

## 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 <sup>M1</sup>, 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.

#### Marginal Citations

**M1** [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.

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 <sup>M2</sup> 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.

**Marginal Citations**

M2 1985 c. 66.

**PART 2**

## Table of specific modifications of the Insolvency (Scotland) Rules 1986

<i>Rule</i>	<i>Subject</i>	<i>Modification</i>
<i>Part 4 (winding up by the court)</i>		
<i>Chapter 1 (provisional liquidator)</i>		
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— <ul style="list-style-type: none"> <li>(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 ”;</li> <li>(b) for paragraphs (2) and (2A) there were substituted— <ul style="list-style-type: none"> <li>“(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</li> </ul> </li> <li>(c) paragraph (4) were omitted.</li> </ul>
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— <ul style="list-style-type: none"> <li>(a) the operator and the depositary; and</li> <li>(b) the directors and employees of the operator and the depositary.</li> </ul>
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—  
(c) the operator; or  
(d) 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

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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

M3

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 Special manager	These Rules do not apply.
4.73		
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 Company with prohibited name	These Rules do not apply.
4.82		
4.83	and EC Regulation	These Rules do not apply.
4.84		
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 Contents of notices	Instead of the particulars in paragraph (3) of each of these Rules all notices published 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.
7.21B		
7.26	Right to list of creditors and copy documents	In paragraph (2A) M4 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

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		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 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.

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#### **Marginal Citations**

- M3** By virtue of Rule 4.16(2) the reference to the Accountant in Bankruptcy is to be read as a reference to the court.
- M4** The second paragraph (2A), which was inserted by [S.I. 1987/1921](#).

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