



# Companies Act 1989

## 1989 CHAPTER 40

### PART VII

#### FINANCIAL MARKETS AND INSOLVENCY

#### *[<sup>F1</sup>Recognised bodies]*

#### **166 Powers <sup>F1</sup>... to give directions.**

- (1) The powers conferred by this section are exercisable in relation to a recognised UK investment exchange or [<sup>F2</sup>recognised clearing house][<sup>F3</sup>or recognised CSD].
- (2) Where in any case [<sup>F4</sup>a recognised body] has not taken action under its default rules—
  - (a) if it appears to the [<sup>F5</sup>appropriate regulator] that it could take action, [<sup>F6</sup>the [<sup>F7</sup>regulator]] may direct it to do so, and
  - (b) if it appears to the [<sup>F8</sup>appropriate regulator] that it is proposing to take or may take action, [<sup>F6</sup>the [<sup>F9</sup>regulator]] may direct it not to do so.
- (3) Before giving such a direction the [<sup>F10</sup>appropriate regulator] shall consult the [<sup>F11</sup>recognised body] in question; and [<sup>F12</sup>it] shall not give a direction unless [<sup>F12</sup>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, <sup>F13</sup>...
  - (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,
  - [<sup>F14</sup>(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) [<sup>F15</sup>or Schedule 11 to the Financial Services and Markets Act 2023 (central counterparties)], or

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- (ii) in connection with a particular exercise of a power under that Part [F16 or that Schedule].]
- [F17(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 [F18 a recognised body] has taken or been directed to take action under its default rules, the [F19 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.
- F20 .....
- [F21(7A) Where the [F22 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 [F23 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—

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- (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) [<sup>F24</sup>or Schedule 11 to the Financial Services and Markets Act 2023 (central counterparties)], or
  - (iii) in connection with a particular exercise of a power under that Part [<sup>F25</sup>or that Schedule].]
- (8) A direction under this section is enforceable, on the application of the [<sup>F26</sup>regulator which gave the direction], by injunction or, in Scotland, by an order under section 45 of the <sup>M1</sup>Court of Session Act 1988; and where [<sup>F27</sup>a recognised body][<sup>F28</sup>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.

[<sup>F29</sup>(9) “The appropriate regulator”—

- (a) in relation to a recognised UK investment exchange, means the FCA, and
- (b) in relation to a [<sup>F30</sup>recognised CSD, a][<sup>F31</sup>recognised clearing house][<sup>F32</sup>or a defaulting clearing member], means the Bank of England.]

#### Textual Amendments

- F1** Words in s. 166 heading omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\), ss. 111\(9\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F2** Words in s. 166(1) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\), regs. 1\(2\), 4\(11\)\(a\)](#) (with [regs. 52-58](#))
- F3** Words in s. 166(1) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\), regs. 1, 3\(13\)\(a\)](#) (with [regs. 7\(4\), 9\(1\)](#))
- F4** Words in s. 166(2) 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\(1\)](#))
- F5** Words in s. 166(2)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(2\)\(a\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F6** Words in s. 166(2)(a)(b) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 81\(2\)\(b\)](#)
- F7** Word in s. 166(2)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(2\)\(b\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F8** Words in s. 166(2)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(3\)\(a\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F9** Word in s. 166(2)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(3\)\(b\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F10** Words in s. 166(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(4\)\(a\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F11** 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\(1\)](#))
- F12** Words in s. 166(3) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 81\(3\)\(b\)](#)
- F13** Word in s. 166(3) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\), ss. 111\(4\)\(b\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F14** S. 166(3)(c)(d) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(4\)\(c\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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- F15** Words in s. 166(3)(d)(i) inserted (31.12.2023) by The Resolution of Central Counterparties (Modified Application of Corporate Law and Consequential Amendments) Regulations 2023 (S.I. 2023/1313), regs. 1(2), **8(3)(a)(i)**
- F16** Words in s. 166(3)(d)(ii) inserted (31.12.2023) by The Resolution of Central Counterparties (Modified Application of Corporate Law and Consequential Amendments) Regulations 2023 (S.I. 2023/1313), regs. 1(2), **8(3)(a)(ii)**
- F17** 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)
- F18** 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))
- F19** Words in s. 166(7) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(5)(a)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F20** Words in s. 166(7) omitted (1.4.2013) by virtue of Financial Services Act 2012 (c. 21), **ss. 111(5)(b)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F21** S. 166(7A)(7B) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(6)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F22** 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))
- F23** 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))
- F24** Words in s. 166(7B)(b)(ii) inserted (31.12.2023) by The Resolution of Central Counterparties (Modified Application of Corporate Law and Consequential Amendments) Regulations 2023 (S.I. 2023/1313), regs. 1(2), **8(3)(b)(i)**
- F25** Words in s. 166(7B)(b)(iii) inserted (31.12.2023) by The Resolution of Central Counterparties (Modified Application of Corporate Law and Consequential Amendments) Regulations 2023 (S.I. 2023/1313), regs. 1(2), **8(3)(b)(ii)**
- F26** Words in s. 166(8) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(7)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F27** 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))
- F28** 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)
- F29** S. 166(9) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), **ss. 111(8)**, 122(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F30** 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))
- F31** 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)
- F32** 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)

- C1** S. 166 applied (with modifications) (1.4.2013) by The Financial Services Act 2012 (Transitional Provisions) (Miscellaneous Provisions) Order 2013 (S.I. 2013/442), arts. 1(3), **67(4)**

#### Commencement Information

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

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**Marginal Citations**

**M1** 1988 c. 36.

**Changes to legislation:**

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