

SCHEDULE 4

Regulation 5

GENERAL AND CONSEQUENTIAL AMENDMENTS IN OTHER LEGISLATION

Insolvency Act 1986 c. 45

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

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

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

“sale–

(a) in the case of the transferee company, shares, policies or other like interests in the company for distribution among the members of the transferor company, or

(b) in the case of the transferee limited liability partnership, membership in the limited liability partnership for distribution among the members of the transferor company.”.

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

“may–

(a) in the case of the transferee company, in lieu of receiving cash, shares, policies or other like interests (or in addition thereto) participate in the profits of, or receive any other benefit from, the company, or

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

Criminal Procedure (Scotland) Act 1995 c. 46

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

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

2. In section 141(2), insert at the end–

“; and in sub-paragraph (b)(i) of this subsection references to the director or secretary or other official, in relation to a limited liability partnership, are to any member of the limited liability partnership”.

3. In section 143(3), insert at the end–

“; and in paragraph 3(b) of this subsection references to the managing director or the secretary, in relation to a limited liability partnership, are to any member of the limited liability partnership”.

Requirements of Writing (Scotland) Act 1995 c. 7

4. In section 7 (7) after “companies,” insert “limited liability partnerships,”.

5. After paragraph 3 of Schedule 2, insert–

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“Limited Liability Partnerships

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

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

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

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

(5) In section 3—

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

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

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

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

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

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

(ii) that it was not validly witnessed for any reason specified in paragraphs (a) to (e) of subsection (4) below,

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

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

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

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

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

(6) In paragraph 1 of Schedule 1—

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

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

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

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

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

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

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

“; or

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

Culpable officer provision

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

(2) A culpable officer provision is a devolved provision in any Act or subordinate legislation (within the meaning of the Interpretation Act 1978 or the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999(1)) to the effect that where—

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

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

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