

## 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;

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- (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(1);
- (l) a reference to an officer (other than a past officer) of the company is to be read as a reference to—
  - (i) a director of the operator or of the depositary; or
  - (ii) a person employed by the operator or by the depositary; and
- (m) a reference to a past officer of the company is to be read as a reference to—
  - (i) a previous director of the operator or of the depositary;
  - (ii) someone who is, or was previously, a director of a person who has been replaced as the operator or the depositary, and was a director when that person was the operator or the depositary;
  - (iii) a person who was previously employed by the operator or by the depositary; or
  - (iv) someone who is, or was previously, employed by a person who has been replaced as the operator or the depositary, and was so employed when that person was the operator or the depositary.

### PART 3

#### Table of applied provisions of the 1986 Act(2)

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

(1) 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.

(2) 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;

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

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

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<i>Provision of the 1986 Act</i>	<i>Modification</i>
Section 132 (investigation by official receiver)	
Section 133 (public examination of officers)	<p>Subsection (1) is to be read as if for paragraph (b) there were substituted—</p> <p>“(b) has acted as liquidator of the relevant scheme;”.</p> <p>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.</p>
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)	<p>This section is to be read as if for subsections (3) and (4) there were substituted—</p> <p>“(3) The liquidator shall be the person (if any) nominated by the creditors.”.</p>
Section 141 (liquidation committee (England and Wales))	This section is to be read as if subsection (3) were omitted.
Section 142 (liquidation committee (Scotland))	<p>This section is to be read as if—</p> <p>(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;”;</p> <p>(b) in subsection (3) the words “, if appointed by the court otherwise than under section 139(4)(a),” were omitted; and</p> <p>(c) subsection (4) were omitted.</p>
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.

<i>Provision of the 1986 Act</i>	<i>Modification</i>
Section 146 (duty to summon final meeting)	
Section 147 (power to stay or sist winding up)	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)	
<b>Chapter 7 (liquidators)</b>	
Section 163 (style and title of liquidators)	
Section 164 (corrupt inducement affecting appointment)	
Section 167 (winding up by the court)	Subsection (2)(a) is to be read as if for the words “a person who is connected with the company (within the meaning of section 249 in Part VII)” there were substituted “the operator or the depositary of the relevant scheme or a person who is an associate of the operator or depositary”.
Section 168 (supplementary powers (England and Wales))	

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

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

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



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

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

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

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

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

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

## PART 4

Table of applied provisions of the 1989 Order<sup>(3)</sup>

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

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

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



<i>Provision of the 1989 Order</i>	<i>Modification</i>
Article 112 (investigation by official receiver)	
Article 113 (public examination of officers)	Paragraph (1) is to be read as if for sub-paragraph (b) there were substituted— “(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

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

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

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

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

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

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

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



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