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SCOTTISH STATUTORY INSTRUMENTS

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**2001 No. 128**

**PARTNERSHIPS**

**Limited Liability Partnerships (Scotland) Regulations 2001**

*Made* - - - - *28th March 2001*

*Coming into force* - - *6th April 2001*

The Scottish Ministers, in exercise of the powers conferred by sections 14(1) and (2), 15, 16 and 17(1) and (3) of the Limited Liability Partnerships Act 2000<sup>(1)</sup> and all other powers enabling them in that behalf, hereby make the following Regulations, a draft of which has, in accordance with section 17(4) of that Act, been approved by resolution of the Scottish Parliament:

**PART I**

**CITATION, COMMENCEMENT EXTENT AND INTERPRETATION**

**Citation, commencement and extent**

1.—(1) These Regulations may be cited as the Limited Liability Partnerships (Scotland) Regulations 2001 and shall come into force on 6th April 2001.

(2) These Regulations extend to Scotland only.

**Interpretation**

2. In these Regulations—

“the 1985 Act” means the Companies Act 1985<sup>(2)</sup>;

“the 1986 Act” means the Insolvency Act 1986<sup>(3)</sup>;

“limited liability partnership agreement”, in relation to a limited liability partnership, means any agreement, express or implied, made between the members of the limited liability partnership or between the limited liability partnership and the members of the limited liability partnership which determines the mutual rights and duties of the members, and their rights and duties in relation to the limited liability partnership;

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(1) 2000 c. 12. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46) as read with section 19(3) of the Limited Liability Partnership Act 2000 (“the 2000 Act”) which deemed the 2000 Act to be a pre-commencement enactment within the meaning of the Scotland Act 1998.

(2) 1985 c. 6.

(3) 1986 c. 45.

“the principal Act” means the Limited Liability Partnerships Act 2000; and  
“shadow member”, in relation to a limited liability partnership, means a person in accordance with whose directions or instructions the members of the limited liability partnership are accustomed to act (but so that a person is not deemed a shadow member by reason only that the members of the limited liability partnership act on advice given by that person in a professional capacity).

## PART II COMPANIES ACT

### **Application of the 1985 Act to limited liability partnerships**

3. The provisions of the 1985 Act specified in the first column of Schedule 1 to these Regulations shall apply to limited liability partnerships, with the following modifications—

- (a) references to a company shall include references to a limited liability partnership;
- (b) references to the Companies Acts shall include references to the principal Act and any regulations made thereunder;
- (c) references to the 1986 Act shall include references to that Act as it applies to limited liability partnerships by virtue of Part III of these Regulations;
- (d) references in a provision of the 1985 Act to other provisions of that Act shall include references to those other provisions as they apply to limited liability partnerships by virtue of these Regulations; and
- (e) the modifications, if any, specified in the second column of Schedule 1 of the provision specified opposite them in the first column.

## PART III WINDING UP AND INSOLVENCY

### **Application of the 1986 Act to limited liability partnerships**

4.—(1) Subject to paragraph (2), the provisions of the 1986 Act(4) listed in Schedule 2 shall apply in relation to limited liability partnerships as they apply in relation to companies.

(2) The provisions of the 1986 Act referred to in paragraph (1) shall so apply, with the following modifications—

- (a) references to a company shall include references to a limited liability partnership;
- (b) references to a director or to an officer of a company shall include references to a member of a limited liability partnership;
- (c) references to a shadow director shall include references to a shadow member;
- (d) references to the 1985 Act, the Company Directors Disqualification Act 1986(5), the Companies Act 1989(6) or to any provisions of those Acts or to any provisions of the 1986

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(4) The provisions of the Insolvency Act 1986 applied by this regulation have been amended as follows: -section 57 was amended by section 3 of, the Insolvency Act 1994 (c. 7); section 162 was amended by section 52 of, and Part III of Schedule 2 to, the Court of Session Act 1988 (c. 36).

(5) 1986 c. 46.

(6) 1989 c. 40.

- Act shall include references to those Acts or provisions as they apply to limited liability partnerships by virtue of the principal Act or these Regulations; and
- (e) the modifications set out in Schedule 3 to these Regulations.

## PART IV

### MISCELLANEOUS

#### **General and consequential amendments**

5. The enactments referred to in Schedule 4 shall have effect subject to the amendments specified in that Schedule.

#### **Application of subordinate legislation**

6.—(1) The Insolvency (Scotland) Rules 1986(7) shall apply to limited liability partnerships with such modifications as the context requires for the purpose of giving effect to the provisions of the Insolvency Act 1986 which are applied by these Regulations.

(2) In the case of any conflict between any provision of the subordinate legislation applied by paragraph (1) and any provision of these Regulations, the latter shall prevail.

St Andrew's House,  
Edinburgh  
28th March 2001

*JAMES R WALLACE*  
A member of the Scottish Executive

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

## SCHEDULE 1

Regulation 3

## MODIFICATIONS TO PROVISIONS OF THE 1985 ACT

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*Formalities of Carrying on Business*


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36B(8) (execution of documents by companies)

**Floating charges and Receivers (Scotland)**

462 (power of incorporated company to create floating charge)(9) In subsection (1), for the words “an incorporated company (whether a company within the meaning of this Act or not),” substitute “a limited liability partnership”, and the words “(including uncalled capital)” are omitted.

463 (effect of floating charge on winding up)(10)

466(11) (alteration of floating charges)  
Subsections (1), (2), (3) and (6)

486 (interpretation for Part XVIII generally)(12) For the definition of “company” substitute ““company” means a limited liability partnership;”

487 (extent of Part XVIII)

## SCHEDULE 2

Regulation 4(1)

## PROVISIONS OF THE 1986 ACT

The relevant provisions of the 1986 Act are as follows:

Sections 50 to 52;

Section 53(1) and (2), to the extent that those subsections do not relate to the requirement for a copy of the instrument and notice being delivered to the registrar of companies;

Section 53(4), (6) and (7);

Section 54(1), (2), (3) (to the extent that that subsection does not relate to the requirement for a copy of the interlocutor to be delivered to the registrar of companies), and subsections (5), (6) and (7);

Sections 55 to 58;

Section 60, other than subsection (1);

Section 61, including subsections (6) and (7) to the extent that those subsections do not relate to anything to be done or which may be sent to the registrar of companies;

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- (8) Section 36B was inserted by section 130(3) of the Companies Act 1989 and was substituted by section 14(1), Schedule 14 of the Requirements of Writing (Scotland) Act 1995 (c. 7)
- (9) Section 462 was amended by section 74(1), (2), Schedule 8, paragraph 33(6), Schedule 9 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 (c. 40), section 14(2) and Schedule 5 of the Requirements of Writing (Scotland) Act 1985 (c. 7) and section 439(1), Schedule 13, Part I of the Insolvency Act 1986.
- (10) Section 463 was amended by section 140 of the Companies Act 1989 (c. 40) and sections 439(1), Schedule 13, Part I and section 438 and Schedule 12 of the Insolvency Act 1986.
- (11) Section 466 was amended by sections 130, 140 and 212 of, and paragraph 9 of Schedule 17 and Schedule 24 to, the Companies Act 1989 (c. 40).
- (12) Section 486 was amended by section 438 of and Schedule 12 to the Insolvency Act 1986.

Section 62, including subsection (5) to the extent that that subsection does not relate to anything to be done or which may be sent to the registrar of companies;

Sections 63 to 66;

Section 67, including subsections (1) and (8) to the extent that those subsections do not relate to anything to be sent to the registrar of companies;

Section 68;

Section 69, including subsections (1) and (2) to the extent that those subsections do not relate to anything to be done or which may be done by the registrar of companies;

Sections 70 and 71;

Subsection 84(3) to the extent that it does not concern the copy of the resolution being forwarded to the registrar of companies within 15 days;

Sections 91 to 93;

Section 94, including subsections (3) and (4) to the extent that those subsections do not relate to the liquidator being required to send to the registrar of companies a copy of the account and a return of the final meeting;

Section 95;

Section 97;

Sections 100 to 102;

Sections 104 to 105;

Section 106, including subsections (3), (4) and (5) to the extent that those subsections do not relate to the liquidator being required to send to the registrar of companies a copy of the account of winding up and a return of the final meeting/quorum;

Sections 109 to 111;

Section 112, including subsection (3) to the extent that that subsection does not relate to the liquidator being required to send to the registrar of companies a copy of the order made by the court;

Sections 113 to 115;

Sections 126 to 128;

Section 130(1) to the extent that that subsection does not relate to a copy of the order being forwarded by the court to the registrar of companies;

Section 131;

Sections 133 to 135;

Sections 138 to 140;

Sections 142 to 146;

Section 147, including subsection (3) to the extent that that subsection does not relate to a copy of the order being forwarded by the company to the registrar of companies;

Section 162 to the extent that the section concerns the matters set out in Section C.2 of Schedule 5 to the Scotland Act 1998 as being exceptions to the reservation of insolvency;

Sections 163 to 167;

Section 169;

Section 170, including subsection (2) to the extent that that subsection does not relate to an application being made by the registrar to make good the default;

Section 171;