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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F1 S. 1 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)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F2 S. 2 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)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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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F3 S. 3 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)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F4 S. 4 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)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F5 S. 5 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)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F6 S. 6 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)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F7 S. 7 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)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F8 S. 8 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)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F9 S. 9 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)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F10 S. 10 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), **Sch. 16**; S.I. 2007/3495, **art. 8**, Sch. 2 Pt. 1 (with arts. 7, 12)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.

Status: *Point in time view as at 30/11/2016. This version of this Act contains provisions that are prospective.*
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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.	—".

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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[F62]73 . . . . . .

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

[F63]74 . . . . . .

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

[F64]75 . . . . . .

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

[F65]76 . . . . . .

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

Amendments of other enactments

[F66]77 . . . . . .

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

[F67]78 . . . . . .

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)**

[F68]79 . . . . . .

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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 sub-paragraph (ii) insert—

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

Commencement Information

I1 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 **[**[F72]FCA, the PRA or the Bank of England**]** under the Financial Services and Markets Act 2000;

[F73](iii) . . . . . .**]**

(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 **[**[F74]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 **[**[F75]he and the **[**[F76]corresponding UK regulator (if any)**]** 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.

[[F77](3A) In subsection (3), "the corresponding UK regulator" means such one or more of the FCA, PRA and the Bank of England as appears to the Secretary of State to exercise functions corresponding to the regulatory functions for the purposes of which the request is made.**]**

(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 **[**[F78]FCA and the PRA**]**.

A "banking supervisor" means an overseas regulatory authority with respect to which the **[**[F79]FCA or the PRA**]** has notified the Secretary of State, for the purposes of this subsection, that it exercises functions corresponding to those of **[**[F80]the body giving the notification**][**[F81]in relation to authorised persons with permission under the Financial Services and Markets Act 2000 to accept deposits**]**.

[[F82](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.

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(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)

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)(ii) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 63(2)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F73 S. 82(2)(a)(iii) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 63(2)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F74 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.**

F75 Words in s. 82(3) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 76(3)

F76 Words in s. 82(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 63(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F77 S. 82(3A) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 63(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F78 Words in s. 82(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 63(5)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F79 Words in s. 82(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 63(5)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F80 Words in s. 82(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 63(5)(c)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F81 Words in the definition of "banking supervisor" in s. 82(5) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 76(4)

F82 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).

C6 S. 82(3) modified (cond.) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 (S.I. 2013/442), arts. 1(3), **64(2)**

C7 S. 82(5) restricted (cond.) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 (S.I. 2013/442), arts. 1(3), **64(3)**

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—

(a) 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,

(b) 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

(c) otherwise to give him such assistance in connection with the inquiries as he is reasonably able to give.

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(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.

[[F83](6A) However, in criminal proceedings in which that person is charged with an offence to which this subsection applies—

(a) no evidence relating to the statement may be adduced, and

(b) no question relating to it may be asked,

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

F83 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).

Status: *Point in time view as at 30/11/2016. 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 21 June 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)*

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—
  (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

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(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.

(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 **[**[F84]EU**]** obligation.

(2) The relevant proceedings referred to in subsection (1)(a) are—

(a) any criminal proceedings,

[[F85](b) civil proceedings arising under or by virtue of the Financial Services and Markets Act 2000 and proceedings before the Upper Tribunal in respect of—

[[F86](i) a decision of the FCA;

(ia) a decision of the PRA;**]**

(ii) a decision of the Bank of England; or

(iii) a decision of a person relating to the assessment of any compensation or consideration under the Banking (Special Provisions) Act 2008 or the Banking Act 2009,**]**

(c) disciplinary proceedings relating to—

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(i) the exercise by a **[**[F87]relevant lawyer**]**, auditor, accountant, valuer or actuary of his professional duties, or

(ii) the discharge by a public servant of his duties.

[[F88](d) proceedings before **[**[F89]the Pensions Regulator Tribunal**][**[F89]a tribunal in relation to a decision of the Pensions Regulator**].]**

[[F90](2A) In subsection (2)(c)(i) "relevant lawyer" means—

(a) a person who, for the purposes of the Legal Services Act 2007, is an authorised person in relation to an activity which constitutes a reserved legal activity (within the meaning of that Act),

(b) a solicitor or barrister in Northern Ireland, or

(c) a solicitor or advocate in Scotland.**]**

(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—

Authority	***Functions***
[[F91]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.**]**
[[F92]The Treasury.	Functions under— (a)this Part or Part 7 of this Act; (b)the Financial Services and Markets Act 2000.**]**
[[F93]An inspector appointed under Part 14 of the Companies Act 1985.	Functions under that Part.**]**
[[F94]A person authorised to exercise powers under section 447 of the Companies Act 1985 or section 84 of this Act.	Functions under that section.**]**
[[F94]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	Functions in relation to the investigation.**]**

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(e)regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies),to conduct an 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.
F95	**F95**
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F95	**F95**
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F95	**F95**
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F95	**F95**
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F95	**F95**
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F95	**F95**
. . .	. . .
The Bank of England.	**[**[F96]Any of its functions**]**
[[F97]**[**[F98]The FCA or the PRA**]**.	Functions under the enactments relating to friendly societies, under the Building Societies Act 1986 and under the Financial Services and Markets Act 2000.**]**
[[F99]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.**]**
F95	**F95**
. . .	. . .
[[F100]A body designated by order under section 1252 of the Companies Act 2006.**]**	**[**[F100]Functions under Part 42 of the Companies Act 2006.**]**

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[F101A recognised supervisory or qualifying body within the meaning of Part 42 of the Companies Act 2006.**]**	**[**F101Functions as such a body.**]**
F95	F95
. . .	. . .
F102	F102
. . .	. . .
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 M12 Insolvency Act 1986.
F95	F95
. . .	. . .
[F103The 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 enactment in force in Northern Ireland corresponding to that Part.**]**
[F104The Competition and Markets Authority**]**	Functions under the **[**F105Financial Services and Markets Act 2000**]**.
[F106A person authorised by the Secretary of State under sections 245C of the Companies Act 1985.**]**	**[**F106Functions relating to the securing of compliance by companies with the accounting requirements of that Act).**]**
F107	F107
. . .	. . .
[F108The Comptroller and Auditor General.	Functions under Part 2 of the National Audit Act 1983.**]**
[F109The Scottish Ministers	Functions under the enactments relating to insolvency
The Accountant in Bankruptcy	Functions he has under the enactments relating to insolvency.**]**

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[[F110] The Regulator of Community Interest Companies.	Functions under the Companies (Audit, Investigations and Community Enterprise) Act 2004.**]**
[[F111]The Gambling Commission	**[**[F112]Functions under— (a) the Gambling Act 2005, (b) sections 5 to 10 and 15 of the National Lottery etc. Act 1993.**]]**

[[F113]*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—

(a) add any public or other authority to the Table and specify the relevant functions of that authority,

(b) remove any authority from the Table, or

(c) 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

F84 Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, **3**, 6 (with art. 3(2)(3), 4(2), 6(4)(5))

F85 S. 87(2)(b) substituted (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 9(a)** (with Sch. 5)

F86 S. 87(2)(b)(i)(ia) substituted for s. 87(2)(b)(i) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 64(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F87 Words in s. 87(2)(c)(i) substituted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), **Sch. 21 para. 82(a)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)

F88 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))

F89 Words in s. 87(2)(d) substituted (E.W.S.) (6.4.2010) by The Transfer of Tribunal Functions Order 2010 (S.I. 2010/22), art. 1(2)(e), **Sch. 2 para. 9(b)** (with Sch. 5)

F90 S. 87(2A) inserted (1.1.2010) by Legal Services Act 2007 (c. 29), s. 211(2), **Sch. 21 para. 82(b)** (with ss. 29, 192, 193); S.I. 2009/3250, art. 2(h)

F91 S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(5)

F92 S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(6)

F93 S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(7)

F94 S. 87(4): Entries in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(8)

F95 S. 87(4): Entries in the Table repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(4)

F96 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**

F97 S. 87(4): Entry in the Table substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(9)

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F98 Words in s. 87(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 64(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F99 S. 87(4): Entries in the Table inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(10)
F100 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**
F101 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**
F102 S. 87(4): Entry in the Table omitted (30.4.2001) by virtue of S.I. 2001/1283, **art. 3(4)**
F103 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))
F104 Words in s. 87(4) Table substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 69** (with art. 3)
F105 Words in the Table in s. 87(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 77(11)
F106 S. 87(4) Table: entry inserted (16.8.1993) by S.I. 1993/1826, **art. 3**
F107 S. 87(4) Table: entry omitted (1.10.2013) by virtue of The Public Bodies (Merger of the Gambling Commission and the National Lottery Commission) Order 2013 (S.I. 2013/2329), art. 1(2), **Sch. para. 23(a)** (with art. 8, Sch. para. 43)
F108 S. 87(4) Table: Entry inserted (14.8.2002) by S.I. 2002/1889, **art. 3(2)**
F109 S. 87(4) Table: entries inserted (1.7.1999) by S.I. 1999/1820, art. 4, **Sch. 2 Pt. I para. 96**
F110 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
F111 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**
F112 Words in s. 87(4) Table substituted (1.10.2013) by The Public Bodies (Merger of the Gambling Commission and the National Lottery Commission) Order 2013 (S.I. 2013/2329), art. 1(2), **Sch. para. 23(b)** (with art. 8, Sch. para. 43)
F113 S. 87(4): Table Note added (14.8.2002) by S.I. 2002/1889, **art. 3(3)**

Modifications etc. (not altering text)
C8 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**
C9 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—

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(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.

(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.),
[[F114](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
F114 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.

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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 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, **[**[F115]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.

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Textual Amendments

F115 Words in s. 91(4) substituted (1.4.1996) by 1995 c. 40, ss. 5, 7(2), **Sch. 4 para. 74(3)**

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

[F116] PART IV

REGISTRATION OF COMPANY CHARGES

Textual Amendments

F116 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)

[F116] Introduction

[F116]92 Introduction.

. . . . . .

[F116] Registration in the companies charges register

[F116]93 Charges requiring registration.

. . . . . .

[F116]94 The companies charges register.

. . . . . .

[F116]95 Delivery of particulars for registration.

. . . . . .

[F116]96 Delivery of further particulars.

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[F116]97 Effect of omissions and errors in registered particulars.

. . . . . .

[F116]98 Memorandum of charge ceasing to affect company's property.

. . . . . .

[F116]99 Further provisions with respect to voidness of charges.

. . . . . .

[F116]100 Additional information to be registered.

. . . . . .

[F116] Copies of instruments and register to be kept by the company

[F116]101 Copies of instruments and register to be kept by the company

. . . . . .

[F116] Supplementary provisions

[F116]102 Power to make further provision by regulations.

. . . . . .

[F116]103 Other supplementary provisions.

. . . . . .

[F116]104 Interpretation, &c.

. . . . . .

[F116]105 Charges on property of oversea company.

. . . . . .

[F116]106 Application of provisions to unregistered companies.

. . . . . .

[F116]107 Consequential amendments.

. . . . . .

Status: *Point in time view as at 30/11/2016. This version of this Act contains provisions that are prospective.*
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PART V

OTHER AMENDMENTS OF COMPANY LAW

A company's capacity and related matters

[F117]108 A company's objects and the power of the directors to bind it.

. . . . . .

Textual Amendments

F117 Ss. 108-110 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.)

[F117]109

. . . . . .

Textual Amendments

F117 Ss. 108-110 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.)

[F117]110 Statement of company's objects.

. . . . . .

Textual Amendments

F117 Ss. 108-110 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.)

[F118]111 . . . . . .

Textual Amendments

F118 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 **[**[F119]a company registered under the Companies Act 2006**]**; and

(b) "charity" means a body **[**[F120]entered in the Scottish Charity Register**]**.

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(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) **[**[F121]Sections 39 and 40 of the Companies Act 2006 (company's capacity and 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 **[**[F122]constitution**]** 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 **[**[F123]constitution**]** 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 **[**[F124]constitution**]** 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,

(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.

[[F125](8) If a company fails to comply with subsection (6) it commits an offence.

(9) An officer of a company, or a person acting on its behalf, who—

(a) issues or authorises the issue of any business letter of the company, or any notice or other official publication of the company, in which the statement required by subsection (6) does not appear, or

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(b) issues or authorises the issue of any bill, invoice, receipt or letter of credit in which the statement required by subsection (6) does not appear,

commits an offence.

(10) An officer of a company, or a person acting on its behalf, who signs or authorises to be signed on behalf of the company any bill of exchange, promissory note, endorsement, cheque or order for money or goods in which the statement required by subsection (6) does not appear—

(a) commits an offence, and

(b) is personally liable to the holder of the bill of exchange, promissory note, endorsement, cheque or order for money or goods for the amount of it (unless it is duly paid by the company).

(11) A person guilty of an offence under subsection (8), (9) or (10) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.**]**

Textual Amendments

F119 Words in s. 112(1)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 103(2)(a)** (with art. 10)

F120 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**

F121 Words in s. 112(3) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 103(2)(b)** (with art. 10)

F122 Word in s. 112(3)(b) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 103(2)(c)** (with art. 10)

F123 Word in s. 112(4) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 103(2)(c)** (with art. 10)

F124 Word in s. 112(5)(a) substituted (1.10.2009) by The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 103(2)(c)** (with art. 10)

F125 S. 112(8)-(11) substituted for s. 112(8) (1.10.2008) by The Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), art. 2(3), **Sch. 3 para. 6** (with arts. 6, 11, 12)

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.

De-regulation of private companies

113 Written resolutions of private companies.

F126 . . . . . .

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Textual Amendments

F126 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.

[F127] . . . . . .

Textual Amendments

F127 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)

[F128]115 Election by private company to dispense with certain requirements.

. . . . . .

Textual Amendments

F128 S. 115 repealed (1.10.2007 for the repeal of s. 115(2)(3), 1.10.2009 for the repeal of s. 115(1)) by Companies Act 2006 (c. 46), s. 1300(2), **Sch. 16**; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 3 para. 48); 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.)

116 Elective resolution of private company.

[[F129](1) . . . . . .

(2) . . . . . .

(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;".**]**

Textual Amendments

F129 S. 116 repealed (1.10.2009 for the repeal of s. 116(1)(2)) 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.)

[F130]117 Power to make further provision by regulations.

. . . . . .

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Textual Amendments

F130 S. 117 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.)

Appointment and removal of auditors and related matters

118 Introduction.

F131 . . . . . .

Textual Amendments

F131 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.

F132 . . . . . .

Textual Amendments

F132 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.

F133 . . . . . .

Textual Amendments

F133 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.

F134 . . . . . .

Textual Amendments

F134 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.

F135 . . . . . .

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Textual Amendments

F135 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)

[F136]123 Statement by person ceasing to hold office as auditor.

. . . . . .

Textual Amendments

F136 S. 123 repealed (6.4.2008 for the repeal of s. 123(1)-(4), 1.10.2009 in so far as not already in force) by Companies Act 2006 (c. 46), s. 1300(2), **Sch. 16**; S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12); 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.)

[F137]124 . . . . . .

Textual Amendments

F137 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.

[[F138](1) . . . . . .

(2) For section 707 of the Companies Act 1985 (power of registrar to accept information on microfilm, &c.) substitute—

" **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,

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(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.

(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.".**]**

Textual Amendments

F138 S. 125 repealed (1.10.2009 for the repeal of s. 125(1)) 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.)

[F139]126 Keeping and inspection of company records.

. . . . . .

Textual Amendments

F139 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.)

[F139]127 Supplementary provisions as to company records and related matters.

. . . . . .

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Textual Amendments

F139 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.)

Miscellaneous

PROSPECTIVE

[F139]128 Form and articles for partnership company.

. . . . . .

Textual Amendments

F139 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.)

[F139]129 Membership of holding company.

. . . . . .

Textual Amendments

F139 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.)

130 Company contracts and execution of documents by companies.

[[F140](1) . . . . . .

(2) . . . . . .

(3) . . . . . [F141]

(4) . . . . . .

(5) . . . . . .

(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; **[**[F142]execution 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.

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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) . . . . .]

Textual Amendments

F140 S. 130 repealed (1.10.2009 for the repeal of s. 130(1)-(5)(7)) 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.)

F141 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**

F142 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**

[F143]131 Members' rights to damages, &c.

. . . . . .

Textual Amendments

F143 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.)

[F143]132 Financial assistance for purposes of employees' share scheme.

. . . . . .

Textual Amendments

F143 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.)

PROSPECTIVE

[F143]133 Issue of redeemable shares.

. . . . . .

Textual Amendments

F143 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.)

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134 Disclosure of interests in shares.

[F144] . . . . . .

Textual Amendments

F144 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 [M19]Companies Act 1985 **[**[F145]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 [F146]. . . , section 445 and Part XV of the Companies Act 1985 **[**[F147]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.

(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

F145 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)**

F146 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**

F147 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

M19 1985 c. 6.

[F148]136 A company's registered office.

. . . . . .

Textual Amendments

F148 S. 136 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.)

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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 21 June 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)*

137 Effecting of insurance for officers and auditors of company.

F149 . . . . . .

Textual Amendments

F149 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.

F150 . . . . . .

Textual Amendments

F150 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.

F151(1) . . . . . .

F151(2) . . . . . .

F151(3) . . . . . .

(4) In Schedule 1 to the M20Company 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) F152 . . . . . .

Textual Amendments

F151 S. 139(1)-(3) 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.)

F152 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)**

Marginal Citations

M20 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, ".

Status: *Point in time view as at 30/11/2016. 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 21 June 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) 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)

C10 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**

Commencement Information

I4 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)**

[F153]141 Application to declare dissolution of company void.

. . . . . .

Status: *Point in time view as at 30/11/2016. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F153 Ss. 141-143 repealed (20.1.2007 for the repeal of s. 143(5), 6.4.2007 for the repeal of s. 143(10), 1.10.2007 for the repeal of s. 143(8)(9), 6.4.2008 for the repeal of s. 143(4), 1.10.2008 for the repeal of s. 141(4) for specified purposes, 1.10.2009 in so far as not already in force) by Companies Act 2006 (c. 46), s. 1300(2), **Sch. 16**; S.I. 2006/3428, art. 7(b)(c), Sch. 3 Pt. 1, Sch. 4 Pt. 1 (with arts. 6, 8(2)); S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 3 para. 48); S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12); S.I. 2008/1886, art. 2(f) (with arts. 6, 7); 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.)

PROSPECTIVE

[F153]142 Abolition of doctrine of deemed notice.

. . . . . .

Textual Amendments

F153 Ss. 141-143 repealed (20.1.2007 for the repeal of s. 143(5), 6.4.2007 for the repeal of s. 143(10), 1.10.2007 for the repeal of s. 143(8)(9), 6.4.2008 for the repeal of s. 143(4), 1.10.2008 for the repeal of s. 141(4) for specified purposes, 1.10.2009 in so far as not already in force) by Companies Act 2006 (c. 46), s. 1300(2), **Sch. 16**; S.I. 2006/3428, art. 7(b)(c), Sch. 3 Pt. 1, Sch. 4 Pt. 1 (with arts. 6, 8(2)); S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 3 para. 48); S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12); S.I. 2008/1886, art. 2(f) (with arts. 6, 7); 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.)

[F153]143 Rights of inspection and related matters.

. . . . . .

Textual Amendments

F153 Ss. 141-143 repealed (20.1.2007 for the repeal of s. 143(5), 6.4.2007 for the repeal of s. 143(10), 1.10.2007 for the repeal of s. 143(8)(9), 6.4.2008 for the repeal of s. 143(4), 1.10.2008 for the repeal of s. 141(4) for specified purposes, 1.10.2009 in so far as not already in force) by Companies Act 2006 (c. 46), s. 1300(2), **Sch. 16**; S.I. 2006/3428, art. 7(b)(c), Sch. 3 Pt. 1, Sch. 4 Pt. 1 (with arts. 6, 8(2)); S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 3 para. 48); S.I. 2007/3495, art. 8(a), Sch. 2 Pt. 1 (with arts. 7, 12); S.I. 2008/1886, art. 2(f) (with arts. 6, 7); 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.)

144 "Subsidiary", "holding company" and "wholly-owned subsidiary".

[F154](1) . . . . . .

[F154](2) . . . . . .

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F154(3) . . . . . .

(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.

Textual Amendments

F154 S. 144(1)-(3) 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.)

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

Commencement Information

I5 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)**

PART VI

MERGERS AND RELATED MATTERS

146 . . . . . .

F155 . . . . . .

Textual Amendments

F155 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.

F156 . . . . . .

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Textual Amendments

F156 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.

F157 . . . . . .

Textual Amendments

F157 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.

F158 . . . . . .

Textual Amendments

F158 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.

F159 . . . . . .

Textual Amendments

F159 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)

F160 151 False or misleading information.

. . . . . .

Textual Amendments

F160 S. 151 repealed (1.4.2014) by Civil Aviation Act 2012 (c. 19), s. 110(1), **Sch. 9 para. 17** (with Sch. 10 paras. 12, 17); S.I. 2013/589, art. 5(1)(b)

152 Fees. U.K.

F161 . . . . . .

Status: *Point in time view as at 30/11/2016. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F161 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)

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 [M46]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 [M47]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.

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(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 [[F433]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

F433 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

M46 1973 c. 41.

M47 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 [M48]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

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(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 [M49]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.

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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 21 June 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)*

(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 [M50]Water Act 1989 and any reference under section 29 of that Act.

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

M48 1973 c. 41.
M49 1973 c. 41.
M50 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)

C11 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

C12 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 **[**[F162]or as default fund contribution,**]** or subject to such a charge (sections 177 to 181).

Status: *Point in time view as at 30/11/2016. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F162 Words in s. 154(c) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(2)**

Commencement Information

I6 S. 154 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

Recognised investment exchanges and clearing houses

155 Market contracts.

[[F163](1) In this Part—

(a) "clearing member client contract" means a contract between a recognised central counterparty and one or more of the parties mentioned in subsection (1A) which is recorded in the accounts of the recognised central counterparty as a position held for the account of a client, an indirect client or a group of clients or indirect clients;

(b) "clearing member house contract" means a contract between a recognised central counterparty and a clearing member recorded in the accounts of the recognised central counterparty as a position held for the account of a clearing member;

(c) "client trade" means a contract between two or more of the parties mentioned in subsection (1A) which corresponds to a clearing member client contract;

(d) "market contracts" means the contracts to which this Part applies by virtue of subsections (2) to (3).**]**

[[F164](1A) The parties referred to in subsections (1)(a) and (c) are—

(a) a clearing member;

(b) a client; and

(c) an indirect client.**]**

[[F165](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 **[**[F166]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 amalgama- tion, merger or otherwise; [F167]...

[[F168](b) contracts entered into by the exchange, in its capacity as such, with a member of the exchange or with a recognised clearing house or with another recognised investment exchange for the purpose of enabling the rights and liabilities of that member or clearing house or other investment exchange under a transaction to be settled; and

(c) contracts entered into by the exchange with a member of the exchange or with a recognised clearing house or with another recognised investment exchange

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for the purpose of providing central counterparty clearing services to that member or clearing house or other investment exchange.**]**

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.

[[F169](2A) Where the exchange in question is a recognised overseas investment exchange, this Part does not apply to a contract that falls within paragraph (a) of subsection (2) (unless it also falls within subsection (3)).**]]**

[[F170](2B) In relation to transactions which are cleared through a recognised central counterparty, this Part applies to—

(a) clearing member house contracts;

(b) clearing member client contracts;

(c) client trades, other than client trades excluded by subsection (2C) **[**[F171]or (2D)**]**; and

(d) contracts entered into by the recognised central counterparty with a recognised investment exchange or a recognised clearing house for the purpose of providing central counterparty clearing services to that exchange or clearing house.

(2C) A client trade is excluded by this subsection from subsection (2B)(c) if—

(a) the clearing member which is a party to the clearing member client contract corresponding to the client trade defaults; and

(b) the clearing member client contract is not transferred to another clearing member within the period specified for this purpose in the default rules of the recognised central counterparty.**]**

[[F172](2D) A client trade is also excluded by this subsection from subsection (2B)(c) if—

(a) the client trade was entered into by a client in the course of providing indirect clearing services to an indirect client;

(b) the client defaults; and

(c) the clearing member client contract corresponding to the client trade is not transferred within—

(i) the period specified for this purpose in the default rules of the recognised central counterparty; or

(ii) if no such period is specified in the default rules of the recognised central counterparty, a period of 14 days beginning with the day on which proceedings in respect of the client's insolvency are begun.**]**

[[F173](3) In relation to a recognised clearing house **[**[F174]which is not a recognised central counterparty,**]** this Part applies to—

(a) contracts entered into by the clearing house, in its capacity as such, with a member of the clearing house or with a recognised investment exchange or with another recognised clearing house for the purpose of enabling the rights and liabilities of that member or investment exchange or other clearing house under a transaction to be settled; and

(b) contracts entered into by the clearing house with a member of the clearing house or with a recognised investment exchange or with another recognised clearing house for the purpose of providing central counterparty clearing services to that member or investment exchange or other clearing house.**]**

[[F175](3A) In this section "central counterparty clearing services" means—

Status: *Point in time view as at 30/11/2016. This version of this Act contains provisions that are prospective.*
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(a) the services provided by a recognised investment exchange or a recognised clearing house to the parties to a transaction in connection with contracts between each of the parties and the investment exchange or clearing house (in place of, or as an alternative to, a contract directly between the parties),

(b) the services provided by a recognised clearing house to a recognised investment exchange or to another recognised clearing house in connection with contracts between them, or

(c) the services provided by a recognised investment exchange to a recognised clearing house or to another recognised investment exchange in connection with contracts between them.**]**

[[F176](3B) The reference in subsection (2D)(c)(ii) to the beginning of insolvency proceedings is to—

(a) **[**[F177]the making of a bankruptcy application or**]** the presentation of a bankruptcy petition or a petition for sequestration of a client's estate, or

(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, or

(c) the appointment of an administrative receiver.

(3C) In subsection (3B)(b) the reference to an application for an administration order is to 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 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 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

F163 S. 155(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(2)(a)** (with regs. 52-58)

F164 S. 155(1A) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(2)(b)** (with regs. 52-58)

F165 S. 155(2)(2A) substituted for s. 155(2) by S.I. 1991/880, **reg. 3**

F166 Words in s. 155(2)(a) inserted (11.8.1998) by S.I. 1998/1748, **reg. 3(a)**

F167 Word in s. 155(2)(a) omitted (15.6.2009) by virtue of The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(3)(a)**

F168 S. 155(2)(b)(c) substituted for s. 155(2)(b) (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(3)(a)**

F169 S. 155(2A) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(3)(b)**

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F170 S. 155(2B)(2C) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(2)(c)** (with regs. 52-58)

F171 Words in s. 155(2B)(c) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(2)(a)**

F172 S. 155(2D) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(2)(b)**

F173 S. 155(3) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(3)(c)**

F174 Words in s. 155(3) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(2)(d)** (with regs. 52-58)

F175 S. 155(3A) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(3)(d)**

F176 S. 155(3B)(3C) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(2)(c)**

F177 Words in s. 155(3B)(a) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 9(2)**

Commencement Information

I7 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.

[F178 155A Qualifying collateral arrangements and qualifying property transfers

(1) In this Part—

(a) "qualifying collateral arrangements" means the contracts and contractual obligations to which this Part applies by virtue of subsection (2); and

(b) "qualifying property transfers" means the property transfers to which this Part applies by virtue of subsection (4).

(2) In relation to transactions which are cleared through a recognised central counterparty, this Part applies to any contracts or contractual obligations for, or arising out of, the provision of property as margin where—

(a) the margin is provided to a recognised central counterparty and is recorded in the accounts of the recognised central counterparty as an asset held for the account of a client, an indirect client, or a group of clients or indirect clients; or

(b) the margin is provided to a client or clearing member for the purpose of providing cover for exposures arising out of present or future client trades.

(3) In subsection (2)—

(a) "property" has the meaning given by section 436(1) of the Insolvency Act 1986 and

(b) the reference to a contract or contractual obligation for, or arising out of, the provision of property as margin in circumstances falling within paragraph (a) or (b) of that subsection includes a reference to a contract or contractual obligation of that kind which has been amended to reflect the transfer of a clearing member client contract or client trade.

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(4) In relation to transactions which are cleared through a recognised central counterparty, this Part applies to—

(a) transfers of property made in accordance with Article 48(7) of the EMIR Level 1 Regulation;

[F179] **[** (aa) payments of money by a clearing member to indirect clients in accordance with Article 4(5) of the EMIR Level 2 Regulation;**]**

(b) transfers of property to the extent that they—

(i) are made by a recognised central counterparty to a non-defaulting clearing member instead of, or in place of, a defaulting clearing member;

(ii) represent the termination or close out value of a clearing member client contract which is transferred from a defaulting clearing member to a non-defaulting clearing member; and

(iii) are determined in accordance with the default rules of the recognised central counterparty.**]**

[[F180] (c) transfers of property to the extent that they—

(i) are made by a clearing member to a non-defaulting client or another clearing member instead of, or in place of, a defaulting client;

(ii) represent the termination or close out value of a client trade which is transferred from a defaulting client to another clearing member or a non-defaulting client; and

(iii) do not exceed the termination or close out value of the clearing member client contract corresponding to that client trade, as determined in accordance with the default rules of the recognised central counterparty.**]**

Textual Amendments

F178 S. 155A inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(3)** (with regs. 52-58)

F179 S. 155A(4)(aa) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(3)(a)**

F180 S. 155A(4)(c) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(3)(b)**

[F181] **156** . . . . . .

Textual Amendments

F181 S. 156 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(e)

157 (1) A recognised UK investment exchange or **[**[F182] recognised clearing house**]** shall give the **[**[F183] appropriate regulator**]** at least **[**[F184] three months**]** notice of any proposal to

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amend, revoke or add to its default rules; and the **[**[F185]regulator**]** may within **[**[F184]three months**]** from receipt of the notice direct the exchange or clearing house not to proceed with the proposal, in whole or in part.

[[F186](1A) The appropriate regulator may, if it considers it appropriate to do so, agree a shorter period of notice and, in a case where it does so, any direction under this section must be given by it within that shorter period.**]**

(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.

[[F187](4) The appropriate regulator"—

(a) in relation to a recognised UK investment exchange, means the FCA, and

(b) in relation to a **[**[F188]recognised clearing house**]**, means the Bank of England.**]**

Textual Amendments

F182 Words in s. 157(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(4)(a)(i)** (with regs. 52-58)

F183 Words in s. 157(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 65(2)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F184 Words in s. 157(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(4)(a)(ii)** (with regs. 52-58)

F185 Word in s. 157(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 65(2)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F186 S. 157(1A) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(4)(b)** (with regs. 52-58)

F187 S. 157(4) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 65(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F188 Words in s. 157(4)(b) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(4)(c)** (with regs. 52-58)

Commencement Information

I8 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.

[[F189](1) The general law of insolvency has effect in relation to—

(a) market contracts,

(b) action taken under the rules of a recognised investment exchange, or a recognised clearing house which is not a recognised central counterparty, with respect to market contracts,

(c) action taken under the rules of a recognised central counterparty to transfer clearing member client contracts, or settle clearing member client contracts

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or clearing member house contracts, in accordance with the default rules of the recognised central counterparty,

(d) where clearing member client contracts transferred in accordance with the default rules of a recognised central counterparty were entered into by the clearing member **[**[F190]or client**]** as a principal, action taken to transfer [F191]... client trades, or groups of client trades, corresponding to those clearing member client contracts,

(e) action taken to transfer qualifying collateral arrangements in conjunction with a transfer of clearing member client contracts as mentioned in paragraph (c) or a transfer of client trades as mentioned in paragraph (d), and

(f) qualifying property transfers,

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—

[[F192](a) proceedings in respect of a recognised investment exchange or a member or designated non-member of a recognised investment exchange,

(aa) proceedings in respect of a recognised clearing house or a member of a recognised clearing house, and**]**

(b) proceedings in respect of a party to a market contract **[**[F193]other than a client trade which are**]** 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) **[**[F194]the making of a bankruptcy application or**]** the presentation of a bankruptcy petition or a petition for sequestration of a person's estate, or

[[F195](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.

[[F196](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 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 **[**[F197]paragraphs (a) to (d) of**]** 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.

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Textual Amendments

F189 S. 158(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(5)(a)** (with regs. 52-58)

F190 Words in s. 158(1)(d) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(4)(a)**

F191 Word in s. 158(1)(d) omitted (26.8.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(4)(b)**

F192 S. 158(2)(a)(aa) substituted for s. 158(2)(a) (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(4)(a)** (with reg. 1(2)(3))

F193 Words in s. 158(2)(b) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(5)(b)** (with regs. 52-58)

F194 Words in s. 158(3)(a) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 9(3)**

F195 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))

F196 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))

F197 Words in s. 158(4) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(5)(c)** (with regs. 52-58)

Modifications etc. (not altering text)

C13 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

I9 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 **[**[F198]in the administration of a company or other body 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 **[**[F199]recognised investment exchange, or of a recognised clearing house which is not a recognised central counterparty,**]** as to the settlement of market contracts not dealt with **[**[F200]under its default rules,**]**

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[[F201](d) the rules of a recognised central counterparty on which the recognised central counterparty relies to give effect to the transfer of a clearing member client contract, or the settlement of a clearing member client contract or clearing member house contract, in accordance with its default rules,

(e) a transfer of a clearing member client contract, or the settlement of a clearing member client contract or a clearing member house contract, in accordance with the default rules of a recognised central counterparty,

(f) where a clearing member client contract transferred in accordance with the default rules of a recognised central counterparty was entered into by the clearing member **[**[F202]or client**]** as principal, a transfer of **[**[F203]a client trade**]** or group of client trades corresponding to that clearing member client contract,

(g) a transfer of a qualifying collateral arrangement in conjunction with the transfer of clearing member client contract as mentioned in paragraph (e) or of a client trade as mentioned in paragraph (f), or

(h) a qualifying property transfer.**]**

(2) The powers of a relevant office-holder in his capacity as such, and the powers of the court under the [M21]Insolvency Act 1986**[**[F204], the Bankruptcy (Scotland) Act **[**[F205]2016**]**, Part 10 of the Building Societies Act 1986, Parts 2 and 3 of the Banking Act 2009 or under regulations made under section 233 of that Act,**]** 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**[**[F206],**]** or recognised clearing house **[**[F207]which is not a recognised central counterparty,**]** of a market contract not dealt with under its default rules, [F208]...

(b) any action taken under the default rules of **[**[F209]a recognised investment exchange,**]** or **[**[F210]clearing house which is not a recognised central counterparty,**]**

[[F211](c) the transfer of a clearing member client contract, or the settlement of a clearing member client contract or a clearing member house contract, in accordance with the default rules of a recognised central counterparty,

(d) where a clearing member client contract transferred in accordance with the default rules of a recognised central counterparty was entered into by the clearing member **[**[F212]or client**]** as principal, the transfer of **[**[F213]a client trade**]** or group of client trades corresponding to that clearing member contract,

(e) the transfer of a qualifying collateral arrangement in conjunction with a transfer of a clearing member client contract as mentioned in paragraph (c), or a transfer of a client trade as mentioned in paragraph (d),

(f) any action taken to give effect to any of the matters mentioned in paragraphs (c) to (e), or

(g) any action taken to give effect to a qualifying property transfer.**]**

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 **[**[F214]or in the administration of a company or other body**]**, or in Scotland claimed in a winding up

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or sequestration **[**[F214]or in the administration of a company or other body**]**, 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.

[F215]**[**(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, **[**[F216]or in the administration of a company or other body**]** a creditors' committee.**]**

(5) For the purposes of **[**[F217]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

F198 Words in s. 159(1) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(5)(a)** (with reg. 1(2)(3))

F199 Words in s. 159(1)(c) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(6)(a)(i)** (with regs. 52-58)

F200 Words in s. 159(1)(c) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(6)(a)(ii)** (with regs. 52-58)

F201 S. 159(1)(d)-(h) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(6)(b)** (with regs. 52-58)

F202 Words in s. 159(1)(f) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(5)(a)(i)**

F203 Words in s. 159(1)(f) substituted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(5)(a)(ii)**

F204 Words in s. 159(2) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(6)(c)** (with regs. 52-58)

F205 Word in s. 159(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(2)**

F206 S. 159(2)(a) comma inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(6)(d)(i)** (with regs. 52-58)

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F207 Words in s. 159(2)(a) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(6)(d)(ii)** (with regs. 52-58)

F208 Word in s. 159(2)(a) omitted (1.4.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(6)(d)(iii)** (with regs. 52-58)

F209 Words in s. 159(2)(b) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(6)(e)(i)** (with regs. 52-58)

F210 Words in s. 159(2)(b) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(6)(e)(ii)** (with regs. 52-58)

F211 S. 159(2)(c)-(g) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(6)(f)** (with regs. 52-58)

F212 Words in s. 159(2)(d) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(5)(b)(i)**

F213 Words in s. 159(2)(d) substituted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(5)(b)(ii)**

F214 Words in s. 159(4) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(5)(b)** (with reg. 1(2)(3))

F215 S. 159 (4A) inserted by S.I. 1991/880, **reg. 4(2)**

F216 Words in s. 159(4A)(b) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(5)(c)** (with reg. 1(2)(3))

F217 Words in s. 159(5) substituted by S.I. 1991/880, **reg. 4(3)**

Commencement Information

I10 S. 159 wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/878, art. 2, **Sch.**

Marginal Citations

M21 1986 c. 45.

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,

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 priviledge 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.

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(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 **[**[F218]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

F218 Words in s. 160(4) added by S.I. 1991/880, **Pt. III reg. 5**

Modifications etc. (not altering text)

C14 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

I11 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

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**[**[F219], administrator**]** or trustee of a defaulter or, in Scotland, a **[**[F220]trustee in the sequestration of the**]** estate of the defaulter shall not—

(a) declare or pay any dividend to the creditors, or

(b) return any capital to contributories,

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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 **[**[F221]section 126, 128, 130, 185 or 285 of, or paragraph **[**[F222]40, 41,**]** 42 or 43 (**[**[F223]including those paragraphs 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 **[**[F224]2016**]** or in the Debtors (Scotland) Act [M22] 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

F219 Words in s. 161(2) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(6)(a)** (with reg. 1(2)(3))

F220 Words in s. 161(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(3)(a)**

F221 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))

F222 Words in s. 161(4) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(6)(b)(i)** (with reg. 1(2)(3))

F223 Words in s. 161(4) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(6)(b)(ii)** (with reg. 1(2)(3))

F224 Word in s. 161(4) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(3)(b)**

Modifications etc. (not altering text)

C15 S. 161 amended by S.I. 1991/880, **reg. 19(1)**

C16 S. 161(4) (as it has effect by virtue of Enterprise Act 2002 (c. 40), s. 249(1)) modified (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(6)(c)** (with reg. 1(2)(3))

Commencement Information

I12 S. 161 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

Marginal Citations

M22 1987 c. 18.

162 Duty to report on completion of default procedings.

(1) [F225]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 **[**[F226]appropriate regulator**]** on its proceedings stating in respect of each creditor or debtor the sum **[**[F227]or sums**]** 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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[F228](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 **[**[F229]appropriate regulator**]** that a report is required for the purpose of insolvency proceedings in any part of the United Kingdom.

[[F230](1B) The report under subsection (1) need not deal with a clearing member client contract which has been transferred in accordance with the default rules of a recognised central counterparty.**]**

(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 **[**[F231]**[**[F232]appropriate regulator**]**, it**]** shall publish notice of that fact in such manner as **[**[F233]it**]** thinks appropriate for bringing **[**[F234]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.

[[F235](7) "The appropriate regulator"—

(a) in relation to a recognised investment exchange or a recognised overseas investment exchange, means the FCA, and

(b) in relation to a recognised clearing house or a recognised overseas clearing house, means the Bank of England.**]**

Textual Amendments

F225 Words in s. 162(1) inserted by S.I. 1991/880, **reg. 6(2)**

F226 Words in s. 162(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 66(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F227 Words in s. 162(1) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(7)(a)** (with regs. 52-58)

F228 S. 162(1A) inserted by S.I. 1991/880, **reg. 6(3)**

F229 Words in s. 162(1A) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 66(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F230 S. 162(1B) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(7)(b)** (with regs. 52-58)

F231 Words in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 80(4)(a)

F232 Words in s. 162(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 66(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F233 Word in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 80(4)(b)

F234 Words in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 80(4)(c)

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F235 S. 162(7) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 66(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C17 S. 162 applied (with modifications) (E.W.S.) (11.12.1999) by S.I. 1999/2979, **reg. 15(1)**

Commencement Information

I13 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.

[[F236](1) The following provisions apply with respect to a net sum certified by a recognised investment exchange or recognised clearing house under its default rules to be payable by or to a defaulter.**]**

(2) If, in England and Wales, a bankruptcy**[**[F237], winding-up or administration order has been made**]**, or a resolution for voluntary winding-up has been passed, the debt—

(a) is provable in the bankruptcy**[**[F238], winding up or administration**]** or, as the case may be, is payable to the relevant office-holder, and

(b) shall be taken into account, where appropriate, under section 323 of the Insolvency Act [M23]1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of winding up **[**[F239]or administration**]**,

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)**[**[F240], or enters administration**]** or, in the case of a partnership, the date of the winding-up order **[**[F241]or the date on which the partnership enters administration**]**.

(3) If, in Scotland, an award of sequestration or a winding-up **[**[F242]or administration**]** order has been made, or a resolution for voluntary winding up has been passed, the debt—

(a) may be claimed in the sequestration**[**[F243], winding up or administration**]** 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**[**[F244], winding up or administration**]**,

in the same way as a debt due before the date of sequestration (within the meaning of section **[**[F245]22(7) of the Bankruptcy (Scotland) Act 2016**]**) or the commencement of the winding up (within the meaning of section 129 of the Insolvency Act 1986) **[**[F246]or the date on which the body corporate enters administration**]**.

[[F247](3A) In subsections (2) and (3), a reference to the making of 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 (appointment by holder of qualifying floating charge); or

(b) paragraph 22 of that Schedule (appointment by company or directors).**]**

(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 **[**[F248]a bankruptcy application or**]** a bankruptcy petition or, in Scotland, a petition for sequestration was pending, [F249]...

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(b) that a meeting of creditors had been summoned under section 98 of the Insolvency Act [M24]1986 or that a winding-up petition was pending, **[**[F250]or**]**

[[F251](c) that an application for an administration order was pending or that any person had given notice of intention to appoint an administrator,**]**

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.

Textual Amendments

F236 S. 163(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(8)** (with regs. 52-58)

F237 Words in s. 163(2) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(a)(i)** (with reg. 1(2)(3))

F238 Words in s. 163(2)(a) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(a)(ii)** (with reg. 1(2)(3))

F239 Words in s. 163(2)(b) added (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(a)(iii)** (with reg. 1(2)(3))

F240 Words in s. 163(2) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(a)(iv)** (with reg. 1(2)(3))

F241 Words in s. 163(2) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(a)(v)** (with reg. 1(2)(3))

F242 Words in s. 163(3) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(b)(i)** (with reg. 1(2)(3))

F243 Words in s. 163(3)(a) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(b)(ii)** (with reg. 1(2)(3))

F244 Words in s. 163(3)(b) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(b)(ii)** (with reg. 1(2)(3))

F245 Words in s. 163(3) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(4)**

F246 Words in s. 163(3) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(b)(iii)** (with reg. 1(2)(3))

F247 S. 163(3A) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(c)** (with reg. 1(2)(3))

F248 Words in s. 163(4)(a) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 9(4)**

F249 Word in s. 163(4)(a) omitted (15.6.2009) by virtue of The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(d)** (with reg. 1(2)(3))

F250 Word in s. 163(4)(b) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(d)** (with reg. 1(2)(3))

F251 S. 163(4)(c) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(7)(d)** (with reg. 1(2)(3))

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Modifications etc. (not altering text)

C18 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)**

C19 S. 163(4)-(6) excluded in part (11.12.1999) by S.I. 1999/2979, **reg. 21(2)(a)**

Commencement Information

I14 S. 163 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

Marginal Citations

M23 1986 c. 45.

M24 1986 c. 45.

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, [F252]...

[[F253](aa) a qualifying collateral arrangement,

(ab) a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement, as mentioned in paragraphs (c) to (e) of section 158(1),

(ac) a qualifying property transfer, 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 **[**[F254]or as default fund contribution**]**.

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 **[**[F255]trustee in the sequestration of the**]** 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 **[**[F256]110 of the Bankruptcy (Scotland) Act 2016**]** 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 **[**[F257], submission of bankruptcy application or**]** or presentation of bankruptcy petition), and section **[**[F258]87(4) of the Bankruptcy (Scotland) Act 2016**]** (effect of dealing with debtor relating to estate vested in [F259]... 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,

[[F260](ba) the provision of default fund contribution to the exchange or clearing house,**]**

[[F261](bb) a qualifying collateral arrangement,

(bc) a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement, as mentioned in paragraphs (c) to (e) of section 158(1),

(bd) a qualifying property transfer**]**

(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 **[**[F262]or

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as default fund contribution**]**, 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 **[**[F263]or as default fund contribution**]**.

(4) However, where—

(a) a market contract is entered into by a person who has notice that **[**[F264]a bankruptcy application has been submitted or**]** 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 **[**[F265]or default fund contribution**]** is accepted by a person who has notice that **[**[F266]such an application has been made or petition presented**]** in relation to the person by whom or on whose behalf the margin **[**[F267]or default fund contribution**]** 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 **[**[F267]or default fund contribution**]** is recoverable from him by the relevant office-holder unless the court directs otherwise.

[[F268](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—

(a) margin in relation to any such contract, unless the contract has been transferred in accordance with the default rules of the central counterparty, or

(b) default fund contribution.**]**

(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.

Textual Amendments

F252 Word in s. 164(1)(a) omitted (1.4.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(9)(a)** (with regs. 52-58)

F253 S. 164(1)(aa)-(ac) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(9)(b)** (with regs. 52-58)

F254 Words in s. 164(1)(b) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(a)** (with reg. 1(2)(3))

F255 Words in s. 164(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(5)(a)(i)**

F256 Words in s. 164(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(5)(a)(ii)**

F257 Words in s. 164(3) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 9(5)(a)**

F258 Words in s. 164(3) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(5)(b)(i)**

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F259 Word in s. 164(3) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(5)(b)(ii)**

F260 S. 164(3)(ba) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(b)(i)** (with reg. 1(2)(3))

F261 S. 164(3)(bb)-(bd) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(9)(c)** (with regs. 52-58)

F262 Words in s. 164(3)(c) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(b)(ii)** (with reg. 1(2)(3))

F263 Words in s. 164(3)(d) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(b)(iii)** (with reg. 1(2)(3))

F264 Words in s. 164(4)(a) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 9(5)(b)**

F265 Words in s. 164(4) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(c)(i)** (with reg. 1(2)(3))

F266 Words in s. 164(4)(b) substituted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 9(5)(c)**

F267 Words in s. 164(4) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(c)(ii)** (with reg. 1(2)(3))

F268 S. 164(5) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(9)(d)** (with regs. 52-58)

Modifications etc. (not altering text)

C20 S. 164 amended by S.I. 1991/880, **reg. 19(1)**

C21 S. 164(4)-(6) excluded in part (11.12.1999) by S.I. 1999/2979, **reg. 21(2)(b)**

Commencement Information

I15 S. 164 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

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 **[**[F269]98 or 99 of the Bankruptcy (Scotland) Act 2016**]** 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, [F270]...

[[F271](ab) a market contract to which this Part applies by virtue of section 155(2B), and

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(b) a disposition of property in pursuance of a market contract referred to in paragraph (a) or (ab).**]**

(4) Where margin is provided in relation to a market contract and (by virtue of subsection (3)(a)**[**[F272], (3)(ab)**]** 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,

[[F273](ab) a qualifying collateral arrangement,**]**

(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 **[**[F274]in question**]** as to the application of property provided as margin.

[[F275](5) This section also applies to—

(a) the provision of default fund contribution to a recognised investment exchange or recognised clearing house,

(b) any contract effected by a recognised investment exchange or recognised clearing house for the purpose of realising the property provided as default fund contribution, [F276]...

(c) any disposition of property in accordance with the rules of the recognised investment exchange or recognised clearing house as to the application of property provided as default fund **[**[F277]contribution,**]**

[[F278](d) a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement as mentioned in paragraphs (c) to (e) of section 158(1), and

(e) a qualifying property transfer.**]]**

Textual Amendments

F269 Words in s. 165(2)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(6)**

F270 Word in s. 165(3)(a) omitted (1.4.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(10)(a)** (with regs. 52-58)

F271 S. 165(3)(ab)(b) substituted for s. 165(3)(b) (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(10)(b)** (with regs. 52-58)

F272 Words in s. 165(4) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(10)(c)** (with regs. 52-58)

F273 S. 165(4)(ab) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(10)(d)** (with regs. 52-58)

F274 Words in s. 165(4)(c) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(9)(a)** (with reg. 1(2)(3))

F275 S. 165(5) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(9)(b)** (with reg. 1(2)(3))

F276 Word in s. 165(5)(b) omitted (1.4.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(10)(e)** (with regs. 52-58)

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F277 Word in s. 165(5)(c) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(10)(f)** (with regs. 52-58)

F278 S. 165(5)(d)(e) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(10)(g)** (with regs. 52-58)

Commencement Information

I16 S. 165 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

166 Powers [F279]... to give directions.

(1) The powers conferred by this section are exercisable in relation to a recognised UK investment exchange or **[**[F280]recognised 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 **[**[F281]appropriate regulator**]** that it could take action, **[**[F282]the **[**[F283]regulator**]]** may direct it to do so, and

(b) if it appears to the **[**[F284]appropriate regulator**]** that it is proposing to take or may take action, **[**[F282]the **[**[F285]regulator**]]** may direct it not to do so.

(3) Before giving such a direction the **[**[F286]appropriate regulator**]** shall consult the exchange or clearing house in question; and **[**[F287]it**]** shall not give a direction unless **[**[F287]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, [F288]...

(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,

[[F289](c) in either case, that the direction is necessary having regard to the public interest in the stability of the financial system of the United Kingdom, or

(d) in either case, that the direction is necessary—

(i) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime), or

(ii) in connection with a particular exercise of a power under that Part.**]**

[[F290](3A) The appropriate regulator may give a direction to a relevant office-holder appointed in respect of a defaulting clearing member to take any action, or refrain from taking any action, if the direction is given for the purposes of facilitating—

(a) the transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement, or

(b) a qualifying property transfer.

(3B) The relevant office-holder to whom a direction is given under subsection (3A)—

(a) must comply with the direction notwithstanding any duty on the relevant office-holder under any enactment relating to insolvency, but

(b) is not required to comply with the direction given if the value of the clearing member's estate is unlikely to be sufficient to meet the office-holder's reasonable expenses of complying.

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(3C) The expenses of the relevant office-holder in complying with a direction of the regulator under subsection (3A) are recoverable as part of the expenses incurred in the discharge of the office-holder's duties.**]**

(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 **[**[F291]appropriate regulator**]** 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.

[F292] . . . . . .

[[F293](7A) Where the exchange or clearing house is acting in accordance with a direction under subsection (2)(a) that was given only by virtue of paragraph (a) of subsection (3), the appropriate regulator shall not give a direction under subsection (7) unless it is satisfied that the direction under that subsection will not impede or frustrate the proper and efficient conduct of the default proceedings.

(7B) Where the exchange or clearing house has taken action under its default rules without being directed to do so, the appropriate regulator shall not give a direction under subsection (7) unless—

(a) it is satisfied that the direction under that subsection will not impede or frustrate the proper and efficient conduct of the default proceedings, or

(b) it is satisfied that the direction is necessary—

(i) having regard to the public interest in the stability of the financial system of the United Kingdom,

(ii) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime), or

(iii) in connection with a particular exercise of a power under that Part.**]**

(8) A direction under this section is enforceable, on the application of the **[**[F294]regulator which gave the direction**]**, by injunction or, in Scotland, by an order under section 45 of the [M25]Court of Session Act 1988; and where an exchange**[**[F295], a clearing house or a relevant office-holder**]** 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.

[[F296](9) "The appropriate regulator"—

(a) in relation to a recognised UK investment exchange, means the FCA, and

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(b) in relation to a **[**[F297]recognised clearing house**][**[F298]or a defaulting clearing member**]**, means the Bank of England.**]**

Textual Amendments

F279 Words in s. 166 heading omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), **ss. 111(9)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F280 Words in s. 166(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(11)(a)** (with regs. 52-58)

F281 Words in s. 166(2)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(2)(a)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F282 Words in s. 166(2)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 81(2)(b)

F283 Word in s. 166(2)(a) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(2)(b)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F284 Words in s. 166(2)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(3)(a)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F285 Word in s. 166(2)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(3)(b)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F286 Words in s. 166(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(4)(a)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F287 Words in s. 166(3) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 81(3)(b)

F288 Word in s. 166(3) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), **ss. 111(4)(b)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F289 S. 166(3)(c)(d) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(4)(c)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F290 S. 166(3A)-(3C) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(11)(b)** (with regs. 52-58)

F291 Words in s. 166(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(5)(a)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F292 Words in s. 166(7) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), **ss. 111(5)(b)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F293 S. 166(7A)(7B) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(6)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F294 Words in s. 166(8) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(7)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F295 Words in s. 166(8) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(11)(c)** (with regs. 52-58)

F296 S. 166(9) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(8)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F297 Words in s. 166(9)(b) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(11)(d)** (with regs. 52-58)

F298 Words in s. 166(9)(b) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(6)**

Modifications etc. (not altering text)

C22 S. 166 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 (S.I. 2013/442), arts. 1(3), **67(4)**

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Commencement Information

I17 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

M25 1988 c. 36.

167 Application to determine whether default proceedings to be taken.

[[F299](1) This section applies where a relevant insolvency event has occurred in the case of—

(a) a recognised investment exchange or a member or designated non-member of a recognised investment exchange,[F300]...

(b) a recognised clearing house or a member of a recognised clearing house**[**[F301], or

(c) a client which is providing indirect clearing services to an indirect client.**]**

The investment exchange, member, designated non-member **[**[F302]clearing house or client**]** in whose case a relevant insolvency event has occurred is referred to below as "the person in default".

(1A) For the purposes of this section a "relevant insolvency event" occurs where—

(a) a bankruptcy order is made,

(b) an award of sequestration is made,

(c) an order appointing an interim receiver is made,

(d) an administration or winding up order is made,

(e) an administrator is appointed under paragraph 14 of Schedule B1 to the Insolvency Act 1986 (appointment by holder of qualifying floating charge) or under paragraph 22 of that Schedule (appointment by company or directors),

(f) a resolution for voluntary winding up is passed, or

(g) an order appointing a provisional liquidator is made.

(1B) Where in relation to a person in default a recognised investment exchange or a recognised clearing house ("the responsible exchange or clearing house")—

(a) has power under its default rules to take action in consequence of the relevant insolvency event or the matters giving rise to it, but

(b) has not done so,

a relevant office-holder appointed in connection with or in consequence of the relevant insolvency event may apply to the **[**[F303]appropriate regulator**]**.**]**

(2) The application shall specify **[**[F304]the responsible exchange or clearing house**]** and the grounds on which it is made.

(3) On receipt of the application the **[**[F305]appropriate regulator**]** shall notify **[**[F306]the responsible exchange or clearing house**]**, and unless within three business days after the day on which the notice is received **[**[F306]the responsible exchange or clearing house**]**—

(a) takes action under its default rules, or

(b) notifies the **[**[F305]appropriate regulator**]** 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 **[**[F307]the person in default**]** is a party or to anything

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done by **[**[F306]the responsible 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 [M26]Banking and Financial Dealings Act 1971.

(4) The provisions of sections 158 to 165 are not disapplied if before the end of the period mentioned in subsection (3) the **[**[F308]appropriate regulator**]** gives **[**[F309]the responsible 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 **[**[F310]the responsible exchange or clearing house**]** notifies the **[**[F311]appropriate regulator**]** 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 **[**[F311]appropriate regulator**]**, by injunction or, in Scotland, by an order under section 45 of the [M27]Court of Session Act 1988.

[[F312](6) "The appropriate regulator"—

(a) in relation to a responsible investment exchange, means the FCA, and

(b) in relation to a responsible clearing house, means the Bank of England.**]**

Textual Amendments

F299 S. 167(1)-(1B) substituted for s. 167(1)(1A) (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(10)(a)** (with reg. 1(2)(3))

F300 Word in s. 167(1)(a) omitted (26.8.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(7)(a)**

F301 S. 167(1)(c) and word inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(7)(b)**

F302 Words in s. 167(1) substituted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(7)(c)**

F303 Words in s. 167(1B) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 67(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F304 Words in s. 167(2) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(10)(b)** (with reg. 1(2)(3))

F305 Words in s. 167(3) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 67(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F306 Words in s. 167(3) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(10)(c)(i)** (with reg. 1(2)(3))

F307 Words in s. 167(3) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(10)(c)(ii)** (with reg. 1(2)(3))

F308 Words in s. 167(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 67(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F309 Words in s. 167(4) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(10)(d)** (with reg. 1(2)(3))

F310 Words in s. 167(5) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(10)(d)** (with reg. 1(2)(3))

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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 21 June 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)*

F311 Words in s. 167(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 67(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F312 S. 167(6) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 67(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C23 S. 167 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 (S.I. 2013/442), arts. 1(3), **67(4)**

Commencement Information

I18 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

M26 1971 c. 80.

M27 1988 c. 36.

[F313]168 . . . . . .

Textual Amendments

F313 S. 168 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(f)

169 Supplementary provisions.

[F314](1) . . . . . .

(2) **[**[F315]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 **[**[F316]Financial Services and Markets Act 2000, the appropriate authority**]** may, before or after the revocation order, give such directions as **[**[F317]it**]** thinks fits 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 where a relevant event of any description specified in the directions occurred before the revocation order takes effect.

[[F318](3A) "The appropriate authority" means—

(a) in the case of an overseas investment exchange or clearing house, the Treasury;

[[F319](b) in the case of a UK investment exchange, the FCA, and

(c) in the case of a UK clearing house, the Bank of England.**]]**

[F314](4) . . . . . .

(5) **[**[F320]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

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document required or authorised by or under this Part to be given to or served on any person other than the **[**[F321]Treasury**[**[F322], the FCA or the Bank of England**]]**.

Textual Amendments

F314 S. 169(1)(4) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(g)
F315 Words in s. 169(2) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 83(2)
F316 Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 83(3)(a)
F317 Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 83(3)(b)
F318 S. 169(3A) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 83(4)
F319 S. 169(3A)(b)(c) substituted for s. 169(3A)(b) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 68(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F320 Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 83(5)(a)
F321 Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 83(5)(b)
F322 Words in s. 169(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 68(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

Modifications etc. (not altering text)

C24 S. 169(3) applied (with modifications) (E.W.S.) (15.8.1995) by S.I. 1995/2049, **reg. 28**

Commencement Information

I19 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.

[[F323](1) The Secretary of State and the Treasury may by regulations provide that this Part applies in relation to contracts connected with an overseas investment exchange or overseas clearing house which—

(a) is not a recognised investment exchange or recognised clearing house, but

(b) is approved by the Treasury in accordance with such requirements as may be so specified,

as it applies in relation to contracts connected with a recognised investment exchange or recognised clearing house.**]**

(2) The **[**[F324]Treasury**]** shall not approve an overseas investment exchange or clearing house unless **[**[F325]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.

(4) The regulations may apply in relation to the approval of a body under this section such of the provisions of the **[**[F326]Financial Services and Markets Act 2000**]** as the Secretary of State considers appropriate.

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(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 **[**[F326]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 **[**[F326]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

F323 S. 170(1) substituted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(11)**

F324 Word in s. 170(2) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 84(3)(a)

F325 Words in s. 170(2) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 84(3)(b)

F326 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)

C25 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

I20 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)**.

[[F327]**170A EEA central counterparties and third country central counterparties**

(1) In this section and section 170B—

(a) "assets" has the meaning given by Article 39(10) of the EMIR Level 1 Regulation;

(b) "EBA" means the European Banking Authority established by Regulation 1093/2010/EU of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority);

(c) "ESMA" means the European Securities and Markets Authority established by Regulation 1095/2010/EU of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority);

(d) "overseas competent authority" means a competent authority responsible for the authorisation or supervision of clearing houses or central counterparties in a country or territory other than the United Kingdom;

(e) "relevant provisions" means any provisions of the default rules of an EEA central counterparty or third country central counterparty which—

(i) provide for the transfer of the positions or assets of a defaulting clearing member;

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(ii) are not necessary for the purposes of complying with the minimum requirements of Articles 48(5) and (6) of the EMIR Level 1 Regulation; and

(iii) may be relevant to a question falling to be determined in accordance with the law of a part of the United Kingdom;

(f) "relevant requirements" means the requirements specified in paragraph 34(2) (portability of accounts: default rules going beyond requirements of EMIR) of Part 6 of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001;

(g) "UK clearing member" means a clearing member to which the law of a part of the United Kingdom will apply for the purposes of an insolvent reorganisation or winding up**[**[F328], and

(h) "UK client" means a client—

(i) which offers indirect clearing services, and

(ii) to which the law of a part of the United Kingdom will apply for the purposes of an insolvent re-organisation or winding up.**]**

(2) This Part applies to transactions cleared through an EEA central counterparty or a third country central counterparty by a UK clearing member **[**[F329]or a UK client**]** as it applies to transactions cleared through a recognised central counterparty, but subject to the modifications in subsections (3) to (5).

(3) For section 157 there is to be substituted—

157. "**Change in default rules**

(1) An EEA central counterparty or a third country central counterparty in respect of which an order under section 170B(4) has been made and not revoked must give the Bank of England at least three months' notice of any proposal to amend, revoke or add to its default rules.

(2) The Bank of England may, if it considers it appropriate to do so, agree a shorter period of notice.

(3) Where notice is given to the Bank of England under subsection (1) an EEA central counterparty or third country central counterparty must provide the Bank of England with such information, documents and reports as the Bank of England may require.

(4) Information, documents and reports required under subsection (3) must be provided in English and be given at such times, in such form and at such place, and verified in such a manner, as the Bank of England may direct.".

(4) Section 162 does not apply to an EEA central counterparty or a third country central counterparty unless it has been notified by the Bank of England that a report under that section is required for the purposes of insolvency proceedings in any part of the United Kingdom.

(5) In relation to an EEA central counterparty or third country central counterparty, references in this Part to the "rules" or "default rules" of the central counterparty are to be taken not to include references to any relevant provisions unless—

(a) the relevant provisions satisfy the relevant requirements; or

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(b) the Bank of England has made an order under section 170B(4) recognising that the relevant provisions of its default rules satisfy the relevant requirements and the order has not been revoked.

Textual Amendments

F327 Ss. 170A, 170B inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(12)** (with regs. 52-58)

F328 S. 170A(1)(h) and word inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(8)(a)**

F329 Words in s. 170A(2) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(8)(b)**

170B. EEA central counterparties and third country central counterparties: procedure

(1) An EEA central counterparty or third country central counterparty may apply to the Bank of England for an order recognising that the relevant provisions of its default rules satisfy the relevant requirements.

(2) The application must be made in such manner, and must be accompanied by such information, documents and reports, as the Bank of England may direct.

(3) Information, documents and reports required under subsection (2) must be provided in English and be given at such times, in such form and at such place, and verified in such manner, as the Bank of England may direct.

(4) The Bank of England may make an order recognising that the relevant provisions of the default rules satisfy the relevant requirements.

(5) The Bank of England may by order revoke an order made under subsection (4) if—

(a) the EEA central counterparty or third country central counterparty consents;

(b) the EEA central counterparty or third country central counterparty has failed to pay a fee which is owing to the Bank of England under paragraph 36 of Schedule 17A to the Financial Services and Markets Act 2000;

(c) the EEA central counterparty or third country central counterparty is failing or has failed to comply with a requirement of or imposed under section 157 (as modified by section 170A(3)); or

(d) it appears to the Bank of England that the relevant provisions no longer satisfy the relevant requirements.

(6) An order made under subsection (4) or (5) must state the time and date when it is to have effect.

(7) An order made under subsection (5) may contain such transitional provision as the Bank of England considers appropriate.

(8) The Bank of England must—

(a) maintain a register of orders made under subsection (4) which are in force; and

(b) publish the register in such manner as it appears to the Bank of England to be appropriate.

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(9) Section 298 of the Financial Services and Markets Act 2000 applies to a refusal to make an order under subsection (4) or the making of a revocation order under subsection (5)(b), (c) or (d) as it applies to the making of a revocation order under section 297(2) of the Financial Services and Markets Act 2000, but with the following modifications—

(a) for "appropriate regulator" substitute "the Bank of England";

(b) for "recognised body" substitute "EEA central counterparty or third country central counterparty"; and

(c) in subsection (7), for "give a direction under section 296" substitute "make an order under paragraph (b), (c) or (d) of section 170B(5) of the Companies Act 1989".

(10) If the Bank of England refuses to make an order under subsection (4) or makes an order under subsection (5)(b), (c) or (d), the EEA central counterparty or third country central counterparty may refer the matter to the Upper Tribunal.

(11) The Bank of England may rely on information or advice from an overseas competent authority, the EBA or ESMA in its determination of an application under subsection (1) or the making of a revocation order under subsection (5)(d).**]**

Textual Amendments

F327 Ss. 170A, 170B inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(12)** (with regs. 52-58)

[F330]171 . . . . . .

Textual Amendments

F330 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.

(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 **[**[F331]and the Treasury shall consult**]** the Bank of England.

Textual Amendments

F331 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).

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Modifications etc. (not altering text)

C26 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

I21 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,

[[F332](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 **[**[F333]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 **[**[F333]or allottee**]** arising in connection therewith.

(2) Where a charge is granted partly for purposes specified in subsection (1)(a), **[**[F334](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) **[**[F335]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;**]**

"specified securities" means securities for the time being specified in the list in Schedule 1 to the [M28]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.

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(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 **[**[F336]and the Treasury shall consult**]** the Bank of England.

Textual Amendments

F332 S. 173(1)(aa) inserted by S.I. 1991/880, **reg. 9(a)**

F333 Words in s. 173(1)(c) inserted by S.I. 1991/880, **reg. 9(b)**

F334 Word in s. 173(2) inserted by S.I. 1991/880, **reg. 9(c)**

F335 Words in s. 173(3) substituted by S.I. 1991/880, **reg. 9(d)**

F336 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)

C27 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

I22 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

M28 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.

(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 **[**[F337]and the Treasury shall consult**]** the Bank of England.

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Textual Amendments

F337 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)

C28 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

I23 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.

[[F338](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 **[**[F339]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, **[**[F340]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.

[[F341](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.**]**

(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**[**[F342], making of bankruptcy application**]** or presentation of bankruptcy petition), and section **[**[F343]87(4) of the Bankruptcy

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(Scotland) Act 2016**]** (effect of dealing with debtor relating to estate vested in [F344]... 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.

[[F345](5) However, if a person who is party to a disposition mentioned in subsection (4) has notice at the time of the disposition that **[**[F346]a bankruptcy application has been made or**]** 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—

(a) the person is a chargee under the market charge,

(b) the disposition is made in accordance with the default rules of a recognised central counterparty for the purposes of transferring a position or asset of a clearing member in default, or

(c) the court directs otherwise.**]**

[[F347](5A) In subsection (5)(b), "asset" has the meaning given by Article 39(10) of the EMIR Level 1 Regulation.**]**

(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

F338 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))

F339 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))

F340 Words in s. 175(2) inserted by S.I. 1991/880, **reg. 18**

F341 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))

F342 Words in s. 175(4) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 9(6)(a)**

F343 Words in s. 175(4) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(7)(i)**

F344 Word in s. 175(4) omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(7)(ii)**

F345 S. 175(5) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(13)** (with regs. 52-58)

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F346 Words in s. 175(5) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 9(6)(b)**

F347 S. 175(5A) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(14)** (with regs. 52-58)

Modifications etc. (not altering text)

C29 S. 175 (as it has effect by virtue of Enterprise Act 2002 (c. 40), s. 249(1)) modified (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(12)** (with reg. 1(2)(3))

C30 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)**

C31 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)**

C32 S. 175(5) amended by S.I. 1991/880, **reg. 19(1)**

C33 S. 175(5)(6) excluded in part (11.12.1999) by S.I. 1999/2979, **reg. 21(2)(c)**

Commencement Information

I24 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))

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 **[**[F348]Bank of England**]** for the purposes of **[**[F349]section 301 of the Financial Services and Markets Act 2000**]** (certain money market institutions),

(c) the Bank of England,

[[F350](d) a person who has permission under **[**[F351]Part 4A**]** 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).

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(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.

[[F352](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 [F353]. . . **[**[F354]Bank of England**]** for the purposes of **[**[F355]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 **[**[F356]FCA**]** and the Bank of England.

(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.

[[F357](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;

[F358]**[**(ba) operating a multilateral trading facility;**]**

(c) managing investments;

(d) safeguarding and administering investments;

(e) sending dematerialised instructions; [F359]...

[F360]**[**(ea) managing a UCITS;

(eb) acting as trustee or depositary of a UCITS;

(ec) managing an AIF;

(ed) acting as trustee or depositary of an AIF; or**]**

(f) establishing etc. a collective investment scheme.

(9) 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

F348 Words in s. 176(2)(b) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 69(2)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

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F349 Words in s. 176(2)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 85(2)(b)
F350 S. 176(2)(d)(e) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 85(3)
F351 Words in s. 176(2)(d) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 69(2)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F352 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**
F353 Words in s. 176(6) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 85(4)(a)
F354 Words in s. 176(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 69(3)(a)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F355 Words in s. 176(6) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 85(4)(b)
F356 Word in s. 176(6) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 69(3)(b)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
F357 S. 176(8)(9) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 85(5)
F358 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**
F359 Word in s. 176(8) omitted (22.7.2013) by virtue of The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 39**
F360 S. 176(8)(ea)-(ed) inserted (22.7.2013) by The Alternative Investment Fund Managers Regulations 2013 (S.I. 2013/1773), reg. 1, **Sch. 1 para. 39**

Modifications etc. (not altering text)
C34 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).
C35 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
I25 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**

Market property

177 Application of margin [F361or default fund contribution] 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 **[**F362or as default fund contribution**]**.

(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 **[**F363or as default fund contribution**]**.

(3) No right or remedy arising subsequently to the property being provided as margin **[**F364or as default fund contribution**]** may be enforced so as to prevent or interfere with

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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.

Textual Amendments

F361 Words in s. 177 heading inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(13)(a)**

F362 Words in s. 177(1) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(13)(b)**

F363 Words in s. 177(2) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(13)(b)**

F364 Words in s. 177(3) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(13)(c)**

Modifications etc. (not altering text)

C36 S. 177 applied (15.8.1995) by S.I. 1995/2049, **reg. 25(1)**

Commencement Information

I26 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.

Modifications etc. (not altering text)

C37 S. 179 applied (15.8.1995) by S.I. 1995/2049, **reg. 25(2)**

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Commencement Information

I27 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 **[**[F365]or as default fund contribution,**]** 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, **[**[F366]and no power to use the procedure in Schedule 12 to the Tribunals, Courts and Enforcement Act 2007 (taking control of goods) may be exercised,**]** 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 **[**[F367]or as default fund contribution**]**, 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 [M29]Insolvency Act 1986 or the Bankruptcy (Scotland) Act **[**[F368]2016**]**.

(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.

Textual Amendments

F365 Words in s. 180(1) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(14)(a)**

F366 Words in s. 180(1) inserted (6.4.2014) by Tribunals, Courts and Enforcement Act 2007 (c. 15), s. 148, **Sch. 13 para. 91** (with s. 89); S.I. 2014/768, art. 2(1)(b)

F367 Words in s. 180(1)(a) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(14)(b)**

F368 Word in s. 180(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(8)**

Modifications etc. (not altering text)

C38 S. 180 applied (15.8.1995) by S.I. 1995/2049, **reg. 25(3)**

Commencement Information

I28 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)).

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Marginal Citations

M29 1986 c. 45.

181 Power to apply provisions to other cases.

(1) **[**[F369]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 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.

[[F370](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

F369 Words in s. 181(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 86(2)

F370 S. 181(3) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 86(3)

Modifications etc. (not altering text)

C39 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

I29 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 [M30]Insolvency Act 1986 (administration, winding up and

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bankruptcy) or under the Bankruptcy (Scotland) Act **[**[F371]2016**]**; and references in this section to the beginning of such proceedings are to—

[[F372](za) the making of a bankruptcy application on which a bankruptcy order is made,**]**

(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

(b) in Scotland, the administration by a judicial factor appointed under section 11A of the [M31]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

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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.

Textual Amendments

F371 Word in s. 182(2) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(9)**

F372 S. 182(2)(za) inserted (6.4.2016) by The Enterprise and Regulatory Reform Act 2013 (Consequential Amendments) (Bankruptcy) and the Small Business, Enterprise and Employment Act 2015 (Consequential Amendments) Regulations 2016 (S.I. 2016/481), reg. 1, **Sch. 1 para. 9(7)**

Modifications etc. (not altering text)

C40 S. 182 amended by S.I. 1991/880, **reg. 19(1)**

Commencement Information

I30 S. 182 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

Marginal Citations

M30 1986 c. 45.

M31 1889 c. 39.

[F373 182A Recognised central counterparties: disapplication of provisions on mutual credit and set-off

(1) Nothing in the law of insolvency shall enable the setting off against each other of—

(a) positions and assets recorded in an account at a recognised central counterparty and held for the account of a client, an indirect client or a group of clients or indirect clients in accordance with Article 39 of the EMIR Level 1 Regulation or Article 3(1) of the EMIR Level 2 Regulation; and

(b) positions and assets recorded in any other account at the recognised central counterparty.

F374 (2) **[** Nothing in the law of insolvency shall enable the setting off against each other of—

(a) positions and assets recorded in an account at a clearing member and held for the account of an indirect client or a group of indirect clients in accordance with Articles 4(2) and (3) of the EMIR Level 2 Regulation; and

(b) positions and assets recorded in any other account at the clearing member.**]]**

Textual Amendments

F373 S. 182A inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(15)** (with regs. 52-58)

F374 S. 182A(2) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(9)**

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183 Insolvency proceedings in other jurisdictions.

(1) The references to insolvency law in section 426 of the [M32]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 [M33]Civil Jurisdiction and Judgments Act 1982 **[**[F375]or **[**[F376]Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), as amended from time to time and as applied by virtue of the Agreement made on 19 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, p62; OJ No L79, 21.3.2013, p4)**]**].

Textual Amendments

F375 Words in s. 183(3) inserted (3.1.2002) by S.I. 2001/3929, art. 5, **Sch. 3 para. 21**

F376 Words in s. 183(3) substituted (10.1.2015) by The Civil Jurisdiction and Judgments (Amendment) Regulations 2014 (S.I. 2014/2947), reg. 1, **Sch. 4 para. 2** (with reg. 6)

Commencement Information

I31 S. 183 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

Marginal Citations

M32 1986 c. 45.

M33 1982 c. 27.

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.

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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 21 June 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) 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 **[**[F377]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

F377 Words in s. 184(5) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 87

Commencement Information

I32 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.

(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.

[[F378](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.**]**

Status: *Point in time view as at 30/11/2016. 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 21 June 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

F378 S. 185(4) inserted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 88

Modifications etc. (not altering text)

C41 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

I33 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)

C42 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

I34 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.

[[F379](2A) Subsections (1) and (2) do not apply to market contracts to which this Part applies by virtue of section 155(2B).**]**

(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.

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Textual Amendments

F379 S. 187(2A) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(16)** (with regs. 52-58)

Modifications etc. (not altering text)

C43 S. 187(1) amended by S.I. 1991/880, **reg. 16(2)**

Commencement Information

I35 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 **[**[F380](including another recognised investment exchange or recognised clearing house)**]** appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts **[**[F381]connected with the exchange or clearing house, [F382]....**]**

[[F383](1A) In the case of a recognised central counterparty, "default rules" includes—

(a) the default procedures referred to in Article 48 of the EMIR Level 1 Regulation; and

(b) any rules of the recognised central counterparty which provide for the taking of action in accordance with a request or instruction from a clearing member under the default procedures referred to in Article 4(4) of the EMIR Level 2 Regulation in respect of assets or positions held by the recognised central counterparty for the account of an indirect client or group of indirect clients.**]**

(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"**[**[F384], "defaulting" and "non-defaulting"**]** shall be construed accordingly.

[[F385](2A) For the purposes of subsection (2), where a recognised central counterparty takes action under the rules referred to in subsection (1A)(b), the action is to be treated as taken in respect of the client providing the indirect clearing services.**]**

(3) In this Part "default proceedings" means proceedings taken by a recognised investment exchange or recognised clearing house under its default rules.

[[F386](3A) In this Part "default fund contribution" means—

(a) contribution by a member or designated non-member of a recognised investment exchange to a fund which—

(i) is maintained by that exchange for the purpose of covering losses arising in connection with defaults by any of the members of the exchange, or defaults by any of the members or designated non-members of the exchange, and

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(ii) may be applied for that purpose under the default rules of the exchange;

(b) contribution by a member of a recognised clearing house to a fund which—

(i) is maintained by that clearing house for the purpose of covering losses arising in connection with defaults by any of the members of the clearing house, and

(ii) may be applied for that purpose under the default rules of the clearing house;

(c) contribution by a recognised clearing house to a fund which—

(i) is maintained by a recognised investment exchange or another recognised clearing house (A) for the purpose of covering losses arising in connection with defaults by recognised clearing houses or recognised investment exchanges other than A or by any of their members, and

(ii) may be applied for that purpose under A's default rules; or

(d) contribution by a recognised investment exchange to a fund which—

(i) is maintained by a recognised clearing house or another recognised investment exchange (A) for the purpose of covering losses arising in connection with defaults by recognised investment exchanges or recognised clearing houses other than A or by any of their members, and

(ii) may be applied for that purpose under A's 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.

Textual Amendments

F380 Words in s. 188(1) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(15)(a)**

F381 Words in s. 188(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(17)(a)** (with regs. 52-58)

F382 Words in s. 188(1) omitted (26.8.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(10)(a)**

F383 S. 188(1A) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(10)(b)**

F384 Words in s. 188(2) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(17)(b)** (with regs. 52-58)

F385 S. 188(2A) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(10)(c)**

F386 S. 188(3A) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(15)(b)**

Status: *Point in time view as at 30/11/2016. This version of this Act contains provisions that are prospective.*
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Commencement Information

I36 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 Bankruptcy (Scotland) Act **[**[F387]2016**]**) as his trustee in bankruptcy or interim receiver of his property or as **[**[F388]trustee**]** 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 [M34]Insolvency Act 1986.

Textual Amendments

F387 Word in s. 189(1)(c) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(10)(a)**

F388 Word in s. 189(1)(c) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(10)(b)**

Commencement Information

I37 S. 189 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

Marginal Citations

M34 1986 c.45.

[[F389]189A Meaning of "transfer"

(1) In this Part, a reference to a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement shall be interpreted in accordance with this section.

(2) A transfer of a clearing member client contract or client trade includes—

(a) an assignment;

(b) a novation; and

(c) terminating or closing out the clearing member client contract or client trade and establishing an equivalent position between different parties.

(3) Where a clearing member client contract is recorded in the accounts of a recognised central counterparty as a position held for the account of an indirect client or group of indirect clients, the clearing member client contract is to be treated as having been transferred if the position is transferred to a different account at the recognised central counterparty.

(4) A reference to a transfer of a qualifying collateral arrangement includes an assignment or a novation.**]**

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Textual Amendments

F389 S. 189A inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(11)**

190 Minor definitions.

(1) In this Part—

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

F390 . . . . . .

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

F391 . . . . . .

[F392"clearing member", in relation to a recognised central counterparty, has the meaning given by Article 2(14) of the EMIR Level 1 Regulation;**]**

[F392"client" has the meaning given by Article 2(15) of the EMIR Level 1 Regulation;**]**

[F392"EMIR Level 1 Regulation" means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;**]**

[F392"EMIR Level 2 Regulation" means Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, risk mitigation for OTC derivatives contracts not cleared by a CCP;**]**

[F393"the FCA" means the Financial Conduct Authority;**]**

[F394"indirect clearing services" has the same meaning as in the EMIR Level 2 Regulation;**]**

[F392"indirect client" has the meaning given by Article 1(a) of the EMIR Level 2 Regulation;**]**

[F395"interim trustee" has the same meaning as in the Bankruptcy (Scotland) Act 2016**]**

F391 . . . . . .

[F392"member of a clearing house" includes a clearing member of a recognised central counterparty;**]**

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

[F392"position" has the same meaning as in the EMIR Level 1 Regulation;**]**

[F396"the PRA" means the Prudential Regulation Authority;**]**

[F397"recognised central counterparty", "recognised clearing house" and "recognised investment exchange" have the same meaning as in the Financial Services and Markets Act 2000;**]**

[F398"sequestration" means sequestration under the Bankruptcy (Scotland) Act 2016;**]**

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[F391] . . . . . .

"set-off", in relation to Scotland, includes compensation;

[[F399]"The Stock Exchange" means the London Stock Exchange Limited;**]**

[[F400]"UK", in relation to an investment exchange, means having its head office in the United Kingdom.**]**

[[F401](2) References in this Part to settlement—

(a) mean, in relation to a market contract, the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise;

(b) include, in relation to a clearing member client contract or a clearing member house contract, a reference to its liquidation for the purposes of Article 48 of the EMIR Level 1 Regulation.**]**

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

[F402](3A) . . . . . .

[F403](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".

[[F404](6) References in this Part to the law of insolvency—

(a) include references to every provision made by or under the Insolvency Act 1986 or the Bankruptcy (Scotland) Act **[**[F405]2016**]**; 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;

(b) are also to be interpreted in accordance with the modifications made by the enactments mentioned in subsection (6B).

(6A) For the avoidance of doubt, references in this Part to administration, administrator, liquidator and winding up are to be interpreted in accordance with the modifications made by the enactments mentioned in subsection (6B).

(6B) The enactments referred to in subsections (6)(b) and (6A) are—

(a) article 3 of, and the Schedule to, the Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009;

(b) article 18 of, and paragraphs 1(a), (2) and (3) of Schedule 2 to, the Building Societies (Insolvency and Special Administration) Order 2009; and

(c) regulation 27 of, and Schedule 6 to, the Investment Bank Special Administration Regulations 2011.**]**

(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 **[**[F406]trustee or to a trustee in the sequestration of an estate**]** include references to a judicial factor on the insolvent estate of a deceased person,

unless the context otherwise requires.

Status: *Point in time view as at 30/11/2016. This version of this Act contains provisions that are prospective.*
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Textual Amendments

F390 Words in s. 190 omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 70(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F391 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)

F392 Words in s. 190(1) inserted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(18)(a)** (with regs. 52-58)

F393 Words in s. 190 inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 70(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F394 Words in s. 190 inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(12)(a)**

F395 Words in s. 190(1) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(11)(a)(i)**

F396 Words in s. 190 inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 70(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F397 Words in s. 190(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(18)(b)(i)** (with regs. 52-58)

F398 Words in s. 190(1) inserted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(11)(a)(ii)**

F399 Definition of "The Stock Exchange" in s. 190(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 89(5)

F400 Words in s. 190(1) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(18)(b)(ii)** (with regs. 52-58)

F401 S. 190(2) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(18)(c)** (with regs. 52-58)

F402 S. 190(3A) omitted (26.8.2013) by virtue of The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(12)(b)**

F403 S. 190(4) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 89(6)

F404 S. 190(6)-(6B) substituted for s. 190(6) (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(18)(e)** (with regs. 52-58)

F405 Word in s. 190(6)(a) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(11)(b)**

F406 Words in s. 190(7)(b) substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(11)(c)**

Commencement Information

I38 S. 190 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

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)—

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[F407 Defined Expression	***Section***
administration	Sections 190(6A) and (6B)
administrator	Sections 190(6A) and (6B)
administrative receiver	Section 190(1)
charge	Section 190(1)
clearing member	Section 190(1)
clearing member client contract	Section 155(1)(a)
clearing member house contract	Section 155(1)(b)
client	Section 190(1)
client trade	Section 155(1)(c)
cover for margin	Section 190(3)
default fund contribution	Section 188(3A)
default rules (and related expressions)	Section 188
designated non-member	Section 155(2)
EMIR Level 1 Regulation	Section 190(1)
EMIR Level 2 Regulation	Section 190(1)
the FCA	Section 190(1)
[F408 indirect clearing services	Section 190(1)**]**
indirect client	Section 190(1)
insolvency law (and similar expressions)	Sections 190(6) and (6B)
interim trustee	Sections 190(1) and 190(7)(b)
liquidator	Sections 190(6A) and (6B)
margin	Section 190(3)
market charge	Section 173
market contract	Section 155
member of a clearing house	Section 190(1)
notice	Section 190(5)
overseas (in relation to investment exchanges and clearing houses)	Section 190(1)
party (in relation to a market contract)	Section 187
F409	**F409**
. . .	. . .
the PRA	Section 190(1)
qualifying collateral arrangement	Section 155A(1)(a)
qualifying property transfers	Section 155A(1)(b)

Status: *Point in time view as at 30/11/2016. This version of this Act contains provisions that are prospective.*
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[F407 Defined Expression	***Section***
recognised central counterparty	Section 190(1)
recognised clearing house	Section 190(1)
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)
[F408 transfer	Section 189A**]**
[F410 interim trustee and trustee in the sequestration of an estate (in relation to Scotland)	section 190(1) and (7)(b)**]**
UK (in relation to investment exchanges)	Section 190(1)
winding up	Sections 190(6A) and (6B)**]**

Textual Amendments

F407 S. 191 Table substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), 4(19), **Sch.** (with regs. 52-58)

F408 Words in s. 191 Table inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(13)**

F409 S. 191 Table: entry omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(12)(a)**

F410 S. 191 Table: entry substituted (30.11.2016) by The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(12)(b)**

Commencement Information

I39 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

F411 192 . . . . . .

Status: *Point in time view as at 30/11/2016. This version of this Act contains provisions that are prospective.*
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Textual Amendments
F411 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(i)

[F412]193 . . . . . .

Textual Amendments
F412 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(i)

[F413]194 . . . . . .

Textual Amendments
F413 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(i)

[F414]195 . . . . . .

Textual Amendments
F414 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(i)

[F415]196 . . . . . .

Textual Amendments
F415 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(i)

[F416]197 . . . . . .

Textual Amendments
F416 Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(i)

[F417]198 . . . . . .

Textual Amendments
F417 S. 198 repealed (19.6.1995) by S.I. 1995/1537, regs. 1(1), 17, **Sch. 2 Pt. II para.10**

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[F418]199 . . . . . .

Textual Amendments
F418 S. 199 repealed (19.6.1995) by S.I. 1995/1537, regs. 1(1), 17, **Sch. 2 Pt. II para.10**

200 Jurisdiction of High Court and Court of Session.

[F419](1) . . . . . .

(2) In Schedule 5 to the [M35]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
F419 S. 200(1) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(j)

Marginal Citations
M35 1982 c. 27.

[F420]201 . . . . . .

Textual Amendments
F420 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(k)

[F421]202 . . . . . .

Textual Amendments
F421 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(k)

[F422]203 . . . . . .

Textual Amendments
F422 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(k)

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[F423]204 . . . . . .

Textual Amendments

F423 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(k)

[F424]205 . . . . . .

Textual Amendments

F424 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(k)

[F425]206 . . . . . .

Textual Amendments

F425 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)

C44 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.

[F426] . . . . . .

Textual Amendments

F426 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)

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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 [M36]Company Directors Disqualification Act 1986 (application of provisions of the [M37]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 Act as it applies to summary proceedings for an offence under Parts I to VII of that Act.".

Marginal Citations

M36 1986 c. 46.
M37 1986 c. 45.

[F427]209 . . . . . .

Textual Amendments

F427 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 [M38]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.

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(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 [M39]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) omitsub-paragraph (4) (provision about notices).

(5) After paragraph 7 insert—

“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

M38 1975 c. 75.

M39 1982 c. 50.

211 Building societies: miscellaneous amendments.

(1) In section 104 of the [M40]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 [M41]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 [M42]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

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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.".

Commencement Information

I40 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

M40 1986 c. 53.
M41 1986 c. 45.
M42 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

I41 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 [F428]... the [M43]Insolvency Act 1986, its application to companies registered or incorporated in Northern Ireland is subject to [F428]... section 441(2) of the Insolvency Act 1986[F428]....

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(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"),

[F429](b) . . . . . .

(c) sections 157, 160, 162, and 166 to 169 (provisions relating to recognised investment exchanges and clearing houses),

(d) **[**[F430]sections 170 and 172**]** (power to extend provisions to other financial markets),

(e) section 184 (indemnity for certain acts), and

(f) sections 185 to 191 (supplementary provisions).

[F429](6) . . . . . .

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

[F431] . . .

(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

F428 Words in s. 213(2) omitted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 103(3)** (with art. 10)

F429 S. 213(5)(b)(6) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(l)

F430 Words in s. 213(5)(d) substituted (1.4.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), regs. 1(2), **4(20)** (with regs. 52-58)

F431 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

M43 1986 c. 45.

[F432]214 . . . . . .

Textual Amendments

F432 S. 214 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 75(m)

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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 [M44]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 [M45]Fair Trading Act 1973, and section 212 so far as relating to those repeals.

(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)

Marginal Citations

M44 1986 c. 60.
M45 1973 c. 41.

216 Short title.

This Act may be cited as the Companies Act 1989.

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