



Banking Act 2009

2009 CHAPTER 1

PART 7

MISCELLANEOUS

Financial collateral arrangements

255 Regulations

- (1) The Treasury may make regulations about financial collateral arrangements.
- (2) “Financial collateral arrangements” are arrangements under which financial collateral is used as security in respect of a loan or other liability; and for that purpose—
 - (a) collateral may be in cash, securities or any other form,
 - (b) use as security may involve transfer of the collateral or the creation or transfer of any kind of right, interest or charge (fixed or floating) in respect of it, and
 - (c) in particular, use as security can include use under arrangements of a kind described commercially as “title transfer financial collateral arrangements”.
- (3) The regulations—
 - (a) may make any provision that the Treasury think necessary or desirable for the purpose of, or in connection with, implementation of the Financial Collateral Arrangements Directive (2002/47/EC) (or any replacement), but
 - (b) are not restricted to provision required in connection with the Directive, and may make any provision that the Treasury think necessary or desirable for the purpose of enabling financial collateral arrangements, whether or not with an international element, to be commercially useful and effective.
- (4) The regulations may, in particular—
 - (a) disapply or modify an enactment or rule of law about formalities or evidence,
 - (b) disapply or modify an enactment about insolvency, administration, receivership or any similar procedure,
 - (c) disapply or modify an enactment about property law,

Status: This is the original version (as it was originally enacted).

- (d) disapply or modify an enactment about companies or other commercial entities or groupings,
 - (e) provide for provisions of financial collateral arrangements to have effect despite a reorganisation, winding-up or other process affecting a party to the arrangements,
 - (f) make provision for the enforcement of financial collateral arrangements (which may include, in particular, provision—
 - (i) about sale, appropriation and set-off,
 - (ii) about the use of collateral while subject to the arrangements,
 - (iii) about “close out netting arrangements”, under which obligations under a number of contracts may be set off against each other in the event of default under a specified contract,
 - (iv) permitting a person to foreclose or exercise another right under the arrangements with or without an order of a court,
 - (v) permitting or requiring the disclosure of information, and
 - (vi) for enforcement after the commencement of, and despite, reorganisation, winding-up or another process),
 - (g) make provision for the choice of law according to which, or under which, matters arising under financial collateral arrangements are to be determined, and
 - (h) apply to persons whether or not provisions of the Directive apply to them.
- (5) The regulations may, in particular—
- (a) do anything done or purported to be done by the Financial Collateral Arrangements (No. 2) Regulations 2003,
 - (b) provide for those regulations, or a specified provision, to be treated as having had effect despite any lack of vires,
 - (c) provide for anything done under or in reliance on those regulations to be treated as having had effect despite any lack of vires, and
 - (d) make any provision which the Treasury think necessary or desirable to achieve or restore certainty and stability in connection with the matters to which those regulations relate.

256 Supplemental

- (1) Regulations under section 255—
- (a) shall be made by statutory instrument, and
 - (b) shall lapse unless approved by resolution of each House of Parliament during the period of 28 days (ignoring periods of dissolution, prorogation or adjournment of either House for more than 4 days) beginning with the day on which the regulations are made.
- (2) The lapse of regulations under subsection (1)(b)—
- (a) does not invalidate anything done under or in reliance on the regulations before the lapse and at a time when neither House has declined to approve the regulations, and
 - (b) does not prevent the making of new regulations (in new terms).