
STATUTORY INSTRUMENTS

2003 No. 3226

The Financial Collateral Arrangements (No.2) Regulations 2003

PART 3

Modification of insolvency law

Certain insolvency legislation on avoidance of contracts and floating charges not to apply to financial collateral arrangements

10.—(1) In relation to winding-up proceedings of a collateral-taker or collateral-provider, section 127 of the Insolvency Act 1986 (avoidance of property dispositions, etc) shall not apply (if it would otherwise do so)—

- (a) to any property or security interest subject to a disposition or created or otherwise arising under a financial collateral arrangement; or
- (b) to prevent a close-out netting provision taking effect in accordance with its terms.

(2) Section 88 of the Insolvency Act 1986 (avoidance of share transfers, etc after winding-up resolution) shall not apply (if it would otherwise do so) to any transfer of shares under a financial collateral arrangement.

[^{F1}(2A) Sections 40 (or in Scotland, sections 59, 60(1)(e)) and 175 of the Insolvency Act 1986 (preferential debts) shall not apply to any debt which is secured by a charge created or otherwise arising under a financial collateral arrangement.

[^{F2}(2AA) Section 174A of the Insolvency Act 1986 (moratorium debts etc. priority) shall not apply (if it otherwise would do so) to any charge created or otherwise arising under a financial collateral arrangement.]

(2B) Section 176ZA of the Insolvency Act 1986 (expenses of winding up) shall not apply in relation to any claim to any property which is subject to a disposition or created or otherwise arising under a financial collateral arrangement.]

(3) Section 176A of the Insolvency Act 1986 ^{F3} (share of assets for unsecured creditors) shall not apply (if it would otherwise do so) to any charge created or otherwise arising under a financial collateral arrangement.

(4) Section 178 of the Insolvency Act 1986 (power to disclaim onerous property) or, in Scotland, any rule of law having the same effect as that section, shall not apply where the collateral-provider or collateral-taker under the arrangement is [^{F4}subject to winding-up proceedings], to any financial collateral arrangement.

(5) Section 245 of the Insolvency Act 1986 (avoidance of certain floating charges) shall not apply (if it would otherwise do so) to any charge created or otherwise arising under a security financial collateral arrangement.

[^{F5}(5A) Paragraph 64A of Schedule B1 to the Insolvency Act 1986 shall not apply (if it otherwise would do so) to any charge created or otherwise arising under a financial collateral arrangement.]

Changes to legislation: The Financial Collateral Arrangements (No.2) Regulations 2003, Section 10 is up to date with all changes known to be in force on or before 13 October 2023. 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

(6) [^{F6}Section 754 of the Companies Act 2006 (priorities where debentures secured by floating charge)] [^{F7}(including that section as applied or modified by any enactment made under the Banking Act 2009)] shall not apply (if it would otherwise do so) to any charge created or otherwise arising under a financial collateral arrangement.

- F1** Reg. 10(2A)(2B) inserted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010 \(S.I. 2010/2993\)](#), regs. 1, **4(8)(a)** (with reg. 3)
- F2** Reg. 10(2AA) inserted (18.7.2020) by [The Co-operative and Community Benefit Societies and Credit Unions \(Arrangements, Reconstructions and Administration\) \(Amendment\) and Consequential Amendments Order 2020 \(S.I. 2020/744\)](#), arts. 1, **15(2)(a)**
- F3** Section 176A of the Insolvency Act 1986 was inserted by section 252 of the Enterprise Act 2002.
- F4** Words in reg. 10(4) substituted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010 \(S.I. 2010/2993\)](#), regs. 1, **4(8)(b)** (with reg. 3)
- F5** Reg. 10(5A) inserted (18.7.2020) by [The Co-operative and Community Benefit Societies and Credit Unions \(Arrangements, Reconstructions and Administration\) \(Amendment\) and Consequential Amendments Order 2020 \(S.I. 2020/744\)](#), arts. 1, **15(2)(b)**
- F6** Words in reg. 10(6) substituted (1.10.2009) by [The Financial Collateral Arrangements \(No. 2\) Regulations 2003 \(Amendment\) Regulations 2009 \(S.I. 2009/2462\)](#), regs. 1(2), **2(6)**
- F7** Words in reg. 10(6) inserted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010 \(S.I. 2010/2993\)](#), regs. 1, **4(8)(c)** (with reg. 3)

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Changes and effects yet to be applied to :

- Regulations revoked by [2023 c. 29 Sch. 1 Pt. 2](#)