
EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations implement Directive [98/26/EC](#) of the European Parliament and of the Council on settlement finality in payment and securities settlement systems (OJ L166, 19.5.98, p. 45) (“the Directive”). The Directive seeks to reduce the risks associated with participation in payment and securities settlement systems by minimising the disruption caused by insolvency proceedings brought against a participant in such a system.

The protection provided by the Regulations is given to any system which has been designated by the Financial Services Authority or the Bank of England. Regulations 3 to 12 make provision in relation to designation and the Schedule sets out the requirements that a designated system must satisfy.

Regulations 13 to 19 modify the law of insolvency in so far as it applies to transfer orders effected through a designated system and to collateral security provided in connection with participation in designated system. Regulation 20 provides that the modifications to the law of insolvency cease to apply to a transfer order which is entered into a designated system after insolvency, unless the transfer order is carried out on the same day as the insolvency and the relevant persons do not have notice of the insolvency at the time of settlement. Regulations 13 to 19 also apply to collateral security which is provided to a central bank in connection with its functions as a central bank.

Where a court makes an insolvency order against a participant in a designated system, the court is required by virtue of regulation 22 to notify both the relevant designated system and the relevant designating authority that such an order has been made. Similarly, paragraph 5(4) of the Schedule provides that a designated system must require a participant to notify the system and the relevant designating authority that a resolution has been passed for a creditors' voluntary winding up of the participant or that a trust deed granted by the participant has become a protected trust deed.

Regulation 23 specifies the law which governs the rights of a person as a holder of collateral security when their entitlement is recorded in a register, account or centralised deposit system. The governing law is specified to be the law of the EEA State (or part of the EEA State) where the register, account or centralised deposit system is located. Regulation 24 provides that any other rights or obligations arising from, or in connection with, participation in a system designated under the Directive are to be determined by the law governing the system.

Regulation 26 makes provision in relation to transfer orders and collateral security in connection with a system designated in another EEA State, Northern Ireland or Gibraltar.