
STATUTORY INSTRUMENTS

1990 No. 1504

The Companies (No. 2) (Northern Ireland) Order 1990

PART V

FINANCIAL MARKETS AND INSOLVENCY

Market charges

Market charges

95.—(1) In this Part “market charge” means a charge, whether fixed or floating, granted—

- (a) in favour of a recognised investment exchange, for the purpose of securing debts or liabilities arising in connection with the settlement of market contracts,
- [^{F1}(aa) in favour of The Stock Exchange, for the purpose of securing debts or liabilities arising in connection with short term certificates;]
- (b) in favour of a recognised clearing house, for the purpose of securing debts or liabilities arising in connection with their ensuring the performance of market contracts, or
- (c) in favour of a person who agrees to make payments as a result of the transfer[^{F1} or allotment] of specified securities made through the medium of a computer-based system established by the Bank of England and The Stock Exchange, for the purpose of securing debts or liabilities of the transferee[^{F1} or allottee] arising in connection therewith.

(2) Where a charge is granted partly for purposes specified in paragraph (1)(a), [^{F1} (aa),] (b) or (c) and partly for other purposes, it is a “market charge” so far as it has effect for the specified purposes.

(3) [^{F1} In paragraph (1)—

“short term certificate” means an instrument issued by The Stock Exchange undertaking to procure the transfer of property of a value and description specified in the instrument to or to the order of the person to whom the instrument is issued or his endorsee or to a person acting on behalf of either of them and also undertaking to make appropriate payment in cash, in the event that the obligation to procure the transfer of property cannot be discharged in whole or in part;

“specified securities” means securities for the time being specified in the list in Schedule 1 to the Stock Exchange Transfer Act 1982, and includes any right to such securities; and

“transfer”, in relation to any such securities or right, means a transfer of the beneficial interest.

(4) The Department may by regulations make further provision as to the charges granted in favour of any such person as is mentioned in paragraph (1)(a), (b) or (c) which are to be treated as “market charges” for the purposes of this Part; and the regulations may add to, amend or repeal the provisions of paragraphs (1) to (3).

(5) The regulations may provide that a charge shall or shall not be treated as a market charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.

(6) Before making regulations under this Article in relation to charges granted in favour of a person within paragraph (1)(c), the Department shall consult the Treasury and the Bank of England.

F1 SR 1991/443

Modifications etc. (not altering text)

C1 Art. 95 applied (with modifications) (8.2.2011) by [Investment Bank Special Administration Regulations 2011 \(S.I. 2011/245\)](#), regs. 1, 8(7), 9, 15, 16-21, 24-26, **Schs. 1-5**

Modifications of the law of insolvency

96.—(1) The general law of insolvency has effect in relation to market charges and action taken in enforcing them subject to the provisions of Article 97.

(2) The Department may by regulations make further provision modifying the law of insolvency in relation to the matters mentioned in paragraph (1).

(3) The regulations may add to, amend or repeal the provisions mentioned in paragraph (1), and any other provision of this Part as it applies for the purposes of those provisions, or provide that those provisions have effect with such exceptions, additions or adaptations as are specified in the regulations.

(4) The regulations may make different provision for cases defined by reference to the nature of the charge, the nature of the property subject to it, the circumstances, nature or extent of the obligations secured by it or any other relevant factor.

(5) Before making regulations under this Article in relation to charges granted in favour of a person within Article 95(1)(c), the Department shall consult the Treasury and the Bank of England.

Administration orders, etc.

97.—^[F2](1) The following provisions of Schedule B1 to the Insolvency Order (administration) do not apply in relation to a market charge—

- (a) paragraph 44(2) and (3) (restriction on enforcement of security or repossession of goods) (including that provision as applied by paragraph 45 (interim moratorium)), and
- (b) paragraphs 71, 72 and 73 (power of administrator to deal with charged or hire-purchase property).

(1A) Paragraph 42(2) of that Schedule (receiver to vacate office at request of administrator) does not apply to a receiver appointed under a market charge.]

(2) However, where a market charge falls to be enforced after^[F3]the occurrence of an event to which paragraph (2A) applies], and there exists another charge over some or all of the same property ranking in priority to or *pari passu* with the market charge,^[F4] on the application of any person interested] the court may order that there shall be taken after enforcement of the market charge such steps as the court may direct for the purpose of ensuring that the chargee under the other charge is not prejudiced by the enforcement of the market charge.

^[F5](2A) This paragraph applies to—

- (a) making an administration application under paragraph 13 of Schedule B1 to the Insolvency Order,
- (b) appointing an administrator under paragraph 15 or 23 of that Schedule (appointment by floating charge holder, company or directors),
- (c) filing with the Court a copy of notice of intention to appoint an administrator under either of those paragraphs.]

(3) Article 53 of the Insolvency Order (power of administrative receiver to dispose of charged property) does not apply in relation to a market charge.

(4) Articles 107 and 257 of the Insolvency Order (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition) do not apply to a disposition of property as a result of which the property becomes subject to a market charge or any transaction pursuant to which that disposition is made.

(5) However, if a person (other than the chargee under the market charge) who is party to a disposition mentioned in paragraph (4) has notice at the time of the disposition that a petition has been presented for the winding up or bankruptcy of the party making the disposition, the value of any profit to him arising from the disposition is recoverable from him by the relevant office-holder unless the court directs otherwise.

(6) Any sum recoverable by virtue of paragraph (5) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential debts.

(7) In a case falling within both paragraph (4) (as a disposition of property as a result of which the property becomes subject to a market charge) and Article 87(2) (as the provision of margin in relation to a market contract), Article 87(3) applies with respect to the recovery of the amount or value of the margin and paragraph (5) does not apply.

- F2** Art. 97(1)(1A) substituted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10))*, arts. 1(3), 3(3), Sch. 2 para. 52(2); S.R. 2006/21, **art. 2** (with transitional provisions and savings in S.R. 2006/22, **arts. 2-7**)
- F3** Words in art. 97(2) substituted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10))*, arts. 1(3), 3(3), Sch. 2 para. 52(3); S.R. 2006/21, **art. 2** (with transitional provisions and savings in S.R. 2006/22, **arts. 2-7**)
- F4** SR 1991/443
- F5** Art. 97(2A) inserted (27.3.2006) by *Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10))*, arts. 1(3), 3(3), Sch. 2 para. 52(4); S.R. 2006/21, **art. 2** (with transitional provisions and savings in S.R. 2006/22, **arts. 2-7**)

Power to make provision about certain other charges

98.—(1) The Department may by regulations provide that the general law of insolvency has effect in relation to charges of such descriptions as may be specified in the regulations, and action taken in enforcing them, subject to such provisions as may be specified in the regulations.

(2) The regulations may specify any description of charge granted in favour of—

- (a) a body approved by the Secretary of State under section 170 of the Companies Act 1989^{F6} (certain overseas exchanges and clearing houses),
- (b) a person included in the list maintained by the^{F7}[^{F8}. . . Authority] for the purposes of^{F7} section 301 of the Financial Services and Markets Act 2000] of that Act (certain money market institutions),
- (c) the Bank of England,
- ^{F7}(d) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a relevant regulated activity, or
- (e) an international securities self-regulating organisation approved for the purposes of an order made under section 22 of the Financial Services and Markets Act 2000,]

for the purpose of securing debts or liabilities arising in connection with or as a result of the settlement of contracts or the transfer of assets, rights or interests on a financial market.

(3) The regulations may specify any description of charge granted for that purpose in favour of any other person in connection with exchange facilities or clearing services provided by a recognised investment exchange or recognised clearing house or by any such body, person, authority or organisation as is mentioned in paragraph (2).

(4) Where a charge is granted partly for the purpose specified in paragraph (2) and partly for other purposes, the power conferred by this Article is exercisable in relation to the charge so far as it has effect for that purpose.

(5) The regulations may—

- (a) make the same or similar provision in relation to the charges to which they apply as is made by or under Articles 96 and 97 in relation to market charges, or
- (b) apply any of those provisions with such exceptions, additions or adaptations as are specified in the regulations.

^{F8}(6) Before making regulations under this Article relating to a description of charges defined by reference to their being granted in favour of a person included in the list maintained by the ^{F7} . . . Authority for the purposes of ^{F7} section 301 of the Financial Services and Markets Act 2000] of the Companies Act 1989, or in connection with exchange facilities or clearing services provided by a person included in that list, the department shall consult the Treasury, the Authority and the Bank of England.

(6A) Before making regulations under this Article relating to a description of charges defined by reference to their being granted in favour of the Bank of England, or in connection with settlement arrangements provided by the Bank, the Department shall consult the Treasury and the Bank.]

(7) Regulations under this Article may provide that they apply or do not apply to a charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.

^{F7}(8) For the purposes of subsection (2)(d), “relevant regulated activity” means—

- (a) dealing in investments as principal or as agent;
- (b) arranging deals in investments;
- (c) managing investments;
- (d) safeguarding and administering investments;
- (e) sending dematerialised instructions; ^{F9}...

[managing a UCITS ;

^{F10}(ea)

- (eb) acting as trustee or depositary of a UCITS ;
- (ec) managing an AIF ;
- (ed) acting as trustee or depositary of an AIF ; or]
- (f) establishing etc. a collective investment scheme.

(9) Paragraph (8) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

F6 1989 c. 40

F7 SI 2001/3649

F8 1998 c. 11

Changes to legislation: There are currently no known outstanding effects for the The Companies (No. 2) (Northern Ireland) Order 1990, Cross Heading: Market charges. (See end of Document for details)

- F9** Word in art. 98(8) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 3**
- F10** Art. 98(8)(ea)-(ed) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 2 para. 3**

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There are currently no known outstanding effects for the The Companies (No. 2) (Northern Ireland) Order 1990, Cross Heading: Market charges.