to comply with any requirement in Chapter VIII of the UCITS directive;
- (b) any decision or measure imposed on the EEA UCITS under provisions implementing Chapter VIII of the UCITS directive;
- (c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEA UCITS, its operator, depositary or auditor.

(3) Where the FCA has the information described in subsection (1)(a), (b) or (c) in relation to an authorised contractual scheme which is a master UCITS for one or more feeder UCITS which are EEA UCITS, the FCA must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.”.

(13) In section 270(**31**) (schemes authorised in designated countries or territories), in subsection (4)—

(a) after paragraph (a) insert—

“(aa) authorised contractual schemes which are co-ownership schemes;

(ab) authorised contractual schemes which are partnership schemes;”;

(b) for paragraph (c) substitute—

“(c) any two or more of the kinds of collective investment scheme mentioned in paragraphs (a) to (b).”.

(14) In section 272(**32**) (individually recognised overseas schemes), in subsection (6)—

(a) after paragraph (a) insert—

“(aa) authorised contractual schemes which are co-ownership schemes;

(ab) authorised contractual schemes which are partnership schemes;”;

(b) for paragraph (c) substitute—

“(c) any two or more of the kinds of collective investment scheme mentioned in paragraphs (a) to (b).”.

(15) In section 283A(**33**) (master-feeder structures), in sub-paragraph (ii) of subsection (5)(b), after “the trust deed” insert “, contractual scheme deed”.

(16) In section 347(**34**) (the record of authorised persons etc.)—

(a) in subsection (1), after paragraph (b) insert—

“(ba) authorised contractual scheme;”;

(b) in subsection (2), after paragraph (b) insert—

“(ba) in the case of an authorised contractual scheme, the name and address of the operator and depositary of the scheme;”;

(c) in subsection (7), after ““Authorised unit trust scheme”,” insert ““authorised contractual scheme”,”.

(17) In section 351A(**35**) (disclosure under the UCITS directive)—

(a) in subsection (2)—

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(31) Section 270 was amended by the Financial Services Act 2012, Schedule 18, paragraph 16.

(32) Section 272 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(f).

(33) Section 283A was inserted by [S.I. 2011/1613](#) and amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(f).

(34) Section 347 was amended by the Financial Services Act 2012, Schedule 12, paragraph 16. There are other amendments not relevant to these Regulations.

(35) Section 351A was inserted by [S.I. 2011/1613](#) and amended by the Financial Services Act 2012, Schedule 12, paragraph 22.

- (i) in paragraphs (a) and (c), after “authorised unit trust scheme” insert “or authorised contractual scheme”;
  - (ii) after paragraph (b) insert—
    - “(ba) the depositary of an authorised contractual scheme that is a master UCITS;”;
  - (iii) after paragraph (d) omit “or” and insert—
    - “(da) the depositary of an authorised contractual scheme that is a feeder UCITS; or”;
  - (iv) for paragraph (e) substitute—
    - “(e) a person acting on behalf of a person within any of paragraphs (a) to (da)”;
  - (b) in subsection (4), after ““authorised unit trust scheme”,” insert ““authorised contractual scheme”,”.
- (18) In section 391 (publication), in subsection (1ZB)(m)(36), after “section 249(1)” insert “or 261K(1)”.
- (19) In section 392(37) (application of sections 393 and 394)—
- (a) in paragraph (a)—
    - (i) after “255(1),” insert “261V(1),”;
    - (ii) after “249(1)” insert “or 261K(1)”;
  - (b) in paragraph (b)—
    - (i) after “255(2),” insert “261V(2),”;
    - (ii) after “249(1)” insert “or 261K(1)”.
- (20) In section 395(38) (the FCA’s and PRA’s procedures), in subsection (13), after paragraph (d) insert—
- “(da) 261Z1(3), (8) or (9)(b),”.
- (21) In Schedule 1ZA(39) (the Financial Conduct Authority), in paragraph 8(3)(c)(ii), for “or section 249(1)” insert “, section 249(1) or 261K(1)”.

### **Amendment to the Stock Transfer Act 1963**

**4.** In section 1 of the Stock Transfer Act 1963(40) (simplified transfer of securities), in subsection (4)(e)(41), after “units of an authorised unit trust scheme” insert “, an authorised contractual scheme”.

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(36) Subsection (1ZB) was substituted by the Financial Services Act 2012, Schedule 9, paragraph 30(2).

(37) Section 392 was amended by the Financial Services Act 2012, Schedule 13, paragraph 8. There are other amendments not relevant to these Regulations.

(38) Section 395 was amended by the Financial Services Act 2012, Schedule 9, paragraph 34. There are other amendments not relevant to these Regulations.

(39) Schedule 1ZA was substituted by the Financial Services Act 2012, section 6(2) and Schedule 3.

(40) 1963 c. 18.

(41) Subsection (4)(e) was substituted by the Financial Services Act 1986 (c. 60), Schedule 16, paragraph 4(a), and amended by S.I. 2001/3649.

### **Amendment to the Corporation Tax Act 2010**

5. In section 1121 of the Corporation Tax Act 2010(42) (“company”), in subsection (1), after “does not include a partnership,” insert “a co-ownership scheme (as defined by section 235A of the Financial Services and Markets Act 2000),”.

### **Amendment to the Financial Services Act 2012**

6. In section 85 of the Financial Services Act 2012(43) (relevant functions in relation to complaints scheme), in subsection (4)(c)(ii), after “section 249(1)” insert “or 261K(1)”.

## **PART 3**

### **AMENDMENTS TO SECONDARY LEGISLATION**

#### **The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975**

7.—(1) The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975(44) is amended as follows.

(2) In article 2, in paragraph (1)(45)—

(a) after the definition of “day care premises” insert—

““depository”, in relation to an authorised contractual scheme, has the meaning given in section 237(2) of the 2000 Act;” and

(b) after the definition of “open-ended investment company” insert—

““operator”, in relation to an authorised contractual scheme, has the meaning given in section 237(2) of the 2000 Act(46);”.

(3) In article 3(g)(47), in the table, after entry 3 insert the following entry—

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“3A	(a)	The operator or depository of an authorised contractual scheme (within the meaning of section 237(3) of the 2000 Act).	The FCA.
	(b)	An associate of the person (whether or not an individual) mentioned in sub-paragraph (a).”	

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(4) In article 4, after paragraph (d)(vi)(48) insert—

“(via) to refuse to make, or to revoke, an order declaring a contractual scheme to be an authorised contractual scheme under section 261D of the 2000 Act or to refuse to give its approval under section 261Q of the 2000 Act to a proposal to replace the operator or depository of such a scheme,

(vib) to give a direction under section 261X of the 2000 Act or to vary (or to refuse to vary or revoke) such a direction,”.

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(42) 2010 c. 4.

(43) 2012 c.21.

(44) S.I. 1975/1023. Relevant amendments are noted separately. This Order was revoked in relation to Scotland by S.S.I. 2003/231.

(45) Paragraph 1 was substituted by S.I. 1986/2268 and amended by S.I. 2001/3816, 2008/3259 and 2013/472.

(46) The definition of “the operator” in section 237(2) is amended by regulation 3(6)(b) of these Regulations.

(47) Paragraph (g) was inserted by S.I. 2001/3816 and amended by S.I. 2007/2149 and 2013/472 (which substituted the table).

(48) Article 4 was amended by S.I. 2001/3816 (which substituted paragraph (d)) and 2008/3259.

**The Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979**

8.—(1) The Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979<sup>(49)</sup> is amended as follows.

(2) In article 1, in paragraph (2)<sup>(50)</sup>—

(a) after the definition of “day care” insert—

““depository”, in relation to an authorised contractual scheme, has the meaning given in section 237(2) of the 2000 Act;” and

(b) after the definition of “open-ended investment company” insert—

““operator”, in relation to an authorised contractual scheme, has the meaning given in section 237(2) of the 2000 Act;”.

(3) In article 2(e)<sup>(51)</sup>, in the table, after entry 3 insert the following entry—

“3A	(a)	The operator or depository of an authorised contractual scheme (within the meaning of section 237(3) of the 2000 Act).	The FCA.
	(b)	An associate of the person (whether or not an individual) mentioned in sub-paragraph (a).”	

(4) In article 3, after paragraph (d)(vi)<sup>(52)</sup> insert—

“(via) to refuse to make, or to revoke, an order declaring a contractual scheme to be an authorised contractual scheme under section 261D of the 2000 Act or to refuse to give its approval under section 261Q of the 2000 Act to a proposal to replace the operator or depository of such a scheme,

(vib) to give a direction under section 261X of the 2000 Act or to vary (or to refuse to vary or revoke) such a direction,”.

**The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001**

9.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001<sup>(53)</sup> is amended as follows.

(2) In article 51 (establishing etc. a collective investment scheme)—

(a) in paragraph (1), after sub-paragraph (b) insert—

“(bb) acting as the depository of an authorised contractual scheme;” and

(b) in paragraph (2), after ““authorised unit trust scheme”” insert ““, authorised contractual scheme””.

<sup>(49)</sup> S.R. 1979 No. 195. Relevant amendments are noted separately.

<sup>(50)</sup> Paragraph (2) was amended by S.R. 2001 No. 400 and 2009 No. 303 and S.I. 2013/472.

<sup>(51)</sup> Paragraph (e) was inserted (as paragraph (g)) by S.R. 2001 No. 400 and amended by S.R. 2003 No. 355 and 2012 No. 318 and S.I. 2013/472 (which substituted the table).

<sup>(52)</sup> Paragraph (d) was substituted by S.R. 2001 No. 400.

<sup>(53)</sup> S.I. 2001/544, to which there are amendments not relevant to these Regulations.

### **The Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001**

**10.**—(1) The Financial Services and Markets Act 2000 (Promotion of Collective Investment Schemes) (Exemptions) Order 2001<sup>(54)</sup> is amended as follows.

- (2) In article 2 (interpretation: general), in paragraph (1)—
- (a) for the definition of “authorised unit trust scheme” substitute—  
““authorised contractual scheme” and “authorised unit trust scheme” have the meaning given in section 237(3) of the Act;”; and
  - (b) in the definition of “unregulated scheme”, after “authorised unit trust scheme” insert “nor an authorised contractual scheme”.

### **The Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001**

**11.**—(1) The Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001<sup>(55)</sup> is amended as follows.

- (2) In article 2 (interpretation)—
- (a) for the definition of “authorised unit trust scheme” substitute—  
““authorised contractual scheme” and “authorised unit trust scheme” have the meaning given in section 237(3) of the Act;”; and
  - (b) for the definition of “feeder fund” substitute—  
““feeder fund” means an authorised unit trust scheme the sole object of which is investment in units of a single authorised unit trust scheme, in units of a single authorised contractual scheme or in shares in a single open-ended investment company;”.
- (3) In the Schedule (arrangements not amounting to a collective investment scheme), in paragraph 1 (individual investment management arrangements), in sub-paragraph (a)(ii), after “authorised unit trust schemes,” insert “authorised contractual schemes,”.

### **The Financial Services and Markets Act 2000 (Stakeholder Products) Regulations 2004**

**12.**—(1) The Financial Services and Markets Act 2000 (Stakeholder Products) Regulations 2004<sup>(56)</sup> is amended as follows.

- (2) In regulation 2 (interpretation), in paragraph (1)—
- (a) for the definition of “manager” substitute—  
““manager” means—
    - (a) the operator of a relevant collective investment scheme which is an authorised contractual scheme;
    - (b) the manager of any other relevant collective investment scheme; or
    - (c) the insurer of a relevant linked long-term contract;”;
  - (b) after the definition of “manager” insert—  
““operator”, in relation to an authorised contractual scheme, has the meaning given in section 237(2) of the 2000 Act;”; and

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<sup>(54)</sup> S.I. 2001/1060, to which there are amendments not relevant to these Regulations.

<sup>(55)</sup> S.I. 2001/1062, to which there are amendments not relevant to these Regulations.

<sup>(56)</sup> S.I. 2004/2738, to which there are amendments not relevant to these Regulations.

- (c) in the definition of “relevant collective investment scheme”, after “authorised unit trust scheme,” insert “an authorised contractual scheme.”
- (3) In regulation 9 (permitted reductions in investor’s rights and investment property), in paragraph (9)(e), after paragraph (i) omit “or” and insert—
- “(ia) to arrange for the investor to receive a copy of the annual report and accounts issued to investors by the manager of an authorised contractual scheme in which the investment scheme is invested directly or indirectly, or to receive any other information issued to investors by the manager of such a scheme, or”.

### **The Limited Partnerships (Forms) Rules 2009**

- 13.—(1) The Limited Partnerships (Forms) Rules 2009<sup>(57)</sup> are amended as follows.
- (2) For the form in Part 2 of the Schedule to the Rules (form for registering changes to limited partnerships) substitute the form in Schedule 1 to these Regulations.

### **The Undertakings for Collective Investment in Transferable Securities Regulations 2011**

- 14.—(1) Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011<sup>(58)</sup> (mergers) is amended as follows.
- (2) In regulation 7 (interpretation), in paragraph (1)—
- (a) in the definition of “depository”—
- (i) omit the word “means” immediately after “depository”;
- (ii) after paragraph (a) insert—
- “(aa) in relation to an authorised contractual scheme means the person by whom, or to whose order, the property subject to the scheme is held;”;
- (b) in the definition of “managers”—
- (i) for “managers” substitute “manager”;
- (ii) after paragraph (a) insert—
- “(aa) in relation to an authorised contractual scheme, the operator of that scheme;”;
- (c) in the definition of “UCITS”, after “open-ended investment company,” insert “an authorised contractual scheme”;
- (d) in the definition of “unit-holders”—
- (i) in paragraph (a) for “UCITS” substitute “company”;
- (ii) after paragraph (a) insert—
- “(aa) in the case of an authorised contractual scheme, the unit-holders in that scheme; and”;
- (e) in the definition of “units”, in paragraph (b), after “authorised unit trust scheme” insert “or an authorised contractual scheme”.
- (3) In regulation 8, in paragraph (1), after “new company” insert “, contractual scheme”.

<sup>(57)</sup> S.I. 2009/2160.

<sup>(58)</sup> S.I. 2011/1613 as amended by S.I. 2013/472.



## **The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013**

**15.**—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013<sup>(59)</sup> is amended as follows.

(2) In article 2 (interpretation), in paragraph (1)—

(a) after the definition of “Council of Lloyd’s” insert—

““depository”, in relation to an authorised contractual scheme, has the meaning given in section 237(2) of the 2000 Act;” and

(b) after the definition of “open-ended investment company” insert—

““operator”, in relation to an authorised contractual scheme, has the meaning given in section 237(2) of the 2000 Act;”.

(3) In Schedule 2 (financial services)—

(a) in Part 1, in paragraph 1, after sub-paragraph (f) insert—

“(fa) to refuse to make, or to revoke, an order declaring a contractual scheme to be an authorised contractual scheme under section 261D of the 2000 Act or to refuse to give its approval under section 261Q of the 2000 Act to a proposal to replace the operator or depository of such a scheme;

(fb) to give a direction under section 261X of the 2000 Act or to vary (or to refuse to vary or revoke) such a direction;” and

(b) in Part 2, in the table, after the entry in paragraph 3 insert the following entry—

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“3A	(1)	The operator or depository of an authorised contractual scheme (within the meaning of section 237(3) of the 2000 Act).	The FCA.
	(2)	An associate of the person (whether or not an individual) mentioned in sub-paragraph (1).”	

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## **PART 4**

### **MODIFICATION OF THE LIMITED PARTNERSHIPS ACT 1907**

#### **Partnership schemes**

**16.**—(1) The Limited Partnerships Act 1907<sup>(60)</sup> has effect with the following modifications in its application to a partnership scheme in respect of which an authorisation order is made.

(2) In this regulation “authorisation order” means an order made under section 261D(1) of FSMA.

(3) Section 4<sup>(61)</sup> (definition and constitution of limited partnership) is to be read as if—

(a) in subsection (2)—

(i) after the words “general partners, who” there were inserted “, subject to regulations 18 and 19 of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013;”;

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<sup>(59)</sup> S.S.I. 2013/50 as amended by S.I. 2013/472.

<sup>(60)</sup> 1907 c. 24.

<sup>(61)</sup> Section 4 was amended by S.I. 2002/3203 and 2003/2904.

- (ii) for the words “who shall not be liable for the debts or obligations of the firm beyond the amount so contributed” there were substituted “whose liability for the debts or obligations of the firm is as set out in subsections (2A) and (2B).”;
- (b) after subsection (2) there were inserted—
- “(2A) The limited partners are not liable for the debts or obligations of the firm beyond the amount of the partnership property which is available to the general partner to meet such debts or obligations.
- (2B) A person (“P”) who ceases to be a limited partner ceases to have any liability for the debts or obligations of the firm.
- (2C) Subsection (2B) does not prevent the debts and obligations of the firm from being taken into account, after P has ceased to be a limited partner, in determining the value of P’s share in the partnership.”; and
- (c) subsection (3) were omitted.
- (4) In section 6 (modifications of general law in case of limited partnerships)—
- (a) subsection (1) is to be read as if at the end there were inserted—
- “For the purposes of this subsection, the exercise of rights conferred on limited partners by rules made under section 261I of the Financial Services and Markets Act 2000 does not constitute taking part in the management of the partnership business.”.
- (b) in subsection (3), the reference to the general partners is to be read as a reference to the general partner and the depositary of the partnership scheme; and
- (c) subsection (5) is to be read as if—
- (i) the words “Subject to any agreement expressed or implied between the partners” were omitted; and
- (ii) in paragraph (b), at the beginning there were inserted “Subject to any express agreement between the partners.”.
- (5) Section 7 (law as to private partnerships to apply where not excluded by this Act) is to be read as if after the words “Subject to the provisions of this Act” there were inserted “as modified by regulation 16 of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013”.
- (6) In section 9(62) (registration of changes in partnerships), subsection (1) is to be read as if—
- (a) paragraphs (d) and (f) were omitted; and
- (b) the changes giving rise to a duty to send a statement to the registrar included—
- (i) the making and the revocation of an authorisation order in respect of a limited partnership; and
- (ii) any change in the general partner or the name of the general partner of the limited partnership.
- (7) Section 10 (advertisement in Gazette of statement of general partner becoming a limited partner and of assignment of share of limited partner) does not apply.

## PART 5

### WINDING UP INSOLVENT CONTRACTUAL SCHEMES

#### Co-ownership schemes: winding up by the court

17.—(1) In this regulation and in Schedules 2 to 5—

(a) each of the following is a “relevant scheme”—

- (i) a stand-alone co-ownership scheme;
- (ii) a sub-scheme of an umbrella co-ownership scheme;

(b) in relation to a relevant scheme—

- (i) a reference to a creditor is a reference to a person to whom a sum is or may become payable in respect of a debt of the relevant scheme;
- (ii) a reference to a debt is a reference to any debt or obligation incurred for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the relevant scheme;
- (iii) a reference to a liability is a reference to any liability (including any contingent or prospective liability) of the participants in the relevant scheme for a debt of the relevant scheme; and

(c) in relation to a sub-scheme of an umbrella co-ownership scheme, a reference to the operator or the depositary is a reference to the operator or the depositary of the umbrella co-ownership scheme in relation to which that sub-scheme forms a separate pool of the contributions of the participants and the profits and income out of which payments are made to them.

(2) Subject to the provisions of this regulation, a relevant scheme may be wound up under the 1986 Act or the 1989 Order as if it were an unregistered company (within the meaning of the 1986 Act or the 1989 Order as the case may be).

(3) The High Court has jurisdiction to wind up a relevant scheme if the depositary of the relevant scheme has a place of business situated in England and Wales or Northern Ireland.

(4) The Court of Session has jurisdiction to wind up a relevant scheme if the depositary of the relevant scheme has a place of business situated in Scotland.

(5) If the depositary of a relevant scheme has a place of business situated in Northern Ireland, the relevant scheme may not be wound up under Part 5 of the 1986 Act (winding up of unregistered companies) unless the depositary has a place of business situated in England and Wales or Scotland, or in both England and Wales and Scotland.

(6) If the depositary of a relevant scheme has a place of business situated in England and Wales or Scotland, the relevant scheme may not be wound up under Part 6 of the 1989 Order (winding up of unregistered companies) unless the depositary has a place of business situated in Northern Ireland.

(7) If the depositary of a relevant scheme has a place of business situated in both England and Wales and Scotland—

- (a) the High Court has jurisdiction to wind up the relevant scheme if the winding up proceedings are instituted in England and Wales; and
- (b) the Court of Session has jurisdiction to wind up the relevant scheme if the winding up proceedings are instituted in Scotland.

(8) Schedules 2 to 5 (which make provision about the application in relation to the winding up of relevant schemes of provisions in the 1986 Act, the 1989 Order, the Insolvency Rules 1986, the Insolvency (Scotland) Rules 1986 and the Insolvency Rules (Northern Ireland) 1991) have effect.

(9) An application to the High Court or the Court of Session for the winding up of a relevant scheme is to be made by petition presented—

- (a) by the operator or any creditor of the relevant scheme;
- (b) by the FCA;
- (c) in a case falling within section 124A of the 1986 Act<sup>(63)</sup> (petition for winding up on grounds of public interest), as modified by Schedule 2, by the Secretary of State; or
- (d) in a case falling within Article 104A of the 1989 Order<sup>(64)</sup> (petition for winding up on grounds of public interest), as modified by Schedule 2, by the Department of Enterprise, Trade and Investment.

(10) The operator of a relevant scheme, upon presenting a petition for the winding up of the relevant scheme or being served with such a petition, must immediately—

- (a) cease entering into contracts which are binding on the participants;
- (b) cease making payments under authorised contracts; and
- (c) except where the operator has already done so pursuant to a direction given by the FCA, cease the issue and redemption of units under the relevant scheme.

(11) Where the court makes an order dismissing a petition presented for the winding up of a relevant scheme, the prohibitions imposed by paragraph (10) cease to apply in relation to the scheme upon the making of the order.

(12) Where, upon hearing a petition presented for the winding up of a relevant scheme, the court makes a winding-up order, the operator ceases to have the authority which was given in relation to the relevant scheme in accordance with section 235A(4)(d) of FSMA<sup>(65)</sup>.

(13) A relevant scheme is not an unincorporated body for the purposes of section 6(1) of the Bankruptcy (Scotland) Act 1985<sup>(66)</sup> (sequestration of other estates).

(14) Section 370 of FSMA<sup>(67)</sup> (liquidator's duty to report to FCA and PRA) has effect with the following modifications in relation to a relevant scheme which is being wound up on a petition presented by any person—

- (a) in paragraph (a) of subsection (1) and paragraph (a) of subsection (2) the reference to a body is to be read as a reference to the relevant scheme; and
- (b) in paragraph (b) of subsection (1) and paragraph (b) of subsection (2) the reference to the body is to be read as a reference to the operator or the depositary of the relevant scheme.

### **Partnership schemes: liability of the general partner (England and Wales and Northern Ireland)**

**18.—**(1) In this regulation—

“authorisation order” means an order made under section 261D(1) of FSMA;

“authorised partnership” means a partnership scheme in respect of which an authorisation order has been made (even if revoked); and

“relevant debts and obligations”, in relation to an authorised partnership, means debts and obligations of the partnership which are incurred while the authorisation order made in respect of the partnership is in force.

<sup>(63)</sup> Section 124A was inserted by the Companies Act 1989 (c. 40), section 60(3), and amended by S.I. 2001/3649 and by the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), Schedule 2, Part 3, paragraph 27.

<sup>(64)</sup> Article 104A was inserted by S.I. 1990/1504 (N.I. 10) and amended by S.I. 2001/3649.

<sup>(65)</sup> Section 235A is inserted by regulation 3(5) of these Regulations.

<sup>(66)</sup> 1985 c. 66.

<sup>(67)</sup> Section 370 was substituted by the Financial Services Act 2012, Schedule 14, paragraph 18.

- (2) In paragraph (4)—
- (a) a reference to a section is a reference to a section of the 1986 Act; and
  - (b) a reference to an Article is a reference to an Article of the 1989 Order.
- (3) Where an authorised partnership is wound up by the court as an unregistered company under Part 5 of the 1986 Act or Part 6 of the 1989 Order, the general partner of the partnership has no personal liability for relevant debts and obligations.
- (4) Paragraph (3) is without prejudice to the power of the court—
- (a) to make an order under section 212 or Article 176 (summary remedy against delinquent directors, liquidators, etc.) compelling the general partner to repay, restore or account for any money or property or to contribute to the assets of the partnership;
  - (b) if the court refuses to examine into the conduct of the general partner on an application under section 212 or Article 176, to make a judgment or order in other proceedings brought against the general partner on any ground on which an application may be made under section 212 or Article 176;
  - (c) to give directions under section 215 (proceedings under ss 213, 214) for giving effect to a declaration under section 213 (fraudulent trading) or section 214 (wrongful trading) that the general partner is liable to make a contribution to the assets of the partnership; or
  - (d) to give directions under Article 179 (proceedings under Articles 177 and 178) for giving effect to a declaration under Article 177 (fraudulent trading) or Article 178 (wrongful trading) that the general partner is liable to make a contribution to the assets of the partnership.

### **Partnership schemes: liability of the general partner (Scotland)**

- 19.**—(1) In this regulation—
- “the Act” means the Bankruptcy (Scotland) Act 1985<sup>(68)</sup>;
  - “authorisation order” means an order made under section 261D(1) of FSMA;
  - “authorised partnership” means a partnership scheme in respect of which an authorisation order has been made (even if revoked); and
  - “relevant debts and obligations”, in relation to an authorised partnership, means debts and obligations of the partnership which are incurred while the authorisation order made in respect of the partnership is in force.
- (2) The Act has effect with the following modifications in its application to an authorised partnership—
- (a) in section 6 (sequestration of other estates), in subsection (4), paragraph (b) is to be read as if after sub-paragraph (i) there were inserted—
    - “(ia) the Financial Conduct Authority;”;
  - (b) the following provisions are to be read as if after the words “presented by a creditor” there were inserted “, the Financial Conduct Authority”—
    - (i) in section 2 (appointment and functions of the trustee in the sequestration), subsections (5) and (7)(a)<sup>(69)</sup>;
    - (ii) in section 12 (when sequestration is awarded), subsections (2), (3) and (4)(b)<sup>(70)</sup>;

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<sup>(68)</sup> 1985 c. 66.

<sup>(69)</sup> Section 2 was substituted by the Bankruptcy (Scotland) Act 1993 (c. 6). Subsection (5) was amended and subsection (7)(a) was substituted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).

<sup>(70)</sup> Subsections (3) and (4) were substituted by the Bankruptcy (Scotland) Act 1993 (c. 6).

- (iii) in section 15 (further provisions relating to award of sequestration), subsection (5);
- (iv) in section 70 (supplies by utilities), subsection (1)(b); and
- (c) in section 12, in subsection (3)(d), after “a creditor” insert “or the Financial Conduct Authority”.

(3) Where sequestration of the estate of an authorised partnership is awarded under section 12(1) or (3) of the Act, the general partner of the partnership has no personal liability for relevant debts and obligations.

(4) Paragraph (3) is without prejudice to the power of the court to make an order compelling the general partner to repay, restore or account for any money or property, or to contribute to the assets of the partnership, if the general partner has misapplied or retained, or become accountable for, any money or other property of the partnership, or been guilty of any misfeasance or breach of any fiduciary or other duty in relation to the partnership.

## PART 6

### TRANSFER OF UNITS IN CONTRACTUAL SCHEMES BY MEANS OF ELECTRONIC COMMUNICATION

#### Interpretation of Part

**20.** In this Part—

- “contractual scheme deed” has the meaning given in section 235A(8) of FSMA(71); and
- “electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(72).

#### Dispositions of units in co-ownership schemes

**21.**—(1) This regulation extends to England and Wales only.

(2) Subject to paragraph (4), section 53(1)(c) of the Law of Property Act 1925(73) (which imposes requirements for certain dispositions to be in writing) does not apply (if it would otherwise do so) to a disposition of units in a stand-alone co-ownership scheme or a sub-scheme of an umbrella co-ownership scheme where—

- (a) the disposition is by means of electronic communication;
- (b) the electronic communication is made by the person disposing of the units or by that person’s agent authorised in writing or by will; and
- (c) such evidence as the operator or depositary of the scheme, being the person responsible for maintaining a register of the holders of units in accordance with the contractual scheme deed, may require to prove the right of the person referred to in sub-paragraph (b) to dispose of the units is provided to the operator or depositary.

(3) The operator or depositary mentioned in paragraph (2)(c) may refuse to register a transfer of units by means of electronic communication.

(4) Paragraph (2) has no effect in a particular case if the operator or depositary mentioned in paragraph (2)(c) refuses to register the transfer of units which would, apart from paragraph (3), be made by the disposition in that case.

(71) Section 235A is inserted by regulation 3(5) of these Regulations.

(72) 2000 c. 8. The definition was amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.

(73) 1925 c. 20.

## **Gratuitous unilateral obligations relating to units in authorised contractual schemes**

**22.**—(1) This regulation extends to Scotland only.

(2) Subject to paragraph (5), section 1(2)(a)(ii) of the Requirements of Writing (Scotland) Act 1995<sup>(74)</sup> (which requires certain gratuitous unilateral obligations to be in writing) does not apply (if it would otherwise do so) to any gratuitous unilateral obligation relating to units in an authorised contractual scheme where—

- (a) the obligation is created by means of electronic communication;
- (b) the electronic communication is made by the debtor in the obligation; and
- (c) such evidence as the operator or depositary of the scheme, being the person responsible for maintaining a register of the holders of units in accordance with the contractual scheme deed, may require to prove the right of the person referred to in sub-paragraph (b) to create the obligation is provided to the operator or depositary.

(3) Where section 1(2)(a)(ii) of that Act does not apply by virtue of paragraph (2), the obligation is not to be considered an obligation mentioned in subsection (2)(a) of that section for the purposes of subsection (3).

(4) The operator or depositary mentioned in paragraph (2)(c) may refuse to register a transfer of units by means of electronic communication.

(5) Paragraph (2) has no effect in a particular case if the operator or depositary mentioned in paragraph (2)(c) refuses to register the transfer of units which would, apart from paragraph (4), be made by the creation of the obligation in that case.

## **Grants and assignments of any trust or confidence**

**23.**—(1) This regulation extends to Northern Ireland only.

(2) Subject to paragraph (4), section 6 of the Statute of Frauds (Ireland) 1695<sup>(75)</sup> (which requires all grants and assignments of any trust or confidence to be in writing) does not apply (if it would otherwise do so) to any grant or assignment of units in a stand-alone co-ownership scheme or a sub-scheme of an umbrella co-ownership scheme where—

- (a) the grant or assignment is by means of electronic communication;
- (b) the electronic communication is made by the person granting or assigning the units; and
- (c) such evidence as the operator or depositary of the scheme, being the person responsible for maintaining a register of the holders of units in accordance with the contractual scheme deed, may require to prove the right of the person referred to in sub-paragraph (b) to grant or assign the units is provided to the operator or depositary.

(3) The operator or depositary mentioned in paragraph (2)(c) may refuse to register a transfer of units by means of electronic communication.

(4) Paragraph (2) has no effect in a particular case if the operator or depositary mentioned in paragraph (2)(c) refuses to register the transfer of units which would, apart from paragraph (3), be made by the grant or assignment in that case.

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<sup>(74)</sup> 1995 c. 7.

<sup>(75)</sup> 1695 c. 12 (Ir).

## PART 7

### TRANSITIONAL PROVISION IN RELATION TO PERMISSION GIVEN UNDER PART 4A OF THE FINANCIAL SERVICES AND MARKETS ACT 2000

#### **Transitional provision: depositaries of authorised contractual schemes**

**24.**—(1) In this regulation—

“authorised unit trust scheme” has the meaning given in section 237(3) of FSMA;

“open-ended investment company” has the meaning given in section 236(1) of FSMA;

“Part 4A permission” has the meaning given in section 55A(5) of FSMA<sup>(76)</sup>;

“relevant person” means a person who, immediately before the date on which these Regulations come into force, had a Part 4A permission to act as a trustee of an authorised unit trust scheme and as the depositary of an open-ended investment company; and

“trustee” has the meaning given in section 237(2) of FSMA.

(2) If within a period of 30 days beginning with the date on which these Regulations come into force a relevant person gives written notice to the FCA of an intention to act as the depositary of an authorised contractual scheme, the person’s Part 4A permission is to be treated as also relating to the regulated activity of acting as such a depositary, but this is subject to any subsequent variation or cancellation under Part 4A of FSMA (permission to carry on regulated activities).

## PART 8

### REVIEW

#### **Review**

**25.**—(1) Before the end of each review period, the Treasury must—

- (a) carry out a review of regulations 2 to 24,
- (b) set out the conclusions of the review in a report, and
- (c) publish the report.

(2) In carrying out the review, the Treasury must, so far as is reasonable, have regard to how in relation to the constitution of UCITS in accordance with contract law (as common funds managed by management companies) the UCITS Directive is implemented in other Member States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory system established or applied in relation to a contractual scheme by regulations 2 to 24,
- (b) assess the extent to which those objectives are achieved, and
- (c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(4) If a report under this regulation is published before the last day of the review period to which it relates, the following review period is to begin with the day on which that report is published.

(5) In this regulation—

“contractual scheme” has the meaning given in section 235A(1) of FSMA;

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<sup>(76)</sup> Part 4A, including section 55A, was substituted by section 11(2) of the Financial Services Act 2012.



“review period” means—

- (a) the period of five years beginning with the day on which these Regulations come into force, and
- (b) subject to paragraph (4), each successive period of five years;

“the UCITS Directive” means the Directive of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (No.2009/65/EC)<sup>(77)</sup>; and

“UCITS” has the meaning given in Article 1.2 of the UCITS Directive.

*Desmond Swayne*

*Anne Milton*

Two of the Lords Commissioners of Her  
Majesty’s Treasury

5th June 2013

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(77) OJ No. L 302, 17.11.2009, p.32. The Directive has been implemented by the Undertakings for Collective Investment in Transferable Securities Regulations 2011 (S.I. 2011/1613).

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

SCHEDULE 1

Regulation 13

Form for registering changes to limited partnerships

Limited Partnerships Act 1907

# LP6

Statement specifying the nature of a change in the limited partnership and statement of increase in the amount contributed (in cash or otherwise) by limited partners.

Pursuant to section 9 of the Limited Partnerships Act 1907 (see Note 1)

Registration No.

Name of firm

The changes specified below have been made or have occurred in this limited partnership (see notes overleaf):

<b>a. Firm name</b>	Previous name	New name	
<b>b. General nature of the business</b>	Business previously carried on	Business now carried on	
<b>c. Principal place of business</b>	Previous place of business	New place of business	
<b>d. Change in the partners or the name of any partner</b> (see note 2) In the case of an authorised partnership state any change in the general partner or in the name of the general partner			
<b>e. Term or character of the partnership</b> (see note 3)  Where the change in character is authorisation as an authorised partnership or the revocation of such authorisation, give the date and the number of the authorisation order	Change in character	Previous term	New term
<b>f. Sum contributed by any limited partner</b> (see note 4) Particulars of any increase in capital contributions must be provided in section h. Not applicable to an authorised partnership			

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

<b>g. Liability of any partner by reason of partner becoming a limited instead of a general partner or a general instead of a limited partner</b>		
<b>h. Statement of increase in capital contributions (see note 4)</b>		
Name of limited partner	Increase of additional sum now contributed (if otherwise than in cash, that fact, with particulars, must be stated)	Total amount contributed (if otherwise than in cash, that fact, with particulars, must be stated)

Signature of firm

Presented by:

Presenter's reference:

**NOTES**

- 1 This form is also to be used to notify changes in a limited partnership which is a partnership scheme (within the meaning given by section 235A(5) of the Financial Services and Markets Act 2000) for which an authorisation order has been made under section 261D of that Act ("an authorised partnership"). The requirement to notify changes in partnerships under section 9 of the Limited Partnerships Act 1907 has been modified for authorised partnerships by regulation 16(6) of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013.
- 2 Changes brought about by death, transfer of interests, increase in the number of partners or change of name of any partner must be notified here. In the case of an authorised partnership, any change in the general partner or in the name of the general partner must be notified here (no change in the limited partners or in the name of a limited partner is required to be notified).
- 3 If there is, or was, no definite term, state under 'previous term' the conditions under which the partnership was constituted and under 'new term' the conditions under which it is now constituted. In the case of an authorised partnership, notify here the making or revocation of the authorisation order by the Financial Conduct Authority (include the authorisation number).
- 4 Any variation in the sum contributed by a limited partner must be stated in section f. A statement of any increase in the amount of the partnership capital, whether arising from an increase of contributions or the introduction of fresh partners, must also be stated in section h. In the case of an authorised partnership, no change in the sum contributed by a limited partner is required to be notified.
- 6 Each change must be entered in the proper section (a, b, c, d, e, f, g or h, as the case may be). Provision is made in this form for notifying all the changes required by the Act to be notified, but it will frequently happen that only one change has to be notified. In any such case, the word 'Nil' should be inserted in the other sections.
- 7 The statement must be signed at the end by the firm, and must be sent by post or delivered to the registrar for registration within seven days of the changes taking place.

## SCHEDULE 2

Regulation 17(8)

### Co-ownership schemes: application of the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989

#### PART 1

##### Interpretation

1. In this Schedule and in Schedules 3, 4 and 5—
  - (a) unless otherwise specified, a reference to a section is a reference to a section of the 1986 Act;
  - (b) a reference to an Article is a reference to an Article of the 1989 Order; and
  - (c) a reference to a participant, in relation to a relevant scheme, is a reference to the participant as a holder of units in that scheme (and not in any other capacity).
2. Unless the context otherwise requires, in this Schedule and in Schedules 3, 4 and 5—
  - (a) a reference to an authorised contract is a reference to an authorised contract entered into by the operator;
  - (b) a reference to the depositary is a reference to the depositary of a relevant scheme—
    - (i) in relation to which a petition has been presented under regulation 17(9); or
    - (ii) which is being wound up by the court following the presentation of such a petition;
  - (c) a reference to the operator is a reference to the operator of such a scheme; and
  - (d) a reference to the participants is a reference to the participants in such a scheme.

#### PART 2

##### Application of the 1986 Act and the 1989 Order with modifications

3. In relation to the winding up of a relevant scheme under the 1986 Act, the provisions set out in the Table in Part 3 of this Schedule apply with—
  - (a) the general modifications set out in paragraph 5;
  - (b) any other modification specified in the Table; and
  - (c) any other necessary modification.
4. In relation to the winding up of a relevant scheme under the 1989 Order, the provisions set out in the Table in Part 4 of this Schedule apply with—
  - (a) the general modifications set out in paragraph 5;
  - (b) any other modification specified in the Table; and
  - (c) any other necessary modification.
5. Unless the context otherwise requires and subject to any modification specified in the Table in Part 3 or 4 of this Schedule which has a contrary effect, the general modifications are that—
  - (a) a reference to a company includes a reference to a relevant scheme;
  - (b) a reference to a voluntary winding up or a resolution for voluntary winding up of a company is to be ignored;

- (c) a reference to a creditor of a company is to be read as a reference to a creditor of a relevant scheme;
- (d) a reference to a contributory or to a meeting of contributories is to be ignored;
- (e) a reference to the making or recovery of a call is to be ignored;
- (f) a reference to a member of a company or to a register or meeting of members is to be ignored;
- (g) a reference to the property, assets, estate or effects of a company is to be read as a reference to the property subject to a relevant scheme;
- (h) a reference to any books, papers or records belonging to the company is to be read as a reference to books, papers or records affecting or relating to the affairs of, or the property subject to, the relevant scheme;
- (i) a reference to an action or proceeding against a company is to be read as a reference to an action or a proceeding brought against the operator for the resolution of any matter relating to a relevant scheme;
- (j) a reference to a debt, obligation or liability of a company is to be read as a reference to a debt or liability of a relevant scheme;
- (k) a reference to the registrar of companies or to the Accountant in Bankruptcy or to the registrar of companies and the Accountant in Bankruptcy is to be read as a reference to the FCA(78);
- (l) a reference to an officer (other than a past officer) of the company is to be read as a reference to—
  - (i) a director of the operator or of the depositary; or
  - (ii) a person employed by the operator or by the depositary; and
- (m) a reference to a past officer of the company is to be read as a reference to—
  - (i) a previous director of the operator or of the depositary;
  - (ii) someone who is, or was previously, a director of a person who has been replaced as the operator or the depositary, and was a director when that person was the operator or the depositary;
  - (iii) a person who was previously employed by the operator or by the depositary; or
  - (iv) someone who is, or was previously, employed by a person who has been replaced as the operator or the depositary, and was so employed when that person was the operator or the depositary.

## PART 3

### Table of applied provisions of the 1986 Act(79)

<i>Provision of the 1986 Act</i>	<i>Modification</i>
<b>Part 4 (winding up of companies registered under the Companies Acts)</b>	

(78) By virtue of the amendment of the 1986 Act by the Scotland Act 1998 (c. 46), Schedule 8, paragraph 23 (as amended by S.I. 2001/3649) anything directed to be done, or which may be done, to or by the registrar of companies in Scotland by virtue of sections 130(1), 147(3), 170(2) and 172(8) of the 1986 Act shall, or (as the case may be) may, also be done to or by the Accountant in Bankruptcy; and the statement which the liquidator is required to send to the registrar of companies in Scotland under section 192(1) of the 1986 Act shall instead be sent to the Accountant in Bankruptcy.

(79) Relevant amendments to the provisions of the 1986 Act set out in the Table are as follows: section 124A was inserted by the Companies Act 1989 (c. 40), section 60(3), and amended by S.I. 2001/3649 and by the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), Schedule 2, Part 3, paragraph 27; section 131 was amended by S.I. 2010/18;

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<i>Provision of the 1986 Act</i>	<i>Modification</i>
<b>Chapter 6 (winding up by the court)</b>	
Section 121 (power to remit winding up to Lord Ordinary)	
Section 124A (petition for winding-up on grounds of public interest)	
Section 125 (powers of court on hearing of petition)	This section is to be read as if subsection (2) were omitted.
Section 126 (power to stay or restrain proceedings against company)	Subsection (1) is to be read as if for the words “the company, or any creditor” there were substituted “the Financial Conduct Authority, the operator or any creditor of the relevant scheme”.
Section 127 (avoidance of property dispositions, etc.)	In subsection (1), the reference to any transfer of shares or alteration in the status of the company’s members is to be read as a reference to any issue, transfer or redemption of units in the relevant scheme.
Section 128 (avoidance of attachments, etc.)	This section is to be read as if for subsections (1) and (2) there were substituted—  “Where a relevant scheme is being wound up by the court, any attachment, sequestration, distress or execution put in force against the property subject to the relevant scheme after the commencement of the winding up is void.”.
Section 129 (commencement of winding up by the court)	
Section 130 (consequences of winding-up order)	In subsection (1) the first reference to the company is to be read as a reference to the operator.  This section is to be read as if subsection (4) were omitted.
Section 131 (company’s statement of affairs)	In subsection (3)(a) the reference to officers of the company is to be read as a reference to the operator and the depository.  Subsection (3) is to be read as if paragraphs (c) and (d) were omitted.

section 155 was amended by S.I. 1999/1820; section 159 was amended by S.I. 2009/1941; section 160 was amended by S.I. 2009/1941; section 162 was amended by the Court of Session Act 1988 (c. 36), section 52(2) and Schedule 2, Part I, and by S.I. 2009/1941; section 168 was amended by S.I. 1994/2421 and 2002/1555; section 188 was amended by S.I. 2006/3429 and 2008/1897; section 196 was amended by S.I. 2009/1941; section 206(1) was amended by S.I. 1986/1996; section 215 was amended by the Civil Partnerships Act 2004 (c. 33), Schedule 27, paragraph 112; section 218 was amended by the Insolvency Act 2000 (c. 39), sections 10 and 15(1) and Schedule 5, and by S.I. 2009/1941; section 219 was amended by the Insolvency Act 2000, sections 10(7) and 11, and by S.I. 2009/1941; section 220 was substituted by S.I. 2009/1941; section 221 was amended by S.I. 2002/1240 and 2009/1941; section 229 was amended by S.I. 2009/1941; section 236 was amended by S.I. 2010/18; section 240 was amended by S.I. 2002/1240 and by the Enterprise Act 2002 (c. 40), Schedule 17, paragraphs 9 and 26(1) and (4); section 241 was amended by the Insolvency (No. 2) Act 1994 (c. 12), section 1; sections 246A and 246B were inserted by S.I. 2010/18; section 251 was amended by S.I. 2007/2194 and 2009/1941; section 434C was inserted by S.I. 2008/948; and Schedule 4 was amended by the Enterprise Act 2002, section 253, and by S.I. 2010/18.

<i>Provision of the 1986 Act</i>	<i>Modification</i>
Section 132 (investigation by official receiver)	
Section 133 (public examination of officers)	Subsection (1) is to be read as if for paragraph (b) there were substituted— “(b) has acted as liquidator of the relevant scheme;”. In subsection (1) the reference to the dissolution of the company is to be read as a reference to the completion of winding up of the relevant scheme.
Section 134 (enforcement of section 133)	
Section 135 (appointment and powers of provisional liquidator)	
Section 136 (functions of official receiver in relation to office of liquidator)	Subsection (1) is to be read as if the words “, subject to section 140 below,” were omitted.
Section 137 (appointment by Secretary of State)	
Section 138 (appointment of liquidator in Scotland)	This section is to be read as if subsection (4) were omitted.
Section 139 (choice of liquidator at meetings of creditors and contributories)	This section is to be read as if for subsections (3) and (4) there were substituted— “(3) The liquidator shall be the person (if any) nominated by the creditors.”.
Section 141 (liquidation committee (England and Wales))	This section is to be read as if subsection (3) were omitted.
Section 142 (liquidation committee (Scotland))	This section is to be read as if— (a) in subsection (1) for the words from “separate meetings” to “(as the case may be)” there were substituted “a meeting of creditors has been summoned for the purpose of choosing a person to be liquidator;”, (b) in subsection (3) the words “, if appointed by the court otherwise than under section 139(4)(a),” were omitted; and (c) subsection (4) were omitted.
Section 143 (general functions in winding up by the court)	
Section 144 (custody of company’s property)	In subsection (1) the reference to all the property and things in action to which the company is or appears to be entitled is to be read as a reference to all property which is or appears to be subject to the relevant scheme and all things in action relating to that property.
Section 145 (vesting of company property in liquidator)	Subsection (1) is to be read as if the words “or held by trustees on its behalf” were omitted.

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<i>Provision of the 1986 Act</i>	<i>Modification</i>
Section 146 (duty to summon final meeting)	
Section 147 (power to stay or sist winding up)	<p>Subsection (2) is to be read as if after the words “the official receiver” there were inserted “or the liquidator”.</p> <p>In subsection (3) the first reference to the company is to be read as a reference to the operator.</p>
Section 153 (power to exclude creditors not proving in time)	
Section 155 (inspection of books by creditors, etc.)	In subsection (1) the reference to books and papers in the company’s possession is to be read as a reference to such books and papers affecting or relating to the affairs of, or the property subject to, the relevant scheme as are in the possession of the operator or the depositary.
Section 156 (payment of expenses of winding up)	
Section 157 (attendance at company meetings (Scotland))	In this section the reference to the winding up by the court of a company registered in Scotland is to be read as a reference to the winding up of a relevant scheme by the Court of Session.
Section 159 (powers of court to be cumulative)	In this section the references to a debtor of the company are to be read as references to a person by whom a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.
Section 160 (delegation of powers to liquidator (England and Wales))	
Section 162 (appeals from orders in Scotland)	
<b>Chapter 7 (liquidators)</b>	
Section 163 (style and title of liquidators)	
Section 164 (corrupt inducement affecting appointment)	
Section 167 (winding up by the court)	Subsection (2)(a) is to be read as if for the words “a person who is connected with the company (within the meaning of section 249 in Part VII)” there were substituted “the operator or the depositary of the relevant scheme or a person who is an associate of the operator or depositary”.
Section 168 (supplementary powers (England and Wales))	



<i>Provision of the 1986 Act</i>	<i>Modification</i>
Section 169 (supplementary powers (Scotland))	<p>Subsection (1) is to be read as if paragraph (a) referred to a power to bring or defend any action or other legal proceeding on behalf of the participants.</p> <p>Subsection (1)(b) is to be read as subject to the requirements in regulation 17(10) to cease making payments under authorised contracts and to cease the issue and redemption of units.</p>
Section 170 (enforcement of liquidator's duty to make returns, etc.)	
Section 172 (removal, etc. (winding up by the court))	
Section 174 (release (winding up by the court))	
<b>Chapter 8 (provisions of general application in winding up)</b>	
Section 178 (power to disclaim onerous property)	In subsection (4) each reference to the company is to be read as a reference to the participants and the depositary.
Section 179 (disclaimer of leaseholds)	In subsection (1) the reference to a person claiming under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title).
Section 180 (land subject to rentcharge)	
Section 181 (powers of court (general))	
Section 182 (powers of court (leaseholds))	<p>In this section—</p> <p>(a) a reference to a person claiming under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title); and</p> <p>(b) a reference to the company, in relation to any reference to liabilities, obligations, estates, incumbrances or interests, is to be read as a reference to the lessee.</p>
Section 186 (rescission of contracts by the court)	In subsection (1) the references to a contract made with the company are to be read as references to an authorised contract.
Section 188 (notification that company is in liquidation)	<p>This section is to be read as if for subsections (1) and (2) there were substituted—</p> <p>“(1) When a relevant scheme is being wound up by the court—</p>

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<i>Provision of the 1986 Act</i>	<i>Modification</i>
	<p>(a) every business letter (whether in hard copy, electronic or any other form) issued by the operator, the depositary or a liquidator of the relevant scheme, and</p> <p>(b) any website which relates to the relevant scheme and for which the operator or the depositary is responsible,</p> <p>must contain a statement that the relevant scheme is being wound up.</p> <p>(2) If default is made in complying with this section, any of the following persons who knowingly and wilfully authorises or permits the default, namely, the operator, the depositary and any liquidator of the relevant scheme, is liable to a fine.”.</p>
Section 189 (interest on debts)	
Section 190 (documents exempt from stamp duty)	<p>In subsection (2) the reference to a company registered in England and Wales is to be read as a reference to a relevant scheme being wound up by the High Court.</p> <p>In subsection (3) the reference to a company registered in Scotland is to be read as a reference to a relevant scheme being wound up by the Court of Session.</p>
Section 192 (information as to pending liquidations)	
Section 194 (resolutions passed at adjourned meetings)	
Section 195 (meetings to ascertain wishes of creditors or contributories)	
Section 196 (judicial notice of court documents)	
Section 197 (commission for receiving evidence)	
Section 198 (court order for examination of persons in Scotland)	
Section 199 (costs of application for leave to proceed (Scottish companies))	<p>This section is to be read as if—</p> <p>(a) for the words from “a company” to “Scotland” there were substituted “the operator of a relevant scheme which is being wound up in Scotland (for the resolution of any matter relating to that scheme)”; and</p> <p>(b) for the words “the company” there were substituted “the operator”.</p>
Section 200 (affidavits etc. in United Kingdom and overseas)	

<i>Provision of the 1986 Act</i>	<i>Modification</i>
<b>Chapter 10 (malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions)</b>	
Section 206 (fraud, etc. in anticipation of winding up)	In subsection (1)(a) the reference to a debt due to the company is to be read as a reference to a debt which is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.  This section is to be read as if subsection (3) were omitted.
Section 207 (transactions in fraud of creditors)	In subsection (1)(b) the reference to any unsatisfied judgment or order for the payment of money obtained against the company is to be read as a reference to any unsatisfied judgment or order for the payment of money to a creditor of the relevant scheme.
Section 208 (misconduct in course of winding up)	In subsection (1)(a) the reference to the disposal by the company of any part of the company's property is to be read as a reference to the disposal by the operator of part of the property subject to the relevant scheme. This section is to be read as if subsection (3) were omitted.
Section 209 (falsification of company's books)	In subsection (1) the reference to any register, book of account or document belonging to the company is to be read as a reference to any register, book of account or document affecting or relating to the affairs of, or the property subject to, the relevant scheme.
Section 210 (material omissions from statement relating to company's affairs)	This section is to be read as if subsection (3) were omitted.
Section 211 (false representations to creditors)	This section is to be read as if subsection (2) were omitted.
Section 212 (summary remedy against delinquent directors, liquidators, etc.)	Subsection (1)(a) is to be read as if the reference to an officer of the company included a reference to the operator and the depositary.
Section 213 (fraudulent trading)	
Section 214 (wrongful trading)	In subsections (1) and (2) a reference to a director of a company is to be read as a reference to the operator or depositary of a relevant scheme.  This section is to be read as if— (a) after subsection (2) there were inserted— “(2A) The condition specified in subsection (2)(b) is taken to be satisfied in relation to the operator or depositary of a relevant scheme if, at some time before the commencement of the winding up, a director or employee of the operator or depositary knew or ought to have concluded that there was no reasonable prospect that the

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<i>Provision of the 1986 Act</i>	<i>Modification</i>
	<p>relevant scheme would avoid going into insolvent liquidation.”; and</p> <p>(b) subsection (7) were omitted.</p> <p>In subsections (4) and (5) a reference to a director of a company is to be read as a reference to the operator or depositary of a relevant scheme or a director or employee of the operator or depositary.</p>
Section 215 (proceedings under sections 213, 214)	
Section 218 (prosecution of delinquent officers and members of company)	
Section 219 (obligations arising under section 218)	In subsection (3) the reference to every agent of the company is to be read as a reference to the operator and the depositary and every person who, at the request of the operator or the depositary, has provided the services of banker, solicitor or auditor or professional services of any other description in relation to the relevant scheme.
<b>Part 5 (winding up of unregistered companies)</b>	
Section 220 (meaning of “unregistered company”)	
Section 221 (winding up of unregistered companies)	<p>This section is to be read as if—</p> <p>(a) subsections (2), (3) and (7) were omitted;</p> <p>(b) in subsection (4) the words “, except in accordance with the EC Regulation” were omitted; and</p> <p>(c) in subsection (5)—</p> <p>(i) paragraph (a) were omitted; and</p> <p>(ii) for paragraph (b) there were substituted—</p> <p style="padding-left: 40px;">“(b) if the operator of a relevant scheme is unable to pay the debts of that scheme out of the property subject to it.”.</p>
Section 222 (inability to pay debts: unpaid creditor for £750 or more)	In subsection (1)(a) and (b) each reference to the company is to be read as a reference to the operator.
Section 224 (inability to pay debts: other cases)	In subsection (1)(a) the reference to execution or other process issued in favour of a creditor against the company or any person authorised to be sued as nominal defendant on its behalf is to be read as a reference to execution or other process issued in favour of a creditor of the relevant scheme against the property subject to that scheme.
Section 229 (provisions of this Part to be cumulative)	
<b>Part 6 (miscellaneous provisions applying to companies which are insolvent or in liquidation)</b>	

<i>Provision of the 1986 Act</i>	<i>Modification</i>
Section 230 (holders of office to be qualified insolvency practitioners)	
Section 231 (appointment to office of two or more persons)	
Section 232 (validity of office-holder's acts)	
Section 234 (getting in the company's property)	In subsection (2) the reference to any property, books, papers or records to which the company appears to be entitled is to be read as a reference to any property that appears to be property subject to the relevant scheme, and to any books, papers or records that appear to affect or relate to that property or to the affairs of the relevant scheme.
Section 235 (duty to co-operate with office-holder)	Subsection (3) is to be read as if— (a) in paragraph (a) the reference to officers of the company included a reference to the operator and the depositary; and (b) paragraphs (c) and (d) were omitted.
Section 236 (inquiry into company's dealings, etc.)	In subsection (2)(b) the reference to any person supposed to be indebted to the company is to be read as a reference to a person by whom, it is supposed, a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.  In subsection (3) the reference to dealings with the company is to be read as a reference to dealings with any matter affecting or relating to the affairs of, or the property subject to, the relevant scheme.
Section 237 (court's enforcement powers under s 236)	In subsection (2) the reference to any person who is indebted to the company is to be read as a reference to a person by whom a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.
Section 238 (transactions at an undervalue (England and Wales))	In subsections (2) and (3) the reference to the company is to be read as a reference to the operator or the depositary.  In subsection (4)— (a) in paragraphs (a) and (b) the second reference to the company is to be read as a reference to the participants in a relevant scheme; and (b) each other reference to a company is to be read as a reference to the operator or depositary of the relevant scheme.

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<i>Provision of the 1986 Act</i>	<i>Modification</i>
	<p>Subsection (5) is to be read as if for paragraph (a) there were substituted—</p> <p style="padding-left: 40px;">“(a) that the operator or the depositary, in entering into the transaction, did so in good faith and for the purposes of carrying on the business of the relevant scheme, and”.</p>
<p>Section 239 (preferences (England and Wales))</p>	<p>In subsections (2) and (3) the reference to the company is to be read as a reference to the operator or the depositary.</p> <p>Subsection (4) is to be read as if for the words from “a company” to the end there were substituted—</p> <p style="padding-left: 40px;">“the operator or depositary of a relevant scheme gives a preference to a person if—</p> <ul style="list-style-type: none"> <li>(a) that person is one of the creditors of the relevant scheme or a surety or guarantor for any of the debts or liabilities of the relevant scheme, and</li> <li>(b) the operator or depositary does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the relevant scheme going into insolvent liquidation, will be better than the position that person would have been in if that thing had not been done.”. <p>In subsection (5) the reference to the company which gave the preference is to be read as a reference to the operator or the depositary in giving the preference.</p> <p>In subsection (6)—</p> <ul style="list-style-type: none"> <li>(a) the first reference to a company is to be read as a reference to the operator or depositary of a relevant scheme; and</li> <li>(b) the reference to a person connected with the company is to be read as a reference to a person who is an associate (within the meaning of section 435) of the operator or depositary of the relevant scheme.</li> </ul> </li></ul>
<p>Section 240 (“relevant time” under sections 238, 239)</p>	<p>In subsections (1) and (2)—</p> <ul style="list-style-type: none"> <li>(a) a reference to a company, except the second reference in subsection (2), is to be read as a reference to the operator or depositary of a relevant scheme; and</li> <li>(b) the reference to a person who is connected with the company is to be read as a reference to a person who is an associate (within the meaning</li> </ul>

<i>Provision of the 1986 Act</i>	<i>Modification</i>
	<p>of section 435) of the operator or depositary of the relevant scheme.</p> <p>In subsection (2) the reference to the inability of the company to pay its debts within the meaning of section 123 is to be read as a reference to the inability of the operator of a relevant scheme to pay the debts of that scheme within the meaning of section 222 or 224 (as modified by this Schedule).</p>
Section 241 (orders under sections 238, 239)	<p>In this section a reference to a company is to be read as a reference to the operator or the depositary, except—</p> <ul style="list-style-type: none"> <li>(a) in subsection (1)(a), where the reference to the company is to be read as a reference to the liquidator of the relevant scheme;</li> <li>(b) in subsection (1)(c), where the reference to security given by the company is to be read as a reference to security over any property subject to the relevant scheme;</li> <li>(c) in subsection (1)(g), where the first reference to the company is to be read as a reference to the liquidator of the relevant scheme;</li> <li>(d) in subsection (2), with respect to the reference to a creditor of the company; and</li> <li>(e) in subsection (3C).</li> </ul>
Section 242 (gratuitous alienations (Scotland))	<p>In subsection (1)(a) the reference to an alienation by the company is to be read as a reference to an alienation by the operator or the depositary.</p> <p>In subsection (2)(a) the reference to any claim or right of the company is to be read as a reference to any claim that may be made or any right that may be exercised by the operator for the benefit of the participants.</p> <p>In subsections (3)(a) and (4)(c) the reference to an associate of the company is to be read as a reference to an associate (within the meaning of section 435) of the operator or the depositary.</p> <p>In subsection (7) the reference to an alienation of a company is to be read as a reference to an alienation by the operator or the depositary.</p>
Section 243 (unfair preferences (Scotland))	<p>In subsection (1) a reference to a transaction entered into by a company is to be read as a reference to a transaction entered into by the operator or the depositary.</p> <p>In subsection (2)(d) the reference to a company is to be read as a reference to the operator or the depositary.</p>

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<i>Provision of the 1986 Act</i>	<i>Modification</i>
Section 246 (unenforceability of liens on books, etc.)	
Section 246A (remote attendance at meetings)	
Section 246B (use of websites)	
<b>Part 7 (interpretation for first group of Parts)</b>	
Section 247 (“insolvency” and “go into liquidation”)	This section is to be read as if— (a) in subsection (2), for the words from “it passes a resolution” to the end there were substituted “an order for its winding up is made by the court”; and (b) subsection (3) were omitted.
Section 248 (“secured creditor” etc.)	
Section 249 (“connected” with a company)	This section is to be read as if the words from “, a person” to “and” were omitted.
Section 251 (expressions used generally)	This section is to be read as if the existing provision were subsection (1) and after that provision there were inserted— “(2) In Parts 4, 5 and 6— (a) a reference to the depositary of a relevant scheme is a reference to the depositary (within the meaning given in section 237(2) of the Financial Services and Markets Act 2000 (“FSMA”)) of that scheme; (b) a reference to the operator of a relevant scheme is a reference to the operator (within the meaning given in section 237(2) of FSMA) of that scheme; (c) a reference to the participants in a relevant scheme is a reference to the participants (within the meaning given in section 235(2) of FSMA) in that scheme; (d) a reference to— (i) a relevant scheme, (ii) a creditor or a debt of a relevant scheme, or (iii) the operator or the depositary in relation to a relevant scheme which is a sub-scheme of an umbrella co-ownership scheme, is to be construed in accordance with regulation 17(1) of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013.”
<b>Part 13 (insolvency practitioners and their qualification)</b>	



<i>Provision of the 1986 Act</i>	<i>Modification</i>
Section 388 (meaning of “act as insolvency practitioner”)	In subsection (4), the definition of “company” is to be read as if the reference to a company that may be wound up under Part 5 of the 1986 Act included a reference to a relevant scheme.
Section 389 (acting without qualification an offence)	
<b>Part 17 (miscellaneous and general)</b>	
Sections 430 (provision introducing Schedule of punishments) Section 431 (summary proceedings) Section 432 (offences by bodies corporate)	These sections are to be read as if a reference to an offence under the 1986 Act or a provision of that Act, in so far as it is a reference to an offence under a provision of that Act that is applied by these Regulations, is to be read as a reference to the offence under that provision as so applied.
<b>Part 17A (supplementary provisions)</b>	
Section 434C (legal professional privilege)	
<b>Schedule 4 (powers of liquidator in a winding up)</b>	
Schedule 4 (powers of liquidator in a winding up)	Schedule 4 is to be read as if— (a) paragraphs 8 and 11 were omitted; (b) the power in paragraph 4 included a power to bring or defend any action or other legal proceeding which would otherwise be brought or defended by the operator on behalf of the participants; (c) the power in paragraph 7 included a power to do all acts and execute all deeds, receipts and other documents which would otherwise be done or executed by the operator on behalf of the participants; and (d) the power in paragraph 9 included a power to draw, accept, make and indorse any bill of exchange or promissory note with the same effect as if the bill or note had been drawn, accepted, made or indorsed by the operator in the course of the business of the relevant scheme. (e) Paragraph 5 is to be read as subject to the requirements in regulation 17(10) to cease making payments under authorised contracts and to cease the issue and redemption of units.
<b>Schedule 10 (punishment of offences under the 1986 Act)</b>	
Schedule 10 (punishment of offences under the 1986 Act)	Schedule 10 is to be read as if a reference to a provision which is applied by these Regulations were a reference to that provision as so applied.

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## PART 4

### Table of applied provisions of the 1989 Order<sup>(80)</sup>

<i>Provision of the 1989 Order</i>	<i>Modification</i>
<b>Part 1 (Introductory)</b>	
Article 2 (general interpretation)	
Article 3 (“act as insolvency practitioner”)	In paragraph (4), the definition of “company” is to be read as if the reference to a company that may be wound up under Part 6 of the 1989 Order included a reference to a relevant scheme.
Article 4 (“associate”)	
Article 5 (interpretation of Parts 2 to 7 of the 1989 Order)	<p>This Article is to be read as if—</p> <p>(a) the definition of “the registrar” were omitted; and</p> <p>(b) after paragraph (1) there were inserted—</p> <p>“(2) In Parts 5, 6 and 7—</p> <p>(a) a reference to the depositary of a relevant scheme is a reference to the depositary (within the meaning given in section 237(2) of the Financial Services and Markets Act 2000 (“FSMA”)) of that scheme;</p> <p>(b) a reference to the operator of a relevant scheme is a reference to the operator (within the meaning given in section 237(2) of FSMA) of that scheme;</p> <p>(c) a reference to the participants in a relevant scheme is a reference to the participants (within the meaning given in section 235(2) of FSMA) in that scheme;</p> <p>(d) a reference to the registrar is to be read as a reference to the Financial Conduct Authority; and</p> <p>(e) a reference to—</p> <p>(i) a relevant scheme,</p>

<sup>(80)</sup> Relevant amendments to the provisions of the 1989 Order set out in the Table are as follows: Article 2 was amended by S.I. 2007/2194; Article 104A was inserted by S.I. 1990/1504 (N.I. 10) and amended by the Criminal Justice Act 1993 (c. 36), Schedule 5, paragraph 22 and Schedule 6, Part II, and by S.I. 2001/3649 and 2009/1941; Articles 110(1), 125(3), 136 and 137(1) were amended by S.I. 2009/1941; Article 159(1) was substituted by S.I. 2006/3429 and amended by S.I. 2008/1897; Article 164 was amended by S.I. 2009/1941; Article 165 was amended by the Justice (Northern Ireland) Act 2002 (c. 26), Schedule 4, paragraph 36; Article 179 was amended by the Civil Partnerships Act 2004 (c. 33), Schedule 27, paragraph 81; Articles 182 and 183 were amended by S.I. 2002/3152 (N.I. 16) and 2009/1941; Article 184 was substituted by S.I. 2009/1941; Article 185 was amended by S.R. 2002 No. 334 and S.I. 2009/1941; Article 193 was amended by S.I. 2009/1941; Article 204 was amended by S.I. 2005/1455 (N.I. 10); Article 205 was amended by the Insolvency (No. 2) Act 1994 (c. 12), section 3(3); Article 385 was inserted by S.I. 2008/948; and Schedule 2 was amended by S.I. 2005/1452 (N.I. 7) and 2005/1455 (N.I. 10).

<i>Provision of the 1989 Order</i>	<i>Modification</i>
	(ii) a creditor or a debt of a relevant scheme, or  (iii) the operator or the depositary in relation to a relevant scheme which is a sub-scheme of an umbrella co-ownership scheme, is to be construed in accordance with regulation 17(1) of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013.”.
Article 6 (“insolvency” and “go into liquidation”)	This Article is to be read as if— (a) in paragraph (2), for the words from “it passes a resolution” to the end there were substituted “an order for its winding up is made by the High Court”; and (b) paragraph (3) were omitted.
<b>Part 5 (winding up of companies registered under the Companies Act 2006)</b>	
<b>Chapter 6 (winding up by the High Court)</b>	
Article 104A (petition for winding up on grounds of public interest)	
Article 105 (powers of High Court on hearing of petition)	This Article is to be read as if paragraph (2) were omitted.
Article 106 (power to stay or restrain proceedings against company)	Paragraph (1) is to be read as if for the words “the company, or any creditor” there were substituted “the Financial Conduct Authority, the operator or any creditor of the relevant scheme”.
Article 107 (avoidance of property dispositions, etc.)	In paragraph (1), the reference to any transfer of shares or alteration in the status of the company’s members is to be read as a reference to any issue, transfer or redemption of units in the relevant scheme.
Article 108 (avoidance of sequestration or distress)	
Article 109 (commencement of winding up by the High Court)	
Article 110 (consequences of winding-up order)	In paragraph (1) the reference to the company is to be read as a reference to the operator.  This Article is to be read as if paragraph (4) were omitted.
Article 111 (company’s statement of affairs)	In paragraph (3)(a) the reference to officers of the company is to be read as a reference to the operator and the depositary.  Paragraph (3) is to be read as if sub-paragraphs (c) and (d) were omitted.

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<i>Provision of the 1989 Order</i>	<i>Modification</i>
Article 112 (investigation by official receiver)	
Article 113 (public examination of officers)	Paragraph (1) is to be read as if for sub-paragraph (b) there were substituted— <p style="text-align: center;">“(b)        has acted as liquidator of the relevant scheme;”.</p> <p>In paragraph (1) the reference to the dissolution of the company is to be read as a reference to the completion of winding up of the relevant scheme.</p>
Article 114 (enforcement of Article 113)	
Article 115 (appointment and powers of provisional liquidator)	
Article 116 (functions of official receiver in relation to office of liquidator)	Paragraph (1) is to be read as if the words “, subject to Article 119,” were omitted.
Article 117 (appointment by Department)	
Article 118 (choice of liquidator at meetings of creditors and contributories)	This Article is to be read as if for paragraphs (3) and (4) there were substituted— <p style="text-align: center;">“(3) The liquidator shall be the person (if any) nominated by the creditors.”.</p>
Article 120 (liquidation committee)	This Article is to be read as if paragraph (3) were omitted.
Article 121 (general functions in winding up by the High Court)	
Article 122 (custody of company’s property)	In this Article the reference to all the property to which the company is or appears to be entitled is to be read as a reference to all property which is or appears to be subject to the relevant scheme.
Article 123 (vesting of company property in liquidator)	Paragraph (1) is to be read as if the words “or held by trustees on its behalf” were omitted.
Article 124 (duty to summon final meeting)	
Article 125 (power to stay winding up)	Paragraph (2) is to be read as if after the words “the official receiver” there were inserted “or the liquidator”.
Article 131 (power to exclude creditors not proving in time)	
Article 133 (inspection of books by creditors, etc.)	In paragraph (1) the reference to books and papers in the company’s possession is to be read as a reference to such books and papers affecting or relating to the affairs

<i>Provision of the 1989 Order</i>	<i>Modification</i>
	of, or the property subject to, the relevant scheme as are in the possession of the operator or the depositary.
Article 134 (payment of expenses of winding up)	
Article 136 (powers of High Court to be cumulative)	In this Article the references to any debtor of the company are to be read as references to a person by whom a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.
Article 137 (delegation of powers to liquidator)	
<b>Chapter 7 (liquidators)</b>	
Article 138 (style and title of liquidators)	
Article 139 (corrupt inducement affecting appointment)	
Article 142 (winding up by the High Court)	Paragraph (2)(a) is to be read as if for the words “a person who is connected with the company (within the meaning given by Article 7)” there were substituted “the operator or the depositary of the relevant scheme or a person who is an associate of the operator or depositary”.
Article 143 (supplementary powers)	
Article 144 (enforcement of liquidator’s duty to make returns, etc.)	
Article 146 (removal, etc. (winding up by the High Court))	
Article 148 (release (winding up by the High Court))	
<b>Chapter 8 (provisions of general application in winding up)</b>	
Article 152 (power to disclaim onerous property)	In paragraph (3) each reference to the company is to be read as a reference to the participants and the depositary.
Article 153 (disclaimer of leaseholds)	In paragraph (1) the reference to a person claiming under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title).
Article 154 (land subject to rentcharge)	
Article 155 (powers of High Court (general))	
Article 156 (powers of High Court (leaseholds))	In this Article—

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

<i>Provision of the 1989 Order</i>	<i>Modification</i>
	<p>(a) a reference to a person claiming under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title); and</p> <p>(b) a reference to the company, in relation to any reference to liabilities, obligations, estates, incumbrances or interests, is to be read as a reference to the lessee.</p>
Article 157 (rescission of contracts by the High Court)	In paragraph (1) the references to a contract made with the company are to be read as references to an authorised contract.
Article 159 (notification that company is in liquidation)	<p>This Article is to be read as if for paragraphs (1) and (2) there were substituted—</p> <p>“(1) When a relevant scheme is being wound up by the High Court—</p> <p>(a) every business letter (whether in hard copy, electronic or any other form) issued by the operator, the depositary or a liquidator of the relevant scheme, and</p> <p>(b) any website which relates to the relevant scheme and for which the operator or the depositary is responsible,</p> <p>must contain a statement that the relevant scheme is being wound up.</p> <p>(2) If default is made in complying with this Article, any of the following persons who knowingly and wilfully authorises or permits the default, namely, the operator, the depositary and any liquidator of the relevant scheme, shall be guilty of an offence.”.</p>
Article 160 (interest on debts)	
Article 162 (information as to pending liquidations)	
Article 163 (resolutions passed at adjourned meetings)	
Article 164 (meeting to ascertain wishes of creditors or contributories)	
Article 165 (affidavits, etc., in United Kingdom and elsewhere)	
<b>Chapter 10 (malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions)</b>	
Article 170 (fraud, etc. in anticipation of winding up)	In paragraph (1)(a) the reference to a debt due to the company is to be read as a reference to a debt which is, or may become, payable to the operator in

<i>Provision of the 1989 Order</i>	<i>Modification</i>
	<p>respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.</p> <p>This Article is to be read as if paragraph (3) were omitted.</p>
Article 171 (transactions in fraud of creditors)	In paragraph (1)(b) the reference to any unsatisfied judgment or order for the payment of money obtained against the company is to be read as a reference to any unsatisfied judgment or order for the payment of money to a creditor of the relevant scheme.
Article 172 (misconduct in course of winding up)	In paragraph (1)(a) the reference to the disposal by the company of any part of the company's property is to be read as a reference to the disposal by the operator of part of the property subject to the relevant scheme. This Article is to be read as if paragraph (3) were omitted.
Article 173 (falsification of company's books)	In this Article the reference to any register, accounting records or document belonging to the company is to be read as a reference to any register, accounting records or document affecting or relating to the affairs of, or the property subject to, the relevant scheme.
Article 174 (material omissions from statement relating to company's affairs)	This Article is to be read as if paragraph (3) were omitted.
Article 175 (false representations to creditors)	This Article is to be read as if paragraph (2) were omitted.
Article 176 (summary remedy against delinquent directors, liquidators, etc.)	Paragraph (1)(a) is to be read as if the reference to an officer of the company included a reference to the operator and the depositary.
Article 177 (fraudulent trading)	
Article 178 (wrongful trading)	<p>In paragraphs (1) and (2) a reference to a director of a company is to be read as a reference to the operator or depositary of a relevant scheme.</p> <p>This Article is to be read as if—</p> <p>(c) after paragraph (2) there were inserted—</p> <p style="padding-left: 40px;">“(2A) The condition specified in paragraph (2) (b) is taken to be satisfied in relation to the operator or depositary of a relevant scheme if, at some time before the commencement of the winding up, a director or employee of the operator or depositary knew or ought to have concluded that there was no reasonable prospect that the relevant scheme would avoid going into insolvent liquidation”; and</p> <p>(d) paragraph (7) were omitted.</p> <p>In paragraphs (4) and (5) a reference to a director of a company is to be read as a reference to the operator</p>

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<i>Provision of the 1989 Order</i>	<i>Modification</i>
	or depositary of a relevant scheme or a director or employee of the operator or depositary.
Article 179 (proceedings under Articles 177 and 178)	
Article 182 (prosecution of delinquent officers and members of company)	
Article 183 (obligations arising under Article 182)	In paragraph (3) the reference to every agent of the company is to be read as a reference to the operator and the depositary and every person who, at the request of the operator or the depositary, has provided the services of banker, solicitor or auditor or professional services of any other description in relation to the relevant scheme.
<b>Part 6 (winding up of unregistered companies)</b>	
Article 184 (meaning of “unregistered company”)	
Article 185 (winding up of unregistered companies)	This Article is to be read as if— <ul style="list-style-type: none"> <li>(a) paragraph (2) were omitted;</li> <li>(b) in paragraph (3) the words “, except in accordance with the EC Regulation” were omitted; and</li> <li>(c) in paragraph (4)— <ul style="list-style-type: none"> <li>(i) sub-paragraph (a) were omitted; and</li> <li>(ii) for sub-paragraph (b) there were substituted— <ul style="list-style-type: none"> <li>“(b) if the operator of a relevant scheme is unable to pay the debts of that scheme out of the property subject to it.”.</li> </ul> </li> </ul> </li> </ul>
Article 186 (inability to pay debts: unpaid creditor for £750 or more)	In paragraph (1)(a) and (b) each reference to the company is to be read as a reference to the operator.  Paragraph (1)(a) is to be read as if the words “in Northern Ireland” were omitted.
Article 188 (inability to pay debts: other cases)	In paragraph (1)(b) the reference to execution or other process issued in favour of a creditor against the company or any person authorised to be sued as nominal defendant on its behalf is to be read as a reference to execution or other process issued in favour of a creditor of the relevant scheme against the property subject to that scheme.
Article 193 (provisions of this Part to be cumulative)	
<b>Part 7 (miscellaneous provisions applying to companies which are insolvent or in liquidation)</b>	
Article 194 (holders of office to be qualified insolvency practitioners)	



<i>Provision of the 1989 Order</i>	<i>Modification</i>
Article 195 (appointment to office of two or more persons)	
Article 196 (validity of office-holder's acts)	
Article 198 (getting in the company's property)	In paragraph (2) the reference to any property, books, papers or records to which the company appears to be entitled is to be read as a reference to any property that appears to be property subject to the relevant scheme, and to any books, papers or records that appear to affect or relate to that property or to the affairs of the relevant scheme.
Article 199 (duty to co-operate with office-holder)	Paragraph (3) is to be read as if— (a) in sub-paragraph (a) the reference to officers of the company included a reference to the operator and the depositary; and (b) sub-paragraphs (c) and (d) were omitted.
Article 200 (inquiry into company's dealings, etc.)	In paragraph (2)(b) the reference to any person supposed to be indebted to the company is to be read as a reference to a person by whom, it is supposed, a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.  In paragraph (3) the reference to dealings with the company is to be read as a reference to dealings with any matter affecting or relating to the affairs of, or the property subject to, the relevant scheme.
Article 201 (High Court's enforcement powers under Article 200)	In paragraph (2) the reference to any person who is indebted to the company is to be read as a reference to a person by whom a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.
Article 202 (transactions at an undervalue)	In paragraphs (2) and (3) the reference to the company is to be read as a reference to the operator or the depositary.  In paragraph (4)— (a) in sub-paragraphs (a) and (b) the second reference to the company is to be read as a reference to the participants in a relevant scheme; and (b) each other reference to a company is to be read as a reference to the operator or depositary of the relevant scheme.  Paragraph (5) is to be read as if for sub-paragraph (a) there were substituted—

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<i>Provision of the 1989 Order</i>	<i>Modification</i>
	<p>“(a) that the operator or the depositary, in entering into the transaction, did so in good faith and for the purposes of carrying on the business of the relevant scheme, and”.</p>
<p>Article 203 (preferences)</p>	<p>In paragraphs (2) and (3) the reference to the company is to be read as a reference to the operator or the depositary.</p> <p>Paragraph (4) is to be read as if for the words from “a company” to the end there were substituted—  “the operator or depositary of a relevant scheme gives a preference to a person if—</p> <ul style="list-style-type: none"> <li>(a) that person is one of the creditors of the relevant scheme or a surety or guarantor for any of the debts or liabilities of the relevant scheme, and</li> <li>(b) the operator or depositary does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the relevant scheme going into insolvent liquidation, will be better than the position that person would have been in if that thing had not been done.”.</li> </ul> <p>In paragraph (5) the reference to the company which gave the preference is to be read as a reference to the operator or the depositary in giving the preference.</p> <p>In paragraph (6)—</p> <ul style="list-style-type: none"> <li>(a) the first reference to a company is to be read as a reference to the operator or depositary of a relevant scheme; and</li> <li>(b) the reference to a person connected with the company is to be read as a reference to a person who is an associate (within the meaning of Article 4) of the operator or depositary of the relevant scheme.</li> </ul>
<p>Article 204 (“relevant time” under Articles 202, 203)</p>	<p>In paragraphs (1) and (2)—</p> <ul style="list-style-type: none"> <li>(a) a reference to a company, except the second reference in paragraph (2), is to be read as a reference to the operator or depositary of a relevant scheme; and</li> <li>(b) the reference to a person who is connected with the company is to be read as a reference to a person who is an associate (within the meaning of Article 4) of the operator or depositary of the relevant scheme.</li> </ul> <p>In paragraph (2) the reference to the inability of the company to pay its debts within the meaning of Article</p>

<i>Provision of the 1989 Order</i>	<i>Modification</i>
	103 is to be read as a reference to the inability of the operator of a relevant scheme to pay the debts of that scheme within the meaning of Article 186 or 188 (as modified by this Schedule).
Article 205 (orders under Articles 202, 203)	In this Article a reference to a company is to be read as a reference to the operator or the depositary, except— (a) in paragraph (1)(a), where the reference to the company is to be read as a reference to the liquidator of the relevant scheme;
	(b) in paragraph (1)(c), where the reference to security given by the company is to be read as a reference to security over any property subject to the relevant scheme; (c) in paragraph (1)(g), where the first reference to the company is to be read as a reference to the liquidator of the relevant scheme; (d) in paragraph (2), with respect to the reference to a creditor of the company; and (e) in paragraph (3C).
Article 208 (unenforceability of liens on books, etc.)	
<b>Part 12 (insolvency practitioners and their qualification)</b>	
Article 348 (acting as insolvency practitioner without qualification)	
<b>Part 14 (miscellaneous)</b>	
Article 373 (prosecution and punishment of offences) Article 374 (summary proceedings)	These Articles are to be read as if a reference to an offence under the 1989 Order or a provision of that Order, in so far as it is a reference to an offence under a provision of that Order that is applied by these Regulations, is to be read as a reference to the offence under that provision as so applied.
<b>Part 15 (supplementary provisions)</b>	
Article 385 (legal professional privilege)	
<b>Schedule 2 (powers of liquidator in a winding up)</b>	
Schedule 2 (powers of liquidator in a winding up)	Schedule 2 is to be read as if— (a) paragraphs 9 and 12 were omitted; (b) the power in paragraph 4 included a power to bring or defend any action or other legal proceeding which would otherwise be brought or defended by the operator on behalf of the participants; (c) the power in paragraph 8 included a power to do all acts and execute all deeds, receipts and other documents which would otherwise be done or executed by the operator on behalf of the participants; and

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<i>Provision of the 1989 Order</i>	<i>Modification</i>
	<p>(d) the power in paragraph 10 included a power to draw, accept, make and indorse any bill of exchange or promissory note with the same effect as if the bill or note had been drawn, accepted, made or indorsed by the operator in the course of the business of the relevant scheme.</p> <p>Paragraph 5 is to be read as subject to the requirements in regulation 17(10) to cease making payments under authorised contracts and to cease the issue and redemption of units.</p>
<b>Schedule 7 (punishment of offences under the 1989 Order)</b>	
Schedule 7 (punishment of offences under the 1989 Order)	Schedule 7 is to be read as if a reference to a provision which is applied by these Regulations were a reference to that provision as so applied.

## SCHEDULE 3

Regulation 17(8)

### Co-ownership schemes: application of the Insolvency Rules 1986

## PART 1

### Application of Rules with modifications

**1.** In relation to the winding up of a relevant scheme by the High Court under the 1986 Act, Parts 4 and 7 to 13 of the Insolvency Rules 1986<sup>(81)</sup>, in so far as they apply to the winding up of an unregistered company, apply with—

- (a) the general modifications set out in paragraph 2;
- (b) any other modification specified in the Table in Part 2 of this Schedule; and
- (c) any other necessary modification.

**2.** Unless the context otherwise requires and subject to any modification specified in the Table in Part 2 of this Schedule which has a contrary effect, the general modifications are that—

- (a) a reference to a company includes a reference to a relevant scheme;
- (b) a reference to a voluntary winding up or a resolution for voluntary winding up of a company is to be ignored;
- (c) in any provision relating to—
  - (i) the service on a company of a petition, demand or order, or the giving or sending by a company of any notice or other document,
  - (ii) the provision to a company of any explanation or other information, or
  - (iii) an application to the court by a company or by any person in relation to a company,

<sup>(81)</sup> S.I. 1986/1925 as modified by S.I. 2011/2866 and 1991/2684, and as amended by S.I. 1993/602, 1999/1022, 2004/584, 2005/527, 2006/1272, 2008/737, 2009/642, 2010/686 and 2012/2404. There are other modifications and amendments not relevant to these Regulations.

a reference to the company is to be read as a reference to the operator or, in the case of a provision that has effect in relation to a company before the presentation of a winding-up petition, the operator of a relevant scheme in relation to which a written demand has been served under section 222(1)(a) (as applied by Schedule 2);

- (d) a reference to a creditor of a company is to be read as a reference to a creditor of the relevant scheme;
- (e) a reference to a contributory or to a meeting of contributories is to be ignored;
- (f) a reference to a member of a company or to a register of members is to be ignored;
- (g) a reference to the estate or to the property or assets of a company is to be read as a reference to the property subject to the relevant scheme;
- (h) a reference to a debt or liability of a company is to be read as a reference to a debt or liability of the relevant scheme; and
- (i) a reference to the registrar of companies is to be read as a reference to the FCA.

## PART 2

### Table of specific modifications of the Insolvency Rules 1986

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
<b>Part 4 (companies winding up)</b>		
<b>Chapter 1 (the scheme of this Part of the Rules)</b>		
4.2	Winding up by the court: the various forms of petition	Paragraph (2) is to be read as if— (a) the reference to the company included a reference to the operator of a relevant scheme; and (b) the words “the directors,” and “the official receiver,” were omitted.
<b>Chapter 2 (the statutory demand)</b>		
4.4	Preliminary	In paragraph (2) the reference to a company is to be read as a reference to the operator of a relevant scheme.
4.5	Form and content of statutory demand	In paragraph (2)(a) the reference to the company’s liability is to be read as a reference to the liability of the relevant scheme in relation to which the statutory demand has been served.
4.6	Information to be given in statutory demand	In paragraph (1)(c) the reference to the company is to be read as a reference to the operator of the relevant scheme in relation to which the statutory demand has been served.
<b>Chapter 3 (petition to winding-up order)</b>		
4.6A	Injunction to restrain presentation or advertisement of petition	The first reference to a company is to be read as a reference to the operator of a relevant scheme.

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<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
4.7	Presentation and filing of petition	Paragraph (3) is to be read as if the words “who is a person other than the company” were omitted.
4.8	Service of petition	This Rule is to be read as if paragraph (2) required the petition is to be served at the registered office or principal place of business of the operator and of the depositary.  Paragraphs (3) to (5) apply in relation to the operator and in relation to the depositary as they apply in relation to a company on which a petition is served.
4.9A	Proof of service	The certificate of service must specify (instead of the particulars in paragraph (2)(a) and (b)) the name of the relevant scheme and the name and registered office (or principal place of business) of the operator and of the depositary.
4.10	Other persons to receive copies of petition	This Rule is to be read as if there were substituted for paragraphs (1) to (4)— “(1) The petitioner must send a copy of the petition to the FCA.”.
4.12	Verification of petition	A statement of truth which is not contained in or endorsed upon the petition which it verifies must specify (instead of the particulars in paragraph (3A)(a)) the name of the relevant scheme and of the operator and the depositary.
4.13	Persons entitled to copy of petition	This Rule is to be read as if the word “director,” were omitted.
4.15	Permission for petitioner to withdraw	In paragraph (c) the reference to the company is to be read as a reference to the operator and the depositary.
4.18	Witness statement in opposition	In this Rule— (a) each reference to the company is to be read as a reference to the operator; and (b) paragraph (1) is to be read as if it required the operator to file a witness statement only with the depositary’s consent.
<b>Chapter 4 (petition by contributories)</b>		
4.22 4.24	to Petition by contributories	These Rules do not apply.
<b>Chapter 5 (provisional liquidator)</b>		
4.25	Appointment of provisional liquidator	Paragraph (1) is to be read as if it provided that an application for the appointment of a

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
		provisional liquidator may be made by the operator, the depositary, the FCA or a creditor.
4.28	Security	In paragraph (2)(a) the reference to the making of an order on the company is to be read as a reference to the making of an order on the operator and the depositary.
<b>Chapter 6 (statement of affairs and other information)</b>		
4.39	Submission of accounts	A reference to the accounts of the company is to be read as a reference to the accounts relating to the affairs of the relevant scheme.
<b>Chapter 7 (information to creditors and contributories)</b>		
4.43	Reports by official receiver	This Rule is to be read as if paragraphs (1A) and (1B) were omitted.
4.48	Winding up stayed	In paragraph (2) the reference to the company is to be read as a reference to the operator.
4.49B	Reports to creditors and members - winding up by the court	<p>The progress report must include full details (instead of the details in paragraph (1)(b)) of the name of the relevant scheme and the name and registered office (or principal place of business) of the operator and of the depositary.</p> <p>Paragraph (2) is to be read as if the words from “and, where the liquidator” to the end were omitted.</p> <p>In paragraph (7) the reference to the members of the company is to be read as a reference to the operator and the depositary.</p>
<b>Chapter 8 (meetings of creditors and contributories)</b>		
4.58	Attendance at meetings of company’s personnel	<p>A reference to the company’s personnel is to be read as a reference to—</p> <p>(a) the operator and the depositary; and</p> <p>(b) the directors and employees of the operator and the depositary.</p>
<b>Chapter 9 (proof of debts in a liquidation)</b>		
4.79	Liquidator to allow inspection of proofs	The reference to any contributory of the company is to be read as a reference to the operator or the depositary.
4.83	Appeal against decision on proof	<p>In paragraphs (2) and (4A) a reference to a contributory is to be read as a reference to the operator or the depositary.</p> <p>In paragraph (4A) the reference to the company is to be read as a reference to the operator for the benefit of the participants.</p>

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

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
4.90	Mutual credits and set-off	A reference to mutual credits, mutual debts or other mutual dealings between the company and any creditor is to be read as a reference to mutual credits etc. between the operator on behalf of the participants and a creditor, and a reference to any obligation to or from the company, or any sum due or owed to, or due from, the company is to be read accordingly.
<b>Chapter 10 (secured creditors)</b>		
4.98	Test of security's value	In paragraph (2) the reference to the liquidator on behalf of the company is to be read as a reference to the liquidator acting in the best interests of the relevant scheme.
<b>Chapter 11 (the liquidator)</b>		
4.124	Release of official receiver	This Rule is to be read as if paragraph (2A) were omitted.
4.125	Final meeting	This Rule is to be read as if paragraph (2A) were omitted.
4.128	Other matters affecting remuneration	Paragraph (3) is to be read as if for the words "act on behalf of the company" there were substituted "act in the liquidation".
4.131	Creditors' claim that remuneration is or other expenses are excessive	Paragraph (4)(e) is to be read as if it required the amount to which it refers to be paid to the operator for the benefit the relevant scheme.
4.138	Liquidator's duties on vacating office	A reference to the company's books, papers and other records is to be read as a reference to all books, papers and other records affecting or relating to the affairs of, or the property subject to, the relevant scheme.
4.149	Power of court to set aside certain transactions	Paragraph (1) is to be read as if the court's power to order the liquidator to compensate the company for loss suffered in consequence of a transaction which is set aside included power to order the liquidator, by way of compensation for loss suffered in consequence of such a transaction, to contribute any sum to the property subject to the relevant scheme.
<b>Chapter 12 (the liquidation committee)</b>		
4.152	Membership of committee	Paragraph (1) is to be read as if the words "Subject to Rule 4.154 below," were omitted.
4.154	Committee established by contributories	This Rule does not apply.
4.171A	Composition of committee when creditors paid in full	This Rule is to be read as if—



<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
		(a) at the end of paragraph (2) there were inserted “and the committee is abolished”; and (b) paragraphs (3) and (4) were omitted.
<b>Chapter 14 (collection and distribution of company’s assets by liquidator)</b>		
4.181	Debts of insolvent company to rank equally	This Rule is to be read as if the references to preferential debts were omitted.
<b>Chapter 15 (disclaimer)</b>		
4.188	Communication of disclaimer to persons interested	In paragraph (2) the reference to a person who claims under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title).
<b>Chapters 16, 17 and 18</b>		
4.195 to 4.201	Settlement of list of contributories	These Rules do not apply.
4.202 to 4.205	Calls	These Rules do not apply.
4.206 to 4.210	Special manager	These Rules do not apply.
<b>Chapter 19 (public examination of company officers and others)</b>		
4.213	Order on request by creditors or contributories	In paragraph (2) the reference to the relationship which the proposed examinee has, or has had, to the company is to be read as a reference to that person’s interest in the relevant scheme or dealings with the operator.
<b>Chapter 20 (order of payment of costs, etc., out of assets)</b>		
4.218	General rule as to priority	Paragraph (2) is to be read as if subparagraph (b) were omitted.  Paragraph (3) is to be read as if the words “Subject as provided in Rules 4.218A to 4.218E,” were omitted.  In paragraphs (2) and (3) a reference to any legal action or proceedings or any arbitration or other dispute resolution procedure which the liquidator has power to bring or defend in the name of the company is to be read as a reference to such action, proceedings or procedure which the liquidator has power to bring or defend on behalf of the participants.
4.218A to 4.218E	Litigation expenses and property subject to a floating charge	These Rules do not apply.

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<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
4.220	Saving for powers of the court	In paragraph (2)— (a) the reference to proceedings by or against the company is to be read as a reference to proceedings brought by or against the operator for the resolution of any matter relating to the relevant scheme; and (b) the reference to the power of any court to order costs to be paid by the company is to be read as a reference to the power of any court to order costs to be paid out of the property subject to the relevant scheme.
<b>Chapters 21, 22 and 23</b>		
4.221 to 4.225	Miscellaneous rules	These Rules do not apply.
4.226 to 4.230	Permission to act as director, etc., of company with prohibited name	These Rules do not apply.
4.231	EC Regulation – member state liquidator	This Rule does not apply.
<b>Part 7 (court procedure and practice)</b>		
7.1	Preliminary	The reference to a petition for a winding-up order under Part IV is to be read as a reference to a petition presented under regulation 17(9).
7.31A	Court file	In paragraph (4)(a)— (a) the reference to an officer or former officer of the company is to be read as a reference to the operator and the depositary; and (b) the reference to a member of the company is to be read as a reference to a participant.
7.41	Costs and expenses of witnesses	In paragraph (1) the reference to an officer of the insolvent company is to be read as a reference to— (a) the operator or any person who is employed by the operator; or (b) the depositary or any person who is employed by the depositary.
7.56	Service of orders staying proceedings	The reference to the property of a company is to be read as a reference to the property subject to a relevant scheme.
<b>Part 8 (proxies and company representation)</b>		
8.5	Right of inspection	In paragraph (3) the right of inspection exercisable in the case of an insolvent company by its directors is exercisable in the

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
		case of the relevant scheme by the operator or the depositary.
<b>Part 11 (declaration and payment of dividend (winding up and bankruptcy))</b>		
11.6	Notice of declaration	This Rule is to be read as if paragraph (2A) were omitted.
<b>Part 12 (miscellaneous and general)</b>		
12.18	False claim of status as creditor, etc.	In paragraph (1)— (a) each reference to the Rules is to be read as a reference to the Rules as modified by this Schedule; and (b) the reference to the members of a company is to be read, in relation to the winding up of a relevant scheme, as a reference to— (i) the operator or depositary of the relevant scheme; or (ii) the participants in it.
<b>Part 12A (provisions of general effect)</b>		
12A.18	Service of orders staying proceedings	In paragraph (1)(a) the reference to the property of a company is to be read as a reference to the property subject to a relevant scheme.
12A.30	Forms for use in insolvency proceedings	Any form prescribed for use by paragraph (1) which is used in proceedings for winding up a relevant scheme is to be read with the modifications set out in this Schedule (so far as applicable for the form concerned). The requirement in paragraph (2) to use a form with such variations as the circumstances may require includes a requirement to use it with such variations as are necessary to take account of applicable modifications.
12A.34 and 12A.39	Notices relating to companies	Instead of the particulars given in each of these Rules a notice must specify the name of the relevant scheme and the name and registered office (or principal place of business) of the operator and of the depositary.
12A.43	Information to be contained in all notifications to the registrar	A notification must specify (instead of the particulars in paragraphs (a) and (b)) the name of the relevant scheme and the name of the operator and of the depositary.
12A.53	Charge for copy documents	The first reference to a member is to be read as a reference to a participant.

## SCHEDULE 4

Regulation 17(8)

Co-ownership schemes: application of the Insolvency (Scotland) Rules 1986

## PART 1

## Application of Rules with modifications

1. In relation to the winding up of a relevant scheme by the Court of Session under the 1986 Act, Rule 0.2 (interpretation) and Parts 4 and 7 of the Insolvency (Scotland) Rules 1986<sup>(82)</sup>, in so far as they apply to the winding up of an unregistered company, apply with—

- (a) the general modifications set out in paragraph 2;
- (b) any other modification specified in the Table in Part 2 of this Schedule; and
- (c) any other necessary modification.

2. Unless the context otherwise requires and subject to any modification specified in the Table in Part 2 of this Schedule which has a contrary effect, the general modifications are that—

- (a) a reference to a company includes a reference to a relevant scheme;
- (b) a reference to a voluntary winding up or a resolution for voluntary winding up of a company is to be ignored;
- (c) in any provision relating to—
  - (i) the possession or control of any books, papers, records or other property,
  - (ii) sending any documents or records to a third party, or
  - (iii) the giving or sending of any notice,
 a reference to the company is to be read as a reference to the operator of the relevant scheme;
- (d) a reference to a creditor of a company is to be read as a reference to a creditor of the relevant scheme;
- (e) a reference to a contributory or to a meeting of contributories is to be ignored;
- (f) a reference to a member of a company is to be ignored;
- (g) a reference to the property or assets of a company is to be read as a reference to the property subject to the relevant scheme;
- (h) a reference to a debt or liability of a company is to be read as a reference to a debt or liability of the relevant scheme;
- (i) a reference to the registrar of companies or to the Accountant in Bankruptcy or to the registrar of companies and the Accountant in Bankruptcy is to be read as a reference to the FCA; and
- (j) where a Rule of the Insolvency (Scotland) Rules 1986 applies a provision of the Bankruptcy (Scotland) Act 1985<sup>(83)</sup> which contains a reference to the debtor (except in the expression “the debtor’s estate”), the Rule is to be read as if it modified the provision concerned by requiring that reference to be read as a reference to the operator.

<sup>(82)</sup> S.I. 1986/1915 as amended by S.I. 1987/1921, 1999/1820, 2006/734, 2010/688, 2012/2404 and S.S.I. 2008/393. There are other amendments not relevant to these Regulations.

<sup>(83)</sup> 1985 c. 66.

## PART 2

## Table of specific modifications of the Insolvency (Scotland) Rules 1986

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
<b>Part 4 (winding up by the court)</b>		
<b>Chapter 1 (provisional liquidator)</b>		
4.1	Appointment of provisional liquidator	Paragraph (1) is to be read as if the words “or by the company itself,” were omitted.
4.3	Caution	Paragraph (a) is to be read as if the words “against the company” were omitted.
<b>Chapter 3 (information)</b>		
4.10	Information to creditors and contributories	This Rule is to be read as if paragraph (1A) were omitted.
<b>Chapter 4 (meeting of creditors and contributories)</b>		
4.12	First meetings in the liquidation	This Rule is to be read as if— (a) in paragraph (1) for the words from “under section 138(3)” to “as the case may be,” there were substituted “the interim liquidator summons”; (b) for paragraphs (2) and (2A) there were substituted— “ (2) That meeting is to be known as “the first meeting of creditors” and must be summoned for a date not later than 42 days after the date of the winding-up order or such longer period as the court may allow.”; and (c) paragraph (4) were omitted.
4.14	Attendance at meetings of company’s personnel	This Rule is to be read as if paragraph (3) were omitted.  A reference to the company’s personnel is to be read as a reference to— (a) the operator and the depositary; and (b) the directors and employees of the operator and the depositary.
<b>Chapter 5 (claims in liquidation)</b>		
4.16	Application of the Bankruptcy (Scotland) Act 1985	This Rule is to be read, in relation to section 49 of the Bankruptcy (Scotland) Act 1985, as if it included a modification of subsection (6A) having the effect that the operator may appeal if, and only if, it satisfies the sheriff that the participants have, or are likely to have, a pecuniary interest in the outcome of the appeal.  In paragraph (2) the expression in column 2 of the table which is substituted for a

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<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
		reference to the expression “Debtor” in column 1 of the table is to be read, in relation to sections 22(5) and 44(2) of the Bankruptcy (Scotland) Act 1985, as a reference to— (c) the operator; or (d) a director or employee of the operator.
4.17	Claims in foreign currency	In paragraph (1) each reference to the company is to be read as a reference to the operator.
<b>Chapter 6 (the liquidator)</b>		
4.18	Appointment of liquidator by the court	Paragraph (1) is to be read as if the words from “, 139(4)” to the end were omitted.
4.19	Appointment by creditors or contributories	Paragraph (2) is to be read as if the words “Subject to section 139(4)” were omitted.
4.22	Taking possession and realisation of the company’s assets	In paragraph (1)(a) the reference to any property, books, papers or records to which the company appears to be entitled is to be read as a reference to any property that appears to be property subject to the relevant scheme, and to any books, papers or records that appear to affect or relate to that property or to the affairs of the relevant scheme.  In paragraph (4) the reference to any title deed or other document or record of the company is to be read as a reference to any title deed or other document or record that affects or relates to the property subject to the relevant scheme or to the affairs of the relevant scheme.
4.28	Resignation of liquidator	Paragraph (2) is to be read as if the words from “and a statement” to the end were omitted.
4.31	Final meeting	Paragraph (2) is to be read as if the words from “and a statement” to the end were omitted.
4.38	Power of court to set aside certain transactions	Paragraph (1) is to be read as if the court’s power to order the liquidator to compensate the company for loss suffered in consequence of a transaction which is set aside included power to order the liquidator, by way of compensation for loss suffered in consequence of such a transaction, to contribute any sum to the property subject to the relevant scheme.
<b>Chapter 7 (the liquidation committee)</b>		

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
4.41	Membership of committee	Paragraph (1) is to be read as if the words “Subject to Rule 4.43 below,” were omitted.
4.43	Committee established by contributories	This Rule does not apply.
4.59	Composition of committee when creditors paid in full	This Rule is to be read as if— (a) at the end of paragraph (3) there were inserted “and the committee is abolished”; and (b) paragraphs (4) to (7) were omitted.
<b>Chapter 9 (distribution of company’s assets by liquidator)</b>		
4.66	Order of priority in distribution	Paragraph (4) is to be read as if the words “Subject to the provisions of section 175,” were omitted.  In paragraph (5) the reference to the members is to be read as a reference to the participants.
4.67	Order of priority of expenses of liquidation	In paragraph (3)— (a) the reference to proceedings by or against the company is to be read as a reference to proceedings brought by or against the operator for the resolution of any matter relating to the relevant scheme; and (b) the reference to the power of any court to order expenses to be paid by the company is to be read as a reference to the power of any court to order expenses to be paid out of the property subject to the relevant scheme.
4.68	Application of the Bankruptcy (Scotland) Act 1985 (procedure after end of accounting period)	This Rule is to be read, in relation to section 53 of the Bankruptcy (Scotland) Act 1985, as if it included a modification of subsection (6A) having the effect that the operator may appeal if, and only if, it satisfies the Accountant in Bankruptcy <sup>(84)</sup> or, as the case may be, the sheriff that the participants have, or are likely to have, a pecuniary interest in the outcome of the appeal.
<b>Chapter 10 (special manager)</b>		
4.69 to 4.73	Special manager	These Rules do not apply.
<b>Chapter 11 (public examination of company officers and others)</b>		
4.75	Order on request by creditors or contributories	In paragraph (2) the reference to the proposed examinee’s relationship to the company is to

<sup>(84)</sup> By virtue of Rule 4.16(2) the reference to the Accountant in Bankruptcy is to be read as a reference to the court.

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<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
		be read as a reference to that person's interest in the relevant scheme or dealings with the operator.
<b>Chapters 13, 14 and 15</b>		
4.78 to 4.82	Company with prohibited name	These Rules do not apply.
4.83 and 4.84	EC Regulation	These Rules do not apply.
<b>Part 7 (provisions of general application)</b>		
<b>Chapter 2 (proxies and company representation)</b>		
7.18	Right of inspection	In paragraph (3) the right of inspection exercisable in the case of an insolvent company by its directors is exercisable in the case of the relevant scheme by the operator or the depositary.
<b>Chapter 3 (miscellaneous)</b>		
7.21A and 7.21B	Contents of notices	Instead of the particulars in paragraph (3) of each of these Rules all notices published must specify the name of the relevant scheme and the name and registered office (or principal place of business) of the operator and of the depositary.
7.26	Right to list of creditors and copy documents	In paragraph (2A)(85) the first reference to a member is to be read as a reference to a participant.
7.27	Confidentiality of documents	In paragraph (1)(b) the reference, in relation to the winding up of a company, to the company's members is to be read, in relation to the winding up of a relevant scheme, as a reference to— (a) the operator or depositary of the relevant scheme; or (b) the participants in it.
7.30	Forms for use in insolvency proceedings	Any form prescribed for use by this Rule which is used in proceedings for winding up a relevant scheme is to be read with the modifications set out in this Schedule (so far as applicable for the form concerned). The reference to the use of a form with such variations as circumstances require includes a reference to its use with such variations as are necessary to take account of applicable modifications.

(85) The second paragraph (2A), which was inserted by S.I. 1987/1921.



<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
7.32	Power of court to cure defects in procedure	<p>The table in paragraph (2) is to be read as if the entry for the expression “Debtor” were omitted.</p> <p>In the entry for the expression “Permanent trustee” the reference to “Responsible insolvency practitioner” is to be read as a reference to the responsible insolvency practitioner in proceedings for winding up the relevant scheme.</p>
7.33	Sederunt book	<p>Paragraph (7) is to be read as if for subparagraph (d) there were substituted—</p> <p>“(d) in the case of a winding up, the date on which the liquidator vacates office under section 172(8) or the date of a certificate of release issued by the Accountant of Court”.</p>
7.34	Disposal of company’s books, papers and other records	<p>In paragraphs (1), (2) and (3) a reference to the company’s books, papers and records is to be read as a reference to all books, papers and other records affecting or relating to the affairs of, or the property subject to, the relevant scheme.</p> <p>In paragraph (3) the reference to the date which is 12 months after the dissolution of the company shall be read as a reference to the date which is 12 months after the date of a notice given by the liquidator in compliance with Rule 4.31(4) which states that the liquidator has been released.</p>
7.36	Information about time spent on a case	<p>In paragraph (2)(b) the reference, in relation to a company, to any director is to be read, in relation to a relevant scheme, as a reference to the operator or depositary of the relevant scheme.</p>

## SCHEDULE 5

Regulation 17(8)

Co-ownership schemes: application of the Insolvency Rules (Northern Ireland) 1991

## PART 1

## Application of Rules with modifications

1. In relation to the winding up of a relevant scheme under the 1989 Order, Rules 0.1 to 0.7 (introductory provisions), Parts 4 and 7 to 12 of the Insolvency Rules (Northern Ireland) 1991<sup>(86)</sup>, in so far as they apply to the winding up of an unregistered company, apply with—

- (a) the general modifications set out in paragraphs 2 and 3;
- (b) any other modification specified in the Table in Part 2 of this Schedule; and
- (c) any other necessary modification.

2. Unless the context otherwise requires and subject to any modification specified in the Table in Part 2 of this Schedule which has a contrary effect, the general modifications are the modifications made in sub-paragraphs (a) to (h) of paragraph 2 of Schedule 3 (read as if set out in this paragraph), except that sub-paragraph (c) is to be read as if for “section 222(1)(a)” there were substituted “Article 186(1)”.

3. A reference to the registrar<sup>(87)</sup> is to be read as a reference to the FCA.

## PART 2

Table of specific modifications of the Insolvency Rules (Northern Ireland) 1991

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
<b>Part 4 (companies winding up)</b>		
<b>Chapter 1 (the scheme of Part 4)</b>		
4.002	Winding up by the court: the various forms of petition	Paragraph (2) is to be read as if— (a) the reference to the company included a reference to the operator of a relevant scheme; and (b) the words “the directors,” and “the official receiver,” were omitted.
<b>Chapter 2 (the statutory demand)</b>		
4.004	Preliminary	In paragraph (2) the reference to a company is to be read as a reference to the operator of a relevant scheme.
4.005	Form and content of statutory demand	In paragraph (2)(a) the reference to the company’s liability is to be read as a reference to the liability of the relevant scheme in relation to which the statutory demand has been served.

<sup>(86)</sup> S.R. 1991 No. 364 as amended by S.R. 1994 No. 26, 1995 No. 291, 2000 No. 247, 2002 No. 261, 2003 No. 549, 2004 No. 355, 2006 No. 47, 2008 No. 118, 2009 No. 404 and 2011 No. 151.

<sup>(87)</sup> The registrar is the registrar of companies for Northern Ireland (see Article 5(1) of the 1989 Order (interpretation)).

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
4.006	Information to be given in statutory demand	In paragraph (1)(c) the reference to the company is to be read as a reference to the operator of the relevant scheme in relation to which the statutory demand has been served.
<b>Chapter 3 (petition to winding-up order)</b>		
4.007	Presentation and filing of petition	Paragraph (3) is to be read as if the words “If the petitioner is other than the company itself,” were omitted.
4.008	Service of petition	This Rule is to be read as if paragraph (2) required the petition is to be served at the registered office or principal place of business of the operator and of the depositary.  Paragraphs (3) to (5) apply in relation to the operator and in relation to the depositary as they apply in relation to a company on which a petition is served.
4.010	Other persons to receive copies of petition	This Rule is to be read as if there were substituted for paragraphs (1) to (5)— “(1) The petitioner must send a copy of the petition to the FCA.”.
4.011	Notice and advertisement of petition	The advertisement must state (instead of the particulars in paragraph (5)(a)) the name of the relevant scheme, the name and registered office (or principal place of business) of the operator and of the depositary and, if service of the petition was effected overseas, the address at which it was effected.
4.013	Persons entitled to copy of petition	This Rule is to be read as if the word “director,” were omitted.
4.015	Dismissal or withdrawal of petition	In paragraph (1)(c) the reference to the company is to be read as a reference to the operator and the depositary.
4.018	Affidavit by company in opposition	In this Rule— (a) each reference to the company is to be read as a reference to the operator; and (b) paragraph (1) is to be read as if it required the operator to file an affidavit only with the depositary’s consent.
<b>Chapter 4 (petition by contributories)</b>		
4.024 to 4.026	Petition by contributories	These Rules do not apply.
<b>Chapter 5 (provisional liquidator)</b>		

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

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
4.027	Appointment of provisional liquidator	Paragraph (1) is to be read as if it provided that an application for the appointment of a provisional liquidator may be made by the operator, the depositary, the FCA or a creditor.
4.031	Security	In paragraph (2)(a) the reference to the making of an order on the company is to be read as a reference to the making of an order on the operator and the depositary.
<b>Chapter 6 (Statement of affairs and other information)</b>		
4.043	Submission of accounts	A reference to the accounts of the company is to be read as a reference to the accounts relating to the affairs of the relevant scheme.
<b>Chapter 7 (information to creditors and contributories)</b>		
4.047	Reports by official receiver	This Rule is to be read as if paragraphs (1A) and (1B) were omitted.
4.052	Winding up stayed	In paragraph (2) the reference to the company is to be read as a reference to the operator.
<b>Chapter 8 (meetings of creditors and contributories)</b>		
4.065	Attendance at meetings of company's personnel	A reference to the company's personnel is to be read as a reference to— (a) the operator and the depositary; and (b) the directors and employees of the operator and the depositary.
<b>Chapter 9 (proof of debts in a liquidation)</b>		
4.085	Liquidator to allow inspection of proofs	The reference to any contributory of the company is to be read as a reference to the operator or the depositary.
4.089	Appeal against decision on proof	In paragraph (3) the reference to a contributory is to be read as a reference to the operator or the depositary.
4.096	Mutual credits and set-off	A reference to mutual credits, mutual debts or other mutual dealings between the company and any creditor is to be read as a reference to mutual credits etc. between the operator on behalf of the participants and a creditor, and a reference to any obligation to or from the company, or any sum due or owed to, or due from, the company is to be read accordingly.
<b>Chapter 10 (secured creditors)</b>		
4.104	Test of security's value	In paragraph (2) the reference to the liquidator on behalf of the company is to be read as a reference to the liquidator acting in the best interests of the relevant scheme.
<b>Chapter 11 (the liquidator)</b>		

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
4.131	Release of official receiver	This Rule is to be read as if paragraph (2A) were omitted.
4.132	Final meeting	This Rule is to be read as if paragraph (2A) were omitted.
4.135	Other matters affecting remuneration	Paragraph (3) is to be read as if for the words “act on behalf of the company” there were substituted “act in the liquidation”.
4.145	Liquidator’s duties on vacating office	A reference to the company’s books, papers and other records is to be read as a reference to all books, papers and other records affecting or relating to the affairs of, or the property subject to, the relevant scheme.
4.157	Power of court to set aside certain transactions	Paragraph (1) is to be read as if the court’s power to order the liquidator to compensate the company for loss suffered in consequence of a transaction which is set aside included power to order the liquidator, by way of compensation for loss suffered in consequence of such a transaction, to contribute any sum to the property subject to the relevant scheme.
<b>Chapter 12 (the liquidation committee)</b>		
4.160	Membership of committee	Paragraph (1) is to be read as if the words “Subject to Rule 4.162,” were omitted.
4.162	Committee established by contributories	This Rule does not apply.
4.179	Composition of committee when creditors paid in full	This Rule is to be read as if— (a) at the end of paragraph (4) there were inserted “and the committee is abolished”; and (b) paragraphs (5) to (9) were omitted.
<b>Chapter 14 (collection and distribution of company’s assets by liquidator)</b>		
4.190	Debts of insolvent company to rank equally	This Rule is to be read as if the references to preferential debts were omitted.
<b>Chapter 15 (disclaimer)</b>		
4.198	Communication of disclaimer to persons interested	In paragraph (2) the reference to a person who claims under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title).
<b>Chapters 16, 17 and 18</b>		
4.205 to 4.211	Settlement of list of contributories	These Rules do not apply.

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<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
4.212 to 4.215	Calls	These Rules do not apply.
4.216 to 4.220	Special manager	These Rules do not apply.
<b>Chapter 19 (public examination of company officers and others)</b>		
4.223	Order on request by creditors or contributories	In paragraph (3) the reference to the relationship which the proposed examinee has, or has had, to the company is to be read as a reference to that person's interest in the relevant scheme or dealings with the operator.
<b>Chapter 20 (order of payment of costs out of assets)</b>		
4.228	General rule as to priority	Paragraph (2) is to be read as if subparagraph (b) were omitted.  Paragraph (3) is to be read as if the words "Subject as provided in Rules 4.228A to 4.228E," were omitted.  In paragraphs (2) and (3) a reference to any legal action or proceedings or any arbitration or other dispute resolution procedure which the liquidator has power to bring or defend in the name of the company is to be read as a reference to such action, proceedings or procedure which the liquidator has power to bring or defend on behalf of the participants.
4.228A to 4.228E	Litigation expenses and property subject to a floating charge	These Rules do not apply.
4.230	Saving for powers of the court	In paragraph (2)— (a) the reference to proceedings by or against the company is to be read as a reference to proceedings brought by or against the operator for the resolution of any matter relating to the relevant scheme; and (b) the reference to the power of any court to order costs to be paid by the company is to be read as a reference to the power of any court to order costs to be paid out of the property subject to the relevant scheme.
<b>Chapter 21 (miscellaneous rules)</b>		
4.231 and 4.232	Order authorising a return of capital	These Rules do not apply.
4.233	Statement to registrar under Article 162	This Rule is to be read as if paragraph (2) were omitted.

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
4.234 and 4.235	Dissolution after winding up	These Rules do not apply.
<b>Chapters 22 and 23</b>		
4.236 to 4.240	Leave to act as director, etc., of company with prohibited name	These Rules do not apply.
4.241	EC Regulation – member state liquidator	This Rule does not apply.
<b>Part 7 (court procedure and practice)</b>		
7.05	Preliminary	The reference to a petition for a winding-up order under Part V is to be read as a reference to a petition presented under regulation 17(9).
7.27	Right to inspect the file	In paragraph (2)(a)— (a) the reference to a director or officer of the company is to be read as a reference to the operator and the depositary; and (b) the reference to a member of the company is to be read as a reference to a participant.
7.37	Costs and expenses of witnesses	In paragraph (1) the reference to an officer of the insolvent company is to be read as a reference to— (a) the operator or any person who is employed by the operator; or (b) the depositary or any person who is employed by the depositary.
7.51	Restriction on concurrent proceedings and remedies	The reference to the property of a company is to be read as a reference to the property subject to a relevant scheme.
<b>Part 8 (proxies and company representation)</b>		
8.5	Right of inspection	In paragraph (3) the right of inspection exercisable in the case of an insolvent company by its directors is exercisable in the case of the relevant scheme by the operator or the depositary.
<b>Part 12 (miscellaneous and general)</b>		
12.08	Forms for use in insolvency proceedings	Any form prescribed for use by this Rule which is used in proceedings for winding up a relevant scheme is to be read with the modifications set out in this Schedule (so far as applicable for the form concerned).  This Rule is to be read, in relation to such a form, as subject to a requirement to vary the form as necessary to take account of applicable modifications.

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<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
12.17	Charge for copy documents	The first reference to a member is to be read as a reference to a participant.
12.20	False claim of status as creditor, etc.	In paragraph (1)— (a) each reference to the Rules is to be read as a reference to the Rules as modified by this Schedule; and (b) the reference to the members of a company is to be read, in relation to the winding up of a relevant scheme, as a reference to— (i) the operator or depositary of the relevant scheme; or (ii) the participants in it.

## EXPLANATORY NOTE

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

These Regulations provide for the formation of undertakings for collective investment constituted in accordance with contract law. Such undertakings are called contractual schemes and are a new class of collective investment scheme (as defined by section 235 of the Financial Services and Markets Act 2000 (c.8) (“FSMA”). A contractual scheme may be either a co-ownership scheme, which has no legal personality distinct from the persons who take part as investors, or a partnership scheme, which is a limited partnership under the Limited Partnerships Act 1907 (c.24).

The Regulations also provide for the authorisation and supervision of contractual schemes by the Financial Conduct Authority (“the FCA”).

Provision for the formation of contractual schemes arises out of and is related to the right conferred by Article 1.3 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (OJ No. L 302, 17.11.2009, p.32). Article 1.3 confers a right to constitute undertakings of this description (“UCITS”) as common funds managed by management companies.

Part 2 (regulations 3, 4, 5 and 6) provides for contractual schemes by amending Part 17 of FSMA (collective investment schemes) and other primary legislation. Unless otherwise specified in this note, a reference to a section is a reference to a section of FSMA.

Regulation 3(5) inserts section 235A, which defines “contractual scheme” and “contractual scheme deed”. The operator of a co-ownership scheme has authority to acquire, manage and dispose of scheme property, and for that purpose to enter into contracts on behalf of the participants in the scheme. The operator of a partnership scheme is the general partner of the limited partnership.

Regulation 3(6) amends section 237 to take account of contractual schemes—

- sub-paragraph (a) amends section 237(1) to exclude contractual schemes from the definition of “unit trust scheme”;



- sub-paragraph (b) amends section 237(2) to specify who the operator is for a co-ownership scheme and a partnership scheme;
- sub-paragraph (d) inserts definitions for co-ownership schemes that consist of segregated sub-schemes and those that do not.

Regulation 3(12) inserts Chapter 3A into Part 17 of FSMA (collective investment schemes). Chapter 3A consists of sections 261C to 261Z5.

Sections 261C to 261G provide for the determination of applications for authorisation of contractual schemes. In order to be authorised, a scheme must meet specified requirements, including a requirement that the scheme must not allow units in the scheme to be issued to anyone other than—

- a professional client for the purpose of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments (OJ No. L 145, 30.4.2004, p.1); or
- someone who makes a payment or contributes property having a value of not less than £1,000,000 in exchange for the units or already holds units in the scheme.

Sections 261H and 261J extend to authorised contractual schemes the power which the FCA has under sections 247 and 248 to make rules in relation to authorised unit trust schemes. Rules may be modified or waived under section 261L.

Sections 261M to 261P make provision about the contracts and the rights and liabilities of the participants in an authorised co-ownership scheme. Section 261O limits their liability for debts incurred under, or in connection with, contracts which the operator is authorised to enter into on their behalf. Section 261P provides for the segregation of the liabilities of participants in sub-schemes (where a co-ownership scheme is constituted as an umbrella co-ownership scheme).

Sections 261Q to 261S provide for the alteration of authorised contractual schemes, including the replacement of the operator or the depository and the conversion of a UCITS which is a feeder UCITS into a UCITS which is not a feeder UCITS.

Sections 261U, 261V and 261W provide for the revocation of an authorisation order made for a contractual scheme.

Sections 261X to 261Z5 confer intervention powers on the FCA and on the court on application by the FCA. Powers of direction include powers exercisable where a master UCITS which has one or more feeder UCITS which are authorised contractual schemes is wound up, merges with another UCITS or is divided into two or more UCITS.

Regulation 4 amends the Stock Transfer Act 1963 (c.18) so that provision made by that Act for the simplified transfer of securities applies to the transfer of units of an authorised contractual scheme.

Regulation 5 amends the Corporation Tax Act 2010 (c.4) so that no charge to corporation tax arises in relation to a co-ownership scheme.

Part 3 (regulations 7 to 15) amends secondary legislation. Regulation 13 amends the Limited Partnerships (Forms) Rules 2009 (S.I. 2009/2160) by substituting the form which is required to be used for registering changes to limited partnerships. The form in Schedule 1 allows for the registration of additional changes required to be registered in relation to partnership schemes.

Part 4 (regulation 16) modifies the Limited Partnerships Act 1907 (c.24) in relation to a limited partnership which is a partnership scheme for which an authorisation order under Part 17 of FSMA has been made. The modifications include the following—

- the general partner's liability for partnership debts and obligations is qualified by regulations 18 and 19 of these Regulations;
- a limited partner is not liable for partnership debts and obligations beyond the amount of partnership property which is available to the general partner to meet them, and a person who ceases to be a limited partner ceases to have any liability for debts and obligations;

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- the exercise of rights conferred on participants in a contractual scheme by FCA rules does not constitute taking part in the management of the partnership; and
- modified provision is made in relation to the registration of changes in the partnership.

Part 5 (regulations 17, 18 and 19) provide for winding up insolvent contractual schemes.

Regulation 17 and Schedules 2 to 5 provide for winding up a stand-alone co-ownership scheme or a sub-scheme of an umbrella co-ownership scheme (a “relevant scheme”) by the court as if it were an unregistered company, including provision—

- for determining which court has jurisdiction to wind up a relevant scheme;
- applying with modifications specified provisions of the Insolvency Act 1986 (c.45) and the Insolvency (Northern Ireland) Order 1989 (S.I. 1989/2405 (N.I. 19));
- enabling a winding up petition to be presented by the operator or a creditor of a relevant scheme or by the FCA on the ground that the operator is unable to meet the debts of the relevant scheme, or that it is just and equitable that the relevant scheme should be wound up;
- enabling a winding up petition to be presented by the Secretary of State (or the Department of Enterprise, Trade and Investment if a relevant scheme is being wound up in Northern Ireland) on the ground that winding up is just and equitable in the public interest; and
- requiring the operator of a relevant scheme, if a petition is presented, immediately to cease investment activity and the issue and redemption of units.

Regulations 18 and 19 limit the liability of the general partner of an insolvent authorised partnership. The general partner of an authorised partnership which is wound up by the court as an unregistered company (in England and Wales or Northern Ireland) or whose estate is sequestrated under the Bankruptcy (Scotland) Act 1985 (c.66) is not personally liable for partnership debts incurred at a time when the authorisation order was in force. This does not affect the power of the court to award a remedy for misapplying partnership property or for misfeasance or breach of duty or, in the case of a partnership wound up as an unregistered company, for fraudulent or wrongful trading.

Part 6 (regulations 20 to 23) modifies the application to authorised contractual schemes of—

- the Law of Property Act 1925 (c.20) and the Statute of Frauds (Ireland) 1695 (c.12 (Ir), which would require transfers of title to units in a co-ownership scheme to be in writing; and
- the Requirements of Writing (Scotland) Act 1995 (c.7), which would require gifts of title to units in any contractual scheme to be in writing.

The modifications allow such transfers to be made by electronic communication.

Part 7 (regulation 24) makes transitional provision in relation to depositaries of authorised contractual schemes. A person who already has permission under Part 4A of FSMA to act as the trustee of an authorised unit trust scheme and as the depositary of an open-ended investment company, if that person gives the FCA notice in accordance with the regulation, is treated as having permission under that Part to act as the depositary of an authorised contractual scheme.

Part 8 (regulation 25) requires the Treasury to review the operation and effect of these Regulations and publish a report within five years after they come into force and within every five years after that. Following a review it will fall to the Treasury to consider whether the Regulations should remain as they are or be revoked or amended. A further instrument would be needed to revoke the Regulations or to amend them.

A full impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Her Majesty’s Treasury, 1 Horse Guards Road, London SW1A 2HQ or on [www.hm-treasury.gov.uk](http://www.hm-treasury.gov.uk), and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

