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STATUTORY INSTRUMENTS

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**2009 No. 1972**

**FINANCIAL SERVICES**

**The Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009**

<i>Made</i>	- - - -	<i>20th July 2009</i>
<i>Laid before Parliament</i>		<i>21st July 2009</i>
<i>Coming into force</i>	- -	<i>1st October 2009</i>

The Treasury are a government department designated<sup>(1)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(2)</sup> in relation to measures—

- (a) relating to investment firms and to the provision of investment services and to the operation of regulated markets and clearing or settlement systems;
- (b) relating to payment systems; and
- (c) relating to collateral security provided to the central banks of member States or to the European Central Bank.

The Treasury make these Regulations in exercise of the powers conferred by that section.

**Citation, commencement and interpretation**

1. These Regulations may be cited as the Financial Markets and Insolvency (Settlement Finality) (Amendment) Regulations 2009, and come into force on 1st October 2009.

**Amendment of the Regulations**

2. The Financial Markets and Insolvency (Settlement Finality) Regulations 1999<sup>(3)</sup> are amended as follows.

3. In paragraph (2) of regulation 6 (certain bodies deemed to satisfy requirements for designation) for “the 1986 Act” substitute “the 2000 Act”.

4. In regulation 14 (proceedings of designated system take precedence over insolvency proceedings)

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(1) S.I. 1993/2661 and S.I. 1998/2793.

(2) 1972 c. 68.

(3) S.I. 1999/2979, amended by S.I. 2001/3929, 2002/1555, 2003/2096, 2006/50, 2006/3221, 2007/32, 2007/108, 2007/126, 2007/1655.

- (a) in paragraph (1), after “winding up,” insert “administration,”
- (b) in paragraph (2), omit the words from “This does not prevent the court” to the end of the paragraph;
- (c) in paragraph (4), for “or bankruptcy” substitute “, bankruptcy, or administration,”
- (d) in paragraph (5)—
  - (i) in sub-paragraph (a), for “section 735 of the Companies Act 1985 or Article 3 of the Companies (Northern Ireland) Order 1986” substitute “section 1 of the Companies Act 2006) or by a building society (within the meaning of section 119 of the Building Societies Act 1986)”;
  - (ii) for sub-paragraph (a)(i), substitute—
    - “(i) sections 175, 176ZA and 176A of, and paragraph 65(2) of Schedule B1 to, the Insolvency Act 1986(4) or Articles 149, 150ZA, and 150A of, and paragraph 66(2) of Schedule B1 to, the Insolvency (Northern Ireland) Order 1989(5);
    - (ii) Rules 4.30(3) and 4.218(2)(b) of the Insolvency Rules 1986(6), Rules 4.033(3) and 4.228(2)(b) of the Insolvency Rules (Northern Ireland) 1991(7) and rule 4.5(3) of the Insolvency (Scotland) Rules 1986(8);”;
  - (iii) for sub-paragraph (a)(ii), substitute—
    - “(iii) section 40 (or in Scotland, section 59 and 60(1)(e)) of the Insolvency Act 1986, paragraph 99(3) of Schedule B1 to that Act and section 19(4) of that Act as that section has effect by virtue of section 249(1) of the Enterprise Act 2002;
    - (iv) paragraph 100(3) of Schedule B1 to, and Article 31(4) of that Order, as that Article has effect by virtue of Article 4(1) of the Insolvency (Northern Ireland) Order 2005; and
    - (v) section 754 of the Companies Act 2006; and”
- (e) in paragraph (6)—
  - (i) in sub-paragraph (a)—
    - (aa) after “paragraph 99(3) of Schedule B1 to that Act” insert “and in section 19(4) of that Act as that section has effect by virtue of section 249(1) of the Enterprise Act 2002”;
    - (bb) after “paragraph 100(3) to Schedule B1 to that Order” insert “and Article 31(4) of that Order, as that Article has effect by virtue of Article 4(1) of the Insolvency (Northern Ireland) Order 2005”;
  - (ii) after sub-paragraph (b), insert—
    - “and
    - (c) the debts or liabilities arising or incurred under contracts mentioned in—
      - (i) paragraph 99(4) of Schedule B1 to the Insolvency Act 1986 and section 19(5) of that Act, as that section has effect by virtue of section 249(1) of the Enterprise Act 2002, or

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(4) 1986 c 45. Section 176ZA was inserted by the [Companies Act 2006 \(c.46\)](#), section 1282. Section 176A and Schedule B1 were inserted by the [Enterprise Act 2002 \(c. 40\)](#), sections 252 and 248 respectively.

(5) [S.I. 1989/2405 \(N.I. 19\)](#). Article 150ZA was inserted by the [Companies Act 2006 \(c.46\)](#), section 1282. Article 150A and Schedule B1 were inserted by [S.I. 2005/1455 \(N.I. 10\)](#).

(6) [S.I. 1986/1925](#). Rule 4.30 was amended by [S.I. 1987/1919](#). Rule 4.218 was amended by [S.I. 2008/737](#).

(7) [S.R. 1991 No. 364](#). Rule 4.228 was amended by [S.R. 2008 No.118](#).

(8) [S.I. 1986/1915](#), amended by [S.I. 1987/1921](#).

- (ii) paragraph 100(4) of Schedule B1 to, the Insolvency (Northern Ireland) Order 1989 and Article 31(5) of that Order as that article has effect by virtue of Article 4(1) of the Insolvency (Northern Ireland) Order 2005.”.
5. In regulation 15 (net sum payable on completion of action taken under default arrangements)—
- (a) in paragraph (2)
- (i) for the words “or winding-up” each time they occur, substitute “, winding-up or administration”;
- (ii) in sub-paragraph (b)—
- (aa) after “(Northern Ireland) Order 1989” insert “or Rule 2.85 of the Insolvency Rules 1986<sup>(9)</sup> or Rule 2.086 of the Insolvency Rules (Northern Ireland) 1991”<sup>(10)</sup>;
- (bb) after “the case of winding-up” insert “or administration”;
- (iii) after the words “Article 6 of the Insolvency (Northern Ireland) Order 1989) or” insert “enters into administration (within the meaning of paragraph 1 of Schedule B1 to the Insolvency Act 1986 or paragraph 2 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989) or”;
- (b) after paragraph (3), insert—
- “(4) A reference in this regulation to “administration order” shall include—
- (a) the appointment of an administrator under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 or under paragraph 15 or 23 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989;
- (b) the making of an order under section 8 of that Act as it has effect by virtue of section 249(1) of the Enterprise Act 2002; and
- (c) the making of an order under Article 21 of that Order as it has effect by virtue of Article 4(1) of the Insolvency (Northern Ireland) Order 2005;
- and “administration” shall be construed accordingly.”
6. In regulation 16(3) (disclaimer of property, rescission of contracts &c)—
- (a) for the words “Sections 127 and 284 of the Insolvency Act 1986” substitute “Sections 88, 127, 245 and 284 of the Insolvency Act 1986”;
- (b) for the words “Articles 107 and 257 of the Insolvency (Northern Ireland) Order 1989” substitute “Articles 74, 107, 207 and 257 of the Insolvency (Northern Ireland) Order 1989”.
7. In regulation 19 (administration orders, &c)—
- (a) after paragraph (1) insert—
- “(1ZA) The following provisions of the Insolvency Act 1986 (which relate to administration orders and administrators), as they have effect by virtue of section 249(1) of the Enterprise Act 2002, do not apply in relation to a collateral security charge—
- (a) sections 10(1)(b) and 11(3)(c) (restriction on enforcement of security while petition for administration order pending or order in force); and
- (b) sections 15(1) and (2) (power of administrator to deal with charged property);

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<sup>(9)</sup> S.I. 1986/1925. Rule 2.85 was substituted by S.I. 2005/527.

<sup>(10)</sup> S.R. 1991 No. 364. Rule 2.086 was substituted by S.R. 2006 No. 47.

and section 11(2) (receiver to vacate office when so required by administrator) does not apply to a receiver appointed under such a charge.”;

(b) after paragraph (1A) insert—

“(1B) The following provisions of the Insolvency (Northern Ireland) Order 1989 (administration), as they have effect by virtue of Article 4(1) of the Insolvency (Northern Ireland) Order 2005<sup>(11)</sup>, do not apply in relation to a collateral security charge—

(a) Article 23(1)(b) and Article 24(3)(c) (restriction on enforcement of security while petition for administration order pending or order in force); and

(b) Article 28(1) and (2) (power of administrator to deal with charged property);

and Article 24(2) of that Order (receiver to vacate office at request of administrator) shall not apply to a receiver appointed under such a charge.”;

(c) after paragraph (3) insert—

“(4) Paragraph 20 and paragraph 12(1)(g) of Schedule A1 to the Insolvency Act 1986, and paragraph 31 and paragraph 23(1)(g) of Schedule A1 to the Insolvency (Northern Ireland) Order 1989 (effect of moratorium on creditors) shall not apply (if they would otherwise do so) to any collateral security charge.”.

*Frank Roy*

*Dave Watts*

Two of the Lords Commissioners of Her  
Majesty’s Treasury

20th July 2009

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations further implement Directive [98/26/EC](#) of the European Parliament and of the Council on settlement finality in payment and security systems (OJ L 166, 19.5.98).

They amend the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 ([S.I. 1999/2979](#)) to ensure that the modifications to the law of insolvency made in regulations 14, 15, 16 and 19 of those Regulations reflect subsequent amendments to insolvency law, and that references to the Companies Act 1985 and to the Companies (Northern Ireland) Order 1986 are replaced by references to the Companies Act 2006.