



Companies Act 1989

1989 CHAPTER 40

PART I

COMPANY ACCOUNTS

Introduction

1 Introduction.

F1

Textual Amendments

F1 S. 1 repealed (6.4.2008) by [Companies Act 2006](#) (c. 46), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8](#), Sch. 2 Pt. 1 (with arts. 7, 12)

Provisions applying to companies generally

2 Accounting records.

F2

Textual Amendments

F2 S. 2 repealed (6.4.2008) by [Companies Act 2006](#) (c. 46), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8](#), Sch. 2 Pt. 1 (with arts. 7, 12)

3 A company's financial year and accounting reference periods.

F3

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Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Textual Amendments

F3 S. 3 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

4 Individual company accounts.

F4

Textual Amendments

F4 S. 4 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

5 Group accounts.

F5

Textual Amendments

F5 S. 5 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

6 Additional disclosure required in notes to accounts.

F6

Textual Amendments

F6 S. 6 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

7 Approval and signing of accounts.

F7

Textual Amendments

F7 S. 7 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

8 Directors' report.

F8

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Textual Amendments

F8 S. 8 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

9 Auditors' report.

F9

Textual Amendments

F9 S. 9 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

10 Publication of accounts and reports.

F10

Textual Amendments

F10 S. 10 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

11 Laying and delivering of accounts and reports.

F11

Textual Amendments

F11 S. 11 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

12 Remedies for failure to comply with accounting requirements.

F12

Textual Amendments

F12 S. 12 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

Exemptions and special provisions

13 Small and medium-sized companies and groups.

F13

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Textual Amendments

- F13** S. 13 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

14 Dormant companies.

F14

Textual Amendments

- F14** S. 14 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

15 Public listed companies: provision of summary financial statement.

F15

Textual Amendments

- F15** S. 15 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

16 Private companies: election to dispense with laying of accounts and reports before general meeting.

F16

Textual Amendments

- F16** S. 16 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch. 1)

17 Unlimited companies: exemption from requirement to deliver accounts and reports.

F17

Textual Amendments

- F17** S. 17 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

18 Banking and insurance companies and groups: special provisions.

F18

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Textual Amendments

F18 S. 18 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

Supplementary provisions

19 Accounting standards.

F19

Textual Amendments

F19 S. 19 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

20 Power to alter accounting requirements.

F20

Textual Amendments

F20 S. 20 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

21 Parent and subsidiary undertakings.

F21

Textual Amendments

F21 S. 21 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

22 Other interpretation provisions.

F22

Textual Amendments

F22 S. 22 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

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Consequential amendments

23 Consequential amendments.

The enactments specified in Schedule 10 have effect with the amendments specified there, which are consequential on the amendments made by the preceding provisions of this Part.

PART II

ELIGIBILITY FOR APPOINTMENT AS COMPANY AUDITOR

Modifications etc. (not altering text)

- C1** Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (20.10.1993) by 1993 c. xi, **ss. 1(2)**, 6(4)
Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (21.7.1993) by S.I. 1993/1820, reg. 4, **Sch. para.3**
Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (19.12.1993) by S.I. 1993/3245, **reg.3(5)**
Pt. II (ss. 24-54) applied (with modifications) (E.W.S.) (28.5.1994) by S.I. 1994/1440, **art. 37(1)(2)** (with arts. 38, 39)
Pt. 2 (ss. 24-54) applied (with modifications) (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), regs. {3(6)}, {4(5)}
- C2** Pt. 2 (ss. 24-54) applied (31.12.2004) by The Insurance Accounts Directive (Lloyd's Syndicate and Aggregate Accounts) Regulations 2004 (S.I. 2004/3219), **reg. 14(1)**
- C3** Pt. II (ss. 24-54) extended (9.2.2005) by The European Communities (Recognition of Professional Qualifications) (First General System) Regulations 2005 (S.I. 2005/18), **reg. 11(6)** (with reg. 3)
- C4** Pt. 2 (ss. 24-54): functions of the Secretary of State transferred to the designated body (E.W.S) (5.9.2005) by The Companies Act 1989 (Delegation) Order 2005 (S.I. 2005/2337), **art. 3** (with arts. 7-10)

Introduction

24 Introduction.

F23

Textual Amendments

- F23** S. 24 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

Eligibility for appointment

25 Eligibility for appointment.

F24

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Textual Amendments

F24 S. 25 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 37(2))

26 Effect of appointment of partnership.

F25

Textual Amendments

F25 S. 26 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 37(2))

27 Ineligibility on ground of lack of independence.

F26

Textual Amendments

F26 S. 27 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 37(2))

28 Effect of ineligibility.

F27

Textual Amendments

F27 S. 28 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 37(2))

29 Power of Secretary of State to require second audit.

F28

Textual Amendments

F28 S. 29 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

Recognition of supervisory bodies and professional qualifications

30 Supervisory bodies.

F29

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Textual Amendments

F29 S. 30 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

31 Meaning of “appropriate qualification”.

F30

Textual Amendments

F30 S. 31 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

32 Qualifying bodies and recognised professional qualifications.

F31

Textual Amendments

F31 S. 32 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

33 Approval of overseas qualifications.

F32

Textual Amendments

F32 S. 33 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2)(3))

34 Eligibility of individuals retaining only 1967 Act authorisation.

F33

Textual Amendments

F33 S. 34 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

Duties of recognised bodies

35 The register of auditors.

F34

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Textual Amendments

F34 S. 35 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

36 Information about firms to be available to public.

F35

Textual Amendments

F35 S. 36 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

37 Matters to be notified to the Secretary of State.

F36

Textual Amendments

F36 S. 37 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 39)

38 Power to call for information.

F37

Textual Amendments

F37 S. 38 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 39)

39 Compliance orders.

F38

Textual Amendments

F38 S. 39 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

40 Directions to comply with international obligations.

F39

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Textual Amendments

- F39** S. 40 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

Offences

41 False and misleading statements.

F40

Textual Amendments

- F40** S. 41 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

42 Offences by bodies corporate, partnerships and unincorporated associations.

F41

Textual Amendments

- F41** S. 42 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

43 Time limits for prosecution of offences.

F42

Textual Amendments

- F42** S. 43 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

44 Jurisdiction and procedure in respect of offences.

F43

Textual Amendments

- F43** S. 44 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

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Supplementary provisions

45 Fees.

F44

Textual Amendments

F44 S. 45 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

46 Delegation of functions of Secretary of State.

F45

Textual Amendments

F45 S. 46 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 42(1))

[^{F46}46A Circumstances in which Secretary of State may delegate functions to existing body

F47]

Textual Amendments

F46 S. 46A inserted (1.1.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 4, 65; S.I. 2004/3322, art. 2(1), Sch. 1

F47 S. 46A repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 42(1))

47 Restrictive practices.

F48

Textual Amendments

F48 S. 47 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

48 Exemption from liability for damages.

F49

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Textual Amendments

F49 S. 48 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 38(2))

49 Service of notices.

F50

Textual Amendments

F50 S. 49 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(2))

50 Power to make consequential amendments.

F51

Textual Amendments

F51 S. 50 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12) (with saving in S.I. 2008/948, arts. 2(2), 10)

51 Power to make provision in consequence of changes affecting accountancy bodies.

F52

Textual Amendments

F52 S. 51 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)

52 Meaning of “associate”.

F53

Textual Amendments

F53 S. 52 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(3))

53 Minor definitions.

F54

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Textual Amendments

F54 S. 53 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(3))

54 Index of defined expressions.

F55

Textual Amendments

F55 S. 54 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 4 para. 41(3))

PART III

INVESTIGATIONS AND POWERS TO OBTAIN INFORMATION

Amendments of the Companies Act 1985

55 Investigations by inspectors not leading to published report.

In section 432 of the ^{M1}Companies Act 1985 (appointment of inspectors by Secretary of State), after subsection (2) (investigation of circumstances suggesting misconduct) insert—

“(2A) Inspectors may be appointed under subsection (2) on terms that any report they may make is not for publication; and in such a case, the provisions of section 437(3) (availability and publication of inspectors’ reports) do not apply.”.

Marginal Citations

M1 1985 c. 6.

56 Production of documents and evidence to inspectors.

(1) Section 434 of the Companies Act 1985 (production of documents and evidence to inspectors) is amended as follows.

(2) In subsection (1) (duty of officers to assist inspectors), for “books and documents” substitute “documents”.

(3) For subsection (2)(power to require production of documents, attendance or other assistance) substitute—

“(2) If the inspectors consider that an officer or agent of the company or other body corporate, or any other person, is or may be in possession of information

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relating to a matter which they believe to be relevant to the investigation, they may require him—

- (a) to produce to them any documents in his custody or power relating to that matter,
- (b) to attend before them, and
- (c) otherwise to give them all assistance in connection with the investigation which he is reasonably able to give;

and it is that person's duty to comply with the requirement.”.

(4) For subsection (3) (power to examine on oath) substitute—

“(3) An inspector may for the purposes of the investigation examine any person on oath, and may administer an oath accordingly.”.

(5) After subsection (5) insert—

“(6) In this section “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of the information in legible form.”.

(6) In section 436 of the ^{M2}Companies Act 1985 (obstruction of inspectors treated as contempt of court), for subsections (1) and (2) substitute—

“(1) If any person—

- (a) fails to comply with section 434(1)(a) or (c),
- (b) refuses to comply with a requirement under section 434(1)(b) or (2), or
- (c) refuses to answer any question put to him by the inspectors for the purposes of the investigation,

the inspectors may certify that fact in writing to the court.”.

Marginal Citations

M2 1985 c. 6.

57 Duty of inspectors to report.

In section 437 of the Companies Act 1985 (inspectors' reports), after subsection (1A) insert—

“(1B) If it appears to the Secretary of State that matters have come to light in the course of the inspectors' investigation which suggest that a criminal offence has been committed, and those matters have been referred to the appropriate prosecuting authority, he may direct the inspectors to take no further steps in the investigation or to take only such further steps as are specified in the direction.

(1C) Where an investigation is the subject of a direction under subsection (1B), the inspectors shall make a final report to the Secretary of State only where—

- (a) they were appointed under section 432(1) (appointment in pursuance of an order of the court), or
- (b) the Secretary of State directs them to do so.”.

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58 Power to bring civil proceedings on the company's behalf.

F56

Textual Amendments

F56 S. 58 repealed (6.4.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(c), Sch. 4 Pt. 1

59 Expenses of investigating a company's affairs.

(1) Section 439 of the Companies Act 1985 (expenses of investigating a company's affairs) is amended as follows.

(2) For subsection (1) substitute—

“(1) The expenses of an investigation under any of the powers conferred by this Part shall be defrayed in the first instance by the Secretary of State, but he may recover those expenses from the persons liable in accordance with this section.

There shall be treated as expenses of the investigation, in particular, such reasonable sums as the Secretary of State may determine in respect of general staff costs and overheads.”.

(3) In subsection (4) for “the inspectors' report” substitute “ an inspectors' report ”.

(4) For subsection (5) substitute—

“(5) Where inspectors were appointed—

(a) under section 431, or

(b) on an application under section 442(3),

the applicant or applicants for the investigation is or are liable to such extent (if any) as the Secretary of State may direct.”.

60 Power of Secretary of State to present winding-up petition.

(1) Section 440 of the ^{M3}Companies Act 1985 (power of Secretary of State to present winding-up petition) is repealed; but the following amendments have the effect of re-enacting that provision, with modifications.

(2) In section 124(4) of the ^{M4}Insolvency Act 1986 (application by Secretary of State for company to be wound up by the court), for paragraph (b) substitute—

“(b) in a case falling within section 124A below.”.

(3) After that section insert—

“124A Petition for winding up on grounds of public interest.

(1) Where it appears to the Secretary of State from—

(a) any report made or information obtained under Part XIV of the Companies Act 1985 (company investigations, &c.),

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- (b) any report made under section 94 or 177 of the Financial Services Act 1986 or any information obtained under section 105 of that Act,
- (c) any information obtained under section 2 of the Criminal Justice Act 1987 or section 52 of the Criminal Justice (Scotland) Act 1987 (fraud investigations), or
- (d) any information obtained under section 83 of the Companies Act 1989 (powers exercisable for purpose of assisting overseas regulatory authorities),

that it is expedient in the public interest that a company should be wound up, he may present a petition for it to be wound up if the court thinks it just and equitable for it to be so.

- (2) This section does not apply if the company is already being wound up by the court.”.

Marginal Citations

M3 1985 c. 6.

M4 1986 c. 45.

61 Inspectors’ reports as evidence.

In section 441 of the Companies Act 1985 (inspectors’ reports to be evidence), in subsection (1) for “sections 431 or 432” substitute “ this Part ”.

62 Investigation of company ownership.

In section 442 of the Companies Act 1985 (power to investigate company ownership), for subsection (3) (investigation on application by members of company) substitute—

“(3) If an application for investigation under this section with respect to particular shares or debentures of a company is made to the Secretary of State by members of the company, and the number of applicants or the amount of shares held by them is not less than that required for an application for the appointment of inspectors under section 431(2)(a) or (b), then, subject to the following provisions, the Secretary of State shall appoint inspectors to conduct the investigation applied for.

(3A) The Secretary of State shall not appoint inspectors if he is satisfied that the application is vexatious; and where inspectors are appointed their terms of appointment shall exclude any matter in so far as the Secretary of State is satisfied that it is unreasonable for it to be investigated.

(3B) The Secretary of State may, before appointing inspectors, require the applicant or applicants to give security, to an amount not exceeding £5,000, or such other sum as he may by order specify, for payment of the costs of the investigation.

An order under this subsection shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(3C) If on an application under subsection (3) it appears to the Secretary of State that the powers conferred by section 444 are sufficient for the purposes of

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investigating the matters which inspectors would be appointed to investigate, he may instead conduct the investigation under that section.”.

63 Secretary of State’s power to require production of documents.

F57

Textual Amendments

F57 S. 63 repealed (6.4.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 64, 65, Sch. 8; S.I. 2004/3322, art. 2(2), Sch. 2 (subject to transitional provisions in arts. 4-13)

64 Entry and search of premises.

(1) For section 448 of the Companies Act 1985 (entry and search of premises) substitute—

“448 Entry and search of premises.

- (1) A justice of the peace may issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person appointed or authorised to exercise powers under this Part, that there are reasonable grounds for believing that there are on any premises documents whose production has been required under this Part and which have not been produced in compliance with the requirement.
- (2) A justice of the peace may also issue a warrant under this section if satisfied on information on oath given by or on behalf of the Secretary of State, or by a person appointed or authorised to exercise powers under this Part—
 - (a) that there are reasonable grounds for believing that an offence has been committed for which the penalty on conviction on indictment is imprisonment for a term of not less than two years and that there are on any premises documents relating to whether the offence has been committed,
 - (b) that the Secretary of State, or the person so appointed or authorised, has power to require the production of the documents under this Part, and
 - (c) that there are reasonable grounds for believing that if production was so required the documents would not be produced but would be removed from the premises, hidden, tampered with or destroyed.
- (3) A warrant under this section shall authorise a constable, together with any other person named in it and any other constables—
 - (a) to enter the premises specified in the information, using such force as is reasonably necessary for the purpose;
 - (b) to search the premises and take possession of any documents appearing to be such documents as are mentioned in subsection (1) or (2), as the case may be, or to take, in relation to any such documents, any other steps which may appear to be necessary for preserving them or preventing interference with them;
 - (c) to take copies of any such documents; and

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- (d) to require any person named in the warrant to provide an explanation of them or to state where they may be found.
- (4) If in the case of a warrant under subsection (2) the justice of the peace is satisfied on information on oath that there are reasonable grounds for believing that there are also on the premises other documents relevant to the investigation, the warrant shall also authorise the actions mentioned in subsection (3) to be taken in relation to such documents.
- (5) A warrant under this section shall continue in force until the end of the period of one month beginning with the day on which it is issued.
- (6) Any documents of which possession is taken under this section may be retained—
- (a) for a period of three months; or
 - (b) if within that period proceedings to which the documents are relevant are commenced against any person for any criminal offence, until the conclusion of those proceedings.
- (7) Any person who intentionally obstructs the exercise of any rights conferred by a warrant issued under this section or fails without reasonable excuse to comply with any requirement imposed in accordance with subsection (3)(d) is guilty of an offence and liable to a fine.
- Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to this offence.
- (8) For the purposes of sections 449 and 451A (provision for security of information) documents obtained under this section shall be treated as if they had been obtained under the provision of this Part under which their production was or, as the case may be, could have been required.
- (9) In the application of this section to Scotland for the references to a justice of the peace substitute references to a justice of the peace or a sheriff, and for the references to information on oath substitute references to evidence on oath.
- (10) In this section “document” includes information recorded in any form.”.
- (2) In Schedule 24 to the ^{M5}Companies Act 1985 (punishment of offences), in the entry relating to section 448(5)—
- (a) in the first column for “448(5)” substitute “448(7)”, and
 - (b) for the entry in the second column substitute—

“Obstructing the exercise of any rights conferred by a warrant or failing to comply with a requirement imposed under subsection (3) (d).”.

Marginal Citations

M5 1985 c. 6.

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65 Provision for security of information obtained.

F58

Textual Amendments

F58 S. 65 repealed (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004](#) (c. 27), ss. 64, 65, [Sch. 8](#); S.I. 2004/3322, [art. 2\(2\)](#), Sch. 2 (subject to transitional provisions in arts. 4-13)

66 Punishment for destroying, mutilating, &c. company documents.

- (1) Section 450 of the ^{M6}Companies Act 1985 (punishment for destroying, mutilating, &c. company documents) is amended as follows.
- (2) In subsection (1) for the opening words down to “insurance company” substitute “An officer of a company, or of an insurance company”, for “body’s” substitute “company’s” and for “the body” substitute “the company”.
- (3) For subsection (4) substitute—
 - “(4) Sections 732 (restriction on prosecutions), 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under this section.”.
- (4) After that subsection insert—
 - “(5) In this section “document” includes information recorded in any form.”.

Marginal Citations

M6 1985 c. 6.

67 Punishment for furnishing false information.

F59

Textual Amendments

F59 S. 67 repealed (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004](#) (c. 27), ss. 64, 65, [Sch. 8](#); S.I. 2004/3322, [art. 2\(2\)](#), Sch. 2 (with transitional provisions in arts. 4-13)

68 Disclosure of information by Secretary of State or inspector.

For section 451A of the Companies Act 1985 (disclosure of information by the Secretary of State) substitute—

“451A Disclosure of information by Secretary of State or inspector.

- (1) This section applies to information obtained under sections 434 to 446.
- (2) The Secretary of State may, if he thinks fit—

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- (a) disclose any information to which this section applies to any person to whom, or for any purpose for which, disclosure is permitted under section 449, or
 - (b) authorise or require an inspector appointed under this Part to disclose such information to any such person or for any such purpose.
- (3) Information to which this section applies may also be disclosed by an inspector appointed under this Part to—
- (a) another inspector appointed under this Part or an inspector appointed under section 94 or 177 of the Financial Services Act 1986, or
 - (b) a person authorised to exercise powers under section 44 of the Insurance Companies Act 1982, section 447 of this Act, section 106 of the Financial Services Act 1986 or section 84 of the Companies Act 1989.
- (4) Any information which may by virtue of subsection (3) be disclosed to any person may be disclosed to any officer or servant of that person.
- (5) The Secretary of State may, if he thinks fit, disclose any information obtained under section 444 to—
- (a) the company whose ownership was the subject of the investigation,
 - (b) any member of the company,
 - (c) any person whose conduct was investigated in the course of the investigation,
 - (d) the auditors of the company, or
 - (e) any person whose financial interests appear to the Secretary of State to be affected by matters covered by the investigation.”.

69 Protection of banking information.

- (1) Section 452 of the ^{M7}Companies Act 1985 (privileged information) is amended as follows.
- (2) ^{F60}
- (3) After that subsection insert—
- “(1A) Nothing in section 434, 443 or 446 requires a person (except as mentioned in subsection (1B) below) to disclose information or produce documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—
- (a) the person to whom the obligation of confidence is owed is the company or other body corporate under investigation,
 - (b) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
 - (c) the making of the requirement is authorised by the Secretary of State.
- (1B) Subsection (1A) does not apply where the person owing the obligation of confidence is the company or other body corporate under investigation under section 431, 432 or 433.”.
- (4) ^{F60}

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Textual Amendments

F60 S. 69(2)(4) repealed (6.4.2005) by [Companies \(Audit, Investigations and Community Enterprise\) Act 2004 \(c. 27\)](#), ss. 64, 65, [Sch. 8](#); S.I. 2004/3322, [art. 2\(2\)](#), Sch. 2 (with transitional provisions in [arts. 4-13](#))

Marginal Citations

M7 1985 c. 6.

70 Investigation of oversea companies.

In section 453 of the Companies Act 1985 (investigation of oversea companies), for subsection (1) substitute—

“(1) The provisions of this Part apply to bodies corporate incorporated outside Great Britain which are carrying on business in Great Britain, or have at any time carried on business there, as they apply to companies under this Act; but subject to the following exceptions, adaptations and modifications.

(1A) The following provisions do not apply to such bodies—

- (a) section 431 (investigation on application of company or its members),
- (b) section 438 (power to bring civil proceedings on the company’s behalf),
- (c) sections 442 to 445 (investigation of company ownership and power to obtain information as to those interested in shares, &c.), and
- (d) section 446 (investigation of share dealings).

(1B) The other provisions of this Part apply to such bodies subject to such adaptations and modifications as may be specified by regulations made by the Secretary of State.”.

71 Investigation of unregistered companies.

In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), for the entry relating to Part XIV substitute—

“Part XIV (except section 446)	Investigation of companies —”. and their affairs; requisition of documents.
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Amendments of the Financial Services Act 1986

^{F61}72

Textual Amendments

F61 Ss. 72-77 repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 75(a)

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F6273

Textual Amendments
F62 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

F6374

Textual Amendments
F63 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

F6475

Textual Amendments
F64 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

F6576

Textual Amendments
F65 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

Amendments of other enactments

F6677

Textual Amendments
F66 Ss. 72-77 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(a)

F6778

Textual Amendments
F67 S. 78 repealed (2.4.2001) by 2000 c. 39, s. 15, Sch. 5; S.I. 2001/766, art. 2(c)(iii)

F6879

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Textual Amendments

F68 S. 79 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(b)

80 Amendment of the Building Societies Act 1986.

In section 53 of the ^{M8}Building Societies Act 1986 (confidentiality of information obtained by the Building Societies Commission), in subsection (7)(b) (functions of Secretary of State for purposes of which disclosure may be made) after subparagraph (ii) insert—

“, or

(iii) Part II, III or VII of the Companies Act 1989;”.

Commencement Information

II S. 80 wholly in force at 25.4.1991 see s. 215 and S.I. 1990/142 and 1991/878, art. 2, Sch.

Marginal Citations

M8 1986 c. 53.

^{F69}**81**

Textual Amendments

F69 S. 81 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(c)

Powers exercisable to assist overseas regulatory authorities

82 Request for assistance by overseas regulatory authority.

- (1) The powers conferred by section 83 are exercisable by the Secretary of State for the purpose of assisting an overseas regulatory authority which has requested his assistance in connection with inquiries being carried out by it or on its behalf.
- (2) An “overseas regulatory authority” means an authority which in a country or territory outside the United Kingdom exercises—
 - [^{F70}(a) any function corresponding to—
 - (i) any function of the Secretary of State under the Companies Act 1985 [^{F71}or the Companies Act 2006];
 - (ii) any function of the Financial Services Authority under the Financial Services and Markets Act 2000;
 - (iii) any function exercised by the competent authority under Part VI of that Act ^{F72}. . . ;]
 - (b) any function in connection with the investigation of, or the enforcement of rules (whether or not having the force of law) relating to, conduct of the kind prohibited by [^{F73}Part V of the Criminal Justice Act 1993 (insider dealing)], or

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- (c) any function prescribed for the purposes of this subsection by order of the Secretary of State, being a function which in the opinion of the Secretary of State relates to companies or financial services.

An order under paragraph (c) shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (3) The Secretary of State shall not exercise the powers conferred by section 83 unless ^[F74]he and the Financial Services Authority are] satisfied that the assistance requested by the overseas regulatory authority is for the purposes of its regulatory functions.

An authority's "regulatory functions" means any functions falling within subsection (2) and any other functions relating to companies or financial services.

- (4) In deciding whether to exercise those powers the Secretary of State may take into account, in particular—
- (a) whether corresponding assistance would be given in that country or territory to an authority exercising regulatory functions in the United Kingdom;
 - (b) whether the inquiries relate to the possible breach of a law, or other requirement, which has no close parallel in the United Kingdom or involves the assertion of a jurisdiction not recognised by the United Kingdom;
 - (c) the seriousness of the matter to which the inquiries relate, the importance to the inquiries of the information sought in the United Kingdom and whether the assistance could be obtained by other means;
 - (d) whether it is otherwise appropriate in the public interest to give the assistance sought.

- (5) Before deciding whether to exercise those powers in a case where the overseas regulatory authority is a banking supervisor, the Secretary of State shall consult the ^[F75]Financial Services Authority].

A "banking supervisor" means an overseas regulatory authority with respect to which the ^[F75]Financial Services Authority] has notified the Secretary of State, for the purposes of this subsection, that it exercises functions corresponding to those of the ^[F76]Authority][^[F77]in relation to authorised persons with permission under the Financial Services and Markets Act 2000 to accept deposits].

- ^[F78](5A) In subsection (5), "authorised person" has the meaning given in the Financial Services and Markets Act 2000 and the references to deposits and their acceptance must be read with—
- (a) section 22 of that Act;
 - (b) any relevant order under that section; and
 - (c) Schedule 2 to that Act.]
- (6) The Secretary of State may decline to exercise those powers unless the overseas regulatory authority undertakes to make such contribution towards the costs of their exercise as the Secretary of State considers appropriate.
- (7) References in this section to financial services include, in particular, investment business, insurance and banking.

Textual Amendments

F70 S. 82(2)(a) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 76(2)

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- F71** Words in s. 82(2)(a)(i) inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 157](#)
- F72** Words in s. 82(2)(a)(iii) omitted (1.7.2005) by virtue of [The Prospectus Regulations 2005 \(S.I. 2005/1433\)](#), reg. 2(3), [Sch. 3 para. 1](#)
- F73** Words in s. 82(2)(b) substituted (1.3.1994) by 1993 c. 36, s. 79(13), [Sch. 5 Pt. I para. 16](#); S.I. 1994/242, art. 2, [Sch.](#)
- F74** Words in s. 82(3) substituted (1.12.2001) by S.I. 2001/3649, [arts. 1, 76\(3\)](#)
- F75** Words in s. 82(5) substituted (1.6.1998) by 1998 c. 11, s. 23, [Sch. 5 Pt. IV](#) c. II para. 66(2)(b)(i); S.I. 1998/1120, [art. 2](#)
- F76** Word in s. 82(5) substituted (1.6.1998) by 1998 c. 11, s. 23, [Sch. 5 Pt. IV](#) c. II para. 66(2)(b)(ii); S.I. 1998/1120, [art. 2](#)
- F77** Words in the definition of “banking supervisor” in s. 82(5) substituted (1.12.2001) by S.I. 2001/3649, [arts. 1, 76\(4\)](#)
- F78** S. 82(5A) inserted (1.12.2001) by S.I. 2001/3649, [arts. 1, 76\(5\)](#)

Modifications etc. (not altering text)

- C5** S. 82(3): (7.6.1992) certain functions made exercisable concurrently by the Secretary of State and the Treasury by S.I. 1992/1315, [arts. 5, 8](#), [Sch. 3 para. 3](#) (with [art. 6](#)).

83 Power to require information, documents or other assistance.

- (1) The following powers may be exercised in accordance with section 82, if the Secretary of State considers there is good reason for their exercise.
- (2) The Secretary of State may require any person—
- to attend before him at a specified time and place and answer questions or otherwise furnish information with respect to any matter relevant to the inquiries,
 - to produce at a specified time and place any specified documents which appear to the Secretary of State to relate to any matter relevant to the inquiries, and
 - otherwise to give him such assistance in connection with the inquiries as he is reasonably able to give.
- (3) The Secretary of State may examine a person on oath and may administer an oath accordingly.
- (4) Where documents are produced the Secretary of State may take copies or extracts from them.
- (5) A person shall not under this section be required to disclose information or produce a document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session, except that a lawyer may be required to furnish the name and address of his client.
- (6) A statement by a person in compliance with a requirement imposed under this section may be used in evidence against him.
- [^{F79}(6A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—
- no evidence relating to the statement may be adduced, and
 - no question relating to it may be asked,

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by or on behalf of the prosecution, unless evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person.

- (6B) Subsection (6A) applies to any offence other than—
- (a) an offence under section 85;
 - (b) an offence under section 2 or 5 of the ^{M9}Perjury Act 1911 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath);
 - (c) an offence under section 44(1) or (2) of the ^{M10}Criminal Law (Consolidation) (Scotland) Act 1995 (false statements made on oath or otherwise than on oath); or
 - (d) an offence under Article 7 or 10 of the ^{M11}Perjury (Northern Ireland) Order 1979 (false statements made on oath otherwise than in judicial proceedings or made otherwise than on oath).]
- (7) Where a person claims a lien on a document, its production under this section is without prejudice to his lien.
- (8) In this section “documents” includes information recorded in any form; and, in relation to information recorded otherwise than in legible form, the power to require its production includes power to require the production of a copy of it in legible form.

Textual Amendments

F79 S. 83(6A)(6B) inserted (14.4.2000 for E.W., N.I. and 1.1.2001 for S.) by 1999 c. 23, s. 59, **Sch. 3 para.21** (with s. 63(2), **Sch. 7** paras. 3(3), 5(2)); S.I. 2000/1034, **arts. 2(a), 3(2)**; S.S.I. 2000/445, **art. 2**

Marginal Citations

M9 1911 c. 6.
M10 1995 c. 39.
M11 S.I. 1979/1714 (N.I. 19).

84 Exercise of powers by officer, &c.

- (1) The Secretary of State may authorise an officer of his or any other competent person to exercise on his behalf all or any of the powers conferred by section 83.
- (2) No such authority shall be granted except for the purpose of investigating—
 - (a) the affairs, or any aspects of the affairs, of a person specified in the authority, or
 - (b) a subject-matter so specified,
 being a person who, or subject-matter which, is the subject of the inquiries being carried out by or on behalf of the overseas regulatory authority.
- (3) No person shall be bound to comply with a requirement imposed by a person exercising powers by virtue of an authority granted under this section unless he has, if required, produced evidence of his authority.
- (4) A person shall not by virtue of an authority under this section be required to disclose any information or produce any documents in respect of which he owes an obligation of confidence by virtue of carrying on the business of banking unless—

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- (a) the imposing on him of a requirement with respect to such information or documents has been specifically authorised by the Secretary of State, or
- (b) the person to whom the obligation of confidence is owed consents to the disclosure or production.

In this subsection “documents” has the same meaning as in section 83.

- (5) Where the Secretary of State authorises a person other than one of his officers to exercise any powers by virtue of this section, that person shall make a report to the Secretary of State in such manner as he may require on the exercise of those powers and the results of exercising them.

85 Penalty for failure to comply with requirement, &c.

- (1) A person who without reasonable excuse fails to comply with a requirement imposed on him under section 83 commits an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or both.
- (2) A person who in purported compliance with any such requirement furnishes information which he knows to be false or misleading in a material particular, or recklessly furnishes information which is false or misleading in a material particular, commits an offence and is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both.

86 Restrictions on disclosure of information.

- (1) This section applies to information relating to the business or other affairs of a person which—
 - (a) is supplied by an overseas regulatory authority in connection with a request for assistance, or
 - (b) is obtained by virtue of the powers conferred by section 83, whether or not any requirement to supply it is made under that section.
- (2) Except as permitted by section 87 below, such information shall not be disclosed for any purpose—
 - (a) by the primary recipient, or
 - (b) by any person obtaining the information directly or indirectly from him, without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.
- (3) The “primary recipient” means, as the case may be—
 - (a) the Secretary of State,
 - (b) any person authorised under section 84 to exercise powers on his behalf, and
 - (c) any officer or servant of any such person.
- (4) Information shall not be treated as information to which this section applies if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.

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- (5) A person who contravenes this section commits an offence and is liable—
- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both;
 - (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding the statutory maximum, or both.

87 Exceptions from restrictions on disclosure.

- (1) Information to which section 86 applies may be disclosed—
- (a) to any person with a view to the institution of, or otherwise for the purposes of, relevant proceedings,
 - (b) for the purpose of enabling or assisting a relevant authority to discharge any relevant function (including functions in relation to proceedings),
 - (c) to the Treasury, if the disclosure is made in the interests of investors or in the public interest,
 - (d) if the information is or has been available to the public from other sources,
 - (e) in a summary or collection of information framed in such a way as not to enable the identity of any person to whom the information relates to be ascertained, or
 - (f) in pursuance of any Community obligation.
- (2) The relevant proceedings referred to in subsection (1)(a) are—
- (a) any criminal proceedings,
 - [^{F80}(b) civil proceedings arising under or by virtue of the Financial Services and Markets Act 2000 and proceedings before the Financial Services and Markets Tribunal;]
 - (c) disciplinary proceedings relating to—
 - (i) the exercise by a solicitor, auditor, accountant, valuer or actuary of his professional duties, or
 - (ii) the discharge by a public servant of his duties.
 - [^{F81}(d) proceedings before the Pensions Regulator Tribunal.]
- (3) In subsection (2)(c)(ii) “public servant” means an officer or servant of the Crown or of any public or other authority for the time being designated for the purposes of that provision by order of the Secretary of State.
- (4) The relevant authorities referred to in subsection (1)(b), and the relevant functions in relation to each such authority, are as follows—

<i>Authority</i>	<i>Functions</i>
[^{F82} The Secretary of State	Functions under— (a) the enactments relating to companies or insolvency; (b) Part 2, this Part or Part 7 of this Act; (c) the Financial Services and Markets Act 2000.]
[^{F83} The Treasury.	Functions under— (a) this Part or Part 7 of this Act;

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	(b)the Financial Services and Markets Act 2000.]
[^{F84} An inspector appointed under Part 14 of the Companies Act 1985.	Functions under that Part.]
[^{F85} A person authorised to exercise powers under section 447 of the Companies Act 1985 or section 84 of this Act.	Functions under that section.]
[^{F85} A person appointed under— (a)section 167 of the Financial Services and Markets Act 2000 (general investigations), (b)section 168 of that Act (investigations in particular cases), (c)section 169(1)(b) of that Act (investigation in support of overseas regulator), (d)section 284 of that Act (investigations into affairs of certain collective investment schemes), or (e)regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),to conduct an investigation.	Functions in relation to the investigation.]
An overseas regulatory authority.	Its regulatory functions (within the meaning of section 82 of this Act).
The Department of Economic Development in Northern Ireland or a person appointed or authorised by that Department.	Functions conferred on it or him by the enactments relating to companies or insolvency.
F86	F86
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F86	F86
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F86	F86
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The Bank of England.	[^{F87} Any of its functions]
[^{F88} The Financial Services Authority.	Functions under the enactments relating to friendly societies, under the Building

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	Societies Act 1986 and under the Financial Services and Markets Act 2000.]
[^{F89} A body corporate established in accordance with section 212(1) of that Act.	Functions under the Financial Services Compensation Scheme, established in accordance with section 213 of that Act.
A recognised investment exchange or a recognised clearing house (as defined by section 285 of that Act).	Functions in its capacity as an exchange or clearing house recognised under that Act.
A body designated under section 326(1) of the Financial Services and Markets Act 2000.	Functions in its capacity as a body designated under that section.]
F86	F86
...	...
[^{F90} A body designated by order under section 1252 of the Companies Act 2006.]	[^{F90} Functions under Part 42 of the Companies Act 2006.]
[^{F91} A recognised supervisory or qualifying body within the meaning of Part 42 of the Companies Act 2006.]	[^{F91} Functions as such a body.]
F86	F86
...	...
F92	F92
...	...
The Official Receiver or, in Northern Ireland, the Official Assignee for company liquidations or for bankruptcy.	Functions under the enactments relating to insolvency.
A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986).	Functions in its capacity as such a body under the
F86	M12
...	Insolvency Act 1986.
	F86
	...
[^{F93} The Pensions Regulator	Functions conferred by or by virtue of—
	(a) the Pension Schemes Act 1993,
	(b) the Pensions Act 1995,
	(c) the Welfare Reform and Pensions Act 1999,
	(d) the Pensions Act 2004,
	or any enactment in force in Northern Ireland corresponding to an enactment mentioned in paragraphs (a) to (d) above.
The Board of the Pension Protection Fund	Functions conferred by or by virtue of Part 2 of the Pensions Act 2004 or any

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	enactment in force in Northern Ireland corresponding to that Part.]
[^{F94} The Office of Fair Trading]	Functions under the [^{F95} Financial Services and Markets Act 2000].
[^{F96} A person authorised by the Secretary of State under sections 245C of the Companies Act 1985.]	[^{F96} Functions relating to the securing of compliance by companies with the accounting requirements of that Act).]
[^{F97} The Director General of the National Lottery.	^{F97} Functions under sections 5 to 10 inclusive and section 15 of the National Lottery etc. Act 1993.]
[^{F98} The Comptroller and Auditor General.	Functions under Part 2 of the National Audit Act 1983.]
[^{F99} The Scottish Ministers	Functions under the enactments relating to insolvency
The Accountant in Bankruptcy	Functions he has under the enactments relating to insolvency.]
[^{F100} The Regulator of Community Interest Companies.	Functions under the Companies (Audit, Investigations and Community Enterprise) Act 2004.]
[^{F101} The Gambling Commission	Functions under the Gambling Act 2005]

[^{F102}Note: Article 3(4) of the Companies (Disclosure of Information) (Designated Authorities) (No. 2) Order 2002 restricts the circumstances in which disclosure for the purpose of enabling or assisting the Comptroller and Auditor General to discharge his relevant functions is permitted.]

- (5) The Secretary of State may by order amend the Table in subsection (4) so as to—
- add any public or other authority to the Table and specify the relevant functions of that authority,
 - remove any authority from the Table, or
 - add functions to, or remove functions from, those which are relevant functions in relation to an authority specified in the Table;
- and the order may impose conditions subject to which, or otherwise restrict the circumstances in which, disclosure is permitted.
- (6) An order under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Textual Amendments

- F80** S. 87(2)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 77(2)
- F81** S. 87(2)(d) inserted (6.4.2005) by Pensions Act 2004 (c. 35), ss. 102(4), 322, Sch. 4 para. 20 (with s. 313); S.I. 2005/275, art. 2(7), Sch. Pt. 7 (subject to art. 2(12))
- F82** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 77(5)
- F83** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 77(6)
- F84** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 77(7)
- F85** S. 87(4): Entries in the Table substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 77(8)
- F86** S. 87(4): Entries in the Table repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 77(4)

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- F87** S. 87(4) Table: words inserted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. IV** c. II para. 66(3); S.I. 1998/1120, **art. 2**
- F88** S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 77(9)**
- F89** S. 87(4): Entries in the Table inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 77(10)**
- F90** S. 87(4) Table: entries substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 158**
- F91** S. 87(4) Table: entries substituted (6.4.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(2), **Sch. 1 para. 158**
- F92** S. 87(4): Entry in the Table omitted (30.4.2001) by virtue of S.I. 2001/1283, **art. 3(4)**
- F93** S. 87(4) Table: entries substituted (6.4.2005) for entry relating to the Occupational Pensions Regulatory Authority by Pensions Act 2004 (c. 35), ss. 319(1), 322, **Sch. 12 para. 6**; S.I. 2005/275, **art. 2(7)**, **Sch. Pt. 7** (subject to art. 2(12))
- F94** Words in the Table in s. 87(4) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(3); S.I. 2003/766, **art. 2**, **Sch.** (with transitional and transitory provision in art. 3)
- F95** Words in the Table in s. 87(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 77(11)**
- F96** S. 87(4) Table: entry inserted (16.8.1993) by S.I. 1993/1826, **art. 3**
- F97** S. 87(4) Table: entry inserted (10.3.1994) by S.I. 1994/340, **art. 3**
- F98** S. 87(4) Table: Entry inserted (14.8.2002) by S.I. 2002/1889, **art. 3(2)**
- F99** S. 87(4) Table: entries inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 96**
- F100** S. 87(4) Table: entry inserted (1.7.2005) by Companies (Audit, Investigations and Community Enterprise) Act 2004 (c. 27), ss. 25, 65, **Sch. 2 para. 29**; S.I. 2004/3322, **art. 2(3)**, Sch. 3
- F101** S. 87(4) Table: entry inserted (1.10.2006) by The Companies (Disclosure of Information) (Designated Authorities) Order 2006 (S.I. 2006/1644), **art. 3**
- F102** S. 87(4): Table Note added (14.8.2002) by S.I. 2002/1889, **art. 3(3)**

Modifications etc. (not altering text)

- C6** S. 87 amended (*temp.* from 3.9.2001) by S.I. 2001/2966, **art. 7**
S. 87 disclosure powers extended (14.12.2001) by 2001 c. 24, ss. 17, 127, **Sch. 4 Pt. I para. 28**
- C7** S. 87(1)(b) restricted (14.8.2002) by S.I. 2002/1889, **art. 3(4)**

Commencement Information

- I2** S. 87 wholly in force at 25.4.1991 see s. 215 and S.I. 1990/142 and 1991/878, art. 2, Sch.

Marginal Citations

- M12** 1986 c. 45.

88 Exercise of powers in relation to Northern Ireland.

- (1) The following provisions apply where it appears to the Secretary of State that a request for assistance by an overseas regulatory authority may involve the powers conferred by section 83 being exercised in Northern Ireland in relation to matters which are transferred matters within the meaning of the ^{M13}Northern Ireland Constitution Act 1973.
- (2) The Secretary of State shall before deciding whether to accede to the request consult the Department of Economic Development in Northern Ireland, and if he decides to accede to the request and it appears to him—
 - (a) that the powers should be exercised in Northern Ireland, and
 - (b) that the purposes for which they should be so exercised relate wholly or primarily to transferred matters,
 he shall by instrument in writing authorise the Department to exercise in Northern Ireland his powers under section 83.

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- (3) The following provisions have effect in relation to the exercise of powers by virtue of such an authority with the substitution for references to the Secretary of State of references to the Department of Economic Development in Northern Ireland—
- (a) section 84 (exercise of powers by officer, &c.),
 - [^{F103}(b) section 449 of the Companies Act 1985 and sections 86 and 87 above (restrictions on disclosure of information);]
 - (c) section 89 (authority for institution of criminal proceedings);
- and references to the Secretary of State in other enactments which proceed by reference to those provisions shall be construed accordingly as being or including references to the Department.
- (4) The Secretary of State may after consultation with the Department of Economic Development in Northern Ireland revoke an authority given to the Department under this section.
- (5) In that case nothing in the provisions referred to in subsection (3)(b) shall apply so as to prevent the Department from giving the Secretary of State any information obtained by virtue of the authority; and (without prejudice to their application in relation to disclosure by the Department) those provisions shall apply to the disclosure of such information by the Secretary of State as if it had been obtained by him in the first place.
- (6) Nothing in this section affects the exercise by the Secretary of State of any powers in Northern Ireland—
- (a) in a case where at the time of acceding to the request it did not appear to him that the circumstances were such as to require him to authorise the Department of Economic Development in Northern Ireland to exercise those powers, or
 - (b) after the revocation by him of any such authority;
- and no objection shall be taken to anything done by or in relation to the Secretary of State or the Department on the ground that it should have been done by or in relation to the other.

Textual Amendments

F103 S. 88(3)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 78

Marginal Citations

M13 1973 c. 36.

89 Prosecutions.

Proceedings for an offence under section 85 or 86 shall not be instituted—

- (a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;
- (b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

90 Offences by bodies corporate, partnerships and unincorporated associations.

- (1) Where an offence under section 85 or 86 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any

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neglect on the part of, a director, manager, secretary or other similar officer of the body, or a person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and liable to be proceeded against and punished accordingly.

- (2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with his functions of management as to a director of a body corporate.
- (3) Where an offence under section 85 or 86 committed by a partnership is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a partner, he as well as the partnership is guilty of the offence and liable to be proceeded against and punished accordingly.
- (4) Where an offence under section 85 or 86 committed by an unincorporated association (other than a partnership) is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any officer of the association or any member of its governing body, he as well as the association is guilty of the offence and liable to be proceeded against and punished accordingly.

91 Jurisdiction and procedure in respect of offences.

- (1) Summary proceedings for an offence under section 85 may, without prejudice to any jurisdiction exercisable apart from this section, be taken against a body corporate or unincorporated association at any place at which it has a place of business and against an individual at any place where he is for the time being.
- (2) Proceedings for an offence alleged to have been committed under section 85 or 86 by an unincorporated association shall be brought in the name of the association (and not in that of any of its members), and for the purposes of any such proceedings any rules of court relating to the service of documents apply as in relation to a body corporate.
- (3) Section 33 of the ^{M14}Criminal Justice Act 1925 and Schedule 3 to the ^{M15}Magistrates' Courts Act 1980 (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in England and Wales with an offence under section 85 or 86 as they apply in the case of a corporation.
- (4) In relation to proceedings on indictment in Scotland for an offence alleged to have been committed under section 85 or 86 by an unincorporated association, [^{F104}section 70 of the ^{M16}Criminal Procedure (Scotland) Act 1995] (proceedings on indictment against bodies corporate) applies as if the association were a body corporate.
- (5) Section 18 of the ^{M17}Criminal Justice Act (Northern Ireland) 1945 and Schedule 4 to the ^{M18}Magistrates' Courts (Northern Ireland) Order 1981 (procedure on charge of offence against a corporation) apply in a case in which an unincorporated association is charged in Northern Ireland with an offence under section 85 or 86 as they apply in the case of a corporation.
- (6) A fine imposed on an unincorporated association on its conviction of such an offence shall be paid out of the funds of the association.

Textual Amendments

F104 Words in s. 91(4) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 74(3)**

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Marginal Citations

- M14 1925 c. 86.
- M15 1980 c. 43.
- M16 1995 c. 46.
- M17 1945 c. 15 (N.I.).
- M18 S.I. 1981/1675 (N.I.26).

PROSPECTIVE

^{F105} PART IV

REGISTRATION OF COMPANY CHARGES

Textual Amendments

- F105** Pt. IV repealed (1.10.2009) by Companies Act 2006 (c. 46), ss. 1180, 1300(2), Sch. 16; S.I. 2008/2860, art. 3(v) (with arts. 7, 8, Sch. 2 para. 1)

^{F105} Introduction

^{F105}92 Introduction.

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^{F105} *Registration in the companies charges register*

^{F105}93 Charges requiring registration.

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^{F105}94 The companies charges register.

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^{F105}95 Delivery of particulars for registration.

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^{F105}96 Delivery of further particulars.

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^{F105}97 Effect of omissions and errors in registered particulars.

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F10598 Memorandum of charge ceasing to affect company’s property.

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F10599 Further provisions with respect to voidness of charges.

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F105100 Additional information to be registered.

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F105 Copies of instruments and register to be kept by the company

F105101 Copies of instruments and register to be kept by the company

.....

F105 Supplementary provisions

F105102 Power to make further provision by regulations.

.....

F105103 Other supplementary provisions.

.....

F105104 Interpretation, &c.

.....

F105105 Charges on property of oversea company.

.....

F105106 Application of provisions to unregistered companies.

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F105107 Consequential amendments.

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PART V

OTHER AMENDMENTS OF COMPANY LAW

A company's capacity and related matters

108 A company's objects and the power of the directors to bind it.

- (1) In Chapter III of Part I of the Companies Act 1985 (a company's capacity; formalities of carrying on business), for section 35 substitute—

“35 A company's capacity not limited by its memorandum.

- (1) The validity of an act done by a company shall not be called into question on the ground of lack of capacity by reason of anything in the company's memorandum.
- (2) A member of a company may bring proceedings to restrain the doing of an act which but for subsection (1) would be beyond the company's capacity; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (3) It remains the duty of the directors to observe any limitations on their powers flowing from the company's memorandum; and action by the directors which but for subsection (1) would be beyond the company's capacity may only be ratified by the company by special resolution.

A resolution ratifying such action shall not affect any liability incurred by the directors or any other person; relief from any such liability must be agreed to separately by special resolution.

- (4) The operation of this section is restricted by section 30B(1) of the Charities Act 1960 and section 112(3) of the Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.

35A Power of directors to bind the company.

- (1) In favour of a person dealing with a company in good faith, the power of the board of directors to bind the company, or authorise others to do so, shall be deemed to be free of any limitation under the company's constitution.
- (2) For this purpose—
 - (a) a person “deals with” a company if he is a party to any transaction or other act to which the company is a party;
 - (b) a person shall not be regarded as acting in bad faith by reason only of his knowing that an act is beyond the powers of the directors under the company's constitution; and
 - (c) a person shall be presumed to have acted in good faith unless the contrary is proved.

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- (3) The references above to limitations on the directors' powers under the company's constitution include limitations deriving—
 - (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or
 - (b) from any agreement between the members of the company or of any class of shareholders.
- (4) Subsection (1) does not affect any right of a member of the company to bring proceedings to restrain the doing of an act which is beyond the powers of the directors; but no such proceedings shall lie in respect of an act to be done in fulfilment of a legal obligation arising from a previous act of the company.
- (5) Nor does that subsection affect any liability incurred by the directors, or any other person, by reason of the directors' exceeding their powers.
- (6) The operation of this section is restricted by section 30B(1) of the Charities Act 1960 and section 112(3) of the Companies Act 1989 in relation to companies which are charities; and section 322A below (invalidity of certain transactions to which directors or their associates are parties) has effect notwithstanding this section.

35B No duty to enquire as to capacity of company or authority of directors.

A party to a transaction with a company is not bound to enquire as to whether it is permitted by the company's memorandum or as to any limitation on the powers of the board of directors to bind the company or authorise others to do so."

- (2) In Schedule 21 to the ^{M19}Companies Act 1985 (effect of registration of companies not formed under that Act), in paragraph 6 (general application of provisions of Act), after sub-paragraph (5) insert—
 - "(6) Where by virtue of sub-paragraph (4) or (5) a company does not have power to alter a provision, it does not have power to ratify acts of the directors in contravention of the provision."
- (3) In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), in the entries relating to Part I, in the first column for "section 35" substitute "sections 35 to 35B".

Commencement Information

I3 Ss. 108-112 and Schedule 19 para 11 were not in force at the 1.2.1991 (base date) but were brought into force on 4.2.1991 by S.I. 1990/2569.

Marginal Citations

M19 1985 c. 6.

- (1) In Part X of the Companies Act 1985 (enforcement of fair dealing by directors), after section 322 insert—

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“322A Invalidity of certain transactions involving directors, etc.

- (1) This section applies where a company enters into a transaction to which the parties include—
 - (a) a director of the company or of its holding company, or
 - (b) a person connected with such a director or a company with whom such a director is associated,and the board of directors, in connection with the transaction, exceed any limitation on their powers under the company’s constitution.
- (2) The transaction is voidable at the instance of the company.
- (3) Whether or not it is avoided, any such party to the transaction as is mentioned in subsection (1)(a) or (b), and any director of the company who authorised the transaction, is liable—
 - (a) to account to the company for any gain which he has made directly or indirectly by the transaction, and
 - (b) to indemnify the company for any loss or damage resulting from the transaction.
- (4) Nothing in the above provisions shall be construed as excluding the operation of any other enactment or rule of law by virtue of which the transaction may be called in question or any liability to the company may arise.
- (5) The transaction ceases to be voidable if—
 - (a) restitution of any money or other asset which was the subject-matter of the transaction is no longer possible, or
 - (b) the company is indemnified for any loss or damage resulting from the transaction, or
 - (c) rights acquired bona fide for value and without actual notice of the directors’ exceeding their powers by a person who is not party to the transaction would be affected by the avoidance, or
 - (d) the transaction is ratified by the company in general meeting, by ordinary or special resolution or otherwise as the case may require.
- (6) A person other than a director of the company is not liable under subsection (3) if he shows that at the time the transaction was entered into he did not know that the directors were exceeding their powers.
- (7) This section does not affect the operation of section 35A in relation to any party to the transaction not within subsection (1)(a) or (b).

But where a transaction is voidable by virtue of this section and valid by virtue of that section in favour of such a person, the court may, on the application of that person or of the company, make such order affirming, severing or setting aside the transaction, on such terms, as appear to the court to be just.

- (8) In this section “transaction” includes any act; and the reference in subsection (1) to limitations under the company’s constitution includes limitations deriving—
 - (a) from a resolution of the company in general meeting or a meeting of any class of shareholders, or

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) from any agreement between the members of the company or of any class of shareholders.”.

- (2) In Schedule 22 to the ^{M20}Companies Act 1985 (provisions applying to unregistered companies), in the entries relating to Part X, insert—

“section 322A	Invalidity of certain transactions involving directors, etc.	Subject to section 718(3).”
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Commencement Information

I4 Ss 108-112 and Schedule 19 para 11 were not in force at the 1.2.1991 (base date) but were brought into force on 4.2.1991 by S.I. 1990/2569.

Marginal Citations

M20 1985 c. 6.

110 Statement of company’s objects.

In Chapter I of Part I of the ^{M21}Companies Act 1985 (company formation), after section 3 (forms of memorandum) insert—

“3A Statement of company’s objects: general commercial company.

Where the company’s memorandum states that the object of the company is to carry on business as a general commercial company—

- (a) the object of the company is to carry on any trade or business whatsoever, and
- (b) the company has power to do all such things as are incidental or conducive to the carrying on of any trade or business by it.”.

- (2) In the same Chapter, for section 4 (resolution to alter objects) substitute—

“4 Resolution to alter objects.

- (1) A company may by special resolution alter its memorandum with respect to the statement of the company’s objects.
- (2) If an application is made under the following section, an alteration does not have effect except in so far as it is confirmed by the court.”.

Commencement Information

I5 Ss. 108-112 and Schedule 19 para 11 were not in force at the 1.2.1991 (base date) but were brought into force on 4.2.1991 by S.I. 1990/2569.

Marginal Citations

M21 1985 c. 6.

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

F106 111

Textual Amendments

F106 S. 111 repealed (1.8.1993) by 1993 c. 10, ss. 98(2), 99(1), Sch. 7

112 Charitable companies (Scotland).

- (1) In the following provisions (which extend to Scotland only)—
 - (a) “company” means a company formed and registered under the ^{M22}Companies Act 1985, or to which the provisions of that Act apply as they apply to such a company; and
 - (b) “charity” means a body [^{F107}entered in the Scottish Charity Register].
- (2) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of—
 - (a) any property acquired by virtue of any transfer, contract or obligation previously effected otherwise than for full consideration in money or money’s worth, or any property representing property so acquired,
 - (b) any property representing income which has accrued before the alteration is made, or
 - (c) the income from any such property as aforesaid.
- (3) Sections 35 and 35A of the Companies Act 1985 (capacity of company not limited by its memorandum; power of directors to bind company) do not apply to the acts of a company which is a charity except in favour of a person who—
 - (a) gives full consideration in money or money’s worth in relation to the act in question, and
 - (b) does not know that the act is not permitted by the company’s memorandum or, as the case may be, is beyond the powers of the directors,or who does not know at the time the act is done that the company is a charity.
- (4) However, where such a company purports to transfer or grant an interest in property, the fact that the act was not permitted by the company’s memorandum or, as the case may be, that the directors in connection with the act exceeded any limitation on their powers under the company’s constitution, does not affect the title of a person who subsequently acquires the property or any interest in it for full consideration without actual notice of any such circumstances affecting the validity of the company’s act.
- (5) In any proceedings arising out of subsection (3) the burden of proving—
 - (a) that a person knew that an act was not permitted by the company’s memorandum or was beyond the powers of the directors, or
 - (b) that a person knew that the company was a charity,lies on the person making that allegation.
- (6) Where a company is a charity and its name does not include the word “charity” or the word “charitable”, the fact that the company is a charity shall be stated in English in legible characters—
 - (a) in all business letters of the company,

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- (b) in all its notices and other official publications,
 - (c) in all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company,
 - (d) in all conveyances purporting to be executed by the company, and
 - (e) in all its bills of parcels, invoices, receipts and letters of credit.
- (7) In subsection (6)(d) “conveyance” means any document for the creation, transfer, variation or extinction of an interest in land.
- (8) Section 349(2) to (4) of the ^{M23}Companies Act 1985 (offences in connection with failure to include required particulars in business letters, &c.) apply in relation to a contravention of subsection (6) above.

Textual Amendments

F107 Words in s. 112(1)(b) substituted (1.4.2006) by [The Charities and Trustee Investment \(Scotland\) Act 2005 \(Consequential Provisions and Modifications\) Order 2006 \(S.I. 2006/242\)](#), arts. 1(3), 5, **Sch. para. 4**

Commencement Information

I6 Ss 108-112 and Schedule 19 para. 11 were not in force at the 1.2.1991 (base date) but were brought into force on 4.2.1991 by [S.I. 1990/2569](#).

Marginal Citations

M22 1985 c. 6.

M23 1985 c. 6.

De-regulation of private companies

113 Written resolutions of private companies.

F108

Textual Amendments

F108 S. 113 repealed (1.10.2007) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; [S.I. 2007/2194](#), **art. 8**, **Sch. 2 Pt. 1** (with **art. 12**, **Sch. 3** (as amended by [S.I. 2007/2607](#), arts. 1, 4 and [S.I. 2007/3495](#), arts. 2(6), 11, **Sch. 5 para. 2(3)-(7)**)) and subject to **Sch. 1**

114 Written resolutions: supplementary provisions.

F109

Textual Amendments

F109 S. 114 repealed (1.10.2007 for s. 114(1) and otherwise prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), **Sch. 16**; [S.I. 2007/2194](#), {art. 8}, **Sch. 2 Pt. 1** (with **art. 12**, **Sch. 3** (as amended by [S.I. 2007/2607](#), arts. 1, 4 and [S.I. 2007/3495](#), arts. 2(6), 11, **Sch. 5 para. 2(3)-(7)**)) and subject to **Sch. 1**

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115 Election by private company to dispense with certain requirements.

[^{F110}(1) In Part IV of the Companies Act 1985 (allotment of shares and debentures), in section 80(1) (authority of company required for certain allotments) after “this section” insert “or section 80A”; and after that section insert—

“ Election by private company as to duration of authority.

- (1) A private company may elect (by elective resolution in accordance with section 379A) that the provisions of this section shall apply, instead of the provisions of section 80(4) and (5), in relation to the giving or renewal, after the election, of an authority under that section.
- (2) The authority must state the maximum amount of relevant securities that may be allotted under it and may be given—
 - (a) for an indefinite period, or
 - (b) for a fixed period, in which case it must state the date on which it will expire.
- (3) In either case an authority (including an authority contained in the articles) may be revoked or varied by the company in general meeting.
- (4) An authority given for a fixed period may be renewed or further renewed by the company in general meeting.
- (5) A resolution renewing an authority—
 - (a) must state, or re-state, the amount of relevant securities which may be allotted under the authority or, as the case may be, the amount remaining to be allotted under it, and
 - (b) must state whether the authority is renewed for an indefinite period or for a fixed period, in which case it must state the date on which the renewed authority will expire.
- (6) The references in this section to the maximum amount of relevant securities that may be allotted shall be construed in accordance with section 80(6).
- (7) If an election under this section ceases to have effect, an authority then in force which was given for an indefinite period or for a fixed period of more than five years—
 - (a) if given five years or more before the election ceases to have effect, shall expire forthwith, and
 - (b) otherwise, shall have effect as if it had been given for a fixed period of five years.”.

(2) In Chapter IV of Part XI of the ^{M24}Companies Act 1985 (meetings and resolutions), after section 366 (annual general meeting) insert—

“ Election by private company to dispense with annual general meetings.

- (1) A private company may elect (by elective resolution in accordance with section 379A) to dispense with the holding of annual general meetings.

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- (2) An election has effect for the year in which it is made and subsequent years, but does not affect any liability already incurred by reason of default in holding an annual general meeting.
- (3) In any year in which an annual general meeting would be required to be held but for the election, and in which no such meeting has been held, any member of the company may, by notice to the company not later than three months before the end of the year, require the holding of an annual general meeting in that year.
- (4) If such a notice is given, the provisions of section 366(1) and (4) apply with respect to the calling of the meeting and the consequences of default.
- (5) If the election ceases to have effect, the company is not obliged under section 366 to hold an annual general meeting in that year if, when the election ceases to have effect, less than three months of the year remains.

This does not affect any obligation of the company to hold an annual general meeting in that year in pursuance of a notice given under subsection (3).”.

- (3) In the same Chapter, in sections 369(4) and 378(3) (majority required to sanction short notice of meeting) insert—

“A private company may elect (by elective resolution in accordance with section 379A) that the above provisions shall have effect in relation to the company as if for the references to 95 per cent. there were substituted references to such lesser percentage, but not less than 90 per cent., as may be specified in the resolution or subsequently determined by the company in general meeting.”.]

Textual Amendments

F110 S. 115 repealed (1.10.2007 for s. 115(2)(3) and otherwise prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); [S.I. 2007/2194](#), {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by [S.I. 2007/2607](#), arts. 1, 4 and [S.I. 2007/3495](#), arts. 2(6), 11, [Sch. 5 para. 2\(3\)-\(7\)](#)) and subject to Sch. 1)

Marginal Citations

M24 1985 c. 6.

116 Elective resolution of private company.

- (1) Chapter IV of Part XI of the Companies Act 1985 (meetings and resolutions) is amended as follows.
- (2) After section 379 insert—

“379A Elective resolution of private company.

- (1) An election by a private company for the purposes of—
 - (a) section 80A (election as to duration of authority to allot shares),
 - (b) section 252 (election to dispense with laying of accounts and reports before general meeting),

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- (c) section 366A (election to dispense with holding of annual general meeting),
- (d) section 369(4) or 378(3) (election as to majority required to authorise short notice of meeting), or
- (e) section 386 (election to dispense with appointment of auditors annually),

shall be made by resolution of the company in general meeting in accordance with this section.

Such a resolution is referred to in this Act as an “elective resolution”.

- (2) An elective resolution is not effective unless—
 - (a) at least 21 days’ notice in writing is given of the meeting, stating that an elective resolution is to be proposed and stating the terms of the resolution, and
 - (b) the resolution is agreed to at the meeting, in person or by proxy, by all the members entitled to attend and vote at the meeting.
 - (3) The company may revoke an elective resolution by passing an ordinary resolution to that effect.
 - (4) An elective resolution shall cease to have effect if the company is re-registered as a public company.
 - (5) An elective resolution may be passed or revoked in accordance with this section, and the provisions referred to in subsection (1) have effect, notwithstanding any contrary provision in the company’s articles of association.”.
- (3) In section 380 (registration of resolutions), in subsection (4) (resolutions to which the section applies), after paragraph (b) insert—
- “(bb) an elective resolution or a resolution revoking such a resolution;”.

117 Power to make further provision by regulations.

- (1) The Secretary of State may by regulations make provision enabling private companies to elect, by elective resolution in accordance with section 379A of the ^{M25}Companies Act 1985, to dispense with compliance with such requirements of that Act as may be specified in the regulations, being requirements which appear to the Secretary of State to relate primarily to the internal administration and procedure of companies.
- (2) The regulations may add to, amend or repeal provisions of that Act; and may provide for any such provision to have effect, where an election is made, subject to such adaptations and modifications as appear to the Secretary of State to be appropriate.
- (3) The regulations may make different provision for different cases and may contain such supplementary, incidental and transitional provisions as appear to the Secretary of State to be appropriate.
- (4) Regulations under this section shall be made by statutory instrument.
- (5) No regulations under this section shall be made unless a draft of the instrument containing the regulations has been laid before Parliament and approved by a resolution of each House.

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Marginal Citations

M25 1985 c. 6.

Appointment and removal of auditors and related matters

118 Introduction.

F111

Textual Amendments

F111 S. 118 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

119 Appointment of auditors.

F112

Textual Amendments

F112 S. 119 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

120 Rights of auditors.

F113

Textual Amendments

F113 S. 120 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

121 Remuneration of auditors.

F114

Textual Amendments

F114 S. 121 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

122 Removal, resignation, &c. of auditors.

F115

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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Textual Amendments

F115 S. 122 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

123 Statement by person ceasing to hold office as auditor.

[^{F116}(1) The following section is inserted in Chapter V of Part XI of the Companies Act 1985 (auditors)—

“ Statement by person ceasing to hold office as auditor.

- (1) Where an auditor ceases for any reason to hold office, he shall deposit at the company’s registered office a statement of any circumstances connected with his ceasing to hold office which he considers should be brought to the attention of the members or creditors of the company or, if he considers that there are no such circumstances, a statement that there are none.
- (2) In the case of resignation, the statement shall be deposited along with the notice of resignation; in the case of failure to seek re-appointment, the statement shall be deposited not less than 14 days before the end of the time allowed for next appointing auditors; in any other case, the statement shall be deposited not later than the end of the period of 14 days beginning with the date on which he ceases to hold office.
- (3) If the statement is of circumstances which the auditor considers should be brought to the attention of the members or creditors of the company, the company shall within 14 days of the deposit of the statement either—
 - (a) send a copy of it to every person who under section 238 is entitled to be sent copies of the accounts, or
 - (b) apply to the court.
- (4) The company shall if it applies to the court notify the auditor of the application.
- (5) Unless the auditor receives notice of such an application before the end of the period of 21 days beginning with the day on which he deposited the statement, he shall within a further seven days send a copy of the statement to the registrar.
- (6) If the court is satisfied that the auditor is using the statement to secure needless publicity for defamatory matter—
 - (a) it shall direct that copies of the statement need not be sent out, and
 - (b) it may further order the company’s costs on the application to be paid in whole or in part by the auditor, notwithstanding that he is not a party to the application;and the company shall within 14 days of the court’s decision send to the persons mentioned in subsection (3)(a) a statement setting out the effect of the order.
- (7) If the court is not so satisfied, the company shall within 14 days of the court’s decision—

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- (a) send copies of the statement to the persons mentioned in subsection (3)(a), and
 - (b) notify the auditor of the court's decision;
- and the auditor shall within seven days of receiving such notice send a copy of the statement to the registrar.

Offences of failing to comply with s.394.

- (1) If a person ceasing to hold office as auditor fails to comply with section 394 he is guilty of an offence and liable to a fine.
 - (2) In proceedings for an offence under subsection (1) it is a defence for the person charged to show that he took all reasonable steps and exercised all due diligence to avoid the commission of the offence.
 - (3) Sections 733 (liability of individuals for corporate default) and 734 (criminal proceedings against unincorporated bodies) apply to an offence under subsection (1).
 - (4) If a company makes default in complying with section 394, the company and every officer of it who is in default is guilty of an offence and liable to a fine and, for continued contravention, to a daily default fine.”.
- (2) In Schedule 24 to the ^{M26}Companies Act 1985 (punishment of offences), at the appropriate place insert—

“394A(1)	Person ceasing to hold office as auditor failing to deposit statement as to circumstances.	1. On indictment. A fine.		
		2. Summary.	The statutory maximum.	
394A(4)	Company failing to comply with requirements as to statement of person ceasing to hold office as auditor.	1. On indictment. A fine.		
		2. Summary.	The statutory maximum.	One-tenth of the statutory maximum.”.

- (3) In section 733 of the Companies Act 1985 (liability of individuals for corporate default), in subsection (1) (offences in relation to which provisions apply) after “216(3)” insert “, 394A(1)”.
- (4) In section 734 of the Companies Act 1985 (criminal proceedings against unincorporated bodies), in subsection (1) (offences in relation to which the provisions apply), after “under” insert “section 394A(1) or”.

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- (5) In Schedule 22 to the Companies Act 1985 (unregistered companies), in the entry for sections 384 to 393, for “393” substitute “394A”.]

Textual Amendments

F116 S. 123 repealed (6.4.2008 for s. 123(1)-(4) and otherwise prosp.) by [Companies Act 2006 \(c. 46\)](#), ss. 1295, 1300(2), [Sch. 16](#); S.I. 2007/3495, [art. 8](#), [Sch. 2 Pt. 1](#) (with arts. 7, 12)

Marginal Citations

M26 1985 c. 6.

^{F117}**124**

Textual Amendments

F117 S. 124 repealed (16.10.1992) by [Trade Union and Labour Relations \(Consolidation\) Act 1992 \(c. 52\)](#), ss. 300(1), 302, [Sch. 1](#) (with [Sch. 3](#))

Company records and related matters

125 Delivery of documents to the registrar.

- (1) For section 706 of the ^{M27}Companies Act 1985 (size, durability, &c. of documents delivered to the registrar) substitute—

“706 Delivery to the registrar of documents in legible form.

- (1) This section applies to the delivery to the registrar under any provision of the Companies Acts of documents in legible form.
- (2) The document must—
- (a) state in a prominent position the registered number of the company to which it relates,
 - (b) satisfy any requirements prescribed by regulations for the purposes of this section, and
 - (c) conform to such requirements as the registrar may specify for the purpose of enabling him to copy the document.
- (3) If a document is delivered to the registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.
- (4) Where the registrar serves such a notice, then, unless a replacement document—
- (a) is delivered to him within 14 days after the service of the notice, and
 - (b) complies with the requirements of this section (or section 707) or is not rejected by him for failure to comply with those requirements,

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the original document shall be deemed not to have been delivered to him.

But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar's notice.

- (5) Regulations made for the purposes of this section may make different provision with respect to different descriptions of document.”.
- (2) For section 707 of the Companies Act 1985 (power of registrar to accept information on microfilm, &c.) substitute—

“707 Delivery to the registrar of documents otherwise than in legible form.

- (1) This section applies to the delivery to the registrar under any provision of the Companies Acts of documents otherwise than in legible form.
- (2) Any requirement to deliver a document to the registrar, or to deliver a document in the prescribed form, is satisfied by the communication to the registrar of the requisite information in any non-legible form prescribed for the purposes of this section by regulations or approved by the registrar.
- (3) Where the document is required to be signed or sealed, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the registrar.
- (4) The document must—
- (a) contain in a prominent position the registered number of the company to which it relates,
 - (b) satisfy any requirements prescribed by regulations for the purposes of this section, and
 - (c) be furnished in such manner, and conform to such requirements, as the registrar may specify for the purpose of enabling him to read and copy the document.
- (5) If a document is delivered to the registrar which does not comply with the requirements of this section, he may serve on the person by whom the document was delivered (or, if there are two or more such persons, on any of them) a notice indicating the respect in which the document does not comply.
- (6) Where the registrar serves such a notice, then, unless a replacement document—
- (a) is delivered to him within 14 days after the service of the notice, and
 - (b) complies with the requirements of this section (or section 706) or is not rejected by him for failure to comply with those requirements,
- the original document shall be deemed not to have been delivered to him.

But for the purposes of any enactment imposing a penalty for failure to deliver, so far as it imposes a penalty for continued contravention, no account shall be taken of the period between the delivery of the original document and the end of the period of 14 days after service of the registrar's notice.

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- (7) The Secretary of State may by regulations make further provision with respect to the application of this section in relation to instantaneous forms of communication.
- (8) Regulations made for the purposes of this section may make different provision with respect to different descriptions of document and different forms of communication, and as respects delivery to the registrar for England and Wales and delivery to the registrar for Scotland.”.

Marginal Citations

M27 1985 c. 6.

126 Keeping and inspection of company records.

- (1) In Part XXIV of the ^{M28}Companies Act 1985 (the registrar of companies, his functions and offices), after the sections inserted by section 125 above, insert—

“707A The keeping of company records by the registrar.

- (1) The information contained in a document delivered to the registrar under the Companies Acts may be recorded and kept by him in any form he thinks fit, provided it is possible to inspect the information and to produce a copy of it in legible form.

This is sufficient compliance with any duty of his to keep, file or register the document.

- (2) The originals of documents delivered to the registrar in legible form shall be kept by him for ten years, after which they may be destroyed.
- (3) Where a company has been dissolved, the registrar may, at any time after the expiration of two years from the date of the dissolution, direct that any records in his custody relating to the company may be removed to the Public Record Office; and records in respect of which such a direction is given shall be disposed of in accordance with the enactments relating to that Office and the rules made under them.

This subsection does not extend to Scotland.

- (4) In subsection (3) “company” includes a company provisionally or completely registered under the Joint Stock Companies Act 1844.”.

- (2) For sections 709 and 710 of the ^{M29}Companies Act 1985 (inspection of documents kept by the registrar) substitute—

“709 Inspection, &c. of records kept by the registrar.

- (1) Any person may inspect any records kept by the registrar for the purposes of the Companies Acts and may require—
 - (a) a copy, in such form as the registrar considers appropriate, of any information contained in those records, or
 - (b) a certified copy of, or extract from, any such record.

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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- (2) The right of inspection extends to the originals of documents delivered to the registrar in legible form only where the record kept by the registrar of the contents of the document is illegible or unavailable.
- (3) A copy of or extract from a record kept at any of the offices for the registration of companies in England and Wales or Scotland, certified in writing by the registrar (whose official position it is unnecessary to prove) to be an accurate record of the contents of any document delivered to him under the Companies Acts, is in all legal proceedings admissible in evidence as of equal validity with the original document and as evidence of any fact stated therein of which direct oral evidence would be admissible.

In England and Wales this is subject to compliance with any applicable rules of court under section 5 of the Civil Evidence Act 1968 or section 69(2) of the Police and Criminal Evidence Act 1984 (which relate to evidence from computer records).

- (4) Copies of or extracts from records furnished by the registrar may, instead of being certified by him in writing to be an accurate record, be sealed with his official seal.
- (5) No process for compelling the production of a record kept by the registrar shall issue from any court except with the leave of the court; and any such process shall bear on it a statement that it is issued with the leave of the court.

710 Certificate of incorporation.

Any person may require a certificate of the incorporation of a company, signed by the registrar or authenticated by his official seal.

710A Provision and authentication by registrar of documents in non-legible form.

- (1) Any requirement of the Companies Acts as to the supply by the registrar of a document may, if the registrar thinks fit, be satisfied by the communication by the registrar of the requisite information in any non-legible form prescribed for the purposes of this section by regulations or approved by him.
- (2) Where the document is required to be signed by him or sealed with his official seal, it shall instead be authenticated in such manner as may be prescribed by regulations or approved by the registrar.”.

Commencement Information

I7 S. 126 wholly in force at 1.7.1991, see s. 215(2) and S.I. 1991/488, **art. 2(1)** (with transitional provisions in **art. 3**)

Marginal Citations

M28 1985 c. 6.

M29 1985 c. 6.

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127 Supplementary provisions as to company records and related matters.

- (1) In Part XXIV of the ^{M30}Companies Act 1985 (the registrar of companies, his functions and offices), after section 715 insert—

“715A Interpretation.

- (1) In this Part—

“document” includes information recorded in any form; and
“legible”, in the context of documents in legible or non-legible form, means capable of being read with the naked eye.

- (2) References in this Part to delivering a document include sending, forwarding, producing or (in the case of a notice) giving it.”

- (2) In section 708(1) of the Companies Act 1985 (fees)—

- (a) in paragraph (a) for the words from “any notice or other document” to the end substitute “any document which under those Acts is required to be delivered to him”, and
(b) ^{F118}

- (3) ^{F118}

- (4) In section 713(1) (enforcement of duty to make returns, &c.), for the words from “file with” to “or other document” substitute “deliver a document to the registrar of companies”.

- (5) In section 735A(2) of the ^{M31}Companies Act 1985 (provisions applying to Insolvency Act 1986 ^{M32} and Company Directors Disqualification Act 1986 as to the Companies Acts)—

- (a) after “707(1),” insert “707A(1),”,
(b) after “708(1)(a) and (4),” insert “709(1) and (3),” and
(c) for “710(5)” substitute “710A”.

- (6) After section 735A of the ^{M33}Companies Act 1985 insert—

“735B Relationship of this Act to Parts IV and V of the Financial Services Act 1986.

In sections 704(5), 706(1), 707(1), 707A(1), 708(1)(a) and (4), 709(1) and (3), 710A and 713(1) references to the Companies Acts include Parts IV and V of the Financial Services Act 1986.”

- (7) In Schedule 22 to the Companies Act 1985 (unregistered companies), in the entry for Part XXIV for “sections 706, 708 to 710, 712 and 713” substitute “sections 706 to 710A, 713 and 715A”.

Textual Amendments

F118 S. 127(2)(b)(3) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

Commencement Information

I8 S. 127 wholly in force at 1.7.1991. See s. 215(2) and S.I. 1991/488 art. 2(1).

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Marginal Citations

M30 1985 c. 6.

M31 1986 c. 45.

M32 1986 c. 46.

M33 1985 c. 6.

Miscellaneous

PROSPECTIVE

^{F119}128 Form and articles for partnership company.

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Textual Amendments

F119 Ss. 126-129 repealed (1.10.2009) by [Companies Act 2006 \(c. 46\)](#), s. 1300(2), [Sch. 16](#); [S.I. 2008/2860](#), art. 4, Sch. 1 Pt. 1 (with arts. 7, 8, Sch. 2) (which transitional provisions in Sch. 2 are amended (1.10.2009) by [S.I. 2009/2476](#), arts. 1(3), 2(3)(4) and by [S.I. 2009/1802](#), arts. 1, 18, Sch.)

129 Membership of holding company.

- (1) In Chapter I of Part I of the Companies Act 1985 (company formation), for section 23 (membership of holding company) substitute—

“23 Membership of holding company.

- (1) Except as mentioned in this section, a body corporate cannot be a member of a company which is its holding company and any allotment or transfer of shares in a company to its subsidiary is void.
- (2) The prohibition does not apply where the subsidiary is concerned only as personal representative or trustee unless, in the latter case, the holding company or a subsidiary of it is beneficially interested under the trust.

For the purpose of ascertaining whether the holding company or a subsidiary is so interested, there shall be disregarded—

- (a) any interest held only by way of security for the purposes of a transaction entered into by the holding company or subsidiary in the ordinary course of a business which includes the lending of money;
- (b) any such interest as is mentioned in Part I of Schedule 2.
- (3) The prohibition does not apply where the subsidiary is concerned only as a market maker.

For this purpose a person is a market maker if—

- (a) he holds himself out at all normal times in compliance with the rules of a recognised investment exchange other than an overseas investment exchange (within the meaning of the Financial Services

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Act 1986) as willing to buy and sell securities at prices specified by him, and

(b) he is recognised as so doing by that investment exchange.

(4) Where a body corporate became a holder of shares in a company—

(a) before 1st July 1948, or

(b) on or after that date and before the commencement of section 129 of the Companies Act 1989, in circumstances in which this section as it then had effect did not apply,

but at any time after the commencement of that section falls within the prohibition in subsection (1) above in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(5) Where a body corporate becomes a holder of shares in a company after the commencement of that section in circumstances in which the prohibition in subsection (1) does not apply, but subsequently falls within that prohibition in respect of those shares, it may continue to be a member of that company; but for so long as that prohibition would apply, apart from this subsection, it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(6) Where a body corporate is permitted to continue as a member of a company by virtue of subsection (4) or (5), an allotment to it of fully paid shares in the company may be validly made by way of capitalisation of reserves of the company; but for so long as the prohibition in subsection (1) would apply, apart from subsection (4) or (5), it has no right to vote in respect of those shares at meetings of the company or of any class of its members.

(7) The provisions of this section apply to a nominee acting on behalf of a subsidiary as to the subsidiary itself.

(8) In relation to a company other than a company limited by shares, the references in this section to shares shall be construed as references to the interest of its members as such, whatever the form of that interest.”

(2) In Schedule 2 to the^{M34} Companies Act 1985 (interpretation of references to “beneficial interest”), in paragraphs 1(1), 3(1) and 4(2) for “as respects section 23(4)” substitute “as this paragraph applies for the purposes of section 23(2)”

Marginal Citations

M34 1985 c. 6.

130 Company contracts and execution of documents by companies.

(1) In Chapter III of Part I of the Companies Act 1985 (a company’s capacity; the formalities of carrying on business), for section 36 (form of company contracts) substitute—

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“36 Company contracts: England and Wales.

Under the law of England and Wales a contract may be made—

- (a) by a company, by writing under its common seal, or
- (b) on behalf of a company, by any person acting under its authority, express or implied;

and any formalities required by law in the case of a contract made by an individual also apply, unless a contrary intention appears, to a contract made by or on behalf of a company.”.

(2) After that section insert—

“36A Execution of documents: England and Wales.

- (1) Under the law of England and Wales the following provisions have effect with respect to the execution of documents by a company.
- (2) A document is executed by a company by the affixing of its common seal.
- (3) A company need not have a common seal, however, and the following subsections apply whether it does or not.
- (4) A document signed by a director and the secretary of a company, or by two directors of a company, and expressed (in whatever form of words) to be executed by the company has the same effect as if executed under the common seal of the company.
- (5) A document executed by a company which makes it clear on its face that it is intended by the person or persons making it to be a deed has effect, upon delivery, as a deed; and it shall be presumed, unless a contrary intention is proved, to be delivered upon its being so executed.
- (6) In favour of a purchaser a document shall be deemed to have been duly executed by a company if it purports to be signed by a director and the secretary of the company, or by two directors of the company, and, where it makes it clear on its face that it is intended by the person or persons making it to be a deed, to have been delivered upon its being executed.

A “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property.”.

(3) F120

(4) After the section inserted by subsection (3) insert—

“36C Pre-incorporation contracts, deeds and obligations.

- (1) A contract which purports to be made by or on behalf of a company at a time when the company has not been formed has effect, subject to any agreement to the contrary, as one made with the person purporting to act for the company or as agent for it, and he is personally liable on the contract accordingly.
- (2) Subsection (1) applies—

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- (a) to the making of a deed under the law of England and Wales, and
 - (b) to the undertaking of an obligation under the law of Scotland,
- as it applies to the making of a contract.”.

- (5) In Schedule 22 of the ^{M35}Companies Act 1985 (provisions applying to unregistered companies), at the appropriate place insert—

“Section 36	Company contracts.	Subject to section 718(3).
Sections 36A and 36B	Execution of documents.	Subject to section 718(3).
Section 36C	Pre-incorporation contracts, deeds and obligations.	Subject to section 718(3).”.

- (6) The Secretary of State may make provision by regulations applying sections 36 to 36C of the Companies Act 1985 (company contracts; execution of documents; [F121execution of deeds;] pre-incorporation contracts, deeds and obligations) to companies incorporated outside Great Britain, subject to such exceptions, adaptations or modifications as may be specified in the regulations.

Regulations under this subsection shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

- (7) Schedule 17 contains further minor and consequential amendments relating to company contracts, the execution of documents by companies and related matters.

Textual Amendments

F120 S. 130(3) repealed by [Law Reform \(Miscellaneous Provisions\) \(Scotland\) Act 1990 \(c. 40, SIF 27; 68A:2; 76:2\), s. 74\(2\), Sch. 9](#)

F121 Words in s. 130(6) inserted (E.W.) (15.9.2005) by [The Regulatory Reform \(Execution of Deeds and Documents\) Order 2005 \(S.I. 2005/1906\), arts. 1\(1\), 10\(1\), Sch. 1 para. 16](#)

Marginal Citations

M35 1985 c. 6.

131 Members’ rights to damages, &c.

- (1) In Part IV of the Companies Act 1985 (allotment of shares and debentures), before section 112 and after the heading “*Other matters arising out of allotment &c.*”, insert—

“111A Right to damages, &c. not affected.

A person is not debarred from obtaining damages or other compensation from a company by reason only of his holding or having held shares in the company or any right to apply or subscribe for shares or to be included in the company’s register in respect of shares.”.

- (2) In section 116 of the Companies Act 1985 (extended operation of certain provisions applying to public companies) for “and 110 to 115” substitute “, 110, 111 and 112 to 115”.

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132 Financial assistance for purposes of employees’ share scheme.

In Chapter VI of Part V of the Companies Act 1985 (financial assistance by company for purchase of its own shares), in section 153 (transactions not prohibited), for subsection (4)(b) (provision of money in accordance with employees’ share scheme) substitute—

“(b) the provision by a company, in good faith in the interests of the company, of financial assistance for the purposes of an employees’ share scheme,”.

PROSPECTIVE

^{F122}**133 Issue of redeemable shares.**

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Textual Amendments

F122 Ss. 131-133 repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1300(2), Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 7, 8, Sch. 2) (which transitional provisions in Sch. 2 are amended (1.10.2009) by S.I. 2009/2476, arts. 1(3), 2(3)(4) and by S.I. 2009/1802, arts. 1, 18, Sch.)

134 Disclosure of interests in shares.

^{F123}

Textual Amendments

F123 S. 134 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 1

135 Orders imposing restrictions on shares.

- (1) The Secretary of State may by regulations made by statutory instrument make such amendments of the provisions of the ^{M36}Companies Act 1985 [^{F124}and the Companies Act 2006] relating to orders imposing restrictions on shares as appear to him necessary or expedient—
 - (a) for enabling orders to be made in a form protecting the rights of third parties;
 - (b) with respect to the circumstances in which restrictions may be relaxed or removed;
 - (c) with respect to the making of interim orders by a court.
- (2) The provisions referred to in subsection (1) are ^{F125} . . . , section 445 and Part XV of the Companies Act 1985 [^{F126}and section 794 of the Companies Act 2006].
- (3) The regulations may make different provision for different cases and may contain such transitional and other supplementary and incidental provisions as appear to the Secretary of State to be appropriate.

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- (4) Regulations under this section shall not be made unless a draft of the regulations has been laid before Parliament and approved by resolution of each House of Parliament.

Textual Amendments

- F124** Words in s. 135(1) inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 159\(2\)](#)
- F125** Words in s. 135(2) repealed (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 159\(3\)\(a\)](#), [Sch. 2](#)
- F126** Words in s. 135(2) inserted (6.4.2008) by [The Companies Act 2006 \(Consequential Amendments etc\) Order 2008 \(S.I. 2008/948\)](#), art. 2(2), [Sch. 1 para. 159\(3\)\(b\)](#)

Marginal Citations

- M36** 1985 c. 6.

136 A company's registered office.

For section 287 of the Companies Act 1985 (registered office) substitute—

“287 Registered office.

- (1) A company shall at all times have a registered office to which all communications and notices may be addressed.
- (2) On incorporation the situation of the company's registered office is that specified in the statement sent to the registrar under section 10.
- (3) The company may change the situation of its registered office from time to time by giving notice in the prescribed form to the registrar.
- (4) The change takes effect upon the notice being registered by the registrar, but until the end of the period of 14 days beginning with the date on which it is registered a person may validly serve any document on the company at its previous registered office.
- (5) For the purposes of any duty of a company—
 - (a) to keep at its registered office, or make available for public inspection there, any register, index or other document, or
 - (b) to mention the address of its registered office in any document,a company which has given notice to the registrar of a change in the situation of its registered office may act on the change as from such date, not more than 14 days after the notice is given, as it may determine.
- (6) Where a company unavoidably ceases to perform at its registered office any such duty as is mentioned in subsection (5)(a) in circumstances in which it was not practicable to give prior notice to the registrar of a change in the situation of its registered office, but—
 - (a) resumes performance of that duty at other premises as soon as practicable, and
 - (b) gives notice accordingly to the registrar of a change in the situation of its registered office within 14 days of doing so,

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it shall not be treated as having failed to comply with that duty.

- (7) In proceedings for an offence of failing to comply with any such duty as is mentioned in subsection (5), it is for the person charged to show that by reason of the matters referred to in that subsection or subsection (6) no offence was committed.”.

137 Effecting of insurance for officers and auditors of company.

F127

Textual Amendments

F127 S. 137 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

138 Increase of limits on certain exemptions.

F128

Textual Amendments

F128 S. 138 repealed (1.10.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/2194. {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch. 1)

139 Annual returns.

- (1) In Part XI of the Companies Act 1985 (company administration and procedure), for Chapter III (annual return) substitute—

“CHAPTER III

ANNUAL RETURN

363 Duty to deliver annual returns.

- (1) Every company shall deliver to the registrar successive annual returns each of which is made up to a date not later than the date which is from time to time the company’s “return date”, that is—
- (a) the anniversary of the company’s incorporation, or
 - (b) if the company’s last return delivered in accordance with this Chapter was made up to a different date, the anniversary of that date.
- (2) Each return shall—
- (a) be in the prescribed form,
 - (b) contain the information required by or under the following provisions of this Chapter, and
 - (c) be signed by a director or the secretary of the company;

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and it shall be delivered to the registrar within 28 days after the date to which it is made up.

- (3) If a company fails to deliver an annual return in accordance with this Chapter before the end of the period of 28 days after a return date, the company is guilty of an offence and liable to a fine and, in the case of continued contravention, to a daily default fine.

The contravention continues until such time as an annual return made up to that return date and complying with the requirements of subsection (2) (except as to date of delivery) is delivered by the company to the registrar.

- (4) Where a company is guilty of an offence under subsection (3), every director or secretary of the company is similarly liable unless he shows that he took all reasonable steps to avoid the commission or continuation of the offence.
- (5) The references in this section to a return being delivered “in accordance with this Chapter” are—
- (a) in relation to a return made after the commencement of section 139 of the Companies Act 1989, to a return with respect to which all the requirements of subsection (2) are complied with;
 - (b) in relation to a return made before that commencement, to a return with respect to which the formal and substantive requirements of this Chapter as it then had effect were complied with, whether or not the return was delivered in time.

364 Contents of annual return: general.

- (1) Every annual return shall state the date to which it is made up and shall contain the following information—
- (a) the address of the company’s registered office;
 - (b) the type of company it is and its principal business activities;
 - (c) the name and address of the company secretary;
 - (d) the name and address of every director of the company;
 - (e) in the case of each individual director—
 - (i) his nationality, date of birth and business occupation, and
 - (ii) such particulars of other directorships and former names as are required to be contained in the company’s register of directors;
 - (f) in the case of any corporate director, such particulars of other directorships as would be required to be contained in that register in the case of an individual;
 - (g) if the register of members is not kept at the company’s registered office, the address of the place where it is kept;
 - (h) if any register of debenture holders (or a duplicate of any such register or a part of it) is not kept at the company’s registered office, the address of the place where it is kept;
 - (i) if the company has elected—
 - (i) to dispense under section 252 with the laying of accounts and reports before the company in general meeting, or

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- (ii) to dispense under section 366A with the holding of annual general meetings,
 a statement to that effect.
- (2) The information as to the company's type shall be given by reference to the classification scheme prescribed for the purposes of this section.
- (3) The information as to the company's principal business activities may be given by reference to one or more categories of any prescribed system of classifying business activities.
- (4) A person's "name" and "address" mean, respectively—
 - (a) in the case of an individual, his Christian name (or other forename) and surname and his usual residential address;
 - (b) in the case of a corporation or Scottish firm, its corporate or firm name and its registered or principal office.
- (5) In the case of a peer, or an individual usually known by a title, the title may be stated instead of his Christian name (or other forename) and surname or in addition to either or both of them.
- (6) Where all the partners in a firm are joint secretaries, the name and principal office of the firm may be stated instead of the names and addresses of the partners.

364A Contents of annual return: particulars of share capital and shareholders.

- (1) The annual return of a company having a share capital shall contain the following information with respect to its share capital and members.
- (2) The return shall state the total number of issued shares of the company at the date to which the return is made up and the aggregate nominal value of those shares.
- (3) The return shall state with respect to each class of shares in the company—
 - (a) the nature of the class, and
 - (b) the total number and aggregate nominal value of issued shares of that class at the date to which the return is made up.
- (4) The return shall contain a list of the names and addresses of every person who—
 - (a) is a member of the company on the date to which the return is made up, or
 - (b) has ceased to be a member of the company since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company);
 and if the names are not arranged in alphabetical order the return shall have annexed to it an index sufficient to enable the name of any person in the list to be easily found.
- (5) The return shall also state—
 - (a) the number of shares of each class held by each member of the company at the date to which the return is made up, and

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- (b) the number of shares of each class transferred since the date to which the last return was made up (or, in the case of the first return, since the incorporation of the company) by each member or person who has ceased to be a member, and the dates of registration of the transfers.
- (6) The return may, if either of the two immediately preceding returns has given the full particulars required by subsections (4) and (5), give only such particulars as relate to persons ceasing to be or becoming members since the date of the last return and to shares transferred since that date.
- (7) Subsections (4) and (5) do not require the inclusion of particulars entered in an overseas branch register if copies of those entries have not been received at the company's registered office by the date to which the return is made up.

Those particulars shall be included in the company's next annual return after they are received.
- (8) Where the company has converted any of its shares into stock, the return shall give the corresponding information in relation to that stock, stating the amount of stock instead of the number or nominal value of shares.

365 Supplementary provisions: regulations and interpretation.

- (1) The Secretary of State may by regulations make further provision as to the information to be given in a company's annual return, which may amend or repeal the provisions of sections 364 and 364A.
- (2) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (3) For the purposes of this Chapter, except section 363(2)(c) (signature of annual return), a shadow director shall be deemed to be a director.”
- (2) Where a company was, immediately before the commencement of this section, in default with respect to the delivery of one or more annual returns, this section does not affect its obligation to make such a return (in accordance with Chapter III of Part XI of the ^{M37}Companies Act 1985 as it then had effect) or any liability arising from failure to do so.
- (3) In Schedule 24 to the Companies Act 1985 (punishment of offences) in the entry relating to section 363(7), in the first column for “363(7)” substitute “363(3)”.
- (4) In Schedule 1 to the ^{M38}Company Directors Disqualification Act 1986 (matters relevant to determining unfitness of directors), in paragraph 4 (failure of company to comply with certain provisions), for sub-paragraphs (f) and (g) substitute—
“(f) section 363 (duty of company to make annual returns);”.
- (5) ^{F129}

Textual Amendments

F129 S. 139(5) repealed (22.7.2004 with effect in accordance with s. 77 of the amending Act) by Finance Act 2004 (c. 12), s. 326, Sch. 42 Pt. 2(7)

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Marginal Citations

M37 1985 c. 6.

M38 1986 c. 46.

140 Floating charges (Scotland).

- (1) In section 463 of the Companies Act 1985 (effect of floating charge on winding up), in subsection (1) for the words “On the commencement of the winding up of a company,” there shall be substituted the words “ Where a company goes into liquidation within the meaning of section 247(2) of the Insolvency Act 1986, ”.
- (2) Section 464 of the Companies Act 1985 (ranking of floating charges) is amended as follows.
- (3) In subsection (1)(b) at the beginning there shall be inserted the words “ with the consent of the holder of any subsisting floating charge or fixed security which would be adversely affected, ”.
- (4) After subsection (1) there shall be inserted the following subsection—

“(1A) Where an instrument creating a floating charge contains any such provision as is mentioned in subsection (1)(a), that provision shall be effective to confer priority on the floating charge over any fixed security or floating charge created after the date of the instrument.”.
- (5) For subsection (3) there shall be substituted—

“(3) The order of ranking of the floating charge with any other subsisting or future floating charges or fixed securities over all or any part of the company’s property is determined in accordance with the provisions of subsections (4) and (5) except where it is determined in accordance with any provision such as is mentioned in paragraph (a) or (b) of subsection (1).”.
- (6) In subsection (5) at the end there shall be added the following paragraph—

“; and

 - (e) (in the case of a floating charge to secure a contingent liability other than a liability arising under any further advances made from time to time) the maximum sum to which that contingent liability is capable of amounting whether or not it is contractually limited.”.
- (7) In subsection (6) after the words “subject to” there shall be inserted the words “ Part XII and to ”.
- (8) In section 466 of the Companies Act 1985 (alteration of floating charges), subsections (4) and (5) and in subsection (6) the words “falling under subsection (4) of this section” shall cease to have effect.

Modifications etc. (not altering text)

- C8** S. 140(1) restricted (20.5.1995) by S.I. 1995/1352, [art.4](#)
 S. 140(3) restricted (20.5.1995) by S.I. 1995/1352, [art.5](#)
 S. 140(6) restricted (20.5.1995) by S.I. 1995/1352, [art.8](#)

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.
Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Commencement Information

- 19** S. 140 partly in force; s. 140 not in force at Royal Assent see s. 215(1)(2); s. 140(1)-(6) in force at 3.7.1995 by S.I. 1995/1352, art. 3(a)

141 Application to declare dissolution of company void.

- (1) Section 651 of the ^{M39}Companies Act 1985 (power of court to declare dissolution of company void) is amended as follows.
- (2) In subsection (1) omit the words “at any time within 2 years of the date of the dissolution”.
- (3) After subsection (3) add—
 - “(4) Subject to the following provisions, an application under this section may not be made after the end of the period of two years from the date of the dissolution of the company.
 - (5) An application for the purpose of bringing proceedings against the company—
 - (a) for damages in respect of personal injuries (including any sum claimed by virtue of section 1(2)(c) of the Law Reform (Miscellaneous Provisions) Act 1934 (funeral expenses)), or
 - (b) for damages under the Fatal Accidents Act 1976 or the Damages (Scotland) Act 1976,may be made at any time; but no order shall be made on such an application if it appears to the court that the proceedings would fail by virtue of any enactment as to the time within which proceedings must be brought.
 - (6) Nothing in subsection (5) affects the power of the court on making an order under this section to direct that the period between the dissolution of the company and the making of the order shall not count for the purposes of any such enactment.
 - (7) In subsection (5)(a) “personal injuries” includes any disease and any impairment of a person’s physical or mental condition.”.
- (4) An application may be made under section 651(5) of the Companies Act 1985 as inserted by subsection (3) above (proceedings for damages for personal injury, &c.) in relation to a company dissolved before the commencement of this section notwithstanding that the time within which the dissolution might formerly have been declared void under that section had expired before commencement.

But no such application shall be made in relation to a company dissolved more than twenty years before the commencement of this section.

- (5) Except as provided by subsection (4), the amendments made by this section do not apply in relation to a company which was dissolved more than two years before the commencement of this section.

Marginal Citations

- M39** 1985 c. 6.

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

PROSPECTIVE

142 Abolition of doctrine of deemed notice.

- (1) In Part XXIV of the Companies Act 1985 (the registrar of companies, his functions and offices), after section 711 insert—

“711A Exclusion of deemed notice.

- (1) A person shall not be taken to have notice of any matter merely because of its being disclosed in any document kept by the registrar of companies (and thus available for inspection) or made available by the company for inspection.
- (2) This does not affect the question whether a person is affected by notice of any matter by reason of a failure to make such inquiries as ought reasonably to be made.
- (3) In this section “document” includes any material which contains information.
- (4) Nothing in this section affects the operation of—
 - (a) section 416 of this Act (under which a person taking a charge over a company’s property is deemed to have notice of matters disclosed on the companies charges register), or
 - (b) section 198 of the Law of Property Act 1925 as it applies by virtue of section 3(7) of the Land Charges Act 1972 (under which the registration of certain land charges under Part XII, or Chapter III of Part XXIII, of this Act is deemed to constitute actual notice for all purposes connected with the land affected).”.

- (2) In Schedule 22 to the ^{M40}Companies Act 1985 (unregistered companies), in the entry for Part XXIV at the appropriate place insert—

“Section 711A	Abolition of doctrine of deemed notice.	Subject to section 718(3).”.
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Marginal Citations

M40 1985 c. 6.

143 Rights of inspection and related matters.

- [^{F130}(1) In Part XXV of the Companies Act 1985 (miscellaneous and supplementary provisions), after section 723 insert—

“Obligations of company as to inspection of registers, &c.

- (1) The Secretary of State may make provision by regulations as to the obligations of a company which is required by any provision of this Act—
 - (a) to make available for inspection any register, index or document, or

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- (b) to provide copies of any such register, index or document, or part of it; and a company which fails to comply with the regulations shall be deemed to have refused inspection or, as the case may be, to have failed to provide a copy.
- (2) The regulations may make provision as to the time, duration and manner of inspection, including the circumstances in which and extent to which the copying of information is permitted in the course of inspection.
- (3) The regulations may define what may be required of the company as regards the nature, extent and manner of extracting or presenting any information for the purposes of inspection or the provision of copies.
- (4) Where there is power to charge a fee, the regulations may make provision as to the amount of the fee and the basis of its calculation.
- (5) Regulations under this section may make different provision for different classes of case.
- (6) Nothing in any provision of this Act or in the regulations shall be construed as preventing a company from affording more extensive facilities than are required by the regulations or, where a fee may be charged, from charging a lesser fee than that prescribed or no fee at all.
- (7) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.”.
- (2) In section 169(5) of the ^{M41}Companies Act 1985 (contract for purchase by company of its own shares), omit the words from “, during business hours” to “for inspection”.
- (3) In section 175(6) of the Companies Act 1985 (statutory declaration and auditors’ report relating to payment out of capital), in paragraph (b) omit the words from “during business hours” to “period”.
- (4) In section 191 of the Companies Act 1985 (register of debenture holders)—
- (a) in subsection (1), omit the words from “(but” to “for inspection)” and for the words from “a fee of 5 pence” to the end substitute “such fee as may be prescribed”;
- (b) in subsection (2) for the words from “10 pence” to the end substitute “such fee as may be prescribed”; and
- (c) in subsection (3), after “on payment” insert “of such fee as may be prescribed” and omit paragraphs (a) and (b).
- (5) In section 219 of the Companies Act 1985 (register of interests in shares, &c.)—
- (a) in subsection (1), omit the words from “during” to “for inspection”;
- (b) in subsection (2) for the words from “10 pence” to “required to be copied” substitute “such fee as may be prescribed”.
- (6) In section 288 of the Companies Act 1985 (register of directors and secretaries), in subsection (3), omit the words from “during” to “for inspection)” and for the words from “5 pence” to the end substitute “such fee as may be prescribed”.
- (7) In section 318 of the Companies Act 1985 (directors’ service contracts), in subsection (7) omit the words from “, during business hours” to “for inspection”.
- (8) In section 356 of the Companies Act 1985 (register and index of members’ names)—

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- (a) in subsection (1), omit “during business hours” and for “the appropriate charge” substitute “such fee as may be prescribed”;
 - (b) omit subsection (2);
 - (c) in subsection (3) for “the appropriate charge” substitute “such fee as may be prescribed”; and
 - (d) omit subsection (4).
- (9) In section 383 of the Companies Act 1985 (minutes of proceedings of general meetings)—
- (a) in subsection (1), omit “during business hours”;
 - (b) omit subsection (2); and
 - (c) in subsection (3), after “entitled” insert “on payment of such fee as may be prescribed” and omit the words from “at a charge” to the end.
- (10) In Part IV of Schedule 13 to the ^{M42}Companies Act 1985 (register of directors’ interests)—
- (a) in paragraph 25, omit the words from “during” to “for inspection)” and for the words from “5 pence” to the end substitute “such fee as may be prescribed”; and
 - (b) in paragraph 26(1), for the words from “10 pence” to the end substitute “such fee as may be prescribed”.
- (11) In Schedule 22 to the Companies Act 1985 (provisions applying to unregistered companies), in the entry relating to Part XXV at the appropriate place insert—

“Section 723A	Rights of inspection and related matters.	To apply only so far as this provision has effect in relation to provisions applying by virtue of the foregoing provisions of this Schedule.”.]
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Textual Amendments

F130 S. 143 repealed (20.1.2007 for s. 143(5), 6.4.2007 for s. 143(10), 1.10.2007 for s. 143(8)(9), 6.4.2008 for s. 143(4) and otherwise prosp.) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2006/3428, art. 7, Sch. 3 Pt. 1, Sch. 4 Pt. 1; S.I. 2007/2194, {art. 8}, Sch. 2 Pt. 1 (with art. 12, Sch. 3 (as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch. 1); S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

Commencement Information

I10 S. 143 wholly in force at 1.11.1991 see s. 215 and S.I. 1991/1996, art. 2(2)(b)

Marginal Citations

M41 1985 c. 6.

M42 1985 c. 6.

144 “Subsidiary”, “holding company” and “wholly-owned subsidiary”.

- (1) In Part XXVI of the Companies Act 1985 (general interpretation provisions), for section 736 substitute—

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“736 “Subsidiary”, “holding company” and “wholly-owned subsidiary”.

- (1) A company is a “subsidiary” of another company, its “holding company”, if that other company—
 - (a) holds a majority of the voting rights in it, or
 - (b) is a member of it and has the right to appoint or remove a majority of its board of directors, or
 - (c) is a member of it and controls alone, pursuant to an agreement with other shareholders or members, a majority of the voting rights in it,or if it is a subsidiary of a company which is itself a subsidiary of that other company.
- (2) A company is a “wholly-owned subsidiary” of another company if it has no members except that other and that other’s wholly-owned subsidiaries or persons acting on behalf of that other or its wholly-owned subsidiaries.
- (3) In this section “company” includes any body corporate.

736A Provisions supplementing s. 736.

- (1) The provisions of this section explain expressions used in section 736 and otherwise supplement that section.
- (2) In section 736(1)(a) and (c) the references to the voting rights in a company are to the rights conferred on shareholders in respect of their shares or, in the case of a company not having a share capital, on members, to vote at general meetings of the company on all, or substantially all, matters.
- (3) In section 736(1)(b) the reference to the right to appoint or remove a majority of the board of directors is to the right to appoint or remove directors holding a majority of the voting rights at meetings of the board on all, or substantially all, matters; and for the purposes of that provision—
 - (a) a company shall be treated as having the right to appoint to a directorship if—
 - (i) a person’s appointment to it follows necessarily from his appointment as director of the company, or
 - (ii) the directorship is held by the company itself; and
 - (b) a right to appoint or remove which is exercisable only with the consent or concurrence of another person shall be left out of account unless no other person has a right to appoint or, as the case may be, remove in relation to that directorship.
- (4) Rights which are exercisable only in certain circumstances shall be taken into account only—
 - (a) when the circumstances have arisen, and for so long as they continue to obtain, or
 - (b) when the circumstances are within the control of the person having the rights;and rights which are normally exercisable but are temporarily incapable of exercise shall continue to be taken into account.

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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- (5) Rights held by a person in a fiduciary capacity shall be treated as not held by him.
 - (6) Rights held by a person as nominee for another shall be treated as held by the other; and rights shall be regarded as held as nominee for another if they are exercisable only on his instructions or with his consent or concurrence.
 - (7) Rights attached to shares held by way of security shall be treated as held by the person providing the security—
 - (a) where apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in accordance with his instructions;
 - (b) where the shares are held in connection with the granting of loans as part of normal business activities and apart from the right to exercise them for the purpose of preserving the value of the security, or of realising it, the rights are exercisable only in his interests.
 - (8) Rights shall be treated as held by a company if they are held by any of its subsidiaries; and nothing in subsection (6) or (7) shall be construed as requiring rights held by a company to be treated as held by any of its subsidiaries.
 - (9) For the purposes of subsection (7) rights shall be treated as being exercisable in accordance with the instructions or in the interests of a company if they are exercisable in accordance with the instructions of or, as the case may be, in the interests of—
 - (a) any subsidiary or holding company of that company, or
 - (b) any subsidiary of a holding company of that company.
 - (10) The voting rights in a company shall be reduced by any rights held by the company itself.
 - (11) References in any provision of subsections (5) to (10) to rights held by a person include rights falling to be treated as held by him by virtue of any other provision of those subsections but not rights which by virtue of any such provision are to be treated as not held by him.
 - (12) In this section “company” includes any body corporate.”.
- (2) Any reference in any enactment (including any enactment contained in subordinate legislation within the meaning of the Interpretation Act ^{M43}1978) to a “subsidiary” or “holding company” within the meaning of section 736 of the Companies Act ^{M44}1985 shall, subject to any express amendment or saving made by or under this Act, be read as referring to a subsidiary or holding company as defined in section 736 as substituted by subsection (1) above.

This applies whether the reference is specific or general, or express or implied.

- (3) In Part XXVI of the Companies Act 1985 (general interpretation provisions), after section 736A insert—

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“736B Power to amend ss. 736 and 736A.

- (1) The Secretary of State may by regulations amend sections 736 and 736A so as to alter the meaning of the expressions “holding company”, “subsidiary” or “wholly-owned subsidiary”.
 - (2) The regulations may make different provision for different cases or classes of case and may contain such incidental and supplementary provisions as the Secretary of State thinks fit.
 - (3) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
 - (4) Any amendment made by regulations under this section does not apply for the purposes of enactments outside the Companies Acts unless the regulations so provide.
 - (5) So much of section 23(3) of the Interpretation Act 1978 as applies section 17(2)(a) of that Act (effect of repeal and re-enactment) to deeds, instruments and documents other than enactments shall not apply in relation to any repeal and re-enactment effected by regulations made under this section.”.
- (4) Schedule 18 contains amendments and savings consequential on the amendments made by this section; and the Secretary of State may by regulations make such further amendments or savings as appear to him to be necessary or expedient.
 - (5) Regulations under this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.
 - (6) So much of section 23(3) of the Interpretation Act 1978 as applies section 17(2)(a) of that Act (presumption as to meaning of references to enactments repealed and re-enacted) to deeds or other instruments or documents does not apply in relation to the repeal and re-enactment by this section of section 736 of the Companies Act 1985.

Marginal Citations

- M43** 1978 c. 30.
M44 1985 c. 6.

145

The Companies Act 1985 has effect with the further amendments specified in Schedule 19.

Commencement Information

- 111** S. 145 partly in force; s. 145 not in force at Royal Assent see s. 215(1)(2); s. 145 in force at 3.7.1995 (so far as it extends to paragraph 20 of Schedule 19 to this Act) by S.I. 1995/1352, art. 3(b)

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

PART VI

MERGERS AND RELATED MATTERS

146

F131

Textual Amendments

F131 S. 146 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

147 Undertakings as alternative to merger reference.

F132

Textual Amendments

F132 S. 147 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

148 Enforcement of undertakings.

F133

Textual Amendments

F133 S. 148 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

149 Temporary restrictions on share dealings.

F134

Textual Amendments

F134 S. 149 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

150 Obtaining control by stages.

F135

Textual Amendments

F135 S. 150 repealed (20.6.2003 for certain purposes and otherwise 29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2003/1397, arts. {2(1)}, 3(1), Sch.; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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151 False or misleading information.

At the end of Part VIII of the ^{M45}Fair Trading Act 1973 there is inserted—

“93B False or misleading information.

(1) If a person furnishes any information—

- (a) to the Secretary of State, the Director or the Commission in connection with any of their functions under Parts IV, V, VI or this Part of this Act or under the Competition Act 1980, or
- (b) to the Commission in connection with the functions of the Commission under the Telecommunications Act 1984 or the Airports Act 1986,

and either he knows the information to be false or misleading in a material particular, or he furnishes the information recklessly and it is false or misleading in a material particular, he is guilty of an offence.

(2) A person who—

- (a) furnishes any information to another which he knows to be false or misleading in a material particular, or
- (b) recklessly furnishes any information to another which is false or misleading in a material particular,

knowing that the information is to be used for the purpose of furnishing information as mentioned in subsection (1)(a) or (b) of this section, is guilty of an offence.

(3) A person guilty of an offence under subsection (1) or (2) of this section is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, and
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.

(4) Section 129(1) of this Act does not apply to an offence under this section.”.

Marginal Citations

M45 1973 c. 41.

152 Fees. U.K.

F136

Textual Amendments

F136 S. 152 repealed (29.12.2004) by 2002 c. 40, ss. 278, 279, Sch. 26; S.I. 2004/3233, art. 2, Sch. (with arts. 3-5)

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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152 Fees. E+W

- (1) The Secretary of State may by regulations made by statutory instrument require the payment to him or to the Director of such fees as may be prescribed by the regulations in connection with the exercise by the Secretary of State, the Director and the Commission of their functions under Part V of the ^{M83}Fair Trading Act 1973.
- (2) The regulations may provide for fees to be payable—
 - (a) in respect of—
 - (i) an application for the consent of the Secretary of State under section 58(1) of the Fair Trading Act 1973 to the transfer of a newspaper or of newspaper assets, and
 - (ii) a notice under section 75A(1) of that Act, and
 - (b) on the occurrence of any event specified in the regulations.
- (3) The events that may be specified in the regulations by virtue of subsection (2)(b) above include—
 - (a) the making by the Secretary of State of a merger reference to the Commission under section 64 or 75 of the Fair Trading Act 1973,
 - (b) the announcement by the Secretary of State of his decision not to make a merger reference in any case where, at the time the announcement is made, he would under one of those sections have power to make a such a reference.
- (4) The regulations may also contain provision—
 - (a) for ascertaining the persons by whom fees are payable,
 - (b) specifying whether any fee is payable to the Secretary of State or to the Director,
 - (c) for the amount of any fee to be calculated by reference to matters which may include—
 - (i) in a case involving functions of the Secretary of State under sections 57 to 61 of the ^{M84}Fair Trading Act 1973, the number of newspapers concerned, the number of separate editions (determined in accordance with the regulations) of each newspaper and the average circulation per day of publication (within the meaning of Part V of that Act) of each newspaper, and
 - (ii) in any other case, the value (determined in accordance with the regulations) of any assets concerned,
 - (d) as to the time when any fee is to be paid, and
 - (e) for the repayment by the Secretary of State or the Director of the whole or part of any fee in specified circumstances.
- (5) The regulations may make different provision for different cases.
- (6) Subsections (2) to (5) above do not prejudice the generality of subsection (1) above.
- (7) In determining the amount of any fees to be prescribed by the regulations, the Secretary of State may take into account all costs incurred by him and by the Director in respect of the exercise by him, by the Commission and by the Director of their respective functions—
 - (a) under Part V of the Fair Trading Act 1973, and
 - (b) under Parts I, VII and VIII of that Act in relation to merger references or other matters arising under Part V.

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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- (8) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Fees paid to the Secretary of State or the Director under this section shall be paid into the Consolidated Fund.
- (10) In this section—
“the Commission”,
“the Director”, and
“merger reference”,
have the same meaning as in the Fair Trading Act 1973, and “newspaper” has the same meaning as in Part V of that Act.
- (11) References in this section to Part V of the Fair Trading Act 1973 and to merger references under section 64 or 75 of that Act or under that Part [^{F235}include sections 32 to 34 of the Water Industry Act 1991 and any reference under section 32 of that Act].

Extent Information

E2 This version of this provision extends to England and Wales only; a separate version has been created for Scotland and Northern Ireland.

Textual Amendments

F235 Words in s. 152(11) substituted (E.W.) (1. 12. 1991) by [Water Consolidation \(Consequential Provisions\) Act 1991 \(c. 60, SIF 130\)](#), ss. 2(1), 4(2), [Sch. 1 para. 52](#)

Marginal Citations

M83 1973 c. 41.

M84 1973 c. 41.

152 Fees. **S+N.I.**

- (1) The Secretary of State may by regulations made by statutory instrument require the payment to him or to the Director of such fees as may be prescribed by the regulations in connection with the exercise by the Secretary of State, the Director and the Commission of their functions under Part V of the ^{M85}Fair Trading Act 1973.
- (2) The regulations may provide for fees to be payable—
(a) in respect of—
(i) an application for the consent of the Secretary of State under section 58(1) of the Fair Trading Act 1973 to the transfer of a newspaper or of newspaper assets, and
(ii) a notice under section 75A(1) of that Act, and
(b) on the occurrence of any event specified in the regulations.
- (3) The events that may be specified in the regulations by virtue of subsection (2)(b) above include—
(a) the making by the Secretary of State of a merger reference to the Commission under section 64 or 75 of the Fair Trading Act 1973,

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) the announcement by the Secretary of State of his decision not to make a merger reference in any case where, at the time the announcement is made, he would under one of those sections have power to make a such a reference.
- (4) The regulations may also contain provision—
- (a) for ascertaining the persons by whom fees are payable,
 - (b) specifying whether any fee is payable to the Secretary of State or to the Director,
 - (c) for the amount of any fee to be calculated by reference to matters which may include—
 - (i) in a case involving functions of the Secretary of State under sections 57 to 61 of the ^{M86}Fair Trading Act 1973, the number of newspapers concerned, the number of separate editions (determined in accordance with the regulations) of each newspaper and the average circulation per day of publication (within the meaning of Part V of that Act) of each newspaper, and
 - (ii) in any other case, the value (determined in accordance with the regulations) of any assets concerned,
 - (d) as to the time when any fee is to be paid, and
 - (e) for the repayment by the Secretary of State or the Director of the whole or part of any fee in specified circumstances.
- (5) The regulations may make different provision for different cases.
- (6) Subsections (2) to (5) above do not prejudice the generality of subsection (1) above.
- (7) In determining the amount of any fees to be prescribed by the regulations, the Secretary of State may take into account all costs incurred by him and by the Director in respect of the exercise by him, by the Commission and by the Director of their respective functions—
- (a) under Part V of the Fair Trading Act 1973, and
 - (b) under Parts I, VII and VIII of that Act in relation to merger references or other matters arising under Part V.
- (8) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.
- (9) Fees paid to the Secretary of State or the Director under this section shall be paid into the Consolidated Fund.
- (10) In this section—
- “the Commission”,
 - “the Director”, and
 - “merger reference”,
- have the same meaning as in the Fair Trading Act 1973, and “newspaper” has the same meaning as in Part V of that Act.
- (11) References in this section to Part V of the Fair Trading Act 1973 and to merger references under section 64 or 75 of that Act or under that Part include sections 29 and 30 of the ^{M87}Water Act 1989 and any reference under section 29 of that Act.

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Extent Information

- E3** This version of this provision extends to Scotland and Northern Ireland only; a separate version has been created for England and Wales only.

Marginal Citations

- M85** 1973 c. 41.
M86 1973 c. 41.
M87 1989 c. 15.

153 Other amendments about mergers and related matters.

Schedule 20 to this Act has effect.

PART VII

FINANCIAL MARKETS AND INSOLVENCY

Modifications etc. (not altering text)

- C9** Pt. VII (ss. 154-191): functions of the Secretary of State transferred (7.6.1992) to the Treasury by S.I. 1992/1315, **art. 2(1)(c)** (with **art. 6**)
Pt. VII (ss. 154-191) applied (E.W.S.) (15.8.1995) by S.I. 1995/2049, **reg.3**; and applied (with modifications) (E.W.S.) (15.8.1995) by S.I. 1995/2049, **regs.3,4,5,19, 26**; and applied (with modifications) (15.7.1996) by S.I. 1996/1469, **regs.3, 4, 5**
- C10** Pt. VII: power to apply conferred (1.12.2001) by 2000 c. 8, **s. 301(1)(a)**; S.I. 2001/3538, **art. 2(1)**

Introduction

154 Introduction.

This Part has effect for the purposes of safeguarding the operation of certain financial markets by provisions with respect to—

- (a) the insolvency, winding up or default of a person party to transactions in the market (sections 155 to 172),
- (b) the effectiveness or enforcement of certain charges given to secure obligations in connection with such transactions (sections 173 to 176), and
- (c) rights and remedies in relation to certain property provided as cover for margin in relation to such transactions or subject to such a charge (sections 177 to 181).

Commencement Information

- I12** S. 154 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, **art. 2, Sch.**

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Recognised investment exchanges and clearing houses

155 Market contracts.

- (1) This Part applies to the following descriptions of contract connected with a recognised investment exchange or recognised clearing house.

The contracts are referred to in this Part as “market contracts”.

- [^{F137}(2) Except as provided in subsection (2A), in relation to a recognised investment exchange this Part applies to—

- (a) contracts entered into by a member or designated non-member of the exchange [^{F138}with a person other than the exchange]] which are either

(i) contracts made on the exchange or on an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; or

(ii) contracts in the making of which the member or designated non-member was subject to the rules of the exchange or of an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; and

- [^{F139}(b) contracts entered into by the exchange with its members for the purpose of enabling the rights and liabilities of that member under transactions in investments to be settled.]

A “designated non-member” means a person in respect of whom action may be taken under the default rules of the exchange but who is not a member of the exchange.

- (2A) This Part does not apply to contracts falling within paragraph (a) of subsection (2) above where the exchange in question is a recognised overseas investment exchange.

- [^{F140}(3) In relation to a recognised clearing house, this Part applies to contracts entered into by the clearing house with a member of the clearing house for the purpose of enabling the rights and liabilities of that member under transactions in investments to be settled.]

- (4) The Secretary of State may by regulations make further provision as to the contracts to be treated as “market contracts”, for the purposes of this Part, in relation to a recognised investment exchange or recognised clearing house.

- (5) The regulations may add to, amend or repeal the provisions of subsections (2) and (3) above.

Textual Amendments

F137 S. 155(2)(2A) substituted for s. 155(2) by S.I. 1991/880, **reg. 3**

F138 Words in s. 155(2)(a) inserted (11.8.1998) by S.I. 1998/1748, **reg. 3(a)**

F139 S. 155(2)(b) substituted (11.8.1998) by S.I. 1998/1748, **reg. 3(b)**

F140 S. 155(3) substituted (11.8.1998) by S.I. 1998/1748, **reg.4**

Commencement Information

I13 S. 155 wholly in force at 25.4.1991. See s. 215 and S.I. 1991/488, **art. 2(2)**; 1991/878, art. 2, Sch.

^{F141}**156**

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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Textual Amendments

F141 S. 156 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(e)

157

- (1) A recognised UK investment exchange or recognised UK clearing house shall give the [^{F142}Authority] at least 14 days' notice of any proposal to amend, revoke or add to its default rules; and the [^{F142}Authority] may within 14 days from receipt of the notice direct the exchange or clearing house not to proceed with the proposal, in whole or in part.
- (2) A direction under this section may be varied or revoked.
- (3) Any amendment or revocation of, or addition to, the default rules of an exchange or clearing house in breach of a direction under this section is ineffective.

Textual Amendments

F142 Words in s. 157(1) substituted (1.12.2001) by s.I. 2001/3649, arts. 1, 79

Commencement Information

I14 S. 157 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. (subject to savings in art. 3(1))

158 Modifications of the law of insolvency.

- (1) The general law of insolvency has effect in relation to market contracts, and action taken under the rules of a recognised investment exchange or recognised clearing house with respect to such contracts, subject to the provisions of sections 159 to 165.
 - (2) So far as those provisions relate to insolvency proceedings in respect of a person other than a defaulter, they apply in relation to—
 - (a) proceedings in respect of a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house, and
 - (b) proceedings in respect of a party to a market contract begun after a recognised investment exchange or recognised clearing house has taken action under its default rules in relation to a person party to the contract as principal, but not in relation to any other insolvency proceedings, notwithstanding that rights or liabilities arising from market contracts fall to be dealt with in the proceedings.
 - (3) The reference in subsection (2)(b) to the beginning of insolvency proceedings is to—
 - (a) the presentation of a bankruptcy petition or a petition for sequestration of a person's estate, or
 - [^{F143}(b) the application for an administration order or the presentation of a winding-up petition or the passing of a resolution for voluntary winding up,]
 - (c) the appointment of an administrative receiver.
- [^{F144}(3A) In subsection (3)(b) the reference to an application for an administration order shall be taken to include a reference to—
- (a) in a case where an administrator is appointed under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (appointment by floating charge

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- holder, company or directors) following filing with the court of a copy of a notice of intention to appoint under that paragraph, the filing of the copy of the notice, and
- (b) in a case where an administrator is appointed under either of those paragraphs without a copy of a notice of intention to appoint having been filed with the court, the appointment of the administrator.]
- (4) The Secretary of State may make further provision by regulations modifying the law of insolvency in relation to the matters mentioned in subsection (1).
- (5) The regulations may add to, amend or repeal the provisions mentioned in subsection (1), and any other provision of this Part as it applies for the purposes of those provisions, or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

Textual Amendments

- F143** S. 158(3)(b) substituted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 44(a) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F144** S. 158(3A) inserted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 44(b) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

- C11** S. 158(4)(5): certain functions made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, Sch. 2 para. 7 (with art. 6)

Commencement Information

- I15** S. 158 wholly in force; s. 158(4)(5) in force for certain purposes at 25.3.1991 and wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/488, art. 2(2); 1991/878, art. 2, Sch.

159 Proceedings of exchange or clearing house take precedence over insolvency procedures.

- (1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy, winding up or sequestration, or in the administration of an insolvent estate—
- (a) a market contract,
 - (b) the default rules of a recognised investment exchange or recognised clearing house,
 - (c) the rules of a recognised investment exchange or recognised clearing house as to the settlement of market contracts not dealt with under its default rules.
- (2) The powers of a relevant office-holder in his capacity as such, and the powers of the court under the ^{M46}Insolvency Act 1986 or the ^{M47}Bankruptcy (Scotland) Act 1985 shall not be exercised in such a way as to prevent or interfere with—
- (a) the settlement in accordance with the rules of a recognised investment exchange or recognised clearing house of a market contract not dealt with under its default rules, or
 - (b) any action taken under the default rules of such an exchange or clearing house.

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This does not prevent a relevant office-holder from afterwards seeking to recover any amount under section 163(4) or 164(4) or prevent the court from afterwards making any such order or decree as is mentioned in section 165(1) or (2) (but subject to subsections (3) and (4) of that section).

(3) Nothing in the following provisions of this Part shall be construed as affecting the generality of the above provisions.

(4) A debt or other liability arising out of a market contract which is the subject of default proceedings may not be proved in a winding up or bankruptcy, or in Scotland claimed in a winding up or sequestration, until the completion of the default proceedings.

A debt or other liability which by virtue of this subsection may not be proved or claimed shall not be taken into account for the purposes of any set-off until the completion of the default proceedings.

[^{F145}(4A) However, prior to the completion of default proceedings—

(a) where it appears to the chairman of the meeting of creditors that a sum will be certified under section 162(1) to be payable, subsection (4) shall not prevent any proof or claim including or consisting of an estimate of that sum which has been lodged or, in Scotland, submitted, from being admitted or, in Scotland, accepted, for the purpose only of determining the entitlement of a creditor to vote at a meeting of creditors; and

(b) a creditor whose claim or proof has been lodged and admitted or, in Scotland, submitted and accepted, for the purpose of determining the entitlement of a creditor to vote at a meeting of creditors and which has not been subsequently wholly withdrawn, disallowed or rejected, is eligible as a creditor to be a member of a liquidation committee or, in bankruptcy proceedings in England and Wales, a creditors' committee.]

(5) For the purposes of [^{F146}subsections (4) and (4A)] the default proceedings shall be taken to be completed in relation to a person when a report is made under section 162 stating the sum (if any) certified to be due to or from him.

Textual Amendments

F145 S. 159 (4A) inserted by S.I. 1991/880, reg. 4(2)

F146 Words in s. 159(5) substituted by S.I. 1991/880, reg. 4(3)

Commencement Information

I16 S. 159 wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/878, art. 2, Sch.

Marginal Citations

M46 1986 c. 45.

M47 1985 c. 66.

160

(1) It is the duty of—

(a) any person who has or had control of any assets of a defaulter, and

(b) any person who has or had control of any documents of or relating to a defaulter,

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to give a recognised investment exchange or recognised clearing house such assistance as it may reasonably require for the purposes of its default proceedings.

This applies notwithstanding any duty of that person under the enactments relating to insolvency.

- (2) A person shall not under this section be required to provide any information or produce any document which he would be entitled to refuse to provide or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.
- (3) Where original documents are supplied in pursuance of this section, the exchange or clearing house shall return them forthwith after the completion of the relevant default proceedings, and shall in the meantime allow reasonable access to them to the person by whom they were supplied and to any person who would be entitled to have access to them if they were still in the control of the person by whom they were supplied.
- (4) The expenses of a relevant office-holder in giving assistance under this section are recoverable as part of the expenses incurred by him in the discharge of his duties; and he shall not be required under this section to take any action which involves expenses which cannot be so recovered, unless the exchange or clearing house undertakes to meet them.

There shall be treated as expenses of his such reasonable sums as he may determine in respect of time spent in giving the assistance [^{F147}and for the purpose of determining the priority in which his expenses are payable out of the assets, sums in respect of time spent shall be treated as his remuneration and other sums shall be treated as his disbursements or, in Scotland, outlays.]

- (5) The Secretary of State may by regulations make further provision as to the duties of persons to give assistance to a recognised investment exchange or recognised clearing house for the purposes of its default proceedings, and the duties of the exchange or clearing house with respect to information supplied to it.

The regulations may add to, amend or repeal the provisions of subsections (1) to (4) above.

- (6) In this section “document” includes information recorded in any form.

Textual Amendments

F147 Words in s. 160(4) added by S.I. 1991/880, Pt. III reg. 5

Modifications etc. (not altering text)

C12 S. 160(5): (7.6.1992) certain functions made exercisable jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para.7 (with art. 6).

Commencement Information

I17 S. 160 wholly in force at 1.10.1991; s. 160(5) in force for certain purposes at 25.3.1991 see 215(2) and S.I. 1991/488, art. 2(2), s. 160 in force at 25.4.1991 with specified exceptions see S.I. 1991/878, art. 2, Sch. (subject to savings in art. 3(2)), s. 160 wholly in force at 1.10.1991 see S.I. 1991/2173, art. 2

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161 Supplementary provisions as to default proceedings.

- (1) If the court is satisfied on an application by a relevant office-holder that a party to a market contract with a defaulter intends to dissipate or apply his assets so as to prevent the office-holder recovering such sums as may become due upon the completion of the default proceedings, the court may grant such interlocutory relief (in Scotland, such interim order) as it thinks fit.
- (2) A liquidator or trustee of a defaulter or, in Scotland, a permanent trustee on the sequestrated estate of the defaulter shall not—
 - (a) declare or pay any dividend to the creditors, or
 - (b) return any capital to contributories,unless he has retained what he reasonably considers to be an adequate reserve in respect of any claims arising as a result of the default proceedings of the exchange or clearing house concerned.
- (3) The court may on an application by a relevant office-holder make such order as it thinks fit altering or dispensing from compliance with such of the duties of his office as are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken.
- (4) Nothing in ^{F148}section 126, 128, 130, 185 or 285 of, or paragraph 42 or 43 (including paragraph 43(6) as applied by paragraph 44) of Schedule B1 to, the Insolvency Act 1986] (which restrict the taking of certain legal proceedings and other steps), and nothing in any rule of law in Scotland to the like effect as the said section 285, in the Bankruptcy (Scotland) Act ^{M48}1985 or in the Debtors (Scotland) Act ^{M49} as to the effect of sequestration, shall affect any action taken by an exchange or clearing house for the purpose of its default proceedings.

Textual Amendments

F148 Words in s. 161(4) substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248, 279, Sch. 17 para. 45 (with savings in s. 249(1)-(3)); [S.I. 2003/2093, art. 2\(1\), Sch. 1](#) (subject to transitional provisions in [arts. 3-8](#) (as amended by [S.I. 2003/2332, art. 2](#)))

Modifications etc. (not altering text)

C13 S. 161 amended by [S.I. 1991/880, reg. 19\(1\)](#)

Commencement Information

I18 S. 161 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

Marginal Citations

M48 1985 c. 66.

M49 1987 c. 18.

162 Duty to report on completion of default proceedings.

- (1) ^{F149}Subject to subsection (1A), a recognised investment exchange or recognised clearing house shall, on the completion of proceedings under its default rules, report to the ^{F150}Authority] on its proceedings stating in respect of each creditor or debtor the sum certified by them to be payable from or to the defaulter or, as the case may be, the fact that no sum is payable.

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- ^{F151}(1A) A recognised overseas investment exchange or recognised overseas clearing house shall not be subject to the obligation under subsection (1) unless it has been notified by the [^{F152}Authority] that a report is required for the purpose of insolvency proceedings in any part of the United Kingdom.
- (2) The exchange or clearing house may make a single report or may make reports from time to time as proceedings are completed with respect to the transactions affecting particular persons.
- (3) The exchange or clearing house shall apply a copy of every report under this section to the defaulter and to any relevant office-holder acting in relation to him or to his estate.
- (4) When a report under this section is received by the [^{F153}Authority, it] shall publish notice of that fact in such manner as [^{F154}it] thinks appropriate for bringing [^{F155}the report] to the attention of creditors and debtors of the defaulter.
- (5) An exchange or clearing house shall make available for inspection by a creditor or debtor of the defaulter so much of any report by it under this section as relates to the sum (if any) certified to be due or from him or to the method by which that sum was determined.
- (6) Any such person may require the exchange or clearing house, on payment of such reasonable fee as the exchange or clearing house may determine, to provide him with a copy of any part of a report which he is entitled to inspect.

Textual Amendments

F149 Words in s. 162(1) inserted by [S.I. 1991/880, reg. 6\(2\)](#)

F150 Word in [s. 162\(1\)](#) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 80\(2\)](#)

F151 [S. 162\(1A\)](#) inserted by [S.I. 1991/880, reg. 6\(3\)](#)

F152 Word in [s. 162\(1A\)](#) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 80\(3\)](#)

F153 Words in [s. 162\(4\)](#) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 80\(4\)\(a\)](#)

F154 Word in [s. 162\(4\)](#) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 80\(4\)\(b\)](#)

F155 Words in [s. 162\(4\)](#) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 80\(4\)\(c\)](#)

Modifications etc. (not altering text)

C14 [S. 162](#) applied (with modifications) (E.W.S.) (11.12.1999) by [S.I. 1999/2979, reg. 15\(1\)](#)

Commencement Information

I19 [S. 162](#) wholly in force at 1.10.1991; [s. 162](#) in force for certain purposes at 25.4.1991 see [s. 215](#) and [S.I. 1991/878, art. 2, Sch.](#) and wholly in force at 1.10.1991 see [s. 215](#) and [S.I. 1991/2173, art. 2](#)

163 Net sum payable on completion of default proceedings.

- (1) The following provisions apply with respect to the net sum certified by a recognised investment exchange or recognised clearing house, upon proceedings under its default rules being duly completed in accordance with this Part, to be payable by or to a defaulter.
- (2) If, in England and Wales, a bankruptcy or winding-up order has been made, or a resolution for voluntary winding-up has been passed, the debt—
- (a) is provable in the bankruptcy or winding up or, as the case may be, is payable to the relevant office-holder, and

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- (b) shall be taken into account, where appropriate, under section 323 of the Insolvency Act ^{M50}1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of winding up, in the same way as a debt before the commencement of the bankruptcy, the date on which the body corporate goes into liquidation (within the meaning of section 247 of the Insolvency Act 1986) or, in the case of a partnership, the date of the winding-up order.
- (3) If, in Scotland, an award of sequestration or a winding-up order has been made, or a resolution for voluntary winding up has been passed, the debt—
- (a) may be claimed in the sequestration or winding up or, as the case may be, is payable to the relevant office-holder, and
- (b) shall be taken into account for the purposes of any rule of law relating to set-off applicable in sequestration or winding up, in the same way as a debt due before the date of sequestration (within the meaning of section 73(1) of the Bankruptcy (Scotland) Act ^{M51}1985) or the commencement of the winding up (within the meaning of section 129 of the Insolvency Act 1986).
- (4) However, where (or to the extent that) a sum is taken into account by virtue of subsection (2)(b) or (3)(b) which arises from a contract entered into at a time when the creditor had notice—
- (a) that a bankruptcy petition or, in Scotland, a petition for sequestration was pending, or
- (b) that a meeting of creditors had been summoned under section 98 of the Insolvency Act ^{M52}1986 or that a winding-up petition was pending, the value of any profit to him arising from the sum being so taken into account (or being so taken into account to that extent) is recoverable from him by the relevant office-holder unless the court directs otherwise.
- (5) Subsection (4) does not apply in relation to a sum arising from a contract effected under the default rules of a recognised investment exchange or recognised clearing house.
- (6) Any sum recoverable by virtue of subsection (4) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.

Modifications etc. (not altering text)

- C15** S. 163 amended by [S.I. 1991/880, reg. 19\(1\)](#)
S. 163 applied (with modifications) (11.12.1999) by [S.I. 1999/2979, reg. 15\(1\)](#)
- C16** S. 163(4)-(6) excluded in part (11.12.1999) by [S.I. 1999/2979, reg. 21\(2\)\(a\)](#)

Commencement Information

- I20** S. 163 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

Marginal Citations

- M50** 1986 c. 45.
M51 1985 c. 66.
M52 1986 c. 45.

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

164 Disclaimer of property, rescission of contracts, &c.

(1) Sections 178, 186, 315 and 345 of the Insolvency Act 1986 (power to disclaim onerous property and court's power to order rescission of contracts, &c.) do not apply in relation to—

- (a) a market contract, or
- (b) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to market contracts.

In the application of this subsection in Scotland, the reference to sections 178, 315 and 345 shall be construed as a reference to any rule of law having the like effect as those sections.

(2) In Scotland, a permanent trustee on the sequestrated estate of a defaulter or a liquidator is bound by any market contract to which that defaulter is a party and by any contract as is mentioned in subsection (1)(b) above notwithstanding section 42 of the ^{M53}Bankruptcy (Scotland) Act 1985 or any rule of law to the like effect applying in liquidations.

(3) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition), and section 32(8) of the Bankruptcy (Scotland) Act 1985 (effect of dealing with debtor relating to estate vested in permanent trustee), do not apply to—

- (a) a market contract, or any disposition of property in pursuance of such a contract,
- (b) the provision of margin in relation to market contracts,
- (c) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to a market contract, or any disposition of property in pursuance of such a contract, or
- (d) any disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin.

(4) However, where—

- (a) a market contract is entered into by a person who has notice that a petition has been presented for the winding up or bankruptcy or sequestration of the estate of the other party to the contract, or
- (b) margin in relation to a market contract is accepted by a person who has notice that such a petition has been presented in relation to the person by whom or on whose behalf the margin is provided,

the value of any profit to him arising from the contract or, as the case may be, the amount or value of the margin is recoverable from him by the relevant office-holder unless the court directs otherwise.

(5) Subsection (4)(a) does not apply where the person entering into the contract is a recognised investment exchange or recognised clearing house acting in accordance with its rules, or where the contract is effected under the default rules of such an exchange or clearing house; but subsection (4)(b) applies in relation to the provision of margin in relation to such a contract.

(6) Any sum recoverable by virtue of subsection (4) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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Modifications etc. (not altering text)

C17 S. 164 amended by [S.I. 1991/880, reg. 19\(1\)](#)

C18 S. 164(4)-(6) excluded in part (11.12.1999) by [S.I. 1999/2979, reg. 21\(2\)\(b\)](#)

Commencement Information

I21 S. 164 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

Marginal Citations

M53 [1985 c. 66.](#)

165 Adjustment of prior transactions.

- (1) No order shall be made in relation to a transaction to which this section applies under—
- (a) section 238 or 339 of the Insolvency Act 1986 (transactions at an under-value),
 - (b) section 239 or 340 of that Act (preferences), or
 - (c) section 423 of that Act (transactions defrauding creditors).
- (2) As respects Scotland, no decree shall be granted in relation to any such transaction—
- (a) under section 34 or 36 of the ^{M54}Bankruptcy (Scotland) Act 1985 or section 242 or 243 of the Insolvency Act 1986 (gratuitous alienations and unfair preferences), or
 - (b) at common law on grounds of gratuitous alienations or fraudulent preferences.
- (3) This section applies to—
- (a) a market contract to which a recognised investment exchange or recognised clearing house is a party or which is entered into under its default rules, and
 - (b) a disposition of property in pursuance of such a market contract.
- (4) Where margin is provided in relation to a market contract and (by virtue of subsection (3)(a) or otherwise) no such order or decree as is mentioned in subsection (1) or (2) has been, or could be, made in relation to that contract, this section applies to—
- (a) the provision of the margin,
 - (b) any contract effected by the exchange or clearing house in question for the purpose of realising the property provided as margin, and
 - (c) any disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin.

Commencement Information

I22 S. 165 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878, art. 2, Sch.](#)

Marginal Citations

M54 [1985 c. 66.](#)

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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166 Powers of Secretary of State to give directions.

- (1) The powers conferred by this section are exercisable in relation to a recognised UK investment exchange or recognised UK clearing house.
- (2) Where in any case an exchange or clearing house has not taken action under its default rules—
 - (a) if it appears to the [^{F156}Authority] that it could take action, [^{F157}the Authority] may direct it to do so, and
 - (b) if it appears to the [^{F156}Authority] that it is proposing to take or may take action, [^{F157}the Authority] may direct it not to do so.
- (3) Before giving such a direction the [^{F158}Authority] shall consult the exchange or clearing house in question; and [^{F159}it] shall not give a direction unless [^{F159}it] is satisfied, in the light of that consultation—
 - (a) in the case of a direction to take action, that failure to take action would involve undue risk to investors or other participants in the market, or
 - (b) in the case of a direction not to take action, that the taking of action would be premature or otherwise undesirable in the interests of investors or other participants in the market.
- (4) A direction shall specify the grounds on which it is given.
- (5) A direction not to take action may be expressed to have effect until the giving of a further direction (which may be a direction to take action or simply revoking the earlier direction).
- (6) No direction shall be given not to take action if, in relation to the person in question—
 - (a) a bankruptcy order or an award of sequestration of his estate has been made, or an interim receiver or interim trustee has been appointed, or
 - (b) a winding up order has been made, a resolution for voluntary winding up has been passed or an administrator, administrative receiver or provisional liquidator has been appointed;
 and any previous direction not to take action shall cease to have effect on the making or passing of any such order, award or appointment.
- (7) Where an exchange or clearing house has taken or been directed to take action under its default rules, the [^{F160}Authority] may direct it to do or not to do such things (being things which it has power to do under its default rules) as are specified in the direction.

 The [^{F160}Authority] shall not give such a direction unless [^{F161}it] is satisfied that the direction] will not impede or frustrate the proper and efficient conduct of the default proceedings.
- (8) A direction under this section is enforceable, on the application of the [^{F162}Authority], by injunction or, in Scotland, by an order under section 45 of the ^{M55}Court of Session Act 1988; and where an exchange or clearing house has not complied with a direction, the court may make such order as it thinks fit for restoring the position to what it would have been if the direction had been complied with.

Textual Amendments

F156 Words in s. 166(2)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(2)(a)

F157 Words in s. 166(2)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(2)(b)

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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F158 Words in s. 166(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(3)(a)

F159 Words in s. 166(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(3)(b)

F160 Words in s. 166(7) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(4)(a)

F161 Words in s. 166(7) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(4)(b)

F162 Words in s. 166(8) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(5)

Commencement Information

I23 S. 166 wholly in force at 1.10.1991; s. 166 in force for certain purposes at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. (subject to savings in art. 3(2)) and wholly in force at 1.10.1991 see S.I. 1991/2173, art. 2.

Marginal Citations

M55 1988 c. 36.

167 Application to determine whether default proceedings to be taken.

(1) Where there has been made or passed in relation to a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house—

- (a) a bankruptcy order or an award of sequestration of his estate, or an order appointing an interim receiver of his property, or
- (b) an administration or winding up order, a resolution for voluntary winding up or an order appointing a provisional liquidator,

and the exchange or clearing house has not taken action under its default rules in consequence of the order, award or resolution or the matters giving rise to it, a relevant office-holder appointed by, or in consequence of or in connection with, the order, award or resolution may apply to the [^{F163}Authority].

[^{F164}(1A) In subsection (1) a reference to an administration order shall be taken to include a reference to the appointment of an administrator under—

- (a) paragraph 14 of Schedule B1 to the Insolvency Act 1986 (c.45) (appointment by holder of qualifying floating charge), or
- (b) paragraph 22 of that Schedule (appointment by company or directors).]

(2) The application shall specify the exchange or clearing house concerned and the grounds on which it is made.

(3) On receipt of the application the [^{F165}Authority] shall notify the exchange or clearing house, and unless within three business days after the day on which the notice is received the exchange or clearing house—

- (a) takes action under its default rules, or
- (b) notifies the [^{F165}Authority] that it proposes to do so forthwith,

then, subject as follows, the provisions of sections 158 to 165 above do not apply in relation to market contracts to which the member or designated non-member in question is a party or to anything done by the exchange or clearing house for the purposes of, or in connection with, the settlement of any such contract.

For this purpose a “business day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in any part of the United Kingdom under the ^{M56}Banking and Financial Dealings Act 1971.

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- (4) The provisions of sections 158 to 165 are not disapplied if before the end of the period mentioned in subsection (3) the ^{F166}Authority] gives the exchange or clearing house a direction under section 166(2)(a) (direction to take action under default rules).

No such direction may be given after the end of that period.

- (5) If the exchange or clearing house notifies the ^{F167}Authority] that it proposes to take action under its default rules forthwith, it shall do so; and that duty is enforceable, on the application of the ^{F167}Authority], by injunction or, in Scotland, by an order under section 45 of the ^{M57}Court of Session Act 1988.

Textual Amendments

- F163** Words in s. 167(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 82(2)**
- F164** S. 167(1A) inserted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 46 (with s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to transitional provisions in **arts. 3-8** (as amended by S.I. 2003/2332, **art. 2**))
- F165** Words in s. 167(3) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 82(3)**
- F166** Words in s. 167(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 82(4)**
- F167** Words in s. 167(5) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 82(5)**

Commencement Information

- I24** S. 167 wholly in force at 1.10.1991; s. 167 in force for certain purposes at 25.4.1991 see s. 215 and S.I. 1991/878, **art. 2, Sch.** and wholly in force at 1.10.1991 see S.I. 1991/2173, **art. 2**

Marginal Citations

- M56** 1971 c. 80.
- M57** 1988 c. 36.

^{F168}168

Textual Amendments

- F168** S. 168 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 75(f)**

169 Supplementary provisions.

^{F169}(1)

- (2) [^{F170}Sections 296 and 297 of the Financial Services and Markets Act 2000 apply] in relation to a failure by a recognised investment exchange or recognised clearing house to comply with an obligation under this Part as to a failure to comply with an obligation under that Act.
- (3) Where the recognition of an investment exchange or clearing house is revoked under the [^{F171}Financial Services and Markets Act 2000, the appropriate authority] may, before or after the revocation order, give such directions as [^{F172}it] thinks fit with respect to the continued application of the provisions of this Part, with such exceptions, additions and adaptations as may be specified in the direction, in relation to cases

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where a relevant event of any description specified in the directions occurred before the revocation order takes effect.

- [^{F173}(3A) “The appropriate authority” means—
- (a) in the case of an overseas investment exchange or clearing house, the Treasury; and
 - (b) in the case of a UK investment exchange or clearing house, the Authority.]

^{F169}(4)

- (5) [^{F174}Regulations under section 414 of the Financial Services and Markets Act 2000 (service of notices) may make provision] in relation to a notice, direction or other document required or authorised by or under this Part to be given to or served on any person other than the [^{F175}Treasury or the Authority].

Textual Amendments

- F169** S. 169(1)(4) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(g)
- F170** Words in s. 169(2) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(2)
- F171** Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(a)
- F172** Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(b)
- F173** S. 169(3A) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(4)
- F174** Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(a)
- F175** Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(b)

Modifications etc. (not altering text)

- C19** S. 169(3) applied (with modifications) (E.W.S.) (15.8.1995) by S.I. 1995/2049, reg. 28

Commencement Information

- I25** S. 169 partly in force: s. 169(1)(2)(3)(5) in force 25.4.1991 see s. 215(2) and S.I. 1991/878, art. 2, Sch.

Other exchanges and clearing houses

170 Certain overseas exchanges and clearing houses.

- (1) The Secretary of State [^{F176}and the Treasury] may by regulations provide that this Part applies in relation to contracts connected with an overseas investment exchange or clearing house which is approved by [^{F177}the Treasury] in accordance with such procedures as may be specified in the regulations, as satisfying such requirements as may be so specified, as it applies in relation to contracts connected with a recognised investment exchange or clearing house.
- (2) The [^{F178}Treasury] shall not approve an overseas investment exchange or clearing house unless [^{F179}they are] satisfied—
 - (a) that the rules and practices of the body, together with the law of the country in which the body’s head office is situated, provide adequate procedures for dealing with the default of persons party to contracts connected with the body, and
 - (b) that it is otherwise appropriate to approve the body.
- (3) The reference in subsection (2)(a) to default is to a person being unable to meet his obligations.

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- (4) The regulations may apply in relation to the approval of a body under this section such of the provisions of the [^{F180}Financial Services and Markets Act 2000] as the Secretary of State considers appropriate.
- (5) The Secretary of State may make regulations which, in relation to a body which is so approved—
 - (a) apply such of the provisions of the [^{F180}Financial Services and Markets Act 2000] as the Secretary of State considers appropriate, and
 - (b) provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient;
 and different provision may be made with respect to different bodies or descriptions of body.
- (6) Where the regulations apply any provisions of the [^{F180}Financial Services and Markets Act 2000], they may provide that those provisions apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient.

Textual Amendments

- F176** Words in s. 170(1) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 84(2)(a)
- F177** Words in s. 170(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 84(2)(b)
- F178** Word in s. 170(2) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 84(3)(a)
- F179** Words in s. 170(2) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 84(3)(b)
- F180** Words in s. 170(4)(5)(a)(6) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 84(4)

Modifications etc. (not altering text)

- C20** Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, **art. 4**, **Sch. 2 para. 7** (with **art. 6**).

Commencement Information

- I26** S. 170 partly in force; s. 170 not in force at Royal Assent see s. 215(1)(2); s. 170 in force for certain purposes at 25.3.1991 by S.I. 1991/488, **art. 2(2)**.

^{F181}**171**

Textual Amendments

- F181** S. 171 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(h)

172 Settlement arrangements provided by the Bank of England.

- (1) The Secretary of State may by regulations provide that this Part applies to contracts of any specified description in relation to which settlement arrangements are provided by the Bank of England, as it applies to contracts connected with a recognised investment exchange or recognised clearing house.

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.
Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (2) Regulations under this section may provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient.
- (3) Before making any regulations under this section, the Secretary of State [^{F182}and the Treasury shall consult] the Bank of England.

Textual Amendments

F182 Words in s. 172(3) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), Sch. 4 para. 13(b) (with art. 6).

Modifications etc. (not altering text)

C21 Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para.7 (with art. 6).

Commencement Information

I27 S. 172 partly in force; s. 172 not in force at Royal Assent see s. 215(1)(2); s. 172 in force for certain purposes at 25.3.1991 by S.I. 1991/488, art. 2(2).

Market charges

173 Market charges.

- (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,
 - [^{F183}(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 [^{F184}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 [^{F184}or allottee] arising in connection therewith.
- (2) Where a charge is granted partly for purposes specified in subsection (1)(a), [^{F185}(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) [^{F186}In subsection (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 payments in cash, in the event that the obligation to procure the transfer of property cannot be discharged in whole or in part;]

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“specified securities” means securities for the time being specified in the list in Schedule 1 to the ^{M58}Stock 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 Secretary of State may by regulations make further provision as to the charges granted in favour of any such person as is mentioned in subsection (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 subsections (1) to (3) above.
- (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 section in relation to charges granted in favour of a person within subsection (1)(c), the Secretary of State [^{F187}and the Treasury shall consult] the Bank of England.

Textual Amendments

F183 S. 173(1)(aa) inserted by S.I. 1991/880, reg. 9(a)

F184 Words in s. 173(1)(c) inserted by S.I. 1991/880, reg. 9(b)

F185 Word in s. 173(2) inserted by S.I. 1991/880, reg. 9(c)

F186 Words in s. 173(3) substituted by S.I. 1991/880, reg. 9(d)

F187 Words in s. 173(6) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), Sch. 4 para. 13

Modifications etc. (not altering text)

C22 Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para.7 (with art. 6).

Commencement Information

I28 S. 173 wholly in force; s. 173(4)(5) in force for certain purposes at 25.3.1991 and s. 173 wholly in force at 25.4.1991 see s. 215(2); S.I. 1991/488, art. 2(2); S.I. 1991/878, art. 2, Sch.

Marginal Citations

M58 1982 c. 41.

174 Modifications of the law of insolvency.

- (1) The general law of insolvency has effect in relation to market charges and action taken in enforcing them subject to the provisions of section 175.
- (2) The Secretary of State may by regulations make further provision modifying the law of insolvency in relation to the matters mentioned in subsection (1).
- (3) The regulations may add to, amend or repeal the provisions mentioned in subsection (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.

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- (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 section in relation to charges granted in favour of a person within section 173(1)(c), the Secretary of State [^{F188}and the Treasury shall consult] the Bank of England.

Textual Amendments

F188 Words in s. 174(5) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), Sch. 4 para. 13(d) (with art. 6).

Modifications etc. (not altering text)

C23 Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para.7 (with art. 6).

Commencement Information

I29 S. 174 wholly in force; s. 174 not in force at Royal Assent see s. 215(2); s. 174(2)(4) in force for certain purposes at 25.3.1991 by S.I. 1991/488, art. 2(2); s. 174 wholly in force at 25.4.1991 by S.I. 1991/878, art. 2, Sch. (subject to certain savings for s. 174(1) in art. 3(4)).

175 Administration orders, &c.

[^{F189}(1) The following provisions of Schedule B1 to the Insolvency Act 1986 (administration) do not apply in relation to a market charge—

- (a) paragraph 43(2) and (3) (restriction on enforcement of security or repossession of goods) (including that provision as applied by paragraph 44 (interim moratorium)), and
- (b) paragraphs 70, 71 and 72 (power of administrator to deal with charged or hire-purchase property).

(1A) Paragraph 41(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 [^{F190}the occurrence of an event to which subsection (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, [^{F191}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.

[^{F192}(2A) This subsection applies to—

- (a) making an administration application under paragraph 12 of Schedule B1 to the Insolvency Act 1986,
- (b) appointing an administrator under paragraph 14 or 22 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.]

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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- (3) The following provisions of the Insolvency Act 1986 (which relate to the powers of receivers) do not apply in relation to a market charge—
- (a) section 43 (power of administrative receiver to dispose of charged property), and
 - (b) section 61 (power of receiver in Scotland to dispose of an interest in property).
- (4) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition), and section 32(8) of the ^{M59}Bankruptcy (Scotland) Act 1985 (effect of dealing with debtor relating to estate vested in permanent trustee), 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 subsection (4) has notice at the time of the disposition that a petition has been presented for the winding up or bankruptcy or sequestration of the estate 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 subsection (5) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.
- (7) In a case falling within both subsection (4) above (as a disposition of property as a result of which the property becomes subject to a market charge) and section 164(3) (as the provision of margin in relation to a market contract), section 164(4) applies with respect to the recovery of the amount or value of the margin and subsection (5) above does not apply.

Textual Amendments

- F189** S. 175(1)(1A) substituted (15.9.2003) for s. 175(1) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(2) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F190** Words in s. 175(2) substituted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(3) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F191** Words in s. 175(2) inserted by S.I. 1991/880, reg. 18
- F192** S. 175(2A) inserted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(4) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))

Modifications etc. (not altering text)

- C24** S. 175(2) restricted (25.2.1991) by S.I. 1991/145, art. 3
S. 175(2) amended by S.I. 1991/880, reg. 19(2)
- C25** S. 175(1)(b)(3) amended by S.I. 1991/880, reg. 15
S. 175(1)(b)(3) modified (15.8.1995) by S.I. 1995/2049, reg. 24
S. 175(1)(b)(3) modified (15.7.1996) by S.I. 1996/1469, reg. 8(2)
- C26** S. 175(5) amended by S.I. 1991/880, reg. 19(1)
- C27** S. 175(5)(6) excluded in part (11.12.1999) by S.I. 1999/2979, reg. 21(2)(c)

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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Commencement Information

I30 S. 175 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. (subject to certain savings in art. 3(4))

Marginal Citations

M59 1985 c. 66.

176 Power to make provision about certain other charges.

- (1) The Secretary of State 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 under section 170 (certain overseas exchanges and clearing houses),
 - (b) a person included in the list maintained by the [^{F193F194} . . . Authority] for the purposes of [^{F195} section 301 of the Financial Services and Markets Act 2000] (certain money market institutions),
 - (c) the Bank of England,
 - [^{F196}(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 subsection (2).
- (4) Where a charge is granted partly for the purpose specified in subsection (2) and partly for other purposes, the power conferred by this section 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 sections 174 and 175 in relation to market charges, or
 - (b) apply any of those provisions with such exceptions, additions or adaptations as are specified in the regulations.

[^{F197}(6) Before making regulations under this section 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 [^{F198} . . . Authority for the purposes of [^{F199} section 301 of the Financial Services and Markets Act 2000]], or in connection with exchange facilities or clearing services provided by a person included in that list, the Secretary of State and the Treasury shall consult the Authority and the Bank of England.

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- (6A) Before making regulations under this section 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 Secretary of State and the Treasury shall consult the Bank.
- (7) Regulations under this section 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.
- [^{F200}(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;
 - [operating a multilateral trading facility;]
- ^{F201}(ba)
- (c) managing investments;
 - (d) safeguarding and administering investments;
 - (e) sending dematerialised instructions; or
 - (f) establishing etc. a collective investment scheme.
- (9) Subsection (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.]

Textual Amendments

- F193** Words in s. 176(2)(b) substituted (1.6.1998) by 1998 c. 11, s. 23, **Sch. 5 Pt. III para. 48(2)**; S.I. 1998/1120, **art. 2**
- F194** Words in s. 176(2)(b) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(2)(a)**
- F195** Words in s. 176(2)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(2)(b)**
- F196** S. 176(2)(d)(e) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(3)**
- F197** S. 176(6)(6A) substituted (1.6.1998) for s. 176(6) by 1998 c. 11, s. 23, **Sch. 5 Pt. III para. 48(3)**; S.I. 1998/1120, **art. 2**
- F198** Words in s. 176(6) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(4)(a)**
- F199** Words in s. 176(6) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(4)(b)**
- F200** S. 176(8)(9) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1, 85(5)**
- F201** S. 176(8)(ba) inserted (1.4.2007 for certain purposes and otherwise 1.11.2007) by **The Financial Services and Markets Act 2000 (Regulated Activities) (Amendment No. 3) Order 2006** (S.I. 2006/3384), **arts. 1(2), 32**

Modifications etc. (not altering text)

- C28** S. 176: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, **art. 4, Sch. 2 para. 7** (with art. 6).
- C29** S. 176 amended (1.1.1993) by S.I. 1992/3218, **reg. 82(1), Sch. 10 Pt. I para. 29**
S. 176(2) extended (1.1.1996) by S.I. 1995/3275, **reg. 57, Sch. 10 Pt. I para. 13**

Commencement Information

- I31** S. 176 wholly in force: s. 176 not in force at Royal Assent see s. 215(1)(2); s. 176 in force for certain purposes at 25.3.1991 by S.I. 1991/488, **art. 2(2)**; s. 176 wholly in force at 4.7.1995 by S.I. 1995/1591, **art. 2**

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.
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Market property

177 Application of margin not affected by certain other interests.

- (1) The following provisions have effect with respect to the application by a recognised investment exchange or recognised clearing house of property (other than land) held by the exchange or clearing house as margin in relation to a market contract.
- (2) So far as necessary to enable the property to be applied in accordance with the rules of the exchange or clearing house, it may be so applied notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the exchange or clearing house had notice of the interest, right or breach of duty at the time the property was provided as margin.
- (3) No right or remedy arising subsequently to the property being provided as margin may be enforced so as to prevent or interfere with the application of the property by the exchange or clearing house in accordance with its rules.
- (4) Where an exchange or clearing house has power by virtue of the above provisions to apply property notwithstanding an interest, right or remedy, a person to whom the exchange or clearing house disposes of the property in accordance with its rules takes free from that interest, right or remedy.

Modifications etc. (not altering text)

C30 S. 177 applied (15.8.1995) by [S.I. 1995/2049](#), [reg. 25\(1\)](#)

Commencement Information

I32 S. 177 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), [art. 2](#), [Sch.](#) (subject to certain savings in [art. 3\(5\)](#))

PROSPECTIVE

178 Priority of floating market charge over subsequent charges.

- (1) The Secretary of State may by regulations provide that a market charge which is a floating charge has priority over a charge subsequently created or arising, including a fixed charge.
- (2) The regulations may make different provision for cases defined, as regards the market charge or the subsequent charge, by reference to the description of charge, its terms, the circumstances in which it is created or arises, the nature of the charge, the person in favour of whom it is granted or arises or any other relevant factor.

179 Priority of market charge over unpaid vendor's lien.

Where property subject to an unpaid vendor's lien becomes subject to a market charge, the charge has priority over the lien unless the chargee had actual notice of the lien at the time the property became subject to the charge.

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Modifications etc. (not altering text)

C31 S. 179 applied (15.8.1995) by S.I. 1995/2049, reg. 25(2)

Commencement Information

I33 S. 179 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. (subject to certain savings in art. 3(6))

180 Proceedings against market property by unsecured creditors.

- (1) Where property (other than land) is held by a recognised investment exchange or recognised clearing house as margin in relation to market contracts or is subject to a market charge, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of—
 - (a) in the case of property provided as cover for margin, the investment exchange or clearing house in question, or
 - (b) in the case of property subject to a market charge, the person in whose favour the charge was granted.
- (2) Where consent is given the proceedings may be commenced or continued notwithstanding any provision of the ^{M60}Insolvency Act 1986 or the ^{M61}Bankruptcy (Scotland) Act 1985.
- (3) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.
- (4) In the application of this section to Scotland, the reference to execution being commenced or continued includes a reference to diligence being carried out or continued, and the reference to distress being levied shall be omitted.

Modifications etc. (not altering text)

C32 S. 180 applied (15.8.1995) by S.I. 1995/2049, reg. 25(3)

Commencement Information

I34 S. 180 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. (subject to certain savings in art. 3(7)).

Marginal Citations

M60 1986 c. 45.

M61 1985 c. 66.

181 Power to apply provisions to other cases.

- (1) [^{F202}A power to which this subsection applies includes the] power to apply sections 177 to 180 to any description of property provided as cover for margin in relation to

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contracts in relation to which the power is exercised or, as the case may be, property subject to charges in relation to which the power is exercised.

(2) The regulations may provide that those sections apply with such exceptions, additions and adaptations as may be specified in the regulations.

[^{F203}(3) Subsection (1) applies to the powers of the Secretary of State and the Treasury to act jointly under—

- (a) sections 170, 172 and 176 of this Act; and
- (b) section 301 of the Financial Services and Markets Act 2000 (supervision of certain contracts).]

Textual Amendments

F202 Words in s. 181(1) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 86(2)

F203 S. 181(3) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 86(3)

Modifications etc. (not altering text)

C33 S. 181: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para. 7 (with art. 6).

Commencement Information

I35 S. 181 wholly in force: s. 181 not in force at Royal Assent see s. 215(1)(2); s. 181 in force for certain purposes at 25.3.1991 by S.I. 1991/488, art. 2(2); s. 181 wholly in force at 4.7.1995 by S.I. 1995/1591, art. 2

Supplementary provisions

182 Powers of court in relation to certain proceedings begun before commencement.

(1) The powers conferred by this section are exercisable by the court where insolvency proceedings in respect of—

- (a) a member of a recognised investment exchange or a recognised clearing house, or
- (b) a person by whom a market charge has been granted,

are begun on or after 22nd December 1988 and before the commencement of this section.

That person is referred to in this section as “the relevant person”.

(2) For the purposes of this section “insolvency proceedings” means proceedings under Part II, IV, V or IX of the ^{M62}Insolvency Act 1986 (administration, winding up and bankruptcy) or under the ^{M63}Bankruptcy (Scotland) Act 1985; and references in this section to the beginning of such proceedings are to—

- (a) the presentation of a petition on which an administration order, winding-up order, bankruptcy order or award of sequestration is made, or
- (b) the passing of a resolution for voluntary winding up.

(3) This section applies in relation to—

- (a) in England and Wales, the administration of the insolvent estate of a deceased person, and

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(b) in Scotland, the administration by a judicial factor appointed under section 11A of the ^{M64}Judicial Factors (Scotland) Act 1889 of the insolvent estate of a deceased person,
 as it applies in relation to insolvency proceedings.

In such a case references to the beginning of the proceedings shall be construed as references to the death of the relevant person.

- (4) The court may on an application made, within three months after the commencement of this section, by—
- (a) a recognised investment exchange or recognised clearing house, or
 - (b) a person in whose favour a market charge has been granted,
- make such order as it thinks fit for achieving, except so far as assets of the relevant person have been distributed before the making of the application, the same result as if the provisions of Schedule 22 had come into force on 22nd December 1988.
- (5) The provisions of that Schedule (“the relevant provisions”) reproduce the effect of certain provisions of this Part as they appeared in the Bill for this Act as introduced into the House of Lords and published on that date.
- (6) The court may in particular—
- (a) require the relevant person or a relevant office-holder—
 - (i) to return property provided as cover for margin or which was subject to a market charge, or to pay to the applicant or any other person the proceeds of realisation of such property, or
 - (ii) to pay to the applicant or any other person such amount as the court estimates would have been payable to that person if the relevant provisions had come into force on 22nd December 1988 and market contracts had been settled in accordance with the rules of the recognised investment exchange or recognised clearing house, or a proportion of that amount if the property of the relevant person or relevant office-holder is not sufficient to meet the amount in full;
 - (b) provide that contracts, rules and dispositions shall be treated as not having been void;
 - (c) modify the functions of a relevant office-holder, or the duties of the applicant or any other person, in relation to the insolvency proceedings, or indemnify any such person in respect of acts or omissions which would have been proper if the relevant provisions had been in force;
 - (d) provide that conduct which constituted an offence be treated as not having done so;
 - (e) dismiss proceedings which could not have been brought if the relevant provisions had come into force on 22nd December 1988, and reverse the effect of any order of a court which could not, or would not, have been made if those provisions had come into force on that date.
- (7) An order under this section shall not be made against a relevant office-holder if the effect would be that his remuneration, costs and expenses could not be met.

Modifications etc. (not altering text)

C34 S. 182 amended by S.I. 1991/880, reg. 19(1)

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Commencement Information

I36 S. 182 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

Marginal Citations

M62 1986 c. 45.

M63 1985 c. 66.

M64 1889 c. 39.

183 Insolvency proceedings in other jurisdictions.

- (1) The references to insolvency law in section 426 of the ^{M65}Insolvency Act 1986 (co-operation with courts exercising insolvency jurisdiction in other jurisdictions) include, in relation to a part of the United Kingdom, the provisions made by or under this Part and, in relation to a relevant country or territory within the meaning of that section, so much of the law of that country or territory as corresponds to any provisions made by or under this Part.
- (2) A court shall not, in pursuance of that section or any other enactment or rule of law, recognise or give effect to—
 - (a) any order of a court exercising jurisdiction in relation to insolvency law in a country or territory outside the United Kingdom, or
 - (b) any act of a person appointed in such a country or territory to discharge any functions under insolvency law,in so far as the making of the order or the doing of the act would be prohibited in the case of a court in the United Kingdom or a relevant office-holder by provisions made by or under this Part.
- (3) Subsection (2) does not affect the recognition or enforcement of a judgment required to be recognised or enforced under or by virtue of the ^{M66}Civil Jurisdiction and Judgments Act 1982 [^{F204}or Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters][^{F205}, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJ No. L 299 16.11.2005 at p62)] .

Textual Amendments

F204 Words in s. 183(3) inserted (3.1.2002) by S.I. 2001/3929, art. 5, Sch. 3 para. 21

F205 Words in s. 183(3) inserted (1.7.2007) by The Civil Jurisdiction and Judgments Regulations 2007 (S.I. 2007/1655), reg. 5, Sch. para. 15(2)

Commencement Information

I37 S. 183 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

Marginal Citations

M65 1986 c. 45.

M66 1982 c. 27.

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

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184 Indemnity for certain acts, &c.

- (1) Where a relevant office-holder takes any action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a recognised investment exchange or recognised clearing house, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by the office-holder's own negligence.
- (2) Any failure by a recognised investment exchange or recognised clearing house to comply with its own rules in respect of any matter shall not prevent that matter being treated for the purposes of this Part as done in accordance with those rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the rules.
- (3) No recognised investment exchange or recognised clearing house, nor any officer or servant or member of the governing body of a recognised investment exchange or recognised clearing house, shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this subsection applies unless the act or omission is shown to have been in bad faith.
- (4) The functions to which subsection (3) applies are the functions of the exchange or clearing house so far as relating to, or to matters arising out of—
 - (a) its default rules, or
 - (b) any obligations to which it is subject by virtue of this Part.
- (5) No person ^{F206}to whom the exercise of any function of a recognised investment exchange or recognised clearing house is delegated under its default rules], nor any officer or servant of such a person, shall be liable in damages for anything done or omitted in the discharge or purported discharge of those functions unless the act or omission is shown to have been in bad faith.

Textual Amendments

F206 Words in s. 184(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 87

Commencement Information

I38 S. 184 wholly in force at 1.10.1991; s. 184 in force for certain purposes on 25.3.1991 see s. 215 and S.I. 1991/488, art. 2(2), s. 184 in force for certain purposes on 25.4.1991 see s. 215 and S.I. 1991/878, art. 2 Sch., s. 184 wholly in force at 1.10.1991 see S.I. 1991/2173, art. 3

185 Power to make further provision by regulations.

- (1) The Secretary of State may by regulations make such further provision as appears to him necessary or expedient for the purposes of this Part.
- (2) Provision may, in particular, be made—
 - (a) for integrating the provisions of this Part with the general law of insolvency, and
 - (b) for adapting the provisions of this Part in their application to overseas investment exchanges and clearing houses.

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(3) Regulations under this section may add to, amend or repeal any of the provisions of this Part or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

[^{F207}(4) References in this section to the provisions of this Part include any provision made under section 301 of the Financial Services and Markets Act 2000.]

Textual Amendments

F207 S. 185(4) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 88

Modifications etc. (not altering text)

C35 S. 185: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para. 7 (with art. 6).

Commencement Information

I39 S. 185 wholly in force at 10.8.1998. In force for certain purposes at 25.3.1991 by s. 215(2) and S.I. 1991/488, art. 2(2), and for all remaining purposes at 10.8.1998 by S.I. 1998/1747, art. 2

186 Supplementary provisions as to regulations.

- (1) Regulations under this Part may make different provision for different cases and may contain such incidental, transitional and other supplementary provisions as appear to the Secretary of State to be necessary or expedient.
- (2) Regulations under this Part shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

C36 S. 186: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para. 7 (with art. 6)

Commencement Information

I40 S.186 wholly in force at 10.8.1998. In force for certain purposes at 25.3.1991 by s. 215(2) and S.I. 1991/488, art. 2(2) and for all remaining purposes at 8.10.1998 by S.I. 1998/1747, art. 2

187 Construction of references to parties to market contracts.

- (1) Where a person enters into market contracts in more than one capacity, the provisions of this Part apply (subject as follows) as if the contracts entered into in each different capacity were entered into by different persons.
- (2) References in this Part to a market contract to which a person is a party include (subject as follows, and unless the context otherwise requires) contracts to which he is party as agent.
- (3) The Secretary of State may by regulations—
 - (a) modify or exclude the operation of subsections (1) and (2), and
 - (b) make provision as to the circumstances in which a person is to be regarded for the purposes of those provisions as acting in different capacities.

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.

Changes to legislation: Companies Act 1989 is up to date with all changes known to be in force on or before 11 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

Modifications etc. (not altering text)

C37 S. 187(1) amended by S.I. 1991/880, **reg. 16(2)**

Commencement Information

I41 S.187 wholly in force; s. 187(3) in force for certain purposes at 25.3.1991, s. 187 wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/488, **art. 2(2)**; S.I. 1991/878, **art. 2, Sch.**

188 Meaning of “default rules” and related expressions.

- (1) In this Part “default rules” means rules of a recognised investment exchange or recognised clearing house which provide for the taking of action in the event of a person appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the exchange or clearing house.
- (2) References in this Part to a “defaulter” are to a person in respect of whom action has been taken by a recognised investment exchange or recognised clearing house under its default rules, whether by declaring him to be a defaulter or otherwise; and references in this Part to “default” shall be construed accordingly.
- (3) In this Part “default proceedings” means proceedings taken by a recognised investment exchange or recognised clearing house under its default rules.
- (4) If an exchange or clearing house takes action under its default rules in respect of a person, all subsequent proceedings under its rules for the purposes of or in connection with the settlement of market contracts to which the defaulter is a party shall be treated as done under its default rules.

Commencement Information

I42 S. 188 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, **art. 2, Sch.**

189 Meaning of “relevant office-holder”.

- (1) The following are relevant office-holders for the purposes of this Part—
 - (a) the official receiver,
 - (b) any person acting in relation to a company as its liquidator, provisional liquidator, administrator or administrative receiver,
 - (c) any person acting in relation to an individual (or, in Scotland, any debtor within the meaning of the ^{M67}Bankruptcy (Scotland) Act 1985) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate,
 - (d) any person acting as administrator of an insolvent estate of a deceased person.
- (2) In subsection (1)(b) “company” means any company, society, association, partnership or other body which may be wound up under the ^{M68}Insolvency Act 1986.

Commencement Information

I43 S. 189 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, **art. 2, Sch.**

Status: Point in time view as at 06/04/2008. This version of this Act contains provisions that are prospective.
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Marginal Citations

M67 1985 c. 66.

M68 1986 c.45.

190 Minor definitions.

(1) In this Part—

“administrative receiver” has the meaning given by section 251 of the Insolvency Act 1986;

[^{F208}“the Authority” means the Financial Services Authority;]

“charge” means any form of security, including a mortgage and, in Scotland, a heritable security;

^{F209} . . .

“interim trustee” and “permanent trustee” have the same meaning as in the Bankruptcy (Scotland) Act 1985;

^{F209} . . .

“overseas”, in relation to an investment exchange or clearing house, means having its head office outside the United Kingdom;

[^{F210}“recognised clearing house” and “recognised investment exchange” have the same meaning as in the Financial Services and Markets Act 2000;]

^{F209} . . .

“set-off”, in relation to Scotland, includes compensation;

[^{F211}“The Stock Exchange” means the London Stock Exchange Limited;]

“UK”, in relation to an investment exchange or clearing house, means having its head office in the United Kingdom.

(2) References in this Part to settlement in relation to a market contract are to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

(3) In this Part the expressions “margin” and “cover for margin” have the same meaning.

^{F212}(4)

(5) For the purposes of this Part a person shall be taken to have notice of a matter if he deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.

This does not apply for the purposes of a provision requiring “actual notice”.

(6) References in this Part to the law of insolvency include references to every provision made by or under the ^{M69}Insolvency Act 1986 or the ^{M70}Bankruptcy (Scotland) Act 1985; and in relation to a building society references to insolvency law or to any provision of the Insolvency Act 1986 are to that law or provision as modified by the Building Societies Act 1986.

(7) In relation to Scotland, references in this Part—

(a) to sequestration include references to the administration by a judicial factor of the insolvent estate of a deceased person, and

(b) to an interim or permanent trustee include references to a judicial factor on the insolvent estate of a deceased person,

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unless the context otherwise requires.

Textual Amendments

- F208** Definition of “the Authority” in s. 190(1) inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(2)
- F209** Definitions of “clearing house”, “investment”, “investment exchange” and “recognised” in s. 190(1) repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(3)
- F210** Definitions of “recognised clearing house” and “recognised investment exchange” in s. 190(1) inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(4)
- F211** Definition of “The Stock Exchange” in s. 190(1) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(5)
- F212** S. 190(4) repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(6)

Commencement Information

- I44** S. 190 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), [art. 2](#), [Sch.](#)

Marginal Citations

- M69** 1986 c. 45.
M70 1985 c. 66.

191 Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section or paragraph)—

administrative receiver	section 190(1)
[^{F213} the Authority	section 190(1)]
charge	section 190(1)
F214	F214
...	...
cover for margin	section 190(3)
default rules (and related expressions)	section 188
designated non-member	section 155(2)
F214	F214
...	...
insolvency law (and similar expressions)	section 190(6)
interim trustee	section 190(1) and (7)(b)
F214	F214
...	...
F214	F214
...	...
margin	section 190(3)
market charge	section 173

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market contract	section 155
notice	section 190(5)
overseas (in relation to an investment exchange or clearing house)	section 190(1)
party (in relation to a market contract)	section 187
permanent trustee	section 190(1) and (7)(b)
F214	F214
...	...
[^{F213} recognised clearing house and recognised investment exchange	section 190(1)]
relevant office-holder	section 189
sequestration	section 190(7)(a)
set off (in relation to Scotland)	section 190(1)
settlement and related expressions (in relation to a market contract)	section 190(2)
The Stock Exchange	section 190(1)
trustee, interim or permanent (in relation to Scotland)	section 190(7)(b)
UK (in relation to an investment exchange or clearing house)	section 190(1).

Textual Amendments

- F213** Entries in the Table in s. 191 inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(7)(b)
- F214** Entries in the Table in s. 191 repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 89(7)(a)

Commencement Information

- I45** S. 191 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), [art. 2](#), [Sch.](#)

PART VIII

AMENDMENTS OF THE FINANCIAL SERVICES ACT 1986

^{F215}**192**

Textual Amendments

- F215** [Ss. 192-197](#) repealed (1.12.2001) by [S.I. 2001/3649](#), [arts. 1](#), 75(i)

^{F216}**193**

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Textual Amendments

F216 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F217 **194**

Textual Amendments

F217 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F218 **195**

Textual Amendments

F218 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F219 **196**

Textual Amendments

F219 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F220 **197**

Textual Amendments

F220 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F221 **198**

Textual Amendments

F221 S. 198 repealed (19.6.1995) by S.I. 1995/1537, regs. 1(1), 17, Sch. 2 Pt. II para.10

F222 **199**

Textual Amendments

F222 S. 199 repealed (19.6.1995) by S.I. 1995/1537, regs. 1(1), 17, Sch. 2 Pt. II para.10

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200 Jurisdiction of High Court and Court of Session.

^{F223}(1)

(2) In Schedule 5 to the ^{M71}Civil Jurisdiction and Judgments Act 1982 (proceedings excluded from general provisions as to allocation of jurisdiction within the United Kingdom), for paragraph 10 substitute—

Financial Services Act 1986

“10 Proceedings such as are mentioned in section 188 of the Financial Services Act 1986.”.

Textual Amendments

F223 S. 200(1) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(j)

Marginal Citations

M71 1982 c. 27.

^{F224}**201**

Textual Amendments

F224 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

^{F225}**202**

Textual Amendments

F225 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

^{F226}**203**

Textual Amendments

F226 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

^{F227}**204**

Textual Amendments

F227 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

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F228 **205**

Textual Amendments

F228 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

F229 **206**

Textual Amendments

F229 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

PART IX

TRANSFER OF SECURITIES

Modifications etc. (not altering text)

C38 Part IX (s. 207): functions of the Secretary of State transferred (7.6.1992) to the Treasury by S.I. 1992/1315, art. 2(1) (with art. 6).

207 **Transfer of securities.**

F230

Textual Amendments

F230 S. 207 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)

PART X

MISCELLANEOUS AND GENERAL PROVISIONS

Miscellaneous

208 **Summary proceedings in Scotland for offences in connection with disqualification of directors.**

In section 21 of the ^{M72}Company Directors Disqualification Act 1986 (application of provisions of the ^{M73}Insolvency Act 1986), after subsection (3) add—

“(4) For the purposes of summary proceedings in Scotland, section 431 of that Act applies to summary proceedings for an offence under section 11 or 13 of this

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Act as it applies to summary proceedings for an offence under Parts I to VII of that Act.”.

Marginal Citations

- M72 1986 c. 46.
- M73 1986 c. 45.

F231 209

Textual Amendments

- F231 S. 209 repealed (1.3.1994) by 1993 c. 36, s. 79(14), Sch. 6 Pt.I; S.I. 1994/242, art. 2, Sch.

210 Restriction of duty to supply statements of premium income.

- (1) Schedule 3 to the ^{M74}Policyholders Protection Act 1975 (provisions with respect to levies on authorised insurance companies) is amended as follows.
- (2) For paragraph 4 (statements of premium income to be sent to Secretary of State) substitute—

“4

- (1) The Secretary of State may by notice in writing require an authorised insurance company to send him a statement of—
 - (a) any income of the company for the year preceding that in which the notice is received by the company which is income liable to the general business levy, and
 - (b) any income of the company for that year which is income liable to the long term business levy.

- (2) An authorised insurance company which receives a notice under this paragraph shall send the statement required by the notice to the Secretary of State within three months of receiving the notice.

- (3) Where an authorised insurance company is required under this paragraph to send a statement to the Secretary of State in respect of income of both descriptions mentioned in sub-paragraph (1)(a) and (b) above it shall send a separate statement in respect of income of each description.”.

- (3) In paragraph 5(3) (application of provisions of the ^{M75}Insurance Companies Act 1982 to failure to meet obligation imposed by paragraph 4) for “the obligation imposed on an insurance company by paragraph 4” substitute “an obligation imposed on an insurance company under paragraph 4”.

- (4) In paragraph 6 (declaration and enforcement of levies) omit sub-paragraph (4) (provision about notices).

- (5) After paragraph 7 insert—

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“8 Notices under paragraphs 4 and 6

A notice under paragraph 4 or 6 above may be sent by post, and a letter containing such a notice shall be deemed to be properly addressed if it is addressed to the insurance company to which it is sent at its last known place of business in the United Kingdom.”.

Marginal Citations

M74 1975 c. 75.

M75 1982 c. 50.

211 Building societies: miscellaneous amendments.

- (1) In section 104 of the ^{M76}Building Societies Act 1986 (power to assimilate law relating to building societies and law relating to companies), in subsection (2) (relevant provisions of that Act), omit the word “and” before paragraph (d) and after that paragraph add—

“; and

(e) section 110 (provisions exempting officers and auditors from liability).”.

- (2) In Schedule 15 to the Building Societies Act 1986 (application of companies winding-up legislation)—

- (a) in paragraph 1(a) (provisions of ^{M77}Insolvency Act 1986 applied) for “and XII” substitute “, XII and XIII”;
- (b) in paragraph 3(2)(b) (adaptations: references to be omitted), omit “, a shadow director”.

- (3) In the ^{M78}Company Directors Disqualification Act 1986, after section 22 insert—

“22A Application of Act to building societies.

- (1) This Act applies to building societies as it applies to companies.
- (2) References in this Act to a company, or to a director or an officer of a company include, respectively, references to a building society within the meaning of the Building Societies Act 1986 or to a director or officer, within the meaning of that Act, of a building society.
- (3) In relation to a building society the definition of “shadow director” in section 22(5) applies with the substitution of “building society” for “company”.
- (4) In the application of Schedule 1 to the directors of a building society, references to provisions of the Insolvency Act or the Companies Act include references to the corresponding provisions of the Building Societies Act 1986.”.

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Commencement Information

I46 S. 211 wholly in force; s. 211(2)(3) in force at 31.7.1990 see S.I. 1990/1392; s. 211(1) in force at 1.10.1991 see s. 215 and S.I. 1991/1996, **art. 2(1)(b)**

Marginal Citations

M76 1986 c. 53.

M77 1986 c. 45.

M78 1986 c. 46.

General

212 Repeals. U.K.

The enactments mentioned in Schedule 24 are repealed to the extent specified there.

Extent Information

E1 For information relating to the extent of this section see s. 213

Commencement Information

I47 S. 212 partly in force: s. 212 partly in force at Royal Assent see s. 215(1)(2); s. 212 in force for certain purposes at 1.7.1991 by S.I. 1991/488, **art. 2(4)**; s. 212 partly in force for certain purposes at 1.10.1991 and 1.11.1991 by S.I. 1991/1996, **art. 2(1)(2)**; s. 212 in force for certain purposes at 3.7.1995 by S.I. 1995/1352, **art. 3(c)(i)(ii)**

212 Repeals. E+W+S

The enactments mentioned in Schedule 24 are repealed to the extent specified there.

213 Provisions extending to Northern Ireland.

- (1) The provisions of this Act extend to Northern Ireland so far as they amend, or provide for the amendment of, an enactment which so extends.
- (2) So far as any provision of this Act amends the ^{M79}Companies Act 1985 or the ^{M80}Insolvency Act 1986, its application to companies registered or incorporated in Northern Ireland is subject to section 745(1) of the Companies Act 1985 or section 441(2) of the Insolvency Act 1986, as the case may be.
- (3) In Part III (investigations and powers to obtain information), sections 82 to 91, (powers exercisable to assist overseas regulatory authorities) extend to Northern Ireland.
- (4) Part VI (mergers and related matters) extends to Northern Ireland.
- (5) In Part VII (financial markets and insolvency) the following provisions extend to Northern Ireland—
 - (a) sections 154 and 155 (introductory provisions and definition of “market contract”),
 - ^{F232}(b)

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- (c) sections 157, 160, 162, and 166 to 169 (provisions relating to recognised investment exchanges and clearing houses),
- (d) sections 170 to 172 (power to extend provisions to other financial markets),
- (e) section 184 (indemnity for certain acts), and
- (f) sections 185 to 191 (supplementary provisions).

^{F232}(6)

(7) Part IX (transfer of securities) extends to Northern Ireland.

^{F233}

(8) In Part X (miscellaneous and general provisions), this section and sections 214 to 216 (general provisions) extend to Northern Ireland.

(9) Except as mentioned above, the provisions of this Act do not extend to Northern Ireland.

Textual Amendments
^{F232} S. 213(5)(b)(6) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(l)
^{F233} Words in s. 213(7) repealed (2.12.1999) by 1998 c. 47, s. 100(2), Sch. 15 (with s. 95); S.I. 1999/3209, art. 2, Sch.

Marginal Citations
^{M79} 1985 c. 6.
^{M80} 1986 c. 45.

^{F234}214

Textual Amendments
^{F234} S. 214 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(m)

215 Commencement and transitional provisions.

- (1) The following provisions of this Act come into force on Royal Assent—
- (a) in Part V (amendments of company law), section 141 (application to declare dissolution of company void);
 - (b) in Part VI (mergers)—
 - (i) sections 147 to 150, and
 - (ii) paragraphs 2 to 12, 14 to 16, 18 to 20, 22 to 25 of Schedule 20, and section 153 so far as relating to those paragraphs;
 - (c) in Part VIII (amendments of the ^{M81}Financial Services Act 1986), section 202 (offers of short-dated debentures);
 - (d) in Part X (miscellaneous and general provisions), the repeals made by Schedule 24 in sections 71, 74, 88 and 89 of, and Schedule 9 to, the ^{M82}Fair Trading Act 1973, and section 212 so far as relating to those repeals.

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- (2) The other provisions of this Act come into force on such day as the Secretary of State may appoint by order made by statutory instrument; and different days may be appointed for different provisions and different purposes.
- (3) An order bringing into force any provision may contain such transitional provisions and savings as appear to the Secretary of State to be necessary or expedient.
- (4) The Secretary of State may also by order under this section amend any enactment which refers to the commencement of a provision brought into force by the order so as to substitute a reference to the actual date on which it comes into force.

Subordinate Legislation Made

- P1** Power of appointment conferred by s. 215(2) partly exercised: [S.I. 1990/98](#), 142, 354, 355, 713, 1392, 1707, 2569
[S. 215\(2\)](#) power partly exercised: 1.1.2005 appointed for specified provisions by [{S.I. 2004/3322}](#), art. 2(1)
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Marginal Citations

- M81** 1986 c. 60.
M82 1973 c. 41.

216 Short title.

This Act may be cited as the Companies Act 1989.

Status:

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Changes to legislation:

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