
D R A F T S T A T U T O R Y I N S T R U M E N T S

2012 No. 000

FINANCIAL SERVICES AND MARKETS

**The Collective Investment in Transferable Securities
(Contractual Scheme) Regulations 2012**

Made - - - - - ***

Coming into force - - - - - ***

The Treasury are a government department designated(a) for the purposes of section 2(2) of the European Communities Act 1972(b) in relation to collective investment in transferable securities and other liquid assets, and to measures relating to investment firms and the provision of investment services.

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

A draft of these Regulations has been laid before 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 2012, and come into force on [] 2012.

Interpretation

2. In these Regulations—

“the 1986 Act” means the Insolvency Act 1986(c);

“the 1989 Order” means the Insolvency (Northern Ireland) Order 1989(a);

(a) S.I. 1993/2661; S.I. 2002/2840.

(b) 1972 c.68. Section 2(2) was amended by section 27(1)(a) of the Legislative and Regulatory Reform Act 2006 (c.51) and the European Union (Amendment) Act 2008 (c.7), Schedule, Part 1. Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 and amended by the European Union (Amendment) Act 2008, Schedule, Part 1.

(c) 1986 c.45.

“authorised contractual scheme” has the meaning given in section 237(3) of FSMA;
“the Authority” means the Financial Services Authority;
“depository” has the meaning given in section 237(2) of FSMA;
“FSMA” means the Financial Services and Markets Act 2000(b);
“operator” has the meaning given in relation to a co-ownership scheme in section 237(2) of FSMA;
“participant” has the meaning given in section 235(2) of FSMA;
“partnership scheme” has the meaning given in section 235A(5) of FSMA;
“stand-alone co-ownership scheme” has the meaning given in section 237(4D) of FSMA;
“sub-scheme” has the meaning given in section 237(4C) of FSMA;
“umbrella co-ownership scheme” has the meaning given in section 237(4A) of FSMA;
“units” has the meaning given in section 237(2) of FSMA; [and
“unregistered company” has the meaning given in section 220 of the 1986 Act or Article 184 of the 1989 Order.

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(c) (liability for key investor information) after “section 248” insert “or 261I”.

(3) In section 140 (restriction on managers of certain collective investment schemes)—

(a) for subsection (1)(d) substitute—

“(1) The Authority may make rules prohibiting an authorised person who has permission to act as—

- (a) the manager of an authorised unit trust scheme,
- (b) the operator of an authorised contractual scheme, or
- (c) the management company of an authorised UCITS open-ended investment company,

from carrying on a specified activity.”; and

(b) after subsection (2) insert—

“(2A) In this section “authorised contractual scheme” and “the operator”, in relation to such a scheme, have the meaning given in section 237.”.

(4) In section 148 (modification or waiver of rules), in subsection (2)(e), for “or section 248 (scheme particulars rules)” substitute “, section 248 (scheme particulars rules), section 261H (contractual scheme rules) or section 261I (contractual scheme particulars rules)”.

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

“235A.—Contractual schemes

(1) In this Part “contractual scheme” means—

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- (a) S.I. 1989/2405 (N.I. 19).
 - (b) 2000 c.8.
 - (c) Section 90ZA was inserted by S.I. 2011/1613.
 - (d) Section 140(1) was substituted by S.I. 2003/2066.
 - (e) Section 148(2) was substituted by S.I. 2007/1973.

- (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).

(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 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 prohibit the transfer of units, except where transfer is permitted by contractual scheme rules;
- (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—
 - (i) the property subject to the scheme is to be held by a depositary; and

- (ii) the limited partners, other than the nominated partner, are to be the participants in the scheme.
- (7) In this section “general partner”, “limited partner” and “limited partnership” have the same meaning as in the Limited Partnerships Act 1907.
- (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 (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”(a), after paragraph (a) insert—
 - “(aa) in relation to a co-ownership scheme, means the person who is responsible under the terms of the contractual scheme deed for the management of the scheme and the property subject to the scheme;
 - (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;”;
 - and
 - (ii) in the definition of “UK UCITS”(b), after “a UCITS which is an authorised unit trust scheme” insert “, an authorised contractual scheme”; and
 - (d) after subsection (4) insert—
 - “(4A) In this Part “umbrella co-ownership scheme” means an authorised contractual scheme which satisfies the conditions in subsection (4B).
 - (4B) 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.
 - (4C) 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.
 - (4D) In this Part “stand-alone co-ownership scheme” means an authorised contractual scheme which—
 - (a) is a co-ownership scheme; and
 - (b) is not an umbrella co-ownership scheme.”
- (7) In section 238 (restrictions on promotion), in subsection (4), after paragraph (a) insert—
 - “(aa) an authorised contractual scheme;”.
- (8) In section 249 (disqualification of auditor for breach of trust scheme rules), in subsection (1), after “unit trust scheme” insert “, authorised contractual scheme”.
- (9) In section 261B(c) (information for feeder UCITS), in subsection (1), after “feeder UCITS of an authorised unit trust scheme” insert “, an authorised contractual scheme”.
- (10) After section 261B insert—

(a) This definition was substituted by S.I. 2011/1613.
 (b) This definition was inserted by S.I. 2011/1613.
 (c) Section 261B was inserted by S.I. 2011/1613.

“CHAPTER 3A
AUTHORISED CONTRACTUAL SCHEMES
Applications for authorisation

261C.—Applications for authorisation of contractual schemes

(1) Any application for an order declaring a contractual scheme to be an authorised contractual scheme must be made to the Authority 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 Authority may direct;
- (b) must state the name and registered 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 the certificate of registration as a limited partnership under the Limited Partnerships Act 1907 certified in accordance with section 16(2) of that Act (or a copy of the certificate).

(3) At any time after receiving an application and before determining it, the Authority 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 Authority 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 Authority may direct.

261D.—Authorisation orders

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

- (a) is satisfied that the scheme complies with the requirements set out in this section,
- (b) is satisfied that the scheme complies with the requirements of the 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 Authority may make an order declaring the scheme to be an authorised contractual scheme.

(2) If the Authority 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.

(12) The participants must be entitled to have their units redeemed in accordance with the contractual scheme deed at a price—

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

261E.—Determination of applications

(1) Subject to subsection (2), an application under section 261C must be determined by the Authority 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 Authority before the end of two months beginning with the date on which it receives the application.

(3) The Authority 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 Authority written notice, at any time before the Authority determines it.

Applications refused

261F.—Procedure when refusing an application

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

(2) If the Authority 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

261G.—Certificates

(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 Authority 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

261H.—Contractual scheme rules

(1) The Authority may by rules (“contractual scheme rules”) make in relation to authorised contractual schemes provision corresponding to that which may be made under section 247 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 Authority’s power to make trust scheme rules shall also be exercisable in relation to the Authority’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.

261I.—Contractual scheme particulars rules

(1) The Authority 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 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.

261J.—Disqualification of auditor for breach of contractual scheme rules

(1) If it appears to the Authority that an auditor has failed to comply with a duty imposed on the auditor by contractual scheme rules, it may disqualify the auditor from being the auditor for any authorised unit trust scheme, authorised contractual scheme or authorised open-ended investment company.

(2) Subsections (2) to (5) of section 345 have effect in relation to disqualification under subsection (1) as they have effect in relation to disqualification under subsection (1) of that section.

261K.—Modification or waiver of rules

(1) In this section “rules” means—

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

(2) The Authority 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 Authority 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) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (2) as they have effect in relation to a direction under section 148(2) 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) subsection (7)(b) is to be read, in relation to a participant in the scheme, as if the word “commercial” were omitted.

(5) Subsections (3) to (9) and (11) of section 148 have effect in relation to a direction under subsection (3) as they have effect in relation to a direction under section 148(2) but with the following modifications—

- (a) subsection (4)(a) is to be read as if the words “by the person” were omitted;
- (b) subsections (7)(b) and (11) are to be read as if references to the person were references to each of the operator and the depositary of the scheme;
- (c) subsection (7)(b) is to be read, in relation to a participant in the scheme, as if the word “commercial” were omitted;
- (d) subsection (8) 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) subsection (9) is to be read as if the reference to the person were a reference to the operator and depositary of the scheme acting jointly.

Co-ownership schemes: rights and liabilities of participants

261L.—Contracts

(1) In this section and in sections 261M to 261O an “authorised contract” means a contract which the operator of a co-ownership scheme is authorised to enter into on behalf of the relevant participants.

(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).

(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 the legal title in any property which is acquired under or by virtue of the contract to be vested in and held by the depositary of the scheme concerned.

261M.— Effect of acquiring, redeeming or transferring units

(1) A person who at any time becomes a participant in a stand-alone co-ownership scheme or a sub-scheme of an umbrella co-ownership scheme acquires the rights and becomes subject to the liabilities to which the other participants in the scheme or sub-scheme are entitled or subject under authorised contracts at that time.

(2) A person (“P”) who redeems or transfers all P’s units in a stand-alone co-ownership scheme or in a sub-scheme of an umbrella co-ownership scheme ceases to have any of the rights and to be subject to any of the liabilities to which a participant in the scheme or sub-scheme is entitled or subject at that time under authorised contracts.

261N.—Limited liability

(1) A participant in a stand-alone co-ownership scheme is not liable for debts under an authorised contract beyond the amount which is equal to the value of the participant’s units.

(2) A participant in an umbrella co-ownership scheme is not liable for debts under an authorised contract beyond the amount which is equal to the value of the participant’s units in the sub-scheme to which the contract relates.

261O.—Segregated liability in relation to umbrella co-ownership schemes

(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 Authority may give a direction under section 261W(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 Authority to apply to the court for an order under section 261X in relation to a sub-scheme of an umbrella co-ownership scheme.

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

Alterations

261P.—Alteration of contractual schemes and changes of operator or depositary

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

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

(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 Authority of any proposal to replace the depositary of the scheme.

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

(a) S.I. 2011/1613.

(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 Authority, 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 Authority a warning notice under section 261Q in respect of the proposal.

(7) The Authority 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).

261Q.—Procedure when refusing approval of a proposal under section 261P

(1) If the Authority proposes to refuse approval of a proposal under section 261P 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 261P(4) or (5).

(2) If the Authority proposes to refuse approval of a proposal under section 261P 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 Authority decides to refuse approval—

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

261R.—Proposal to convert to a non-feeder UCITS

(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 Authority.

(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 Authority 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 Authority approves the proposed amendments to the contractual scheme deed, or
- (b) separate warning notices to the operator and depositary of the scheme that the Authority 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 Authority, by written notice, has given its approval to the proposal.

(6) If, having given a warning notice to a person, the Authority 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 Authority may only approve the proposal subject to the conditions set out in section 283A(5) and (6).

(9) In this section “specified” means—

- (a) specified in rules made by the Authority to implement the UCITS directive, or
- (b) specified in any directly applicable EU regulation or decision made under the UCITS directive.

Exclusion clauses

261S.—Avoidance of exclusion clauses

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

261T.—Revocation of authorisation order otherwise than by consent

(1) An authorisation order may be revoked by an order made by the Authority if it appears to the Authority 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 Authority 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 Authority may take into account any matter relating to—

- (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.

261U.—Procedure for revoking authorisation order

(1) If the Authority proposes to make an order under section 261T 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 Authority 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.

261V.—Requests for revocation of authorisation order

(1) An authorisation order may be revoked by an order made by the Authority at the request of the operator or depositary of the scheme concerned.

(2) If the Authority 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 Authority 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 Authority 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 Authority 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

261W.—Directions

(1) The Authority may give a direction under this section if it appears to the Authority 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 Authority 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) The authorisation order may not be revoked unless—
 - (a) the Authority has given a direction under this section—
 - (i) requiring the operator of the scheme to cease the issue and redemption of units under the scheme; and
 - (ii) requiring the operator and depositary of the scheme to wind it up; or
 - (b) a petition has been presented to the court—
 - (i) in the case of a co-ownership scheme, for winding up the scheme by the court;
 - (ii) in the case of a partnership scheme, for winding up the scheme by the court [or the sequestration of the estate which is constituted by the property subject to the scheme].
- (4) If a person contravenes a direction under this section, section 150 applies to the contravention as it applies to a contravention mentioned in that section.
- (5) The Authority 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 Authority—
 - (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.

261X.—Applications to the court

- (1) If the Authority could give a direction under section 261W, 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 Authority.
- (2) The Authority 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 Authority 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 Authority, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).
- (6) The Authority 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.

261Y.—Winding up or merger of master UCITS

- (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 Authority under section 261W, an order of the court under section 261X, rules made by the Authority or otherwise.

(2) The Authority 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 Authority 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 Authority approves under section 261R 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 Authority 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 Authority 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 Authority approves under section 261R 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.

261Z.—Procedure on giving directions under section 261W or 261Y and varying them on Authority's own initiative

(1) A direction under section 261W or 261Y 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 may be expressed to take effect immediately (or on a specified date) only if the Authority, having regard to the ground on which it is exercising its power under section 261W, considers that it is necessary for the direction to take effect immediately (or on that date).

(3) If the Authority proposes to give a direction under section 261W, or gives such a direction 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 persons to whom it is given of when the direction takes effect;
- (c) state the Authority's reasons for giving the direction and for its determination as to when the direction takes effect;

- (d) inform the persons to whom it is given that representations may be made to the Authority within such period as may be specified in it (whether or not the matter has been referred to the Tribunal); and
- (e) inform the persons to whom it is given of the right to refer the matter to the Tribunal.

(5) If the direction imposes a requirement under section 261W(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 261W(2)(b) or section 261Y(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 Authority 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 Authority 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 Authority 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 Authority'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).

261Z1.—Procedure: refusal to revoke or vary direction

(1) If on an application under section 261W(5) for a direction to be revoked or varied the Authority 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 Authority 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.

261Z2.—Procedure: revocation of direction and grant of request for variation

(1) If the Authority decides on its own initiative to revoke a direction under section 261W 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 261W(5) for a direction to be revoked or varied the Authority 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 Authority may publish such information about the revocation or variation, in such way, as it considers appropriate.

261Z3.—Information for home state regulator

(1) Subsection (2) applies if, in accordance with rules made by the Authority to implement Article 66 of the UCITS directive, the Authority 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 Authority must immediately inform the home state regulator of the feeder UCITS of the investment made by that UCITS in the master UCITS.

261Z4.—Information for feeder UCITS

(1) The Authority 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 Authority 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 Authority;
- (c) any information reported to the Authority pursuant to rules of the Authority 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 Authority 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 Authority 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 Authority must immediately give that information to the home state regulator of each feeder UCITS established outside the United Kingdom.”.

(11) In section 270 (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) all or any two of the kinds of collective investment scheme mentioned in paragraphs (a) to (b).”.
- (12) In section 272 (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) all or any two of the kinds of collective investment scheme mentioned in paragraphs (a) to (b).”.
- (13) In section 283A(a) (master-feeder structures), in sub-paragraph (ii) of subsection (5)(b), after “the trust deed” insert “, contractual scheme deed”.
- (14) In section 347 (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 the depositary of the scheme;”;
 - (c) in subsection (7), after ““Authorised unit trust scheme”,” insert ““authorised contractual scheme”,”.
- (15) In section 351A(b) (disclosure under the UCITS directive)—
 - (a) in subsection (2)—
 - (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”;
 - and
 - (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”,”.
- (16) In section 392 (application of sections 393 and 394)—
 - (a) in paragraph (a)—
 - (i) after “255(1),” insert “261U(1),”;
 - (ii) after “249(1)” insert “or 261J(1)”;
 - (b) in paragraph (b)—
 - (i) after “255(2),” insert “261U(2),”;
 - (ii) after “249(1)” insert “or 261J(1)”.

(a) Section 283A was inserted by S.I. 2011/1613.
 (b) Section 351A was inserted by S.I. 2011/1613.

(17) In section 395 (the Authority’s procedures), in subsection (13), after paragraph (d) insert—
“(da) 261Z(3), (8) or (9)(b);”.

Amendment to the Stock Transfer Act 1963

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

Amendment to the Corporation Tax Act 2010

5. In section 1121 of the Corporation Tax Act 2010(c) (“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),”.

PART 3

AMENDMENTS TO SECONDARY LEGISLATION

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

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

(2) In article 2—

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

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

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

<i>Status</i>	<i>Questioner</i>
3A (a) The operator or depository of an authorised contractual scheme within the meaning of section 235A of the 2000 Act.	The Financial Services Authority.
(b) An associate of the person (whether or not an individual) mentioned in sub-paragraph (a).	

(4) In article 4, after paragraph (d)(vi) 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 261P of the 2000 Act to a proposal to replace the operator or depository of such a scheme,

(a) 1963 c.18.

(b) Subsection (4)(e) was substituted by the Financial Services Act 1986, s212(2) and Schedule 16, paragraph 4(a), and was amended by S.I. 2001/3649.

(c) 2010 c.4.

(d) S.I. 1975/1023. Article 3(g) was added by S.I. 2001/3816 and was amended by S.I. 2007/2149. Article 4(d) was substituted by S.I. 2001/3816. There are other amendments not relevant to these Regulations.

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

The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2012

7.—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2012(a) is amended as follows.

- (2) In article 2 (interpretation)—
- (a) after the definition of “Council of Lloyd’s” insert—
- ““depository”, in relation to a 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 a contractual scheme, has the meaning given in section 237(2) of the 2000 Act;”.
- (3) In Schedule 2 (financial services)—
- (a) 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 261P of the 2000 Act to a proposal to replace the operator or depository of such a scheme;
- (fb) to give a direction under section 261W 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—

<i>Status</i>	<i>Questioner</i>
3A (a) The operator or depository of an authorised contractual scheme within the meaning of section 235A of the 2000 Act.	The Financial Services Authority.
(b) An associate of the person (whether or not an individual) mentioned in sub-paragraph (a).	

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

8.—(1) The Rehabilitation of Offenders (Exceptions) Order (Northern Ireland) 1979(b) is amended as follows.

- (2) In article 1(2)—
- (a) after the definition of “day care” insert—
- ““depository”, in relation to a 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 a contractual scheme, has the meaning given in section 237(2) of the 2000 Act;”.
- (3) In article 2(g), in the table, after the entry in paragraph 3 insert the following entry—

(a) S.S.I. 2012/ [].

(b) S.R. 1979 No. 195, as amended by S.R. 1987 No. 393, S.R. 2001 No. 248, S.R. 2001 No. 400, S.R. No. 2003 No. 355, S.R. 2009 No. 173 and S.R. 2009 No. 303. Article 2(g) was inserted, and article 3(d) was substituted, by S.R. 2001 No. 400.

<i>Status</i>	<i>Questioner</i>
3A (a) The operator or depositary of an authorised contractual scheme within the meaning of section 235A of the 2000 Act.	The Financial Services Authority.
(b) An associate of the person (whether or not an individual) mentioned in sub-paragraph (a).	

(4) In article 3, after paragraph (d)(vi) 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 261P of the 2000 Act to a proposal to replace the operator or depositary of such a scheme,

(vib) to give a direction under section 261W 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(a) 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 depositary of an authorised contractual scheme;” and

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

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(b) is amended as follows.

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

(a) before the definition of “authorised unit trust scheme” insert—

““authorised contractual scheme” has 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(c) is amended as follows.

(2) In article 2 (interpretation)—

(a) before the definition of “authorised unit trust scheme” insert—

““authorised contractual scheme” has the meaning given in section 237(3) of the Act;”

-
- (a) S.I. 2001/544, to which there are amendments not relevant to these Regulations.
 (b) S.I. 2001/1060, to which there are amendments not relevant to these Regulations.
 (c) S.I. 2001/1062, to which there are amendments not relevant to these Regulations.

- (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;” and
- (c) 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) Order 2004(a) is amended as follows.

(2) In regulation 2 (interpretation)—

(a) for the definition of “manager” substitute—

““manager” means the operator of a relevant collective investment scheme or the insurer of a relevant linked long-term contract as the case may be;” and

(b) 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 a contractual scheme in which the investment scheme is invested directly or indirectly, or to receive any other information issued to investors by such a scheme; or”.

The Undertakings for Collective Investment in Transferable Securities Regulations 2011

13.—(1) Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011(b) (mergers) is amended as follows.

(2) In regulation 7 (interpretation)—

(a) [after the definition of “the Act” insert—

““authorised contractual scheme” means a contractual scheme in the case of which an authorisation order made by the Authority under section 261D of the Act is in force;”;

(b) after the definition of “the Authority” insert—

““contractual scheme” has the meaning given in section 235A of the Act;”]

(c) in the definition of “depository”, after paragraph (a) insert—

“(aa) in relation to an authorised contractual scheme means the person entrusted with safekeeping of the scheme property;”;

(d) in the definition of “managers”, after paragraph (a) insert—

“(aa) in relation to an authorised contractual scheme means the operator of that scheme;”;

(e) in the definition of “UCITS”, after “open-ended investment company,” insert “an authorised contractual scheme;”;

(f) in the definition of “unit-holders”, after paragraph (a) insert—

“(aa) in the case of an authorised contractual scheme, the unit-holders in that scheme; and”;

(g) in the definition of “units”, after paragraph (a) insert—

“(aa) in the case of an authorised contractual scheme, units in the scheme;”.

(a) S.I. 2004/2738, to which there are amendments not relevant to these Regulations.

(b) S.I. 2011/1613.

(3) In regulation 8, in paragraph (1), after “new company” insert “, contractual scheme”.

PART 4

MODIFICATION OF ENACTMENTS RELATING TO LIMITED PARTNERSHIPS

Modification of the Limited Partnerships Act 1907

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

(2) The Limited Partnerships Act 1907(a) has effect with the following modifications in its application to partnership schemes.

(3) Section 8A(2) is to be read as if the details required to be contained in an application for registration of a partnership scheme included the name of the person who is to be the depository if an authorisation order is made in respect of the partnership.

(4) Paragraphs (5) to (9) apply if an authorisation order is made in respect of a partnership scheme.

(5) Section 4 is to be read as if —

(a) in subsection (2)—

(i) after the words “general partners, who” there were inserted “, subject to regulation 16 of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2012,”;

(ii) for the words “, and 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 subsection (2A)”;

(b) after subsection (2) there were inserted—

“(2A) A limited partner (“L”) is not liable for the debts or obligations of the firm beyond the value of L’s share in the partnership.”; and

(c) subsection (3) were omitted.

(6) In section 6—

(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 261H 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 depository 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) for paragraph (b) there were substituted—

“(b) A limited partner (“L”) may not assign L’s share in the partnership, except where assignment is permitted by rules made under section 261H of the Financial Services and Markets Act 2000.”.

(7) Section 7 is to be read as if after the words “Subject to the provisions of this Act” there were inserted “as modified by regulation 14 of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2012”.

(a) 1907 c.24.

- (8) Section 9(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 of an authorisation order in respect of a limited partnership; and
 - (ii) any change in the general partner or depositary or the name of the general partner or depositary of the limited partnership.
- (9) Section 10 does not apply.

PART 5

WINDING UP INSOLVENT CONTRACTUAL SCHEMES

Co-ownership schemes: winding up by the court

15.—(1) In this regulation “authorised contract” has the meaning given in section 261L(1) of FSMA.

- (2) In this regulation and in the Schedules—
- (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 of the scheme or sub-scheme is a reference to a person to whom a debt of the scheme or sub-scheme is due or may fall due;
 - (ii) a reference to a debt of the scheme or sub-scheme is a reference to a debt which is due or may fall due by virtue of any liability (including any contingent or prospective liability) incurred under an authorised contract;
 - (iii) a reference to a liability of the scheme or sub-scheme is a reference to such a liability; 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.
- (3) A relevant scheme may be wound up under the applicable winding up legislation as if it were an unregistered company.
- (4) Schedule 1 has effect for the purpose of determining which enactments comprise the applicable winding up legislation.
- (5) Those enactments have effect with the modifications in Schedules 2 to 5 and with any other necessary modification [see para. 27 of Schedule 2 (s.144)].
- (6) If at any time the operator of a relevant scheme is deemed for the purposes of section 221 of the 1986 Act or Article 185 of the 1989 Order unable to pay the debts of the scheme or sub-scheme, the operator—
- (a) ceases to have authority to enter into an authorised contract; and
 - (b) must immediately—
 - (i) cease the issue and redemption of units under the scheme or sub-scheme;
 - (ii) give written notice to the Authority that the operator is unable to pay the debts of the scheme or sub-scheme; and
 - (iii) cease making payments under authorised contracts.

(7) An application to the court for the winding up of a relevant scheme may be made by petition presented by—

- (a) the operator or the depositary of the scheme or sub-scheme;
- (b) the Authority; or
- (c) any creditor of the scheme or sub-scheme.

(8) Section 370 of FSMA (liquidator's duty to report to Authority) has effect with the following modifications in relation to a relevant scheme which is being wound up on a petition presented otherwise than by the Authority—

- (a) in paragraph (a), the reference to a body is to be read as a reference to the scheme or sub-scheme; and
- (b) in paragraph (b), the reference to the body is to be read as a reference to the operator or the depositary of the scheme or sub-scheme.

Partnership schemes: liability of the general partner

16.—(1) In this regulation—

- (a) 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) “authorised partnership” means a partnership scheme in respect of which an authorisation order has been made under section 261D of FSMA.

(2) Where an authorised partnership is wound up under Part 5 of the 1986 Act or Part 6 of the 1989 Order as an unregistered company, the general partner is not liable for the debts and obligations of the partnership beyond the amount that the general partner is required to pay—

- (a) to satisfy 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 satisfy 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; or
- (c) in consequence of a declaration under section 213 or Article 177 (fraudulent trading) or section 214 or Article 178 (wrongful trading) that the general partner is liable to make a contribution to the assets of the partnership.

(3) [provision for Scotland equivalent to (2)]

PART 6

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

Transitional provision: depositaries of authorised contractual schemes

17.—(1) In this regulation—

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

“Part IV permission” has the meaning given in section 40(4) of FSMA;

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

“trustee” and “authorised unit trust scheme” have the meaning given in section 237 of FSMA.

(2) If within one month beginning with the date on which these Regulations come into force a relevant person gives written notice to the Authority of an intention to act as the depository of an authorised contractual scheme, the person's Part IV permission is to be treated as also relating to the regulated activity of acting as such a depository, but this is subject to any subsequent revocation or variation under Part 4 of FSMA.

PART 7

REVIEW

Review

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

- (a) carry out a review of regulations 2 to 17,
- (b) set out the conclusions of the review in a report, and
- (c) lay the report before Parliament.

(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 17,
- (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 laid before Parliament 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 laid.

(5) In this regulation—

- (a) “contractual scheme” has the meaning given in section 235A of FSMA;
- (b) “review period” means—
 - (i) the period of five years beginning with the day on which these Regulations come into force, and
 - (ii) subject to paragraph (4), each successive period of five years;
- (c) “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)(a); and
- (d) “UCITS” has the meaning given in Article 1.2 of the UCITS Directive.

Date

Name
Name
Two of the Lords Commissioners of Her Majesty's Treasury

(a) 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).

Enactments applicable to the winding-up of an insolvent co-ownership scheme

1. In this Schedule and in Schedule 2 “contractual scheme deed” means—
 - (a) in relation to a stand-alone co-ownership scheme, the deed referred to in section 235A(3)(b) of FSMA; and
 - (b) in relation to a sub-scheme of an umbrella co-ownership scheme, the deed referred to in that provision which was entered into between the operator and the depositary of the umbrella co-ownership scheme concerned.
2. The enactments which are applicable for the purpose of the winding up of a relevant scheme are to be determined in accordance with the following paragraphs.
3. Where the contractual scheme deed for a relevant scheme is governed by the law of England and Wales, the applicable enactments are the following in so far as they apply to the winding up of an unregistered company by order of the court—
 - (a) in the 1986 Act—
 - (i) Chapters 6, 7, 8 and 10 of Part 4 (winding up of companies registered under the Companies Acts);
 - (ii) Part 5 (winding up of unregistered companies);
 - (iii) Part 6 (miscellaneous provisions applying to companies which are insolvent or in liquidation);
 - (iv) Part 7 (interpretation for first group of parts); and
 - (b) Parts 4 and 7 to 13 of the Insolvency Rules 1986^(a).
4. Where the contractual scheme deed for a relevant scheme is governed by the law of Scotland, the applicable enactments are the following in so far as they apply to the winding up of an unregistered company by order of the court—
 - (a) the enactments referred to in paragraph 3(a); and
 - (b) in the Insolvency (Scotland) Rules 1986^(b)—
 - (i) Rules 0.1 to 0.3 (introductory provisions); and
 - (ii) Parts 4 and 7.
5. Where the contractual scheme deed for a relevant scheme is governed by the law of Northern Ireland, the applicable enactments are the following in so far as they apply to the winding up of an unregistered company by order of the court—
 - (a) in the 1989 Order—
 - (i) Articles 2 to 7 (interpretation);
 - (ii) Chapters 6, 7, 8 and 10 of Part 5 (winding up of companies registered under the Companies Act 2006);
 - (iii) Part 6 (winding up of unregistered companies);
 - (iv) Part 7 (miscellaneous provisions applying to companies which are insolvent or in liquidation);
 - (v) Article 377 (exemption from stamp duty); and
 - (b) in the Insolvency Rules (Northern Ireland) 1991^(c)—

(a) S.I. 1986/1925 [as amended by].

(b) S.I. 1986/1915 [as amended by].

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

- (i) Rules 0.1 to 0.7 (introductory provisions); and
- (ii) Parts 4 and 7 to 12.

SCHEDULE 2

Regulation 15(5)

Modification of the Insolvency Act 1986 and the Insolvency (Northern Ireland) Order 1989

PART 1

Interpretation

1. In this Schedule—

- (a) 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;
- (c) a reference to the scheme or the sub-scheme is a reference to a relevant scheme in relation to which a petition is presented under regulation 15(7); and
- (d) a reference to the participants, in relation to a relevant scheme, is a reference to the participants as holders of units in that scheme or sub-scheme (and not in any other capacity).

PART 2

General modifications

2. The following provisions have effect with the general modifications in paragraph 3 and the further modifications in Parts 3 and 4 of this Schedule—

- (a) in the 1986 Act—
 - (i) Chapters 6, 7, 8 and 10 of Part 4;
 - (ii) Parts 5, 6 and 7; and
- (b) in the 1989 Order—
 - (i) Articles 2 to 7 and 377;
 - (ii) Chapters 6, 7, 8 and 10 of Part 5;
 - (iii) Parts 6 and 7.

3. Unless the context otherwise requires and subject to the further modifications [see references to officer], the general modifications are that—

- (a) a reference to a company is to be read as a reference to a relevant scheme;
- (b) a reference to the company is to be read as a reference to the scheme or the sub-scheme;
- (c) a reference to a creditor or to creditors of the company is to be read as a reference to a creditor or to creditors of the scheme or the sub-scheme;
- (d) a reference to the property or assets of the company or to its estate or effects is to be read as a reference to the property which is subject to the scheme or the sub-scheme;
- (e) a reference to an action or a proceeding against a company is to be read as a reference to an action or a proceeding brought against the operator of the scheme or the sub-scheme for the resolution of any matter relating to the scheme or sub-scheme;
- (f) a reference to any debt or liability of a company is to be read as a reference to any debt or liability of the scheme or the sub-scheme;

- (g) a reference to a director or manager or an officer of the company is to be read as a reference to the operator or the depositary of the scheme or the sub-scheme or any person who is employed by the operator or the depositary.

PART 3

Further modifications of the 1986 Act

CHAPTER 1

Part 4 of the 1986 Act

4. The further modifications of Chapters 6, 7, 8 and 10 of Part 4 of the 1986 Act (winding up of companies registered under the Companies Acts) are as follows.

Chapter 6 (winding up by the court)

5. Section 117 (High Court and county court jurisdiction) is to be read as if subsections (2) to (6) and subsection (8) were omitted.

6. In section 117(1) the reference to any company registered in England and Wales is to be read as a reference to any relevant scheme in relation to which the contractual scheme deed is governed by the law of England and Wales.

7. Section 118 (proceedings taken in wrong court) and section 119 (proceedings in county court; case stated for High Court) do not apply.

8. Section 120 (Court of Session and sheriff court jurisdiction) is to be read as if subsections (3) to (5) were omitted.

9. In section 120(1) the reference to any company registered in Scotland is to be read as a reference to any relevant scheme in relation to which the contractual scheme deed is governed by the law of Scotland.

10. The following sections do not apply—

- section 122 (circumstances in which company may be wound up by the court);
- section 123 (definition of inability to pay debts);
- section 124 (application for winding up);
- section 124A (petition for winding up on grounds of public interest);
- section 124B (petition for winding up of SE); and
- section 124C (petition for winding up of SCE).

11. Section 125 (powers of court on hearing of petition) is to be read as if subsection (2) were omitted.

12. In section 126 (power to stay or restrain proceedings against company), in subsection (1), the reference to the company, or any creditor or contributory is to be read as a reference to the Authority, or the operator or the depositary or any creditor of the scheme or the sub-scheme.

13. In 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 or redemption of units in the scheme or the sub-scheme.

14. In section 128 (avoidance of attachments, etc.)—

- (a) in subsection (1), the reference to a company registered in England and Wales being wound up by the court is to be read as a reference to a relevant scheme being wound up by the High Court; and
- (b) in subsection (2)—

- (i) 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; and
- (ii) 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.

15. [Section 129 (commencement of winding up by the court) is to be read as if—

- (a) subsections (1) and (1A) were omitted; and
- (b) in subsection (2) the words “In any other case,” were omitted.]

16. Section 130 (consequences of winding-up order) is to be read as if subsection (4) were omitted.

17. In section 130(1) the reference to the registrar of companies is to be read as a reference to the Authority.

18. In section 131 (company’s statement of affairs), in subsection (3)(c), the reference to persons who are or have been in the company’s employment is to be read as a reference to persons who are or have been in the employment of the operator or the depositary of the scheme of the sub-scheme.

19. In section 136 (functions of official receiver in relation to office of liquidator)—

- (a) subsection (1) is to be read as if the words “, subject to section 140 below,” were omitted;
- (b) in subsection (4) the reference to separate meetings of the company’s creditors and contributories is to be read as a reference to a meeting of the creditors of the scheme or the sub-scheme; and
- (c) subsections (5) and (6) are to be read as if—
 - (i) for “meetings” there were substituted “a meeting”; and
 - (ii) the words “and contributories” were omitted.

20. In section 137 (appointment by Secretary of State) subsection (2) is to be read as if—

- (a) for “meetings are held” there were substituted “a meeting is held”; and
- (b) for “those meetings” there were substituted “that meeting”.

21. Section 138 (appointment of liquidator in Scotland) is to be read as if subsection (4) were omitted.

22. In section 138(3) the reference to separate meetings of the company’s creditors and contributories is to be read as a reference to a meeting of the creditors of the scheme or the sub-scheme.

23. Section 139 (choice of liquidator at meetings of creditors and contributories) 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.”.

24. In section 139—

- (a) in subsection (1) the reference to separate meetings of the company’s creditors and contributories is to be read as a reference to a meeting of the creditors of the scheme or the sub-scheme; and
- (b) subsection (2) is to be read as if the words “and the contributories at their respective meetings” were omitted.

25. Section 140 (appointment by the court following administration or voluntary arrangement) does not apply.

26. Section 141 (liquidation committee (England and Wales)) is to be read as if subsection (3) were omitted.

27. In section 141—

- (a) in subsection (1)—
 - (i) the reference to separate meetings of the company’s creditors and contributories is to be read as a reference to a meeting of the creditors of the scheme or the sub-scheme;
 - (ii) the reference to those meetings is to be read as a reference to that meeting; and
- (b) in subsection (2) the reference to separate general meetings of the company’s creditors and contributories is to be read as a reference to a general meeting of the creditors of the scheme or the sub-scheme.

28. Section 142 (liquidation committee (Scotland)) 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 (2), the word “separate” and the words “and contributories” were omitted;
- (c) in subsection (3), the words “, if appointed by the court otherwise than under section 139(4)(a),” were omitted; and
- (d) subsection (4) were omitted.

29. In section 144 (custody of company’s property), in subsection (1), the reference to the company is to be read as a reference to the participants in the scheme or the sub-scheme.

30. In section 145 (vesting of company property in liquidator), in subsection (1), the reference to property belonging to the company or held by trustees on its behalf is to be read as a reference to the property subject to the scheme or the sub-scheme, and the reference to recovering its property is to be read accordingly.

31. In section 147 (power to stay or sist winding up), in subsection (3)—

- (a) the first reference to the company is to be read as a reference to the operator of the scheme or the sub-scheme; and
- (b) the reference to the registrar of companies is to be read as a reference to the Authority.

32. The following sections do not apply—

- section 148 (settlement of list of contributories and application of assets);
- section 149 (debts due from contributory to company);
- section 150 (power to make calls);
- section 151 (payment into bank of money due to company);
- section 152 (order on contributory to be conclusive evidence); and
- section 154 (adjustment of rights of contributories).

33. In section 155 (inspection of books by creditors, etc.)—

- (a) subsection (1) is to be read as if the words “and contributories” were omitted; and
- (b) in subsection (1)—
 - (i) the reference to the company’s books and papers is to be read as a reference to books and papers relating to the affairs of the scheme or the sub-scheme; and
 - (ii) the reference to books and papers in the company’s possession is to be read as a reference to such books and papers in the possession of the operator or the depositary of the scheme or the sub-scheme.

34. In section 157 (attendance at company meetings (Scotland)) the reference to a company registered in Scotland is to be read as a reference to a relevant scheme in relation to which the contractual scheme deed is governed by the law of Scotland.

35. Section 158 (power to arrest absconding contributory) and section 161 (orders for calls on contributories (Scotland)) do not apply.

Chapter 7 (liquidators)

36. In section 164 (corrupt inducement affecting appointment) the reference to a member of a company is to be read as a reference to the operator or the depositary of a relevant scheme or a participant in such a scheme.

37. Section 165 (voluntary winding up) and section 166 (creditors' voluntary winding up) do not apply.

38. Section 169 (supplementary powers (Scotland)) is to be read as if the power made exercisable by subsection (1)(a) were a power to bring or defend any action or other legal proceeding which would otherwise be brought or defended by the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme.

39. Section 169 (1)(b) is to be read as subject to the requirements in regulation 15(6)(b) to cease the issue and redemption of units and to cease making payments under contracts.

40. In section 170 (enforcement of liquidator's duty to make returns, etc.), in subsection (2), the reference to the registrar of companies is to be read as a reference to the Authority.

41. Section 171 (removal, etc. (voluntary winding up)) does not apply.

42. In section 172 (removal etc., winding up by the court), in subsection (8), the reference to the registrar of companies is to be read as a reference to the Authority.

43. Section 173 (release (voluntary winding up)) does not apply.

Chapter 8 (provisions of general application in winding up)

44. Sections 175 and 176 (preferential debts) do not apply.

45. In section 176ZA (payment of expenses of winding up (England and Wales)), in subsection (1), the reference to any floating charge created by the company is to be read as a reference to any floating charge over the property subject to the scheme or the sub-scheme.

46. Section 176A (share of assets for unsecured creditors) does not apply.

47. Section 177 (power to appoint special manager) does not apply.

48. In section 178 (power to disclaim onerous property), in subsection (4), the reference to the company is to be read as a reference to the participants in the scheme or the sub-scheme and the depositary of the scheme or the sub-scheme.

49. In section 179 (disclaimer of leaseholds) and section 182 (powers of court (leaseholds)) 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 legal title to the property held by the depositary of the scheme or the sub-scheme.

50. In section 182 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 depositary of the scheme or the sub-scheme as the holder of the legal title to the leasehold property.

51. Sections 183, 184 and 185 (execution, attachment and the Scottish equivalents) do not apply.

52. In section 186 (rescission of contracts by the court), in subsection (1), the reference to a contract made with the company is to be read as a reference to a contract made with the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme.

53. Section 187 (power to make over assets to employees) does not apply.

54. In section 188 (notification that company is in liquidation), subsection (2) is to be read as if the words "the company and", where they appear after "in complying with this section,", were omitted.

55. In section 190 (documents exempt from stamp duty)—

- (a) 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; and
- (b) 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.

56. The following sections do not apply—

- section 191 (company’s books to be evidence);
- section 192 (information as to pending liquidations); and
- section 193 (unclaimed dividends (Scotland)).

57. In section 199 (costs of application for leave to proceed (Scottish companies)) the reference to the amount of the petitioner’s or applicant’s claim against the company is to be read as a reference to the amount which the petitioner or the applicant seeks to recover in the action or proceeding for which leave to proceed is granted.

Chapter 10 (malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions)

58. Section 206 (fraud, etc. in anticipation of winding up) is to be read as if subsection (3) were omitted.

59. In section 206—

- (a) subsection (1) is to be read as if the words “, or passes a resolution for voluntary winding up” were omitted; and
- (b) in subsection (1)—
 - (i) the reference to a past or present officer of the company is to be read as a reference to any person who is or has been employed by the operator or the depositary of the scheme or the sub-scheme; and
 - (ii) in paragraph (a) the reference to a debt due to the company is to be read as a reference to a debt payable to the operator for the benefit of the scheme or the sub-scheme.

60. In section 207 (transactions in fraud of creditors)—

- (a) subsection (1) is to be read as if the words “or passes a resolution for voluntary winding up” were omitted; and
- (b) in subsection (1)—
 - (i) the reference to an officer of the company is to be read as a reference to a person who is employed by the operator or the depositary of the scheme or the sub-scheme; and
 - (ii) in paragraph (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 scheme or the sub-scheme.

61. Section 208 (misconduct in course of winding up) is to be read as if subsection (3) were omitted.

62. In section 208—

- (a) subsection (1) is to be read as if for the words “, whether by the court or voluntarily” there were substituted “by the court”; and
- (b) in subsection (1)—
 - (i) the reference to a past or present officer of the company is to be read as a reference to any person who is or has been employed by the operator or the depositary of the scheme or the sub-scheme;

- (ii) in paragraph (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 the scheme or the sub-scheme of part of the property subject to the scheme or sub-scheme;
- (iii) in paragraph (c) the reference to books and papers belonging to the company is to be read as a reference to books and papers relating to the affairs of the scheme or the sub-scheme.

63. In section 209 (falsification of company's books), in subsection (1)—

- (a) the reference to an officer or contributory of the company is to be read as a reference to any person who is or has been employed by the operator or the depositary of the scheme or the sub-scheme; and
- (b) 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 relating to the affairs of the scheme or the sub-scheme.

64. Section 210 (material omissions from statement relating to company's affairs) is to be read as if subsection (3) were omitted.

65. In section 210—

- (a) subsection (1) is to be read as if for the words “, whether by the court or voluntarily” there were substituted “by the court”;
- (b) in subsection (1) the reference to a past or present officer of the company is to be read as a reference to any person who is or has been employed by the operator or the depositary of the scheme or the sub-scheme; and
- (c) subsection (2) is to be read as if the words “, or has passed a resolution for voluntary winding up” were omitted.

66. Section 211 (false representations to creditors) is to be read as if subsection (2) were omitted.

67. In section 211—

- (a) subsection (1) is to be read as if for the words “, whether by the court or voluntarily” there were substituted “by the court”; and
- (b) in subsection (1) the reference to a past or present officer of the company is to be read as a reference to any person who is or has been employed by the operator or the depositary of the scheme or the sub-scheme.

68. [In section 214 (wrongful trading)—

- (a) in subsection (1) the reference to a director of the company is to be read as a reference to the operator or the depositary of the scheme or the sub-scheme;
- (b) subsections (1) and (2) are to be read as if subsection (2) applied—
 - (i) in relation to the operator if, at some time before the commencement of the winding up of the scheme or the sub-scheme, a person employed by the operator at that time knew or ought to have concluded that there was no reasonable prospect that the scheme or sub-scheme would avoid going into insolvent liquidation; and
 - (ii) in relation to the depositary if, at some time before the commencement of the winding up of the scheme or the sub-scheme, a person employed by the depositary at that time knew or ought to have concluded that there was no reasonable prospect that the scheme or sub-scheme would avoid going into insolvent liquidation;
- (c) in subsection (3) the reference to the condition specified in subsection (2)(b) being first satisfied in relation to any person is to be read as a reference to the time at which a person employed by that person knew or ought to have concluded that there was no reasonable prospect that the scheme or the sub-scheme would avoid going into insolvent liquidation;

- (d) subsection (4) is to be read as if for the words “director of a company” and “director” there were substituted “person”; and
- (e) subsection (5) is to be read as if for the words “director of the company” there were substituted “person”.]

69. Section 216 (restriction on re-use of company names) and section 217 (personal liability for debts, following contravention of s216) do not apply.

70. In section 218 (prosecution of delinquent officers and members of company)—

- (a) subsection (1) is to be read as if the words “, or any member,” were omitted; and
- (b) subsection (3) is to be read as if the words “, or any member of it,” were omitted.

71. In section 219 (obligations arising under section 218)—

- (a) subsection (3) is to be read as if the words from “For this purpose “agent” includes” to the end were omitted; and
- (b) in that subsection as so modified, the reference to every agent of the company is to be read as a reference to every person who has acted as a banker, solicitor or auditor in relation to the scheme or the sub-scheme or has provided services of any other description at the request of the operator or depositary of the scheme or sub-scheme.

Schedule 4 (powers of liquidator in a winding up)

72. Schedule 4 (powers of liquidator in a winding up) is to be read as if—

- (a) paragraphs 8 and 11 were omitted;
- (b) the power in paragraph 4 were a power to bring or defend any action or other legal proceeding which would otherwise be brought or defended by the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme;
- (c) the power in paragraph 7 were a power to do all acts and execute all deeds, receipts and other documents which would otherwise be done or executed by the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme; and
- (d) the power in paragraph 9 were 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 of the scheme or the sub-scheme in the course of the business of the scheme or sub-scheme.

73. In Schedule 4—

- (a) paragraph 3(a) and paragraph 6A(a) are to be read as if the words “contributory or alleged alleged contributory or other” were omitted; and
- (b) paragraph 5 is to be read as subject to the requirements in regulation 15(6)(b) to cease the issue and redemption of units and to cease making payments under contracts.

CHAPTER 2

Part 5 of the 1986 Act

74. The further modifications of Part 5 of the 1986 Act (winding up of unregistered companies) are as follows.

75. Section 220 (meaning of “unregistered company”) is to be read as if the reference to any association included a reference to a relevant scheme.

76. Section 221 (winding up of unregistered companies) is to be read as if subsections (2) and (3) were omitted.

77. In section 221—

(a) Paragraph 6A was inserted by S.I. 2010/18.

- (a) subsection (5) is to be read as if paragraph (a) were omitted; and
- (b) in subsection (7) the reference to the company is to be read as a reference to the operator of the scheme or the sub-scheme.

78. In section 222 (inability to pay debts: unpaid creditor for £750 or more), in subsection (1)(a) and (b), the reference to the company is to be read as a reference to the operator of the scheme or the sub-scheme.

79. Section 223 (inability to pay debts: debt remaining unsatisfied after action brought) does not apply.

80. In section 224 (inability to pay debts: other cases), in subsection (1)—

- (a) in paragraph (a), the reference to execution or other process issued in favour of a creditor against the company or any member of it 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 scheme or the sub-scheme; and
- (b) in paragraph (c), the reference to paragraph (a) is to be read as a reference to that paragraph as so modified.

81. The following sections do not apply—

- section 225 (oversea company may be wound up though dissolved);
- section 226 (contributories in winding up of unregistered company);
- section 227 (power of court to stay, sist or restrain proceedings); and
- section 228 (actions stayed on winding up order).

CHAPTER 3

Part 6 of the 1986 Act

82. The further modifications of Part 6 of the 1986 Act (miscellaneous provisions applying to companies which are insolvent or in liquidation) are as follows.

83. Section 233 (supplies of gas, water, electricity, etc.) does not apply.

84. In section 234 (getting in the company's property), in subsection (2), the reference to the company is to be read as a reference to the operator or the depositary of the scheme or the sub-scheme.

85. In section 235 (duty to co-operate with office-holder), in subsection (3)(c), the reference to persons who are or have been in the employment of the company is to be read as a reference to persons who are or have been in the employment of the operator or the depositary of the scheme of the sub-scheme.

86. In section 236 (inquiry into company's dealings, etc.)—

- (a) in subsection (2)(b), the reference to any person supposed to be indebted to the company is to be read as a reference to any person supposed to be indebted to the participants in the scheme or the sub-scheme; and
- (b) in subsection (3), the reference to dealings with the company is to be read as a reference to dealings with any matter relating to the affairs of the scheme or the sub-scheme.

87. In section 237 (court's enforcement powers under s 236), in subsection (2), the reference to the company is to be read as a reference to the participants in the scheme or the sub-scheme.

88. In section 238 (transactions at an undervalue (England and Wales))—

- (a) in subsections (2) and (3), the reference to the company is to be read as a reference to the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme;

- (b) in subsection (4), the reference to a company is to be read as a reference to the operator of a relevant scheme on behalf of the participants in that scheme, and the references to the company are to be read accordingly; and
- (c) in subsection (5)—
 - (i) in paragraph (a), the reference to the company which entered into the transaction is to be read as a reference to the operator of the scheme or the sub-scheme [in entering into it,] and the reference to its business is to be read as a reference to the business of the scheme or the sub-scheme; and
 - (ii) in paragraph (b), the reference to the company is to be read as a reference to the participants in the scheme or the sub-scheme.

89. In section 239 (preferences (England and Wales))—

- (a) in subsections (2), (3) and (5), the reference to the company is to be read as a reference to the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme;
- (b) in subsection (4)—
 - (i) the reference to a company is to be read as a reference to the operator of a relevant scheme on behalf of the participants in that scheme, and the first reference to the company in paragraph (b) is to be read accordingly;
 - (ii) in paragraph (a), the reference to the company’s creditors and to its debts or other liabilities is to be read as a reference to [the creditors of the scheme or the sub-scheme and to the debts or liabilities of the scheme or sub-scheme]; and
 - (iii) in paragraph (b), the second reference to the company is to be read as a reference to that scheme or sub-scheme; and
- (c) in subsection (6), the reference to a company is to be read as a reference to the operator of a relevant scheme, and the reference to the company is to be read accordingly.

90. In section 240 (“relevant time” under ss 238, 239)—

- (a) in subsection (1)—
 - (i) the reference to a company is to be read as a reference to the operator of a relevant scheme; and
 - (ii) in paragraph (a), the reference to the company is to be read accordingly; and
- (b) in subsection (2)—
 - (i) each reference to a company is to be read as a reference to the operator of a relevant scheme;
 - (ii) the second reference to the company is to be read accordingly; and
 - (iii) 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 the scheme or sub-scheme within the meaning of section 222 (as modified by paragraph [63] of this Schedule) or section 224 (as modified by paragraph [65] of this Schedule).

91. In section 241 (orders under ss 238, 239)—

- (a) in subsection (1), the reference to a transaction or preference entered into or given by a company is to be read as a reference to a transaction or preference entered into or given by the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme; and
- (b) the reference to the company or to the company in question is to be read accordingly, except—
 - (i) in subsection (1)(a), where the reference to the company is to be read as a reference to the depositary of the scheme or the sub-scheme;

- (ii) 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 scheme or the sub-scheme;
- (iii) in subsection (1)(g), where the first reference to the company is to be read as a reference to the depositary of the scheme or the sub-scheme;
- (iv) in subsection (2), with respect to the reference to a creditor of the company;
- (v) in subsection (3C).

92. In section 242 (gratuitous alienations (Scotland))—

- (a) in subsection (1), the reference to an alienation by the company is to be read as a reference to an alienation by the operator of the scheme or the sub-scheme of any property subject to the scheme or sub-scheme;
- (b) 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 of the scheme or the sub-scheme for the benefit of the participants; and
- (c) in subsection (3)(a) and (4)(c), the reference to an associate of the company is to be read as a reference to an associate of the operator of the scheme or the sub-scheme or an associate of a participant in the scheme or sub-scheme.

93. In section 243 (unfair preferences (Scotland))—

- (a) 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 of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme; and
- (b) in subsection (2)(d), the reference to a company is to be read as a reference to the operator of the scheme or the sub-scheme.

94. Section 244 (extortionate credit transactions) and section 245 (avoidance of certain floating charges) do not apply.

95. In section 246A (remote attendance at meetings)(a)—

- (a) subsection (1) is to be read as if paragraph (b) were omitted; and
- (b) in subsection (1)(a) the reference to the creditors of a company is to be read as a reference to the creditors of a relevant scheme.

CHAPTER 4

Part 7 of the 1986 Act

96. The further modifications of Part 7 of the 1986 Act (interpretation for first group of parts) are as follows.

97. Section 249 (“connected” with a company) is to be read as if paragraph (a) were omitted.

98. In section 249 the reference to an associate of the company is to be read as a reference to an associate of the operator or the depositary of a relevant scheme or an associate of a participant in a relevant scheme.

(a) Section 246A was inserted by S.I. 2010/18.

PART 4

Further modifications of the 1989 Order

CHAPTER 1

Articles 2 to 7 of the 1989 Order

99. The further modifications of Articles 2 to 7 of the 1989 Order are as follows.

100. Article 7 (“connected” with a company) is to be read as if sub-paragraph (a) were omitted.

101. In Article 7 the reference to an associate of the company is to be read as a reference to an associate of the operator or the depository of a relevant scheme or an associate of a participant in a relevant scheme.

CHAPTER 2

Part 5 of the 1989 Order

102. The further modifications of Chapters 6, 7, 8 and 10 of Part 5 of the 1989 Order (winding up of companies registered under the Companies Act 2006) are as follows.

Chapter 6 (winding up by the High Court)

103. Article 102 (circumstances in which company may be wound up by the court) is to be read as if the words from “if” to the end were omitted.

104. In Article 102 as so modified the reference to a company is to be read as a reference to a relevant scheme in relation to which the contractual scheme deed is governed by the law of Northern Ireland.

105. The following Articles do not apply—

- Article 103 (definition of inability to pay debts; the statutory demand);
- Article 104 (application for winding up);
- Article 104A (petition for winding up on grounds of public interest);
- Article 104B (petition for winding up of SE); and
- Article 104C (petition for winding up of SCE).

106. Article 105 (powers of High Court on hearing of petition) is to be read as if paragraph (2) were omitted.

107. In Article 106 (power to stay or restrain proceedings against company), in paragraph (1), the reference to the company, or any creditor or contributory is to be read as a reference to the Authority, or the operator or the depository or any creditor of the scheme or the sub-scheme.

108. In 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 or redemption of units in the scheme or the sub-scheme.

109. [Article 109 (commencement of winding up by the High Court) is to be read as if—

- (a) paragraphs (1) and (1A) were omitted; and
- (b) in paragraph (2) the words “In any other case,” were omitted.]

110. Article 110 (consequences of winding-up order) is to be read as if paragraph (4) were omitted.

111. In Article 110(1) the reference to the registrar is to be read as a reference to the Authority.

112. In Article 111 (company’s statement of affairs), in paragraph (3)(c), the reference to persons who are or have been in the company’s employment is to be read as a reference to persons

who are or have been in the employment of the operator or the depositary of the scheme of the sub-scheme.

113. In Article 116 (functions of official receiver in relation to office of liquidator)—

- (a) paragraph (1) is to be read as if the words “, subject to Article 119,” were omitted;
- (b) in paragraph (4) the reference to separate meetings of the company’s creditors and contributories is to be read as a reference to a meeting of the creditors of the scheme or the sub-scheme; and
- (c) paragraphs (5) and (6) are to be read as if—
 - (i) for “meetings” there were substituted “a meeting”; and
 - (ii) the words “and contributories” were omitted.

114. In Article 117 (appointment by Department) paragraph (2) is to be read as if—

- (a) for “meetings are held” there were substituted “a meeting is held”; and
- (b) for “those meetings” there were substituted “that meeting”.

115. Article 118 (choice of liquidator at meetings of creditors and contributories) is to be read as if for paragraphs (3) and (4) there were substituted—

“(3) The liquidator shall be the person (if any) nominated by the creditors.”.

116. In Article 118—

- (a) in paragraph (1) the reference to separate meetings of the company’s creditors and contributories is to be read as a reference to a meeting of the creditors of the scheme or the sub-scheme; and
- (b) paragraph (2) is to be read as if the words “and the contributories at their respective meetings” were omitted.

117. Article 119 (appointment by the High Court following administration or voluntary arrangement) does not apply.

118. Article 120 (liquidation committee) is to be read as if paragraph (3) were omitted.

119. In Article 120—

- (a) in paragraph (1)—
 - (i) the reference to separate meetings of the company’s creditors and contributories is to be read as a reference to a meeting of the creditors of the scheme or the sub-scheme;
 - (ii) the reference to those meetings is to be read as a reference to that meeting; and
- (b) in paragraph (2) the reference to separate general meetings of the company’s creditors and contributories is to be read as a reference to a general meeting of the creditors of the scheme or the sub-scheme.

120. In Article 122 (custody of company’s property) the reference to the company is to be read as a reference to the participants in the scheme or the sub-scheme.

121. In Article 123 (vesting of company property in liquidator) the reference to property belonging to the company or held by trustees on its behalf is to be read as a reference to the property subject to the scheme or the sub-scheme, and the reference to recovering its property is to be read accordingly.

122. In Article 125 (power to stay winding up), in paragraph (3)—

- (a) the reference to the company is to be read as a reference to the operator of the scheme or the sub-scheme; and
- (b) the reference to the registrar is to be read as a reference to the Authority.

123. The following Articles do not apply—

- Article 126 (settlement of list of contributories and application of assets);
- Article 127 (debts due from contributory to company);
- Article 128 (power to make calls);
- Article 129 (payment into bank of money due to company);
- Article 130 (order on contributory to be conclusive evidence); and
- Article 132 (adjustment of rights of contributories).

124. In Article 133 (inspection of books by creditors, etc.)—

- (a) paragraph (1) is to be read as if the words “and contributories” were omitted; and
- (b) in paragraph (1)—
 - (i) the reference to the company’s books and papers is to be read as a reference to books and papers relating to the affairs of the scheme or the sub-scheme; and
 - (ii) the reference to books and papers in the company’s possession is to be read as a reference to such books and papers in the possession of the operator or the depositary of the scheme or the sub-scheme.

125. Article 135 (power to arrest absconding contributory) does not apply.

Chapter 7 (liquidators)

126. In Article 139 (corrupt inducement affecting appointment) the reference to a member of a company is to be read as a reference to the operator or the depositary of a relevant scheme or a participant in such a scheme.

127. Article 140 (voluntary winding up) and Article 141 (creditors’ voluntary winding up) do not apply.

128. In Article 144 (enforcement of liquidator’s duty to make returns, etc.), in paragraph (2), the reference to the registrar is to be read as a reference to the Authority.

129. Article 145 (removal, etc. (voluntary winding up)) does not apply.

130. In Article 146 (removal etc., winding up by the High Court)), in paragraph (7), the reference to the registrar is to be read as a reference to the Authority.

131. Article 147 (release (voluntary winding up)) does not apply.

Chapter 8 (provisions of general application in winding up)

132. Articles 149 and 150 (preferential debts) do not apply.

133. Article 150ZA (payment of expenses of winding up), in paragraph (1), the reference to any floating charge created by the company is to be read as a reference to any floating charge over the property subject to the scheme or the sub-scheme.

134. Article 150A (share of assets for unsecured creditors) does not apply.

135. Article 151 (power to appoint special manager) does not apply.

136. In Article 152 (power to disclaim onerous property), in paragraph (3), the reference to the company is to be read as a reference to the participants in the scheme or the sub-scheme and the depositary of the scheme or sub-scheme.

137. In Article 153 (disclaimer of leaseholds) and Article 156 (powers of High Court (leaseholds)) 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 legal title to the property held by the depositary of the scheme or the sub-scheme.

138. In Article 156 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 depositary of the scheme or the sub-scheme as the holder of the legal title to the leasehold property.

139. In Article 157 (rescission of contracts by the High Court), in paragraph (1), the reference to a contract made with the company is to be read as a reference to a contract made with the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme.

140. Article 158 (power to make over assets to employees) does not apply.

141. In Article 159 (notification that company is in liquidation), paragraph (2) is to be read as if the words “the company and”, where they appear after “in complying with this Article,”, were omitted.

142. Article 161 (company’s books to be evidence) and Article 162 (information as to pending liquidations) do not apply.

Chapter 10 (malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions)

143. Article 170 (fraud, etc. in anticipation of winding up) is to be read as if paragraph (3) were omitted.

144. In Article 170—

- (a) paragraph (1) is to be read as if the words “, or passes a resolution for voluntary winding up” were omitted; and
- (b) in paragraph (1)—
 - (i) the reference to a past or present officer of the company is to be read as a reference to any person who is or has been employed by the operator or the depositary of the scheme or the sub-scheme; and
 - (ii) in sub-paragraph (a) the reference to a debt due to the company is to be read as a reference to a debt payable to the operator for the benefit of the scheme or the sub-scheme.

145. In Article 171 (transactions in fraud of creditors)—

- (a) paragraph (1) is to be read as if the words “or passes a resolution for voluntary winding up” were omitted; and
- (b) in paragraph (1)—
 - (i) the reference to an officer of the company is to be read as a reference to a person who is employed by the operator or the depositary of the scheme or the sub-scheme; and
 - (ii) in sub-paragraph (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 scheme or the sub-scheme.

146. Article 172 (misconduct in course of winding up) is to be read as if paragraph (3) were omitted.

147. In Article 172—

- (a) paragraph (1) is to be read as if for the words “, whether by the High Court or voluntarily” there were substituted “by the High Court”; and
- (b) in paragraph (1)—
 - (i) the reference to a past or present officer of the company is to be read as a reference to any person who is or has been employed by the operator or the depositary of the scheme or the sub-scheme;
 - (ii) in sub-paragraph (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 the scheme or the sub-scheme of part of the property subject to the scheme or sub-scheme;

- (iii) in sub-paragraph (c) the reference to books and papers belonging to the company is to be read as a reference to books and papers relating to the affairs of the scheme or the sub-scheme.

148. In Article 173 (falsification of company's books), in paragraph (1)—

- (a) the reference to an officer or contributory of the company is to be read as a reference to any person who is or has been employed by the operator or the depositary of the scheme or the sub-scheme; and
- (b) 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 relating to the affairs of the scheme or the sub-scheme.

149. Article 174 (material omissions from statement relating to company's affairs) is to be read as if subsection (3) were omitted.

150. In Article 174—

- (a) paragraph (1) is to be read as if for the words “, whether by the High Court or voluntarily” there were substituted “by the High Court”;
- (b) in paragraph (1) the reference to a past or present officer of the company is to be read as a reference to any person who is or has been employed by the operator or the depositary of the scheme or the sub-scheme; and
- (c) paragraph (2) is to be read as if the words “, or has passed a resolution for voluntary winding up” were omitted.

151. Article 175 (false representations to creditors) is to be read as if paragraph (2) were omitted.

152. In Article 175—

- (a) paragraph (1) is to be read as if for the words “, whether by the High Court or voluntarily” there were substituted “by the High Court”; and
- (b) in paragraph (1) the reference to a past or present officer of the company is to be read as a reference to any person who is or has been employed by the operator or the depositary of the scheme or the sub-scheme.

153. [In Article 178 (wrongful trading)—

- (a) in paragraph (1) the reference to a director of the company is to be read as a reference to the operator or the depositary of the scheme or the sub-scheme;
- (b) paragraphs (1) and (2) are to be read as if paragraph (2) applied—
 - (i) in relation to the operator if, at some time before the commencement of the winding up of the scheme or the sub-scheme, a person employed by the operator at that time knew or ought to have concluded that there was no reasonable prospect that the scheme or sub-scheme would avoid going into insolvent liquidation; and
 - (ii) in relation to the depositary if, at some time before the commencement of the winding up of the scheme or the sub-scheme, a person employed by the depositary at that time knew or ought to have concluded that there was no reasonable prospect that the scheme or sub-scheme would avoid going into insolvent liquidation;
- (c) in paragraph (3) the reference to the condition specified in paragraph (2)(b) being first satisfied in relation to any person is to be read as a reference to the time at which a person employed by that person knew or ought to have concluded that there was no reasonable prospect that the scheme or the sub-scheme would avoid going into insolvent liquidation;
- (d) paragraph (4) is to be read as if for the words “director of a company” and “director” there were substituted “person”; and
- (e) paragraph (5) is to be read as if for the words “director of the company” there were substituted “person”.]

154. Article 180 (restriction on re-use of company names) and Article 181 (personal liability for debts, following contravention of Article 180) do not apply.

155. In Article 182 (prosecution of delinquent officers and members of company)—

- (a) paragraph (1) is to be read as if the words “, or any member,” were omitted; and
- (b) paragraph (2) is to be read as if the words “, or any member of it,” were omitted.

156. In 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 every person who has acted as a banker, solicitor or auditor in relation to the scheme or the sub-scheme or has provided services of any other description at the request of the operator or depositary of the scheme or sub-scheme.

157. Article 183 is to be read as if paragraph (4) were omitted.

Schedule 2 (powers of liquidator in a winding up)

158. Schedule 2 (powers of liquidator in a winding up) is to be read as if—

- (a) paragraphs 9 and 12 were omitted;
- (b) the power in paragraph 4 were a power to bring or defend any action or other legal proceeding which would otherwise be brought or defended by the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme;
- (c) the power in paragraph 8 were a power to do all acts and execute all deeds, receipts and other documents which would otherwise be done or executed by the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme; and
- (d) the power in paragraph 10 were 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 of the scheme or the sub-scheme in the course of the business of the scheme or sub-scheme.

159. In Schedule 2—

- (a) paragraph 3(a) is to be read as if the words “contributory or alleged contributory or other” were omitted; and
- (b) paragraph 5 is to be read as subject to the requirements in regulation 15(6)(b) to cease the issue and redemption of units and to cease making payments under contracts.

CHAPTER 3

Part 6 of the 1989 Order

160. The further modifications of Part 6 of the 1989 Order (winding up of unregistered companies) are as follows.

161. Article 184 (meaning of “unregistered company”) is to be read as if the reference to any association included a reference to a relevant scheme.

162. Article 185 (winding up of unregistered companies) is to be read as if paragraph (2) were omitted.

163. Article 185(4) is to be read as if sub-paragraph (a) were omitted.

164. In Article 186 (inability to pay debts: unpaid creditor for £750 or more)—

- (a) in paragraph (1)(a) and (b), the reference to the company is to be read as a reference to the operator of the scheme or the sub-scheme; and
- (b) paragraph (1)(a) is to be read as if the words “in Northern Ireland” were omitted.

165. Article 187 (inability to pay debts: debt remaining unsatisfied after action brought) does not apply.

166. In 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 member of it

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 scheme or the sub-scheme.

167. The following Articles do not apply—

- Article 189 (company incorporated outside Northern Ireland may be wound up though dissolved);
- Article 190 (contributories in winding up of unregistered company);
- Article 191 (power of High Court to stay or restrain proceedings); and
- Article 192 (actions stayed on winding up order).

CHAPTER 4

Part 7 of the 1989 Order

168. The further modifications of Part 7 of the 1989 Order (miscellaneous provisions applying to companies which are insolvent or in liquidation) are as follows.

169. Article 197 (supplies of water, electricity, etc.) does not apply.

170. In Article 198 (getting in the company's property), in paragraph (2), the reference to the company is to be read as a reference to the operator or the depositary of the scheme or the sub-scheme.

171. In Article 199 (duty to co-operate with office-holder), in paragraph (3)(c), the reference to persons who are or have been in the employment of the company is to be read as a reference to persons who are or have been in the employment of the operator or the depositary of the scheme of the sub-scheme.

172. In Article 200 (inquiry into company's dealings, etc.)—

- (a) in paragraph (2)(b), the reference to any person supposed to be indebted to the company is to be read as a reference to any person supposed to be indebted to the participants in the scheme or the sub-scheme; and
- (b) in paragraph (3), the reference to dealings with the company is to be read as a reference to dealings with any matter relating to the affairs of the scheme or the sub-scheme.

173. In Article 201 (High Court's enforcement powers under Article 200), in paragraph (2), the reference to the company is to be read as a reference to the participants in the scheme or the sub-scheme.

174. In Article 202 (transactions at an undervalue)—

- (a) in paragraphs (2) and (3), the reference to the company is to be read as a reference to the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme;
- (b) in paragraph (4), the reference to a company is to be read as a reference to the operator of a relevant scheme on behalf of the participants in that scheme, and the references to the company are to be read accordingly; and
- (c) in paragraph (5)—
 - (i) in sub-paragraph (a), the reference to the company which entered into the transaction is to be read as a reference to the operator of the scheme or the sub-scheme [in entering into it,] and the reference to its business is to be read as a reference to the business of the scheme or the sub-scheme; and
 - (ii) in sub-paragraph (b), the reference to the company is to be read as a reference to the participants in the scheme or the sub-scheme.

175. In Article 203 (preferences)—

- (a) in paragraphs (2), (3) and (5), the reference to the company is to be read as a reference to the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme;
- (b) in paragraph (4)—
 - (i) the reference to a company is to be read as a reference to the operator of a relevant scheme on behalf of the participants in that scheme, and the first reference to the company in sub-paragraph (b) is to be read accordingly;
 - (ii) in sub-paragraph (a), the reference to the company’s creditors and to its debts or other liabilities is to be read as a reference to [the creditors of the scheme or the sub-scheme and to the debts or liabilities of the scheme or sub-scheme] ; and
 - (iii) in sub-paragraph (b), the second reference to the company is to be read as a reference to that scheme or sub-scheme; and
- (c) in paragraph (6), the reference to a company is to be read as a reference to the operator of a relevant scheme, and the reference to the company is to be read accordingly.

176. In Article 204 (“relevant time” under Articles 202, 203)—

- (a) in paragraph (1)—
 - (i) the reference to a company is to be read as a reference to the operator of a relevant scheme; and
 - (ii) in sub-paragraph (a), the reference to the company is to be read accordingly; and
- (b) in paragraph (2)—
 - (i) each reference to a company is to be read as a reference to the operator of a relevant scheme;
 - (ii) the second reference to the company is to be read accordingly; and
 - (iii) the reference to the inability of the company to pay its debts within the meaning of Article 103 is to be read as a reference to the inability of the operator of a relevant scheme to pay the debts of the scheme or sub-scheme within the meaning of Article 186 (as modified by paragraph 136 of this Schedule) or Article 188 (as modified by paragraph 138 of this Schedule).

177. In Article 205 (orders under Articles 202, 203)—

- (a) in paragraph (1), the reference to a transaction or preference entered into or given by a company is to be read as a reference to a transaction or preference entered into or given by the operator of the scheme or the sub-scheme on behalf of the participants in the scheme or sub-scheme; and
- (b) the reference to the company or to the company in question is to be read accordingly, except—
 - (i) in paragraph (1)(a), where the reference to the company is to be read as a reference to the depositary of the scheme or the sub-scheme;
 - (ii) 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 scheme or the sub-scheme;
 - (iii) in paragraph (1)(g), where the first reference to the company is to be read as a reference to the depositary of the scheme or the sub-scheme;
 - (iv) in paragraph (2), with respect to the reference to a creditor of the company;
 - (v) in paragraph (3C).

178. Article 206 (extortionate credit transactions) and Article 207 (avoidance of certain floating charges) do not apply.

Modification of the Insolvency Rules 1986

PART 1

Interpretation and modifications

1. In this Schedule and in Schedules 4 and 5—

“the depositary” means the depositary of the scheme or the sub-scheme;

“the operator” means the operator of the scheme or the sub-scheme;

“the participants” means the participants in the scheme or the sub-scheme as holders of units in the scheme or sub-scheme (and not in any other capacity);

“the scheme” means any stand-alone co-ownership scheme in relation to which a petition is presented under regulation 15(7); and

“the sub-scheme” means any sub-scheme of an umbrella co-ownership scheme in relation to which a petition is presented under regulation 15(7).

2. In this Schedule a reference to a section is a reference to a section of the 1986 Act.

3. Parts 4 and 7 to 13 of the Insolvency Rules 1986^(a) have effect with the general modifications in paragraph 4 and the further modifications in the Table in Part 2 of this Schedule.

4. Unless the context otherwise requires [4.6A; 4.79; 7.34A] and subject to the further modifications [4.149], the general modifications are that—

(a) a reference to a company is to be read as a reference to a relevant scheme, except that in relation to—

(i) the service of a demand, or

(ii) an application to the court,

it is to be read as a reference to the operator;

(b) a reference to the company is to be read as a reference to the scheme or the sub-scheme, except that in relation to—

(i) the service of a petition, demand or order, or the giving or sending of any notice or other document,

(ii) the provision of any explanation or other information, or

(iii) an application to the court,

it is to be read as a reference to the operator;

(c) a reference to a creditor or to creditors of the company is to be read as a reference to a creditor or to creditors of the scheme or the sub-scheme;

(d) a reference to creditors and contributories is to be read as a reference to creditors only;

(e) a reference to the property or assets of the company or to the estate is to be read as a reference to the property which is subject to the scheme or the sub-scheme;

(f) a reference to proceedings by or against the company is to be read as a reference to proceedings brought by or against the operator of the scheme or the sub-scheme for the resolution of any matter relating to the scheme or sub-scheme;

(g) a reference to any debt or liability of a company is to be read as a reference to any debt or liability of the scheme or the sub-scheme; and

(a) S.I. 1986/1925 [as amended by].

- (h) a reference to the registrar of companies, in relation to the submission, filing or giving of any notice or other document or any information, is to be read as a reference to the Authority.

PART 2

Table of further modifications

Modification of specified provisions of the Insolvency Rules 1986

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
Part 4 (companies winding up)		
<i>Chapter 2 (the statutory demand)</i>		
4.5	Form and content of statutory demand	In paragraph (2)(a) the reference to the company's liabilities is to be read as a reference to the liabilities of the scheme or the sub-scheme.
4.6	Information to be given in statutory demand	The methods of compliance referred to in paragraph (1)(c) are open to the operator on behalf of the participants.
<i>Chapter 3 (petition to winding up order)</i>		
4.8	Service of petition	The petition is to be served at the registered office of the operator and of the depositary, and paragraphs (3) and (4) apply separately in relation to the operator and 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 scheme or the sub-scheme, the name of the operator and of the depositary and the addresses of their registered offices.
4.10	Other persons to receive copies of petition	The petitioner must send a copy of the petition to the Authority.
4.12	Verification of petition	The statement of truth must specify (instead of the particulars in paragraph (3A)(a)): the name of the scheme or the sub-scheme and of the operator and depositary.
4.13	Persons entitled to copy of petition	This Rule is to be read as if the words "director, contributory or" were omitted.
4.15	Permission for petitioner to withdraw	It is for the operator and the depositary to consent to an order being made under this Rule.
4.18	Witness statement in opposition	It is for the operator to oppose a petition with the depositary's consent, and to file a witness statement in court on behalf of the participants.
<i>Chapter 4 (petition by contributories)</i>		
4.22 to 4.24	Petition by contributories	These Rules do not apply.

<i>Chapter 5 (provisional liquidator)</i>		
4.25	Appointment of provisional liquidator	An application under this Rule may be made by the petitioner, a creditor, the depositary or the Authority.
4.28	Security	Paragraph (2)(a) is to be read as if the words “on the company” were omitted.
<i>Chapter 6 (Statement of affairs and other information)</i>		
4.33	Verification and filing	In paragraph (2) the reference to section 131(3) is to be read as a reference to that section as modified by paragraph of 17 of Schedule 2.
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 scheme or the sub-scheme.
<i>Chapter 7 (information to creditors and contributories)</i>		
4.43	Reports by official receiver	This Rule is to be read as if paragraph (1A) required the official receiver to include in the report just an estimate of the value of the company’s net property.
4.48	Winding up stayed	Any requirements included in an order granting a stay are requirements on the operator.
4.49B	Reports to creditors and members - winding up by the court	The progress report must include full details (instead of the details in paragraph (1)(b)) of the name of the scheme or the sub-scheme and the address of the registered office of the operator and of the depositary. A copy of the report must be sent as specified in paragraph (7) to [the operator, the depositary,] the Authority and the creditors.
<i>Chapter 8 (meetings of creditors and contributories)</i>		
4.58	Attendance at meetings of company's personnel	This Rule is to be read as if the definition in paragraph 2 of “the company’s personnel” were omitted. A reference to the company’s personnel is to be read as a reference to the persons referred to in paragraphs (a), (b) and (c) of section 235(3) as modified by paragraphs 3 and 83 of Schedule 2.
<i>Chapter 9 (proof of debts in a liquidation)</i>		
4.73	Meaning of “prove”	In paragraph (1) the reference to a creditor, in relation to a company, is to be read as a reference to a creditor of a relevant scheme which is being wound up by the court.
4.90(a)	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

(a) Rule 4.90 was substituted by S.I. 2005/527.

		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.
<i>Chapter 10 (secured creditors)</i>		
4.98(a)	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 on behalf of the participants.
<i>Chapter 11 (the liquidator)</i>		
4.101B(b)	Official receiver not to be appointed liquidator	This Rule is to be read as if the words “, contributories or the company” were omitted.
4.124	Release of official receiver	This Rule is to be read as if paragraph (2A)(c) 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(d)	Creditors' claim that remuneration is or other expenses are excessive	In paragraph (4)(e) the reference to the company is to be read as a reference to [the depositary].
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 the books, papers and other records relating to the affairs of the scheme or the sub-scheme.
4.149	Power of court to set aside certain transactions	In paragraph (1) the reference to the company is to be read as a reference to the participants.
<i>Chapter 12 (the liquidation committee)</i>		
4.151	Preliminary	In the definition of an “insolvent winding up” the reference to a company being wound up on grounds which include inability to pay its debts is to be read as a reference to a relevant scheme being wound up under the circumstances in section 221(5)(b) or (c).
4.154	Committee established by contributories	This Rule does not apply.
<i>Chapter 13 (the liquidation committee where winding up follows immediately on administration)</i>		
4.173 to 4.178	The liquidation committee where winding up follows immediately on administration	These Rules do not apply.
<i>Chapter 14 (collection and distribution of company's assets by liquidator)</i>		
4.179	General duties of liquidator	In paragraph (1) the reference to the company's liabilities is to be read as a reference to the liabilities of the scheme or the sub-scheme.

(a) Rule 4.98 was amended by S.I. 2010/686.

(b) Rule 4.101B was inserted by S.I. 2010/686.

(c) Paragraph (2A) of Rule 4.124 and paragraph (2A) of Rule 4.125 were inserted by S.I. 2003/1730.

(d) Rule 4.131 was amended by S.I. 2010/686.

<i>Chapter 15 (disclaimer)</i>		
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 who claims as underlessee or mortgagee under the legal title to the property held by the depositary.
<i>Chapters 16, 17 and 18</i>		
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.
<i>Chapter 19 (public examination of company officers and others)</i>		
4.213	Order on request by creditors or contributories	In paragraph (2) the reference to the proposed examinee's relationship to the company is to be read as a reference to that person's interest in the scheme or the sub-scheme or dealings with the operator.
<i>Chapter 20 (order of payment of costs, etc., out of assets)</i>		
4.218 to 4.218E and 4.220	Order of payment of costs, etc., out of assets	In these Rules— <ul style="list-style-type: none"> (a) a reference to a legal action or 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 an action or procedure which the liquidator has power to bring or defend on behalf of the participants; and (b) a reference to a floating charge created by the company is to be read as a reference to a floating charge over the property subject to the scheme or the sub-scheme.
4.220	Saving for powers of the court	In paragraph (2) the reference to payment of costs by the company is to be read as a reference to payment of costs out of the property subject to the scheme or the sub-scheme.
<i>Chapters 21, 22 and 23</i>		
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.
Part 7 (court procedure and practice)		
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 which is presented

		under regulation 15(7).
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 persons referred to in paragraph (a) of section 235(3) as modified by paragraph 3 of Schedule 2; 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.
Part 8 (proxies and company representation)		
8.5	Right of inspection	In paragraph (3) the reference to the directors of an insolvent company is to be read as a reference to its operator or depositary.
Part 11 (Declaration and payment of dividend (winding up and bankruptcy))		
11.6	Notice of declaration	This Rule is to be read as if paragraph (2A)(a) were omitted.
Part 12 (miscellaneous and general)		
12.18	False claim of status as creditor, etc.	In paragraph (1) the reference to members of a company is to be read as a reference to the participants in a relevant scheme.
Part 12A (provisions of general effect)		
12A.18	Service of orders staying proceedings	In paragraph (1) the reference to the property of a company is to be read as a reference to the property subject to a relevant scheme.
12A.34	Gazette notices relating to companies	A notice must specify (instead of the particulars given) the name of the scheme or the sub-scheme, the name of the operator and of the depositary and the addresses of their registered offices.
12A.39	Non-Gazette notices relating to companies	
12A.43	Information to be contained in all notifications to the registrar	A notification must specify (instead of the particulars in sub-paragraphs (a) and (b)) the name of the scheme or the sub-scheme and the name of the operator and of the

(a) Paragraph (2A) was inserted by S.I. 2010/686.

		depository.
12A.53	Charge for copy documents	The first reference to a member includes a reference to a participant in a relevant scheme.

SCHEDULE 4

Regulation 15(5)

Modification of the Insolvency (Scotland) Rules 1986

PART 1

Interpretation and modifications

1. In this Schedule, unless otherwise specified, a reference to a section is a reference to a section of the 1986 Act.

2. Rules 0.1 to 0.3 (introductory provisions) and Parts 4 and 7 of the Insolvency (Scotland) Rules 1986(a) have effect with the general modifications in paragraph 3 and the further modifications in the Table in Part 2 of this Schedule.

3. Unless the context otherwise requires [e.g. 0.2 - “company”; 7.12; 7.14(1); 7.15(1); 7.18(1)] and subject to the further modifications [e.g. 4.17; 4.16; 4.66; 7.27], the general modifications are that—

- (a) a reference to a company is to be read as a reference to a relevant scheme;
- (b) a reference to the company is to be read as a reference to the scheme or the sub-scheme, except that in relation 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,
it is to be read as a reference to the operator;
- (c) a reference to a creditor or to creditors of the company is to be read as a reference to a creditor or to creditors of the scheme or the sub-scheme;
- (d) a reference to creditors and contributories is to be read as a reference to creditors only;
- (e) a reference to the property or assets of the company is to be read as a reference to the property which is subject to the scheme or the sub-scheme;
- (f) a reference to any debt or liability of a company is to be read as a reference to any debt or liability of the scheme or the sub-scheme;
- (g) a reference the registrar of companies, in relation to the submission, filing or giving of any notice or other document or any information, is to be read as a reference to the Authority; and
- (h) where a rule of the Insolvency (Scotland) Rules 1986 applies a provision of the Bankruptcy (Scotland) Act 1985(b) which contains a reference to the debtor, the rule is to be read as if it modified the provision concerned by substituting a reference to the operator on behalf of the participants.

(a) S.I. 1986/1915 [as amended by].

(b) 1985 c.66.

PART 2

Table of further modifications

Modification of specified provisions of the Insolvency (Scotland) Rules 1986

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
Part 4 (winding up by the court)		
<i>Chapter 1 (provisional liquidator)</i>		
4.1	Appointment of provisional liquidator	An application under this Rule may be made by the depositary, the Authority or any creditor or creditors.
4.3	Caution	Paragraph (a) is to be read as if the words “against the company” were omitted.
4.6	Termination of appointment	Paragraphs (1) and (3) are to be read as if the words “Except in relation to winding-up petitions under section 124A,” were omitted.
<i>Chapter 3 (information)</i>		
4.10	Information to creditors	This Rule is to be read as if paragraph (1A)(a) only required the liquidator to include in the report an estimate of the value of the company’s net property.
4.11	Information to registrar of companies	This Rule does not apply.
<i>Chapter 4 (meeting of creditors and contributories)</i>		
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 paragraph (2) and (2A)(a) 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 the persons referred to in paragraphs (a), (b) and (c) of section 235(3) as modified by paragraphs 3 and 83 of Schedule 2.
<i>Chapter 5 (claims in liquidation)</i>		
4.16	Application of the Bankruptcy Act	In paragraph (2) the expression in column 2 of the table which is substituted for a reference to the expression “Debtor” in

(a) Paragraph (2A) was inserted by S.I. 1987/1921.

		<p>column 1 of the table is to be read as a reference to [the operator] , except that—</p> <p>(a) in relation to section 44(2) of the Bankruptcy Act it is to be read as a reference to the persons referred to in paragraphs (a), (b) and (c) of section 235(3) as modified by paragraphs 3 and 83 of Schedule 2; and</p> <p>(b) in relation to section 60(1) of the Bankruptcy Act it is to be read as a reference to the operator on behalf of the participants.</p>
4.17	Claims in foreign currency	[In paragraph (1) each reference to the company is to be read as a reference to the operator].
4.18	Appointment of liquidator by the court	<p>Paragraph (1) is to be read as if the words from “or section 140” to the end were omitted.</p> <p>In paragraph (1) the reference to section 139(4) (different persons nominated by creditors and contributories) is to be read as a reference to section 139(3) as substituted for section 139(3) and (4) by paragraph 21 of Schedule 2 (person nominated by the creditors).</p>
4.22	Taking possession and realisation of the company’s assets	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 relating to the property of the scheme or the sub-scheme.
<i>Chapter 6 (the liquidator)</i>		
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	In paragraph (1) the reference to the company is to be read as a reference to the participants.
<i>Chapter 7 (the liquidation committee)</i>		
4.40	Preliminary	In the definition of an “insolvent winding up” the reference to a company being wound up on grounds which include inability to pay its debts is to be read as a reference to a relevant scheme being wound up under the circumstances in section 221(5)(b) or (c) or by the Court of Session under section 221(7) as modified by paragraph 75(b) of Schedule 2.
4.41	Membership of committee	<p>This Rule is to be read as if—</p> <p>(a) in paragraph (1) the words “Subject to Rule 4.43 below,” and subparagraph (b) were omitted; and</p> <p>(b) paragraph (3) were omitted.</p>

4.43	Committee established by contributories	This Rule does not apply.
4.48	Committee members' representatives	This Rule is to be read as if the words "(or, as the case may be, members or contributories)" were omitted.
4.53	Vacancy (contributory members)	This Rule does not apply.
4.54	Voting rights and resolutions	This Rule is to be read as if paragraphs (2) and (3) were omitted.
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.
<i>Chapter 8 (the liquidation committee where winding up follows immediately on administration)</i>		
4.60 to 4.65	The liquidation committee where winding up follows immediately on administration	These Rules do not apply.
<i>Chapter 9 (distribution of company's assets by liquidator)</i>		
4.66	Order of priority in distribution	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 of the scheme or the sub-scheme for the resolution of any matter relating to the scheme or sub-scheme; and (b) the reference to payment of expenses by the company is to be read as a reference to payment of expenses out of the property subject to the scheme or the sub-scheme.
<i>Chapter 10 (special manager)</i>		
4.69 to 4.73	Special manager	These Rules do not apply.
<i>Chapter 11 (public examination of company officers and others)</i>		
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 be read as a reference to that person's interest in the scheme or the sub-scheme or dealings with the operator.
<i>Chapters 13, 14 and 15</i>		
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.
Part 7 (provisions of general application)		
<i>Chapter 1 (meetings)</i>		
7.3	Notice of meeting	Paragraph (1) is to be read as if the case

		referred to in sub-paragraph (c) were a meeting of creditors under section 138(3) as modified by paragraph 20 of Schedule 2.
7.6	Meetings requisitioned	In paragraph (1)(b) the reference to separate meetings of creditors and contributories is to be read as a reference to meetings of creditors.
7.10	Entitlement to vote (members and contributories)	This rule does not apply.
<i>Chapter 1A (prescribed part)</i>		
7.13A and 7.13B	Prescribed part	These rules do not apply.
<i>Chapter 2 (proxies and company representation)</i>		
7.18	Right of inspection	In paragraph (3) the reference, in relation to an insolvent company, to its directors is to be read as a reference, in relation to the scheme or the sub-scheme, to the operator or the depositary.
<i>Chapter 3 (miscellaneous)</i>		
7.21A and 7.21B	Contents of notices	All notices published must specify (instead of the particulars in paragraph (3) of each of these Rules) the name of the scheme or the sub-scheme, the name of the operator and of the depositary and the addresses of their registered offices.
7.26	Right to list of creditors and copy documents	In paragraph (2A)(a) the first reference to a member includes a reference to a participant in a relevant scheme.
7.27	Confidentiality of documents	In paragraph (1)(b) the reference, in relation to the winding up of a company, to its members or the contributories is to be read as a reference, in relation to the winding up of a relevant scheme, to— (a) that scheme or sub-scheme; (b) its operator or depositary; or (c) its participants.
7.33	Sederunt book	The relevant date is 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.
7.34	Disposal of company's books, papers and other records	A reference to the company's books, papers and other records is to be read as a reference to the books, papers and other records relating to the affairs of the scheme or the sub-scheme.
7.36	Information about time spent on a case	In paragraph (2)(b) the reference, in relation to a company, to any director or contributory is to be read as a reference, in relation to a relevant scheme, to its operator or depositary.

(a) Paragraph (2A) was inserted by S.I. 1987/1921.

Modification of the Insolvency Rules (Northern Ireland) 1991

PART 1

Interpretation and modifications

1. In this Schedule, a reference to an Article is a reference to an Article of the 1989 Order.
2. Rules 0.1 to 0.7 (introductory provisions) and Parts 4 and 7 to 12 of the Insolvency Rules (Northern Ireland) 1991(a) have effect with the general modifications in paragraph 3 and the further modifications in the Table in Part 2 of this Schedule.
3. Unless the context otherwise requires and subject to paragraph 4 and the further modifications, the general modifications are the same as the modifications made in relation to the Insolvency Rules 1986 by paragraph 4 of Schedule 3.
4. A reference to the registrar(b), in relation to the submission, filing or giving of any notice or other document or any information, is to be read as a reference to the Authority.

PART 2

Table of further modifications

Modification of specified provisions of the Insolvency Rules (Northern Ireland) 1991

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
Part 4 (winding up by the court)		
<i>Chapter 2 (the statutory demand)</i>		
4.005	Form and content of statutory demand	In paragraph (2)(a) the reference to the company's liabilities is to be read as a reference to the liabilities of the scheme or the sub-scheme.
4.006	Information to be given in statutory demand	The methods of compliance referred to in paragraph (1)(c) are open to the operator on behalf of the participants.
<i>Chapter 3 (petition to winding up order)</i>		
4.008	Service of petition	The petition is to be served at the registered office of the operator and of the depositary, and paragraphs (3) and (4) apply separately in relation to the operator and 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	The petitioner must send a copy of the petition to the Authority.
4.011	Notice and advertisement of petition	The advertisement must state (instead of the particulars in paragraph (5)(a)) the name of the scheme or the sub-scheme, the name of

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

(b) The registrar of companies for Northern Ireland (see Article 5(1) of the 1989 Order (interpretation)).

		the operator and of the depositary and the addresses of their registered offices.
4.013	Persons entitled to copy of petition	This Rule is to be read as if the words “director, contributory or” were omitted.
4.015	Dismissal or withdrawal of petition	It is for the operator and the depositary to consent to an order being made under this Rule.
4.018	Affidavit by company in opposition	It is for the operator to oppose a petition with the depositary’s consent, and to file an affidavit in court on behalf of the participants.
<i>Chapter 4 (petition by contributories)</i>		
4.024 to 4.026	Petition by contributories	These Rules do not apply.
<i>Chapter 5 (provisional liquidator)</i>		
4.027	Appointment of provisional liquidator	An application under this Rule may be made by the petitioner, a creditor, the depositary or the Authority.
4.031	Security	Paragraph (2)(a) is to be read as if the words “on the company” were omitted.
<i>Chapter 6 (Statement of affairs and other information)</i>		
4.036	Verification and filing	In paragraph (2) the reference to Article 111(3) is to be read as a reference to that Article as modified by paragraph of 109 of Schedule 2.
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 scheme or the sub-scheme.
<i>Chapter 7 (information to creditors and contributories)</i>		
4.047	Reports by official receiver	This Rule is to be read as if paragraph (1A) required the official receiver to include in the report just an estimate of the value of the company’s net property.
4.052	Winding up stayed	Any requirements included in an order granting a stay are requirements on the operator.
<i>Chapter 8 (meetings of creditors and contributories)</i>		
4.065	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 the persons referred to in paragraphs (a), (b) and (c) of Article 199(3) as modified by paragraphs 3 and 167 of Schedule 2.
<i>Chapter 9 (proof of debts in a liquidation)</i>		
4.079	Meaning of “prove”	In paragraph (1) the reference to a creditor, in relation to a company, is to be read as a reference to a creditor of a relevant scheme which is being wound up by the court.

4.096(a)	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.
<i>Chapter 10 (secured creditors)</i>		
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 on behalf of the participants.
<i>Chapter 11 (the liquidator)</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(b).
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 the books, papers and other records relating to the affairs of the scheme or the sub-scheme.
4.157	Power of court to set aside certain transactions	In paragraph (1) the reference to the company is to be read as a reference to the participants.
<i>Chapter 12 (the liquidation committee)</i>		
4.159	Preliminary	In the definition of an "insolvent winding up" the reference to a company being wound up on grounds which include inability to pay its debts is to be read as a reference to a relevant scheme being wound up under the circumstances in Article 185(4)(b) or (c).
4.162	Committee established by contributories	This Rule does not apply.
<i>Chapter 13 (the liquidation committee where winding up follows immediately on administration)</i>		
4.182 to 4.187	The liquidation committee where winding up follows immediately on administration	These Rules do not apply.
<i>Chapter 14 (collection and distribution of company's assets by liquidator)</i>		
4.188	General duties of liquidator	In paragraph (1) the reference to the company's liabilities is to be read as a reference to the liabilities of the scheme or the sub-scheme.
<i>Chapter 15 (disclaimer)</i>		
4.198	Communication of disclaimer to	In paragraph (2) the reference to a person

(a) Rule 4.096 was substituted by S.R. 2006 No. 47.

(b) Paragraph (2A) of Rule 4.131 and paragraph (2A) of Rule 4.132 were inserted by S.R. 2006 No. 47.

	persons interested	who claims under the company as underlessee or mortgagee is to be read as a reference to a person who claims as underlessee or mortgagee under the legal title to the property held by the depository.
<i>Chapters 16, 17 and 18</i>		
4.205 to 4.211	Settlement of list of contributories	These Rules do not apply.
4.212 to 4.215	Calls	These Rules do not apply.
4.216 to 4.220	Special manager	These Rules do not apply.
<i>Chapter 19 (public examination of company officers and others)</i>		
4.223	Order on request by creditors or contributories	In paragraph (3) the reference to the proposed examinee's relationship to the company is to be read as a reference to that person's interest in the scheme or the sub-scheme or dealings with the operator.
<i>Chapter 20 (order of payment of costs out of assets)</i>		
4.228 to 4.228E and 4.230	Order of payment of costs out of assets	In these Rules— <ul style="list-style-type: none"> (a) a reference to a legal action or 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 an action or procedure which the liquidator has power to bring or defend on behalf of the participants; and (b) a reference to a floating charge created by the company is to be read as a reference to a floating charge over the property subject to the scheme or the sub-scheme.
4.230	Saving for powers of the court	In paragraph (2) the reference to payment of costs by the company is to be read as a reference to payment of costs out of the property subject to the scheme or the sub-scheme.
<i>Chapters 21, 22 and 23</i>		
4.231 to 4.235	Miscellaneous rules	These Rules do not apply.
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.
Part 7 (court procedure and practice)		
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 which is presented under regulation 15(7).
7.27	Right to inspect the file	In paragraph (2)(a)—

		<p>(a) the reference to a director or officer of the company is to be read as a reference to any of the persons referred to in Article 199(3)(a) as modified by paragraph 3 of Schedule 2; and</p> <p>(b) the reference to a member of the company is to be read as a reference to a participant.</p>
7.37	Costs and expenses of witnesses	<p>In paragraph (1) the reference to an officer of the insolvent company is to be read as a reference to—</p> <p>(a) the operator or any person who is employed by the operator; or</p> <p>(b) the depositary or any person who is employed by the depositary.</p>
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.
Part 8 (proxies and company representation)		
8.5	Right of inspection	In paragraph (3) the reference to the directors of an insolvent company is to be read as a reference to its operator or depositary.
Part 12 (miscellaneous and general)		
12.17	Charge for copy documents	The first reference to a member includes a reference to a participant in a relevant scheme.
12.20	False claim of status as creditor, etc.	In paragraph (1) the reference to members of a company is to be read as a reference to the participants in a relevant scheme.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision 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 make provision for the authorisation and supervision of contractual schemes by the Financial Services Authority (“the Authority”).

Provision for the formation of contractual schemes arises out of and is related to the right conferred by Article 1.3 of 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 (“the UCITS Directive”). Article

1.3 confers a right to constitute undertakings of this description (“UCITS”) as common funds managed by management companies.

By reason of the treatment of contractual schemes for direct taxation, the Regulations will enable full advantage of the opportunities offered by the UCITS Directive to be taken in the United Kingdom in relation to marketing UCITS in other states of the European Economic Area and in relation to operating master and feeder UCITS. In the interests of maintaining existing parity of tax treatment for all collective investment schemes authorised under Part 17 of FSMA and maintaining uniform law and practice in the market for such schemes, the Regulations enable contractual schemes to be formed for authorised schemes not regulated by the UCITS Directive.

Part 2 (regulations 3, 4 and 5) makes provision for contractual schemes by amending FSMA and other primary legislation.

Regulation 3(3) has the effect that the powers of the Authority to make rules under section 140 in relation to the managers of certain collective investment schemes shall be exercisable for like purposes and subject to the same conditions in relation to the operators of authorised contractual schemes.

Regulation 3(5) inserts new section 235A, which defines “contractual scheme” and “contractual scheme deed”.

Regulation 3(6)(a) amends section 237(1) to exclude contractual schemes from the definition of unit trust scheme.

Regulation 3(6)(b) amends section 237(2) to specify who the operator is for a co-ownership scheme and a partnership scheme.

Regulation 3(10) inserts a new chapter (Chapter 3A) into Part 17 of FSMA. Chapter 3A consists of sections 261C to 261Z4.

Sections 261C to 261F make provision for the determination and refusal of applications for authorisation of contractual schemes.

Sections 261H and 261I extends to authorised contractual schemes the power which the Authority has under sections 247 and 248 to make rules in relation to authorised unit trust schemes. Rules may be modified or waived under section 261K.

Sections 261L to 261O make provision about the contracts and liabilities of the participants in an authorised contractual scheme which is a co-ownership scheme. Section 261N makes provision for co-ownership schemes constituted as umbrella co-ownership schemes and for the segregation of the sub-schemes of an umbrella co-ownership scheme.

Sections 261P to 261R make provision for the alteration of authorised contractual schemes, including the replacement of the operator or the depositary and the conversion of a UCITS which is a feeder UCITS into a UCITS which is not a feeder UCITS.

Sections 261T to 261V make provision for the revocation of an authorisation order made for a contractual scheme.

Sections 261W to 261Z4 confer powers of intervention on the Authority and on the court on application by that authority, including 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 Corporation Tax Act 2010 (c.4) so that no charge to corporation tax arises in relation to a co-ownership scheme.

Regulation 5 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.

Part 3 (regulations 6 to 10) makes provision for contractual schemes by amending relevant secondary legislation.

Part 4 (regulation 11) modifies the Limited Partnerships Act 1907 in relation to a partnership scheme which is authorised under Part 17 of FSMA. The partners' liability for partnership debts and obligations is to be met exclusively out of the property of the partnership (the property subject to the scheme which is held by the depositary). Participants do not take part in the management of the partnership business by virtue of exercising rights conferred by rules made by the Authority under section 261H of FSMA. Modified provision is also made in relation to the transfer of units and the registration of changes in the partnership.

Part 5 (regulation 15 and the Schedules) makes provision for winding up an insolvent co-ownership scheme or an insolvent sub-scheme of an umbrella co-ownership scheme as if it were an unregistered company. Provision is made for—

- the presentation of a winding-up petition by the depositary, the Authority or any creditor or creditors on the ground that the participants are unable to pay their debts or that it is just and equitable that the scheme or sub-scheme should be wound up;
- determining the applicable winding up legislation by reference to the law which governs the contractual scheme deed;
- the modification of applicable winding up legislation to ensure that it has effect as intended in relation to co-ownership schemes; and
- steps to be taken by the operator if the participants are deemed unable to pay their debts (the operator must immediately cease investment activity and notify the Authority).

Part 6 (regulation 13) makes transitional provision in relation to depositaries of authorised contractual schemes. A person who already has permission under Part 4 of FSMA to act as trustee of an authorised unit trust scheme or as the depositary or sole director of an open-ended investment company, if that person gives the Authority 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 7 (regulation 18) requires the Treasury to review the operation and effect of these Regulations 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 be amended. A further instrument would be needed to revoke the Regulations or to amend them.

An Impact Assessment of the effect that these Regulations will have on the costs of business is available on HM Treasury's website (hm-treasury.gov.uk) and is annexed to the Explanatory Memorandum which is available alongside these Regulations on the legislation.gov.uk website.