Companies Act 1989

1989 CHAPTER 40

An Act to amend the law relating to company accounts; to make new provision with respect to the persons eligible for appointment as company auditors; to amend the Companies Act 1985 and certain other enactments with respect to investigations and powers to obtain information and to confer new powers exercisable to assist overseas regulatory authorities; to make new provision with respect to the registration of company charges and otherwise to amend the law relating to companies; to amend the Fair Trading Act 1973; to enable provision to be made for the payment of fees in connection with the exercise by the Secretary of State, the Director General of Fair Trading and the Monopolies and Mergers Commission of their functions under Part V of that Act; to make provision for safeguarding the operation of certain financial markets; to amend the Financial Services Act 1986; to enable provision to be made for the recording and transfer of title to securities without a written instrument; to amend the Company Directors Disqualification Act 1986, the Company Securities (Insider Dealing) Act 1985, the Policyholders Protection Act 1975 and the law relating to building societies; and for connected purposes.

[16th November 1989]

Be it enacted by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

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**Extent Information**

**E1** Act extends to Great Britain, but for exceptions see s. 213.

**Modifications etc. (not altering text)**

**C1** Act modified (21.2.2009) by The Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009 (S.I. 2009/317), arts. 1, 3, Sch.

**C2** Act applied (with modifications) (8.2.2011) by The Investment Bank Special Administration Regulations 2011 (S.I. 2011/245), reg. 1, Sch. 6 Pt. 1 (with reg. 27(a))
PART I
COMPANY ACCOUNTS

Introduction

1 Introduction.

2 Accounting records.

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

4 Individual company accounts.
5  Group accounts.

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F5  S. 5 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)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

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

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.

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.

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.

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)
Status: This version of this Act contains provisions that are prospective.
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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.

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.

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.

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.

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.

Textual Amendments
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

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)

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)
C4 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)
Introduction

24 Introduction.

Eligibility for appointment

25 Eligibility for appointment.

Effect of appointment of partnership.

Ineligibility on ground of lack of independence.
28 Effect of ineligibility.

F27

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))

29 Power of Secretary of State to require second audit.

F28

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))

Recognition of supervisory bodies and professional qualifications

30 Supervisory bodies.

F29

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))

31 Meaning of “appropriate qualification”.

F30

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))

32 Qualifying bodies and recognised professional qualifications.

F31
Part II – Eligibility for Appointment as Company Auditor

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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

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
Companies Act 1989 (c. 40)

Part II – Eligibility for Appointment as Company Auditor

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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

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
Companies Act 1989 (c. 40)
Part II – Eligibility for Appointment as Company Auditor

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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))

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))

[F46A Circumstances in which Secretary of State may delegate functions to existing body

F47 . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .]
Part II – Eligibility for Appointment as Company Auditor

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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

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.
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 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 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 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.”.
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.”.

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

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
Companies Act 1989 (c. 40)

Part III – Investigations and Powers to Obtain Information

(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 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 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.),
(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 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

(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 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).”.

65 Provision for security of information obtained.

Textual Amendments

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 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.

Textual Amendments

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—

(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 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.

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**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

Textual Amendments

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

F62

Textual Amendments

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

F63

Textual Amendments

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

F64

Textual Amendments

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

F65

Textual Amendments

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

Textual Amendments

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

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

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

“or

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

Commencement Information


Marginal Citations

M8  1986 c. 53.

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—

(a) any function corresponding to—

(i) any function of the Secretary of State under the Companies Act 1985 or the Companies Act 2006;

(ii) any function of the FCA, the PRA or the Bank of England under the Financial Services and Markets Act 2000;

(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 Part V of the Criminal Justice Act 1993 (insider dealing), or

(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 he and the 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.

(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] 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.

(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. 1 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)**

C8 S. 82(3): (7.6.1992) certain functions made exercisable concurrently by the Secretary of State and the Treasury by S.I. 1992/1315, arts. 5, 8, Sch. 3 para. 3 (with art. 6).
83 Power to require information, documents or other assistance.

(1) The following powers may be exercised in accordance with section 82, if the Secretary of State considers there is good reason for their exercise.

(2) The Secretary of State may require any person—
   (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.

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

(1) A person who without reasonable excuse fails to comply with a requirement imposed on him under section 83 commits an offence and is liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the standard scale, or both.

(2) A person who in purported compliance with any such requirement furnishes information which he knows to be false or misleading in a material particular, or recklessly furnishes information which is false or misleading in a material particular, commits an offence and is liable—

(a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine, or both;

(b) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or both.

86 Restrictions on disclosure of information.

(1) This section applies to information relating to the business or other affairs of a person which—

(a) is supplied by an overseas regulatory authority in connection with a request for assistance, or

(b) is obtained by virtue of the powers conferred by section 83, whether or not any requirement to supply it is made under that section.

(2) Except as permitted by section 87 below, such information shall not be disclosed for any purpose—

(a) by the primary recipient, or

(b) by any person obtaining the information directly or indirectly from him, without the consent of the person from whom the primary recipient obtained the information and, if different, the person to whom it relates.

(3) The “primary recipient” means, as the case may be—

(a) the Secretary of State,

(b) any person authorised under section 84 to exercise powers on his behalf, and

(c) any officer or servant of any such person.

(4) Information shall not be treated as information to which this section applies if it has been made available to the public by virtue of being disclosed in any circumstances in which, or for any purpose for which, disclosure is not precluded by this section.

(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 EU obligation.

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

(a) any criminal proceedings,

(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—

(i) a decision of the FCA;

(ii) a decision of the PRA;

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

(c) disciplinary proceedings relating to—

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

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

(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—

<table>
<thead>
<tr>
<th>Authority</th>
<th>Functions</th>
</tr>
</thead>
<tbody>
<tr>
<td>[F91The Secretary of State]</td>
<td>Functions under—&lt;br&gt;(a)the enactments relating to companies or insolvency;&lt;br&gt;(b)Part 2, this Part or Part 7 of this Act;&lt;br&gt;(c)the Financial Services and Markets Act 2000.</td>
</tr>
</tbody>
</table>
Companies Act 1989 (c. 40)
Part III – Investigations and Powers to Obtain Information

Status: 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 01 January 2022. 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) View outstanding changes

(b) the Financial Services and Markets Act 2000.


A person authorised to exercise powers under section 447 of the Companies Act 1985 or section 84 of this Act.

A person appointed under—
(a) section 167 of the Financial Services and Markets Act 2000 (general investigations),
(b) section 168 of that Act (investigations in particular cases),
(c) section 169(1)(b) of that Act (investigation in support of overseas regulator),
(d) section 284 of that Act (investigations into affairs of certain collective investment schemes), or
(e) regulations made as a result of section 262(2)(k) of that Act (investigations into open-ended investment companies) to conduct an investigation.

An overseas regulatory authority.

The Department of Economic Development in Northern Ireland or a person appointed or authorised by that Department.


Any of its functions

The FCA or the PRA.

Functions under the enactments relating to friendly societies, under the Building

Functions in relation to the investigation.

Its regulatory functions (within the meaning of section 82 of this Act).

Functions conferred on it or him by the enactments relating to companies or insolvency.
A body corporate established in accordance with section 212(1) of that Act.

A recognised investment exchange, recognised clearing house or recognised CSD (as defined by section 285 of that Act).

A body designated under section 326(1) of the Financial Services and Markets Act 2000.

The Official Receiver or, in Northern Ireland, the Official Assignee for company liquidations or for bankruptcy.

A recognised professional body (within the meaning of section 391 of the Insolvency Act 1986).

The Pensions Regulator

The Board of the Pension Protection Fund


Functions under the Financial Services Compensation Scheme, established in accordance with section 213 of that Act.

Functions in its capacity as an exchange clearing house or central securities depository recognised under that Act.

Functions in its capacity as a body designated under that section.

Functions under Part 42 of the Companies Act 2006.

Functions as such a body.

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.

Functions conferred by or by virtue of Part 2 of the Pensions Act 2004 or any
Companies Act 1989 (c. 40)
Part III – Investigations and Powers to Obtain Information

Status: 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 01 January 2022. 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) View outstanding changes

[F106 The Competition and Markets Authority] Functions under the [F107 Financial Services and Markets Act 2000].

[F108 A person authorised by the Secretary of State under sections 245C of the Companies Act 1985.] [F109 Functions relating to the securing of compliance by companies with the accounting requirements of that Act].

[...]


[F111 The Scottish Ministers Functions under the enactments relating to insolvency.

The Accountant in Bankruptcy Functions he has under the enactments relating to insolvency.]

[F112 The Regulator of Community Interest Companies. Functions under the Companies (Audit, Investigations and Community Enterprise) Act 2004.]

[F113 The Gambling Commission Functions under—
(a) the Gambling Act 2005,
(b) sections 5 to 10 and 15 of the National Lottery etc. Act 1993.]

[F115 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)(a) 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)(c), 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) |
| 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. |
| F100 | Words in s. 87(4) Table substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, Sch. para. 5(2)(a) (with regs. 7(4), 9(1)) |
| F101 | Words in s. 87(4) Table substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, Sch. para. 5(2)(b) (with regs. 7(4), 9(1)) |
| F102 | 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 |
| F103 | 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 |
| F104 | S. 87(4): Entry in the Table omitted (30.4.2001) by virtue of S.I. 2001/1283, art. 3(4) |
| F105 | 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)) |
| F106 | Words in s. 87(4) Table substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Consequence, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), Sch. 1 para. 69 (with art. 3) |
| F107 | Words in the Table in s. 87(4) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 77(11) |
| F108 | S. 87(4) Table: entry inserted (16.8.1993) by S.I. 1993/1826, art. 3 |
| F109 | 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) |
| F110 | S. 87(4) Table: Entry inserted (14.8.2002) by S.I. 2002/1889, art. 3(2) |
| F111 | S. 87(4) Table: entries inserted (1.7.1999) by S.I. 1999/1820, art. 4, Sch. 2 Pt. I para. 96 |
| F112 | 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 |
| F113 | 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 |
| F114 | 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) |
| F115 | S. 87(4): Table Note added (14.8.2002) by S.I. 2002/1889, art. 3(3) |
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 Northern Ireland Constitution Act 1973.

(2) The Secretary of State shall before deciding whether to accede to the request consult the Department of Economic Development in Northern Ireland, and if he decides to accede to the request and it appears to him—
   (a) that the powers should be exercised in Northern Ireland, and
   (b) that the purposes for which they should be so exercised relate wholly or primarily to transferred matters,

he shall by instrument in writing authorise the Department to exercise in Northern Ireland his powers under section 83.

(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.),
   (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

F116 S. 88(3)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 78

Marginal Citations

M13 1973 c. 36.

89 Prosecutions.

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

(a) in England and Wales, except by or with the consent of the Secretary of State or the Director of Public Prosecutions;

(b) in Northern Ireland, except by or with the consent of the Secretary of State or the Director of Public Prosecutions for Northern Ireland.

90 Offences by bodies corporate, partnerships and unincorporated associations.

(1) Where an offence under section 85 or 86 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any 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 Criminal Justice Act 1925 and Schedule 3 to the 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, section 70 of
the 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 Criminal Justice Act (Northern Ireland) 1945 and Schedule 4
to the Magistrates’ Courts (Northern Ireland) Order 1981 (procedure on charge of
offence against a corporation) apply in a case in which an unincorporated association
is charged in Northern Ireland with an offence under section 85 or 86 as they apply
in the case of a corporation.

(6) A fine imposed on an unincorporated association on its conviction of such an offence
shall be paid out of the funds of the association.

Textual Amendments
F117 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.).

PROSPECTIVE

F118 PART IV
REGISTRATION OF COMPANY CHARGES

Textual Amendments
F118 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)
Introduction

Charges requiring registration.

The companies charges register.

Delivery of particulars for registration.

Delivery of further particulars.

Effect of omissions and errors in registered particulars.

Memorandum of charge ceasing to affect company’s property.

Further provisions with respect to voidness of charges.

Additional information to be registered.

Copies of instruments and register to be kept by the company.
Supplementary provisions

102 Power to make further provision by regulations.

103 Other supplementary provisions.

104 Interpretation, &c.

105 Charges on property of oversea company.

106 Application of provisions to unregistered companies.

107 Consequential amendments.

PART V

OTHER AMENDMENTS OF COMPANY LAW

A company’s capacity and related matters

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

Textual Amendments

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.)
110 Statement of company’s objects.

Textual Amendments
F119 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.)

111 Charitable companies (Scotland).

Textual Amendments
F120 S. 111 repealed (1.8.1993) by 1993 c. 10, ss. 98(2), 99(1), Sch. 7

112 Charitable companies (Scotland).

(1) In the following provisions (which extend to Scotland only)—
(a) “company” means a company registered under the Companies Act 2006; and
(b) “charity” means a body entered in the Scottish Charity Register.

(2) Where a charity is a company or other body corporate having power to alter the instruments establishing or regulating it as a body corporate, no exercise of that power which has the effect of the body ceasing to be a charity shall be valid so as to affect the application of—
(a) any property acquired by virtue of any transfer, contract or obligation previously effected otherwise than for full consideration in money or money’s worth, or any property representing property so acquired,
(b) any property representing income which has accrued before the alteration is made, or
(c) the income from any such property as aforesaid.

(3) Sections 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 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 [F125] 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 
        [F126] 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.

[F127] (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 
    (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.]
Status: 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 01 January 2022. 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) View outstanding changes

Textual Amendments

F121 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)

F122 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

F123 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)

F124 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)

F125 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)

F126 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)

F127 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.
F128

Textual Amendments

F128 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.
F129

Textual Amendments

F129 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)
F130115 Election by private company to dispense with certain requirements.

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Textual Amendments
F130 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.

[F131] (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
F131 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.)

F132117 Power to make further provision by regulations.

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Textual Amendments
F132 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.

F133

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Textual Amendments
F133 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.

Textual Amendments
F134 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.

Textual Amendments
F135 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.

Textual Amendments
F136 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.

Textual Amendments
F137 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)

F138 123 Statement by person ceasing to hold office as auditor.

Textual Amendments
F138 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.)
124. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Textual Amendments
F139 S. 124 repealed (16.10.1992) by Trade Union and Labour Relations (Consolidation) Act 1992 (c. 52), ss. 300(1), 302, Sch. 1 (with Sch. 3)

Company records and related matters

125 Delivery of documents to the registrar.

(1) For section 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,

(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.”

F140 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.)

126 Keeping and inspection of company records.

F141 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.)

127 Supplementary provisions as to company records and related matters.

F141 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

F141 128 Form and articles for partnership company.

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Companies Act 1989 (c. 40)

Part V – Other amendments of Company Law

Document Generated: 2022-01-01

Status: 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 01 January 2022. 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) View outstanding changes

Textual Amendments

F141 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.)

F141

129 Membership of holding company.

Textual Amendments

F141 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.

[F142](1) ............................................... F143

(2) ............................................... F145

(3) ............................................... F145

(4) ............................................... F145

(5) ............................................... F145

(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; 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.

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

F142 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.)

F143 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

F144 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
F145 131 Members’ rights to damages, &c.

Textual Amendments
F145 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.)

F145 132 Financial assistance for purposes of employees’ share scheme.

Textual Amendments
F145 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.)

F145 133 Issue of redeemable shares.

Textual Amendments
F145 Ss. 131-133 repealed (1.10.2009) by Companies Act 2006 (c. 46), s. 1300(2), Sch. 16; S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with arts. 7, 8, Sch. 2) (which transitional provisions in Sch. 2 are amended (1.10.2009) by S.I. 2009/2476, arts. 1(3), 2(3)(4) and by S.I. 2009/1802, arts. 1, 18, Sch.)

134 Disclosure of interests in shares.

F146

Textual Amendments
F146 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 Companies Act 1985 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 F148 . . . , section 445 and Part XV of the Companies Act 1985 [F149 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
F147 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)
F148 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
F149 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.

F150 A company’s registered office.

Textual Amendments
F150 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.)

Effecting of insurance for officers and auditors of company.

Textual Amendments
F151 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)

Increase of limits on certain exemptions.
Companies Act 1989 (c. 40)
Part V – Other amendments of Company Law

Status: 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 01 January 2022. 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) View outstanding changes

139 Annual returns.

F153 (1) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(2) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(3) . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

(4) In Schedule 1 to the M20 Company Directors Disqualification Act 1986 (matters relevant to determining unfitness of directors), in paragraph 4 (failure of company to comply with certain provisions), for sub-paragraphs (f) and (g) substitute—

“(f) section 363 (duty of company to make annual returns);”.

(5) F154 . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . .

Textual Amendments

F152 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)

F153 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.)

F154 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, “.

(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.

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**Modifications etc. (not altering text)**

C13  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)

**Textual Amendments**

F155  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(6)(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.)
Abolition of doctrine of deemed notice.

Textual Amendments

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.)

Rights of inspection and related matters.

Textual Amendments

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.)

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

(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 (premutation 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
F156 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
15 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 ........................................
F157 ........................................

Textual Amendments
F157 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.
F158 ........................................

Textual Amendments
F158 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.
F159 ........................................

Textual Amendments
F159 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.

Textual Amendments
F160 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.

Textual Amendments
F161 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)

151 False or misleading information.

Textual Amendments
F162 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.

Textual Amendments
F163 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 M79 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 Fair Trading Act 1973, the number of newspapers concerned, the number of separate editions (determined in accordance with the regulations) of each newspaper and the average circulation per day of publication (within the meaning of Part V of that Act) of each newspaper, and

(ii) in any other case, the value (determined in accordance with the regulations) of any assets concerned,

(d) as to the time when any fee is to be paid, and

(e) for the repayment by the Secretary of State or the Director of the whole or part of any fee in specified circumstances.

(5) The regulations may make different provision for different cases.

(6) Subsections (2) to (5) above do not prejudice the generality of subsection (1) above.

(7) In determining the amount of any fees to be prescribed by the regulations, the Secretary of State may take into account all costs incurred by him and by the Director in respect of the exercise by him, by the Commission and by the Director of their respective functions—

(a) under Part V of the Fair Trading Act 1973, and

(b) under Parts I, VII and VIII of that Act in relation to merger references or other matters arising under Part V.

(8) A statutory instrument containing regulations under this section shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(9) Fees paid to the Secretary of State or the Director under this section shall be paid into the Consolidated Fund.

(10) In this section—

“the Commission”,

“the Director”, and

“merger reference”,

have the same meaning as in the Fair Trading Act 1973, and “newspaper” has the same meaning as in Part V of that Act.
(11) References in this section to Part V of the Fair Trading Act 1973 and to merger references under section 64 or 75 of that Act or under that Part \[F704\] include sections 32 to 34 of the Water Industry Act 1991 and any reference under section 32 of that Act.

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**152 Fees.**

(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 \[M81\] 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 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 \[M81\] Fair Trading Act 1973, the number of newspapers concerned, the number of separate editions (determined in accordance with the regulations) of each newspaper and the average circulation...
per day of publication (within the meaning of Part V of that Act) of
each newspaper, and
(ii) in any other case, the value (determined in accordance with the
regulations) of any assets concerned,
(d) as to the time when any fee is to be paid, and
(e) for the repayment by the Secretary of State or the Director of the whole or
part of any fee in specified circumstances.

(5) The regulations may make different provision for different cases.

(6) Subsections (2) to (5) above do not prejudice the generality of subsection (1) above.

(7) In determining the amount of any fees to be prescribed by the regulations, the Secretary
of State may take into account all costs incurred by him and by the Director in respect
of the exercise by him, by the Commission and by the Director of their respective
functions—
(a) under Part V of the Fair Trading Act 1973, and
(b) under Parts I, VII and VIII of that Act in relation to merger references or other
matters arising under Part V.

(8) A statutory instrument containing regulations under this section shall be subject to
annulment in pursuance of a resolution of either House of Parliament.

(9) Fees paid to the Secretary of State or the Director under this section shall be paid into
the Consolidated Fund.

(10) In this section—
“the Commission”,
“the Director”, and
“merger reference”,
have the same meaning as in the Fair Trading Act 1973, and “newspaper” has the same
meaning as in Part V of that Act.

(11) References in this section to Part V of the Fair Trading Act 1973 and to merger
references under section 64 or 75 of that Act or under that Part include sections 29
and 30 of the Water Act 1989 and any reference under section 29 of that Act.

Extent Information
E4 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
M81 1973 c. 41.
M82 1973 c. 41.
M83 1989 c. 15.

153 Other amendments about mergers and related matters.

Schedule 20 to this Act has effect.
PART VII

FINANCIAL MARKETS AND INSOLVENCY

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 [F164 or as default fund contribution,] or subject to such a charge (sections 177 to 181).

Textual Amendments

F164 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


[F165 Recognised bodies]
Companies Act 1989 (c. 40)
Part VII – Financial Markets and Insolvency

Status: 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 01 January 2022. 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) View outstanding changes

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 [F167(3ZA)].]

[F168(1A) The parties referred to in subsections (1)(a) and (c) are—
(a) a clearing member;
(b) a client; and
(c) an indirect client.]

[F169(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 [F170 with a person other than the exchange which are either
   (i) contracts made on the exchange or on an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; or
   (ii) contracts in the making of which the member or designated non-member was subject to the rules of the exchange or of an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise;]

[F172(b) contracts entered into by the exchange, in its capacity as such, with a member of the exchange or with a recognised clearing house [F173 or with a recognised CSD] or with another recognised investment exchange for the purpose of enabling the rights and liabilities of that member [F175 or recognised body] 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 [F175 or with a recognised CSD] or with another recognised investment exchange for the purpose of providing central counterparty clearing services to that member [F174 or recognised body].]

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.

[F175(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)).]

[F176(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) [F177 or (2D)]; and
(d) contracts entered into by the recognised central counterparty with a recognised investment exchange [F178 or with a recognised CSD] or a recognised clearing
house for the purpose of providing central counterparty clearing services to [F179]that recognised body].

(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.]

[F180](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.]

[F181](3) In relation to a recognised clearing house [F182]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 [F183]or with a recognised CSD or with another recognised clearing house for the purpose of enabling the rights and liabilities of that member [F184]or recognised body 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 [F185]or with a recognised CSD or with another recognised clearing house for the purpose of providing central counterparty clearing services to that member [F186]or recognised body].

[F187](3ZA) In relation to a recognised CSD, this Part applies to contracts entered into by the central securities depository with a member of the central securities depository or with a recognised investment exchange or with a recognised clearing house or with another recognised CSD for the purpose of providing authorised central securities depository services to that member or recognised body.]

[F188](3A) In this section “central counterparty clearing services” means—
(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 [F189]a recognised body] in connection with contracts between them, or
(c) the services provided by a recognised investment exchange to [F189]a recognised body] in connection with contracts between them.

[F189](3B) The reference in subsection (2D)(c)(ii) to the beginning of insolvency proceedings is to—
Companies Act 1989 (c. 40)
Part VII – Financial Markets and Insolvency

Document Generated: 2022-01-01

Status: 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 01 January 2022. 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) View outstanding changes

(a) 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.

[3D] In this Part “authorised central securities depository services” means, in relation to a recognised CSD—
(a) the core services listed in Section A of the Annex to the CSD regulation which that central securities depository is authorised to provide pursuant to Article 16 or 19(1)(a) or (c) of the CSD regulation;
(b) the non-banking-type ancillary services listed in or permitted under Section B of that Annex which that central securities depository is authorised to provide, including services notified under Article 19 of the CSD regulation; and
(c) the banking-type ancillary services listed in or permitted under Section C of that Annex which that central securities depository is authorised to provide pursuant to Article 54(2)(a) of the CSD regulation.

(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 body.

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

Textual Amendments
F166 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)
F167 Word in s. 155(1)(d) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(a) (with regs. 7(4), 9(1))
F168 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)
F169 S. 155(2)(2A) substituted for s. 155(2) by S.I. 1991/880, reg. 3
F170 Words in s. 155(2)(a) inserted (11.8.1998) by S.I. 1998/1748, reg. 3(a)
F173 Words in s. 155(2)(b)(c) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(b)(i) (with regs. 7(4), 9(1))

F174 Words in s. 155(2)(b)(c) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(b)(ii) (with regs. 7(4), 9(1))


F176 S. 155(2B) 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)

F177 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)

F178 Words in s. 155(2B)(d) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(c)(i) (with regs. 7(4), 9(1))

F179 Words in s. 155(2B)(d) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(c)(ii) (with regs. 7(4), 9(1))

F180 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)


F182 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)(c) (with regs. 52-58)

F183 Words in s. 155(3)(a) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(d)(i) (with regs. 7(4), 9(1))

F184 Words in s. 155(3)(a) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(d)(ii) (with regs. 7(4), 9(1))

F185 Words in s. 155(3)(b) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(d)(i) (with regs. 7(4), 9(1))

F186 Words in s. 155(3)(b) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(d)(ii) (with regs. 7(4), 9(1))

F187 S. 155(3ZA) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(e) (with regs. 7(4), 9(1))


F189 Words in s. 155(3A)(b) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(f)(i) (with regs. 7(4), 9(1))

F190 Words in s. 155(3A)(c) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(f)(ii) (with regs. 7(4), 9(1))

F191 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)

F192 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)

F193 S. 155(3D) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(g) (with regs. 7(4), 9(1))

F194 Words in s. 155(4) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(h) (with regs. 7(4), 9(1))

F195 Words in s. 155(5) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(3)(i) (with regs. 7(4), 9(1))
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.

(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;
   (aa) transfers of property made in accordance with Article 4(6) and (7) of the EMIR Level 2 Regulation or Article 4(6) and (7) of the MIFIR 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.
   (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

**F196** 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)

**F197** S. 155A(4)(aa) substituted (3.1.2018) by The Companies Act 1989 (Financial Markets and Insolvency) (Amendment) Regulations 2017 (S.I. 2017/1247), regs. 1, 2(2)

**F198** 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)

**F199** 156 ..............................

### Textual Amendments

**F199** S. 156 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(e)

157 (1) [F200] A recognised body shall give the [F201] appropriate regulator at least [F202] three months notice of any proposal to amend, revoke or add to its default rules; and the [F203] regulator may within [F204] three months from receipt of the notice direct [F205] the recognised body not to proceed with the proposal, in whole or in part.

[F205](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 [F206] a recognised body in breach of a direction under this section is ineffective.

[F207](4) The appropriate regulator”—

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

(b) in relation to a [F208] recognised clearing house[F209] or a recognised CSD, means the Bank of England.

### Textual Amendments

**F200** Words in s. 157(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(4)(a)(i) (with regs. 7(4), 9(1))

**F201** 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.
158 Modifications of the law of insolvency.

(1) The general law of insolvency has effect in relation to—
   (a) market contracts,
   (b) action taken under the rules of a recognised body other than 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 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 as a principal, action taken to transfer 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—
   (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.
(ab) proceedings in respect of a recognised CSD or a member of a recognised CSD, and

(b) proceedings in respect of a party to a market contract other than a client trade which are begun after a recognised body has taken action under its default rules in relation to a person party to the contract as principal, but not in relation to any other insolvency proceedings, notwithstanding that rights or liabilities arising from market contracts fall to be dealt with in the proceedings.

(3) The reference in subsection (2)(b) to the beginning of insolvency proceedings is to—

(a) the making of a bankruptcy application or the presentation of a bankruptcy petition or a petition for sequestration of a person’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,

(c) the appointment of an administrative receiver.

(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 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.

Textual Amendments

F210 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)

F211 Words in s. 158(1)(b) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(5)(a) (with regs. 7(4), 9(1))

F212 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)

F213 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)


F215 Word in s. 158(2)(aa) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(5)(b)(i) (with regs. 7(4), 9(1))
F216 S. 158(2)(ab) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(5)(b)(ii) (with regs. 7(4), 9(1))

F217 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)

F218 Words in s. 158(2)(b) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(5)(b)(iii) (with regs. 7(4), 9(1))

F219 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)

F220 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))

F221 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))

F222 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)

C16 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

19 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 recognised bodies take precedence over insolvency procedures.

(1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy, winding up or sequestration, or in the administration of a company or other body or in the administration of an insolvent estate—

(a) a market contract,
(b) the default rules of a recognised body,
(c) the rules of a recognised body other than a recognised central counterparty as to the settlement of market contracts not dealt with under its default rules,
(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 as principal, a transfer of 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 Insolvency Act 1986[231], the Bankruptcy (Scotland) Act 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 body other than
a recognised central counterparty of a market contract not dealt with under
its default rules,
(b) any action taken under the default rules of a recognised body other than
a recognised central counterparty,
(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 or client as principal, the transfer of a client trade
or group of client trades corresponding to that clearing member contract,
(e) the transfer of a qualifying central counterparty 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 or in the
administration of a company or other body, or in Scotland claimed in a winding up
or sequestration 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.

However, prior to the completion of default proceedings—
(a) where it appears to the convener 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 in a
decision procedure; 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 [\(F_{245}\) in a decision procedure] 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, [\(F_{244}\) or in the administration of a company or other body] a creditors’ committee.]

(5) For the purposes of [\(F_{245}\) 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

<table>
<thead>
<tr>
<th>Code</th>
<th>Amendment</th>
<th>Date</th>
<th>Source</th>
</tr>
</thead>
<tbody>
<tr>
<td>F223</td>
<td>S. 159 heading substituted</td>
<td>28.11.2017</td>
<td>The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, 3(6)(a) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F225</td>
<td>Words in s. 159(1)(b) substituted</td>
<td>28.11.2017</td>
<td>The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, 3(6)(b) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F226</td>
<td>Words in s. 159(1)(c) substituted</td>
<td>28.11.2017</td>
<td>The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, 3(6)(c) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F227</td>
<td>Words in s. 159(1)(c) substituted</td>
<td>1.4.2013</td>
<td>The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), reg. 1(2), 4(6)(a)(ii) (with regs. 52-58)</td>
</tr>
<tr>
<td>F228</td>
<td>S. 159(1)(d)-(h) inserted</td>
<td>1.4.2013</td>
<td>The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), reg. 1(2), 4(6)(b) (with regs. 52-58)</td>
</tr>
<tr>
<td>F229</td>
<td>Words in s. 159(1)(f) inserted</td>
<td>26.8.2013</td>
<td>The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/504), reg. 1(3)(c), 2(5)(a)(i)</td>
</tr>
<tr>
<td>F230</td>
<td>Words in s. 159(1)(f) substituted</td>
<td>26.8.2013</td>
<td>The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), reg. 1(3)(c), 2(5)(a)(iii)</td>
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<tr>
<td>F231</td>
<td>Words in s. 159(2) substituted</td>
<td>1.4.2013</td>
<td>The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), reg. 1(2), 4(6)(c) (with regs. 52-58)</td>
</tr>
<tr>
<td>F232</td>
<td>Word in s. 159(2) substituted</td>
<td>30.11.2016</td>
<td>The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, Sch. 1 para. 6(2)</td>
</tr>
<tr>
<td>F233</td>
<td>Words in s. 159(2)(a) substituted</td>
<td>28.11.2017</td>
<td>The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, 3(6)(d) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F234</td>
<td>Word in s. 159(2)(a) omitted</td>
<td>1.4.2013</td>
<td>The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), reg. 1(2), 4(6)(d)(iii) (with regs. 52-58)</td>
</tr>
<tr>
<td>F235</td>
<td>Words in s. 159(2)(b) substituted</td>
<td>28.11.2017</td>
<td>The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), reg. 1, 3(6)(e) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F236</td>
<td>S. 159(2)(c)-(g) inserted</td>
<td>1.4.2013</td>
<td>The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) Regulations 2013 (S.I. 2013/504), reg. 1(2), 4(6)(f) (with regs. 52-58)</td>
</tr>
</tbody>
</table>
(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 \[F246\] a recognised body such assistance as it may reasonably require for the purposes of its default proceedings.

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

(2) A person shall not under this section be required to provide any information or produce any document which he would be entitled to refuse to provide or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

(3) Where original documents are supplied in pursuance of this section, \[F247\] the recognised body 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 \[F248\] the recognised body 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 [F249 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 [F250 a recognised body] for the purposes of its default proceedings, and the duties of [F251 the recognised body] 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.

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**Textual Amendments**

<table>
<thead>
<tr>
<th>Amend.</th>
<th>Section</th>
<th>Note</th>
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<tbody>
<tr>
<td>F246</td>
<td>s. 160(1)</td>
<td>Words in s. 160(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(7)(a) (with regs. 7(4), 9(1))</td>
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<tr>
<td>F247</td>
<td>s. 160(3)</td>
<td>Words in s. 160(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(7)(b) (with regs. 7(4), 9(1))</td>
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<td>F248</td>
<td>s. 160(4)</td>
<td>Words in s. 160(4) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(7)(b) (with regs. 7(4), 9(1))</td>
</tr>
<tr>
<td>F249</td>
<td>s. 160(4)</td>
<td>Words in s. 160(4) added by S.I. 1991/880, Pt. III reg. 5</td>
</tr>
<tr>
<td>F250</td>
<td>s. 160(5)</td>
<td>Words in s. 160(5) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(7)(a) (with regs. 7(4), 9(1))</td>
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<tr>
<td>F251</td>
<td>s. 160(5)</td>
<td>Words in s. 160(5) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(7)(b) (with regs. 7(4), 9(1))</td>
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**Modifications etc. (not altering text)**

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<tbody>
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<td>C17</td>
<td>S. 160(5); (7.6.1992)</td>
<td>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).</td>
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</table>

**Commencement Information**

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161 **Supplementary provisions as to default proceedings.**

(1) If the court is satisfied on an application by a relevant office-holder that a party to a market contract with a defaulter intends to dissipate or apply his assets so as to prevent the office-holder recovering such sums as may become due upon the completion of the default proceedings, the court may grant such interlocutory relief (in Scotland, such interim order) as it thinks fit.

(2) A liquidator[F252, administrator] or trustee of a defaulter or, in Scotland, a [F253 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,
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 [Footnote 254] the recognised body] 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 [Footnote 255] section 126, 128, 130, 185 or 285 of, or paragraph [Footnote 256] 40, 41, 42 or 43 (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 [Footnote 257] 2016 or in the Debtors (Scotland) Act [Footnote 258] as to the effect of sequestration, shall affect any action taken by [Footnote 259] a recognised body] for the purpose of its default proceedings.

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Textual Amendments


F253 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)

F254 Words in s. 161(2) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(8)(a) (with regs. 7(4), 9(1))

F255 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))


F258 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)

F259 Words in s. 161(4) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(8)(b) (with regs. 7(4), 9(1))

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Modifications etc. (not altering text)

C18 S. 161 amended by S.I. 1991/880, reg. 19(1)

C19 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))

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Commencement Information


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Marginal Citations

M22 1985 c. 66.
M23 1987 c. 18.
162 Duty to report on completion of default proceedings.

(1) Subject to subsection (1A), a recognised body shall, on the completion of proceedings under its default rules, report to the appropriate regulator on its proceedings stating in respect of each creditor or debtor the sum certified by them to be payable from or to the defaulter or, as the case may be, the fact that no sum is payable.

(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 appropriate regulator that a report is required for the purpose of insolvency proceedings in any part of the United Kingdom.

(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 recognised body 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 recognised body 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 appropriate regulator, it shall publish notice of that fact in such manner as it thinks appropriate for bringing the report to the attention of creditors and debtors of the defaulter.

(5) A recognised body 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 recognised body, on payment of such reasonable fee as the recognised body may determine, to provide him with a copy of any part of a report which he is entitled to inspect.

“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 CSD, a recognised clearing house or a recognised overseas clearing house, means the Bank of England.
If, in Scotland, an award of sequestration or a winding-up order has been made, or a resolution for voluntary winding up has been passed, the debt—

(1) the following provisions apply with respect to a net sum certified by a recognised body under its default rules to be payable by or to a defaulter.

2 If, in England and Wales, a bankruptcy, winding-up or administration order has been made, or a resolution for voluntary winding up has been passed, the debt may be claimed in the bankruptcy, winding up or administration or, as the case may be, is payable to the relevant office-holder, and shall be taken into account, where appropriate, under section 323 of the Insolvency Act 1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of winding up 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) or enters administration or, in the case of a partnership, the date of the winding-up order or the date on which the partnership enters administration.

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

(a) may be claimed in the sequestration, winding up or administration or, as the case may be, is payable to the relevant office-holder, and shall be taken into account, where appropriate, under any rule of law relating to set-off applicable in sequestration, winding up or administration,
in the same way as a debt due before the date of sequestration (within the meaning of section \[F287\]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) \[F288\]or the date on which the body corporate enters administration].

\[F289\](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 \[F290\]a bankruptcy application or] a bankruptcy petition or, in Scotland, a petition for sequestration was pending, \[F291\]...  

(b) that \[F292\]a statement as to the affairs of the company had been made out and sent under section 99 of the Insolvency Act \[M25\]1986 or that a winding-up petition was pending, \[F293\]or

\[F294\](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 \[F295\]a recognised body].

(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**

F277 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)

F278 Words in s. 163(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(10) (with regs. 7(4), 9(1))


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,

(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 recognised body for the purpose of realising property provided as margin in relation to market contracts 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 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 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, submission of bankruptcy application or presentation of bankruptcy petition), and section 87(4) of the Bankruptcy (Scotland) Act 2016 (effect of dealing with debtor relating to estate vested in ... trustee), do not apply to—

(a) a market contract, or any disposition of property in pursuance of such a contract,

(b) the provision of margin in relation to market contracts,

(c) the provision of default fund contribution to the recognised body,

(d) a qualifying collateral arrangement,

(e) 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),

(f) a qualifying property transfer

(g) a contract effected by the recognised body for the purpose of realising property provided as margin in relation to a market contract or as default fund contribution, or any disposition of property in pursuance of such a contract, or

(h) any disposition of property in accordance with the rules of the recognised body as to the application of property provided as margin or as default fund contribution.

(4) However, where—

(a) a market contract is entered into by a person who has notice that 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 is accepted by a person who has notice that such an application has been made or petition presented in relation to the person by whom or on whose behalf the margin is provided, the value of any profit to him arising from the contract or, as the case may be, the amount or value of the margin is recoverable from him by the relevant office-holder unless the court directs otherwise.

(5) Subsection (4)(a) does not apply where the person entering into the contract is a recognised body acting in accordance with its rules, or where the contract is effected under the default rules of such a recognised body; 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

F296 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)

F297 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)(a) (with regs. 52-58)

F298 Words in s. 164(1)(b) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(11)(a) (with regs. 7(4), 9(1))


F300 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)

F301 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)

F302 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)

F303 Words in s. 164(3) 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(5)(b)(ii)

F304 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)


F306 Words in s. 164(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(11)(b) (with regs. 7(4), 9(1))

F307 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)


F310 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)


F312 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)


F314 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)

F315 Words in s. 164(5) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(11)(c)(i) (with regs. 7(4), 9(1))

F316 Words in s. 164(5) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(11)(c)(ii) (with regs. 7(4), 9(1))
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 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 body is a party or which is entered into under its default rules,
   (b) a market contract to which this Part applies by virtue of section 155(2B), and
   (c) 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), (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,
   (b) any contract effected by the recognised body 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 recognised body as to the application of property provided as margin.

(5) This section also applies to—
   (a) the provision of default fund contribution to a recognised body,
   (b) any contract effected by a recognised body for the purpose of realising the property provided as default fund contribution,
   (c) any disposition of property in accordance with the rules of the recognised body as to the application of property provided as default fund contribution,
   (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.
166 Powers ... to give directions.

(1) The powers conferred by this section are exercisable in relation to a recognised UK investment exchange or \[^{334}\] recognised clearing house or \[^{335}\] recognised CSD.

(2) Where in any case \[^{336}\] a recognised body has not taken action under its default rules—
(a) if it appears to the \textit{appropriate regulator} that it could take action, the \textit{regulator} may direct it to do so, and

(b) if it appears to the \textit{appropriate regulator} that it is proposing to take or may take action, the \textit{regulator} may direct it not to do so.

(3) Before giving such a direction the \textit{appropriate regulator} shall consult the \textit{recognised body} in question; and it shall not give a direction unless 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, 

(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,

(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.

(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.

(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 a recognised body has taken or been directed to take action under its default rules, the 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.

(7A) Where the recognised body 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 recognised body 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 regulator which gave the direction, by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988; and where a recognised body 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.

(9) “The appropriate regulator”—

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

(b) in relation to a recognised CSD, a recognised clearing house, or a defaulting clearing member, means the Bank of England.
F339 Word in s. 166(2)(a) substituted (1.4.2013) by The Financial Services Act 2012 (c. 21), ss. 111(2)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F340 Words in s. 166(2)(b) substituted (1.4.2013) by The Financial Services Act 2012 (c. 21), ss. 111(3)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F341 Word in s. 166(2)(b) substituted (1.4.2013) by The Financial Services Act 2012 (c. 21), ss. 111(3)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F342 Words in s. 166(3) inserted (1.4.2013) by The Financial Services Act 2012 (c. 21), ss. 111(4)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F343 Words in s. 166(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(13)(c) (with regs. 7(4), 9(1))

F344 Words in ss. 166(3), 2013 substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(3)(b)

F345 Word in s. 166(3) inserted (1.4.2013) by virtue of The Financial Services Act 2012 (c. 21), ss. 111(4)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F346 S. 166(3)(c)(d) inserted (1.4.2013) by The Financial Services Act 2012 (c. 21), ss. 111(4)(c), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F347 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)

F348 Words in s. 166(7) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(13)(b) (with regs. 7(4), 9(1))

F349 Words in s. 166(7) substituted (1.4.2013) by The Financial Services Act 2012 (c. 21), ss. 111(5)(a), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F350 Words in s. 166(7) omitted (1.4.2013) by virtue of The Financial Services Act 2012 (c. 21), ss. 111(5)(b), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F351 S. 166(7A)/(7B) inserted (1.4.2013) by The Financial Services Act 2012 (c. 21), ss. 111(6), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F352 Words in s. 166(7A) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(13)(c) (with regs. 7(4), 9(1))

F353 Words in s. 166(7B) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(13)(c) (with regs. 7(4), 9(1))

F354 Words in s. 166(8) substituted (1.4.2013) by The Financial Services Act 2012 (c. 21), ss. 111(7), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F355 Words in s. 166(8) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(13)(d) (with regs. 7(4), 9(1))

F356 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)

F357 S. 166(9) inserted (1.4.2013) by The Financial Services Act 2012 (c. 21), ss. 111(8), 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F358 Words in s. 166(9)(b) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(13)(e) (with regs. 7(4), 9(1))

F359 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)

F360 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)

Application to determine whether default proceedings to be taken.

(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,
   (b) a recognised clearing house or a member of a recognised clearing house, a recognised CSD or a member of a recognised CSD, or a client which is providing indirect clearing services to an indirect client.

(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 body has power under its default rules to take action in consequence of the relevant insolvency event or the matters giving rise to it, but has not done so, an relevant office-holder appointed in connection with or in consequence of the relevant insolvency event may apply to the appropriate regulator.

(2) The application shall specify the responsible recognised body and the grounds on which it is made.

(3) On receipt of the application the appropriate regulator shall notify the responsible recognised body, and unless within three business days after the day on which the notice is received the responsible recognised body—
   (a) takes action under its default rules, or
   (b) notifies the 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 the person in default is a party or to anything.
done by [F374]the responsible recognised body] 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 [M27]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 [F374]appropriate regulator] gives [F374]the responsible recognised body] 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 [F376]the responsible recognised body] notifies the [F377]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 [F377]appropriate regulator], by injunction or, in Scotland, by an order under section 45 of the [M28]Court of Session Act 1988.

[F378](6) “The appropriate regulator”—

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

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

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**Textual Amendments**

F361 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))

F362 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)

F363 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)

F364 Word in s. 167(1)(b) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(14)(a)(i) (with regs. 7(4), 9(1))

F365 S. 167(1)(ba) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(14)(a)(ii) (with regs. 7(4), 9(1))

F366 Words in s. 167(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(14)(a)(iii) (with regs. 7(4), 9(1))

F367 Words in s. 167(1B) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(14)(b) (with regs. 7(4), 9(1))

F368 Words in s. 167(1B) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(14)(c) (with regs. 7(4), 9(1))

F369 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.

F370 Words in s. 167(2) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(14)(c) (with regs. 7(4), 9(1))

F371 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.

F372 Words in s. 167(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(14)(c) (with regs. 7(4), 9(1))

Status: This version of the Act contains provisions that are prospective.

January 2022: 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) View outstanding changes

F374 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.
F375 Words in s. 167(4) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(14)(e) (with regs. 7(4), 9(1))
F376 Words in s. 167(5) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(14)(e) (with regs. 7(4), 9(1))
F377 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.
F378 S. 167(6) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(14)(d) (with regs. 7(4), 9(1))

Modifications etc. (not altering text)

Commencement Information

Marginal Citations
M27 1971 c. 80.
M28 1988 c. 36.

F379 168 ..................

Textual Amendments
F379 S. 168 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(f)

169 Supplementary provisions.
F380 (1) ..........................................................

(2) [F381Sections 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.

[F382(2A) Section 296 of the Financial Services and Markets Act 2000 applies in relation to a failure by a recognised CSD 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 [F383an investment exchange, clearing house or central securities depository] is revoked under the [F384Financial Services and Markets Act 2000, the appropriate authority] may, before or after the revocation order, give such directions as [F385it] thinks fit with respect to the continued application of the provisions of this Part, with such exceptions, additions and adaptations as may be specified in the direction, in relation to cases where a relevant event of any description specified in the directions occurred before the revocation order takes effect.

[F386(3A) “The appropriate authority” means—]
(a) in the case of an overseas investment exchange or clearing house, the Treasury;

(b) in the case of a UK investment exchange, the FCA,

(c) in the case of a UK clearing house, the Bank of England[

(d) in the case of a central securities depository, the Bank of England.]

Textual Amendments

F380 S. 169(1)(4) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(g)
F381 Words in s. 169(2) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(2)
F382 S. 169(2A) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(15)(a) (with regs. 7(4), 9(1))
F383 Words in s. 169(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(15)(b) (with regs. 7(4), 9(1))
F384 Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(a)
F385 Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(b)
F386 S. 169(3A) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(4)
F387 S. 169(3A)(b) 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.
F388 Words in s. 169(3A)(b) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(15)(c)(i) (with regs. 7(4), 9(1))
F389 S. 169(3A)(d) and word inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(15)(c)(ii) (with regs. 7(4), 9(1))
F390 Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(a)
F391 Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(b)
F392 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)

C27 S. 169(3) applied (with modifications) (E.W.S.) (15.8.1995) by S.I. 1995/2049, reg. 28

Commencement Information


Other exchanges and clearing houses

170 Certain overseas exchanges and clearing houses.

(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 Treasury shall not approve an overseas investment exchange or clearing house unless 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 Financial Services and Markets Act 2000 as the Secretary of State considers appropriate.

(5) The Secretary of State may make regulations which, in relation to a body which is so approved—
   (a) apply such of the provisions of the 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 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**


F394 Word in s. 170(2) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 84(3)(a)

F395 Words in s. 170(2) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 84(3)(b)

F396 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)**

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**

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).

**Third country central counterparties**

(1) In this section and section 170B—
Companies Act 1989 (c. 40)
Part VII – Financial Markets and Insolvency

(a) “assets” has the meaning given by Article 39(10) of the EMIR Level 1 Regulation;
(b) ..............................................................
(c) ..............................................................
(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 \[F401\] third
country central counterparty which—
   (i) provide for the transfer of the positions or assets of a defaulting
clearing member;
   (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 \[F402\], Clearing Houses
and Central Securities Depositories\) 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 \[F403\], 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 \[F404\]... a third country central
counterparty by a UK clearing member \[F405\] 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) \[F406\] 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
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) \[F407\], a
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 f408 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 f409[a] 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

(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.

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**Textual Amendments**

F397 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)

F398 Word in s. 170A heading substituted (31.12.2020) by The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(2) (a) (with reg. 21) (as amended by S.I. 2020/1301, reg. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)


F400 S. 170A(1)(c) omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(2)(b)(i) (with reg. 21) (as amended by S.I. 2020/1301, reg. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F401 Word in s. 170A(1)(c) substituted (31.12.2020) by The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(2)(b)(ii) (with reg. 21) (as amended by S.I. 2020/1301, reg. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F402 Words in s. 170A(1)(f) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(16) (with regs. 7(4), 9(1))

F403 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)

F404 Words in s. 170A(2) omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(2) (e) (with reg. 21) (as amended by S.I. 2020/1301, reg. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F405 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. [F410]Third country central counterparties: procedure

(1) [F411]A 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 third country central counterparty consents;

(b) the 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 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.
(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, with the following modifications—

(a) for “appropriate regulator” substitute “the Bank of England”;
(b) for “recognised body” substitute "third country central counterparty”;
(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 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 in its determination of an application under subsection (1) or the making of a revocation order under subsection (5)(d).

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**Textual Amendments**

F397 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)

F410 Word in s. 170B heading substituted (31.12.2020) by The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(3) (a) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F411 Word in s. 170B(1) substituted (31.12.2020) by The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(3)(b) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F412 Words in s. 170B(5) omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(3) (e) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F413 Words in s. 170B(5) omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(3) (e) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F414 Words in s. 170B(5) omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(3) (e) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F415 Words in s. 170B(9) omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(3) (e) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

170C. [F418 Third] country CSDs

(1) This Part applies to transactions settled through F419... a third country CSD by a UK member of the central securities depository as it applies to transactions settled through a recognised CSD, but subject to subsections (2), (3) and (4).

(2) The definition of “authorised central securities depository services” in section 155(3D) applies to third country CSDs as if it read—

“authorised central securities depository services” means, in relation to a third country CSD, those services which that central securities depository is authorised to provide that are equivalent to the services listed in the Annex to the CSD regulation.”.

(3) Section 157 does not apply to F419... a third country CSD.

(4) Section 162 does not apply to F419... a third country CSD 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. Where F419... a third country CSD has been so notified, the appropriate regulator for the purposes of section 162 shall be the Bank of England.

(5) In this section “UK member” means a member of F419... a third country CSD to which the law of a part of the United Kingdom will apply for the purposes of an insolvent reorganisation or winding up.
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 body.

(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 and the Treasury shall consult the Bank of England.

Textual Amendments

F421 Words in s. 172(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(18) (with regs. 7(4), 9(1))

F422 Words in s. 172(3) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), Sch. 4 para. 13(b) (with art. 6).

Modifications etc. (not altering text)

C29 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).

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,

[F423(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, [F424]

[F425(ba)] in favour of a recognised CSD, 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 [F426 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 [F428 or allottee] arising in connection therewith.

Market charges
(2) Where a charge is granted partly for purposes specified in subsection (1)(a), [F427(aa),] (b) [F428, (ba)] or (c) and partly for other purposes, it is a “market charge” so far as it has effect for the specified purposes.

(3) [F429In 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 M29 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) [F430, (ba)] or (c) which are to be treated as “market charges” for the purposes of this Part; and the regulations may add to, amend or repeal the provisions of subsections (1) to (3) above.

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

(6) Before making regulations under this section in relation to charges granted in favour of a person within subsection (1)(c), the Secretary of State [F431 and the Treasury shall consult] the Bank of England.

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**Textual Amendments**

F423 S. 173(1)(aa) inserted by S.I. 1991/880, reg. 9(a)
F424 Word in s. 173(1)(b) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(19)(a)(ii) (with regs. 7(4), 9(1))
F426 Words in s. 173(1)(c) inserted by S.I. 1991/880, reg. 9(b)
F427 Word in s. 173(2) inserted by S.I. 1991/880, reg. 9(c)
F428 Word in s. 173(2) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(19)(b) (with regs. 7(4), 9(1))
F429 Words in s. 173(3) substituted by S.I. 1991/880, reg. 9(d)
F430 Word in s. 173(4) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(19)(b) (with regs. 7(4), 9(1))
F431 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)**

C30 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).
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 and the Treasury shall consult the Bank of England.

Textual Amendments

F432 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)

C31 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

123 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.I. 1991/878, art. 2, Sch. (subject to certain savings for s. 174(1) in art. 3(4)).
(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 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, 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.

(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, making of bankruptcy application or presentation of bankruptcy petition), and section 87(4) of the Bankruptcy (Scotland) Act 2016 (effect of dealing with debtor relating to estate vested in a... trustee), do not apply to a disposition of property as a result of which the property becomes subject to a market charge or any transaction pursuant to which that disposition is made.

(5) However, if a person who is party to a disposition mentioned in subsection (4) has notice at the time of the disposition that 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.

(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.
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 [F443 Bank of England] for the purposes of [F446 section 301 of the Financial Services and Markets Act 2000] (certain money market institutions),
   (c) the Bank of England,
   (d) a person who has permission under [F448 Part 4A] of the Financial Services and Markets Act 2000 to carry on a relevant regulated activity,
   (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 [F449 or settlement arrangements] 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) [F450, or in connection with authorised central securities depository services (see section 155(3D)) provided by a recognised CSD].

(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.

(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 [F452 Bank of England] for the purposes of [F454 section 301 of the Financial Services and Markets Act 2000], or in connection with exchange facilities or clearing services [F455 or settlement arrangements] provided by a person included in that list, the Secretary of State and the Treasury shall consult the [F456 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.

(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;
[ (b)] operating a multilateral trading facility;
[ (b)] operating an organised trading facility;
(c) managing investments;
(d) safeguarding and administering investments;
(e) sending dematerialised instructions;
[ (e) ] managing a UCITS;
( [e] ) acting as trustee or depositary of a UCITS;
( [e] ) managing an AIF;
( [e] ) 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

F443 S. 176(2)(aa) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(20)(a) (with regs. 7(4), 9(1))
F444 Words in s. 176(2)(aa) omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(5) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11), 2020 c. 1, Sch. 5 para. 1(1)
F445 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.
F446 Words in s. 176(2)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 85(2)(b)
F448 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.
F449 Words in s. 176(3) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(20)(b)(i) (with regs. 7(4), 9(1))
F450 Words in s. 176(3) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(20)(b)(ii) (with regs. 7(4), 9(1))
F451 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
F452 Words in s. 176(6) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 85(4)(a)
F453 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.
F454 Words in s. 176(6) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 85(4)(b)
Application of margin or default fund contribution not affected by certain other interests.

(1) The following provisions have effect with respect to the application by a recognised body of property (other than land) held by the recognised body as margin in relation to a market contract or as default fund contribution.

(2) So far as necessary to enable the property to be applied in accordance with the rules of the recognised body, 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 recognised body had notice of the interest, right or breach of duty at the time the property was provided as margin or as default fund contribution.

(3) No right or remedy arising subsequently to the property being provided as margin or as default fund contribution may be enforced so as to prevent or interfere with the application of the property by the recognised body in accordance with its rules.

(4) Where a recognised body has power by virtue of the above provisions to apply property notwithstanding an interest, right or remedy, a person to whom the recognised body disposes of the property in accordance with its rules takes free from that interest, right or remedy.
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.
180  Proceedings against market property by unsecured creditors.

(1) Where property (other than land) is held by a recognised body as margin in relation to market contracts 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, 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 or as default fund contribution, and the recognised body 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 Insolvency Act 1986 or the Bankruptcy (Scotland) Act 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.
181 Power to apply provisions to other cases.

(1) 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.

[F478 (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

F478 Words in s. 181(1) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 86(2)
F479 S. 181(3) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 86(3)

Modifications etc. (not altering text)

C42 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

129 S. 181 wholly in force: s. 181 not in force at Royal Assent see s. 215(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 Insolvency Act 1986 (administration, winding up and bankruptcy) or under the Bankruptcy (Scotland) Act 2016; and references in this section to the beginning of such proceedings are to—

(a) the presentation of a petition on which an administration order, winding-up order, bankruptcy order or award of sequestration is made, or

(b) the passing of a resolution for voluntary winding up.

(3) This section applies in relation to—

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

(b) in Scotland, the administration by a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 of the insolvent estate of a deceased person,

as it applies in relation to insolvency proceedings.

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

(4) The court may on an application made, within three months after the commencement of this section, by—

(a) a recognised investment exchange or recognised clearing house, or

(b) a person in whose favour a market charge has been granted,

make such order as it thinks fit for achieving, except so far as assets of the relevant person have been distributed before the making of the application, the same result as if the provisions of Schedule 22 had come into force on 22nd December 1988.

(5) The provisions of that Schedule (“the relevant provisions”) reproduce the effect of certain provisions of this Part as they appeared in the Bill for this Act as introduced into the House of Lords and published on that date.

(6) The court may in particular—

(a) require the relevant person or a relevant office-holder—

(i) to return property provided as cover for margin or which was subject to a market charge, or to pay to the applicant or any other person the proceeds of realisation of such property, or

(ii) to pay to the applicant or any other person such amount as the court estimates would have been payable to that person if the relevant provisions had come into force on 22nd December 1988 and market contracts had been settled in accordance with the rules of the recognised investment exchange or recognised clearing house, or a proportion of that amount if the property of the relevant person or relevant office-holder is not sufficient to meet the amount in full;

(b) provide that contracts, rules and dispositions shall be treated as not having been void;
(c) modify the functions of a relevant office-holder, or the duties of the applicant or any other person, in relation to the insolvency proceedings, or indemnify any such person in respect of acts or omissions which would have been proper if the relevant provisions had been in force;

(d) provide that conduct which constituted an offence be treated as not having done so;

(e) dismiss proceedings which could not have been brought if the relevant provisions had come into force on 22nd December 1988, and reverse the effect of any order of a court which could not, or would not, have been made if those provisions had come into force on that date.

(7) An order under this section shall not be made against a relevant office-holder if the effect would be that his remuneration, costs and expenses could not be met.

Textual Amendments

F480 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)

F481 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)

C43 S. 182 amended by S.I. 1991/880, reg. 19(1)

Commencement Information


Marginal Citations

M32 1986 c. 45.
M33 1889 c. 39.

[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 F483, Article 3(1) of the EMIR Level 2 Regulation or Article 3(1) of the MIFIR Level 2 Regulation; and

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

[184A] (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 F485 Article 4(2) of the EMIR Level 2 Regulation or Article 4(2) of the MIFIR Level 2 Regulation; and

(b) positions and assets recorded in any other account at the clearing member.]
183 Insolvency proceedings in other jurisdictions.

(1) The references to insolvency law in section 426 of the **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 **Civil Jurisdiction and Judgments Act 1982** [...].

Textual Amendments

F482 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)

F483 Words in s. 182A(1)(a) substituted (3.1.2018) by The Companies Act 1989 (Financial Markets and Insolvency) (Amendment) Regulations 2017 (S.I. 2017/1247), regs. 1, 2(3)(a)

F484 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)

F485 Words in s. 182A(2)(a) substituted (3.1.2018) by The Companies Act 1989 (Financial Markets and Insolvency) (Amendment) Regulations 2017 (S.I. 2017/1247), regs. 1, 2(3)(b)

F486 Words in s. 183(3) omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(6) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information


Marginal Citations

M34 1986 c. 45.
M35 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 body, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by the office-holder’s own negligence.

(2) Any failure by a recognised body 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 body, nor any officer or servant or member of the governing body of a recognised body, 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 recognised body 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 to whom the exercise of any function of a recognised body 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
F487 Words in s. 184(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(23)(a) (with regs. 7(4), 9(1))
F488 Words in s. 184(2) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(23)(a) (with regs. 7(4), 9(1))
F489 Words in s. 184(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(23)(a) (with regs. 7(4), 9(1))
F490 Words in s. 184(4) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(23)(b) (with regs. 7(4), 9(1))
F491 Words in s. 184(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 87
F492 Words in s. 184(5) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(23)(a) (with regs. 7(4), 9(1))

Commencement Information

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.

[F493 (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.]

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### Textual Amendments

**F493** S. 185(4) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 88

### Modifications etc. (not altering text)

**C44** 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)

**C45** 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

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### 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.

[F494 (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

**F494**  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), reg. 1(2), 4(16) (with regs. 52-58)

### Modifications etc. (not altering text)

**C46**  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 [F495 recognised body] which provide for the taking of action in the event of a person [F496 (including another [F495 recognised body])] appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts [F497 connected with [F496 the recognised body], ...]

[F500 (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 [F501 Article 4(6) and (7) of the EMIR Level 2 Regulation or Article 4(6) and (7) of the MIFIR 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.]

[F502 (1B) In the case of a recognised CSD, “default rules” includes the default rules and procedures referred to in Article 41 of the CSD regulation.]

(2) References in this Part to a “defaulter” are to a person in respect of whom action has been taken by [F503 a recognised body] under its default rules, whether by declaring him to be a defaulter or otherwise; and references in this Part to “default”, “defaulting” and “non-defaulting” shall be construed accordingly.
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 body under its default rules.

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

(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 another recognised body (A) for the purpose of covering losses arising in connection with defaults by recognised bodies other than A or by any of their members, and

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

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

(i) is maintained by another recognised body (A) for the purpose of covering losses arising in connection with defaults by recognised bodies other than A or by any of their members, and

(ii) may be applied for that purpose under A’s default rules.

(e) contribution by a member of a recognised CSD to a fund which—

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

(ii) may be applied for that purpose under the default rules of the central securities depository; or

(f) contribution by a recognised CSD to a fund which—

(i) is maintained by another recognised body (A) for the purpose of covering losses arising in connection with defaults by recognised bodies other than A or by any of their members, and

(ii) may be applied for that purpose under A’s default rules.

(4) If a recognised body 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.
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 [F513 2016]) as his trustee in bankruptcy or interim receiver of his property or as [F514 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 Insolvency Act 1986.

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**Textual Amendments**

[F513] 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)

[F514] 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**


**Marginal Citations**

M36 1986 c.45.

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**[F515]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**

190 Minor definitions.

(1) In this Part—

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

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

“clearing member”, in relation to a recognised central counterparty, has the meaning given by Article 2(14) of the EMIR Level 1 Regulation;

“client” has the meaning given by Article 2(15) of the EMIR Level 1 Regulation;


“the FCA” means the Financial Conduct Authority;

“indirect clearing services” has the same meaning as in the EMIR Level 2 Regulation;

“indirect client” has the meaning given by Article 1(a) of the EMIR Level 2 Regulation;

“interim trustee” has the meaning given by Article 1(a) of the EMIR Level 2 Regulation;

“member”, in relation to a central securities depository, means a participant of that central securities depository as defined in Article 2(1)(19) of the CSD regulation;

“member of a clearing house” includes a clearing member of a recognised central counterparty;


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

“position” has the same meaning as in the EMIR Level 1 Regulation;

“the PRA” means the Prudential Regulation Authority;
114

Companies Act 1989 (c. 40)
Part VII – Financial Markets and Insolvency

Document Generated: 2022-01-01

Status: 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 01 January 2022. 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) View outstanding changes

[FS19] “recognised body” has the same meaning as in section 313 of the Financial Services and Markets Act 2000;

FS27 [FS28] “recognised central counterparty”, “recognised CSD”, “recognised clearing house”, “recognised investment exchange” [FS39], “third country central counterparty” and “third country CSD” have the same meaning as in the Financial Services and Markets Act 2000 (see section 285 of that Act);

[FS30] “sequestration” means sequestration under the Bankruptcy (Scotland) Act 2016;

FS17 ............................................................

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


[FS33] (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.

FS34 (3A) ..........................................................

FS35 (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”.

[FS36] (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 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
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 [555]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.

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

Textual Amendments

F516 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.

F517 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)

F518 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)

F519 Words in s. 190(1) inserted (28.11.2017) by the Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(25)(a) (with regs. 7(4), 9(1))

F520 Words in s. 190(1) added (3.1.2018) by The Companies Act 1989 (Financial Markets and Insolvency) (Amendment) Regulations 2017 (S.I. 2017/1247), regs. 1, 2(5)(a)

F521 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.

F522 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)

F523 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)

F524 Words in s. 190(1) inserted (3.1.2018) by The Companies Act 1989 (Financial Markets and Insolvency) (Amendment) Regulations 2017 (S.I. 2017/1247), regs. 1, 2(5)(b)

F525 Words in s. 190(1) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(25)(b) (with regs. 7(4), 9(1))

F526 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.

F527 Words in s. 190(1) omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(7) (a) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F528 Words in s. 190(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(25)(c) (with regs. 7(4), 9(1))

F529 Words in s. 190(1) inserted (31.12.2020) by The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(7)(b) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F530 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)

F531 Definition of “The Stock Exchange” in s. 190(1) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 89(5)
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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Companies Act 1989 (c. 40)
Part VII – Financial Markets and Insolvency

Status: 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 01 January 2022. 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) View outstanding changes

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<td>[F546] third country central counterparty</td>
<td>Section 190(1)</td>
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<td>[F548] third country CSD</td>
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<td>[F542] transfer</td>
<td>Section 189A</td>
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<td>[F547] interim trustee and trustee in the sequestration of an estate (in relation to Scotland)</td>
<td>section 190(1) and (7)(b)</td>
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<td>UK (in relation to investment exchanges)</td>
<td>Section 190(1)</td>
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<td>winding up</td>
<td>Sections 190(6A) and (6B)</td>
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Textual Amendments

F539 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)

F540 Words in s. 191 Table inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(26(a) (with regs. 7(4), 9(1))

F541 Words in s. 191 omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(8)(a) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F542 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)

F543 Words in s. 191 inserted (3.1.2018) by The Companies Act 1989 (Financial Markets and Insolvency) (Amendment) Regulations 2017 (S.I. 2017/1247), regs. 1, 2(6)

F544 Words in s. 191 Table substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, 3(26(b) (with regs. 7(4), 9(1))

F545 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)

F546 Words in s. 191 inserted (31.12.2020) by The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), 2(8)(b) (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

F547 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

PART VIII

AMENDMENTS OF THE FINANCIAL SERVICES ACT 1986

F548 192 .................................

Textual Amendments
F548  Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F549 193 .................................

Textual Amendments
F549  Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F550 194 .................................

Textual Amendments
F550  Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F551 195 .................................

Textual Amendments
F551  Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F552 196 .................................

Textual Amendments
F552  Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)

F553 197 .................................

Textual Amendments
F553  Ss. 192-197 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(i)
S. 198 repealed (19.6.1995) by S.I. 1995/1537, regs. 1(1), 17, Sch. 2 Pt. II para.10

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

(1) In Schedule 5 to the M37 Civil Jurisdiction and Judgments Act 1982 (proceedings excluded from general provisions as to allocation of jurisdiction within the United Kingdom), for paragraph 10 substitute—

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

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

S. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)
Companies Act 1989 (c. 40)

Part IX – Transfer of Securities

Textual Amendments
F559 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

F560 .................................................

Textual Amendments
F560 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

F561 .................................................

Textual Amendments
F561 Ss. 201-206 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(k)

F562 .................................................

Textual Amendments
F562 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)
C47 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.
F563 .................................................

Textual Amendments
F563 S. 207 repealed (6.4.2008) by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12)
PART X
MISCELLANEOUS AND GENERAL PROVISIONS

Miscellaneous

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

In section 21 of the Companies Act 1986 (application of
provisions of the 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
M38 1986 c. 46.
M39 1986 c. 45.

Textual Amendments
F564 S. 209 repealed (1.3.1994) by 1993 c. 36, s. 79(14), Sch. 6 Pt.I; S.I. 1994/242, art. 2, Sch.

211  Building societies: miscellaneous amendments.

(1) In section 104 of the 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

(c) 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 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 Company Directors Disqualification Act 1986, after section 22 insert—
“22A Application of Act to building societies.

(1) This Act applies to building societies as it applies to companies.

(2) References in this Act to a company, or to a director or an officer of a company include, respectively, references to a building society within the meaning of the Building Societies Act 1986 or to a director or officer, within the meaning of that Act, of a building society.

(3) In relation to a building society the definition of “shadow director” in section 22(5) applies with the substitution of “building society” for “company”.

(4) In the application of Schedule 1 to the directors of a building society, references to provisions of the Insolvency Act or the Companies Act include references to the corresponding provisions of the Building Societies Act 1986.”.

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

M42 1986 c. 53.
M43 1986 c. 45.
M44 1986 c. 46.

General

[F565 211A“Bank of England”]

In this Act references to the Bank of England do not include the Bank acting in its capacity as the Prudential Regulation Authority.

Textual Amendments

F565 S. 211A inserted (1.3.2017) by The Bank of England and Financial Services (Consequential Amendments) Regulations 2017 (S.I. 2017/80), reg. 1, Sch. para. 3(a)

212 Repeals. U.K.

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

Extent Information

E2 For information relating to the extent of this section see s. 213
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 Insolvency Act 1986, its application to companies registered or incorporated in Northern Ireland is subject to section 441(2) of the Insolvency Act 1986.

(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”),

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

(d) 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).

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

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

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

M46 1986 c. 60.
M47 1973 c. 41.

216 Short title.

This Act may be cited as the Companies Act 1989.
SCHEDULES

SCHEDULE 1

Textual Amendments

F573 Sch. 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)

SCHEDULE 2

Textual Amendments

F574 Sch. 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)

SCHEDULE 3

Textual Amendments

F575 Sch. 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)

SCHEDULE 4

Textual Amendments

F576 Sch. 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)
### SCHEDULE 5

**Textual Amendments**

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**Textual Amendments**

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**Textual Amendments**

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### SCHEDULE 9
### Textual Amendments

**F584** Sch. 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)

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### SCHEDULE 10

**AMENDMENTS CONSEQUENTIAL ON PART I**

**PART I**

**AMENDMENTS OF THE COMPANIES ACT 1985**

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Companies Act 1989 (c. 40)
SCHEDULE 10 – Amendments Consequential on Part I

Document Generated: 2022-01-01

Status: 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 01 January 2022. 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) View outstanding changes

Textual Amendments

**F589** Sch. 10 para. 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

**F590**

Textual Amendments

**F590** Sch. 10 para. 6 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 1

7

**F591**

Textual Amendments

**F591** Sch. 10 para. 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

**F592**

Textual Amendments

**F592** Sch. 10 para. 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

**F593**

Textual Amendments

**F593** Sch. 10 para. 9 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.)

10

**F594**

Textual Amendments

**F594** Sch. 10 para. 10 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)

11

**F595**

Textual Amendments

**F595** Sch. 10 para. 11 repealed (28.2.1994) by S.I. 1994/233, regs. 1(2), 6(5)(b)

12
Textual Amendments

F596 Sch. 10 para. 12 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.)

F597 Sch. 10 para. 13 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.)

F598 Sch. 10 para. 14 repealed (20.1.2007) by Companies Act 2006 (c. 46), ss. 1295, 1300, Sch. 16; S.I. 2006/3428, art. 7(b), Sch. 3 Pt. 1

F599 Sch. 10 para. 15 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.)

F600 Sch. 10 para. 16 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.)

F601 Sch. 10 para. 17 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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PART II

AMENDMENTS OF OTHER ENACTMENTS

Betting, Gaming and Lotteries Act 1963 (c.2)

Harbours Act 1964 (c.40)

(1) Section 42 of the Harbours Act 1964 (accounts and reports of statutory harbour undertakers) is amended as follows.

(2) For subsection (2) substitute—

“(2) Where a statutory harbour undertaker is a parent undertaking with subsidiary undertakings which carry on harbour activities or any associated activities, then, it shall be the duty of the company also to prepare group accounts relating to the harbour activities and associated activities carried on by it and its subsidiary undertakings.”

(3) In subsection (6) (application of provisions of the Companies Act 1985)—

(a) in paragraph (a) for “company accounts” substitute “individual company accounts”;

(b) in paragraph (c) omit the words “required to be attached to a company’s balance sheet”.

(4) In subsection (9), for the definition of “holding company” and “subsidiary” substitute—

“‘parent undertaking’ and “subsidiary undertaking” have the same meaning as in Part VII of the Companies Act 1985;”.

Marginal Citations

M54 1985 c. 6.

Coal Industry Act 1971 (c.16)

Textual Amendments

F610 Sch. 10 para. 27 repealed (27.3.2004) by 1994 c. 21, ss. 67, 68(3)(b)(c), Sch. 11 Pt. IV (with s. 40(7), 66); S.I. 2004/144, art. 3
Aircraft and Shipbuilding Industries Act 1977 (c.3)

Textual Amendments
F611 Sch. 10 para. 28 omitted (22.3.2013) by virtue of The Public Bodies (Abolition of British Shipbuilders) Order 2013 (S.I. 2013/687), art. 1(2), Sch. 1 para. 12

Crown Agents Act 1979 (c.43)

Textual Amendments
F612 Sch. 10 para. 29 repealed (21.3.1997) by 1995 c. 24, s. 13(2), Sch. 2 Pt.I; S.I. 1997/1139, art.2

British Telecommunications Act 1981 (c.38)

Textual Amendments
F613 Sch. 10 para. 30 repealed (26.3.2001) by 2000 c. 26, s. 127(6), Sch. 9; S.I. 2001/1148, art.2(2), Sch. Table

Transport Act 1981 (c.56)

31 In section 11(4) of the Transport Act 1981, for “section 235” substitute “section 234”.

Iron and Steel Act 1982 (c.25)

32 In section 24(5) of the Iron and Steel Act 1982 (meaning of “directors’ report”) for the words from “which, under section 235” to the end substitute “which is required to be prepared under section 234 of the Companies Act 1985”.

Oil and Pipelines Act 1985 (c.62)

33 In Schedule 3 to the Oil and Pipelines Act 1985 (Oil and Pipelines Agency: financial and other provisions), in paragraph 9(2) (duty to prepare consolidated accounts) for “subsidiaries” (three times) substitute “subsidiary undertakings”, and at the end of that sub-paragraph add—

“In this sub-paragraph “subsidiary undertaking” has the same meaning as in Part VII of the Companies Act 1985.”.

Patents, Designs and Marks Act 1986 (c.39)

34 In Schedule 2 to the Patents, Designs and Marks Act 1986 (service marks), in paragraph 1(2) (provisions in which reference to trade mark includes service mark) for sub-paragraph (ii) substitute—
“(ii) Part I of Schedule 4 and paragraphs 5(2)(d) and 10(1)(b) and (2) of Schedule 9 (form of company balance sheets); and”.

Company Directors Disqualification Act 1986 (c.46)

35 (1) The Company Directors Disqualification Act 1986 is amended as follows.

(2) In section 3(3)(b) (default orders)—
(a) in sub-paragraph (i) for “section 244” substitute “section 242(4)”, and
(b) after that sub-paragraph insert—
“(ia) section 245B of that Act (order requiring preparation of revised accounts),”.

(3) In Schedule 1, for paragraph 5 substitute—
“The extent of the director’s responsibility for any failure by the directors of the company to comply with—
(a) section 226 or 227 of the Companies Act (duty to prepare annual accounts), or
(b) section 233 of that Act (approval and signature of accounts).”.

Financial Services Act 1986 (c.60)

F614 Sch. 10 paras. 36, 37 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(n)

Banking Act 1987 (c.22)

F615 Sch. 10 paras. 36, 37 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(n)

Income and Corporation Taxes Act 1988 (c.1)

38 (1) The Income and Corporation Taxes Act 1988 is amended as follows.

(2) In section 180 (annual return of registered profit-related pay scheme), in subsection (3) for “section 242(3)” substitute “section 244(3)”.

(3) F617 Sch. 10 paras. 38(2) repealed (19.3.1997) by 1997 c. 16, ss. 61(2)(3), 113, Sch. 18 Pt. VI(3) (with effect as mentioned in the Notes 1 and 2 at the end of Pt. VI(3), Note 2 providing that the repeal does not
Companies Act 1989 (c. 40)

SCHEDULE 11

In section 33 of the Dartford–Thurrock Crossing Act 1988 (duty to lay before Parliament copies of accounts of persons appointed to levy tolls), for subsection (2) substitute—

“(2) In relation to a company “accounts” in subsection (1) means the company’s annual accounts for a financial year, together with the relevant directors’ report and the auditors’ report on those accounts.

Expressions used in this subsection have the same meaning as in Part VII of the Companies Act 1985.”.

Textual Amendments

F618 Sch. 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, Sch. 4 para. 38(2))

Textual Amendments

F622 Sch. 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, Sch. 4 para. 38(2))

Textual Amendments

F623 Sch. 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, Sch. 4 para. 42)
SCHEDULE 14

SUPERVISORY AND QUALIFYING BODIES: RESTRICTIVE PRACTICES

Textual Amendments

F629 Sch. 14 ceased to have effect (1.5.2004) by virtue of The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 5, Sch. 2 para. 2(2) (with reg. 6(2))

PART I

PREVENTION OF RESTRICTIVE PRACTICES

Refusal of recognition on grounds related to competition

1 (1) The Secretary of State shall before deciding whether to make a recognition order in respect of a supervisory body or professional qualification send to [F630 the Office of Fair Trading (in this Schedule referred to as ‘‘the OFT’’)] a copy of the rules and of any guidance which the Secretary of State is required to consider in making that decision together with such other information as the Secretary of State considers will assist the [F630 OFT].

(2) The [F630 OFT] shall consider whether the rules or guidance have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, and shall report to the Secretary of State; and the Secretary of State shall have regard to [F630 its] report in deciding whether to make a recognition order.

(3) The Secretary of State shall not make a recognition order if it appears to him that the rules and any guidance of which copies are furnished with the application have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, unless it appears to him that the effect is reasonably justifiable having regard to the purposes of this Part of this Act.

Textual Amendments

F630 Words in Sch. 14 para. 1(1) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(a)(i); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 5)

F631 Words in Sch. 14 para. 1(2) substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(a)(ii); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 5)

Notification of changes to rules or guidance

2 (1) Where a recognised supervisory or qualifying body amends, revokes or adds to its rules or guidance in a manner which may reasonably be regarded as likely—

(a) to restrict, distort or prevent competition to any significant extent, or

(b) otherwise to affect the question whether the recognition order granted to the body should continue in force,
it shall within seven days give the Secretary of State written notice of the amendment, revocation or addition.

(2) Notice need not be given under sub-paragraph (1) of the revocation of guidance not intended to have continuing effect or issued otherwise than in writing or other legible form, or of any amendment or addition to guidance which does not result in or consist of guidance which is intended to have continuing effect and is issued in writing or other legible form.

Continuing scrutiny by the Director General of Fair Trading

3

(1) The [F632OFT] shall keep under review the rules made or guidance issued by a recognised supervisory or qualifying body, and if [F633it] is of the opinion that any rules or guidance of such a body have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition, [F633it] shall report [F633its] opinion to the Secretary of State, stating what in [F633its] opinion the effect is or is likely to be.

(2) The Secretary of State shall send to the [F632OFT] copies of any notice received by him under paragraph 2, together with such other information as he considers will assist the [F632OFT].

(3) The [F632OFT] may report to the Secretary of State [F634its] opinion that any matter mentioned in such a notice does not have, and is not intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition.

(4) The [F632OFT] may from time to time consider whether—

(a) any practices of a recognised supervisory or qualifying body in its capacity as such, or

(b) any relevant practices required or contemplated by the rules or guidance of such a body or otherwise attributable to its conduct in its capacity as such, have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and, if so, what that effect is or is likely to be; and if [F635it] is of that opinion [F635it] shall make a report to the Secretary of State stating [F635its] opinion and what the effect is or is likely to be.

(5) The practices relevant for the purposes of sub-paragraph (4)(b) in the case of a recognised supervisory body are practices engaged in for the purposes of, or in connection with, appointment as a company auditor or the conduct of company audit work by persons who—

(a) are eligible under its rules for appointment as a company auditor, or

(b) hold an appropriate qualification and are directors or other officers of bodies corporate which are so eligible or partners in, or employees of, partnerships which are so eligible.

(6) The practices relevant for the purposes of sub-paragraph (4)(b) in the case of a recognised qualifying body are—

(a) practices engaged in by persons in the course of seeking to obtain a recognised professional qualification from that body, and

(b) practices engaged in by persons approved by the body for the purposes of giving practical training to persons seeking such a qualification and which relate to such training.
Investigatory powers of the Director

(1) The following powers are exercisable by the OFT for the purpose of investigating any matter in connection with its functions under paragraph 1 or 3.

(2) The OFT may by a notice in writing require any person to produce, at a time and place specified in the notice, to the OFT or to any person appointed by it for the purpose, any documents which are specified or described in the notice and which are documents in his custody or under his control and relating to any matter relevant to the investigation.

(3) The OFT may by a notice in writing require any person to furnish to the OFT such information as may be specified or described in the notice, and specify the time within which and the manner and form in which any such information is to be furnished.

(4) A person shall not under this paragraph be required to produce any document or disclose any information which he would be entitled to refuse to produce or disclose on grounds of legal professional privilege in proceedings in the High Court or on the grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

(5) Sch. 14 para. 4(5) repealed (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(c)(iv), Sch. 26; S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)
(2) An application under sub-paragraph (1) shall include details of the possible failure which the OFT considers has occurred.

(3) In enquiring into a case under sub-paragraph (1), the court shall hear any witness who may be produced against or on behalf of the defaulter and any statement which may be offered in defence.

(4) Sub-paragraphs (5) and (6) apply where the court is satisfied, after hearing any witnesses and statements as mentioned in sub-paragraph (3), that the defaulter has refused or otherwise failed, without reasonable excuse, to comply with the notice under paragraph 4.

(5) The court may punish the defaulter as it would have been able to punish him had he been guilty of contempt of court.

(6) Where the defaulter is a body corporate, the court may punish any director or officer of the defaulter as it would have been able to punish that director or officer had the director or officer been guilty of contempt of court.

[Where the defaulter is a partnership constituted under the law of Scotland, the court may punish any partner of the defaulter as it would have been able to punish him had he been guilty of contempt of court.]

(7) In this section “the court”—
   (a) in relation to England and Wales, means the High Court, and
   (b) in relation to Scotland, means the Court of Session.

Textual Amendments

F640 Sch. 14 para. 4A inserted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(d); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)


F642 Sch. 14 para. 4B inserted (1.4.2003) by 2002 c. 40, s. 278, Sch. 25 para. 21(4)(d); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

Publication of Director’s reports

(1) The [F641]OF T may, if [F641]it thinks fit, publish any report made by [F641]it under paragraph 1 or 3.
(2) [F643]It shall exclude from a published report, so far as practicable, any matter which relates to the affairs of a particular person (other than the supervisory or qualifying body concerned) the publication of which would or might in [F643]its opinion seriously and prejudicially affect the interests of that person.

Textual Amendments

F643 Words in Sch. 14 para. 5 substituted (1.4.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(e); S.I. 2003/766, art. 2, Sch. (with transitional and transitory provision in art. 3)

Powers exercisable by the Secretary of State in consequence of report

6 (1) The powers conferred by this section are exercisable by the Secretary of State if, having received and considered a report from the [F644]OFT under paragraph 3(1) or (4), it appears to him that—

(a) any rules made or guidance issued by a recognised supervisory or qualifying body, or
(b) any such practices as are mentioned in paragraph 3(4), have, or are intended or likely to have, to any significant extent the effect of restricting, distorting or preventing competition and that that effect is greater than is reasonably justifiable having regard to the purposes of this Part of this Act.

(2) The powers are—

(a) to revoke the recognition order granted to the body concerned,
(b) to direct it to take specified steps for the purpose of securing that the rules, guidance or practices in question do not have the effect mentioned in sub-paragraph (1), and
(c) to make alterations in the rules of the body for that purpose.

(3) The provisions of paragraph 3(2) to (5), (7) and (9) of Schedule 11 or, as the case may be, Schedule 12 have effect in relation to the revocation of a recognition order under sub-paragraph (2)(a) above as they have effect in relation to the revocation of such an order under that Schedule.

(4) Before the Secretary of State exercises the power conferred by sub-paragraph (2)(b) or (c) above he shall—

(a) give written notice of his intention to do so to the body concerned and take such steps (whether by publication or otherwise) as he thinks appropriate for bringing the notice to the attention of any other person who in his opinion is likely to be affected by the exercise of the power, and
(b) have regard to any representation made within such time as he considers reasonable by the body or any such other person.

(5) A notice under sub-paragraph (4) shall give particulars of the manner in which the Secretary of State proposes to exercise the power in question and state the reasons for which he proposes to act; and the statement of reasons may include matters contained in any report received by him under paragraph 4.
Supplementary provisions

7 (1) A direction under paragraph 6 is, on the application of the Secretary of State, enforceable by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.

(2) The fact that any rules made by a recognised supervisory or qualifying body have been altered by the Secretary of State, or pursuant to a direction of the Secretary of State, under paragraph 6 does not preclude their subsequent alteration or revocation by that body.

(3) In determining for the purposes of this Part of this Schedule whether any guidance has, or is likely to have, any particular effect the Secretary of State and the OFT may assume that the persons to whom it is addressed will act in conformity with it.

Marginal Citations

M56 1988 c. 36.

PART II
CONSEQUENTIAL EXEMPTIONS FROM COMPETITION LAW

Fair Trading Act 1973 (c. 41)

Textual Amendments

F646 Sch. 14 para. 8 repealed (20.6.2003) by 2002 c. 40, ss. 278, 279, Sch. 25 para. 21(4)(g), Sch. 26; S.I. 2003/1397, art. (2(1)), Sch.

F647 The Competition Act 1998
(1) The Chapter I prohibition does not apply to an agreement for the constitution of a recognised supervisory or qualifying body to the extent to which it relates to—
   (a) rules of, or guidance issued by, the body; and
   (b) incidental matters connected with the rules or guidance.

(2) The Chapter I prohibition does not apply to an agreement the parties to which consist of or include—
   (a) a recognised supervisory or qualifying body, or
   (b) any person mentioned in paragraph 3(5) or (6) above,
   to the extent to which the agreement consists of provisions the inclusion of which in the agreement is required or contemplated by the rules or guidance of that body.

(3) The Chapter I prohibition does not apply to the practices mentioned in paragraph 3(4)(a) and (b) above.

(4) Where a recognition order is revoked, sub-paragraphs (1) to (3) above are to continue to apply for a period of six months beginning with the day on which the revocation takes effect, as if the order were still in force.

(5) In this paragraph—
   (a) “the Chapter I prohibition” means the prohibition imposed by section 2(1) of the Competition Act 1998,
   (b) references to an agreement are to be read as applying equally to, or in relation to, a decision or concerted practice,
   and expressions used in this paragraph which are also used in Part I of the Competition Act 1998 are to be interpreted in the same way as for the purposes of that Part of that Act.

(6) In the application of this paragraph to decisions and concerted practices, references to provisions of an agreement are to be read as references to elements of a decision or concerted practice.]
Status: 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 01 January 2022. 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) View outstanding changes

Textual Amendments

F650 Sch. 15 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)

PROSPECTIVE

F651 SCHEDULE 16

AMENDMENTS CONSEQUENTIAL ON PART IV

Textual Amendments

F651 Sch. 16 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)

F651 Land Charges Act 1972 (c. 61)

F6511 ................................................

F651 Companies Act 1985 (c. 6)

F6511A ................................................

F6512 ................................................

F651 Insolvency Act 1986 (c. 45)

F6513 ................................................

F651 Company Directors Disqualification Act 1986 (c. 46)

F6514 ................................................

F652 SCHEDULE 17

COMPANY CONTRACTS, SEALS, &C.: FURTHER PROVISIONS

Textual Amendments

F652 Sch. 17 repealed (6.4.2007 for specified purposes, 6.4.2008 for specified purposes, 1.10.2009 insofar as not already in force) by Companies Act 2006 (c. 46), s. 1300(2), Sch. 16; S.I. 2006/3428, art. 7(e), Sch. 4 Pt. 1; S.I. 2007/3495, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12); S.I. 2008/2860, art. 4, Sch. 1 Pt. 1 (with
SCHEDULE 18

“SUBSIDIARY” AND RELATED EXPRESSIONS: CONSEQUENTIAL AMENDMENTS AND SAVINGS

Coal Industry Nationalisation Act 1946 (c. 59)

1 In Schedule 2A to the Coal Industry Nationalisation Act 1946 (eligibility for superannuation benefits), in the definition of “subsidiary” in paragraph 5 of the Table, for “section 154 of the Companies Act 1948” substitute “section 736 of the Companies Act 1985”.

F652

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.)
Textual Amendments

**Electricity Act 1947 (c. 54)**

F653 Sch. 18 paras. 2, 11, 19, 26 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

**Landlord and Tenant Act 1954 (c. 56)**

F654 Sch. 18 para. 3 repealed (E.W.) (1.6.2004) by The Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (S.I. 2003/3096), art. 28(2), Sch. 6

**Transport Act 1962 (c. 46)**

In the Transport Act 1946, in the definition of “subsidiary” in section 92(1) (interpretation) omit the words “(taking references in that section to a company as being references to a body corporate)”.

**Harbours Act 1964 (c. 40)**

In section 57(1) of the Harbours Act 1964 (interpretation), in the definition of “marine work” for “section 154 of the Companies Act 1948” substitute “section 736 of the Companies Act 1985”.

**General Rate Act 1967 (c. 9)**

In section 32A of the General Rate Act 1967 (rateable premises of Transport Boards), in the definition of “subsidiary” in subsection (6) omit the words “(taking references in that section to a company as being references to a body corporate)”.

**Transport Act 1968 (c. 73)**

F655 Sch. 18 para. 7 repealed (1.1.1996) by 1995 c. 23, s. 60(2), Sch. 8 Pt.1 (with ss. 54, 55); S.I. 1995/2181, art.2

**Post Office Act 1969 (c. 48)**

In section 86 of the Post Office Act 1969 (interpretation), in subsection (2) for “736(5)(b)” substitute “736”.

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Status: This version of this Act contains provisions that are prospective.

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Companies Act 1989 (c. 40)
SCHEDULE 18 – “Subsidiary” and related expressions: consequential amendments and savings

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Industry Act 1972 (c. 63)

9 In section 10 of the Industry Act 1972 (construction credits), in subsection (9) for “for the purposes of the Companies Act 1985 by section 736 of that Act” substitute “by section 736 of the Companies Act 1985 ”.

Coal Industry Act 1973 (c. 8)

10 Sch. 18 para. 10 repealed (27.3.2004) by 1994 c. 21, ss. 67, 68(3)(b)(c), Sch. 11 Pt. IV (with ss. 40(7), 66); S.I. 2004/144, art. 3

Industry Act 1975 (c. 68)

11 Sch. 18 paras. 2, 11, 19, 26 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

Scottish Development Agency Act 1975 (c. 69)

[12 Sch. 18 para. 12 repealed (1.4.1991) by Enterprise and New Towns (Scotland) Act 1990 (c. 35, SIF 64), s. 38(2), Sch. 5 Part I

Welsh Development Agency Act 1975 (c. 70)

13 In section 27(1) of the Welsh Development Agency Act 1975 (interpretation), in the definition of “wholly-owned subsidiary” for “section 736(5)(b)” substitute “section 736 ”.

Restrictive Trade Practices Act 1976 (c. 41)

14 Sch. 18 para. 14 repealed (1.3.2000) by S.I. 2000/311, art. 24(b)
Companies Act 1989 (c. 40)

SCHEDULE 18 – “Subsidiary” and related expressions: consequential amendments and savings

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Status: This version of this Act contains provisions that are prospective.

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Industrial Common Ownership Act 1976 (c. 78)

15 In section 2(5) of the Industrial Common Ownership Act 1976 (common ownership and co-operative enterprises) for “for the purposes of the Companies Act 1985” substitute “as defined by section 736 of the Companies Act 1985 or for the purposes of”.

Aircraft and Shipbuilding Industries Act 1977 (c. 3)

Textual Amendments

F660 Sch. 18 para. 16 omitted (26.5.2015) by virtue of Deregulation Act 2015 (c. 20), s. 115(3)(r), Sch. 23 para. 9(3)

Nuclear Industry (Finance) Act 1977 (c. 7)

17 In section 3 of the Nuclear Industry (Finance) Act 1977 (expenditure on acquisition of shares in National Nuclear Corporation Ltd and subsidiaries), after “within the meaning of” insert “section 736 of”.

Coal Industry Act 1977 (c. 39)

Textual Amendments

F661 Sch. 18 para. 18 repealed (27.3.2004) by 1994 c. 21, ss. 67, 68, Sch. 11 Pt.III (with ss. 40(7), 66); S.I. 2004/144, art. 2, Sch.

Shipbuilding (Redundancy Payments) Act 1978 (c. 11)

Textual Amendments

F662 Sch. 18 paras. 2, 11, 19, 26 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), (Sch. 1 Pt. 17 Group 5)

Capital Gains Tax Act 1979 (c. 14)

Textual Amendments

F663 Sch. 18 para. 20 repealed (6.3.1992 with effect as mentioned in s. 289(1)(2) of the repealing Act) by Taxation of Chargeable Gains Act 1992 (c. 12), ss. 289, 290, Sch.12 (with s. 201(3), Sch. 11 paras. 20, 22, 26(2), 27)
Crown Agents Act 1979 (c. 43)
21 In section 31(1) of the Crown Agents Act 1979 (interpretation), in the definition of “wholly-owned subsidiary” for “section 736(5)(b)” substitute “section 736(2)”.

Competition Act 1980 (c. 21)
22 In sections 11(3)(f) and 12 of the Competition Act 1980 (references relating to public bodies, &c.), after “within the meaning of” insert “section 736 of”.

British Aerospace Act 1980 (c. 26)
23 In section 14(1) of the British Aerospace Act 1980 (interpretation)—
   (a) in the definition of “subsidiary” for “the same meaning as in the Companies Act 1948”, and
   (b) in the definition of “wholly-owned subsidiary” for “the same meaning as it has for the purposes of section 150 of the Companies Act 1948”, substitute “the meaning given by section 736 of the Companies Act 1985”.

Local Government, Planning and Land Act 1980 (c. 65)
24 In sections 100(1), 141(7) and 170(1)(d) and (2) of the Local Government, Planning and Land Act 1980 (which refer to wholly-owned subsidiaries) for “within the meaning of section 736(5)(b)” substitute “as defined by section 736”.

British Telecommunications Act 1981 (c. 38)
25 In section 85 of the British Telecommunications Act 1981 (interpretation), for subsection (2) substitute—
   “(2) Any reference in this Act to a subsidiary or wholly-owned subsidiary shall be construed in accordance with section 736 of the Companies Act 1985.”.

Transport Act 1981 (c. 56)
26

Textual Amendments
F664 Sch. 18 paras. 2, 11, 19, 26 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), [Sch. 1 Pt. 17 Group 5]

Value Added Tax Act 1983 (c. 55)
F665 Sch. 18 para. 27 repealed (1.9.1994) by 1994 c. 23, ss. 100(2), 101(1), Sch.15 (with Sch. 13 para. 2)
Telecommunications Act 1984 (c. 12)

[F666-28] In section 73(1) of the Telecommunications Act 1984 (interpretation of Part V), for “the same meaning as in” substitute “the meaning given by section 736 of”.

Textual Amendments

Sch. 18 para. 28 repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406(7), 408, 411, Sch. 19(1) (with transitional provisions in Sch. 18); S.I. 2003/1900, art. 1(2), 2(1), 3(1), Sch. 1 (with art. 3(2)) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)

London Regional Transport Act 1984 (c. 32)

29 In section 68 of the London Regional Transport Act 1984 (interpretation), for the definition of “subsidiary” substitute—

“‘subsidiary’ (subject to section 62 of this Act) has the meaning given by section 736 of the Companies Act 1985;”.

Inheritance Tax Act 1984 (c. 51)

30 (1) The Inheritance Tax Act 1984 is amended as follows.

(2) In section 13 (dispositions by close companies for benefit of employees), in the definition of “subsidiary” in subsection (5) for “the same meaning as in” substitute “the meaning given by section 736 of”.

(3) In section 103 (introductory provisions relating to relief for business property), in subsection (2) for “the same meanings as in” substitute “the meanings given by section 736 of”.

(4) In section 234 (interest on instalments) in subsection (3) for “within the meaning of” substitute “as defined in section 736 of”.

Ordnance Factories and Military Services Act 1984 (c. 59)

31 In section 14 of the Ordnance Factories and Military Services Act 1984 (interpretation), for the definitions of “subsidiary” and “wholly-owned subsidiary” substitute—

“‘subsidiary’ and “wholly-owned subsidiary” have the meanings given by section 736 of the Companies Act 1985.”.

Companies Act 1985 (c. 6)

Textual Amendments

Sch. 18 paras. 32-38 repealed (1.10.2007 for the repeal of Sch. 18 paras. 34-36, 1.10.2009 in so far as not already in force) by Companies Act 2006 (c. 46) ss. 1295, s. 1300(2), Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 3 para. 48 (and as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch.1); S.I. 2008/2860, art. 4, Sch. 1
Companies Act 1989 (c. 40)
SCHEDULE 18 – “Subsidiary” and related expressions: consequential amendments and savings

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.)

Textual Amendments
F667 Sch. 18 paras. 32-38 repealed (1.10.2007 for the repeal of Sch. 18 paras. 34-36, 1.10.2009 in so far as not already in force) by Companies Act 2006 (c. 46) ss. 1295, s. 1300(2), Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 3 para. 48 (and as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7) and subject to Sch.1); S.I. 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.)

Textual Amendments
F667 Sch. 18 paras. 32-38 repealed (1.10.2007 for the repeal of Sch. 18 paras. 34-36, 1.10.2009 in so far as not already in force) by Companies Act 2006 (c. 46) ss. 1295, s. 1300(2), Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 3 para. 48 (and as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7) and subject to Sch.1); S.I. 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.)

Textual Amendments
F667 Sch. 18 paras. 32-38 repealed (1.10.2007 for the repeal of Sch. 18 paras. 34-36, 1.10.2009 in so far as not already in force) by Companies Act 2006 (c. 46) ss. 1295, s. 1300(2), Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 3 para. 48 (and as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7) and subject to Sch.1); S.I. 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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Textual Amendments

F667 Sch. 18 paras. 32-38 repealed (1.10.2007 for the repeal of Sch. 18 paras. 34-36, 1.10.2009 in so far as not already in force) by Companies Act 2006 (c. 46) ss. 1295, s. 1300(2), Sch. 16; S.I. 2007/2194, art. 8, Sch. 2 Pt. 1 (with arts. 7, 12, Sch. 3 para. 48 (and as amended by S.I. 2007/2607, arts. 1, 4 and S.I. 2007/3495, arts. 2(6), 11, Sch. 5 para. 2(3)-(7)) and subject to Sch.1); S.I. 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.)

Transport Act 1985 (c. 67)

39 In section 137(1) of the Transport Act 1985 (interpretation), in the definition of “subsidiary” for the words from “as defined” to the end substitute “within the meaning of section 736 of the Companies Act 1985 as originally enacted (and not as substituted by section 144(1) of the Companies Act 1989); “.

Housing Act 1985 (c. 68)

40 In section 622 of the Housing Act 1985 (minor definitions: general), in the definition of “subsidiary” for “the same meaning as in” substitute “the meaning given by section 736 of”.

Housing Associations Act 1985 (c. 69)

41 In section 101 of the Housing Associations Act 1985 (minor definitions: Part II), in the definition of “subsidiary” for “the same meaning as in” substitute “the meaning given by section 736 of”.

Atomic Energy Authority Act 1986 (c. 3)

42 In section 9 of the Atomic Energy Authority Act 1986 (interpretation), in the definition of “subsidiary” and “wholly-owned subsidiary” for “have the same meaning as in” substitute “have the meaning given by section 736 of”.

Airports Act 1986 (c. 31)

43 In section 82 of the Airports Act 1986 (general interpretation), in the definition of “subsidiary” for “has the same meaning as in” substitute “has the meaning given by section 736 of”. 

44 In the Gas Act 1986—
(a) in section 48(1) (interpretation of Part I), in the definitions of “holding company” and “subsidiary”, and
(b) in section 61(1) (interpretation of Part II), in the definition of “subsidiary”, for “has the same meaning as in” substitute “ has the meaning given by section 736 of ”.

45 In section 119 of the Building Societies Act 1986 (interpretation), in the definition of “subsidiary” for “has the same meaning as in” substitute “ has the meaning given by section 736 of ”.

46 In the Income and Corporation Taxes Act 1988 (interpretation), in the definition of “subsidiary” for “has the same meaning as in” substitute “ has the meaning given by section 736 of ”.

SCHEDULE 19

MINOR AMENDMENTS OF THE COMPANIES ACT 1985

Correction of cross-reference

Particulars to be given of directors and secretaries
Companies Act 1989 (c. 40)
SCHEDULE 19 – Minor amendments of the Companies Act 1985

Status: 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 01 January 2022. 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) View outstanding changes

Textual Amendments

F669 Sch. 19 paras. 1-9 repealed (1.10.2007 for the repeal of Sch. 19 paras. 8, 9, 1.10.2009 in so far as not already in force) by Companies Act 2006 (c. 46), s. 1300(2), Sch. 16; S.I. 2007/2194, 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.)

F669

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Textual Amendments

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Textual Amendments

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F669

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Textual Amendments

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F669

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Textual Amendments

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F669

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Transactions with directors not requiring authorisation

Time limit for holding extraordinary general meeting convened on members’ requisition

Removal of restriction on transfer of shares

Protection of company’s members against unfair prejudice
Textual Amendments

requirements for registration by joint stock companies

Delivery of documents by oversea companies

Companies’ registered numbers

Exemptions from limit of 20 on members of partnership
Textual Amendments

**F670** Sch. 19 paras. 11-16 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.)

*Meaning of “officer who is in default”*

17  

**F671** Sch. 19 para. 17 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)

*Offences committed by partnerships and other unincorporated bodies*

18  

**F672** Sch. 19 para. 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)

*Meaning of “office copy” in Scotland*

**F673** Sch. 19 paras. 19-21 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.)

*Index of defined expressions*
SCHEDULE 20 – Amendments about mergers and related matters

section 153.

AMENDMENTS ABOUT MERGERS AND RELATED MATTERS

Fair Trading Act 1973 (c. 41)

1

Textual Amendments

F673 Sch. 19 paras. 19-21 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.)

Fraudulent trading by unregistered companies

Textual Amendments

F673 Sch. 19 paras. 19-21 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.)

SCHEDULE 20

AMENDMENTS ABOUT MERGERS AND RELATED MATTERS

Fair Trading Act 1973 (c. 41)

1

Textual Amendments

F674 Sch. 20 paras. 1, 20 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

2

Textual Amendments

F674 Sch. 20 paras. 1, 20 repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

3

Textual Amendments

F675 Sch. 20 para. 2 repealed (25.7.2003 for specified purposes, 29.12.2003 for further specified purposes) by Communications Act 2003 (c. 21), ss. 406(7), 411, Sch. 19(1),(with transitional provisions in Sch. 18); S.I. 2003/1900, art. 1(2), 2(1), 3(1), Sch. 1 (with art. 3(2) (as amended (8.12.2003) by S.I. 2003/3142, art. 1(3))); S.I. 2003/3142, art. 3(2) (with art. 11) and Sch. 20 para. 2(2) expressed to be repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

4

Textual Amendments

F676 Sch. 20 para. 3 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)
### Textual Amendments

**F677** Sch. 20 para. 4 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)

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**F678** ........................................

### Textual Amendments

**F678** Sch. 20 para. 5 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)

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**F679** ........................................

### Textual Amendments

**F679** Sch. 20 para. 6 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)

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**F680** ........................................

### Textual Amendments

**F680** Sch. 20 para. 7 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)

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**F681** ........................................

### Textual Amendments

**F681** Sch. 20 para. 8 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)

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**F682** ........................................

### Textual Amendments

**F682** Sch. 20 para. 9 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)

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**F683** ........................................

### Textual Amendments

**F683** Sch. 20 para. 10 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)

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**F684** ........................................
Companies Act 1989 (c. 40)

SCHEDULE 20 – Amendments about mergers and related matters

Document Generated: 2022-01-01

Status: 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 01 January 2022. 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) View outstanding changes

Textual Amendments

F684 Sch. 20 para. 11 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)

12 F685 .................................................................

Textual Amendments


13 (1) F686 .................................................................

(2) F687 .................................................................

Textual Amendments


F687 Sch. 20 para. 13(2) repealed (22.7.2004) by Statute Law (Repeals) Act 2004 (c. 14), s. 1(1), {Sch. 1 Pt. 17 Group 5}

14 F688 .................................................................

Textual Amendments

F688 Sch. 20 para. 14 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)

15 F689 .................................................................

Textual Amendments

F689 Sch. 20 para. 15 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)

16 F690 .................................................................

Textual Amendments

F690 Sch. 20 para. 16 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)

17 In section 132(1) of that Act, after “85(6)” there is inserted “ section 93B ”.

18 (1) In Schedule 3 to that Act, in paragraph 16(2) for “75” there is substituted “ “73 ”.

(2) This paragraph does not apply in relation to any report made before the passing of this Act.
25 (1) In section 13(9) of the Telecommunications Act 1984, after “Commission)” there is inserted “ together with section 24 of the Competition Act 1980 (modification of provisions about performance of Commission’s functions) “.
(2) The Monopolies and Mergers Commission (Performance of Functions) Order 1989 shall have effect as if sub-paragraph (1) above had come into force immediately before the making of the Order.

Financial Services Act 1986 (c. 60)

Sch. 20 para. 26 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(o)

Sch. 21 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(p)

Sch. 22 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(q)

Sch. 23 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(r)
## SCHEDULE 24

### REPEALS

#### Modifications etc. (not altering text)

**C54** Sch. 24 restricted by S.I. 1990/354, art. 6(4)

#### Commencement Information

<table>
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<tr>
<th>Sch. 24 partly in force: Sch. 24 in force for certain purposes at 1.7.1991 by s. 215(2) and S.I. 1991/488, art. 2(4); Sch. 24 partly in force for certain purposes at 1.10.1991 and 1.11.1991 see s. 215 and S.I. 1991/1996, art. 2(1)(2); Sch. 24 in force for certain purposes at 3.7.1995 see s. 215 and S.I. 1995/1352, art. 3(c)(i)(ii)</th>
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<th>Chapter</th>
<th>Short title</th>
<th>Extent of repeal</th>
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<tr>
<td>1964 c. 40.</td>
<td>Harbours Act 1964.</td>
<td>In section 42(6), the words “required to be attached to a company’s balance sheet”</td>
</tr>
<tr>
<td>1973 c. 41.</td>
<td>Fair Trading Act 1973.</td>
<td>Section 46(3). In section 71, in subsection (1) the words “made under section 69(4) of this Act” and subsection (2). In section 74(1), the words from “and does not” to “section 69(4) of this Act”. In section 85, subsection (5) and, in subsection (6), paragraph (b) and the word “or” preceding it. In section 88(6), the words from “the relevant parties” to the “and” immediately following paragraph (c). In section 89(2), the words “Part II of”. In Schedule 9, in paragraph 4 the words from “either” to the end.</td>
</tr>
<tr>
<td>1985 c. 6.</td>
<td>Companies Act 1985.</td>
<td>Section 160(3). In section 169(5), the words from “, during business hours” to “for inspection)”. In section 175(6)(b), the words from “during business hours” to “period”.</td>
</tr>
</tbody>
</table>

**Status:** This version of this Act contains provisions that are prospective.

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In section 191—
(a) in subsection (1), the words from “(but” to “for inspection)”;
(b) in subsection (3), paragraphs (a) and (b).

Section 201.
In section 202(1), the words “(except where section 201(3) applies)”.

Section 209(1)(j).
In section 219(1), the words from “during” to “for inspection”.
In section 288(3), the words from “during” to “for inspection”.
In section 318(7), the words from “during” to “for inspection”.

In section 356—
(a) in subsection (1), the words “during business hours”;
(b) subsections (2) and (4).

In section 383—
(a) in subsection (1), the words “during business hours”;
(b) subsection (2);
(c) in subsection (3), the words from “at a charge” to the end.

Section 389.
Section 435.
Section 440.
Section 443(4).
In section 446—
(a) in subsection (3), paragraph (b) and the word “and” preceding it;
(b) subsection (7).
Section 447(1).
In section 449(1)—
(a) the words “or 448”;
(b) paragraph (e).
Section 452(1)(b).
In section 460(1), the words “(inspection of company’s books and papers)” and “under section 440”.

In section 464(5), at the end of paragraph (c), the word “and”.

In section 466—
(a) in subsection (2), paragraph (a) and (d) and the word “or” preceding the latter;
(b) subsections (4) and (5);
(c) in subsection (6), the words “falling under subsection (4) of this section”.

In section 651(1), the words “at any time within 2 years of the date of the dissolution”.

In section 708(1)(b), the words “or other material”.
Sections 712 and 715.
In section 716(2), the words following paragraph (c).
In section 717(1), the words following paragraph (e).
In section 733(3), the words from “then” to “216(3)”.
In section 735A(1), the words “440, 449(1)(a) and (d)”.
In section 744, the definitions of “annual return”, “authorised institution”, “authorised minimum”, “expert”, “floating charge”,
“joint stock company” and “undistributable reserves”.

In section 746, the words “Except as provided by section 243(6).”.

In Schedule 2—
(a) in paragraph 1(1), the words “paragraph 60(2) of Schedule 4 or paragraph 19(3) of Schedule 9”;
(b) paragraph 1(5);
(c) in paragraph 2(1), the word “23,”;
(d) paragraph 2(2);
(e) in paragraph 3(1), the words “paragraph 60(2) of Schedule 4 or paragraph 19(3) of Schedule 9”;
(f) paragraph 3(3);
(g) in paragraph 4(1), the words “(whether as personal representative or otherwise)”;
(h) in paragraph 4(2), the words “paragraph 60(2) of Schedule 4 or paragraph 19(3) of Schedule 9”.

In Schedule 4, paragraphs 50(6), 53(7), 60 to 70, 74, 75, 77 to 81, 87, 90 to 92 and 95.

In Schedule 9—
(a) paragraphs 1, 13(3) and (18), 16, 18(5), 19(3) to (7) and 21 to 26;
(b) in paragraph 27(4), the words “of the said Part I”;
(c) in paragraph 28, in sub-paragraph (1) the words “to which Part II of the Insurance Companies Act 1982 applies” and in sub-paragraph (2) the words “of Part I of this Schedule”;
(d) paragraphs 29 to 31.

In Schedule 11—
SCHEDULE 24 – Repeals

(a) paragraph 4(b) and (c);
(b) paragraph 5(b).

In Schedule 13, in paragraph 25, the words from “during” to “for inspection)”. Schedule 15.

In Schedule 22—
(a) the entry relating to section 36(4);
(b) in the entry relating to sections 363 to 365, the words “(with Schedule 15)”; 
(c) in the entry relating to sections 384 to 393, in column 2, the word “qualifications”.

In Schedule 24, the entries relating to sections 245(1), 245(2), 255(5), 260(3), 287(3), 365(3), 384(5), 386(2), 389(10), 390(7), 391(4), 392(2) and 393.


1986 c. 45. Insolvency Act 1986. In sections 45(5), 53(2), 54(3) and 62(5), the words “and, for continued contravention, to a daily default fine”.

1986 c. 45—cont. Insolvency Act 1986—cont. In Schedule 10, the entries in column 5 relating to sections 45(5), 53(2), 54(3) and 62(5).

In Part I of Schedule 13, the entries relating to sections 222(4), 225 and 733(3).

1986 c. 46. Company Directors Disqualification Act 1986. In section 21(2), the words “and section 431 (summary proceedings)”.

1986 c. 53. Building Societies Act 1986. In Schedule 15, in paragraph 3(2)(b), the words “, a shadow director”.

In Schedule 18, paragraphs 16 and 17.

1986 c. 60. Financial Services Act 1986. In section 13—
(a) subsection (1);
(b) subsections (4) to (6).

In section 48(1), the words “members of a recognised self-regulating organisation or” and “organisation or”.

In section 55—
(a) in subsection (2)(b) and (e), the words “a member of a recognised self-regulating organisation or” and “organisation or”;
(b) in subsection (3), the words “organisation or”.

In section 94—
(a) in subsection (3), the words “except section 435(1) (a) and (b) and (2)”;
(b) in subsection (4), the words “or its affairs”, “and the affairs mentioned in subsection (1) or (2) above” and “or director”.

Section 105(7).

In section 119(5), the words from “and the practices referred to in paragraph (c)” to the end.

In sections 159(1) and 160(1), the words from the beginning to “section 161 below”.

In section 179(3), the word “and” preceding paragraph (i).

Section 180(6).

Section 196(3).

Section 198(1).

1986 c. 60—cont. Financial Services Act 1986—cont. In section 199(9), the words from “and, in relation” to the end.

In Schedule 11—
(a) paragraph 4(4)(b);

(b) paragraph 7;
(c) in paragraph 10(3), the words from “and the practices referred to in paragraph (c)” to the end;
(d) in paragraph 14(1), the words “other than a member society”;
(e) in paragraph 14(3), the word “and” after paragraph (a).

In Schedule 16, paragraph 22.

In the Table in section 84(1), the entry relating to persons appointed under section 94, 106 or 177 of the Financial Services Act 1986.

Section 90(1).

In Schedule 6—
(a) paragraph 18(1) to (6);
(b) in paragraph 18(7), the words “and (1A)”;
(c) paragraph 18(8) and (9);
(d) in paragraph 27(3), the words “and (6)”.


Section 55(a).


Section 565(6)(b).


Section 145(a).


In Schedule 7, paragraph 31.
### Status:
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 01 January 2022. 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.

View outstanding changes

<table>
<thead>
<tr>
<th>Changes and effects yet to be applied to:</th>
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<tbody>
<tr>
<td>- s. 56(5) repealed by 2006 c. 46 Sch. 16</td>
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<tr>
<td>- s. 57 repealed by 2006 c. 46 Sch. 16</td>
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<tr>
<td>- s. 64(2) repealed by 2006 c. 46 Sch. 16</td>
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<td>- s. 66(3) repealed by 2006 c. 46 Sch. 16</td>
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<tr>
<td>- s. 71 repealed by 2006 c. 46 Sch. 16</td>
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<tr>
<td>- s. 87(4) words inserted by S.I. 2005/1967 (N.I.) Sch. 2 para. 22 (This amendment not applied to legislation.gov.uk. The affecting Order is repealed by Companies Act 2006 (c. 46), ss. 1295, 1300(2), Sch. 16, the repeal was brought into force on different dates, the final date being 1.10.2009, see S.I. 2008/2860, art. 4, Sch. 1 Pt. 2 (with arts. 5, 7, 8, Sch. 2 (as amended by S.I. 2009/1802, art. 18, Sch. and S.I. 2009/2476, reg. 2(3)(4))); for details of the earlier dates see individual provisions in previous version of the Order)</td>
</tr>
<tr>
<td>- s. 135 repealed by 2006 c. 46 Sch. 16</td>
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<tr>
<td>- s. 140 repealed by 2007 asp 3 s. 46(5)</td>
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<tr>
<td>- s. 144(6) repealed by 2006 c. 46 Sch. 16</td>
</tr>
<tr>
<td>- s. 191 words inserted by 2012 c. 21 Sch. 18 para. 71(3) (This amendment was superseded by the effect of S.I. 2013/504, regs. 1(2), 4(19), Sch.)</td>
</tr>
<tr>
<td>- s. 191 words inserted by 2012 c. 21 Sch. 18 para. 71(4) (This amendment was superseded by the effect of S.I. 2013/504, regs. 1(2), 4(19), Sch.)</td>
</tr>
<tr>
<td>- s. 191 words omitted by 2012 c. 21 Sch. 18 para. 71(2) (This amendment was superseded by the effect of S.I. 2013/504, regs. 1(2), 4(19), Sch.)</td>
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<tr>
<td>- Sch. 18 para. 1 repealed by 1994 c. 21 Sch. 11 Pt. 3</td>
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