HM TREASURY

Contractual schemes for collective investment:

summary of consultation responses and Government response

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1 Introduction

Summary

- On 10 January 2012 HM Treasury issued a consultation paper on draft Regulations for the authorisation of two types of authorised contractual scheme for collective investment in transferable securities.
- One type of contractual scheme is a co-ownership scheme. The other is a limited partnership. Both types will be tax transparent and both will be available as UCITS and non-UCITS schemes.
- HM Treasury has amended its proposals in a number of respects in response to comments on the draft Regulations and answers to specific questions in the consultation paper. HM Treasury also took account of points made during the course of continuing discussion with the Financial Services Authority, the Department of Business, Innovation and Skills, the Insolvency Service and other interested parties and stakeholders.
- Revised draft Regulations were published at the end of July 2012 for consideration and further comment by interested parties. The Government has made a number of further changes following that process and is satisfied that the legislation will provide a legal framework for competitive tax transparent forms of collective investment.

Overview of the Authorised Contractual Funds regime

1.1 The Government announced its intention in Budget 2011 to introduce a new, regulated, tax-transparent fund vehicle (a "contractual scheme") to facilitate collective investment in transferable securities. This was particularly in order to take advantage of the opportunity to set up master funds, which was offered by Directive 2009/65/EC of the European Parliament and of the European Council on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (the "UCITS IV Directive")[1].

1.2 A contractual scheme is a collective investment scheme that is tax transparent, meaning that income and gains accrue to investors directly as they arise. There will be two types of tax transparent contractual scheme, namely the co-ownership scheme and the partnership scheme. A co-ownership scheme has no legal personality, so that there is no entity at the level of the fund which can be subject to corporation tax, income tax or capital gains tax. A partnership scheme is a limited partnership formed under the Limited Partnership Act 1907.

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32009L0065:en:NOT

1.3 Introducing contractual schemes will help to ensure that the UK is able to compete to win an appropriate share of European pooled funds (as UK domiciled funds), and to consolidate the UK's position as the largest asset management centre in Europe.

1.4 Contractual schemes are expected to be attractive vehicles for UCITS master funds, in which feeder UCITS funds can pool investments under cross-border arrangements. Also, it is expected that institutional investors, such as pension funds and life assurance companies, will benefit from collective investment in contractual schemes, as asset pooling provides economies of scale and offers reduced costs and potentially enhanced returns through greater scope for diversifying investments.

1.5 The fiscal transparency of contractual schemes will mean that, in the absence of tax legislation providing otherwise, the investor must 'look through' the fund for capital gains purposes in the same way as for income.

1.6 However, in the case of a co-ownership scheme the rules for tax on capital gains have been amended, so that the asset held by an investor is their interest in the co-ownership scheme and not their share of the underlying assets. This means that a capital gain or loss may be realised on disposal of that interest. A capital gain or loss will not be attributable to the investor when a disposal is made by the scheme nor when the investors' precise share of a scheme asset increases or decreases through the contraction or expansion of the scheme. This treatment is consistent with the treatment of similar funds based outside of the UK.

1.7 Similar provision has not been made for partnership schemes. The asset held by the investor will be their share of the underlying assets, and any disposal or other dealing with the assets may give rise directly to a capital gain or loss. This is consistent with current UK tax treatment of limited partnerships.

Consultation on the draft Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013

1.8 In addition to the original consultation which took place between 10 January and 19 March 2012 the Government consulted on a revised draft of the Regulations in August 2012. The Government is grateful for comments and proposals put forward by individuals, companies, representative bodies and others throughout the consultation process. This document sets out the Government's responses to the consultation and changes to earlier proposals. Its aim is to ensure that the legal framework for the authorisation and operation of contractual schemes strikes the right balance between enabling tax transparent schemes to be set up efficiently and run competitively and securing effective regulation and protection of investors.

1.9 The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013 will be ready for laying before Parliament when final checks have been completed. Details of the previous consultations are available at:

http://www.hm-treasury.gov.uk/consult_contractual_schemes_collective_investment.htm

Responses received

1.10 The Government received 20 written responses to the January 2012 consultation and 7 written responses following the publication of revised draft Regulations in July 2012. Throughout the preparation of this legislation Treasury and HMRC has engaged with stakeholders and appropriate advisers and practitioners through a regular series of meetings and discussions. Of the original consultation responses six were received from businesses which use or operate funds, six from professional services or consultancy businesses, six from representative bodies and two from individuals. A full list of respondents is given in Annex A. The Government is also grateful for the

assistance of the three working groups set up to discuss legal, tax and commercial issues. A list of working group members has also been provided in Annex A. Government responses to the questions posed in the January consultation paper are set out in Chapter 3.

Overall response to the regime

1.11 Most consultation responses have been strongly supportive of the introduction of two forms of authorised contractual scheme and were of the view that they would improve the UK's competitiveness and encourage more funds to domicile in the UK. At the same time some respondents provided detailed comments and suggestions, particularly about:

- the restriction on transfer of units;
- the recognition by foreign courts of UK law which limits participants' liability or otherwise protects investors;
- provisions limiting the liability of participants;
- the liability of the general partner of a the partnership scheme;
- winding up an insolvent co-ownership scheme by the court as an unregistered company; and
- the importance of ensuring that contractual schemes are recognised as transparent by foreign jurisdictions.

1.12 The Government's response to these points is set out in Chapters 2 and 3. For detail on the changes to the capital gains tax rules on mergers and reconstructions, which affect all collective investment schemes and which have been introduced as part of this project, please see Annex B. For a short summary of the structure of the main draft Regulations (The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013), please see Annex C. Under the Financial Services Act 2012 the Financial Conduct Authority ('FCA') will assume the relevant responsibilities of the Financial Services Authority ('FSA') with respect to the authorisation and supervision of tax transparent fund vehicles. Throughout this document, you may see references to both.

2 Main changes to the authorised contractual schemes

The main Regulations

- The draft Regulations make provision for the formation of undertakings for collective investment constituted in accordance with contract law.
- The draft Regulations provide for the authorisation and supervision of contractual schemes by the Financial Conduct Authority ("the FCA") mainly by inserting a new Chapter (3A) in Part 17 of the Financial Services and Markets Act 2000 ("FSMA").
- The Government approach is to ensure that contractual schemes are authorised and regulated broadly in the same way as authorised unit trusts ("AUTs") and open-ended investment companies ("OEICs"), taking account of the different legal principles and legislative framework which govern co-ownership and limited partnership.
- The draft Regulations have been revised to take account of concerns and points that emerged on consultation and of comments made in specialist working groups set up to inform decisions about the structure of contractual schemes and how they should be regulated and wound up.

The Tax Regulations

- Regulations will also be introduced that will ensure the correct capital gains tax, stamp tax and VAT treatment for the new funds.
- The capital gains tax rules for authorised contractual schemes ("ACSs") will provide that the co-ownership scheme is treated as opaque for gains for the purposes of UK tax resident investors. The regulations provide reliefs for life insurance companies who transfer assets into one of the new funds and clarify existing rules on mergers and reconstructions.
- Schedule 19 will not be extended to cover ACSs, and a Stamp Duty Reserve Tax exemption is being introduced to help facilitate investment in the new funds.

2.1 The Government has received invaluable input from those who have responded to the consultation or have contributed through industry working groups set up to look at the tax, regulatory and insolvency aspects of the statutory instruments.

2.2 Most respondents were strongly supportive of the introduction of authorised contractual schemes. In response to feedback received a number of changes have been made to the draft Regulations since the original consultation and the subsequent technical consultation in August 2012.

2.3 These changes will improve the commercial appeal of the new schemes while also meeting the Government's aim of protecting investors. They mainly concern the transfer of units, investor eligibility, limited liability and insolvent winding up. This has involved extensive input from the

FSA and insolvency practitioners. Other areas of regulation, most notably the common regulatory framework and tax regulations, have been subject to comparatively less change.

2.4 This chapter outlines the more significant points considered since the end of the initial consultation period and the changes made to address them. For more detail please see Chapter 3, which sets out consultation responses on a question by question basis. For detail on the changes to the capital gains tax rules on mergers, and reconstructions which affect all collective investment schemes and which have been introduced as part of this project please see Annex B. For a short summary of the structure of the main regulations please see Annex C.

Uniformity in market for collective investment

2.5 As far as possible the Treasury has tried to ensure consistency between contractual schemes, OEICs and AUTs. In particular, both types of contractual scheme will be capable of being authorised as Non-UCITS Retail Schemes ("NURS") and Qualified Investor Schemes ("QIS") as well as UCITS schemes. One major difference is that where a strategy involves setting up sub-funds within a single collective investment scheme, the choice of a contractual scheme will be confined to co-ownership schemes (a partnership scheme cannot be authorised if it allows for sub-schemes).

2.6 It is also important in the interests of uniformity to ensure that procedure for setting up schemes, and powers and provisions relating to their governance and regulation are as close as possible (i.e. do not differ more than is necessary to take account of the different legal characteristics of OEICs, unit trusts and contractual schemes and the different legislation that governs the way they are set up, managed and wound up).

2.7 This approach is seen, in particular, in the way in which Chapter 3A of Part 17 of FSMA closely follows the pattern of Chapter 3 (AUTs), and secondary legislation is amended, mainly by adding reference to ACSs (and not making any different provision for them). Similarly, the FCA has the same power to make rules in relation to ACSs as it has in relation to AUTs, and the amendments to COLL (in the FCA's Handbook) made for ACSs are as far as possible in line with rules applicable to AUTs and OEICs. So, for example, an AUT and an ACS will be treated in much the same way as regards applications for authorisation, restrictions on financial promotion, alterations, and powers of intervention by the FCA and master-feeder UCITS.

Transferability of units

2.8 The original consultation proposed that the Regulations prohibit the transfer of units except where permitted by FCA rules. Following consultation this requirement has been changed to allow ACS promoters greater freedom to decide how far unit transfers may be permitted.

2.9 It was originally thought that allowing transfers of units would be taken as an indication that the scheme was a separate entity from the investors (because units would be akin to shares in an OEIC), and that this could jeopardise recognition of the schemes as tax transparent by foreign fiscal authorities. Following consultation it became evident that:

- this was not the case in many jurisdictions;
- in those jurisdictions where prohibition against transfer is a prerequisite to recognising a scheme as being tax transparent, the prohibition must be absolute, so that the qualified restriction originally proposed would not suffice;
- in jurisdictions which require an absolute prohibition it is satisfactory for the prohibition to be set out within the individual deed of a given scheme rather than as a legislative rule applying to all contractual schemes;

- the prohibition proposed would be more restrictive than that on tax transparent fund structures offered in other major EU jurisdictions; and
- there was significant commercial demand for allowing units to be transferable.

2.10 The Government has concluded that a blanket restriction on transfers would be disproportionate and that any restrictions upon transferability should be decided by the promoters and set out in the deed of the scheme to meet the best interests of intended investors and the tax implications of transferability in the jurisdiction where schemes and sub-schemes are to focus investment.

2.11 But some constraint on unit transfer is necessary for regulatory reasons. The additional risks inherent in a contractual scheme require additional protection for retail investors who might otherwise invest without appropriate advice. For this reason the legislation requires a minimum initial investment by retail investors of £1million (see below). Unit transfer must be regulated for the same reasons. Other constraints on investment (and therefore on unit transfer) will be set out in FCA rules for ACS.

2.12 The SDRT charge in Schedule 19 FA 1999 is not being extended to ACS's. Transfers of units in ACS's will be exempt from stamp duty and SDRT.

Safeguards to protect retail investors

2.13 The authorised contractual schemes represent innovative types of fund structure which are constituted under contract law and are subject to certain legal risks which cannot be entirely eliminated. In particular, and in common with existing foreign structures, there remains a small risk that a foreign court may not recognise UK legislation that limits the liability of participants. The draft Regulations address this risk by requiring schemes to prevent retail investors becoming participants unless they invest £1million or more.

2.14 This is intended to ensure that only retail investors who possess the experience, knowledge and expertise necessary to appreciate the risks or who can be taken to rely on professional advice will make investments in an ACS.

Provisions limiting liability of participants

2.15 In a co-ownership scheme rights and liabilities associated with the ownership of the investments and other property of a collective investment scheme are vested in the investors through the agency of the operator. This is the fundamental characteristic of transparency. There is no fund entity in which assets and liabilities can be vested (subject only to legal title being vested for practical and regulatory reasons in a custodian). This means, of course, that co-owners are personally liable to meet debts and obligations incurred in the course of the operation of the scheme. It is necessary, therefore, to limit investors' liability to the extent of the scheme property, to ensure that new investors have all rights and liabilities of existing investors, and to release investors who redeem or transfer units from such liabilities.

2.16 The legislation enacted to provide a framework for the authorisation and regulation of this structure requires the safeguards mentioned above to meet the risk of non-recognition of limited liability in foreign courts, and provision for insolvent winding up to ensure that scheme property is fairly allocated to meet the claims of creditors (as it is not enough to meet all claims in full). For this purpose, a co-ownership scheme may be wound up by the court as if it were an unregistered company (see below).

2.17 In the case of a partnership scheme, the liability of a participant (as a limited partner) is already provided for in the Limited Partnerships Act 1907. It is necessary to modify that legislation, including provision for limiting their liability and provision limiting the liability of the

general partner in the event of insolvency (see below). In spite of widespread recognition of the limited partnership as a tax transparent structure, it is necessary to safeguard small retail investors, because a potential risk of non-recognition of UK law may stem from the modification of the 1907 Act which ensures that exercising rights conferred on limited partners by FCA rules will not result in the loss of their limited liability. The winding up of an insolvent partnership scheme will be under existing law (in England and Wales and Northern Ireland by the court as an unregistered company, and in Scotland by sequestration).

Liability of the General Partner as Operator

2.18 Originally it was proposed that the limited partnership scheme would have a single general partner (with unlimited liability) who would also be the operator of the scheme and would have to be authorised by the Financial Services Authority. This gave rise to concerns about the risks and commercial impact of unlimited liability, particularly where an authorised operator was the operator of a number of different funds. The effect that this could have on investment manager's risk profiles made this proposal unworkable.

2.19 The Government has revised the draft Regulations so that in an insolvent situation the general partner of an FCA authorised limited partnership scheme will not be personally liable for partnership debts and obligations, except where the general partner had awarded against it any remedies for misapplying funds or other breaches of fiduciary duty or for fraudulent or wrongful trading. Any indemnity for failure to exercise due care and diligence by a general partner would be void.

Winding up an insolvent co-ownership scheme

2.20 The legislation provides that an insolvent co-ownership scheme is to be wound up by the court as an unregistered company. This will occur upon the presentation of a petition by the operator, the FCA, a creditor or, in exceptional circumstances justified by the public interest, the Secretary of State for Business, Innovation and Skills (or his devolved counterpart).

2.21 The jurisdiction of winding-up proceedings will be determined by the place of business of the depository. The depository of an authorised contractual scheme must have a place of business in the UK.

2.22 For these purposes a sub-scheme of an umbrella co-ownership scheme is to be treated in the same way as a stand-alone co-ownership scheme. As a fund with segregated assets and liabilities, a sub-scheme may be wound up without prejudging the continued operation of other sub-schemes.

2.23 Regulation 17 and Schedules 2 to 5 make necessary provision for this, including provision applying specified insolvency legislation and making necessary modifications.

Overseas recognition

2.24 A significant number of respondents made clear the extent to which the commercial success of the new ACSs will depend on the degree to which they secure widespread recognition by foreign jurisdictions as being tax transparent.

2.25 The Government understands the importance of securing foreign recognition for the fiscal transparency of contractual funds. To that end, the schemes have been designed, with the benefit of expert advice and consultation with industry, to meet the generally recognised characteristics of tax transparent arrangements. Of the two types of scheme being introduced, one is based on the existing limited partnership structure, which is already widely recognised as transparent. The other, the co-ownership model, shares many characteristics of transparency with existing foreign schemes which are already recognised as transparent in many other jurisdictions.

2.26 HMRC will publish guidance on the tax effects of the legislation relating to authorised contractual funds, and this will be shared with foreign jurisdictions in order to ensure that they are well informed about the new fund arrangements. HMRC will follow this up through informal contact with foreign fiscal authorities in key jurisdictions. This will ensure that information is made available to foreign jurisdictions about UK contractual funds to facilitate an early understanding of their nature.

Financial Services Act 2012

2.27 The draft Regulations have been revised to take account of the amendments to FSMA made by the Financial Services Act 2012. In particular, as the functions of the Financial Services Authority relating to the regulation of collective investment schemes will shortly become exercisable by the Financial Conduct Authority ("the FCA"), the draft Regulations refer throughout to the FCA. The Treasury intends to bring the Regulations into force (with Parliamentary approval) as soon as possible after the provisions of the Act relating to the new regulatory regime are commenced on 1 April.

3 Consultation responses

Chapter 2 of the consultation paper: Why are we introducing UK contractual schemes?

Question 1: How important is it to the UK fund management industry to have a UK TTF option available and do you agree that an increase in funds domiciled in the UK will lead to further economic activity in the UK?

Question 2: Do you agree that introducing a TTF would positively reinforce the UK's reputation as a financial centre?

Question 3: What are the additional benefits of asset pooling for investors and investment managers? What levels of saving are achievable through asset pooling?

Question 4: Do you believe that you or your clients would be able to benefit from an asset pooling scheme? If so what quantum of assets would you consider pooling? Would you consider investing in an asset pooling vehicle domiciled outside of the UK?

Summary of responses

3.1 There was a strong consensus that providing for UK tax transparent funds was important in order to ensure that the UK remains competitive as a fund domicile. Many respondents stated that in addition to maintaining the UK's current competitiveness in the field of collective investment, legislating for contractual schemes would lead to an increase in the number of funds domiciled in the UK and an associated increase in economic activity.

3.2 Respondents felt that the introduction of UK tax transparent funds would send a compelling message that the UK is a serious competitor as a location for international funds and would help to reinforce the UK's reputation as a leading financial centre.

3.3 The option of establishing tax transparent funds in the UK is considered to be especially important for the management of assets on behalf of UK institutional investors. Responses indicated that there will be particular interest in the new funds from pension funds, insurance groups and fund managers with pensions and insurance mandates. It was mentioned that a contractual scheme could be effectively used as a master fund with a UK retail feeder fund invested alongside pension funds or life company assets. Life insurance funds and pension funds would be likely to require fund managers to manage funds onshore as it would result in simpler and more transparent governance structures.

3.4 While many respondents expected the number of funds domiciled in the UK to increase as a result of the measure some felt that by themselves the authorised contractual schemes (ACSs) were not sufficient to attract funds to the UK and that it was important to consider the new vehicles within a wider commercial context. According to some respondents if the schemes were not introduced the UK would be likely to experience a gradual shift of funds offshore.

3.5 Respondents identified the ability of tax transparent funds to facilitate greater pooling of assets as one of their primary benefits. By increasing the amount of assets pooled cost savings could be achieved, particularly in relation to compliance, lower management fees for investors and greater transparency and governance by fund managers.

3.6 Respondents also largely agreed that the new funds would help create jobs associated with professional services offered to funds and fund managers. Such professional services included fund administration, client compliance, legal advisers, auditors and depositories.

Government's position

3.7 The Government is keen to maintain the competitive position of the UK as a domicile for funds. In line with the responses to the consultation the Government believes that the new authorised contractual funds will bring significant benefits to both industry and investors.

Question 5: What, if any, are the reasons that a UK domiciled TTF would be preferable to a non-UK domiciled TTF?

Question 6: Would you or your client be likely to transfer assets that are currently invested in unauthorised funds, AUTs or OEICs into a TTF authorised as a NURS or QIS rather than a UCITS scheme? If so what quantum of assets would be transferred?

Summary of responses

3.8 A number of respondents stated that reasons for using a UK domiciled tax transparent vehicle included:

- the opportunity to take advantage of the UK's extensive double tax treaty network;
- that it would be more marketable to UK investors; and
- that it would benefit from the UK's robust regulatory regime.

3.9 For UK centric groups using a UK domiciled tax transparent fund would also potentially be more cost effective than establishing one in a foreign domicile. One respondent suggested that once an asset manager acknowledges that a tax transparent vehicle is required as part of their fund range, they will consider their home domicile or location of their largest existing funds as the most logical base.

3.10 One respondent felt that due to the need to generate economies of scale in order for tax transparent funds to be cost effective the new schemes were most likely to be set up as UCITs funds. The majority of replies suggested there would be demand across the board with schemes expected to be set up as NURS and QIS as well. Some respondents indicated that institutional investors could transfer their existing equity funds into tax transparent funds, while others indicated that cost considerations would deter institutions from this course.

3.11 Respondents indicated that clients were keen to establish tax transparent funds for new investments. One fund manager estimated that they would expect to pool at least £5 billion of assets in a tax transparent fund in order for it to achieve the scale necessary to be commercially viable. The IMA indicated that their members may move a total of up to £500 billion of assets into UK based tax transparent fund structures.

Government's position

3.12 The Government has welcomed all comments on the advantages offered by the UK as a domicile for tax transparent collective investment funds and has continued to work with industry to develop these proposals. ACSs are being introduced by regulations under section 2(2) of the

European Communities Act, which will amend the Financial Services and Markets Act 2000 and other legislation and make self-standing provision as necessary for the effective operation of contractual schemes. They will enable the establishment of tax transparent UCITS, which is the type of fund used for over 70 per cent of collective investment, but it is essential in the interests of market uniformity to ensure that NURS and QIS can be set up as tax transparent schemes.

3.13 The decision by fund managers whether to transfer existing assets or to launch new funds is a purely commercial choice.

Question 7: Do you agree that, as set out in this consultation document, there would be no mandatory cost imposed on any UK businesses by the proposed legislation?

Question 8: Do you agree that businesses that wished to utilise the opportunity provided by the legislation (either to set up and operate or access a TTF) would be able to reliably assess the cost:benefit equation for their organisation?

Question 9: Do you agree that assumptions set out in the annexed draft impact assessment are reasonable? If not, for what reason and how should the assumption be adjusted?

Summary of responses

3.14 There was agreement among respondents that any costs to UK businesses would be incurred on a voluntary basis as a result of a commercial decision to launch a tax transparent fund. This is a measure to stimulate business, and the impact is wholly positive, though it will be necessary, of course, to incur cost in order to take advantage of the opportunity offered by the legislation. Accordingly, for the purpose of assessing regulatory impact, it was agreed that there would be no mandatory cost for business.

3.15 Respondents said that they would be in a better position to assess the costs and benefits of tax transparent funds once the FCA rules had been finalised, the legislation had been put in place and examples of ACS documentation had been prepared.

3.16 Some respondents felt that the benefits have been slightly overstated. These respondents argued that the gains from asset pooling would be subject to diminishing returns to scale as the cost savings envisaged would reduce over time.

3.17 Impact assessment: There was little detailed comment in relation to the impact assessment. A number of those responding agreed that the assumptions in the draft impact assessment were reasonable although some respondents suggested that initial take-up may be slightly lower than expected as fund managers waited to see how the scheme worked.

3.18 One major industry body agreed with our assumption that if ACSs were not made available to fund managers in the UK, we would be likely to see a movement of fund domicile towards foreign jurisdictions.

3.19 Respondents agreed that a UK domiciled TTF would bring work for fund managers, custodians, depositaries, legal advisers and auditors, all of whom would be likely to be based in the UK.

Government's position

3.20 The Government notes agreement that legislation for ACSs will not impose mandatory costs on business, and appreciates that cost:benefit analysis will be easier once the regime is in place.

3.21 While some respondents indicated that they might expect to pool up to £5 billion of assets into a TTF structure, the impact assessment takes a more conservative estimate of the average assets pooled to be £840 million per scheme. This figure was arrived at following further discussions with industry bodies and reflects a more cautious attitude.

3.22 The impact assessment has been submitted taking into account comments and feedback from the consultation and ongoing feedback. Within the analysis of benefits, our assumptions have been revised to reflect the more cautious views that:

- it may take longer for life insurance companies to transfer their funds into the UK than originally anticipated;
- initial take-up may be lower than expected as some fund managers will wait until the schemes have been established by other providers in order to better assess how they operate; and
- the UK is likely to lose a smaller (but nevertheless significant) proportion of funds domiciled in the UK if ACSs are not introduced.

Question 10: **Do you agree that micro-businesses should be able to utilise the contractual scheme as operators and therefore not be exempted from the scope of the legislation?**

Summary of responses

3.23 There was a consensus that micro-businesses would be disadvantaged if they were exempted from the scope of the legislation. Excluding micro-businesses from the scope of the legislation would be prejudicial to their interests as it would prevent these businesses from making use of the opportunity for their clients.

Government's position

3.24 The Government does not intend to apply the micro-business moratorium in this case. In any event, the moratorium is not mandatory for this measure because there are no mandatory costs associated with it.

Chapter 3 of the consultation paper: Contractual scheme Regulations

Question 11: **Do you agree that the conditions laid down in new FSMA section 235A(3) are appropriate for a scheme which has no legal personality distinct from the participants, who collectively own the pooled property?**

Summary of responses

3.25 There was strong agreement that the conditions laid down in new FSMA section 235A(3) were appropriate for a fund that has no legal personality separate from that of its investors.

3.26 Some concerns were raised about the need for scheme arrangements to be set out in a deed and about what happens if a deed is not validly executed.

3.27 Other responses called for more explicit provisions emphasising that the scheme does not have a legal personality and cannot be said to be a partnership or unit trust.

Government's position

3.28 The requirement for a deed to govern the scheme arrangements: It has been concluded that a deed is appropriate for arrangements of this nature. Also, the Treasury's approach to the legislation, in the interests of uniformity, has been to follow the statutory framework and procedures for authorising and regulating unit trusts unless there is good reason for departing from them. Furthermore, limited partnerships are also invariably constituted by deed. While a deed is required for different reasons for the establishment of a unit trust or a partnership, there is no reason for departing from the same legal form for constituting a co-ownership scheme.

3.29 Legal personality: The Treasury have laid stress from the outset of this project on the need to be clear about the distinct characteristics of co-ownership and how co-ownership differs from the unit trust. It was concluded that the characteristics, which included a condition that a co-ownership scheme does not constitute a body corporate, a partnership or a limited partnership (see section 235A(3)), did clearly define an arrangement that had no legal personality, but that it would be helpful to provide in addition that the contractual scheme deed must state that the arrangements are intended to constitute a co-ownership scheme (this eliminates any possibility that an existing unit trust could be classified as well as a co-ownership scheme).

Question 12: **Do you agree that the prohibition on transfers of units in a co-ownership scheme should be qualified by contractual scheme rules made by the FSA? If you do, under what circumstances ought a unit-holder to be permitted to transfer units?**

Question 26: **Do you agree that the prohibition on transfers of units in a partnership scheme should be qualified by contractual scheme rules made by the FSA? If you do, under what circumstances ought a unit-holder to be permitted to transfer units?**

Summary of responses

3.30 A number of respondents were concerned that a prohibition on the transfer of units would create practical and commercial difficulties. For example, units need to be transferable if transactions are to take place in CREST. One respondent felt that the prohibition would prevent the operator operating a "box" in order to hold and sell unregistered units, and that this would make the depositary responsible for the issue and cancellation of units in the TTF.

3.31 Even among the respondents who were prepared to accept a degree of restriction on the transferability of units, there were some who said that the restriction was unnecessary and most said that it would still be essential to permit transfers in a range of circumstances, which they helpfully set out for consideration.

Government's position

3.32 The initial consultation paper proposed that the transfer of units in co-ownership schemes and partnership schemes should be prohibited except where permitted by FCA rules. Having considered consultation responses and representations by industry, the Treasury has modified provision for the transfer of units.

3.33 It is necessary first to note that new FSMA section 261E lays down criteria which must be met by new investors in an ACS (see paragraphs 3.36, and 3.97 to 3.99). Also, the FCA lay down in rules criteria of eligibility to invest in a QIS. Section 261E(2) provides that an ACS must not allow units to be issued to anyone other than a professional client or a retail investor for a consideration valued at less than £1 million or a person who already holds units in the scheme.

3.34 It is necessary to ensure that any entitlement to transfer units is subject to such restrictions as are necessary to ensure that the transferee is a person who would be entitled to acquire the units concerned on issue by the operator.

3.35 In the case of a co-ownership scheme, the contractual scheme deed must either prohibit unit transfer or allow it only if specified conditions are met (section 235A(4)(c)). The scheme promoters will be free to decide how far to restrict a participant's right to transfer units beyond conditions specified in accordance with FCA rules, and may prohibit transfers altogether. Specified conditions may ensure that the operator is able to prevent a transfer which is contrary to FCA rules or any stricter provision about transfer made in the prospectus and contractual scheme deed.

3.36 In the case of an umbrella co-ownership scheme (i.e. 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), section 235A(4)(c) provides that the contractual scheme deed must, in relation to each separate part, make provision prohibiting the transfer of units or allowing units to be transferred only if specified conditions are met. This allows a promoter, for example, to prohibit unit transfers for one sub-scheme and allow them, subject to specified conditions, for others.

3.37 In the case of a partnership scheme, section 6(5)(b) of the Limited Partnerships Act 1907 as modified by regulation 16(4)(c) provides that subject to any express agreement between the partners a limited partner may assign its partnership share with the consent of the general partner. The scheme promoters will be free to decide how far to restrict a limited partner's (participant's) right to transfer units beyond conditions specified in accordance with FCA rules, and may prohibit transfers altogether. The requirement to obtain the general partner's (operator's) consent ensures that the general partner is able to prevent a transfer which is contrary to FCA rules or any stricter provision about transfer made in the prospectus and partnership deed.

3.38 FCA rules will require the contractual scheme deed of an ACS to state whether unit transfer is allowed, and if it is, to state that units may only be transferred in accordance with conditions specified by FCA rules, including a condition that units may not be transferred to anyone other than an eligible investor.

3.39 Where a scheme is intended for investment in a jurisdiction where transferability is likely to jeopardise recognition of tax transparency, the promoters can impose tight restrictions on transfer in the prospectus and as a term of the contractual scheme deed. Where there is no commercial constraint on investors' entitlement to transfer units, the promoters' freedom to specify conditions, subject to the minimum level of control required by FCA rules, will allow scope for unit transfer to be decided according to the investment policy and the best interests of the participants in the scheme or sub-scheme concerned.

3.40 Also, this is compatible with the aim of maintaining uniformity in the market for collective investment, as there are no legislative restrictions on the transfer of units in AUTs or OEICs.

3.41 Note, that if units are transferred to an ineligible person notwithstanding specified conditions or the need for general partner consent, or are acquired by an ineligible person by operation of law upon the death, bankruptcy or other incapacity of the unitholder, the operator must redeem the units on becoming aware that they are held by an ineligible person (new FSMA section 261E(3)).

3.42 Finally, the draft Regulations make provision for units to be transferred electronically, subject to the right of the operator or the depositary (whichever one of them is responsible for maintaining a register of unitholders in accordance with the contractual scheme deed) to refuse to record such a transfer (regulations 20 to 23).

Question 13: Are the respective rights of operator, depositary, participants and third parties in a co-ownership scheme in line with what is required for the commercial operation of such a scheme?

Summary of responses

3.43 Most respondents broadly agreed that the balance of rights and liabilities in the proposals consulted on were in line with commercial requirements. Some respondents questioned whether investors could be held liable if the operator acted outside the scope of its authority under the contractual scheme deed (as described in new FSMA section 235A(4)).

3.44 A number of respondents questioned whether provision made for the rights and liabilities of participants rested on too narrow a description of the scope of the operator's authority, so that it was not wide enough to cover all commitments that the operator would be expected to make (in line with commitments normally made by the trustee of an AUT or in the course of management of an OEIC). In particular, it was said that the operator's authority to enter into contracts binding on the participants should extend to contracts for the purpose of or in connection with management, as well as acquisition and disposal, of property.

3.45 Another issue raised was whether provision that only the operator may bring proceedings "for the resolution of any matter relating to an authorised contract" together with provision excluding the participants from doing this themselves could prevent participants from bringing an action for breach of contract against the operator.

3.46 Another issue raised was whether provision for limiting participants' liability could rest on a reference to the value of a participant's units or the value of scheme property, given that this would always be variable.

3.47 Some respondents wanted clarification as to whether the depositary was merely a custodian of the assets of a co-ownership scheme or was a trustee (this is relevant to the question of how co-ownership differs from the unit trust – see under response to question 11).

Government's position

3.48 Operator acting outside the scope of its authority: The legislation limits the liability of participants for debts under a contract which the operator is authorised to enter into on their behalf. A contract outside the scope of that authority, for which provision must be made in the contractual scheme deed, is not binding on the participants (i.e. it is not an authorised contract). The onus is on the counter-party to ensure that a contract is authorised, because they are deemed to have actual knowledge of the scope of the operator's authority.

3.49 Scope of operator's authority: The Treasury has agreed that the operator's authority to enter into contracts binding on the participants should extend to contracts for the purpose of or in connection with the management, as well as the acquisition and disposal of scheme property. An investment might be made as part of the function of managing the scheme rather than as the acquisition or disposal of property. For example, money might be deposited on an interim basis in a high-interest bond.

3.50 The operator would be entitled to recover costs from scheme property, whether they were incurred by the operator as principal or under an authorised contract. In either case, costs due, for example, to a specialist investment adviser would not be recoverable if the work concerned were covered by the operator's fee. The operator's right of recovery will be governed by the terms of the contractual scheme deed, and will be constrained by general principles, including fiduciary duties owed to participants as agent and principles under which an agent is not entitled to be indemnified for the consequences of fraud or other wrong-doing.

3.51 For these reasons the draft Regulations recognise that the operator should have broader scope than initially provided for to incur debts for which the participants are liable as principal. The operator is to be authorised to acquire, manage and dispose of scheme property, and to enter into contracts for the purposes of, or in connection with, the acquisition, management or disposal of scheme property. Examples of debts that could be incurred in the exercise of the operator's authority include:

- debts under an authorised contract (i.e. under, or for breach of, a term of the contract);
- tax (e.g. stamp duty) and other charges relating to dealing in securities;

- a judgment debt made under an order for restitution (if an authorised contract is rescinded for innocent misrepresentation);
- other costs associated with an authorised contract (e.g. the fraudulent performance of an authorised contract); and
- fees and administrative costs not associated with authorised contracts.

3.52 Participants' action for breach of contract against the operator: To deal with this point new FSMA section 261M (contracts) has been amended in subsection (4) to read as follows:

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

Subsection (3) authorises the operator to bring and defend proceedings on behalf of the participants. Subsection (4) previously prevented participants from doing any of the "things mentioned in subsection (3)", which included bringing proceedings for the resolution of any matter relating to an authorised contract, and could be construed as covering proceedings brought against the operator by the participants. The modification ensures that subsection (4) will not be construed in this way.

3.53 Limiting participants' liability without reference to the value of units or scheme property: New FSMA section 261O ring-fences the property out of which debts and obligations can be met (scheme property) and limits liability by reference to the amount of that property which is available to the operator to meet the debts and obligations (the operator is solely responsible for managing the scheme property and managing contracts made for the purpose of, or in connection with, acquiring and disposing of scheme property). This protects unitholders from liability for debts and obligations that cannot be satisfied because total debt exceeds the gross value of scheme property. It also protects unitholders if the operator misapplies the property. There is equivalent provision for sub-schemes.

3.54 Nature of the depositary's role: The depositary of a co-ownership scheme is principally a custodian of the assets. The depositary does not have the normal powers of a trustee of a unit trust, who has full power to invest scheme property and who delegates or shares that power with the operator (who is also effectively a trustee). In so far as the depositary has fiduciary duties, they stem from its role as custodian or bare trustee. This is a distinct difference between a unit trust (as commonly set up rather than as broadly defined in section 237(1) of FSMA) and a co-ownership scheme.

3.55 The Government has changed the requirement that scheme property must be held by a depositary to a requirement that scheme property must be "held by, or to the order of, a depositary". This takes account of representations that legal title to property, particularly property acquired on a foreign exchange or otherwise overseas, is frequently held by a nominee or agent of the depositary such as a global custodian. The revised provision is in line with the equivalent provision for OEICs, and will allow the depositary to make arrangements for assets, including legal title in assets, to be held by nominees and other persons.

Question 14: Does the scope of the operator's authority to enter into contracts for participants fit the practice of the industry for meeting the operator's costs?

Summary of responses

3.56 A few respondents felt that the scope of the operator's powers should be as broad as the scope of the powers conferred on the operator of an OEIC and the manager of a unit trust. For example, some respondents argued for flexibility to permit managers to engage in stocklending, which may be of use to some institutional clients. Respondents were divided about whether the

costs attributable to the scheme, where powers have been delegated, should be met by the scheme or by the operator out of its own fee. In particular where:

- the fund manager delegates to an investment manager; or
- the appointed depositary delegates to a sub-custodian.

Government's position

3.57 The Government has taken on board responses to the consultation as well as feedback from legal expert working groups, and has made provision for the operator to enter into contracts for the purposes of managing the scheme property (as well as for acquiring and disposing of property). This should make it possible to allow the operator to enter, for example, into hedging contracts and make short-term deposits (see paragraphs 3.49 and 3.51 above).

3.58 As regards costs, please see paragraph 3.50 above.

Question 15: **Do the provisions for the protection for participants and counterparties ensure that the balance of risk between them is fair and proportionate given the level of knowledge and expertise on each side?**

Summary of responses

3.59 Most respondents agreed that a fair and proportionate balance had been struck. Respondents expected schemes to set out risks clearly within the marketing document or prospectus. Potential creditors or counterparties were also expected to exercise appropriate due diligence before entering into contracts with the scheme operator.

3.60 A few respondents also proposed that the legislation be changed to clarify whether pre-existing liabilities of the scheme would be extended to new investors upon the issue of units.

Government's position

3.61 New FSMA section 261N (effect of becoming or ceasing to be a participant) provides that: (i) a participant who redeems all units in a co-ownership scheme or sub-scheme ceases to have the rights of a participant and ceases to be subject to the liabilities to which a participant is subject; and (ii) a new participant acquires the rights and becomes subject to the liabilities to which the other participants are entitled or subject at the time when the units are acquired.

3.62 The rights and liabilities concerned are rights and liabilities under, or in connection with, authorised contracts. The expression "authorised contract" has the meaning given in section 261M(1), so that it covers any contract made by the operator within the scope of the authority conferred by the contractual scheme deed (i.e. for the purpose of, or in connection with, the acquisition, management or disposal of scheme or sub-scheme property).

3.63 The Treasury recognises that rights and liabilities (and associated debts) do not just arise under contracts for the acquisition and disposal of property, and that provision which limits liability and governs what happens upon becoming or ceasing to be a participant must be brought into line with the scope of the operator's overall authority to enter into contracts which are binding on the participants.

Question 16: **Do you agree that the most appropriate way for a co-ownership scheme to be wound up by the court in the case of insolvency is winding-up as an unregistered company?**

Summary of responses

3.64 The responses to this question in the initial consultation were generally supportive of the proposal to wind up an insolvent co-ownership scheme or sub-scheme under legislation applicable to the winding-up by the court of an unregistered company.

3.65 One respondent was concerned about the lack of coherency in applying the law for winding up an unregistered company to a scheme that is neither a legal entity nor a partnership, and was concerned about the view that foreign tax authorities and advisers would take about this legislative framework.

Government's position

3.66 Following the initial consultation and further discussion with the Insolvency Service and insolvency practitioners the Government has decided that there is no more suitable law or procedure for winding up insolvent co-ownership schemes. It has, however, recognised that the legislation required to implement this option effectively requires much more detailed application and modification of existing legislation than outlined in the draft Regulations prepared for issue with the initial consultation paper.

3.67 A stand-alone co-ownership scheme may be wound up as an unregistered company; so may a sub-scheme of an umbrella co-ownership scheme, and for this purpose a sub-scheme is segregated from every other sub-scheme which forms part of the same umbrella co-ownership scheme. "Relevant scheme" in regulation 17 and Schedules 2 to 5 of the draft Regulations means a stand-alone scheme or a sub-scheme.

3.68 Provision for fixing the jurisdiction in which winding up proceedings are to be commenced is modelled on section 221 of the Insolvency Act 1986, but the critical factor for determining jurisdiction is the location of the place of business of the depositary. This approach was strongly supported during further consultation. The depositary of a relevant scheme must have a place of business in the UK (section 261D(6)). Section 221 excludes the application of all enactments relating to voluntary winding up.

3.69 Section 221(5) of the 1986 Act specifies three grounds for winding up an unregistered company. Section 221 is modified so that a petition for insolvent winding up of a relevant scheme may be presented on the ground that the operator of the scheme or sub-scheme is unable to pay its debts; or on the ground that it is just and equitable that the scheme or sub-scheme be wound up.

3.70 A petition for insolvent winding up may be presented by the operator, the FCA, a creditor or, on grounds of public interest, by the Secretary of State.

3.71 A requirement is imposed on the operator to cease business immediately upon the presentation of a petition, but provision is made for the possibility that the court may dismiss the petition.

3.72 Provision is made to ensure that the estate of the participants in a co-ownership scheme is not subject to sequestration under section 6 of the Bankruptcy (Scotland) Act 1985.

Question 17: Do you agree with the way in which Parts 4 & 5 of the Insolvency Act 1986 and Parts 5 & 6 of the Insolvency (Northern Ireland) Order 1989 have been modified for this purpose?

Summary of responses

3.73 Of those who responded most felt that the proposed modifications were appropriate.

3.74 Feedback included the point that the definition of debts covered by insolvency procedure is wider than debts under authorised contracts, with reference to which participants' liability was limited.

Government's position

3.75 The Government has worked on the more detailed modifications in the current draft with the Insolvency Service, insolvency practitioners and lawyers experienced in winding up funds and companies. Appropriate consultation has also been conducted for provision required to take account of the law of Scotland and Northern Ireland and for provisions that apply differently in each country or amend or modify law that has effect only in one of those countries.

3.76 The definition of scheme and sub-scheme debts has been widened to cover all debts and obligations incurred for the purposes of, or in connection with the acquisition, management or disposal of property subject to the scheme or sub-scheme. This will cover not just liability under (including for breach of) an authorised contract, but also, for example, tax liabilities, a judgment debt made under an order for restitution and debts due under a lease.

3.77 This change also ensures that the description of debts and liabilities taken account of in winding up a scheme or sub-scheme by the court is in line with the description of debts and liabilities that can be incurred by the operator in the proper exercise of authority (by reference to which the liability of participants is limited).

Question 18: **How important commercially is it that there is provision to facilitate the authorisation of co-ownership umbrella schemes? How far do the draft provisions meet commercial requirements?**

Summary of responses

3.78 There was strong support for provision allowing a co-ownership scheme to be set up as an umbrella scheme (a single scheme with segregated sub-schemes), particularly as this is permitted for similar funds in other jurisdictions.

3.79 A number of responses stressed the need to have equivalent options for all three types of UK authorised collective investment scheme (i.e. AUTs, ACSs and OEICs), including the option of setting up sub-schemes for pooling in relation to separate parts of the scheme property. Attention was drawn to the commercial and operational advantages for fund managers of being able to offer a single fund consisting of segregated sub-funds for investment of different types, in different markets and different parts of the world, between which investors could freely exchange units.

Government's position

3.80 The Government has revised provision for umbrella co-ownership schemes made in the draft Regulations which were published with the initial consultation paper. The substance of provision made for segregating sub-schemes is unchanged. The changes reflect further thought on how best to implement policy on sub-schemes in legislation and in the far more detailed provision now made for insolvent winding-up.

3.81 The draft Regulations insert in section 237(4) of FSMA a definition of "umbrella co-ownership scheme", "sub-scheme" in relation to an umbrella co-ownership scheme, and "stand-alone co-ownership scheme". The last is a co-ownership scheme which is not an umbrella co-ownership scheme.

3.82 Each segregated sub-scheme of an umbrella co-ownership scheme is effectively treated as if it were a stand-alone co-ownership scheme. This extends to winding up in the case of

insolvency. A sub-scheme may be wound up by the court as an unregistered company without risk that the liabilities incurred by the participants in that sub-scheme will become a burden for participants in any other sub-scheme of the same umbrella co-ownership scheme.

Question 19: Does new FSMA section 261N and corresponding provision for winding up by the court achieve effective segregation of sub-schemes within a framework that allows authorisation and regulation of the umbrella scheme, regulation of sub-schemes and free exchangeability of units between sub-schemes?

Summary of responses

3.83 Provision for segregation of sub-schemes is now in new FSMA section 261P.

3.84 Respondents stressed the need for free exchangeability of units between sub-schemes and effective segregation of assets during winding-up. Some respondents wanted the language in section 261N (now 261P) to mirror that used in the protected cell regime for OEICs. This would have the advantage that fund documentation could then be more standardised and there would be less risk of inconsistent court interpretations.

Government's position

3.85 The consultation paper and consultation draft of the Regulations fully recognised the need to ensure that units in sub-schemes would be freely exchangeable and that there would be effective segregation of assets on winding up.

3.86 Legislation for segregating OEIC sub-funds takes account of the corporate nature of an OEIC whose liabilities could otherwise be met from the assets of the sub-fund. An umbrella co-ownership scheme is not a corporate entity. This and other differences between an OEIC and a co-ownership scheme require a different approach to be taken and different words to be used to give effect to the segregation of umbrella co-ownership scheme sub-schemes.

Question 20: Are there any obstacles not addressed in this paper to the proposal to authorise co-ownership schemes as a vehicle for collective investment under Part 17 of FSMA? If there are, how significant are they and how would you suggest addressing them?

Summary of responses

3.87 Responses to this question were mixed with several respondents suggesting that there was no obstacle to the authorisation of co-ownership schemes as ACSs.

3.88 Respondents were keen to ensure that the new co-ownership scheme offered broadly the same level of investor protection as existing authorised schemes. This would help fund management companies standardise relevant documentation.

3.89 In this connection it is important to note the issues that arose from a point made by one respondent in discussion after the end of the initial consultation. This concerns the risk of non-recognition of UK law in foreign courts, particularly new FSMA provision requiring all proceedings to be handled for the participants by the operator; protecting participants' non-scheme property from liability; and limiting the liability of participants.

Government's position

3.90 The Treasury has concluded that there is no reason why an authorised person who has permission under FSMA to act as the operator or depositary of an AUT or an OEIC should not be permitted to be the operator or depositary of an ACS.

3.91 The Treasury sees no reason to believe that contractual schemes offer a lower level of investor protection than the level of protection offered by existing authorised schemes, except that a higher risk has been identified in relation to the recognition of UK law by foreign courts.

3.92 A risk of this nature has been identified for both types of scheme, and the measures described below apply to any ACS (it is convenient to cover the point here for partnership schemes as well as co-ownership schemes).

3.93 Risk of non-recognition of UK law in foreign courts: There is a risk in relation to co-ownership schemes that a foreign court may not recognise UK law limiting the liability of participants, requiring debts to be met out of scheme property and requiring legal proceedings to be taken and defended on their behalf by the operator.

3.94 In the case of a partnership scheme, provision for limited liability for sleeping partners is widely recognised. Limited partnerships are used widely for unregulated investment schemes. The Treasury has no reason to believe that the modification of section 4 of the Limited Partnerships Act 1907 (regulation 16(3) of the draft Regulations) is likely to increase the risk of non-recognition. But there is some concern that a foreign court might conclude that limited liability has been undermined through the exercise of rights conferred on investors by FCA rules. This activity could be regarded as going beyond what is generally regarded in that jurisdiction as an acceptable level of participation in management for a sleeping partner.

3.95 These types of risk are not unknown for unit trusts and other investment schemes, and authorised managers can be expected to take account of them when investing in different jurisdictions. The focus is on the need to protect retail investors who may not appreciate the risk of incurring liability beyond the amount they have invested, notwithstanding UK legislation and promotional literature drawing attention to the risk.

3.96 The view taken by the Treasury, in consultation with the FSA, is that retail investors should not be excluded from participation in an ACS, but that measures should be taken which would have the effect of excluding investment by anyone who either does not have the experience and knowledge required to assess the financial and legal risks referred to above, or is unlikely to obtain professional advice which would equip them to assess those risks.

3.97 How this risk is to be addressed: The draft Regulations protect retail investors by laying down a qualifying criterion that every new investor who is not a professional client within the meaning given to that expression in Section 1 of Annex II to the MIFID Directive (No 2004/39/EC) must invest a minimum amount. New FSMA section 261E(2) requires the scheme to disallow the issue of units to anyone other than a professional client, a "large investor" (someone who invests at least £1 million) or a person who already holds units (it does not matter how many units are issued to, or redeemed by, a retail investor at any future time). The criterion bites on initial investment (whether by contributing property valued at £1 million or making a payment of that sum in exchange for the issue of units), because that is when the risk falls to be understood and assessed by a retail investor with the benefit of professional advice.

3.98 Section 261E(2) is complemented by section 261E(3), which requires the scheme to require the operator to redeem units on becoming aware that they are vested in a person who is not a professional client or an eligible retail investor. It is possible that units may be transferred to a person who would not be eligible to acquire them on issue, notwithstanding specified conditions or the need for general partner consent, perhaps by mistake or following a misrepresentation. Also, the operator has no control over the transfer of units by operation of law to or by a trustee in bankruptcy or a personal representative of a participant who has died or is incapacitated. On becoming aware that units have vested in someone not eligible to acquire them on issue, the operator must redeem the units.

3.99 Section 261E lays down a minimum requirement for eligibility to hold units in an ACS. Additional requirements may be imposed by FCA rules. There is provision in the FCA's Handbook (COLL 8, Annex 1) specifying persons who are eligible to invest in a QIS. Under FSMA section 261E(2) if a retail investor (someone who is not a professional client) wishes to invest in an ACS which is a QIS, they will be subject to the minimum investment requirement and must meet the categories in COLL 8, Annex 1, which further restrict the eligibility of retail investors to participate in a QIS.

Question 21: How far is the legal framework for a limited partnership, having regard to the respective roles of general partner, limited partners (participants) and depositary, suitable for the commercial operation of a collective investment fund?

Question 24: Do you agree that the depositary should be a limited partner?

Question 25: Do you agree that regulation 3 makes appropriate provision for the amendment and modification of the Limited Partnerships Act 1907?

Summary of responses

3.100 A number of respondents had reservations about the commercial attractiveness of the proposed legal framework for limited partnership schemes. There were particular concerns about the proposal that the depositary should be the initial (non-participating) limited partner, and about the unlimited liability faced by the operator if, as proposed, the operator and authorised person had to be the general partner of the limited partnership.

3.101 Feedback from industry bodies stressed the need to ensure that UK fund structures were as consistent as possible and reflected a concern that the proposals for limited partnerships were moving away from this.

3.102 Consultation responses reflected the clear view of industry that the depositary should not be a limited partner. Many were concerned about conflicts of interest (actual or apparent) that could arise if the depositary had any interest in the partnership itself, particularly as FCA rules require the depositary to be independent.

3.103 Some respondents felt that it would suggest that the depositary had obligations and liabilities as a limited partner, including voting rights. One respondent suggested that this could be resolved if we required the depositary to be a different class of limited partner.

3.104 A number of respondents questioned the commercial feasibility of requiring the operator to be the general partner with unlimited liability for partnership debts and liabilities. Fund houses were said to be unwilling to expose their existing authorised fund managers to unlimited liability for a scheme's debts. Authorising a specially constituted fund manager to take on the operation of a single authorised partnership scheme was thought to be expensive and time consuming and would delay authorisation. Given that other types of fund avoided this issue it was felt that this would hamper the commercial attractiveness of the authorised limited partnership.

3.105 Some respondents suggested that a partnership scheme should be registered by the FCA on authorisation, rather than with the Registrar of Companies, in line with legislative arrangements for the incorporation of OEICs.

Government's position

3.106 Depositary as initial limited partner: Having considered industry concerns and having engaged in further discussion with the FSA, the Department for Business, Innovation and Skills and stakeholders, the Government agrees that the depositary should be appointed by (rather than a partner of) the limited partnership set up for authorisation as a partnership scheme, and

proposed a modification to the Limited Partnerships Act 1907 which would enable the operator to be the general partner without exposing it to unlimited personal liability in an insolvent situation. Effect was given to these changes in a revision of the draft Regulations published for further consultation at the end of July 2012.

3.107 New FSMA section 235A(6)(e)(i) requires the limited partnership deed for a partnership scheme to provide that the property subject to the scheme is to be held by, or to the order of, a person appointed to be a depositary (that person is the depositary as defined in section 237 of FSMA). Consequently, the depositary will no longer be required to be an initial (non-participating) limited partner, and will sit outside the scheme. This will avoid any risk that the depositary could be seen to be carrying on "business in common" with the general partner, which could undermine regulatory requirements for independence and result in conflicts of interest.

3.108 Liability of the general partner: The Government was persuaded by comments made following the initial consultation that original proposals to combine the role of operator (as the person authorised under FSMA) and general partner were not commercially feasible. They would create a risk that losses in one scheme, if they put the operator out of business, would prejudice the effective operation of other schemes (where a single authorised entity operated a number of different funds). Alternatively, authorising a separately constituted general partner for every partnership scheme set up by an authorised fund manager would be time consuming and commercially unattractive.

3.109 At the same time the Government has made it clear that the authorised fund manager cannot be appointed, like the depositary, by a general partner incorporated specially for the operation of the scheme (possibly without adequate capital) without FSMA authorisation. The function of operating a partnership scheme is an authorised activity, so that authorisation of a special purpose vehicle cannot be avoided. The proposal that the General Partner (GP) delegate most of the functions of operating the scheme to the Authorised Fund Manager (AFM) would not resolve the problems and would be unacceptable for regulatory reasons.

3.110 After discussion with industry representatives and the FSA the solution for which provision is made in the draft Regulations is to require the operator of the scheme to be the general partner, but to ensure that the personal liability of the general partner is effectively limited to the value of the scheme assets. But this provision is subject to an exception in an insolvent situation: the general partner is held personally liable to restore property which it has misapplied or to contribute to partnership assets where there has been fraudulent or wrongful trading or other misfeasance. The general partner will not otherwise incur personal liability when a scheme is wound up by the court as an unregistered company, or, in Scotland, is the subject of sequestration.

3.111 Provision exempting the general partner from liability to make any payment out of its own estate in the event of insolvency does not affect the general partner's unlimited liability for partnership scheme debts or obligations in a solvent situation, or the general law, including contractual rights, relating to the satisfaction of such debts and obligations out of scheme property.

3.112 The modifications to the Limited Partnerships Act are not intended to have effect for a partnership scheme whose authorisation order has been revoked by the FCA. The draft Regulations limit the general partner's liability for partnership debts and obligations incurred while the scheme is authorised, so that the general partner would be personally liable for any debts of an insolvent partnership scheme incurred after revocation. Also, an insolvent scheme would not be permitted to continue to operate in an unauthorised state and would be wound up by direction of the FCA (if not in proceedings for insolvent winding up).

3.113 The provision described above recognises that the GP is not in a position to shoulder liability for which it cannot be indemnified out of partnership property (except where loss is

caused by its own wrongdoing). It also recognises that the property of an authorised partnership consists of fully paid up capital and other assets and is subject to constant valuation under rules applicable to open ended collective investment. The availability of that property to meet debts and liabilities is of greater consequence than the right which creditors would otherwise have by virtue of the GP's unlimited liability.

3.114 Registration upon authorisation by the FCA: The Government's view is that it would not be feasible to provide for the registration of a limited partnership which is constituted for authorisation as a partnership scheme by the FCA. The partnership must exist before it can be the subject of an application for authorisation as a contractual scheme. This requires it to be registered first under the Limited Partnerships Act 1907 by the Registrar of Companies, and for that purpose it must have been constituted by a deed entered into by a general partner and at least one limited partner (who will be a person nominated by the general partner).

3.115 Provision for incorporating an OEIC on authorisation under FSMA is not suitable for application to a partnership scheme, which it is not a corporate body and is not intended to constitute a new type of partnership. The Government has set out to modify the Limited Partnerships Act 1907 no more than necessary for the effective operation of a limited partnership as a vehicle for collective investment.

Question 22: Do you agree that a limited partnership would provide a suitable vehicle for open-ended collective investment? How do you see this working in relation to the subscription for units by investors?

Summary of responses

3.116 There was broad agreement among respondents that a limited partnership would prove a suitable vehicle for open-ended collective investment, and that it was important to make such a vehicle available for authorisation under FSMA. It was highlighted that partnerships were commonly used as investment vehicles in an unregulated form, particularly as master funds in hedge fund structures and in the field of venture capital investment.

3.117 Concern was expressed about the problems arising from the discontinuity in a partnership that result from a change of membership. There was particular concern about the impact of changes (the retirement of limited partners, the subscription of new ones or the replacement of the general partner) on partnership contracts.

3.118 One respondent agreed that the mechanics for subscribing to the arrangements for existing forms of authorised collective investment scheme would be suitable for a partnership scheme. No doubts or concerns were raised about this question.

3.119 One respondent commented that fiduciary investors would be less comfortable with a limited partnership structure than a unitholder structure.

Government's position

3.120 The regulations do not modify the general law of partnerships beyond what is necessary to provide for the special characteristics of a limited partnership set up to operate as an authorised vehicle for open-ended collective investment. Special characteristics include: (i) the requirement that the authorised fund manager (the force behind the scheme and not a special purpose company) must be the general partner; (ii) the variable value of a limited partner's contribution, which requires a different approach to the limitation of their liability; (iii) the right of a limited partner to draw out its contribution without dissolving the partnership; (iv) the exercise of rights conferred on participants by FCA rules.

3.121 Modifications to the 1907 Act: The limited aim of provision modifying the 1907 Act is explained above. Problems arising from point (i) are addressed by qualifying the unlimited liability of the general partner in an insolvent situation (see under response to question 21).

3.122 Point (ii) is addressed by substituting provision for limiting the liability of the limited partners for partnership debts and obligations. Liability is limited by reference to the amount which is available to the general partner to meet partnership debts and obligations, rather than by reference to the partners' contributions. It is also necessary to put beyond doubt the question whether a limited partner who redeems or assigns all its units retains any liability for partnership debts or obligations incurred while it was a partner.

3.123 Where a limited partner's interests are vested in a trustee in bankruptcy or personal representative, that person does not become a limited partner and participant in the scheme. They are entitled to payment for the value of the partnership share (an interest in the assets subject to liabilities). As the limited partner has ceased to be liable for partnership debts and obligations and the liability is not transmitted by operation of law, it is necessary to ensure that the net value of the partnership share can still be determined by reference to partnership debts and obligations.

3.124 Point (iii) is addressed by requiring section 4 of the 1907 Act to be read as if subsection (3) were omitted. This means that a limited partner is entitled to draw out part of its contribution. This does not address the issue of continuity (see below).

3.125 Points (i), (ii) and (iii) are addressed by the modifications of section 4 of the Limited Partnership Act (regulation 16(3)).

3.126 The problem arising from point (iv) that the exercise of such rights could result in a participant incurring additional liability is addressed by modifying section 6 of the 1907 Act to make it clear that the exercise of rights conferred on participants by FCA rules does not constitute taking part in the management of the partnership business (regulation 16(4)(a).

3.127 It is necessary to modify section 6(5) of the 1907 Act so that the partners may not agree to vary the provisions in paragraphs (c), (d) and (e) (paragraph (a) has no effect for a partnership scheme and the qualification is reinstated in a modified way for paragraph (b) (see paragraph 3.37 above).

3.128 It is also necessary to modify section 9, which makes provision for the registration of changes in partnerships.

3.129 Continuity of partnership: The policy benefits of changing the law to ensure that a partnership continues have been the subject of public consultation on the reform of partnership law and would require general legislation to remove the rule that a partnership is dissolved on a change of membership. The modifications needed for the operation of a limited partnership as an ACS are not the place for taking forward this agenda. The law being modified is the law of limited partnerships which is currently in force and applies uniformly to all limited partnerships.

3.130 The parties to a limited partnership agreement commonly make provision for continuity of the partnership by the remaining partners in the event that a limited partner retires. While there is a technical dissolution under these circumstances, such provision fulfils the purpose of ensuring that the business does not have to be wound up. As this is of critical importance for the operation of a limited partnership as a collective investment scheme, the partnership deed must provide that the partnership is not dissolved on any person ceasing to be a limited partner, provided that there remains at least one limited partner (regulation 3(5): new FSMA section 235A(6)(e)(iii)).

Question 23: Are there any obstacles not addressed in this paper to the formation of a limited partnership as a vehicle for collective investment under Part 17 of FSMA? If there are, how significant are they and how would you suggest addressing them?

Summary of responses

3.131 Most respondents saw no further obstacles to the formation of a limited partnership as a vehicle for collective investment under Part 17 of FSMA. A few respondents suggested that the legislation should be silent on the formation of a limited partnership for which Part 17 authorisation is to be sought. This would allow the general partner to use a second entity which acts as a limited partner for a short period until the other investors have been appointed.

3.132 Some respondents felt that limited partnerships should file changes annually. Other respondents were keen to prepare accounts in accordance with FCA rules rather than the existing legislative requirements for partnerships. It was mentioned by some respondents that due to its full fiscal transparency the limited partnership scheme could give rise to complicated tax reporting requirements.

3.133 One respondent questioned whether it was necessary to amend paragraph 10 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 in consequence of provision that the initial limited partner, being a person nominated by the general partner, was likely to be an associate.

Government's position

3.134 The draft Regulations now provide that an initial limited partner will be nominated by the general partner for the purpose of forming the limited partnership. This partner is, in effect, a second entity which acts as a limited partner for that purpose only, and is not a participant following authorisation of the scheme (the other limited partners are to be the participants).

3.135 A partnership scheme, like any other limited partnership, must be registered with Companies House under the provisions of the Limited Partnerships Act 1907 and will be subject to the same requirements to file particulars of changes. As regards partnership accounts, the requirements will be the same as for any limited partnership whose general partner is a limited company. The Government has not excluded authorised partnership schemes from the definition of "qualifying partnerships" in regulation 3 of the Partnerships (Accounts) Regulations 2008 (S.I. 2008/569).

3.136 The reporting requirements for an authorised limited partnership fund are inevitably somewhat complex due to the fiscally transparent nature of the scheme. However, the scheme has been designed as far as possible to avoid being unnecessarily demanding in this respect. No special reporting requirements have been imposed beyond the need to supply participants with enough information to meet their own tax requirements. We believe that the reporting requirements are not substantially more onerous than for other, comparable, schemes.

3.137 A limited partnership which is to be the subject of an application for authorisation under new FSMA section 261C is to be registered under the Limited Partnerships Act 1907 using the existing form prescribed for this purpose (it does not need to be modified).

3.138 But provision for registering changes in an authorised partnership scheme is modified. No change in the identity of limited partners or the amount of their investment is subject to notification to the registrar, but the making or revocation of an authorisation order and any change in the general partner or its name is required to be notified. Regulation 13 amends the Limited Partnerships (Forms) Rules 2009 by substituting a new form for this purpose (see Schedule 1 to the draft Regulations).

3.139 It is not necessary to amend paragraph 10 of the Schedule to the Financial Services and Markets Act 2000 (Collective Investment Schemes) Order 2001 in consequence of provision that the initial limited partner, being a person nominated by the general partner, is likely to be an associate. Article 3 provides that arrangements of the kind specified by the Schedule are not collective investment schemes. Paragraph 10 specifies arrangements where each of the participants is a body corporate in the same group as the operator. The partnership deed must provide that the limited partners, other than the nominated partner, are to be the participants in the scheme (regulation 3(5): new FSMA section 235A(6)(e)(ii)).

Question 27: Does the Act need to be amended or modified in any other respect in relation to a partnership scheme?

Summary of responses

3.140 Substantial points made in response to this question are addressed elsewhere.

Question 28: Do you agree that there is no commercial need for umbrella partnership schemes and that in view of the complications that could arise from the authorisation of such schemes, legislative provision should exclude the option of establishing partnership schemes with sub-schemes? (See new FSMA section 235A(6)(c))

Summary of responses

3.141 Most respondents to the consultation felt that it would be desirable to allow for umbrella partnership schemes. A number of respondents said that there was no commercial demand for umbrella partnership schemes. Some took the view that even though there might be little commercial demand at the moment, the position might change in the future. Some felt that the option of setting up sub-schemes of a partnership scheme would offer potential for cost saving, as it would allow a single fund manager to control different categories of assets in segregated sub-schemes for different limited partners. Many respondents were at least keen to ensure the option wasn't ruled out for the future.

3.142 Feedback from legal experts working groups suggested that sub-schemes could in principle be used to manage different asset classes or as single country funds. However, feedback from industry sessions suggests there is no consensus over demand for umbrella partnership schemes.

Government's position

3.143 In order to introduce umbrella partnership schemes, it would be necessary to make further modifications to primary legislation about partnerships and tackle some difficult questions about the application of the general law of partnerships. For example, it is unclear how an umbrella scheme could be constituted as a single limited partnership under the Limited Partnerships Act 1907 if the investors in one sub-fund carried on business in common with one another but not with the limited partners who participated in other sub-funds. The legislative changes that are likely to be needed could have implications beyond ACSs.

3.144 Given current uncertainty over the level of demand for umbrella partnership schemes and the difficulty of the legal issues likely to arise if this option had to be pursued, the draft Regulations do not make provision for the authorisation of partnership schemes with segregated sub-schemes. This means that it is necessary to limit authorisation to limited partnerships whose constitution prohibits pooling of investors' contributions in relation to separate parts of the partnership property (see now new FSMA section 235(6)(d)).

3.145 However, the Government has not ruled out considering the merits of the option and what legislative measures would be needed to make it work if demand for it were to become pressing at any time in the future.

Chapter 4 of the consultation paper: Tax treatment

Question 29: To what extent do tax-exempt investors give up the benefit of their tax-exempt status by investing in non-exempt opaque funds?

Question 30: As a tax exempt investor, would you consider investing through a transparent fund that achieved limited tax-drag? If so, what would be the driver of the decision (e.g. access to expertise in relation to an unfamiliar territory)?

Summary of responses

3.146 Almost all respondents agreed that some tax exempt investors currently give up their tax-exempt status as a result of investing via opaque funds. While segregated mandates could be used in certain instances they are unsuitable for smaller tax exempt investors and for those wishing to benefit from economies of scale. Responses indicated that the level of 'tax drag', and hence the likelihood that a tax exempt investor would give up their tax exempt status, could vary depending on the asset class invested in, the fund vehicle used and the jurisdiction where the investment was domiciled. A number of respondents felt that there was an increasing awareness of this issue and that tax exempt investors were increasingly unwilling to use opaque vehicles that did not provide a tax efficient outcome.

3.147 As part of their comments a number of respondents highlighted the importance of introducing a tax transparent fund in order to allow tax-exempt investors to access the appropriate tax rates.

Government's position

3.148 HM Treasury fully expects that the ACSs will enable tax-exempt investors to secure the most beneficial rates of tax. Ameliorating tax drag for exempt investors was one of the driving forces behind providing the two new vehicles. The Government believes that the new funds will provide flexibility for investors who might otherwise have been required to choose between an efficient tax outcome and the benefits inherent in pooling assets.

Question 31: Do you agree that a co-ownership scheme may properly be regarded as tax transparent – i.e. that profits and income arising from the acquisition, holding, management and disposal of scheme property should not be chargeable to corporation tax as profits of the scheme, and investors in the scheme will be liable to tax on their share of the fund's income and on capital gains on disposal of their interest in the scheme?

Summary of responses

3.149 There was widespread agreement that under UK tax rules the co-ownership scheme as currently constituted would be properly regarded as transparent for tax. Some responses highlighted a concern that foreign jurisdictions might treat the fund as transparent for capital gains purposes, therefore requiring foreign investors to receive additional information.

Government's position

3.150 It is the intention of the UK Government to introduce fiscally transparent vehicles. In the case of UK residents the Government will also legislate to simplify the treatment of tax on capital gains for participants in co-ownership funds (as has already been done for UK participants in

certain offshore funds). The UK cannot set the tax treatment that other jurisdictions should apply to their own resident participants. HMRC will however speak to key foreign jurisdictions and explain why these schemes are considered transparent in the UK.

Question 32: Given that UK partnerships are already widely understood to be tax transparent, would you expect them to offer any tax benefits to investors that differ from those expected to be derived from investment in co-ownership schemes?

Summary of responses

3.151 Responses identified the established recognition of the Partnership model as transparent by foreign jurisdictions as being one of its primary advantages. A small number of respondents queried this interpretation and suggested that in certain circumstances partnerships could be treated as UK domiciled for tax treaty purposes with treaty benefits applied at the partnership rather than investor level.

3.152 The fact that the partnership structure was transparent for gains was also identified as a potential benefit to certain classes of investor.

Government's position

3.153 HM Treasury have designed the limited partnership scheme so as to increase the likelihood that they are recognised as transparent by foreign jurisdictions and that treaty benefits are applied at the investor level. The Government believes that the new authorised limited partnership model will continue to benefit from the widespread overseas recognition currently enjoyed by existing, unauthorised, partnership funds.

Question 33: Do you consider that a UK contractual scheme would have tax advantages or disadvantages when compared with tax transparent funds established outside the UK?

Summary of responses

3.154 Responses generally indicated that the UK ACSs would be at least as competitive as overseas transparent structures subject to a small number of concerns. Many respondents noted that the tax position for foreign investors would depend on the funds being recognised as transparent.

3.155 Some respondents raised concerns as to the VAT treatment of the new ACSs. Specifically there were queries over who would be the registrable person for VAT purposes. It was also pointed out that fees from UK investment managers are exempt and therefore unrecoverable by a UK based fund, whereas supplies to offshore contractual funds would be recoverable.

3.156 Some responses also noted that it was important that the vehicle had the appropriate stamp tax treatment to ensure that it can compete on a level playing field with tax transparent funds overseas. One response indicated that one advantage that the UK TTF would have over such funds is that there is a clear legislative provision for relief where securities are transferred into the TTF in exchange for units in the TTF. The stamp tax treatment is discussed further in the responses to questions 34 to 36.

Government's position

3.157 The Government recognises the importance of ensuring that these funds meet the requirements for tax transparency in foreign jurisdictions and has designed the schemes accordingly. In this connection it should be noted that HMRC will not treat either type of contractual fund as being tax resident and it will follow that the funds themselves will not have access to benefits under any UK tax treaties. The Government considers that treaty benefits are a

matter for consideration under the treaty (if any) subsisting between the state of residence of the participant and the state from which any income or gains arise.

3.158 Authorised contractual funds will be recognised as "special investment funds" for VAT purposes. This means they will be exempt from the VAT on fund management services. Therefore VAT incurred on these supplies will not carry a right of deduction, irrespective of a fund's location.

3.159 However, fund management services concerning funds which are not recognised as "special investment funds" are subject to UK VAT if the customer of the services (i.e. the fund) is established in the UK, but are outside the scope of UK VAT and carry a right to deduct if the customer is established outside the UK. The determination of the registrable person is a question of fact that has to be decided on a supply-by-supply basis. This will involve consideration of how the fund is set up and structured in relation to the scheme assets/property as well as the terms of the contractual scheme deed and partnership scheme. However, in general terms it is envisaged that the contractual schemes will be registered for VAT in the name of the general partner/operator.

Question 34: Do you consider that the reliefs outlined ("Setting up a new contractual scheme") are necessary and also sufficient to enable and encourage contractual schemes to be set up?

Question 35: Taking into account the TTF design, including the proposed umbrella structure and issues of transferability, in what other circumstances might relief/exemption be appropriate?

Summary of responses

3.160 There was broad agreement in the responses that the proposed reliefs, including those for charitable investors, were necessary to enable and encourage contractual funds to be set up. Some respondents also suggested that it would be beneficial if relief were also provided where there is an in specie redemption of units. A few respondents also queried whether there would be relief from stamp duty land tax.

3.161 Respondents also indicated that there would be commercial demand for umbrella fund structures under the co-ownership TTF model - as discussed at paragraph 3.78 and 3.79. To facilitate the setting up of these structures, which are common under foreign tax transparent vehicles, respondents suggested that it would be important to provide for an exemption where securities are transferred between sub-schemes under an umbrella arrangement.

Government's position

3.162 The Government will continue to provide an exemption for the acquisition by a contractual fund of securities in exchange for issuing units in itself, and will not be extending Schedule 19 to cover the new funds. It has been determined that new legislation is not needed in respect of the acquisition by a contractual scheme of securities where the fund can and does only have charitable investors. The transparent nature of the TTF means that existing reliefs for charities are sufficient. For situations where funds are partially comprised of charitable investors, the fund will need to pay the stamp taxes on shares ('STS') in the first instance, and then reclaim the appropriate amount of STS based on the proportion of charitable investors in the fund.

3.163 The Government can also confirm that STS will not apply where there are in specie redemptions from a fund on a pro rata basis. However, STS will apply where in specie redemptions are made on a non pro-rata basis. During the consultation, many participants advised that such redemptions are unlikely to occur in practice given the way in which funds are managed, and therefore there was no pressing commercial need to provide an exemption for them. Providing an exemption in such circumstances would also increase the scope for

avoidance. Taking these factors into account, the Government has decided not to provide for such an exemption

3.164 Responding to the views expressed during consultation, the Government has decided to allow interests in ACSs to be transferable. The exemption from STS will extend to all such transfers. While the Government is not currently proposing to introduce any special Stamp Duty Land Tax rules, we will continue to keep this position under review.

Question 36: We would be interested in views on what the best way of protecting the reliefs, taking into account the effectiveness of the protection and competitiveness of the fund.

Summary of responses

3.165 It is important that the stamp taxes regime for contractual schemes is not subject to abuse as this might ultimately undermine the legitimate use of the exemptions. Many respondents suggested that the genuine diversity of ownership test used for other types of Authorised Investment Funds would provide an effective means of protecting the exemptions. However, during the consultation process some respondents suggested that such a test could have practical difficulties. It was suggested, therefore, that an anti-avoidance purpose test would be a more effective and commercially desirable way of preventing avoidance.

Government's position

3.166 The Government has decided to go with the latter approach of an anti-avoidance purpose test.

Chapter 5 of the consultation paper: Updating FSA rules for contractual schemes

Question 37: Are there any areas of the COLL rules and / or guidance where it would be inappropriate to treat contractual schemes in the same way as AUTs and OEICs? If so, which areas and why?

Summary of responses

3.167 The majority of respondents felt that the new authorised contractual schemes should, so far as possible, be treated in the same way as other authorised funds in COLL rules and guidance.

Government's position

3.168 The Government appreciates that it is important that COLL rules and guidance apply consistently across all authorised funds. The Government has tried to ensure uniformity, providing for different treatment only where necessary to take account of the different legal characteristics of contractual schemes and the different legislation in place for governing their formation, operation and winding up.

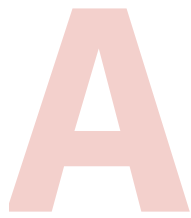
Question 38: Are there any specific additional requirements needed in COLL to deal with the specificities of contractual schemes?

Summary of responses

3.169 Again respondents made the point that in so far as possible they would want the new schemes to be treated so far as possible in the same way as existing authorised schemes. One respondent proposed that unauthorised versions of the co-ownership scheme should be provided for sophisticated investors.

Government's position

3.170 Limited Partnership schemes already exist in unauthorised form. The constitution of a co-ownership scheme is a matter of contract law, but the participants in such a scheme set up outside FSMA would not have the essential safeguards enacted for their protection by the draft Regulations. Therefore, there are currently no plans to allow for the co-ownership scheme to be made available in unauthorised form.



List of respondents

Respondents to initial consultation
Alternative Investment Management Association
Association of Consulting Actuaries
British Bankers Association
BNY Mellon
DATA
Deloitte
Eversheds
Fidelity Worldwide Investment
International Financial Data Services
Investment Management Association
KPMG
Law Society of England and Wales
Northern Trust
PWC
Reed Smith
Scottish Financial Enterprise
Standard Life
State Street

Respondents to technical consultation
DATA
Deloitte
Ernst and Young
Investment Management Association
Linklaters
Northern Trust
Simmons & Simmons

Representatives from the following firms and bodies formed our tax, legal, insolvency and commercial experts working groups

Alternative Investment Management Association
AVIVA
Berwin Leighton Paisner
Deloitte
Eversheds
FSA
Government Insolvency Service
Herbert Smith
Investment Management Association
JP Morgan
KPMG
Linklaters
M&G
Northern Trust
Vanguard

B Changes to capital gains tax, mergers and reconstructions

Exchanges, mergers and reconstructions

B.1 Changes have been introduced in order to clarify the capital gains tax position for investors in collective investment schemes under the TCGA 1992. In particular changes have been introduced to ensure that no gain will arise on an exchange of shares where the property subject to the scheme and the rights of participants to share in the capital and income in relation to that property remain the same both before and after the event.

B.2 These changes do not cover the partnership fund where the tax treatment of investors remains as it is at present for investors in limited partnerships.

Switches of shares

B.3 As part of the responses received we were asked to consider whether the new rules would cover 'switches' of shares. This is where an investor's existing shares are cancelled and new shares issued in their place, as opposed to the more straightforward conversion of shares from one class to another.

B.4 Provided that the issue of the new units is to the same investor and is tied to the cancellation of the old units and made in exchange for those units, so that the transaction the investor undertakes is a single one, then this will be within the wording of this regulation.

B.5 It was also identified in the responses that this method of switching share classes could cause equalisation to arise to the investor on the issue of new units. Given that the purpose of this regulation is to treat the investor as having made neither a disposal nor an acquisition then it is not appropriate that equalisation should arise for tax purposes in such a case.

B.6 The Government has therefore provided that (where section s103F applies) then any part of the next distribution, or amount of reported income, that is paid out or reported as an equalisation amount in respect of the new holding of units (or converted units) shall be treated for the purposes of the participant's tax, not as a repayment of capital, but as a distribution of income.

B.7 This means that it will be necessary to inform investors who had undertaken such a 'switch' or conversion that any equalisation that may be shown on their vouchers should be added to the distribution or reported income for tax purposes. It should not be treated as repayment of capital. HMRC will issue guidance as to how this can be dealt with in practice.

Extent of s103F case 1

B.8 A number of respondents also queried the extent of the new s103F case 1, and asked for clarification as to how this new rule will be applied in various scenarios. In particular respondents questioned the application of the new section to scenarios where there was a change from a hedged to an un-hedged share class. Some respondents mentioned circumstances involving sidepockets and different gearing arrangements as well.

B.9 The purpose of the new rule in s103F is to provide clarity of capital gains treatment for collective investment schemes and to avoid a disposal on an exchange where the underlying economic assets, and the investor's rights over them, remain unchanged. This means, for example, that the relief will be available in situations where the different share classes attract different annual management charges or are denominated in different currencies.

B.10 In the examples given of the currency hedge, gearing arrangement or sidepocket then a unit without such features is a different asset (with differing risks and rewards) from one which does have them. The hedge (or similar) may constitute a major part of the asset and we would therefore expect there to be an economic investment decision involved in deciding to switch. Because of this in those circumstances the relief in s103F would not apply.

B.11 In order to assist industry in understanding the impact of the new rules HMRC will provide guidance on those scenarios which will be covered by the new s103F.

S103G

Master-Feeder Reorganisations

B.12 Some respondents queried the interpretation of the provision made under case 2 of s103G. Specifically a concern was raised that the section would not provide a relief for the exchange of units in the feeder fund for units in the master fund. It was further suggested that under Case 2 s103G(b) the requirement that the 85 per cent condition be met "in consequence of the exchange" ought to be removed.

B.13 S103G needs only to cover the case where a formerly stand-alone fund becomes a Master fund (and so retains its assets) and its participants (or some of them) are issued with shares in a new feeder fund. S103G(2) Case 2 (b) is significant in that it means that Case 2 would only be applicable at the point where a master-feeder structure is established and would not apply to later exchanges of Master for Feeder units made by participants. This is the intended function of the provision as such a later exchange might be an individual economic decision whereas the initial exchange is a consequence of establishing the Master-Feeder structure and is therefore appropriately covered within mergers and reconstructions provisions.

General Offer under s103G

B.14 Some respondents were concerned with the interpretation that might be put on the requirements for general offers under s103G. Specifically there is a concern that even where an offer is made only to one share class within the scheme it must be conditional on 50 per cent of the income and capital of the entire scheme being transferred.

B.15 HMRCs view of the new regulations is that where investors within a specific share class of a scheme exchange units for those in a different scheme then the arrangements are likely to fall within S103H.

Structure of main legislation

C.1 Part 1 of the draft Regulations provides for the citation and commencement of the Regulations and defines expressions used in the self-standing provisions of the Regulations.

C.2 Part 2 of the draft Regulations amends primary legislation. Part 17 of FSMA (collective investment schemes) is amended to make provision for contractual schemes, principally by inserting a new Chapter 3A in Part 17 of FSMA (collective investment schemes), which follows closely the provision made in Chapter 3 for unit trusts. Part 2 also makes minor amendments to the Stock Transfer Act 1963, the Corporation Tax Act 2010 and the Financial Services Act 2012.

C.3 Part 3 of the draft Regulations amends secondary legislation. The effect of the amendments is generally to make the same provision for ACSs as the amended legislation makes already for other authorised schemes. For example, regulation 51 of the FSMA (Regulated Activities) Order 2001 is amended to provide that acting as the depositary of an ACS is a regulated activity (just as acting as the trustee of an AUT or the depositary of an OEIC is regulated activity at the moment).

C.4 Part 4 of the draft Regulations modifies the Limited Partnerships Act 1907. The modifications qualify the general partner's liability for the debts and obligations of an authorised partnership by reference to regulations 18 and 19 of these Regulations, and modify provision for limiting the liability of the limited partners, who will be the participants in the scheme. They also ensure that the exercise of rights conferred on participants by FCA rules does not constitute taking part in the management of an authorised partnership (limited partners are liable for debts and obligations incurred while they take part in the management of the partnership business).

C.5 Regulation 16 also modifies provision in the 1907 Act relating to the registration of changes in the partnership. This will require amendments to the form prescribed for registering changes in accordance with section 9 of the Act. Regulation 13 amends the Limited Partnerships (Forms) Rules 2009 and substitutes a new form for this purpose (see Schedule 1).

C.6 Part 5 of the draft Regulations makes provision for winding up insolvent contractual schemes. A partnership scheme will be wound up under general law (in England and Wales and Northern Ireland by the court as an unregistered company, and in Scotland by sequestration under the Bankruptcy (Scotland) Act 1985). Regulations 18 and 19 limit the personal liability of the general partner in such insolvency proceedings.

C.7 Regulation 17 and Schedules 2 to 5 make provision for winding up a stand-alone co-ownership scheme or a sub-scheme of an umbrella co-ownership scheme. The property subject to a sub-scheme is segregated from the property of all other sub-schemes of the umbrella co-ownership scheme and may be wound up separately as though it were a stand-alone scheme. In the winding-up provisions a "relevant scheme" is either a stand-alone scheme or a sub-scheme.

C.8 A relevant scheme may be wound up by the court as if it were an unregistered company. Provision is made for:

(i) determining which court has jurisdiction to wind up the scheme or sub-scheme;

(ii) modifying the Insolvency Act 1986, the Insolvency (Northern Ireland) Order 1989 and insolvency rules which apply in relation to the winding up;

(iii) enabling a winding up petition to be presented by the operator, the FCA or a creditor on the ground that the scheme or sub-scheme property will not cover the debts of the scheme (i.e. of the participants) or that it is just and equitable that the scheme or sub-scheme should be wound up;

(iv) enabling a winding up petition to be presented by the Secretary of State (or the Department of Enterprise, Trade and Investment if the scheme or sub-scheme is being wound up in Northern Ireland) on the ground that winding up is just and equitable in the public interest; and

(v) requiring the operator of the scheme or sub-scheme, if a petition is presented, immediately to cease investment activity and the issue and redemption of units.

C.9 Part 6 of the draft Regulations makes provision for the use of electronic communications in relation to the transfer of units in an ACS. This is in line with provision made for the transfer of units in unit trusts under the Electronic Communications Act 2000, subject to differences that reflect the different legal characteristics of a contractual scheme.

C.10 Part 7 of the draft Regulations provides that a person who already has permission under Part 4A of FSMA to act as trustee of an AUT scheme and as the depositary of an OEIC, if that person gives the FCA notice, is treated as having permission to act as the depositary of an ACS.

C.11 Part 8 of the draft Regulations makes provision for the review of regulations 2 to 24 after five years.

D Draft Regulations

D.1 The following pages contain the draft statutory instruments for The Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013.

Draft Regulations laid before Parliament under paragraph 2 of Schedule 2 to the European Communities Act 1972, for approval by resolution of each House of Parliament.

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

2013 No. 0000

FINANCIAL SERVICES AND MARKETS

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

Made - - - -	2013
Coming into force in accordance with regulation 1	2013

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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 financial services.

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

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

PART 1

CITATION, COMMENCEMENT AND INTERPRETATION

Citation and commencement

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

Interpretation

2. In these Regulations—

"the 1986 Act" means the Insolvency Act 1986(**c**);

"the 1989 Order" means the Insolvency (Northern Ireland) Order 1989(**d**);

"authorised contract" has the meaning given in section 261M(1) of FSMA(**e**);

"authorised contractual scheme" has the meaning given in section 237(3) of FSMA(**f**);

"depositary" has the meaning given in section 237(2) of FSMA;

"the FCA" means the Financial Conduct Authority;

"FSMA" means the Financial Services and Markets Act 2000(**g**);

(**a**) S.I. 2012/1759.
(**b**) 1972 c. 68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c. 51), section 27(1)(a), and by the European Union (Amendment) Act 2008 (c. 7), section 3 and the Schedule, Part 1.
(**c**) 1986 c. 45.
(**d**) S.I. 1989/2405 (N.I. 19).
(**e**) Section 261M is inserted by regulation 3(12) of these Regulations.
(**f**) Section 237 was amended by S.I. 2011/1613 and by the Financial Services Act 2012 (c. 21), Schedule 18, paragraph 9(1) and (2)(a). This definition is inserted by regulation 3(6) of these Regulations.
(**g**) 2000 c. 8.

"operator" has the meaning given in section 237(2) of FSMA(**a**);

"participant" has the meaning given in section 235(2) of FSMA;

"partnership scheme" has the meaning given in section 235A(5) of FSMA(**b**);

"stand-alone co-ownership scheme" has the meaning given in section 237(8) of FSMA(**c**);

"sub-scheme" has the meaning given in section 237(7) of FSMA;

"umbrella co-ownership scheme" has the meaning given in section 237(5) of FSMA; and

"units" has the meaning given in section 237(2) of FSMA.

PART 2

AMENDMENTS TO PRIMARY LEGISLATION

Amendments to the Financial Services and Markets Act 2000

3.—(1) FSMA is amended as follows.

(2) In section 90ZA(**d**) (liability for key investor information), in subsection (1), after "section 248" insert "or 261J".

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

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

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

"**Contractual schemes**

235A.—(1) In this Part "contractual scheme" means—

(a) a co-ownership scheme; or

(b) a partnership scheme.

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

(3) The conditions are—

(a) that the arrangements constituting the scheme are contractual;

(b) that they are set out in a deed that is entered into between the operator and a depositary and meets the requirements of subsection (4);

(c) that the scheme does not constitute a body corporate, a partnership or a limited partnership;

(d) that the property subject to the scheme is held by, or to the order of, a depositary; and

(e) that either—

(i) the property is beneficially owned by the participants as tenants in common (or, in Scotland, is the common property of the participants); or

---

(**a**) The definition of "the operator" in section 237(2) is amended by regulation 3(6)(b) of these Regulations.
(**b**) Section 235A is inserted by regulation 3(5) of these Regulations.
(**c**) Subsections (5) to (8) of section 237 are inserted by regulation 3(6)(d) of these Regulations.
(**d**) Section 90ZA was inserted by S.I. 2011/1613.
(**e**) Section 133 was substituted by S.I. 2010/22. Subsection (7A) was inserted by section 23(2)(c) of the Financial Services Act 2012.
(**f**) Section 138A was substituted by section 24(1) of the Financial Services Act 2012.

(ii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, each part is beneficially owned by the participants in that part as tenants in common (or, in Scotland, is the common property of the participants in that part).

(4) The deed—

(a) must contain a statement that the arrangements are intended to constitute a co-ownership scheme as defined in section 235A of the Financial Services and Markets Act 2000;

(b) must make provision for the issue and redemption of units;

(c) must—

(i) prohibit the transfer of units,

(ii) allow units to be transferred only if specified conditions are met, or

(iii) where the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property, in relation to each separate part make provision falling within sub-paragraph (i) or (ii);

(d) must authorise the operator—

(i) to acquire, manage and dispose of property subject to the scheme; and

(ii) to enter into contracts which are binding on participants for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the scheme; and

(e) must make provision requiring the operator and depositary to wind up the scheme in specified circumstances.

(5) In this Part "partnership scheme" means a collective investment scheme which satisfies the conditions in subsection (6).

(6) The conditions are—

(a) that the scheme is a limited partnership;

(b) that the limited partnership—

(i) at any time has only one general partner; and

(ii) on formation has only one limited partner, who is a person nominated by the general partner ("the nominated partner");

(c) that the arrangements constituting the partnership are set out in a deed that is entered into between the general partner and the nominated partner;

(d) that the deed prohibits such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and

(e) that the deed provides that if an authorisation order is made in respect of the limited partnership under section 261D(1)—

(i) the property subject to the scheme is to be held by, or to the order of, a person appointed to be a depositary;

(ii) the limited partners, other than the nominated partner, are to be the participants in the scheme; and

(iii) the partnership is not dissolved on any person ceasing to be a limited partner provided that there remains at least one limited partner.

(7) In this section "general partner", "limited partner" and "limited partnership" have the same meaning as in the Limited Partnerships Act 1907(**a**).

(**a**) 1907 c.24.

(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(**a**) (other definitions)—

(a) in subsection (1), at the end insert ", except that it does not include a contractual scheme";

(b) in subsection (2), in the definition of "the operator", after paragraph (a) insert—

"(aa) in relation to a co-ownership scheme, means the operator appointed under the terms of the contractual scheme deed;

(ab) in relation to a partnership scheme, means the general partner;";

(c) in subsection (3)—

(i) after the definition of "an authorised unit trust scheme" insert—

""an authorised contractual scheme" means a contractual scheme which is authorised for the purposes of this Act by an authorisation order in force under section 261D(1);";

(ii) in the definition of "UK UCITS", after "a UCITS which is an authorised unit trust scheme" insert ", an authorised contractual scheme"; and

(d) after subsection (4) insert—

"(5) In this Part "umbrella co-ownership scheme" means an authorised contractual scheme which satisfies the conditions in subsection (6).

(6) The conditions are—

(a) that the scheme is a co-ownership scheme;

(b) that the arrangements constituting the scheme provide for such pooling as is mentioned in section 235(3)(a) in relation to separate parts of the property; and

(c) that the participants are entitled under the terms of the scheme to exchange rights in one part for rights in another.

(7) In this Part "sub-scheme", in relation to an umbrella co-ownership scheme, means the arrangements constituting the scheme so far as they relate to a separate part of the property.

(8) In this Part "stand-alone co-ownership scheme" means an authorised contractual scheme which—

(a) is a co-ownership scheme; and

(b) is not an umbrella co-ownership scheme.".

(7) In section 238(**b**) (restrictions on promotion), in subsection (4), after paragraph (a) insert—

"(aa) an authorised contractual scheme;".

(8) In section 249(**c**) (disciplinary measures), in subsection (1)(a), after "authorised unit trust scheme" insert ", authorised contractual scheme".

(9) In section 258A(**d**) (winding up or merger of master UCITS), in subsection (1)—

(a) after "section 257" insert "or 261X"; and

(b) after "section 258" insert "or 261Y".

(10) In section 259(**e**) (procedure on giving directions under section 257 or 258A and varying them on FCA's own initiative)—

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

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

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

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

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

(a) in subsection (2)—

(i) after “A direction” insert “under section 257”;

(ii) for “section 257” substitute “that section”; and

(b) in subsection (3), for the words “section 257, or gives such a direction” substitute “section 257 or 258A, or gives a direction under either section”.

(11) In section 261B(**a**) (information for feeder UCITS), in subsection (1), after “feeder UCITS of an authorised unit trust scheme” insert “, an authorised contractual scheme”.

(12) After section 261B insert—

“CHAPTER 3A

AUTHORISED CONTRACTUAL SCHEMES

Applications for authorisation

Applications for authorisation of contractual schemes

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

(2) The application—

(a) must be made in such manner as the FCA may direct;

(b) must state the name and the registered office, or if it does not have a registered office, the head office, of the operator or proposed operator and of the depositary or proposed depositary; and

(c) in the case of a partnership scheme, must be accompanied by a copy of the certificate of registration as a limited partnership under the Limited Partnerships Act 1907.

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

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

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

Authorisation orders

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

(a) is satisfied that the scheme complies with the requirements set out in this section and section 261E,

(b) is satisfied that the scheme complies with the requirements of contractual scheme rules, and

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

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

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

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

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

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

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

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

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

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

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

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

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

Authorisation orders: holding of units

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

(a) related to the net value of the property to which the units relate; and

(b) determined in accordance with the scheme.

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

(a) a professional investor;

(b) a large investor; or

(c) a person who already holds units in the scheme.

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

(4) In subsection (2)—

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

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

Determination of applications

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

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

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

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

Applications refused

Procedure when refusing an application

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

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

(a) it must give each of the applicants a decision notice; and

(b) either applicant may refer the matter to the Tribunal.

Certificates

Certificates

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

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

Rules

Contractual scheme rules

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

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

(a) a reference to trust scheme rules is to be read as a reference to contractual scheme rules;

(b) a reference to authorised unit trust schemes is to be read as a reference to authorised contractual schemes;

(c) a reference to the manager is to be read as a reference to the operator;

(d) a reference to the trustee is to be read as a reference to the depositary; and

(e) a reference to the trust deed is to be read as a reference to the contractual scheme deed.

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

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

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

Contractual scheme particulars rules

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

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

(a) a reference to scheme particulars rules is to be read as a reference to contractual scheme particulars rules;

(b) a reference to scheme particulars is to be read as a reference to contractual scheme particulars; and

(c) a reference to the manager of an authorised unit trust scheme is to be read as a reference to the operator of an authorised contractual scheme.

Disciplinary measures

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

(a) disqualify the auditor from being the auditor of any authorised unit trust scheme, authorised contractual scheme or authorised open-ended investment company;

(b) publish a statement to the effect that it appears to the FCA that the auditor has failed to comply with the duty;

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

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

Modification or waiver of rules

261L.—(1) In this section "rules" means—

(a) contractual scheme rules; or

(b) contractual scheme particulars rules.

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

(a) are not to apply to that person as respects a particular scheme; or

(b) are to apply to that person, as respects a particular scheme, with such modifications as may be specified in the direction.

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

(a) are not to apply to the scheme; or

(b) are to apply to the scheme with such modifications as may be specified in the direction.

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

(**a**) Section 248 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(b).
(**b**) Sections 345B to 345E were substituted by the Financial Services Act 2012, Schedule 13, paragraph 7.
(**c**) Sections 138A and 138B were substituted by section 24(1) of the Financial Services Act 2012.

(a) any reference to the person is to be read as a reference to the person mentioned in subsection (2); and

(b) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word "commercial" were omitted.

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

(a) subsection (4)(a) of section 138A is to be read as if the words "by the person" were omitted;

(b) section 138B(3)(c) and the definition of "immediate group" in section 421ZA(**a**) as it applies to that section are to be read as if references to the person were references to each of the operator and the depositary of the scheme;

(c) section 138B(3)(c) is to be read, in relation to a participant in the scheme, as if the word "commercial" were omitted;

(d) section 138B(5) is to be read as if the reference to the person concerned were a reference to the scheme concerned and to its operator and depositary; and

(e) section 138A(7) is to be read as if the reference to the person were a reference to the operator and depositary of the scheme acting jointly.

Co-ownership schemes: rights and liabilities of participants

Contracts

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

(2) The relevant participants are—

(a) in the case of a contract relating to a stand-alone co-ownership scheme, the participants in the scheme;

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

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

(a) exercise rights under an authorised contract;

(b) bring and defend proceedings for the resolution of any matter relating to an authorised contract; and

(c) take action in relation to the enforcement of any judgment given in such proceedings.

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

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

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

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

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

Effect of becoming or ceasing to be a participant

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

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

(3) In this section—

(a) "authorised contract" has the meaning given in section 261M(1); and

(b) each of the following is a "relevant scheme"—

(i) a stand-alone co-ownership scheme; and

(ii) a sub-scheme of an umbrella co-ownership scheme.

Limited liability

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

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

(3) In this section—

(a) a reference to the debts of a relevant scheme is a reference to debts and obligations incurred under, or in connection with, authorised contracts;

(b) "authorised contract" has the meaning given in section 261M(1); and

(c) "relevant scheme" has the meaning given in section 261N(3).

Segregated liability in relation to umbrella co-ownership schemes

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

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

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

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

Alterations

Alteration of contractual schemes and changes of operator or depositary

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

(a) to which section 261S applies; or

(b) to which Part 4 of the Undertakings for Collective Investment in Transferable Securities Regulations 2011(**a**) (mergers) applies.

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

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

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

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

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

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

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

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

Procedure when refusing approval of a proposal under section 261Q

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

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

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

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

(a) it must give that person a decision notice; and

(b) that person may refer the matter to the Tribunal.

Proposal to convert to a non-feeder UCITS

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

(a) involves a change in the contractual scheme deed, and

(**a**) S.I. 2011/1613.

(b) will enable the scheme to convert into a UCITS which is not a feeder UCITS.

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

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

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

(b) the specified information.

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

(a) written notice to the operator of the scheme that the FCA approves the proposed amendments to the contractual scheme deed, or

(b) separate warning notices to the operator and depositary of the scheme that the FCA proposes to refuse approval of the proposed amendments.

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

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

(a) it must give that person a decision notice; and

(b) that person may refer the matter to the Tribunal.

(7) Subsection (8) applies where—

(a) the notice given under subsection (2) relates to a proposal to amend the contractual scheme deed of a feeder UCITS to enable it to convert into a UCITS which is not a feeder UCITS following the winding-up of its master UCITS; and

(b) the proceeds of the winding-up are to be paid to the feeder UCITS before the date on which the feeder UCITS proposes to start investing in accordance with the new investment objectives and policy provided for in its amended contractual scheme deed and contractual scheme rules.

(8) Where this subsection applies, the FCA may only approve the proposal subject to the conditions set out in section 283A(5) and (6)(**a**).

(9) In this section "specified" means—

(a) specified in rules made by the FCA to implement the UCITS directive, or

(b) specified in any directly applicable EU regulation or decision made under the UCITS directive.

Exclusion clauses

Avoidance of exclusion clauses

261T. Any provision—

(a) of the contractual scheme deed of an authorised contractual scheme, or

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

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

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

Ending of authorisation

Revocation of authorisation order otherwise than by consent

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

(a) one or more of the requirements for the making of the order are no longer satisfied;

(b) the operator or depositary of the scheme concerned has contravened a requirement imposed on the operator or depositary by or under this Act;

(c) the operator or depositary of the scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular;

(d) no regulated activity is being carried on in relation to the scheme and the period of that inactivity began at least twelve months earlier; or

(e) none of paragraphs (a) to (d) applies, but it is desirable to revoke the authorisation order in order to protect the interests of participants or potential participants in the scheme.

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

(a) the scheme;

(b) the operator or depositary;

(c) any person employed by or associated with the operator or depositary in connection with the scheme;

(d) any director of the operator or depositary;

(e) any person exercising influence over the operator or depositary;

(f) any body corporate in the same group as the operator or depositary;

(g) any director of any such body corporate;

(h) any person exercising influence over any such body corporate.

Procedure for revoking authorisation order

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

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

Requests for revocation of authorisation order

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

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

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

(a) the public interest requires that any matter concerning the scheme should be investigated before a decision is taken as to whether the authorisation order should be revoked; or

(b) revocation would not be in the interests of the participants or would be incompatible with an EU obligation.

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

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

Powers of intervention

Directions

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

(a) one or more of the requirements for the making of an authorisation order are no longer satisfied;

(b) the operator or depositary of an authorised contractual scheme has contravened, or is likely to contravene, a requirement imposed—

(i) by or under this Act; or

(ii) by any directly applicable EU regulation or decision made under the UCITS directive;

(c) the operator or depositary of such a scheme has, in purported compliance with any such requirement, knowingly or recklessly given the FCA information which is false or misleading in a material particular; or

(d) none of paragraphs (a) to (c) applies, but it is desirable to give a direction in order to protect the interests of participants or potential participants in such a scheme.

(2) A direction under this section may—

(a) require the operator of the scheme to cease the issue or redemption, or both the issue and redemption, of units under the scheme;

(b) require the operator and depositary of the scheme to wind it up.

(3) If the authorisation order is revoked, the revocation does not affect any direction under this section which is then in force.

(4) A direction may be given under this section in relation to a scheme in the case of which the authorisation order has been revoked.

(5) If a person contravenes a direction under this section, section 138D(**a**) applies to the contravention as it applies to a contravention mentioned in that section.

(6) The FCA may revoke or vary a direction given under this section, either on its own initiative or on the application of a person to whom the direction was given, if it appears to the FCA—

(a) in the case of revocation, that it is no longer necessary for the direction to take effect or continue in force;

(b) in the case of variation, that the direction should take effect or continue in force in a different form.

Applications to the court

261Y.—(1) If the FCA could give a direction under section 261X, it may also apply to the court for an order—

(a) removing the operator or the depositary, or both the operator and the depositary, of the scheme; and

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(**a**) Section 138D was substituted by section 24(1) of the Financial Services Act 2012.

(b) replacing the person or persons removed with a suitable person or persons nominated by the FCA.

(2) The FCA may nominate a person for the purposes of subsection (1)(b) only if it is satisfied that, if the order was made, the requirements of section 261D(4) to (9) would be complied with.

(3) If it appears to the FCA that there is no person it can nominate for the purposes of subsection (1)(b), it may apply to the court for an order—

(a) removing the operator or the depositary, or both the operator and the depositary, of the scheme; and

(b) appointing an authorised person to wind up the scheme.

(4) On an application under this section the court may make such order as it thinks fit.

(5) The court may, on the application of the FCA, rescind any such order as is mentioned in subsection (3) and substitute such an order as is mentioned in subsection (1).

(6) The FCA must give written notice of the making of an application under this section to the operator and depositary of the scheme concerned.

(7) The jurisdiction conferred by this section may be exercised by—

(a) the High Court;

(b) in Scotland, the Court of Session.

Winding up or merger of master UCITS

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

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

(a) the FCA approves under section 283A the investment by the feeder UCITS of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in units of another UCITS or master UCITS; or

(b) the FCA approves under section 261S an amendment of the contractual scheme deed of the feeder UCITS which would enable it to convert into a UCITS which is not a feeder UCITS.

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

(a) merges with another UCITS, or

(b) is divided into two or more UCITS.

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

(a) the FCA approves under section 283A the investment by the scheme of at least 85% of the total property which is subject to the collective investment scheme constituted by the feeder UCITS in the units of—

(i) the master UCITS which results from the merger;

(ii) one of the UCITS resulting from the division; or

(iii) another UCITS or master UCITS;

(**a**) Section 257 was amended by the Financial Services Act 2012, Schedule 18, paragraphs 9(1) and (2)(c) and 12.
(**b**) Sections 258 was amended by the Financial Services Act 2012, Schedule 18, paragraph 9(1) and (2)(c).

(b) the FCA approves under section 261S an amendment of the contractual scheme deed of the scheme concerned which would enable it to convert into a UCITS which is not a feeder UCITS.

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

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

(a) immediately, if the notice given under subsection (3) states that that is the case;

(b) on such date as may be specified in the notice; or

(c) if no date is specified in the notice, when the matter to which it relates is no longer open to review.

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

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

(4) The notice must—

(a) give details of the direction;

(b) inform the person to whom it is given of when the direction takes effect;

(c) state the FCA's reasons for giving the direction and for its determination as to when the direction takes effect;

(d) inform the person to whom it is given that representations may be made to the FCA within such period as may be specified in it (whether or not the matter has been referred to the Tribunal); and

(e) inform the person to whom it is given of the right to refer the matter to the Tribunal.

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

(a) a specified date; or

(b) a further direction.

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

(a) by a date specified in the notice; or

(b) if no date is specified, as soon as practicable.

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

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

(a) to give the direction in the way proposed, or

(b) if it has been given, not to revoke the direction,

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

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

(a) not to give the direction in the way proposed,

(b) to give the direction in a way other than that proposed, or

(c) to revoke a direction which has effect,

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

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

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

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

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

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

Procedure: refusal to revoke or vary direction

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

(a) to vary the direction otherwise than in accordance with the application, or

(b) to refuse to revoke or vary the direction,

it must give the applicant a warning notice.

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

(a) it must give the applicant a decision notice; and

(b) the applicant may refer the matter to the Tribunal.

Procedure: revocation of direction and grant of request for variation

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

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

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

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

Information for home state regulator

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

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

Information for feeder UCITS

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

(a) any failure of which the FCA becomes aware by the master UCITS to comply with a provision made in implementation of Chapter VIII of the UCITS directive;

(b) any warning notice or decision notice given to the master UCITS in relation to a contravention of any provision made in implementation of Chapter VIII of the UCITS directive by or under any enactment or in rules of the FCA;

(c) any information reported to the FCA pursuant to rules of the FCA made to implement Article 106(1) of the UCITS directive which relates to the master UCITS, or to one or more of its directors, or its management company, trustee, depositary or auditor.

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

(a) any failure by the EEA UCITS to comply with any requirement in Chapter VIII of the UCITS directive;

(b) any decision or measure imposed on the EEA UCITS under provisions implementing Chapter VIII of the UCITS directive;

(c) any information reported to the home state regulator pursuant to Article 106(1) of the UCITS directive relating to the EEA UCITS, its operator, depositary or auditor.

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

(13) In section 270(**a**) (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;”; and

(b) for paragraph (c) substitute—

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

(14) In section 272(**b**) (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;”; and

(b) for paragraph (c) substitute—

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

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

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

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

“(ba) authorised contractual scheme;”;

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

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

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

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

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

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

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

(17) In section 351A(**a**) (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";

(iv) for paragraph (e) substitute—

"(e) a person acting on behalf of a person within any of paragraphs (a) to (da)"; and

(b) in subsection (4), after "“authorised unit trust scheme”," insert "“authorised contractual scheme”,".

(18) In section 391 (publication), in subsection (1ZB)(m)(**b**), after "section 249(1)" insert "or 261K(1)".

(19) In section 392(**c**) (application of sections 393 and 394)—

(a) in paragraph (a)—

(i) after "255(1)," insert "261V(1),";

(ii) after "249(1)" insert "or 261K(1)"; and

(b) in paragraph (b)—

(i) after "255(2)," insert "261V(2),"; and

(ii) after "249(1)" insert "or 261K(1)".

(20) In section 395(**d**) (the FCA's and PRA's procedures), in subsection (13), after paragraph (d) insert—

"(da) 261Z1(3), (8) or (9)(b);".

(21) In Schedule 1ZA(**e**) (the Financial Conduct Authority), in paragraph 8(3)(c)(ii), for "or section 249(1)" insert ", section 249(1) or 261K(1)".

Amendment to the Stock Transfer Act 1963

4. In section 1 of the Stock Transfer Act 1963(**f**) (simplified transfer of securities), in subsection (4)(e)(**g**), 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(**h**) ("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),".

(**a**) Section 351A was inserted by S.I. 2011/1613 and amended by the Financial Services Act 2012, Schedule 12, paragraph 22.
(**b**) Subsection (1ZB) was substituted by the Financial Services Act 2012, Schedule 9, paragraph 30(2).
(**c**) Section 392 was amended by the Financial Services Act 2012, Schedule 13, paragraph 8. There are other amendments not relevant to these Regulations.
(**d**) Section 395 was amended by the Financial Services Act 2012, Schedule 9, paragraph 34. There are other amendments not relevant to these Regulations.
(**e**) Schedule 1ZA was substituted by the Financial Services Act 2012, section 6(2) and Schedule 3.
(**f**) 1963 c. 18.
(**g**) Subsection (4)(e) was substituted by the Financial Services Act 1986 (c. 60), Schedule 16, paragraph 4(a), and amended by S.I. 2001/3649.
(**h**) 2010 c. 4.

Amendment to the Financial Services Act 2012

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

PART 3

AMENDMENTS TO SECONDARY LEGISLATION

The Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975

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

(2) In article 2, in paragraph (1)(**c**)—

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

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

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

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

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

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

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

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

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

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

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

(2) In article 1, in paragraph (2)(**h**)—

(a) after the definition of "day care" insert—

(**a**) 2012 c.21.
(**b**) S.I. 1975/1023. Relevant amendments are noted separately. This Order was revoked in relation to Scotland by S.S.I. 2003/231.
(**c**) Paragraph 1 was substituted by S.I. 1986/2268 and amended by S.I. 2001/3816, 2008/3259 and 2013/472.
(**d**) The definition of "the operator" in section 237(2) is amended by regulation 3(6)(b) of these Regulations.
(**e**) Paragraph (g) was inserted by S.I. 2001/3816 and amended by S.I. 2007/2149 and 2013/472 (which substituted the table).
(**f**) Article 4 was amended by S.I. 2001/3816 (which substituted paragraph (d)) and 2008/3259.
(**g**) S.R. 1979 No. 195. Relevant amendments are noted separately.
(**h**) Paragraph (2) was amended by S.R. 2001 No. 400 and 2009 No. 303 and S.I. 2013/472.

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

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

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

(3) In article 2(e)(**a**), in the table, after entry 3 insert the following entry—

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

(4) In article 3, after paragraph (d)(vi)(**b**) insert—

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

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

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

9.—(1) The Financial Services and Markets Act 2000 (Regulated Activities) Order 2001(**c**) 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(**d**) is amended as follows.

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

(a) for the definition of “authorised unit trust scheme” substitute—

““authorised contractual scheme” and “authorised unit trust scheme” have the meaning given in section 237(3) of the Act;”; and

(b) in the definition of “unregulated scheme”, after “authorised unit trust scheme” insert “nor an authorised contractual scheme”.

(**a**) Paragraph (e) was inserted (as paragraph (g)) by S.R. 2001 No. 400 and amended by S.R. 2003 No. 355 and 2012 No. 318 and S.I. 2013/472 (which substituted the table).
(**b**) Paragraph (d) was substituted by S.R. 2001 No. 400.
(**c**) S.I. 2001/544, to which there are amendments not relevant to these Regulations.
(**d**) S.I. 2001/1060, to which there are amendments not relevant to these Regulations.

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(**a**) is amended as follows.

(2) In article 2 (interpretation)—

(a) for the definition of "authorised unit trust scheme" substitute—

""authorised contractual scheme" and "authorised unit trust scheme" have the meaning given in section 237(3) of the Act;"; and

(b) for the definition of "feeder fund" substitute—

""feeder fund" means an authorised unit trust scheme the sole object of which is investment in units of a single authorised unit trust scheme, in units of a single authorised contractual scheme or in shares in a single open-ended investment company; ".

(3) In the Schedule (arrangements not amounting to a collective investment scheme), in paragraph 1 (individual investment management arrangements), in sub-paragraph (a)(ii), after "authorised unit trust schemes," insert "authorised contractual schemes,".

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

12.—(1) The Financial Services and Markets Act 2000 (Stakeholder Products) Regulations 2004(**b**) is amended as follows.

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

(a) for the definition of "manager" substitute—

""manager" means—

(a) the operator of a relevant collective investment scheme which is an authorised contractual scheme;

(b) the manager of any other relevant collective investment scheme; or

(c) the insurer of a relevant linked long-term contract;";

(b) after the definition of "manager" insert—

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

(c) in the definition of "relevant collective investment scheme", after "authorised unit trust scheme," insert "an authorised contractual scheme,".

(3) In regulation 9 (permitted reductions in investor's rights and investment property), in paragraph (9)(e), after paragraph (i) omit "or" and insert—

"(ia) to arrange for the investor to receive a copy of the annual report and accounts issued to investors by the manager of an authorised contractual scheme in which the investment scheme is invested directly or indirectly, or to receive any other information issued to investors by the manager of such a scheme, or".

The Limited Partnerships (Forms) Rules 2009

13.—(1) The Limited Partnerships (Forms) Rules 2009(**c**) are amended as follows.

(2) For the form in Part 2 of the Schedule to the Rules (form for registering changes to limited partnerships) substitute the form in Schedule 1 to these Regulations.

(**a**) S.I. 2001/1062, to which there are amendments not relevant to these Regulations.
(**b**) S.I. 2004/2738, to which there are amendments not relevant to these Regulations.
(**c**) S.I. 2009/2160.

The Undertakings for Collective Investment in Transferable Securities Regulations 2011

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

(2) In regulation 7 (interpretation), in paragraph (1)—

(a) in the definition of "depositary"—

(i) omit the word "means" immediately after "depositary";

(ii) after paragraph (a) insert—

"(aa) in relation to an authorised contractual scheme means the person by whom, or to whose order, the property subject to the scheme is held;";

(b) in the definition of "managers"—

(i) for "managers" substitute "manager";

(ii) after paragraph (a) insert—

"(aa) in relation to an authorised contractual scheme, the operator of that scheme,";

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

(d) in the definition of "unit-holders"—

(i) in paragraph (a) for "UCITS" substitute "company";

(ii) after paragraph (a) insert—

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

(e) in the definition of "units", in paragraph (b), after "authorised unit trust scheme" insert "or an authorised contractual scheme".

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

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

15.—(1) The Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2013(**b**) is amended as follows.

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

(a) after the definition of "Council of Lloyd's" insert—

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

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

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

(3) In Schedule 2 (financial services)—

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

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

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

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(**a**) S.I. 2011/1613 as amended by S.I. 2013/472.
(**b**) S.S.I. 2013/50 as amended by S.I. 2013/472.

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

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

PART 4

MODIFICATION OF THE LIMITED PARTNERSHIPS ACT 1907

Partnership schemes

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

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

(3) Section 4(**b**) (definition and constitution of limited partnership) is to be read as if—

(a) in subsection (2)—

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

(ii) for the words "who shall not be liable for the debts or obligations of the firm beyond the amount so contributed" there were substituted "whose liability for the debts or obligations of the firm is as set out in subsections (2A) and (2B).";

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

"(2A) The limited partners are not liable for the debts or obligations of the firm beyond the amount of the partnership property which is available to the general partner to meet such debts or obligations.

(2B) A person ("P") who ceases to be a limited partner ceases to have any liability for the debts or obligations of the firm.

(2C) Subsection (2B) does not prevent the debts and obligations of the firm from being taken into account, after P has ceased to be a limited partner, in determining the value of P's share in the partnership."; and

(c) subsection (3) were omitted.

(4) In section 6 (modifications of general law in case of limited partnerships)—

(a) subsection (1) is to be read as if at the end there were inserted—

"For the purposes of this subsection, the exercise of rights conferred on limited partners by rules made under section 261I of the Financial Services and Markets Act 2000 does not constitute taking part in the management of the partnership business.".

(b) in subsection (3), the reference to the general partners is to be read as a reference to the general partner and the depositary of the partnership scheme; and

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(**a**) 1907 c. 24.
(**b**) Section 4 was amended by S.I. 2002/3203 and 2003/2904.

(c) subsection (5) is to be read as if—

(i) the words "Subject to any agreement expressed or implied between the partners" were omitted; and

(ii) in paragraph (b), at the beginning there were inserted "Subject to any express agreement between the partners,".

(5) Section 7 (law as to private partnerships to apply where not excluded by this Act) is to be read as if after the words "Subject to the provisions of this Act" there were inserted "as modified by regulation 16 of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013".

(6) In section 9(**a**) (registration of changes in partnerships), subsection (1) is to be read as if—

(a) paragraphs (d) and (f) were omitted; and

(b) the changes giving rise to a duty to send a statement to the registrar included—

(i) the making and the revocation of an authorisation order in respect of a limited partnership; and

(ii) any change in the general partner or the name of the general partner of the limited partnership.

(7) Section 10 (advertisement in Gazette of statement of general partner becoming a limited partner and of assignment of share of limited partner) does not apply.

PART 5

WINDING UP INSOLVENT CONTRACTUAL SCHEMES

Co-ownership schemes: winding up by the court

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

(a) each of the following is a "relevant scheme"—

(i) a stand-alone co-ownership scheme;

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

(b) in relation to a relevant scheme—

(i) a reference to a creditor is a reference to a person to whom a sum is or may become payable in respect of a debt of the relevant scheme;

(ii) a reference to a debt is a reference to any debt or obligation incurred for the purposes of, or in connection with, the acquisition, management or disposal of property subject to the relevant scheme;

(iii) a reference to a liability is a reference to any liability (including any contingent or prospective liability) of the participants in the relevant scheme for a debt of the relevant scheme; and

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

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

(**a**) Section 9 was amended by S.I. 2009/1941.

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

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

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

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

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

(a) the High Court has jurisdiction to wind up the relevant scheme if the winding up proceedings are instituted in England and Wales; and

(b) the Court of Session has jurisdiction to wind up the relevant scheme if the winding up proceedings are instituted in Scotland.

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

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

(a) by the operator or any creditor of the relevant scheme;

(b) by the FCA;

(c) in a case falling within section 124A of the 1986 Act(**a**) (petition for winding up on grounds of public interest), as modified by Schedule 2, by the Secretary of State; or

(d) in a case falling within Article 104A of the 1989 Order(**b**) (petition for winding up on grounds of public interest), as modified by Schedule 2, by the Department of Enterprise, Trade and Investment.

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

(a) cease entering into contracts which are binding on the participants;

(b) cease making payments under authorised contracts; and

(c) except where the operator has already done so pursuant to a direction given by the FCA, cease the issue and redemption of units under the relevant scheme.

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

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

(13) A relevant scheme is not an unincorporated body for the purposes of section 6(1) of the Bankruptcy (Scotland) Act 1985(**d**) (sequestration of other estates).

(**a**) Section 124A was inserted by the Companies Act 1989 (c. 40), section 60(3), and amended by S.I. 2001/3649 and by the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), Schedule 2, Part 3, paragraph 27.
(**b**) Article 104A was inserted by S.I. 1990/1504 (N.I. 10) and amended by S.I. 2001/3649.
(**c**) Section 235A is inserted by regulation 3(5) of these Regulations.
(**d**) 1985 c. 66.

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

(a) in paragraph (a) of subsection (1) and paragraph (a) of subsection (2) the reference to a body is to be read as a reference to the relevant scheme; and

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

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

18.—(1) In this regulation—

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

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

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

(2) In paragraph (4)—

(a) a reference to a section is a reference to a section of the 1986 Act; and

(b) a reference to an Article is a reference to an Article of the 1989 Order.

(3) Where an authorised partnership is wound up by the court as an unregistered company under Part 5 of the 1986 Act or Part 6 of the 1989 Order, the general partner of the partnership has no personal liability for relevant debts and obligations.

(4) Paragraph (3) is without prejudice to the power of the court—

(a) to make an order under section 212 or Article 176 (summary remedy against delinquent directors, liquidators, etc.) compelling the general partner to repay, restore or account for any money or property or to contribute to the assets of the partnership;

(b) if the court refuses to examine into the conduct of the general partner on an application under section 212 or Article 176, to make a judgment or order in other proceedings brought against the general partner on any ground on which an application may be made under section 212 or Article 176;

(c) to give directions under section 215 (proceedings under ss 213, 214) for giving effect to a declaration under section 213 (fraudulent trading) or section 214 (wrongful trading) that the general partner is liable to make a contribution to the assets of the partnership; or

(d) to give directions under Article 179 (proceedings under Articles 177 and 178) for giving effect to a declaration under Article 177 (fraudulent trading) or Article 178 (wrongful trading) that the general partner is liable to make a contribution to the assets of the partnership.

Partnership schemes: liability of the general partner (Scotland)

19.—(1) In this regulation—

"the Act" means the Bankruptcy (Scotland) Act 1985(**b**);

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

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

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(**a**) Section 370 was substituted by the Financial Services Act 2012, Schedule 14, paragraph 18.
(**b**) 1985 c. 66.

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

(2) The Act has effect with the following modifications in its application to an authorised partnership—

(a) in section 6 (sequestration of other estates), in subsection (4), paragraph (b) is to be read as if after sub-paragraph (i) there were inserted—

"(ia) the Financial Conduct Authority;";

(b) the following provisions are to be read as if after the words "presented by a creditor" there were inserted ", the Financial Conduct Authority"—

(i) in section 2 (appointment and functions of the trustee in the sequestration), subsections (5) and (7)(a)(**a**);

(ii) in section 12 (when sequestration is awarded), subsections (2), (3) and (4)(b)(**b**);

(iii) in section 15 (further provisions relating to award of sequestration), subsection (5);

(iv) in section 70 (supplies by utilities), subsection (1)(b); and

(c) in section 12, in subsection (3)(d), after "a creditor" insert "or the Financial Conduct Authority".

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

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

PART 6

TRANSFER OF UNITS IN CONTRACTUAL SCHEMES BY MEANS OF ELECTRONIC COMMUNICATION

Interpretation of Part

20. In this Part—

"contractual scheme deed" has the meaning given in section 235A(8) of FSMA(**c**); and

"electronic communication" has the meaning given in section 15(1) of the Electronic Communications Act 2000(**d**).

Dispositions of units in co-ownership schemes

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

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

(**a**) Section 2 was substituted by the Bankruptcy (Scotland) Act 1993 (c. 6). Subsection (5) was amended and subsection (7)(a) was substituted by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3).
(**b**) Subsections (3) and (4) were substituted by the Bankruptcy (Scotland) Act 1993 (c. 6).
(**c**) Section 235A is inserted by regulation 3(5) of these Regulations.
(**d**) 2000 c. 8. The definition was amended by the Communications Act 2003 (c. 21), Schedule 17, paragraph 158.
(**e**) 1925 c. 20.

(a) the disposition is by means of electronic communication;

(b) the electronic communication is made by the person disposing of the units or by that person's agent authorised in writing or by will; and

(c) such evidence as the operator or depositary of the scheme, being the person responsible for maintaining a register of the holders of units in accordance with the contractual scheme deed, may require to prove the right of the person referred to in sub-paragraph (b) to dispose of the units is provided to the operator or depositary.

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

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

Gratuitous unilateral obligations relating to units in authorised contractual schemes

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

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

(a) the obligation is created by means of electronic communication;

(b) the electronic communication is made by the debtor in the obligation; and

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

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

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

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

Grants and assignments of any trust or confidence

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

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

(a) the grant or assignment is by means of electronic communication;

(b) the electronic communication is made by the person granting or assigning the units; and

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

(**a**) 1995 c. 7.
(**b**) 1695 c. 12 (Ir).

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

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

PART 7

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

Transitional provision: depositaries of authorised contractual schemes

24.—(1) In this regulation—

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

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

"Part 4A permission" has the meaning given in section 55A(5) of FSMA(**a**);

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

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

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

PART 8

REVIEW

Review

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

(a) carry out a review of regulations 2 to 24,

(b) set out the conclusions of the review in a report, and

(c) publish the report.

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

(3) The report must in particular—

(a) set out the objectives intended to be achieved by the regulatory system established or applied in relation to a contractual scheme by regulations 2 to 24,

(b) assess the extent to which those objectives are achieved, and

(c) assess whether those objectives remain appropriate and, if so, the extent to which they could be achieved with a system that imposes less regulation.

(**a**) Part 4A, including section 55A, was substituted by section 11(2) of the Financial Services Act 2012.

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

(5) In this regulation—

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

"review period" means—

(a) the period of five years beginning with the day on which these Regulations come into force, and

(b) subject to paragraph (4), each successive period of five years;

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

"UCITS" has the meaning given in Article 1.2 of the UCITS Directive.

Name
Name

Date — 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).

SCHEDULE 1

Regulation 13

Form for registering changes to limited partnerships

Limited Partnerships Act 1907 **LP6**

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

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

Registration No.

Name of firm

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

a. **Firm name**	Previous name	New name
b. **General nature of the business**	Business previously carried on	Business now carried on
c. **Principal place of business**	Previous place of business	New place of business

d. **Change in the partners or the name of any partner** (*see note 2*) In the case of an authorised partnership state any change in the general partner or in the name of the general partner

e. **Term or character of the partnership** (*see note 3*) Where the change in character is authorisation as an authorised partnership or the revocation of such authorisation, give the date and the number of the authorisation order	Change in character	Previous term	New term

f. **Sum contributed by any limited partner** (*see note 4*) Particulars of any increase in capital contributions must be provided in section h. Not applicable to an authorised partnership

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

Signature of firm

Presented by: Presenter's reference:

NOTES

1 This form is also to be used to notify changes in a limited partnership which is a partnership scheme (within the meaning given by section 235A(5) of the Financial Services and Markets Act 2000) for which an authorisation order has been made under section 261D of that Act ("an authorised partnership"). The requirement to notify changes in partnerships under section 9 of the Limited Partnerships Act 1907 has been modified for authorised partnerships by regulation 16(6) of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013.

2. Changes brought about by death, transfer of interests, increase in the number of partners or change of name of any partner must be notified here. In the case of an authorised partnership, any change in the general partner or in the name of the general partner must be notified here (no change in the limited partners or in the name of a limited partner is required to be notified).

3. If there is, or was, no definite term, state under 'previous term' the conditions under which the partnership was constituted and under 'new term' the conditions under which it is now constituted. In the case of an authorised partnership, notify here the making or revocation of the authorisation order by the Financial Conduct Authority (include the authorisation number).

4. Any variation in the sum contributed by a limited partner must be stated in section f. A statement of any increase in the amount of the partnership capital, whether arising from an increase of contributions or the introduction of fresh partners, must also be stated in section h. In the case of an authorised partnership, no change in the sum contributed by a limited partner is required to be notified.

6. Each change must be entered in the proper section (a, b, c, d, e, f, g or h, as the case may be). Provision is made in this form for notifying all the changes required by the Act to be notified, but it will frequently happen that only one change has to be notified. In any such case, the word 'Nil' should be inserted in the other sections.

7. The statement must be signed at the end by the firm, and must be sent by post or delivered to the registrar for registration within seven days of the changes taking place.

SCHEDULE 2

Regulation 17(8)

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

PART 1

Interpretation

1. In this Schedule and in Schedules 3, 4 and 5—

(a) unless otherwise specified, a reference to a section is a reference to a section of the 1986 Act;

(b) a reference to an Article is a reference to an Article of the 1989 Order; and

(c) a reference to a participant, in relation to a relevant scheme, is a reference to the participant as a holder of units in that scheme (and not in any other capacity).

2. Unless the context otherwise requires, in this Schedule and in Schedules 3, 4 and 5—

(a) a reference to an authorised contract is a reference to an authorised contract entered into by the operator;

(b) a reference to the depositary is a reference to the depositary of a relevant scheme—

(i) in relation to which a petition has been presented under regulation 17(9); or

(ii) which is being wound up by the court following the presentation of such a petition;

(c) a reference to the operator is a reference to the operator of such a scheme; and

(d) a reference to the participants is a reference to the participants in such a scheme.

PART 2

Application of the 1986 Act and the 1989 Order with modifications

3. In relation to the winding up of a relevant scheme under the 1986 Act, the provisions set out in the Table in Part 3 of this Schedule apply with—

(a) the general modifications set out in paragraph 5;

(b) any other modification specified in the Table; and

(c) any other necessary modification.

4. In relation to the winding up of a relevant scheme under the 1989 Order, the provisions set out in the Table in Part 4 of this Schedule apply with—

(a) the general modifications set out in paragraph 5;

(b) any other modification specified in the Table; and

(c) any other necessary modification.

5. Unless the context otherwise requires and subject to any modification specified in the Table in Part 3 or 4 of this Schedule which has a contrary effect, the general modifications are that—

(a) a reference to a company includes a reference to a relevant scheme;

(b) a reference to a voluntary winding up or a resolution for voluntary winding up of a company is to be ignored;

(c) a reference to a creditor of a company is to be read as a reference to a creditor of a relevant scheme;

(d) a reference to a contributory or to a meeting of contributories is to be ignored;

(e) a reference to the making or recovery of a call is to be ignored;

(f) a reference to a member of a company or to a register or meeting of members is to be ignored;

(g) a reference to the property, assets, estate or effects of a company is to be read as a reference to the property subject to a relevant scheme;

(h) a reference to any books, papers or records belonging to the company is to be read as a reference to books, papers or records affecting or relating to the affairs of, or the property subject to, the relevant scheme;

(i) a reference to an action or proceeding against a company is to be read as a reference to an action or a proceeding brought against the operator for the resolution of any matter relating to a relevant scheme;

(j) a reference to a debt, obligation or liability of a company is to be read as a reference to a debt or liability of a relevant scheme;

(k) a reference to the registrar of companies or to the Accountant in Bankruptcy or to the registrar of companies and the Accountant in Bankruptcy is to be read as a reference to the FCA(**a**);

(l) a reference to an officer (other than a past officer) of the company is to be read as a reference to—

  (i) a director of the operator or of the depositary; or

  (ii) a person employed by the operator or by the depositary; and

(m) a reference to a past officer of the company is to be read as a reference to—

  (i) a previous director of the operator or of the depositary;

  (ii) someone who is, or was previously, a director of a person who has been replaced as the operator or the depositary, and was a director when that person was the operator or the depositary;

  (iii) a person who was previously employed by the operator or by the depositary; or

  (iv) someone who is, or was previously, employed by a person who has been replaced as the operator or the depositary, and was so employed when that person was the operator or the depositary.

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

PART 3

Table of applied provisions of the 1986 Act(**a**)

Provision of the 1986 Act	*Modification*
Part 4 (winding up of companies registered under the Companies Acts)	
Chapter 6 (winding up by the court)	
Section 121 (power to remit winding up to Lord Ordinary)	
Section 124A (petition for winding-up on grounds of public interest)	
Section 125 (powers of court on hearing of petition)	This section is to be read as if subsection (2) were omitted.
Section 126 (power to stay or restrain proceedings against company)	Subsection (1) is to be read as if for the words "the company, or any creditor" there were substituted "the Financial Conduct Authority, the operator or any creditor of the relevant scheme".
Section 127 (avoidance of property dispositions, etc.)	In subsection (1), the reference to any transfer of shares or alteration in the status of the company's members is to be read as a reference to any issue, transfer or redemption of units in the relevant scheme.
Section 128 (avoidance of attachments, etc.)	This section is to be read as if for subsections (1) and (2) there were substituted— "Where a relevant scheme is being wound up by the court, any attachment, sequestration, distress or execution put in force against the property subject to the relevant scheme after the commencement of the winding up is void.".
Section 129 (commencement of winding up by the court)	
Section 130 (consequences of winding-up order)	In subsection (1) the first reference to the company is to be read as a reference to the operator. This section is to be read as if subsection (4) were omitted.
Section 131 (company's statement of affairs)	In subsection (3)(a) the reference to officers of the company is to be read as a reference to the operator and the depositary. Subsection (3) is to be read as if paragraphs (c) and (d) were omitted.
Section 132 (investigation by official receiver)	

(**a**) Relevant amendments to the provisions of the 1986 Act set out in the Table are as follows: section 124A was inserted by the Companies Act 1989 (c. 40), section 60(3), and amended by S.I. 2001/3649 and by the Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), Schedule 2, Part 3, paragraph 27; section 131 was amended by S.I. 2010/18; section 155 was amended by S.I. 1999/1820; section 159 was amended by S.I. 2009/1941; section 160 was amended by S.I. 2009/1941; section 162 was amended by the Court of Session Act 1988 (c. 36), section 52(2) and Schedule 2, Part I, and by S.I. 2009/1941; section 168 was amended by S.I. 1994/2421 and 2002/1555; section 188 was amended by S.I. 2006/3429 and 2008/1897; section 196 was amended by S.I. 2009/1941; section 206(1) was amended by S.I. 1986/1996; section 215 was amended by the Civil Partnerships Act 2004 (c. 33), Schedule 27, paragraph 112; section 218 was amended by the Insolvency Act 2000 (c. 39), sections 10 and 15(1) and Schedule 5, and by S.I. 2009/1941; section 219 was amended by the Insolvency Act 2000, sections 10(7) and 11, and by S.I. 2009/1941; section 220 was substituted by S.I. 2009/1941; section 221 was amended by S.I. 2002/1240 and 2009/1941; section 229 was amended by S.I. 2009/1941; section 236 was amended by S.I. 2010/18; section 240 was amended by S.I. 2002/1240 and by the Enterprise Act 2002 (c. 40), Schedule 17, paragraphs 9 and 26(1) and (4); section 241 was amended by the Insolvency (No. 2) Act 1994 (c. 12), section 1; sections 246A and 246B were inserted by S.I. 2010/18; section 251 was amended by S.I. 2007/2194 and 2009/1941; section 434C was inserted by S.I. 2008/948; and Schedule 4 was amended by the Enterprise Act 2002, section 253, and by S.I. 2010/18.

Section 133 (public examination of officers)	Subsection (1) is to be read as if for paragraph (b) there were substituted— "(b) has acted as liquidator of the relevant scheme;". In subsection (1) the reference to the dissolution of the company is to be read as a reference to the completion of winding up of the relevant scheme.
Section 134 (enforcement of section 133)	
Section 135 (appointment and powers of provisional liquidator)	
Section 136 (functions of official receiver in relation to office of liquidator)	Subsection (1) is to be read as if the words ", subject to section 140 below," were omitted.
Section 137 (appointment by Secretary of State)	
Section 138 (appointment of liquidator in Scotland)	This section is to be read as if subsection (4) were omitted.
Section 139 (choice of liquidator at meetings of creditors and contributories)	This section is to be read as if for subsections (3) and (4) there were substituted— "(3) The liquidator shall be the person (if any) nominated by the creditors.".
Section 141 (liquidation committee (England and Wales))	This section is to be read as if subsection (3) were omitted.
Section 142 (liquidation committee (Scotland))	This section is to be read as if— (a) in subsection (1) for the words from "separate meetings" to "(as the case may be)" there were substituted "a meeting of creditors has been summoned for the purpose of choosing a person to be liquidator,"; (b) in subsection (3) the words ", if appointed by the court otherwise than under section 139(4)(a)," were omitted; and (c) subsection (4) were omitted.
Section 143 (general functions in winding up by the court)	
Section 144 (custody of company's property)	In subsection (1) the reference to all the property and things in action to which the company is or appears to be entitled is to be read as a reference to all property which is or appears to be subject to the relevant scheme and all things in action relating to that property.
Section 145 (vesting of company property in liquidator)	Subsection (1) is to be read as if the words "or held by trustees on its behalf" were omitted.
Section 146 (duty to summon final meeting)	
Section 147 (power to stay or sist winding up)	Subsection (2) is to be read as if after the words "the official receiver" there were inserted "or the liquidator". In subsection (3) the first reference to the company is to be read as a reference to the operator.

Section 153 (power to exclude creditors not proving in time)	
Section 155 (inspection of books by creditors, etc.)	In subsection (1) the reference to books and papers in the company's possession is to be read as a reference to such books and papers affecting or relating to the affairs of, or the property subject to, the relevant scheme as are in the possession of the operator or the depositary.
Section 156 (payment of expenses of winding up)	
Section 157 (attendance at company meetings (Scotland))	In this section the reference to the winding up by the court of a company registered in Scotland is to be read as a reference to the winding up of a relevant scheme by the Court of Session.
Section 159 (powers of court to be cumulative)	In this section the references to a debtor of the company are to be read as references to a person by whom a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.
Section 160 (delegation of powers to liquidator (England and Wales))	
Section 162 (appeals from orders in Scotland)	
Chapter 7 (liquidators)	
Section 163 (style and title of liquidators)	
Section 164 (corrupt inducement affecting appointment)	
Section 167 (winding up by the court)	Subsection (2)(a) is to be read as if for the words "a person who is connected with the company (within the meaning of section 249 in Part VII)" there were substituted "the operator or the depositary of the relevant scheme or a person who is an associate of the operator or depositary".
Section 168 (supplementary powers (England and Wales))	
Section 169 (supplementary powers (Scotland))	Subsection (1) is to be read as if paragraph (a) referred to a power to bring or defend any action or other legal proceeding on behalf of the participants. Subsection (1)(b) is to be read as subject to the requirements in regulation 17(10) to cease making payments under authorised contracts and to cease the issue and redemption of units.
Section 170 (enforcement of liquidator's duty to make returns, etc.)	
Section 172 (removal, etc. (winding up by the court))	
Section 174 (release (winding up by the court))	
Chapter 8 (provisions of general application in winding up)	
Section 178 (power to disclaim onerous property)	In subsection (4) each reference to the company is to be read as a reference to the participants and the depositary.

Section 179 (disclaimer of leaseholds)	In subsection (1) the reference to a person claiming under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title).
Section 180 (land subject to rentcharge)	
Section 181 (powers of court (general))	
Section 182 (powers of court (leaseholds))	In this section— (a) a reference to a person claiming under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title); and (b) a reference to the company, in relation to any reference to liabilities, obligations, estates, incumbrances or interests, is to be read as a reference to the lessee.
Section 186 (rescission of contracts by the court)	In subsection (1) the references to a contract made with the company are to be read as references to an authorised contract.
Section 188 (notification that company is in liquidation)	This section is to be read as if for subsections (1) and (2) there were substituted— "(1) When a relevant scheme is being wound up by the court— (a) every business letter (whether in hard copy, electronic or any other form) issued by the operator, the depositary or a liquidator of the relevant scheme, and (b) any website which relates to the relevant scheme and for which the operator or the depositary is responsible, must contain a statement that the relevant scheme is being wound up. (2) If default is made in complying with this section, any of the following persons who knowingly and wilfully authorises or permits the default, namely, the operator, the depositary and any liquidator of the relevant scheme, is liable to a fine.".
Section 189 (interest on debts)	
Section 190 (documents exempt from stamp duty)	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. 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.
Section 192 (information as to pending liquidations)	

Section 194 (resolutions passed at adjourned meetings)	
Section 195 (meetings to ascertain wishes of creditors or contributories)	
Section 196 (judicial notice of court documents)	
Section 197 (commission for receiving evidence)	
Section 198 (court order for examination of persons in Scotland)	
Section 199 (costs of application for leave to proceed (Scottish companies))	This section is to be read as if— (a) for the words from "a company" to "Scotland" there were substituted "the operator of a relevant scheme which is being wound up in Scotland (for the resolution of any matter relating to that scheme)"; and (b) for the words "the company" there were substituted "the operator".
Section 200 (affidavits etc. in United Kingdom and overseas)	
Chapter 10 (malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions)	
Section 206 (fraud, etc. in anticipation of winding up)	In subsection (1)(a) the reference to a debt due to the company is to be read as a reference to a debt which is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract. This section is to be read as if subsection (3) were omitted.
Section 207 (transactions in fraud of creditors)	In subsection (1)(b) the reference to any unsatisfied judgment or order for the payment of money obtained against the company is to be read as a reference to any unsatisfied judgment or order for the payment of money to a creditor of the relevant scheme.
Section 208 (misconduct in course of winding up)	In subsection (1)(a) the reference to the disposal by the company of any part of the company's property is to be read as a reference to the disposal by the operator of part of the property subject to the relevant scheme. This section is to be read as if subsection (3) were omitted.
Section 209 (falsification of company's books)	In subsection (1) the reference to any register, book of account or document belonging to the company is to be read as a reference to any register, book of account or document affecting or relating to the affairs of, or the property subject to, the relevant scheme.
Section 210 (material omissions from statement relating to company's affairs)	This section is to be read as if subsection (3) were omitted.
Section 211 (false representations to creditors)	This section is to be read as if subsection (2) were omitted.
Section 212 (summary remedy against delinquent directors, liquidators, etc.)	Subsection (1)(a) is to be read as if the reference to an officer of the company included a reference to the operator and the depositary.
Section 213 (fraudulent trading)	

<table>
<tr><td>Section 214 (wrongful trading)</td><td>In subsections (1) and (2) a reference to a director of a company is to be read as a reference to the operator or depositary of a relevant scheme.
This section is to be read as if—
(a) after subsection (2) there were inserted—
“(2A) The condition specified in subsection (2)(b) is taken to be satisfied in relation to the operator or depositary of a relevant scheme if, at some time before the commencement of the winding up, a director or employee of the operator or depositary knew or ought to have concluded that there was no reasonable prospect that the relevant scheme would avoid going into insolvent liquidation.”; and
(b) subsection (7) were omitted.
In subsections (4) and (5) a reference to a director of a company is to be read as a reference to the operator or depositary of a relevant scheme or a director or employee of the operator or depositary.</td></tr>
<tr><td>Section 215 (proceedings under sections 213, 214)</td><td></td></tr>
<tr><td>Section 218 (prosecution of delinquent officers and members of company)</td><td></td></tr>
<tr><td>Section 219 (obligations arising under section 218)</td><td>In subsection (3) the reference to every agent of the company is to be read as a reference to the operator and the depositary and every person who, at the request of the operator or the depositary, has provided the services of banker, solicitor or auditor or professional services of any other description in relation to the relevant scheme.</td></tr>
<tr><td colspan="2">Part 5 (winding up of unregistered companies)</td></tr>
<tr><td>Section 220 (meaning of “unregistered company”)</td><td></td></tr>
<tr><td>Section 221 (winding up of unregistered companies)</td><td>This section is to be read as if—
(a) subsections (2), (3) and (7) were omitted;
(b) in subsection (4) the words “, except in accordance with the EC Regulation” were omitted; and
(c) in subsection (5)—
(i) paragraph (a) were omitted; and
(ii) for paragraph (b) there were substituted—
“(b) if the operator of a relevant scheme is unable to pay the debts of that scheme out of the property subject to it.”.</td></tr>
<tr><td>Section 222 (inability to pay debts: unpaid creditor for £750 or more)</td><td>In subsection (1)(a) and (b) each reference to the company is to be read as a reference to the operator.</td></tr>
</table>

Section 224 (inability to pay debts: other cases)	In subsection (1)(a) the reference to execution or other process issued in favour of a creditor against the company or any person authorised to be sued as nominal defendant on its behalf is to be read as a reference to execution or other process issued in favour of a creditor of the relevant scheme against the property subject to that scheme.
Section 229 (provisions of this Part to be cumulative)	
Part 6 (miscellaneous provisions applying to companies which are insolvent or in liquidation)	
Section 230 (holders of office to be qualified insolvency practitioners)	
Section 231 (appointment to office of two or more persons)	
Section 232 (validity of office-holder's acts)	
Section 234 (getting in the company's property)	In subsection (2) the reference to any property, books, papers or records to which the company appears to be entitled is to be read as a reference to any property that appears to be property subject to the relevant scheme, and to any books, papers or records that appear to affect or relate to that property or to the affairs of the relevant scheme.
Section 235 (duty to co-operate with office-holder)	Subsection (3) is to be read as if— (a) in paragraph (a) the reference to officers of the company included a reference to the operator and the depositary; and (b) paragraphs (c) and (d) were omitted.
Section 236 (inquiry into company's dealings, etc.)	In subsection (2)(b) the reference to any person supposed to be indebted to the company is to be read as a reference to a person by whom, it is supposed, a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract. In subsection (3) the reference to dealings with the company is to be read as a reference to dealings with any matter affecting or relating to the affairs of, or the property subject to, the relevant scheme.
Section 237 (court's enforcement powers under s 236)	In subsection (2) the reference to any person who is indebted to the company is to be read as a reference to a person by whom a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.

<table>
<tr><td>Section 238 (transactions at an undervalue (England and Wales))</td><td>In subsections (2) and (3) the reference to the company is to be read as a reference to the operator or the depositary.
In subsection (4)—
(a) in paragraphs (a) and (b) the second reference to the company is to be read as a reference to the participants in a relevant scheme; and
(b) each other reference to a company is to be read as a reference to the operator or depositary of the relevant scheme.
Subsection (5) is to be read as if for paragraph (a) there were substituted—
“(a) that the operator or the depositary, in entering into the transaction, did so in good faith and for the purposes of carrying on the business of the relevant scheme, and”.</td></tr>
<tr><td>Section 239 (preferences (England and Wales))</td><td>In subsections (2) and (3) the reference to the company is to be read as a reference to the operator or the depositary.
Subsection (4) is to be read as if for the words from “a company” to the end there were substituted—
“the operator or depositary of a relevant scheme gives a preference to a person if—
(a) that person is one of the creditors of the relevant scheme or a surety or guarantor for any of the debts or liabilities of the relevant scheme, and
(b) the operator or depositary does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the relevant scheme going into insolvent liquidation, will be better than the position that person would have been in if that thing had not been done.”.
In subsection (5) the reference to the company which gave the preference is to be read as a reference to the operator or the depositary in giving the preference.
In subsection (6)—
(a) the first reference to a company is to be read as a reference to the operator or depositary of a relevant scheme; and
(b) the reference to a person connected with the company is to be read as a reference to a person who is an associate (within the meaning of section 435) of the operator or depositary of the relevant scheme.</td></tr>
</table>

Section 240 (“relevant time” under sections 238, 239)	In subsections (1) and (2)— (a) a reference to a company, except the second reference in subsection (2), is to be read as a reference to the operator or depositary of a relevant scheme; and (b) the reference to a person who is connected with the company is to be read as a reference to a person who is an associate (within the meaning of section 435) of the operator or depositary of the relevant scheme. In subsection (2) the reference to the inability of the company to pay its debts within the meaning of section 123 is to be read as a reference to the inability of the operator of a relevant scheme to pay the debts of that scheme within the meaning of section 222 or 224 (as modified by this Schedule).
Section 241 (orders under sections 238, 239)	In this section a reference to a company is to be read as a reference to the operator or the depositary, except— (a) in subsection (1)(a), where the reference to the company is to be read as a reference to the liquidator of the relevant scheme; (b) in subsection (1)(c), where the reference to security given by the company is to be read as a reference to security over any property subject to the relevant scheme; (c) in subsection (1)(g), where the first reference to the company is to be read as a reference to the liquidator of the relevant scheme; (d) in subsection (2), with respect to the reference to a creditor of the company; and (e) in subsection (3C).
Section 242 (gratuitous alienations (Scotland))	In subsection (1)(a) the reference to an alienation by the company is to be read as a reference to an alienation by the operator or the depositary. In subsection (2)(a) the reference to any claim or right of the company is to be read as a reference to any claim that may be made or any right that may be exercised by the operator for the benefit of the participants. In subsections (3)(a) and (4)(c) the reference to an associate of the company is to be read as a reference to an associate (within the meaning of section 435) of the operator or the depositary. In subsection (7) the reference to an alienation of a company is to be read as a reference to an alienation by the operator or the depositary.
Section 243 (unfair preferences (Scotland))	In subsection (1) a reference to a transaction entered into by a company is to be read as a reference to a transaction entered into by the operator or the depositary. In subsection (2)(d) the reference to a company is to be read as a reference to the operator or the depositary.

Section 246 (unenforceability of liens on books, etc.)	
Section 246A (remote attendance at meetings)	
Section 246B (use of websites)	
Part 7 (interpretation for first group of Parts)	
Section 247 ("insolvency" and "go into liquidation")	This section is to be read as if— (a) in subsection (2), for the words from "it passes a resolution" to the end there were substituted "an order for its winding up is made by the court"; and (b) subsection (3) were omitted.
Section 248 ("secured creditor" etc.)	
Section 249 ("connected" with a company)	This section is to be read as if the words from ", a person" to "and" were omitted.
Section 251 (expressions used generally)	This section is to be read as if the existing provision were subsection (1) and after that provision there were inserted— "(2) In Parts 4, 5 and 6— (a) a reference to the depositary of a relevant scheme is a reference to the depositary (within the meaning given in section 237(2) of the Financial Services and Markets Act 2000 ("FSMA")) of that scheme; (b) a reference to the operator of a relevant scheme is a reference to the operator (within the meaning given in section 237(2) of FSMA) of that scheme; (c) a reference to the participants in a relevant scheme is a reference to the participants (within the meaning given in section 235(2) of FSMA) in that scheme; (d) a reference to— (i) a relevant scheme, (ii) a creditor or a debt of a relevant scheme, or (iii) the operator or the depositary in relation to a relevant scheme which is a sub-scheme of an umbrella co-ownership scheme, is to be construed in accordance with regulation 17(1) of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013.".
Part 13 (insolvency practitioners and their qualification)	
Section 388 (meaning of "act as insolvency practitioner")	In subsection (4), the definition of "company" is to be read as if the reference to a company that may be wound up under Part 5 of the 1986 Act included a reference to a relevant scheme.

<table>
<tr><td>Section 389 (acting without qualification an offence)</td><td></td></tr>
<tr><td colspan="2">Part 17 (miscellaneous and general)</td></tr>
<tr><td>Sections 430 (provision introducing Schedule of punishments)
Section 431 (summary proceedings)
Section 432 (offences by bodies corporate)</td><td>These sections are to be read as if a reference to an offence under the 1986 Act or a provision of that Act, in so far as it is a reference to an offence under a provision of that Act that is applied by these Regulations, is to be read as a reference to the offence under that provision as so applied.</td></tr>
<tr><td colspan="2">Part 17A (supplementary provisions)</td></tr>
<tr><td>Section 434C (legal professional privilege)</td><td></td></tr>
<tr><td colspan="2">Schedule 4 (powers of liquidator in a winding up)</td></tr>
<tr><td>Schedule 4 (powers of liquidator in a winding up)</td><td>Schedule 4 is to be read as if—
(a) paragraphs 8 and 11 were omitted;
(b) the power in paragraph 4 included a power to bring or defend any action or other legal proceeding which would otherwise be brought or defended by the operator on behalf of the participants;
(c) the power in paragraph 7 included a power to do all acts and execute all deeds, receipts and other documents which would otherwise be done or executed by the operator on behalf of the participants; and
(d) the power in paragraph 9 included a power to draw, accept, make and indorse any bill of exchange or promissory note with the same effect as if the bill or note had been drawn, accepted, made or indorsed by the operator in the course of the business of the relevant scheme.
(e) Paragraph 5 is to be read as subject to the requirements in regulation 17(10) to cease making payments under authorised contracts and to cease the issue and redemption of units.</td></tr>
<tr><td colspan="2">Schedule 10 (punishment of offences under the 1986 Act)</td></tr>
<tr><td>Schedule 10 (punishment of offences under the 1986 Act)</td><td>Schedule 10 is to be read as if a reference to a provision which is applied by these Regulations were a reference to that provision as so applied.</td></tr>
</table>

PART 4

Table of applied provisions of the 1989 Order(**a**)

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

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

	umbrella co-ownership scheme, is to be construed in accordance with regulation 17(1) of the Collective Investment in Transferable Securities (Contractual Scheme) Regulations 2013.”.
Article 6 (“insolvency” and “go into liquidation”)	This Article is to be read as if— (a) in paragraph (2), for the words from “it passes a resolution” to the end there were substituted “an order for its winding up is made by the High Court”; and (b) paragraph (3) were omitted.
Part 5 (winding up of companies registered under the Companies Act 2006)	
Chapter 6 (winding up by the High Court)	
Article 104A (petition for winding up on grounds of public interest)	
Article 105 (powers of High Court on hearing of petition)	This Article is to be read as if paragraph (2) were omitted.
Article 106 (power to stay or restrain proceedings against company)	Paragraph (1) is to be read as if for the words “the company, or any creditor” there were substituted “the Financial Conduct Authority, the operator or any creditor of the relevant scheme”.
Article 107 (avoidance of property dispositions, etc.)	In paragraph (1), the reference to any transfer of shares or alteration in the status of the company’s members is to be read as a reference to any issue, transfer or redemption of units in the relevant scheme.
Article 108 (avoidance of sequestration or distress)	
Article 109 (commencement of winding up by the High Court)	
Article 110 (consequences of winding-up order)	In paragraph (1) the reference to the company is to be read as a reference to the operator. This Article is to be read as if paragraph (4) were omitted.
Article 111 (company’s statement of affairs)	In paragraph (3)(a) the reference to officers of the company is to be read as a reference to the operator and the depositary. Paragraph (3) is to be read as if sub-paragraphs (c) and (d) were omitted.
Article 112 (investigation by official receiver)	
Article 113 (public examination of officers)	Paragraph (1) is to be read as if for sub-paragraph (b) there were substituted— “(b) has acted as liquidator of the relevant scheme;”. In paragraph (1) the reference to the dissolution of the company is to be read as a reference to the completion of winding up of the relevant scheme.
Article 114 (enforcement of Article 113)	
Article 115 (appointment and powers of provisional liquidator)	

Article 116 (functions of official receiver in relation to office of liquidator)	Paragraph (1) is to be read as if the words ", subject to Article 119," were omitted.
Article 117 (appointment by Department)	
Article 118 (choice of liquidator at meetings of creditors and contributories)	This Article is to be read as if for paragraphs (3) and (4) there were substituted— "(3) The liquidator shall be the person (if any) nominated by the creditors.".
Article 120 (liquidation committee)	This Article is to be read as if paragraph (3) were omitted.
Article 121 (general functions in winding up by the High Court)	
Article 122 (custody of company's property)	In this Article the reference to all the property to which the company is or appears to be entitled is to be read as a reference to all property which is or appears to be subject to the relevant scheme.
Article 123 (vesting of company property in liquidator)	Paragraph (1) is to be read as if the words "or held by trustees on its behalf" were omitted.
Article 124 (duty to summon final meeting)	
Article 125 (power to stay winding up)	Paragraph (2) is to be read as if after the words "the official receiver" there were inserted "or the liquidator". In paragraph (3) the reference to the company is to be read as a reference to the operator.
Article 131 (power to exclude creditors not proving in time)	
Article 133 (inspection of books by creditors, etc.)	In paragraph (1) the reference to books and papers in the company's possession is to be read as a reference to such books and papers affecting or relating to the affairs of, or the property subject to, the relevant scheme as are in the possession of the operator or the depositary.
Article 134 (payment of expenses of winding up)	
Article 136 (powers of High Court to be cumulative)	In this Article the references to any debtor of the company are to be read as references to a person by whom a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.
Article 137 (delegation of powers to liquidator)	
Chapter 7 (liquidators)	
Article 138 (style and title of liquidators)	
Article 139 (corrupt inducement affecting appointment)	

Article 142 (winding up by the High Court)	Paragraph (2)(a) is to be read as if for the words "a person who is connected with the company (within the meaning given by Article 7)" there were substituted "the operator or the depositary of the relevant scheme or a person who is an associate of the operator or depositary".
Article 143 (supplementary powers)	
Article 144 (enforcement of liquidator's duty to make returns, etc.)	
Article 146 (removal, etc. (winding up by the High Court))	
Article 148 (release (winding up by the High Court))	
Chapter 8 (provisions of general application in winding up)	
Article 152 (power to disclaim onerous property)	In paragraph (3) each reference to the company is to be read as a reference to the participants and the depositary.
Article 153 (disclaimer of leaseholds)	In paragraph (1) the reference to a person claiming under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title).
Article 154 (land subject to rentcharge)	
Article 155 (powers of High Court (general)	
Article 156 (powers of High Court (leaseholds))	In this Article— (a) a reference to a person claiming under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title); and (b) a reference to the company, in relation to any reference to liabilities, obligations, estates, incumbrances or interests, is to be read as a reference to the lessee.
Article 157 (rescission of contracts by the High Court)	In paragraph (1) the references to a contract made with the company are to be read as references to an authorised contract.

Article 159 (notification that company is in liquidation)	This Article is to be read as if for paragraphs (1) and (2) there were substituted— "(1) When a relevant scheme is being wound up by the High Court— (a) every business letter (whether in hard copy, electronic or any other form) issued by the operator, the depositary or a liquidator of the relevant scheme, and (b) any website which relates to the relevant scheme and for which the operator or the depositary is responsible, must contain a statement that the relevant scheme is being wound up. (2) If default is made in complying with this Article, any of the following persons who knowingly and wilfully authorises or permits the default, namely, the operator, the depositary and any liquidator of the relevant scheme, shall be guilty of an offence.".
Article 160 (interest on debts)	
Article 162 (information as to pending liquidations)	
Article 163 (resolutions passed at adjourned meetings)	
Article 164 (meeting to ascertain wishes of creditors or contributories)	
Article 165 (affidavits, etc., in United Kingdom and elsewhere)	
Chapter 10 (malpractice before and during liquidation; penalisation of companies and company officers; investigations and prosecutions)	
Article 170 (fraud, etc. in anticipation of winding up)	In paragraph (1)(a) the reference to a debt due to the company is to be read as a reference to a debt which is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract. This Article is to be read as if paragraph (3) were omitted.
Article 171 (transactions in fraud of creditors)	In paragraph (1)(b) the reference to any unsatisfied judgment or order for the payment of money obtained against the company is to be read as a reference to any unsatisfied judgment or order for the payment of money to a creditor of the relevant scheme.
Article 172 (misconduct in course of winding up)	In paragraph (1)(a) the reference to the disposal by the company of any part of the company's property is to be read as a reference to the disposal by the operator of part of the property subject to the relevant scheme. This Article is to be read as if paragraph (3) were omitted.

Article 173 (falsification of company's books)	In this Article the reference to any register, accounting records or document belonging to the company is to be read as a reference to any register, accounting records or document affecting or relating to the affairs of, or the property subject to, the relevant scheme.
Article 174 (material omissions from statement relating to company's affairs)	This Article is to be read as if paragraph (3) were omitted.
Article 175 (false representations to creditors)	This Article is to be read as if paragraph (2) were omitted.
Article 176 (summary remedy against delinquent directors, liquidators, etc.)	Paragraph (1)(a) is to be read as if the reference to an officer of the company included a reference to the operator and the depositary.
Article 177 (fraudulent trading)	
Article 178 (wrongful trading)	In paragraphs (1) and (2) a reference to a director of a company is to be read as a reference to the operator or depositary of a relevant scheme. This Article is to be read as if— (a) after paragraph (2) there were inserted— "(2A) The condition specified in paragraph (2)(b) is taken to be satisfied in relation to the operator or depositary of a relevant scheme if, at some time before the commencement of the winding up, a director or employee of the operator or depositary knew or ought to have concluded that there was no reasonable prospect that the relevant scheme would avoid going into insolvent liquidation"; and (b) paragraph (7) were omitted. In paragraphs (4) and (5) a reference to a director of a company is to be read as a reference to the operator or depositary of a relevant scheme or a director or employee of the operator or depositary.
Article 179 (proceedings under Articles 177 and 178)	
Article 182 (prosecution of delinquent officers and members of company)	
Article 183 (obligations arising under Article 182)	In paragraph (3) the reference to every agent of the company is to be read as a reference to the operator and the depositary and every person who, at the request of the operator or the depositary, has provided the services of banker, solicitor or auditor or professional services of any other description in relation to the relevant scheme.
Part 6 (winding up of unregistered companies)	
Article 184 (meaning of "unregistered company")	

Article 185 (winding up of unregistered companies)	This Article is to be read as if— (a) paragraph (2) were omitted; (b) in paragraph (3) the words ", except in accordance with the EC Regulation" were omitted; and (c) in paragraph (4)— (i) sub-paragraph (a) were omitted; and (ii) for sub-paragraph (b) there were substituted— "(b) if the operator of a relevant scheme is unable to pay the debts of that scheme out of the property subject to it.".
Article 186 (inability to pay debts: unpaid creditor for £750 or more)	In paragraph (1)(a) and (b) each reference to the company is to be read as a reference to the operator. Paragraph (1)(a) is to be read as if the words "in Northern Ireland" were omitted.
Article 188 (inability to pay debts: other cases)	In paragraph (1)(b) the reference to execution or other process issued in favour of a creditor against the company or any person authorised to be sued as nominal defendant on its behalf is to be read as a reference to execution or other process issued in favour of a creditor of the relevant scheme against the property subject to that scheme.
Article 193 (provisions of this Part to be cumulative)	
Part 7 (miscellaneous provisions applying to companies which are insolvent or in liquidation)	
Article 194 (holders of office to be qualified insolvency practitioners)	
Article 195 (appointment to office of two or more persons)	
Article 196 (validity of office-holder's acts)	
Article 198 (getting in the company's property)	In paragraph (2) the reference to any property, books, papers or records to which the company appears to be entitled is to be read as a reference to any property that appears to be property subject to the relevant scheme, and to any books, papers or records that appear to affect or relate to that property or to the affairs of the relevant scheme.
Article 199 (duty to co-operate with office-holder)	Paragraph (3) is to be read as if— (a) in sub-paragraph (a) the reference to officers of the company included a reference to the operator and the depositary; and (b) sub-paragraphs (c) and (d) were omitted.

Article 200 (inquiry into company's dealings, etc.)	In paragraph (2)(b) the reference to any person supposed to be indebted to the company is to be read as a reference to a person by whom, it is supposed, a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract. In paragraph (3) the reference to dealings with the company is to be read as a reference to dealings with any matter affecting or relating to the affairs of, or the property subject to, the relevant scheme.
Article 201 (High Court's enforcement powers under Article 200)	In paragraph (2) the reference to any person who is indebted to the company is to be read as a reference to a person by whom a debt is, or may become, payable to the operator in respect of any liability (including any contingent or prospective liability) incurred under an authorised contract.
Article 202 (transactions at an undervalue)	In paragraphs (2) and (3) the reference to the company is to be read as a reference to the operator or the depositary. In paragraph (4)— (a) in sub-paragraphs (a) and (b) the second reference to the company is to be read as a reference to the participants in a relevant scheme; and (b) each other reference to a company is to be read as a reference to the operator or depositary of the relevant scheme. Paragraph (5) is to be read as if for sub-paragraph (a) there were substituted— "(a) that the operator or the depositary, in entering into the transaction, did so in good faith and for the purposes of carrying on the business of the relevant scheme, and".

<table>
<tr><td>Article 203 (preferences)</td><td>In paragraphs (2) and (3) the reference to the company is to be read as a reference to the operator or the depositary.
Paragraph (4) is to be read as if for the words from “a company” to the end there were substituted—
“the operator or depositary of a relevant scheme gives a preference to a person if—
(a) that person is one of the creditors of the relevant scheme or a surety or guarantor for any of the debts or liabilities of the relevant scheme, and
(b) the operator or depositary does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the relevant scheme going into insolvent liquidation, will be better than the position that person would have been in if that thing had not been done.”.
In paragraph (5) the reference to the company which gave the preference is to be read as a reference to the operator or the depositary in giving the preference.
In paragraph (6)—
(a) the first reference to a company is to be read as a reference to the operator or depositary of a relevant scheme; and
(b) the reference to a person connected with the company is to be read as a reference to a person who is an associate (within the meaning of Article 4) of the operator or depositary of the relevant scheme.</td></tr>
<tr><td>Article 204 (“relevant time” under Articles 202, 203)</td><td>In paragraphs (1) and (2)—
(a) a reference to a company, except the second reference in paragraph (2), is to be read as a reference to the operator or depositary of a relevant scheme; and
(b) the reference to a person who is connected with the company is to be read as a reference to a person who is an associate (within the meaning of Article 4) of the operator or depositary of the relevant scheme.
In paragraph (2) 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 that scheme within the meaning of Article 186 or 188 (as modified by this Schedule).</td></tr>
<tr><td>Article 205 (orders under Articles 202, 203)</td><td>In this Article a reference to a company is to be read as a reference to the operator or the depositary, except—
(a) in paragraph (1)(a), where the reference to the company is to be read as a reference to the liquidator of the relevant scheme;</td></tr>
</table>

	(b) in paragraph (1)(c), where the reference to security given by the company is to be read as a reference to security over any property subject to the relevant scheme; (c) in paragraph (1)(g), where the first reference to the company is to be read as a reference to the liquidator of the relevant scheme; (d) in paragraph (2), with respect to the reference to a creditor of the company; and (e) in paragraph (3C).
Article 208 (unenforceability of liens on books, etc.)	
Part 12 (insolvency practitioners and their qualification)	
Article 348 (acting as insolvency practitioner without qualification)	
Part 14 (miscellaneous)	
Article 373 (prosecution and punishment of offences) Article 374 (summary proceedings)	These Articles are to be read as if a reference to an offence under the 1989 Order or a provision of that Order, in so far as it is a reference to an offence under a provision of that Order that is applied by these Regulations, is to be read as a reference to the offence under that provision as so applied.
Part 15 (supplementary provisions)	
Article 385 (legal professional privilege)	
Schedule 2 (powers of liquidator in a winding up)	
Schedule 2 (powers of liquidator in a winding up)	Schedule 2 is to be read as if— (a) paragraphs 9 and 12 were omitted; (b) the power in paragraph 4 included a power to bring or defend any action or other legal proceeding which would otherwise be brought or defended by the operator on behalf of the participants; (c) the power in paragraph 8 included a power to do all acts and execute all deeds, receipts and other documents which would otherwise be done or executed by the operator on behalf of the participants; and (d) the power in paragraph 10 included a power to draw, accept, make and indorse any bill of exchange or promissory note with the same effect as if the bill or note had been drawn, accepted, made or indorsed by the operator in the course of the business of the relevant scheme. Paragraph 5 is to be read as subject to the requirements in regulation 17(10) to cease making payments under authorised contracts and to cease the issue and redemption of units.
Schedule 7 (punishment of offences under the 1989 Order)	
Schedule 7 (punishment of offences under the 1989 Order)	Schedule 7 is to be read as if a reference to a provision which is applied by these Regulations were a reference to that provision as so applied.

SCHEDULE 3

Regulation 17(8)

Co-ownership schemes: application of the Insolvency Rules 1986

PART 1

Application of Rules with modifications

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

(a) the general modifications set out in paragraph 2;

(b) any other modification specified in the Table in Part 2 of this Schedule; and

(c) any other necessary modification.

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

(a) a reference to a company includes a reference to a relevant scheme;

(b) a reference to a voluntary winding up or a resolution for voluntary winding up of a company is to be ignored;

(c) in any provision relating to—

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

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

(iii) an application to the court by a company or by any person in relation to a company,

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

(d) a reference to a creditor of a company is to be read as a reference to a creditor of the relevant scheme;

(e) a reference to a contributory or to a meeting of contributories is to be ignored;

(f) a reference to a member of a company or to a register of members is to be ignored;

(g) a reference to the estate or to the property or assets of a company is to be read as a reference to the property subject to the relevant scheme;

(h) a reference to a debt or liability of a company is to be read as a reference to a debt or liability of the relevant scheme; and

(i) a reference to the registrar of companies is to be read as a reference to the FCA.

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

PART 2

Table of specific modifications of the Insolvency Rules 1986

Rule	*Subject*	*Modification*
Part 4 (companies winding up)		
Chapter 1 (the scheme of this Part of the Rules)		
4.2	Winding up by the court: the various forms of petition	Paragraph (2) is to be read as if— (a) the reference to the company included a reference to the operator of a relevant scheme; and (b) the words "the directors," and "the official receiver," were omitted.
Chapter 2 (the statutory demand)		
4.4	Preliminary	In paragraph (2) the reference to a company is to be read as a reference to the operator of a relevant scheme.
4.5	Form and content of statutory demand	In paragraph (2)(a) the reference to the company's liability is to be read as a reference to the liability of the relevant scheme in relation to which the statutory demand has been served.
4.6	Information to be given in statutory demand	In paragraph (1)(c) the reference to the company is to be read as a reference to the operator of the relevant scheme in relation to which the statutory demand has been served.
Chapter 3 (petition to winding-up order)		
4.6A	Injunction to restrain presentation or advertisement of petition	The first reference to a company is to be read as a reference to the operator of a relevant scheme.
4.7	Presentation and filing of petition	Paragraph (3) is to be read as if the words "who is a person other than the company" were omitted.
4.8	Service of petition	This Rule is to be read as if paragraph (2) required the petition is to be served at the registered office or principal place of business of the operator and of the depositary. Paragraphs (3) to (5) apply in relation to the operator and in relation to the depositary as they apply in relation to a company on which a petition is served.
4.9A	Proof of service	The certificate of service must specify (instead of the particulars in paragraph (2)(a) and (b)) the name of the relevant scheme and the name and registered office (or principal place of business) of the operator and of the depositary.
4.10	Other persons to receive copies of petition	This Rule is to be read as if there were substituted for paragraphs (1) to (4)— "(1) The petitioner must send a copy of the petition to the FCA.".

4.12	Verification of petition	A statement of truth which is not contained in or endorsed upon the petition which it verifies must specify (instead of the particulars in paragraph (3A)(a)) the name of the relevant scheme and of the operator and the depositary.
4.13	Persons entitled to copy of petition	This Rule is to be read as if the word "director," were omitted.
4.15	Permission for petitioner to withdraw	In paragraph (c) the reference to the company is to be read as a reference to the operator and the depositary.
4.18	Witness statement in opposition	In this Rule— (a) each reference to the company is to be read as a reference to the operator; and (b) paragraph (1) is to be read as if it required the operator to file a witness statement only with the depositary's consent.
Chapter 4 (petition by contributories)		
4.22 to 4.24	Petition by contributories	These Rules do not apply.
Chapter 5 (provisional liquidator)		
4.25	Appointment of provisional liquidator	Paragraph (1) is to be read as if it provided that an application for the appointment of a provisional liquidator may be made by the operator, the depositary, the FCA or a creditor.
4.28	Security	In paragraph (2)(a) the reference to the making of an order on the company is to be read as a reference to the making of an order on the operator and the depositary.
Chapter 6 (statement of affairs and other information)		
4.39	Submission of accounts	A reference to the accounts of the company is to be read as a reference to the accounts relating to the affairs of the relevant scheme.
Chapter 7 (information to creditors and contributories)		
4.43	Reports by official receiver	This Rule is to be read as if paragraphs (1A) and (1B) were omitted.
4.48	Winding up stayed	In paragraph (2) the reference to the company is to be read as a reference to the operator.
4.49B	Reports to creditors and members - winding up by the court	The progress report must include full details (instead of the details in paragraph (1)(b)) of the name of the relevant scheme and the name and registered office (or principal place of business) of the operator and of the depositary. Paragraph (2) is to be read as if the words from "and, where the liquidator" to the end were omitted. In paragraph (7) the reference to the members of the company is to be read as a reference to the operator and the depositary.

Chapter 8 (meetings of creditors and contributories)		
4.58	Attendance at meetings of company's personnel	A reference to the company's personnel is to be read as a reference to— (a) the operator and the depositary; and (b) the directors and employees of the operator and the depositary.
Chapter 9 (proof of debts in a liquidation)		
4.79	Liquidator to allow inspection of proofs	The reference to any contributory of the company is to be read as a reference to the operator or the depositary.
4.83	Appeal against decision on proof	In paragraphs (2) and (4A) a reference to a contributory is to be read as a reference to the operator or the depositary. In paragraph (4A) the reference to the company is to be read as a reference to the operator for the benefit of the participants.
4.90	Mutual credits and set-off	A reference to mutual credits, mutual debts or other mutual dealings between the company and any creditor is to be read as a reference to mutual credits etc. between the operator on behalf of the participants and a creditor, and a reference to any obligation to or from the company, or any sum due or owed to, or due from, the company is to be read accordingly.
Chapter 10 (secured creditors)		
4.98	Test of security's value	In paragraph (2) the reference to the liquidator on behalf of the company is to be read as a reference to the liquidator acting in the best interests of the relevant scheme.
Chapter 11 (the liquidator)		
4.124	Release of official receiver	This Rule is to be read as if paragraph (2A) were omitted.
4.125	Final meeting	This Rule is to be read as if paragraph (2A) were omitted.
4.128	Other matters affecting remuneration	Paragraph (3) is to be read as if for the words "act on behalf of the company" there were substituted "act in the liquidation".
4.131	Creditors' claim that remuneration is or other expenses are excessive	Paragraph (4)(e) is to be read as if it required the amount to which it refers to be paid to the operator for the benefit the relevant scheme.
4.138	Liquidator's duties on vacating office	A reference to the company's books, papers and other records is to be read as a reference to all books, papers and other records affecting or relating to the affairs of, or the property subject to, the relevant scheme.
4.149	Power of court to set aside certain transactions	Paragraph (1) is to be read as if the court's power to order the liquidator to compensate the company for loss suffered in consequence of a transaction which is set aside included power to order the liquidator, by way of compensation for loss suffered in consequence of such a transaction, to

		contribute any sum to the property subject to the relevant scheme.
Chapter 12 (the liquidation committee)		
4.152	Membership of committee	Paragraph (1) is to be read as if the words "Subject to Rule 4.154 below," were omitted.
4.154	Committee established by contributories	This Rule does not apply.
4.171A	Composition of committee when creditors paid in full	This Rule is to be read as if— (a) at the end of paragraph (2) there were inserted "and the committee is abolished"; and (b) paragraphs (3) and (4) were omitted.
Chapter 14 (collection and distribution of company's assets by liquidator		
4.181	Debts of insolvent company to rank equally	This Rule is to be read as if the references to preferential debts were omitted.
Chapter 15 (disclaimer)		
4.188	Communication of disclaimer to persons interested	In paragraph (2) the reference to a person who claims under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title).
Chapters 16, 17 and 18		
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.
Chapter 19 (public examination of company officers and others)		
4.213	Order on request by creditors or contributories	In paragraph (2) the reference to the relationship which the proposed examinee has, or has had, to the company is to be read as a reference to that person's interest in the relevant scheme or dealings with the operator.
Chapter 20 (order of payment of costs, etc., out of assets)		
4.218	General rule as to priority	Paragraph (2) is to be read as if sub-paragraph (b) were omitted. Paragraph (3) is to be read as if the words "Subject as provided in Rules 4.218A to 4.218E," were omitted. In paragraphs (2) and (3) a reference to any legal action or proceedings or any arbitration or other dispute resolution procedure which the liquidator has power to bring or defend in the name of the company is to be read as a reference to such action, proceedings or procedure which the liquidator has power to bring or defend on behalf of the participants.

4.218A to 4.218E	Litigation expenses and property subject to a floating charge	These Rules do not apply.
4.220	Saving for powers of the court	In paragraph (2)— (a) the reference to proceedings by or against the company is to be read as a reference to proceedings brought by or against the operator for the resolution of any matter relating to the relevant scheme; and (b) the reference to the power of any court to order costs to be paid by the company is to be read as a reference to the power of any court to order costs to be paid out of the property subject to the relevant scheme.
Chapters 21, 22 and 23		
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 presented under regulation 17(9).
7.31A	Court file	In paragraph (4)(a)— (a) the reference to an officer or former officer of the company is to be read as a reference to the operator and the depositary; and (b) the reference to a member of the company is to be read as a reference to a participant.
7.41	Costs and expenses of witnesses	In paragraph (1) the reference to an officer of the insolvent company is to be read as a reference to— (a) the operator or any person who is employed by the operator; or (b) the depositary or any person who is employed by the depositary.
7.56	Service of orders staying proceedings	The reference to the property of a company is to be read as a reference to the property subject to a relevant scheme.
Part 8 (proxies and company representation)		
8.5	Right of inspection	In paragraph (3) the right of inspection exercisable in the case of an insolvent company by its directors is exercisable in the case of the relevant scheme by the operator or the depositary.

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

SCHEDULE 4

Regulation 17(8)

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

PART 1

Application of Rules with modifications

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

(a) the general modifications set out in paragraph 2;

(b) any other modification specified in the Table in Part 2 of this Schedule; and

(c) any other necessary modification.

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

(a) a reference to a company includes a reference to a relevant scheme;

(b) a reference to a voluntary winding up or a resolution for voluntary winding up of a company is to be ignored;

(c) in any provision relating to—

(i) the possession or control of any books, papers, records or other property,

(ii) sending any documents or records to a third party, or

(iii) the giving or sending of any notice,

a reference to the company is to be read as a reference to the operator of the relevant scheme;

(d) a reference to a creditor of a company is to be read as a reference to a creditor of the relevant scheme;

(e) a reference to a contributory or to a meeting of contributories is to be ignored;

(f) a reference to a member of a company is to be ignored;

(g) a reference to the property or assets of a company is to be read as a reference to the property subject to the relevant scheme;

(h) a reference to a debt or liability of a company is to be read as a reference to a debt or liability of the relevant scheme;

(i) a reference to the registrar of companies or to the Accountant in Bankruptcy or to the registrar of companies and the Accountant in Bankruptcy is to be read as a reference to the FCA; and

(j) where a Rule of the Insolvency (Scotland) Rules 1986 applies a provision of the Bankruptcy (Scotland) Act 1985(**b**) which contains a reference to the debtor (except in the expression "the debtor's estate"), the Rule is to be read as if it modified the provision concerned by requiring that reference to be read as a reference to the operator.

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

(**b**) 1985 c. 66.

PART 2

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

Rule	*Subject*	*Modification*
Part 4 (winding up by the court)		
Chapter 1 (provisional liquidator)		
4.1	Appointment of provisional liquidator	Paragraph (1) is to be read as if the words “or by the company itself,” were omitted.
4.3	Caution	Paragraph (a) is to be read as if the words “against the company” were omitted.
Chapter 3 (information)		
4.10	Information to creditors and contributories	This Rule is to be read as if paragraph (1A) were omitted.
Chapter 4 (meeting of creditors and contributories)		
4.12	First meetings in the liquidation	This Rule is to be read as if— (a) in paragraph (1) for the words from “under section 138(3)” to “as the case may be,” there were substituted “the interim liquidator summons”; (b) for paragraphs (2) and (2A) there were substituted— “(2) That meeting is to be known as “the first meeting of creditors” and must be summoned for a date not later than 42 days after the date of the winding-up order or such longer period as the court may allow.”; and (c) paragraph (4) were omitted.
4.14	Attendance at meetings of company’s personnel	This Rule is to be read as if paragraph (3) were omitted. A reference to the company’s personnel is to be read as a reference to— (a) the operator and the depositary; and (b) the directors and employees of the operator and the depositary.
Chapter 5 (claims in liquidation)		
4.16	Application of the Bankruptcy (Scotland) Act 1985	This Rule is to be read, in relation to section 49 of the Bankruptcy (Scotland) Act 1985, as if it included a modification of subsection (6A) having the effect that the operator may appeal if, and only if, it satisfies the sheriff that the participants have, or are likely to have, a pecuniary interest in the outcome of the appeal. In paragraph (2) the expression in column 2 of the table which is substituted for a reference to the expression “Debtor” in column 1 of the table is to be read, in relation to sections 22(5) and 44(2) of the Bankruptcy (Scotland) Act 1985, as a reference to—

		(a) the operator; or (b) a director or employee of the operator.
4.17	Claims in foreign currency	In paragraph (1) each reference to the company is to be read as a reference to the operator.
Chapter 6 (the liquidator)		
4.18	Appointment of liquidator by the court	Paragraph (1) is to be read as if the words from ", 139(4)" to the end were omitted.
4.19	Appointment by creditors or contributories	Paragraph (2) is to be read as if the words "Subject to section 139(4)" were omitted.
4.22	Taking possession and realisation of the company's assets	In paragraph (1)(a) the reference to any property, books, papers or records to which the company appears to be entitled is to be read as a reference to any property that appears to be property subject to the relevant scheme, and to any books, papers or records that appear to affect or relate to that property or to the affairs of the relevant scheme. In paragraph (4) the reference to any title deed or other document or record of the company is to be read as a reference to any title deed or other document or record that affects or relates to the property subject to the relevant scheme or to the affairs of the relevant scheme.
4.28	Resignation of liquidator	Paragraph (2) is to be read as if the words from "and a statement" to the end were omitted.
4.31	Final meeting	Paragraph (2) is to be read as if the words from "and a statement" to the end were omitted.
4.38	Power of court to set aside certain transactions	Paragraph (1) is to be read as if the court's power to order the liquidator to compensate the company for loss suffered in consequence of a transaction which is set aside included power to order the liquidator, by way of compensation for loss suffered in consequence of such a transaction, to contribute any sum to the property subject to the relevant scheme.
Chapter 7 (the liquidation committee)		
4.41	Membership of committee	Paragraph (1) is to be read as if the words "Subject to Rule 4.43 below," were omitted.
4.43	Committee established by contributories	This Rule does not apply.
4.59	Composition of committee when creditors paid in full	This Rule is to be read as if— (a) at the end of paragraph (3) there were inserted "and the committee is abolished"; and (b) paragraphs (4) to (7) were omitted.
Chapter 9 (distribution of company's assets by liquidator)		
4.66	Order of priority in distribution	Paragraph (4) is to be read as if the words "Subject to the provisions of section 175,"

		were omitted. In paragraph (5) the reference to the members is to be read as a reference to the participants.
4.67	Order of priority of expenses of liquidation	In paragraph (3)— (a) the reference to proceedings by or against the company is to be read as a reference to proceedings brought by or against the operator for the resolution of any matter relating to the relevant scheme; and (b) the reference to the power of any court to order expenses to be paid by the company is to be read as a reference to the power of any court to order expenses to be paid out of the property subject to the relevant scheme.
4.68	Application of the Bankruptcy (Scotland) Act 1985 (procedure after end of accounting period)	This Rule is to be read, in relation to section 53 of the Bankruptcy (Scotland) Act 1985, as if it included a modification of subsection (6A) having the effect that the operator may appeal if, and only if, it satisfies the Accountant in Bankruptcy(**a**) or, as the case may be, the sheriff that the participants have, or are likely to have, a pecuniary interest in the outcome of the appeal.
Chapter 10 (special manager)		
4.69 to 4.73	Special manager	These Rules do not apply.
Chapter 11 (public examination of company officers and others)		
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 relevant scheme or dealings with the operator.
Chapters 13, 14 and 15		
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)		
Chapter 2 (proxies and company representation)		
7.18	Right of inspection	In paragraph (3) the right of inspection exercisable in the case of an insolvent company by its directors is exercisable in the case of the relevant scheme by the operator or the depositary.
Chapter 3 (miscellaneous)		
7.21A and 7.21B	Contents of notices	Instead of the particulars in paragraph (3) of each of these Rules all notices published

(**a**) By virtue of Rule 4.16(2) the reference to the Accountant in Bankruptcy is to be read as a reference to the court.

		must specify the name of the relevant scheme and the name and registered office (or principal place of business) of the operator and of the depositary.
7.26	Right to list of creditors and copy documents	In paragraph (2A)(**a**) the first reference to a member is to be read as a reference to a participant.
7.27	Confidentiality of documents	In paragraph (1)(b) the reference, in relation to the winding up of a company, to the company's members is to be read, in relation to the winding up of a relevant scheme, as a reference to— (a) the operator or depositary of the relevant scheme; or (b) the participants in it.
7.30	Forms for use in insolvency proceedings	Any form prescribed for use by this Rule which is used in proceedings for winding up a relevant scheme is to be read with the modifications set out in this Schedule (so far as applicable for the form concerned). The reference to the use of a form with such variations as circumstances require includes a reference to its use with such variations as are necessary to take account of applicable modifications.
7.32	Power of court to cure defects in procedure	The table in paragraph (2) is to be read as if the entry for the expression "Debtor" were omitted. In the entry for the expression "Permanent trustee" the reference to "Responsible insolvency practitioner" is to be read as a reference to the responsible insolvency practitioner in proceedings for winding up the relevant scheme.
7.33	Sederunt book	Paragraph (7) is to be read as if for sub-paragraph (d) there were substituted— "(d) in the case of a winding up, the date on which the liquidator vacates office under section 172(8) or the date of a certificate of release issued by the Accountant of Court".
7.34	Disposal of company's books, papers and other records	In paragraphs (1), (2) and (3) a reference to the company's books, papers and records is to be read as a reference to all books, papers and other records affecting or relating to the affairs of, or the property subject to, the relevant scheme. In paragraph (3) the reference to the date which is 12 months after the dissolution of the company shall be read as a reference to

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

		the date which is 12 months after the date of a notice given by the liquidator in compliance with Rule 4.31(4) which states that the liquidator has been released.
7.36	Information about time spent on a case	In paragraph (2)(b) the reference, in relation to a company, to any director is to be read, in relation to a relevant scheme, as a reference to the operator or depositary of the relevant scheme.

SCHEDULE 5

Regulation 17(8)

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

PART 1

Application of Rules with modifications

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

(a) the general modifications set out in paragraphs 2 and 3;

(b) any other modification specified in the Table in Part 2 of this Schedule; and

(c) any other necessary modification.

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

3. A reference to the registrar(**b**) is to be read as a reference to the FCA.

PART 2

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

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

(**a**) S.R. 1991 No. 364 as amended by S.R. 1994 No. 26, 1995 No. 291, 2000 No. 247, 2002 No. 261, 2003 No. 549, 2004 No. 355, 2006 No. 47, 2008 No. 118, 2009 No. 404 and 2011 No. 151.
(**b**) The registrar is the registrar of companies for Northern Ireland (see Article 5(1) of the 1989 Order (interpretation)).

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

Chapter 6 (Statement of affairs and other information)		
4.043	Submission of accounts	A reference to the accounts of the company is to be read as a reference to the accounts relating to the affairs of the relevant scheme.
Chapter 7 (information to creditors and contributories)		
4.047	Reports by official receiver	This Rule is to be read as if paragraphs (1A) and (1B) were omitted.
4.052	Winding up stayed	In paragraph (2) the reference to the company is to be read as a reference to the operator.
Chapter 8 (meetings of creditors and contributories)		
4.065	Attendance at meetings of company's personnel	A reference to the company's personnel is to be read as a reference to— (a) the operator and the depositary; and (b) the directors and employees of the operator and the depositary.
Chapter 9 (proof of debts in a liquidation)		
4.085	Liquidator to allow inspection of proofs	The reference to any contributory of the company is to be read as a reference to the operator or the depositary.
4.089	Appeal against decision on proof	In paragraph (3) the reference to a contributory is to be read as a reference to the operator or the depositary.
4.096	Mutual credits and set-off	A reference to mutual credits, mutual debts or other mutual dealings between the company and any creditor is to be read as a reference to mutual credits etc. between the operator on behalf of the participants and a creditor, and a reference to any obligation to or from the company, or any sum due or owed to, or due from, the company is to be read accordingly.
Chapter 10 (secured creditors)		
4.104	Test of security's value	In paragraph (2) the reference to the liquidator on behalf of the company is to be read as a reference to the liquidator acting in the best interests of the relevant scheme.
Chapter 11 (the liquidator)		
4.131	Release of official receiver	This Rule is to be read as if paragraph (2A) were omitted.
4.132	Final meeting	This Rule is to be read as if paragraph (2A) were omitted.
4.135	Other matters affecting remuneration	Paragraph (3) is to be read as if for the words "act on behalf of the company" there were substituted "act in the liquidation".
4.145	Liquidator's duties on vacating office	A reference to the company's books, papers and other records is to be read as a reference to all books, papers and other records affecting or relating to the affairs of, or the property subject to, the relevant scheme.
4.157	Power of court to set aside certain transactions	Paragraph (1) is to be read as if the court's power to order the liquidator to compensate the company for loss suffered in

		consequence of a transaction which is set aside included power to order the liquidator, by way of compensation for loss suffered in consequence of such a transaction, to contribute any sum to the property subject to the relevant scheme.
Chapter 12 (the liquidation committee)		
4.160	Membership of committee	Paragraph (1) is to be read as if the words "Subject to Rule 4.162," were omitted.
4.162	Committee established by contributories	This Rule does not apply.
4.179	Composition of committee when creditors paid in full	This Rule is to be read as if— (a) at the end of paragraph (4) there were inserted "and the committee is abolished"; and (b) paragraphs (5) to (9) were omitted.
Chapter 14 (collection and distribution of company's assets by liquidator		
4.190	Debts of insolvent company to rank equally	This Rule is to be read as if the references to preferential debts were omitted.
Chapter 15 (disclaimer)		
4.198	Communication of disclaimer to persons interested	In paragraph (2) the reference to a person who claims under the company as underlessee or mortgagee is to be read as a reference to a person claiming as underlessee or mortgagee under the leasehold title which is held by the depositary (or a person nominated by the depositary to hold the leasehold title).
Chapters 16, 17 and 18		
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.
Chapter 19 (public examination of company officers and others)		
4.223	Order on request by creditors or contributories	In paragraph (3) the reference to the relationship which the proposed examinee has, or has had, to the company is to be read as a reference to that person's interest in the relevant scheme or dealings with the operator.
Chapter 20 (order of payment of costs out of assets)		
4.228	General rule as to priority	Paragraph (2) is to be read as if sub-paragraph (b) were omitted. Paragraph (3) is to be read as if the words "Subject as provided in Rules 4.228A to 4.228E," were omitted. In paragraphs (2) and (3) a reference to any legal action or proceedings or any arbitration or other dispute resolution procedure which the liquidator has power to bring or defend in the name of the company is to be read as a

		reference to such action, proceedings or procedure which the liquidator has power to bring or defend on behalf of the participants.
4.228A to 4.228E	Litigation expenses and property subject to a floating charge	These Rules do not apply.
4.230	Saving for powers of the court	In paragraph (2)— (a) the reference to proceedings by or against the company is to be read as a reference to proceedings brought by or against the operator for the resolution of any matter relating to the relevant scheme; and (b) the reference to the power of any court to order costs to be paid by the company is to be read as a reference to the power of any court to order costs to be paid out of the property subject to the relevant scheme.
Chapter 21 (miscellaneous rules)		
4.231 and 4.232	Order authorising a return of capital	These Rules do not apply.
4.233	Statement to registrar under Article 162	This Rule is to be read as if paragraph (2) were omitted.
4.234 and 4.235	Dissolution after winding up	These Rules do not apply.
Chapters 22 and 23		
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 presented under regulation 17(9).
7.27	Right to inspect the file	In paragraph (2)(a)— (a) the reference to a director or officer of the company is to be read as a reference to the operator and the depositary; and (b) the reference to a member of the company is to be read as a reference to a participant.
7.37	Costs and expenses of witnesses	In paragraph (1) the reference to an officer of the insolvent company is to be read as a reference to— (a) the operator or any person who is employed by the operator; or (b) the depositary or any person who is employed by the depositary.
7.51	Restriction on concurrent proceedings and remedies	The reference to the property of a company is to be read as a reference to the property subject to a relevant scheme.

Part 8 (proxies and company representation)		
8.5	Right of inspection	In paragraph (3) the right of inspection exercisable in the case of an insolvent company by its directors is exercisable in the case of the relevant scheme by the operator or the depositary.
Part 12 (miscellaneous and general)		
12.08	Forms for use in insolvency proceedings	Any form prescribed for use by this Rule which is used in proceedings for winding up a relevant scheme is to be read with the modifications set out in this Schedule (so far as applicable for the form concerned). This Rule is to be read, in relation to such a form, as subject to a requirement to vary the form as necessary to take account of applicable modifications.
12.17	Charge for copy documents	The first reference to a member is to be read as a reference to a participant.
12.20	False claim of status as creditor, etc.	In paragraph (1)— (a) each reference to the Rules is to be read as a reference to the Rules as modified by this Schedule; and (b) the reference to the members of a company is to be read, in relation to the winding up of a relevant scheme, as a reference to— (i) the operator or depositary of the relevant scheme; or (ii) the participants in it.

EXPLANATORY NOTE

(This note is not part of the Regulations)

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

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

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

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

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

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

- sub-paragraph (a) amends section 237(1) to exclude contractual schemes from the definition of "unit trust scheme";
- sub-paragraph (b) amends section 237(2) to specify who the operator is for a co-ownership scheme and a partnership scheme;
- sub-paragraph (d) inserts definitions for co-ownership schemes that consist of segregated sub-schemes and those that do not.

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

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

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

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

Sections 261M to 261P make provision about the contracts and the rights and liabilities of the participants in an authorised co-ownership scheme. Section 261O limits their liability for debts incurred under, or in connection with, contracts which the operator is authorised to enter into on

their behalf. Section 261P provides for the segregation of the liabilities of participants in sub-schemes (where a co-ownership scheme is constituted as an umbrella co-ownership scheme).

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

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

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

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

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

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

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

- the general partner's liability for partnership debts and obligations is qualified by regulations 18 and 19 of these Regulations;
- a limited partner is not liable for partnership debts and obligations beyond the amount of partnership property which is available to the general partner to meet them, and a person who ceases to be a limited partner ceases to have any liability for debts and obligations;
- the exercise of rights conferred on participants in a contractual scheme by FCA rules does not constitute taking part in the management of the partnership; and
- modified provision is made in relation to the registration of changes in the partnership.

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

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

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

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

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

— the Law of Property Act 1925 (c.20) and the Statute of Frauds (Ireland) 1695 (c.12 (Ir), which would require transfers of title to units in a co-ownership scheme to be in writing; and

— the Requirements of Writing (Scotland) Act 1995 (c.7), which would require gifts of title to units in any contractual scheme to be in writing.

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

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

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

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

HM Treasury contacts

This document can be found in full on our website: http://www.hm-treasury.gov.uk

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