

SCHEDULE 2

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

PART 4

Table of applied provisions of the 1989 Order^{M1}

Marginal Citations

M1 Relevant amendments to the provisions of the 1989 Order set out in the Table are as follows: Article 2 was amended by [S.I. 2007/2194](#); Article 104A was inserted by [S.I. 1990/1504 \(N.I. 10\)](#) and amended by the [Criminal Justice Act 1993 \(c. 36\)](#), [Schedule 5, paragraph 22](#) and Schedule 6, Part II, and by [S.I. 2001/3649](#) and 2009/1941; Articles 110(1), 125(3), 136 and 137(1) were amended by [S.I. 2009/1941](#); Article 159(1) was substituted by [S.I. 2006/3429](#) and amended by [S.I. 2008/1897](#); Article 164 was amended by [S.I. 2009/1941](#); Article 165 was amended by the [Justice \(Northern Ireland\) Act 2002 \(c. 26\)](#), [Schedule 4, paragraph 36](#); Article 179 was amended by the [Civil Partnerships Act 2004 \(c. 33\)](#), [Schedule 27, paragraph 81](#); Articles 182 and 183 were amended by [S.I. 2002/3152 \(N.I. 16\)](#) and 2009/1941; Article 184 was substituted by [S.I. 2009/1941](#); Article 185 was amended by [S.R. 2002 No. 334](#) and [S.I. 2009/1941](#); Article 193 was amended by [S.I. 2009/1941](#); Article 204 was amended by [S.I. 2005/1455 \(N.I. 10\)](#); Article 205 was amended by the [Insolvency \(No. 2\) Act 1994 \(c. 12\)](#), [section 3\(3\)](#); Article 385 was inserted by [S.I. 2008/948](#); and Schedule 2 was amended by [S.I. 2005/1452 \(N.I. 7\)](#) and 2005/1455 (N.I. 10).

<i>Provision of the 1989 Order</i>	<i>Modification</i>
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	

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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 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.

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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)

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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

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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 In this Article— (leaseholds))

- (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)

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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—

(c) 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

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scheme would avoid going into insolvent liquidation”; and

(d) 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.

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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

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- (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”.

Article 203 (preferences)

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.

Article 204 (“relevant time” under Articles 202, 203)

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

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(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).

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.)

Part 12 (insolvency practitioners and their qualification)

Article 348 (acting as insolvency practitioner without qualification)

[^{F1}Article 349 (persons not qualified to act as insolvency practitioner) This Article is to be read as if for paragraph (2) there were substituted—

“(2) A person is not qualified to act at any time as an insolvency practitioner in relation to a relevant scheme unless at that time the person is fully authorised to act as an insolvency practitioner or partially authorised to act as an insolvency practitioner only in relation to companies.”.]

[^{F1}Article 349A (authorisation of insolvency practitioners)

In these Articles a reference to a company, except in a reference to creditors of a company, is to be read without modification by this Schedule.]

Articles 350 to 350T (regulation of insolvency practitioners)

Part 14 (miscellaneous)

Article 373 (prosecution and punishment of offences)

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

Article 374 (summary proceedings)

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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.

F1 Words in Sch. 2 Pt. 4 inserted (7.4.2017) by [The Deregulation Act 2015](#), the [Small Business, Enterprise and Employment Act 2015](#) and the [Insolvency \(Amendment\) Act \(Northern Ireland\) 2016](#) (Consequential Amendments and Transitional Provisions) Regulations 2017 (S.I. 2017/400), regs. 1(2), **11(3)**

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Changes and effects yet to be applied to :

- Regulations power to modify conferred by [2023 c. 29 s. 3Sch. 1 Pt. 2](#)
- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)