



# Companies Act 1989

## 1989 CHAPTER 40

### PART VII

#### FINANCIAL MARKETS AND INSOLVENCY

##### Modifications etc. (not altering text)

- C1** Pt. VII (ss. 154-191): functions of the Secretary of State transferred (7.6.1992) to the Treasury by S.I. 1992/1315, art. 2(1)(c) (with art. 6)  
Pt. VII (ss. 154-191) applied (E.W.S.) (15.8.1995) by S.I. 1995/2049, reg.3; and applied (with modifications) (E.W.S.) (15.8.1995) by S.I. 1995/2049, regs.3,4,5,19, 26; and applied (with modifications) (15.7.1996) by S.I. 1996/1469, regs.3, 4, 5
- C2** Pt. VII: power to apply conferred (1.12.2001) by 2000 c. 8, s. 301(1)(a); S.I. 2001/3538, art. 2(1)

##### *Introduction*

#### 154 Introduction.

This Part has effect for the purposes of safeguarding the operation of certain financial markets by provisions with respect to—

- (a) the insolvency, winding up or default of a person party to transactions in the market (sections 155 to 172),
- (b) the effectiveness or enforcement of certain charges given to secure obligations in connection with such transactions (sections 173 to 176), and
- (c) rights and remedies in relation to certain property provided as cover for margin in relation to such transactions [<sup>F1</sup>or as default fund contribution,] or subject to such a charge (sections 177 to 181).

##### Textual Amendments

- F1** Words in s. 154(c) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), 2(2)

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

### Commencement Information

**II** S. 154 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

### *Recognised investment exchanges and clearing houses*

#### **155 Market contracts.**

[<sup>F2</sup>(1) In this Part—

- (a) “clearing member client contract” means a contract between a recognised central counterparty and one or more of the parties mentioned in subsection (1A) which is recorded in the accounts of the recognised central counterparty as a position held for the account of a client, an indirect client or a group of clients or indirect clients;
- (b) “clearing member house contract” means a contract between a recognised central counterparty and a clearing member recorded in the accounts of the recognised central counterparty as a position held for the account of a clearing member;
- (c) “client trade” means a contract between two or more of the parties mentioned in subsection (1A) which corresponds to a clearing member client contract;
- (d) “market contracts” means the contracts to which this Part applies by virtue of subsections (2) to (3).]

[<sup>F3</sup>(1A) The parties referred to in subsections (1)(a) and (c) are—

- (a) a clearing member;
- (b) a client; and
- (c) an indirect client.]

[<sup>F4</sup>(2) Except as provided in subsection (2A), in relation to a recognised investment exchange this Part applies to—

- (a) contracts entered into by a member or designated non-member of the exchange [<sup>F5</sup>with a person other than the exchange] which are either
  - (i) contracts made on the exchange or on an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; or
  - (ii) contracts in the making of which the member or designated non-member was subject to the rules of the exchange or of an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; <sup>F6</sup>...

[<sup>F7</sup>(b) contracts entered into by the exchange, in its capacity as such, with a member of the exchange or with a recognised clearing house or with another recognised investment exchange for the purpose of enabling the rights and liabilities of that member or clearing house or other investment exchange under a transaction to be settled; and

- (c) contracts entered into by the exchange with a member of the exchange or with a recognised clearing house or with another recognised investment exchange for the purpose of providing central counterparty clearing services to that member or clearing house or other investment exchange.]

A “designated non-member” means a person in respect of whom action may be taken under the default rules of the exchange but who is not a member of the exchange.

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[<sup>F8</sup>(2A) Where the exchange in question is a recognised overseas investment exchange, this Part does not apply to a contract that falls within paragraph (a) of subsection (2) (unless it also falls within subsection (3)).]

[<sup>F9</sup>(2B) In relation to transactions which are cleared through a recognised central counterparty, this Part applies to—

- (a) clearing member house contracts;
- (b) clearing member client contracts;
- (c) client trades, other than client trades excluded by subsection (2C); and
- (d) contracts entered into by the recognised central counterparty with a recognised investment exchange or a recognised clearing house for the purpose of providing central counterparty clearing services to that exchange or clearing house.

(2C) A client trade is excluded by this subsection from subsection (2B)(c) if—

- (a) the clearing member which is a party to the clearing member client contract corresponding to the client trade defaults; and
- (b) the clearing member client contract is not transferred to another clearing member within the period specified for this purpose in the default rules of the recognised central counterparty.]

[<sup>F10</sup>(3) In relation to a recognised clearing house [<sup>F11</sup>which is not a recognised central counterparty,] this Part applies to—

- (a) contracts entered into by the clearing house, in its capacity as such, with a member of the clearing house or with a recognised investment exchange or with another recognised clearing house for the purpose of enabling the rights and liabilities of that member or investment exchange or other clearing house under a transaction to be settled; and
- (b) contracts entered into by the clearing house with a member of the clearing house or with a recognised investment exchange or with another recognised clearing house for the purpose of providing central counterparty clearing services to that member or investment exchange or other clearing house.]

[<sup>F12</sup>(3A) In this section “central counterparty clearing services” means—

- (a) the services provided by a recognised investment exchange or a recognised clearing house to the parties to a transaction in connection with contracts between each of the parties and the investment exchange or clearing house (in place of, or as an alternative to, a contract directly between the parties),
- (b) the services provided by a recognised clearing house to a recognised investment exchange or to another recognised clearing house in connection with contracts between them, or
- (c) the services provided by a recognised investment exchange to a recognised clearing house or to another recognised investment exchange in connection with contracts between them.]

(4) The Secretary of State may by regulations make further provision as to the contracts to be treated as “market contracts”, for the purposes of this Part, in relation to a recognised investment exchange or recognised clearing house.

(5) The regulations may add to, amend or repeal the provisions of subsections (2) and (3) above.

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### Textual Amendments

- F2** S. 155(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\(2\)\(a\)](#) (with regs. 52-58)
- F3** S. 155(1A) 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\(2\)\(b\)](#) (with regs. 52-58)
- F4** S. 155(2)(2A) substituted for s. 155(2) by S.I. 1991/880, [reg. 3](#)
- F5** Words in s. 155(2)(a) inserted (11.8.1998) by S.I. 1998/1748, [reg. 3\(a\)](#)
- F6** Word in s. 155(2)(a) omitted (15.6.2009) by virtue of [The Financial Markets and Insolvency Regulations 2009](#) (S.I. 2009/853), regs. 1(1), [2\(3\)\(a\)](#)
- F7** S. 155(2)(b)(c) substituted for s. 155(2)(b) (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009](#) (S.I. 2009/853), regs. 1(1), [2\(3\)\(a\)](#)
- F8** S. 155(2A) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009](#) (S.I. 2009/853), regs. 1(1), [2\(3\)\(b\)](#)
- F9** S. 155(2B)(2C) 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\(2\)\(c\)](#) (with regs. 52-58)
- F10** S. 155(3) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009](#) (S.I. 2009/853), regs. 1(1), [2\(3\)\(c\)](#)
- F11** Words in s. 155(3) 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\(2\)\(d\)](#) (with regs. 52-58)
- F12** S. 155(3A) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009](#) (S.I. 2009/853), regs. 1(1), [2\(3\)\(d\)](#)

### Commencement Information

- I2** S. 155 wholly in force at 25.4.1991. See s. 215 and [S.I. 1991/488](#), [art. 2\(2\)](#); 1991/878, art. 2, Sch.

## [<sup>F13</sup>155A] Qualifying collateral arrangements and qualifying property transfers

- (1) In this Part—
- “qualifying collateral arrangements” means the contracts and contractual obligations to which this Part applies by virtue of subsection (2); and
  - “qualifying property transfers” means the property transfers to which this Part applies by virtue of subsection (4).
- (2) In relation to transactions which are cleared through a recognised central counterparty, this Part applies to any contracts or contractual obligations for, or arising out of, the provision of property as margin where—
- the margin is provided to a recognised central counterparty and is recorded in the accounts of the recognised central counterparty as an asset held for the account of a client, an indirect client, or a group of clients or indirect clients; or
  - the margin is provided to a client or clearing member for the purpose of providing cover for exposures arising out of present or future client trades.
- (3) In subsection (2)—
- “property” has the meaning given by section 436(1) of the Insolvency Act 1986 and

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- (b) the reference to a contract or contractual obligation for, or arising out of, the provision of property as margin in circumstances falling within paragraph (a) or (b) of that subsection includes a reference to a contract or contractual obligation of that kind which has been amended to reflect the transfer of a clearing member client contract or client trade.
- (4) In relation to transactions which are cleared through a recognised central counterparty, this Part applies to—
- (a) transfers of property made in accordance with Article 48(7) of the EMIR Level 1 Regulation;
  - (b) transfers of property to the extent that they—
    - (i) are made by a recognised central counterparty to a non-defaulting clearing member instead of, or in place of, a defaulting clearing member;
    - (ii) represent the termination or close out value of a clearing member client contract which is transferred from a defaulting clearing member to a non-defaulting clearing member; and
    - (iii) are determined in accordance with the default rules of the recognised central counterparty.]

**Textual Amendments**

**F13** S. 155A 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(3) (with regs. 52-58)

**F14** 156 .....

**Textual Amendments**

**F14** S. 156 repealed (1.12.2001) by [S.I. 2001/3649](#), arts. 1, 75(e)

**157**

(1) A recognised UK investment exchange or [<sup>F15</sup>recognised clearing house] shall give the [<sup>F16</sup>appropriate regulator] at least [<sup>F17</sup>three months] notice of any proposal to amend, revoke or add to its default rules; and the [<sup>F18</sup>regulator] may within [<sup>F17</sup>three months] from receipt of the notice direct the exchange or clearing house not to proceed with the proposal, in whole or in part.

[<sup>F19</sup>(1A) The appropriate regulator may, if it considers it appropriate to do so, agree a shorter period of notice and, in a case where it does so, any direction under this section must be given by it within that shorter period.]

(2) A direction under this section may be varied or revoked.

(3) Any amendment or revocation of, or addition to, the default rules of an exchange or clearing house in breach of a direction under this section is ineffective.

[<sup>F20</sup>(4) The appropriate regulator”—

(a) in relation to a recognised UK investment exchange, means the FCA, and

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(b) in relation to a [<sup>F21</sup>recognised clearing house], means the Bank of England.]

#### Textual Amendments

- F15** Words in s. 157(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\(4\)\(a\)\(i\)](#) (with regs. 52-58)
- F16** Words in s. 157(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 65\(2\)\(a\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F17** Words in s. 157(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\(4\)\(a\)\(ii\)](#) (with regs. 52-58)
- F18** Word in s. 157(1) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 65\(2\)\(b\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F19** S. 157(1A) 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\(4\)\(b\)](#) (with regs. 52-58)
- F20** S. 157(4) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 65\(3\)](#) (with [Sch. 20](#)); S.I. 2013/423, art. 3, [Sch.](#)
- F21** Words in s. 157(4)(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\(4\)\(c\)](#) (with regs. 52-58)

#### Commencement Information

- I3** S. 157 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), art. 2, [Sch.](#) (subject to savings in [art. 3\(1\)](#))

## 158 Modifications of the law of insolvency.

[<sup>F22</sup>(1) The general law of insolvency has effect in relation to—

- (a) market contracts,
- (b) action taken under the rules of a recognised investment exchange, or a recognised clearing house which is not a recognised central counterparty, with respect to market contracts,
- (c) action taken under the rules of a recognised central counterparty to transfer clearing member client contracts, or settle clearing member client contracts or clearing member house contracts, in accordance with the default rules of the recognised central counterparty,
- (d) where clearing member client contracts transferred in accordance with the default rules of a recognised central counterparty were entered into by the clearing member as a principal, action taken to transfer the client trades, or groups of client trades, corresponding to those clearing member client contracts,
- (e) action taken to transfer qualifying collateral arrangements in conjunction with a transfer of clearing member client contracts as mentioned in paragraph (c) or a transfer of client trades as mentioned in paragraph (d), and
- (f) qualifying property transfers,

subject to the provisions of sections 159 to 165.]

(2) So far as those provisions relate to insolvency proceedings in respect of a person other than a defaulter, they apply in relation to—

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- [<sup>F23</sup>(a) proceedings in respect of a recognised investment exchange or a member or designated non-member of a recognised investment exchange,
- (aa) proceedings in respect of a recognised clearing house or a member of a recognised clearing house, and]
- (b) proceedings in respect of a party to a market contract [<sup>F24</sup>other than a client trade which are] begun after a recognised investment exchange or recognised clearing house has taken action under its default rules in relation to a person party to the contract as principal,
- but not in relation to any other insolvency proceedings, notwithstanding that rights or liabilities arising from market contracts fall to be dealt with in the proceedings.
- (3) The reference in subsection (2)(b) to the beginning of insolvency proceedings is to—
- (a) the presentation of a bankruptcy petition or a petition for sequestration of a person's estate, or
- [<sup>F25</sup>(b) the application for an administration order or the presentation of a winding-up petition or the passing of a resolution for voluntary winding up,]
- (c) the appointment of an administrative receiver.
- [<sup>F26</sup>(3A) In subsection (3)(b) the reference to an application for an administration order shall be taken to include a reference to—
- (a) in a case where an administrator is appointed under paragraph 14 or 22 of Schedule B1 to the Insolvency Act 1986 (appointment by floating charge holder, company or directors) following filing with the court of a copy of a notice of intention to appoint under that paragraph, the filing of the copy of the notice, and
- (b) in a case where an administrator is appointed under either of those paragraphs without a copy of a notice of intention to appoint having been filed with the court, the appointment of the administrator.]
- (4) The Secretary of State may make further provision by regulations modifying the law of insolvency in relation to the matters mentioned in [<sup>F27</sup>paragraphs (a) to (d) of] subsection (1).
- (5) The regulations may add to, amend or repeal the provisions mentioned in subsection (1), and any other provision of this Part as it applies for the purposes of those provisions, or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

#### Textual Amendments

- F22** S. 158(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(5)(a)** (with regs. 52-58)
- F23** S. 158(2)(a)(aa) substituted for s. 158(2)(a) (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(4)(a)** (with reg. 1(2)(3))
- F24** Words in s. 158(2)(b) 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(5)(b)** (with regs. 52-58)
- F25** S. 158(3)(b) substituted (15.9.2003) by [2002 c. 40, ss. 248, 279, Sch. 17 para. 44\(a\)](#) (with s. 249(1)-(3)); [S.I. 2003/2093](#), **art. 2(1)**, [Sch. 1](#) (subject to transitional provisions in [arts. 3-8](#) (as amended by [S.I. 2003/2332](#), [art. 2](#)))



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- F26** S. 158(3A) inserted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 44(b) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F27** Words in s. 158(4) 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(5)(c) (with regs. 52-58)

**Modifications etc. (not altering text)**

- C3** S. 158(4)(5): certain functions made exercisable jointly by the Secretary of State and the Treasury (7.6.1992) by S.I. 1992/1315, art. 4, Sch. 2 para. 7 (with art. 6)

**Commencement Information**

- I4** S. 158 wholly in force; s. 158(4)(5) in force for certain purposes at 25.3.1991 and wholly in force at 25.4.1991 see s. 215(2) and S.I. 1991/488, art. 2(2); 1991/878, art. 2, Sch.

**159 Proceedings of exchange or clearing house take precedence over insolvency procedures.**

- (1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy, winding up or sequestration, or [<sup>F28</sup>in the administration of a company or other body or] in the administration of an insolvent estate—
- (a) a market contract,
  - (b) the default rules of a recognised investment exchange or recognised clearing house,
  - (c) the rules of a [<sup>F29</sup>recognised investment exchange, or of a recognised clearing house which is not a recognised central counterparty,] as to the settlement of market contracts not dealt with [<sup>F30</sup>under its default rules,]
  - [<sup>F31</sup>(d) the rules of a recognised central counterparty on which the recognised central counterparty relies to give effect to the transfer of a clearing member client contract, or the settlement of a clearing member client contract or clearing member house contract, in accordance with its default rules,
  - (e) a transfer of a clearing member client contract, or the settlement of a clearing member client contract or a clearing member house contract, in accordance with the default rules of a recognised central counterparty,
  - (f) where a clearing member client contract transferred in accordance with the default rules of a recognised central counterparty was entered into by the clearing member as principal, a transfer of the client trade or group of client trades corresponding to that clearing member client contract,
  - (g) a transfer of a qualifying collateral arrangement in conjunction with the transfer of clearing member client contract as mentioned in paragraph (e) or of a client trade as mentioned in paragraph (f), or
  - (h) a qualifying property transfer.]
- (2) The powers of a relevant office-holder in his capacity as such, and the powers of the court under the <sup>M1</sup>Insolvency Act 1986 [<sup>F32</sup>, the Bankruptcy (Scotland) Act 1985, Part 10 of the Building Societies Act 1986, Parts 2 and 3 of the Banking Act 2009 or under regulations made under section 233 of that Act,] shall not be exercised in such a way as to prevent or interfere with—
- (a) the settlement in accordance with the rules of a recognised investment exchange [<sup>F33</sup>,] or recognised clearing house [<sup>F34</sup>which is not a recognised



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central counterparty,] of a market contract not dealt with under its default rules,<sup>F35</sup> ...

- (b) any action taken under the default rules of [<sup>F36</sup>a recognised investment exchange,] or [<sup>F37</sup>clearing house which is not a recognised central counterparty,]
- [<sup>F38</sup>(c) the transfer of a clearing member client contract, or the settlement of a clearing member client contract or a clearing member house contract, in accordance with the default rules of a recognised central counterparty,
- (d) where a clearing member client contract transferred in accordance with the default rules of a recognised central counterparty was entered into by the clearing member as principal, the transfer of the client trade or group of client trades corresponding to that clearing member contract,
- (e) the transfer of a qualifying collateral arrangement in conjunction with a transfer of a clearing member client contract as mentioned in paragraph (c), or a transfer of a client trade as mentioned in paragraph (d),
- (f) any action taken to give effect to any of the matters mentioned in paragraphs (c) to (e), or
- (g) any action taken to give effect to a qualifying property transfer.]

This does not prevent a relevant office-holder from afterwards seeking to recover any amount under section 163(4) or 164(4) or prevent the court from afterwards making any such order or decree as is mentioned in section 165(1) or (2) (but subject to subsections (3) and (4) of that section).

- (3) Nothing in the following provisions of this Part shall be construed as affecting the generality of the above provisions.
- (4) A debt or other liability arising out of a market contract which is the subject of default proceedings may not be proved in a winding up or bankruptcy [<sup>F39</sup>or in the administration of a company or other body], or in Scotland claimed in a winding up or sequestration [<sup>F39</sup>or in the administration of a company or other body], until the completion of the default proceedings.

A debt or other liability which by virtue of this subsection may not be proved or claimed shall not be taken into account for the purposes of any set-off until the completion of the default proceedings.

<sup>F40</sup>[(4A) However, prior to the completion of default proceedings—

- (a) where it appears to the chairman of the meeting of creditors that a sum will be certified under section 162(1) to be payable, subsection (4) shall not prevent any proof or claim including or consisting of an estimate of that sum which has been lodged or, in Scotland, submitted, from being admitted or, in Scotland, accepted, for the purpose only of determining the entitlement of a creditor to vote at a meeting of creditors; and
- (b) a creditor whose claim or proof has been lodged and admitted or, in Scotland, submitted and accepted, for the purpose of determining the entitlement of a creditor to vote at a meeting of creditors and which has not been subsequently wholly withdrawn, disallowed or rejected, is eligible as a creditor to be a member of a liquidation committee or, in bankruptcy proceedings in England and Wales, [<sup>F41</sup>or in the administration of a company or other body] a creditors' committee.]

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- (5) For the purposes of [<sup>F42</sup>subsections (4) and (4A)] the default proceedings shall be taken to be completed in relation to a person when a report is made under section 162 stating the sum (if any) certified to be due to or from him.

#### Textual Amendments

- F28** Words in s. 159(1) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(5)(a)** (with reg. 1(2)(3))
- F29** Words in s. 159(1)(c) 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(6)(a)(i)** (with regs. 52-58)
- F30** Words in s. 159(1)(c) 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(6)(a)(ii)** (with regs. 52-58)
- F31** S. 159(1)(d)-(h) 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(6)(b)** (with regs. 52-58)
- F32** Words in s. 159(2) 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(6)(c)** (with regs. 52-58)
- F33** S. 159(2)(a) comma 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(6)(d)(i)** (with regs. 52-58)
- F34** Words in s. 159(2)(a) 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(6)(d)(ii)** (with regs. 52-58)
- F35** Word in s. 159(2)(a) omitted (1.4.2013) by virtue of [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(6)(d)(iii)** (with regs. 52-58)
- F36** Words in s. 159(2)(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(6)(e)(i)** (with regs. 52-58)
- F37** Words in s. 159(2)(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(6)(e)(ii)** (with regs. 52-58)
- F38** S. 159(2)(c)-(g) 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(6)(f)** (with regs. 52-58)
- F39** Words in s. 159(4) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(5)(b)** (with reg. 1(2)(3))
- F40** S. 159(4A) inserted by [S.I. 1991/880](#), **reg. 4(2)**
- F41** Words in s. 159(4A)(b) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(5)(c)** (with reg. 1(2)(3))
- F42** Words in s. 159(5) substituted by [S.I. 1991/880](#), **reg. 4(3)**

#### Commencement Information

- I5** S. 159 wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/878](#), art. 2, **Sch.**

#### Marginal Citations

- M1** 1986 c. 45.

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

160

- (1) It is the duty of—
- (a) any person who has or had control of any assets of a defaulter, and
  - (b) any person who has or had control of any documents of or relating to a defaulter,
- to give a recognised investment exchange or recognised clearing house such assistance as it may reasonably require for the purposes of its default proceedings.

This applies notwithstanding any duty of that person under the enactments relating to insolvency.

- (2) A person shall not under this section be required to provide any information or produce any document which he would be entitled to refuse to provide or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.
- (3) Where original documents are supplied in pursuance of this section, the exchange or clearing house shall return them forthwith after the completion of the relevant default proceedings, and shall in the meantime allow reasonable access to them to the person by whom they were supplied and to any person who would be entitled to have access to them if they were still in the control of the person by whom they were supplied.
- (4) The expenses of a relevant office-holder in giving assistance under this section are recoverable as part of the expenses incurred by him in the discharge of his duties; and he shall not be required under this section to take any action which involves expenses which cannot be so recovered, unless the exchange or clearing house undertakes to meet them.

There shall be treated as expenses of his such reasonable sums as he may determine in respect of time spent in giving the assistance [<sup>F43</sup>and for the purpose of determining the priority in which his expenses are payable out of the assets, sums in respect of time spent shall be treated as his remuneration and other sums shall be treated as his disbursements or, in Scotland, outlays.]

- (5) The Secretary of State may by regulations make further provision as to the duties of persons to give assistance to a recognised investment exchange or recognised clearing house for the purposes of its default proceedings, and the duties of the exchange or clearing house with respect to information supplied to it.

The regulations may add to, amend or repeal the provisions of subsections (1) to (4) above.

- (6) In this section “document” includes information recorded in any form.

#### Textual Amendments

**F43** Words in s. 160(4) added by S.I. 1991/880, Pt. III reg. 5

#### Modifications etc. (not altering text)

**C4** S. 160(5): (7.6.1992) certain functions made exercisable jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para.7 (with art. 6).

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

### Commencement Information

- I6** S. 160 wholly in force at 1.10.1991; s. 160(5) in force for certain purposes at 25.3.1991 see 215(2) and S.I. 1991/488, **art. 2(2)**, s. 160 in force at 25.4.1991 with specified exceptions see S.I. 1991/878, art. 2, Sch. (subject to savings in art. 3(2)), s. 160 wholly in force at 1.10.1991 see S.I. 1991/2173, art. 2

## 161 Supplementary provisions as to default proceedings.

- (1) If the court is satisfied on an application by a relevant office-holder that a party to a market contract with a defaulter intends to dissipate or apply his assets so as to prevent the office-holder recovering such sums as may become due upon the completion of the default proceedings, the court may grant such interlocutory relief (in Scotland, such interim order) as it thinks fit.
- (2) A liquidator<sup>F44</sup>, administrator] or trustee of a defaulter or, in Scotland, a permanent trustee on the sequestrated estate of the defaulter shall not—
  - (a) declare or pay any dividend to the creditors, or
  - (b) return any capital to contributories,
 unless he has retained what he reasonably considers to be an adequate reserve in respect of any claims arising as a result of the default proceedings of the exchange or clearing house concerned.
- (3) The court may on an application by a relevant office-holder make such order as it thinks fit altering or dispensing from compliance with such of the duties of his office as are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken.
- (4) Nothing in <sup>F45</sup>section 126, 128, 130, 185 or 285 of, or paragraph <sup>F46</sup>[40, 41,] 42 or 43 (<sup>F47</sup>including those paragraphs as applied by paragraph 44) of Schedule B1 to, the Insolvency Act 1986] (which restrict the taking of certain legal proceedings and other steps), and nothing in any rule of law in Scotland to the like effect as the said section 285, in the Bankruptcy (Scotland) Act <sup>M2</sup>1985 or in the Debtors (Scotland) Act <sup>M3</sup> as to the effect of sequestration, shall affect any action taken by an exchange or clearing house for the purpose of its default proceedings.

### Textual Amendments

- F44** Words in s. 161(2) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(6)(a)** (with reg. 1(2)(3))
- F45** Words in s. 161(4) substituted (15.9.2003) by [Enterprise Act 2002 \(c. 40\)](#), ss. 248, 279, Sch. 17 para. 45 (with savings in s. 249(1)-(3)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F46** Words in s. 161(4) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(6)(b)(i)** (with reg. 1(2)(3))
- F47** Words in s. 161(4) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(6)(b)(ii)** (with reg. 1(2)(3))

### Modifications etc. (not altering text)

- C5** S. 161 amended by S.I. 1991/880, **reg. 19(1)**
- C6** S. 161(4) (as it has effect by virtue of Enterprise Act 2002 (c. 40), s. 249(1)) modified (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(6)(c)** (with reg. 1(2)(3))

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

#### Commencement Information

**I7** S. 161 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

#### Marginal Citations

**M2** 1985 c. 66.

**M3** 1987 c. 18.

### 162 Duty to report on completion of default proceedings.

(1) <sup>F48</sup>Subject to subsection (1A), a recognised investment exchange or recognised clearing house shall, on the completion of proceedings under its default rules, report to the [<sup>F49</sup>appropriate regulator] on its proceedings stating in respect of each creditor or debtor the sum [<sup>F50</sup>or sums] certified by them to be payable from or to the defaulter or, as the case may be, the fact that no sum is payable.

<sup>F51</sup>(1A) A recognised overseas investment exchange or recognised overseas clearing house shall not be subject to the obligation under subsection (1) unless it has been notified by the [<sup>F52</sup>appropriate regulator] that a report is required for the purpose of insolvency proceedings in any part of the United Kingdom.

[<sup>F53</sup>(1B) The report under subsection (1) need not deal with a clearing member client contract which has been transferred in accordance with the default rules of a recognised central counterparty.]

(2) The exchange or clearing house may make a single report or may make reports from time to time as proceedings are completed with respect to the transactions affecting particular persons.

(3) The exchange or clearing house shall apply a copy of every report under this section to the defaulter and to any relevant office-holder acting in relation to him or to his estate.

(4) When a report under this section is received by the [<sup>F54</sup>[<sup>F55</sup>appropriate regulator], it] shall publish notice of that fact in such manner as [<sup>F56</sup>it] thinks appropriate for bringing [<sup>F57</sup>the report] to the attention of creditors and debtors of the defaulter.

(5) An exchange or clearing house shall make available for inspection by a creditor or debtor of the defaulter so much of any report by it under this section as relates to the sum (if any) certified to be due or from him or to the method by which that sum was determined.

(6) Any such person may require the exchange or clearing house, on payment of such reasonable fee as the exchange or clearing house may determine, to provide him with a copy of any part of a report which he is entitled to inspect.

[<sup>F58</sup>(7) “The appropriate regulator”—

- (a) in relation to a recognised investment exchange or a recognised overseas investment exchange, means the FCA, and
- (b) in relation to a recognised clearing house or a recognised overseas clearing house, means the Bank of England.]

#### Textual Amendments

**F48** Words in s. 162(1) inserted by S.I. 1991/880, reg. 6(2)

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

- F49** Words in s. 162(1) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 66(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F50** Words in s. 162(1) 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(7)(a)** (with regs. 52-58)
- F51** S. 162(1A) inserted by S.I. 1991/880, **reg. 6(3)**
- F52** Words in s. 162(1A) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 66(2)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F53** S. 162(1B) 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(7)(b)** (with regs. 52-58)
- F54** Words in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(4)(a)**
- F55** Words in s. 162(4) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 66(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F56** Word in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(4)(b)**
- F57** Words in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(4)(c)**
- F58** S. 162(7) inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 66(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.

#### Modifications etc. (not altering text)

- C7** S. 162 applied (with modifications) (E.W.S.) (11.12.1999) by S.I. 1999/2979, **reg. 15(1)**

#### Commencement Information

- I8** S. 162 wholly in force at 1.10.1991; s. 162 in force for certain purposes at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.** and wholly in force at 1.10.1991 see s. 215 and S.I. 1991/2173, **art. 2**

### 163 Net sum payable on completion of default proceedings.

- [<sup>F59</sup>(1) The following provisions apply with respect to a net sum certified by a recognised investment exchange or recognised clearing house under its default rules to be payable by or to a defaulter.]
- (2) If, in England and Wales, a bankruptcy [<sup>F60</sup>, winding-up or administration order has been made], or a resolution for voluntary winding-up has been passed, the debt—
- is provable in the bankruptcy [<sup>F61</sup>, winding up or administration] or, as the case may be, is payable to the relevant office-holder, and
  - shall be taken into account, where appropriate, under section 323 of the Insolvency Act <sup>M4</sup>1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of winding up [<sup>F62</sup> or administration],
- in the same way as a debt before the commencement of the bankruptcy, the date on which the body corporate goes into liquidation (within the meaning of section 247 of the Insolvency Act 1986) [<sup>F63</sup>, or enters administration] or, in the case of a partnership, the date of the winding-up order [<sup>F64</sup> or the date on which the partnership enters administration].
- (3) If, in Scotland, an award of sequestration or a winding-up [<sup>F65</sup> or administration] order has been made, or a resolution for voluntary winding up has been passed, the debt—
- may be claimed in the sequestration [<sup>F66</sup>, winding up or administration] or, as the case may be, is payable to the relevant office-holder, and
  - shall be taken into account for the purposes of any rule of law relating to set-off applicable in sequestration [<sup>F67</sup>, winding up or administration],



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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

in the same way as a debt due before the date of sequestration (within the meaning of section 73(1) of the <sup>M5</sup>Bankruptcy (Scotland) Act 1985) or the commencement of the winding up (within the meaning of section 129 of the Insolvency Act 1986) [<sup>F68</sup>or the date on which the body corporate enters administration].

[<sup>F69</sup>(3A) In subsections (2) and (3), a reference to the making of an administration order shall be taken to include a reference to the appointment of an administrator under—

- (a) paragraph 14 of Schedule B1 to the Insolvency Act 1986 (appointment by holder of qualifying floating charge); or
- (b) paragraph 22 of that Schedule (appointment by company or directors).]

(4) However, where (or to the extent that) a sum is taken into account by virtue of subsection (2)(b) or (3)(b) which arises from a contract entered into at a time when the creditor had notice—

- (a) that a bankruptcy petition or, in Scotland, a petition for sequestration was pending, <sup>F70</sup>...
- (b) that a meeting of creditors had been summoned under section 98 of the Insolvency Act <sup>M6</sup>1986 or that a winding-up petition was pending, [<sup>F71</sup>or

[<sup>F72</sup>(c) that an application for an administration order was pending or that any person had given notice of intention to appoint an administrator,]

the value of any profit to him arising from the sum being so taken into account (or being so taken into account to that extent) is recoverable from him by the relevant office-holder unless the court directs otherwise.

(5) Subsection (4) does not apply in relation to a sum arising from a contract effected under the default rules of a recognised investment exchange or recognised clearing house.

(6) Any sum recoverable by virtue of subsection (4) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.

#### Textual Amendments

- F59** S. 163(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(8)** (with regs. 52-58)
- F60** Words in s. 163(2) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(a)(i)** (with reg. 1(2)(3))
- F61** Words in s. 163(2)(a) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(a)(ii)** (with reg. 1(2)(3))
- F62** Words in s. 163(2)(b) added (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(a)(iii)** (with reg. 1(2)(3))
- F63** Words in s. 163(2) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(a)(iv)** (with reg. 1(2)(3))
- F64** Words in s. 163(2) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(a)(v)** (with reg. 1(2)(3))
- F65** Words in s. 163(3) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(b)(i)** (with reg. 1(2)(3))
- F66** Words in s. 163(3)(a) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(b)(ii)** (with reg. 1(2)(3))
- F67** Words in s. 163(3)(b) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(b)(ii)** (with reg. 1(2)(3))



*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

- F68** Words in s. 163(3) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(b)(iii)** (with reg. 1(2)(3))
- F69** S. 163(3A) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(c)** (with reg. 1(2)(3))
- F70** Word in s. 163(4)(a) omitted (15.6.2009) by virtue of [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(d)** (with reg. 1(2)(3))
- F71** Word in s. 163(4)(b) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(d)** (with reg. 1(2)(3))
- F72** S. 163(4)(c) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(7)(d)** (with reg. 1(2)(3))

#### Modifications etc. (not altering text)

- C8** S. 163 amended by [S.I. 1991/880](#), **reg. 19(1)**  
S. 163 applied (with modifications) (11.12.1999) by [S.I. 1999/2979](#), **reg. 15(1)**
- C9** S. 163(4)-(6) excluded in part (11.12.1999) by [S.I. 1999/2979](#), **reg. 21(2)(a)**

#### Commencement Information

- I9** S. 163 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), art. 2, **Sch.**

#### Marginal Citations

- M4** [1986 c. 45.](#)
- M5** [1985 c. 66.](#)
- M6** [1986 c. 45.](#)

## 164 Disclaimer of property, rescission of contracts, &c.

- (1) Sections 178, 186, 315 and 345 of the Insolvency Act 1986 (power to disclaim onerous property and court's power to order rescission of contracts, &c.) do not apply in relation to—

- (a) a market contract, <sup>F73</sup>...
- [<sup>F74</sup>(aa) a qualifying collateral arrangement,
- (ab) a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement, as mentioned in paragraphs (c) to (e) of section 158(1),
- (ac) a qualifying property transfer, or]
- (b) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to market contracts [<sup>F75</sup>or as default fund contribution].

In the application of this subsection in Scotland, the reference to sections 178, 315 and 345 shall be construed as a reference to any rule of law having the like effect as those sections.

- (2) In Scotland, a permanent trustee on the sequestrated estate of a defaulter or a liquidator is bound by any market contract to which that defaulter is a party and by any contract as is mentioned in subsection (1)(b) above notwithstanding section 42 of the <sup>M7</sup>Bankruptcy (Scotland) Act 1985 or any rule of law to the like effect applying in liquidations.
- (3) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition), and section 32(8) of the Bankruptcy (Scotland) Act 1985 (effect of dealing with debtor relating to estate vested in permanent trustee), do not apply to—

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

- (a) a market contract, or any disposition of property in pursuance of such a contract,
  - (b) the provision of margin in relation to market contracts,
  - [<sup>F76</sup>(ba) the provision of default fund contribution to the exchange or clearing house,]
  - [<sup>F77</sup>(bb) a qualifying collateral arrangement,
  - (bc) a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement, as mentioned in paragraphs (c) to (e) of section 158(1),
  - (bd) a qualifying property transfer]
  - (c) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to a market contract [<sup>F78</sup>or as default fund contribution], or any disposition of property in pursuance of such a contract, or
  - (d) any disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin [<sup>F79</sup>or as default fund contribution].
- (4) However, where—
- (a) a market contract is entered into by a person who has notice that a petition has been presented for the winding up or bankruptcy or sequestration of the estate of the other party to the contract, or
  - (b) margin in relation to a market contract [<sup>F80</sup>or default fund contribution] is accepted by a person who has notice that such a petition has been presented in relation to the person by whom or on whose behalf the margin [<sup>F81</sup>or default fund contribution] is provided,
- the value of any profit to him arising from the contract or, as the case may be, the amount or value of the margin [<sup>F81</sup>or default fund contribution] is recoverable from him by the relevant office-holder unless the court directs otherwise.
- [<sup>F82</sup>(5) Subsection (4)(a) does not apply where the person entering into the contract is a recognised investment exchange or recognised clearing house acting in accordance with its rules, or where the contract is effected under the default rules of such an exchange or clearing house; but subsection (4)(b) applies in relation to the provision of—
- (a) margin in relation to any such contract, unless the contract has been transferred in accordance with the default rules of the central counterparty, or
  - (b) default fund contribution.]
- (6) Any sum recoverable by virtue of subsection (4) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.

#### Textual Amendments

- F73** Word in s. 164(1)(a) omitted (1.4.2013) by virtue of [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(9)(a)** (with regs. 52-58)
- F74** S. 164(1)(aa)-(ac) 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(9)(b)** (with regs. 52-58)
- F75** Words in s. 164(1)(b) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(8)(a)** (with reg. 1(2)(3))

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

- F76** S. 164(3)(ba) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(b)(i)** (with reg. 1(2)(3))
- F77** S. 164(3)(bb)-(bd) 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(9)(c)** (with regs. 52-58)
- F78** Words in s. 164(3)(c) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(b)(ii)** (with reg. 1(2)(3))
- F79** Words in s. 164(3)(d) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(b)(iii)** (with reg. 1(2)(3))
- F80** Words in s. 164(4) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(c)(i)** (with reg. 1(2)(3))
- F81** Words in s. 164(4) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(8)(c)(ii)** (with reg. 1(2)(3))
- F82** S. 164(5) 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(9)(d)** (with regs. 52-58)

#### Modifications etc. (not altering text)

- C10** S. 164 amended by S.I. 1991/880, **reg. 19(1)**
- C11** S. 164(4)-(6) excluded in part (11.12.1999) by S.I. 1999/2979, **reg. 21(2)(b)**

#### Commencement Information

- I10** S. 164 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

#### Marginal Citations

- M7** 1985 c. 66.

## 165 Adjustment of prior transactions.

- (1) No order shall be made in relation to a transaction to which this section applies under—
- section 238 or 339 of the Insolvency Act 1986 (transactions at an under-value),
  - section 239 or 340 of that Act (preferences), or
  - section 423 of that Act (transactions defrauding creditors).
- (2) As respects Scotland, no decree shall be granted in relation to any such transaction—
- under section 34 or 36 of the <sup>M8</sup>Bankruptcy (Scotland) Act 1985 or section 242 or 243 of the Insolvency Act 1986 (gratuitous alienations and unfair preferences), or
  - at common law on grounds of gratuitous alienations or fraudulent preferences.
- (3) This section applies to—
- a market contract to which a recognised investment exchange or recognised clearing house is a party or which is entered into under its default rules, <sup>F83</sup>...
  - <sup>F84</sup>(ab) a market contract to which this Part applies by virtue of section 155(2B), and
  - a disposition of property in pursuance of a market contract referred to in paragraph (a) or (ab).]
- (4) Where margin is provided in relation to a market contract and (by virtue of subsection (3)(a) <sup>F85</sup>, (3)(ab)] or otherwise) no such order or decree as is mentioned in subsection (1) or (2) has been, or could be, made in relation to that contract, this section applies to—

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

- (a) the provision of the margin,
  - [<sup>F86</sup>(ab) a qualifying collateral arrangement,]
  - (b) any contract effected by the exchange or clearing house in question for the purpose of realising the property provided as margin, and
  - (c) any disposition of property in accordance with the rules of the exchange or clearing house [<sup>F87</sup>in question] as to the application of property provided as margin.
- [<sup>F88</sup>(5) This section also applies to—
- (a) the provision of default fund contribution to a recognised investment exchange or recognised clearing house,
  - (b) any contract effected by a recognised investment exchange or recognised clearing house for the purpose of realising the property provided as default fund contribution, <sup>F89</sup>...
  - (c) any disposition of property in accordance with the rules of the recognised investment exchange or recognised clearing house as to the application of property provided as default fund [<sup>F90</sup>contribution,]
  - [<sup>F91</sup>(d) a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement as mentioned in paragraphs (c) to (e) of section 158(1), and
  - (e) a qualifying property transfer.]]

#### Textual Amendments

- F83** Word in s. 165(3)(a) omitted (1.4.2013) by virtue of [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\(10\)\(a\)](#) (with regs. 52-58)
- F84** S. 165(3)(ab)(b) substituted for s. 165(3)(b) (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\(10\)\(b\)](#) (with regs. 52-58)
- F85** Words in s. 165(4) 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\(10\)\(c\)](#) (with regs. 52-58)
- F86** S. 165(4)(ab) 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\(10\)\(d\)](#) (with regs. 52-58)
- F87** Words in s. 165(4)(c) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), [2\(9\)\(a\)](#) (with reg. 1(2)(3))
- F88** S. 165(5) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), [2\(9\)\(b\)](#) (with reg. 1(2)(3))
- F89** Word in s. 165(5)(b) omitted (1.4.2013) by virtue of [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\(10\)\(e\)](#) (with regs. 52-58)
- F90** Word in s. 165(5)(c) 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\(10\)\(f\)](#) (with regs. 52-58)
- F91** S. 165(5)(d)(e) 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\(10\)\(g\)](#) (with regs. 52-58)

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

### Commencement Information

**I11** S. 165 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

### Marginal Citations

**M8** 1985 c. 66.

## 166 Powers<sup>F92</sup> ... to give directions.

- (1) The powers conferred by this section are exercisable in relation to a recognised UK investment exchange or [<sup>F93</sup>recognised clearing house].
- (2) Where in any case an exchange or clearing house has not taken action under its default rules—
  - (a) if it appears to the [<sup>F94</sup>appropriate regulator] that it could take action, [<sup>F95</sup>the [<sup>F96</sup>regulator]] may direct it to do so, and
  - (b) if it appears to the [<sup>F97</sup>appropriate regulator] that it is proposing to take or may take action, [<sup>F95</sup>the [<sup>F98</sup>regulator]] may direct it not to do so.
- (3) Before giving such a direction the [<sup>F99</sup>appropriate regulator] shall consult the exchange or clearing house in question; and [<sup>F100</sup>it] shall not give a direction unless [<sup>F100</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>F101</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>F102</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), or
    - (ii) in connection with a particular exercise of a power under that Part.]
- <sup>F103</sup>(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.]

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

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- (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 an exchange or clearing house has taken or been directed to take action under its default rules, the [F104appropriate 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.

F105 .....

[F106(7A) Where the exchange or clearing house 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 exchange or clearing house 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—
  - (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), or
  - (iii) in connection with a particular exercise of a power under that Part.]

(8) A direction under this section is enforceable, on the application of the [F107regulator which gave the direction], by injunction or, in Scotland, by an order under section 45 of the M9Court of Session Act 1988; and where an exchange[F108, a clearing house 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.

[F109(9) “The appropriate regulator”—

- (a) in relation to a recognised UK investment exchange, means the FCA, and
- (b) in relation to a [F110recognised clearing house], means the Bank of England.]



*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

### Textual Amendments

- F92** 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.
- F93** 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)
- F94** 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.
- F95** Words in s. 166(2)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 81(2)(b)
- F96** 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.
- F97** 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.
- F98** 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.
- F99** 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.
- F100** Words in s. 166(3) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 81(3)(b)
- F101** 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.
- F102** 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.
- F103** 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)
- F104** 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.
- F105** 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.
- F106** 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.
- F107** 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.
- F108** 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)
- F109** 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.
- F110** 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)

### Modifications etc. (not altering text)

- C12** 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

- I12** 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.



*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

### Marginal Citations

M9 1988 c. 36.

## 167 Application to determine whether default proceedings to be taken.

- [<sup>F111</sup>(1) This section applies where a relevant insolvency event has occurred in the case of—
- (a) a recognised investment exchange or a member or designated non-member of a recognised investment exchange, or
  - (b) a recognised clearing house or a member of a recognised clearing house.

The investment exchange, member, designated non-member or clearing house in whose case a relevant insolvency event has occurred is referred to below as “the person in default”.

- (1A) For the purposes of this section a “relevant insolvency event” occurs where—
- (a) a bankruptcy order is made,
  - (b) an award of sequestration is made,
  - (c) an order appointing an interim receiver is made,
  - (d) an administration or winding up order is made,
  - (e) an administrator is appointed under paragraph 14 of Schedule B1 to the Insolvency Act 1986 (appointment by holder of qualifying floating charge) or under paragraph 22 of that Schedule (appointment by company or directors),
  - (f) a resolution for voluntary winding up is passed, or
  - (g) an order appointing a provisional liquidator is made.
- (1B) Where in relation to a person in default a recognised investment exchange or a recognised clearing house (“the responsible exchange or clearing house”)—
- (a) has power under its default rules to take action in consequence of the relevant insolvency event or the matters giving rise to it, but
  - (b) has not done so,

a relevant office-holder appointed in connection with or in consequence of the relevant insolvency event may apply to the [<sup>F112</sup>appropriate regulator].]

- (2) The application shall specify [<sup>F113</sup>the responsible exchange or clearing house] and the grounds on which it is made.
- (3) On receipt of the application the [<sup>F114</sup>appropriate regulator] shall notify [<sup>F115</sup>the responsible exchange or clearing house], and unless within three business days after the day on which the notice is received [<sup>F115</sup>the responsible exchange or clearing house]—
- (a) takes action under its default rules, or
  - (b) notifies the [<sup>F114</sup>appropriate regulator] that it proposes to do so forthwith,

then, subject as follows, the provisions of sections 158 to 165 above do not apply in relation to market contracts to which [<sup>F116</sup>the person in default] is a party or to anything done by [<sup>F115</sup>the responsible exchange or clearing house] for the purposes of, or in connection with, the settlement of any such contract.

For this purpose a “business day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in any part of the United Kingdom under the <sup>M10</sup>Banking and Financial Dealings Act 1971.

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

- (4) The provisions of sections 158 to 165 are not disapplied if before the end of the period mentioned in subsection (3) the <sup>F117</sup>appropriate regulator] gives <sup>F118</sup>the responsible exchange or clearing house] a direction under section 166(2)(a) (direction to take action under default rules).

No such direction may be given after the end of that period.

- (5) If <sup>F119</sup>the responsible exchange or clearing house] notifies the <sup>F120</sup>appropriate regulator] that it proposes to take action under its default rules forthwith, it shall do so; and that duty is enforceable, on the application of the <sup>F120</sup>appropriate regulator], by injunction or, in Scotland, by an order under section 45 of the <sup>M11</sup>Court of Session Act 1988.

<sup>F121</sup>(6) “The appropriate regulator”—

- (a) in relation to a responsible investment exchange, means the FCA, and  
(b) in relation to a responsible clearing house, means the Bank of England.]

#### Textual Amendments

- F111** S. 167(1)-(1B) substituted for s. 167(1)(1A) (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(10)(a)** (with reg. 1(2)(3))
- F112** Words in s. 167(1B) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 67(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F113** Words in s. 167(2) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(10)(b)** (with reg. 1(2)(3))
- F114** Words in s. 167(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 67(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F115** Words in s. 167(3) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(10)(c)(i)** (with reg. 1(2)(3))
- F116** Words in s. 167(3) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(10)(c)(ii)** (with reg. 1(2)(3))
- F117** Words in s. 167(4) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 67(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F118** Words in s. 167(4) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(10)(d)** (with reg. 1(2)(3))
- F119** Words in s. 167(5) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(10)(d)** (with reg. 1(2)(3))
- F120** Words in s. 167(5) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 67(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F121** S. 167(6) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 67(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

#### Modifications etc. (not altering text)

- C13** S. 167 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

- I13** S. 167 wholly in force at 1.10.1991; s. 167 in force for certain purposes at 25.4.1991 see s. 215 and [S.I. 1991/878](#), art. 2, **Sch.** and wholly in force at 1.10.1991 see [S.I. 1991/2173](#), art. 2

#### Marginal Citations

- M10** 1971 c. 80.

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

M11 1988 c. 36.

<sup>F122</sup>168 .....

#### Textual Amendments

F122 S. 168 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(f)

### 169 Supplementary provisions.

<sup>F123</sup>(1) .....

(2) [<sup>F124</sup>Sections 296 and 297 of the Financial Services and Markets Act 2000 apply] in relation to a failure by a recognised investment exchange or recognised clearing house to comply with an obligation under this Part as to a failure to comply with an obligation under that Act.

(3) Where the recognition of an investment exchange or clearing house is revoked under the [<sup>F125</sup>Financial Services and Markets Act 2000, the appropriate authority] may, before or after the revocation order, give such directions as [<sup>F126</sup>it] thinks fit with respect to the continued application of the provisions of this Part, with such exceptions, additions and adaptations as may be specified in the direction, in relation to cases where a relevant event of any description specified in the directions occurred before the revocation order takes effect.

<sup>F127</sup>(3A) “The appropriate authority” means—

(a) in the case of an overseas investment exchange or clearing house, the Treasury;

<sup>F128</sup>(b) in the case of a UK investment exchange, the FCA, and

(c) in the case of a UK clearing house, the Bank of England.]]

<sup>F123</sup>(4) .....

(5) [<sup>F129</sup>Regulations under section 414 of the Financial Services and Markets Act 2000 (service of notices) may make provision] in relation to a notice, direction or other document required or authorised by or under this Part to be given to or served on any person other than the [<sup>F130</sup>Treasury]<sup>F131</sup>, the FCA or the Bank of England]].

#### Textual Amendments

F123 S. 169(1)(4) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(g)

F124 Words in s. 169(2) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(2)

F125 Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(a)

F126 Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(b)

F127 S. 169(3A) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(4)

F128 S. 169(3A)(b)(c) substituted for s. 169(3A)(b) (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 68(2) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

F129 Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(a)

F130 Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(b)

F131 Words in s. 169(5) substituted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), Sch. 18 para. 68(3) (with Sch. 20); S.I. 2013/423, art. 3, Sch.

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

#### **Modifications etc. (not altering text)**

**C14** S. 169(3) applied (with modifications) (E.W.S.) (15.8.1995) by [S.I. 1995/2049, reg. 28](#)

#### **Commencement Information**

**I14** S. 169 partly in force: s. 169(1)(2)(3)(5) in force 25.4.1991 see s. 215(2) and [S.I. 1991/878, art. 2, Sch.](#)

### *Other exchanges and clearing houses*

#### **170 Certain overseas exchanges and clearing houses.**

- [<sup>F132</sup>(1) The Secretary of State and the Treasury may by regulations provide that this Part applies in relation to contracts connected with an overseas investment exchange or overseas clearing house which—
- (a) is not a recognised investment exchange or recognised clearing house, but
  - (b) is approved by the Treasury in accordance with such requirements as may be so specified,
- as it applies in relation to contracts connected with a recognised investment exchange or recognised clearing house.]
- (2) The [<sup>F133</sup>Treasury] shall not approve an overseas investment exchange or clearing house unless [<sup>F134</sup>they are] satisfied—
- (a) that the rules and practices of the body, together with the law of the country in which the body's head office is situated, provide adequate procedures for dealing with the default of persons party to contracts connected with the body, and
  - (b) that it is otherwise appropriate to approve the body.
- (3) The reference in subsection (2)(a) to default is to a person being unable to meet his obligations.
- (4) The regulations may apply in relation to the approval of a body under this section such of the provisions of the [<sup>F135</sup>Financial Services and Markets Act 2000] as the Secretary of State considers appropriate.
- (5) The Secretary of State may make regulations which, in relation to a body which is so approved—
- (a) apply such of the provisions of the [<sup>F135</sup>Financial Services and Markets Act 2000] as the Secretary of State considers appropriate, and
  - (b) provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient;
- and different provision may be made with respect to different bodies or descriptions of body.
- (6) Where the regulations apply any provisions of the [<sup>F135</sup>Financial Services and Markets Act 2000], they may provide that those provisions apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient.

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

#### Textual Amendments

**F132** S. 170(1) substituted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), [regs. 1\(1\), 2\(11\)](#)

**F133** Word in s. 170(2) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 84\(3\)\(a\)](#)

**F134** Words in s. 170(2) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 84\(3\)\(b\)](#)

**F135** Words in s. 170(4)(5)(a)(6) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 84\(4\)](#)

#### Modifications etc. (not altering text)

**C15** Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by [S.I. 1992/1315](#), [art. 4](#), [Sch. 2 para. 7](#) (with [art. 6](#)).

#### Commencement Information

**I15** S. 170 partly in force; s. 170 not in force at Royal Assent see s. 215(1)(2); s. 170 in force for certain purposes at 25.3.1991 by [S.I. 1991/488](#), [art. 2\(2\)](#).

### <sup>F136</sup>170A EEA central counterparties and third country central counterparties

- (1) In this section and section 170B—
- (a) “assets” has the meaning given by Article 39(10) of the EMIR Level 1 Regulation;
  - (b) “EBA” means the European Banking Authority established by Regulation 1093/2010/EU of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority);
  - (c) “ESMA” means the European Securities and Markets Authority established by Regulation 1095/2010/EU of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority);
  - (d) “overseas competent authority” means a competent authority responsible for the authorisation or supervision of clearing houses or central counterparties in a country or territory other than the United Kingdom;
  - (e) “relevant provisions” means any provisions of the default rules of an EEA central counterparty or third country central counterparty which—
    - (i) provide for the transfer of the positions or assets of a defaulting clearing member;
    - (ii) are not necessary for the purposes of complying with the minimum requirements of Articles 48(5) and (6) of the EMIR Level 1 Regulation; and
    - (iii) may be relevant to a question falling to be determined in accordance with the law of a part of the United Kingdom;
  - (f) “relevant requirements” means the requirements specified in paragraph 34(2) (portability of accounts: default rules going beyond requirements of EMIR) of Part 6 of the Schedule to the Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001;
  - (g) “UK clearing member” means a clearing member to which the law of a part of the United Kingdom will apply for the purposes of an insolvent reorganisation or winding up.
- (2) This Part applies to transactions cleared through an EEA central counterparty or a third country central counterparty by a UK clearing member as it applies to transactions

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

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cleared through a recognised central counterparty, but subject to the modifications in subsections (3) to (5).

(3) For section 157 there is to be substituted—

**157. “Change in default rules**

- (1) An EEA central counterparty or a third country central counterparty in respect of which an order under section 170B(4) has been made and not revoked must give the Bank of England at least three months’ notice of any proposal to amend, revoke or add to its default rules.
  - (2) The Bank of England may, if it considers it appropriate to do so, agree a shorter period of notice.
  - (3) Where notice is given to the Bank of England under subsection (1) an EEA central counterparty or third country central counterparty must provide the Bank of England with such information, documents and reports as the Bank of England may require.
  - (4) Information, documents and reports required under subsection (3) must be provided in English and be given at such times, in such form and at such place, and verified in such a manner, as the Bank of England may direct.”.
- (4) Section 162 does not apply to an EEA central counterparty or a third country central counterparty unless it has been notified by the Bank of England that a report under that section is required for the purposes of insolvency proceedings in any part of the United Kingdom.
- (5) In relation to an EEA central counterparty or third country central counterparty, references in this Part to the “rules” or “default rules” of the central counterparty are to be taken not to include references to any relevant provisions unless—
- (a) the relevant provisions satisfy the relevant requirements; or
  - (b) the Bank of England has made an order under section 170B(4) recognising that the relevant provisions of its default rules satisfy the relevant requirements and the order has not been revoked.

**Textual Amendments**

**F136** Ss. 170A, 170B 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(12)** (with regs. 52-58)

**170B. EEA central counterparties and third country central counterparties: procedure**

- (1) An EEA central counterparty or third country central counterparty may apply to the Bank of England for an order recognising that the relevant provisions of its default rules satisfy the relevant requirements.
- (2) The application must be made in such manner, and must be accompanied by such information, documents and reports, as the Bank of England may direct.

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*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

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- (3) Information, documents and reports required under subsection (2) must be provided in English and be given at such times, in such form and at such place, and verified in such manner, as the Bank of England may direct.
- (4) The Bank of England may make an order recognising that the relevant provisions of the default rules satisfy the relevant requirements.
- (5) The Bank of England may by order revoke an order made under subsection (4) if—
  - (a) the EEA central counterparty or third country central counterparty consents;
  - (b) the EEA central counterparty or third country central counterparty has failed to pay a fee which is owing to the Bank of England under paragraph 36 of Schedule 17A to the Financial Services and Markets Act 2000;
  - (c) the EEA central counterparty or third country central counterparty is failing or has failed to comply with a requirement of or imposed under section 157 (as modified by section 170A(3)); or
  - (d) it appears to the Bank of England that the relevant provisions no longer satisfy the relevant requirements.
- (6) An order made under subsection (4) or (5) must state the time and date when it is to have effect.
- (7) An order made under subsection (5) may contain such transitional provision as the Bank of England considers appropriate.
- (8) The Bank of England must—
  - (a) maintain a register of orders made under subsection (4) which are in force; and
  - (b) publish the register in such manner as it appears to the Bank of England to be appropriate.
- (9) Section 298 of the Financial Services and Markets Act 2000 applies to a refusal to make an order under subsection (4) or the making of a revocation order under subsection (5)(b), (c) or (d) as it applies to the making of a revocation order under section 297(2) of the Financial Services and Markets Act 2000, but with the following modifications—
  - (a) for “appropriate regulator” substitute “the Bank of England”;
  - (b) for “recognised body” substitute “EEA central counterparty or third country central counterparty”; and
  - (c) in subsection (7), for “give a direction under section 296” substitute “make an order under paragraph (b), (c) or (d) of section 170B(5) of the Companies Act 1989”.
- (10) If the Bank of England refuses to make an order under subsection (4) or makes an order under subsection (5)(b), (c) or (d), the EEA central counterparty or third country central counterparty may refer the matter to the Upper Tribunal.
- (11) The Bank of England may rely on information or advice from an overseas competent authority, the EBA or ESMA in its determination of an application under subsection (1) or the making of a revocation order under subsection (5)(d).]



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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

#### Textual Amendments

**F136** Ss. 170A, 170B 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(12)** (with regs. 52-58)

<sup>F137</sup>**171** .....

#### Textual Amendments

**F137** S. 171 repealed (1.12.2001) by [S.I. 2001/3649](#), **arts. 1, 75(h)**

### **172 Settlement arrangements provided by the Bank of England.**

- (1) The Secretary of State may by regulations provide that this Part applies to contracts of any specified description in relation to which settlement arrangements are provided by the Bank of England, as it applies to contracts connected with a recognised investment exchange or recognised clearing house.
- (2) Regulations under this section may provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient.
- (3) Before making any regulations under this section, the Secretary of State [<sup>F138</sup>and the Treasury shall consult] the Bank of England.

#### Textual Amendments

**F138** Words in s. 172(3) substituted (7.6.1992) by [S.I. 1992/1315](#), art. 10(1), **Sch. 4 para. 13(b)** (with art. 6).

#### Modifications etc. (not altering text)

**C16** Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by [S.I. 1992/1315](#), art. 4, **Sch. 2 para.7** (with art. 6).

#### Commencement Information

**I16** S. 172 partly in force; s. 172 not in force at Royal Assent see s. 215(1)(2); s. 172 in force for certain purposes at 25.3.1991 by [S.I. 1991/488](#), **art. 2(2)**.

### *Market charges*

### **173 Market charges.**

- (1) In this Part “market charge” means a charge, whether fixed or floating, granted—
  - (a) in favour of a recognised investment exchange, for the purpose of securing debts or liabilities arising in connection with the settlement of market contracts,

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- [<sup>F139</sup>(aa) in favour of The Stock Exchange, for the purpose of securing debts or liabilities arising in connection with short term certificates;]
- (b) in favour of a recognised clearing house, for the purpose of securing debts or liabilities arising in connection with their ensuring the performance of market contracts, or
- (c) in favour of a person who agrees to make payments as a result of the transfer [<sup>F140</sup>or allotment] of specified securities made through the medium of a computer-based system established by the Bank of England and The Stock Exchange, for the purpose of securing debts or liabilities of the transferee [<sup>F140</sup>or allottee] arising in connection therewith.
- (2) Where a charge is granted partly for purposes specified in subsection (1)(a), [<sup>F141</sup>(aa),] (b) or (c) and partly for other purposes, it is a “market charge” so far as it has effect for the specified purposes.
- (3) [<sup>F142</sup>In subsection (1)—
- “short term certificate” means an instrument issued by The Stock Exchange undertaking to procure the transfer of property of a value and description specified in the instrument to or to the order of the person to whom the instrument is issued or his endorsee or to a person acting on behalf of either of them and also undertaking to make appropriate payments in cash, in the event that the obligation to procure the transfer of property cannot be discharged in whole or in part;]
- “specified securities” means securities for the time being specified in the list in Schedule 1 to the <sup>M12</sup>Stock Transfer Act 1982, and includes any right to such securities; and
- “transfer”, in relation to any such securities or right, means a transfer of the beneficial interest.
- (4) The Secretary of State may by regulations make further provision as to the charges granted in favour of any such person as is mentioned in subsection (1)(a), (b) or (c) which are to be treated as “market charges” for the purposes of this Part; and the regulations may add to, amend or repeal the provisions of subsections (1) to (3) above.
- (5) The regulations may provide that a charge shall or shall not be treated as a market charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.
- (6) Before making regulations under this section in relation to charges granted in favour of a person within subsection (1)(c), the Secretary of State [<sup>F143</sup>and the Treasury shall consult] the Bank of England.

#### Textual Amendments

**F139** S. 173(1)(aa) inserted by S.I. 1991/880, reg. 9(a)

**F140** Words in s. 173(1)(c) inserted by S.I. 1991/880, reg. 9(b)

**F141** Word in s. 173(2) inserted by S.I. 1991/880, reg. 9(c)

**F142** Words in s. 173(3) substituted by S.I. 1991/880, reg. 9(d)

**F143** Words in s. 173(6) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), Sch. 4 para. 13

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

#### **Modifications etc. (not altering text)**

**C17** Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, **Sch. 2 para.7** (with art. 6).

#### **Commencement Information**

**I17** S. 173 wholly in force; s. 173(4)(5) in force for certain purposes at 25.3.1991 and s. 173 wholly in force at 25.4.1991 see s. 215(2); S.I. 1991/488, **art. 2(2)**; S.I. 1991/878, **art. 2, Sch.**

#### **Marginal Citations**

**M12** 1982 c. 41.

### **174 Modifications of the law of insolvency.**

- (1) The general law of insolvency has effect in relation to market charges and action taken in enforcing them subject to the provisions of section 175.
- (2) The Secretary of State may by regulations make further provision modifying the law of insolvency in relation to the matters mentioned in subsection (1).
- (3) The regulations may add to, amend or repeal the provisions mentioned in subsection (1), and any other provision of this Part as it applies for the purposes of those provisions, or provide that those provisions have effect with such exceptions, additions or adaptations as are specified in the regulations.
- (4) The regulations may make different provision for cases defined by reference to the nature of the charge, the nature of the property subject to it, the circumstances, nature or extent of the obligations secured by it or any other relevant factor.
- (5) Before making regulations under this section in relation to charges granted in favour of a person within section 173(1)(c), the Secretary of State [<sup>F144</sup>and the Treasury shall consult] the Bank of England.

#### **Textual Amendments**

**F144** Words in s. 174(5) substituted (7.6.1992) by S.I. 1992/1315, art. 10(1), **Sch. 4 para. 13(d)** (with art. 6).

#### **Modifications etc. (not altering text)**

**C18** Ss. 170-174: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, **Sch. 2 para.7** (with art. 6).

#### **Commencement Information**

**I18** S. 174 wholly in force; s. 174 not in force at Royal Assent see s. 215(2); s. 174(2)(4) in force for certain purposes at 25.3.1991 by S.I. 1991/488, **art. 2(2)**; s. 174 wholly in force at 25.4.1991 by S.I. 1991/878, **art. 2, Sch.** (subject to certain savings for s. 174(1) in art. 3(4)).

### **175 Administration orders, &c.**

- [<sup>F145</sup>(1) The following provisions of Schedule B1 to the Insolvency Act 1986 (administration) do not apply in relation to a market charge—

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- (a) paragraph 43(2) and (3) (restriction on enforcement of security or repossession of goods) (including that provision as applied by paragraph 44 (interim moratorium)), and
  - (b) paragraphs 70, 71 and 72 (power of administrator to deal with charged or hire-purchase property).
- (1A) Paragraph 41(2) of that Schedule (receiver to vacate office at request of administrator) does not apply to a receiver appointed under a market charge.]
- (2) However, where a market charge falls to be enforced after [F146]the occurrence of an event to which subsection (2A) applies], and there exists another charge over some or all of the same property ranking in priority to or *pari passu* with the market charge, [F147]on the application of any person interested] the court may order that there shall be taken after enforcement of the market charge such steps as the court may direct for the purpose of ensuring that the chargee under the other charge is not prejudiced by the enforcement of the market charge.
- [F148](2A) This subsection applies to—
  - (a) making an administration application under paragraph 12 of Schedule B1 to the Insolvency Act 1986,
  - (b) appointing an administrator under paragraph 14 or 22 of that Schedule (appointment by floating charge holder, company or directors),
  - (c) filing with the court a copy of notice of intention to appoint an administrator under either of those paragraphs.]
- (3) The following provisions of the Insolvency Act 1986 (which relate to the powers of receivers) do not apply in relation to a market charge—
  - (a) section 43 (power of administrative receiver to dispose of charged property), and
  - (b) section 61 (power of receiver in Scotland to dispose of an interest in property).
- (4) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition), and section 32(8) of the <sup>M13</sup>Bankruptcy (Scotland) Act 1985 (effect of dealing with debtor relating to estate vested in permanent trustee), do not apply to a disposition of property as a result of which the property becomes subject to a market charge or any transaction pursuant to which that disposition is made.
- [F149](5) However, if a person who is party to a disposition mentioned in subsection (4) has notice at the time of the disposition that a petition has been presented for the winding up or bankruptcy or sequestration of the estate of the party making the disposition, the value of any profit to him arising from the disposition is recoverable from him by the relevant office-holder unless—
  - (a) the person is a chargee under the market charge,
  - (b) the disposition is made in accordance with the default rules of a recognised central counterparty for the purposes of transferring a position or asset of a clearing member in default, or
  - (c) the court directs otherwise.]
- [F150](5A) In subsection (5)(b), “asset” has the meaning given by Article 39(10) of the EMIR Level 1 Regulation.]

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

- (6) Any sum recoverable by virtue of subsection (5) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.
- (7) In a case falling within both subsection (4) above (as a disposition of property as a result of which the property becomes subject to a market charge) and section 164(3) (as the provision of margin in relation to a market contract), section 164(4) applies with respect to the recovery of the amount or value of the margin and subsection (5) above does not apply.

#### Textual Amendments

- F145** S. 175(1)(1A) substituted (15.9.2003) for s. 175(1) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(2) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F146** Words in s. 175(2) substituted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(3) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F147** Words in s. 175(2) inserted by S.I. 1991/880, reg. 18
- F148** S. 175(2A) inserted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 47(4) (with s. 249(1)-(3)); S.I. 2003/2093, art. 2(1), Sch. 1 (subject to transitional provisions in arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F149** S. 175(5) 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(13) (with regs. 52-58)
- F150** S. 175(5A) 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(14) (with regs. 52-58)

#### Modifications etc. (not altering text)

- C19** S. 175 (as it has effect by virtue of Enterprise Act 2002 (c. 40), s. 249(1)) modified (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), 2(12) (with reg. 1(2)(3))
- C20** S. 175(2) restricted (25.2.1991) by S.I. 1991/145, art. 3  
S. 175(2) amended by S.I. 1991/880, reg. 19(2)
- C21** S. 175(1)(b)(3) amended by S.I. 1991/880, reg. 15  
S. 175(1)(b)(3) modified (15.8.1995) by S.I. 1995/2049, reg. 24  
S. 175(1)(b)(3) modified (15.7.1996) by S.I. 1996/1469, reg. 8(2)
- C22** S. 175(5) amended by S.I. 1991/880, reg. 19(1)
- C23** S. 175(5)(6) excluded in part (11.12.1999) by S.I. 1999/2979, reg. 21(2)(c)

#### Commencement Information

- I19** S. 175 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. (subject to certain savings in art. 3(4))

#### Marginal Citations

- M13** 1985 c. 66.

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*Status:* Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.

*Changes to legislation:* There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)

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## **176 Power to make provision about certain other charges.**

- (1) The Secretary of State may by regulations provide that the general law of insolvency has effect in relation to charges of such descriptions as may be specified in the regulations, and action taken in enforcing them, subject to such provisions as may be specified in the regulations.
- (2) The regulations may specify any description of charge granted in favour of—
  - (a) a body approved under section 170 (certain overseas exchanges and clearing houses),
  - (b) a person included in the list maintained by the [<sup>F151</sup>Bank of England] for the purposes of [<sup>F152</sup>section 301 of the Financial Services and Markets Act 2000] (certain money market institutions),
  - (c) the Bank of England,
  - [<sup>F153</sup>(d) a person who has permission under [<sup>F154</sup>Part 4A] of the Financial Services and Markets Act 2000 to carry on a relevant regulated activity, or
  - (e) an international securities self-regulating organisation approved for the purposes of an order made under section 22 of the Financial Services and Markets Act 2000,]for the purpose of securing debts or liabilities arising in connection with or as a result of the settlement of contracts or the transfer of assets, rights or interests on a financial market.
- (3) The regulations may specify any description of charge granted for that purpose in favour of any other person in connection with exchange facilities or clearing services provided by a recognised investment exchange or recognised clearing house or by any such body, person, authority or organisation as is mentioned in subsection (2).
- (4) Where a charge is granted partly for the purpose specified in subsection (2) and partly for other purposes, the power conferred by this section is exercisable in relation to the charge so far as it has effect for that purpose.
- (5) The regulations may—
  - (a) make the same or similar provision in relation to the charges to which they apply as is made by or under sections 174 and 175 in relation to market charges, or
  - (b) apply any of those provisions with such exceptions, additions or adaptations as are specified in the regulations.
- [<sup>F155</sup>(6) Before making regulations under this section relating to a description of charges defined by reference to their being granted in favour of a person included in the list maintained by the [<sup>F156</sup> . . . [<sup>F157</sup>Bank of England] for the purposes of [<sup>F158</sup>section 301 of the Financial Services and Markets Act 2000], or in connection with exchange facilities or clearing services provided by a person included in that list, the Secretary of State and the Treasury shall consult the [<sup>F159</sup>FCA] and the Bank of England.
- (6A) Before making regulations under this section relating to a description of charges defined by reference to their being granted in favour of the Bank of England, or in connection with settlement arrangements provided by the Bank, the Secretary of State and the Treasury shall consult the Bank.]
- (7) Regulations under this section may provide that they apply or do not apply to a charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.

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[<sup>F160</sup>(8) For the purposes of subsection (2)(d), “relevant regulated activity” means—

- (a) dealing in investments as principal or as agent;
- (b) arranging deals in investments;
- [ operating a multilateral trading facility;]
- <sup>F161</sup>(ba)
- (c) managing investments;
- (d) safeguarding and administering investments;
- (e) sending dematerialised instructions; or
- (f) establishing etc. a collective investment scheme.

(9) Subsection (8) must be read with—

- (a) section 22 of the Financial Services and Markets Act 2000;
- (b) any relevant order under that section; and
- (c) Schedule 2 to that Act.]

#### Textual Amendments

- F151** Words in s. 176(2)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 69(2)(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F152** Words in s. 176(2)(b) substituted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 85(2)(b)
- F153** S. 176(2)(d)(e) substituted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 85(3)
- F154** Words in s. 176(2)(d) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 69(2)(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F155** S. 176(6)(6A) substituted (1.6.1998) for s. 176(6) by 1998 c. 11, s. 23, **Sch. 5 Pt. III para. 48(3)**; [S.I. 1998/1120](#), **art. 2**
- F156** Words in s. 176(6) repealed (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 85(4)(a)
- F157** Words in s. 176(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 69(3)(a)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F158** Words in s. 176(6) substituted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 85(4)(b)
- F159** Word in s. 176(6) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 69(3)(b)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F160** S. 176(8)(9) inserted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 85(5)
- F161** S. 176(8)(ba) inserted (1.4.2007 for certain purposes and otherwise 1.11.2007) by [The Financial Services and Markets Act 2000 \(Regulated Activities\) \(Amendment No. 3\) Order 2006 \(S.I. 2006/3384\)](#), **arts. 1(2)**, **32**

#### Modifications etc. (not altering text)

- C24** S. 176: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by [S.I. 1992/1315](#), **art. 4**, **Sch. 2 para. 7** (with art. 6).
- C25** S. 176 amended (1.1.1993) by [S.I. 1992/3218](#), reg. 82(1), **Sch. 10 Pt. I para. 29**  
S. 176(2) extended (1.1.1996) by [S.I. 1995/3275](#), reg. 57, **Sch. 10 Pt. I para. 13**

#### Commencement Information

- I20** S. 176 wholly in force: s. 176 not in force at Royal Assent see s. 215(1)(2); s. 176 in force for certain purposes at 25.3.1991 by [S.I. 1991/488](#), **art. 2(2)**; s. 176 wholly in force at 4.7.1995 by [S.I. 1995/1591](#), **art. 2**



*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

### *Market property*

#### **177 Application of margin [<sup>F162</sup>or default fund contribution] not affected by certain other interests.**

- (1) The following provisions have effect with respect to the application by a recognised investment exchange or recognised clearing house of property (other than land) held by the exchange or clearing house as margin in relation to a market contract [<sup>F163</sup>or as default fund contribution].
- (2) So far as necessary to enable the property to be applied in accordance with the rules of the exchange or clearing house, it may be so applied notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the exchange or clearing house had notice of the interest, right or breach of duty at the time the property was provided as margin [<sup>F164</sup>or as default fund contribution].
- (3) No right or remedy arising subsequently to the property being provided as margin [<sup>F165</sup>or as default fund contribution] may be enforced so as to prevent or interfere with the application of the property by the exchange or clearing house in accordance with its rules.
- (4) Where an exchange or clearing house has power by virtue of the above provisions to apply property notwithstanding an interest, right or remedy, a person to whom the exchange or clearing house disposes of the property in accordance with its rules takes free from that interest, right or remedy.

#### **Textual Amendments**

**F162** Words in s. 177 heading inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(13)(a)**

**F163** Words in s. 177(1) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(13)(b)**

**F164** Words in s. 177(2) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(13)(b)**

**F165** Words in s. 177(3) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(13)(c)**

#### **Modifications etc. (not altering text)**

**C26** S. 177 applied (15.8.1995) by [S.I. 1995/2049](#), **reg. 25(1)**

#### **Commencement Information**

**I21** S. 177 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), art. 2, **Sch.** (subject to certain savings in art. 3(5))

PROSPECTIVE

#### **178 Priority of floating market charge over subsequent charges.**

- (1) The Secretary of State may by regulations provide that a market charge which is a floating charge has priority over a charge subsequently created or arising, including a fixed charge.

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- (2) The regulations may make different provision for cases defined, as regards the market charge or the subsequent charge, by reference to the description of charge, its terms, the circumstances in which it is created or arises, the nature of the charge, the person in favour of whom it is granted or arises or any other relevant factor.

### 179 Priority of market charge over unpaid vendor's lien.

Where property subject to an unpaid vendor's lien becomes subject to a market charge, the charge has priority over the lien unless the chargee had actual notice of the lien at the time the property became subject to the charge.

#### Modifications etc. (not altering text)

**C27** S. 179 applied (15.8.1995) by S.I. 1995/2049, reg. 25(2)

#### Commencement Information

**I22** S. 179 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. (subject to certain savings in art. 3(6))

### 180 Proceedings against market property by unsecured creditors.

- (1) Where property (other than land) is held by a recognised investment exchange or recognised clearing house as margin in relation to market contracts [<sup>F166</sup>or as default fund contribution,] or is subject to a market charge, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of—
- (a) in the case of property provided as cover for margin [<sup>F167</sup>or as default fund contribution], the investment exchange or clearing house in question, or
  - (b) in the case of property subject to a market charge, the person in whose favour the charge was granted.
- (2) Where consent is given the proceedings may be commenced or continued notwithstanding any provision of the <sup>M14</sup>Insolvency Act 1986 or the <sup>M15</sup>Bankruptcy (Scotland) Act 1985.
- (3) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.
- (4) In the application of this section to Scotland, the reference to execution being commenced or continued includes a reference to diligence being carried out or continued, and the reference to distress being levied shall be omitted.

#### Textual Amendments

**F166** Words in s. 180(1) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), 2(14)(a)

**F167** Words in s. 180(1)(a) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), 2(14)(b)

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#### **Modifications etc. (not altering text)**

**C28** S. 180 applied (15.8.1995) by S.I. 1995/2049, reg. 25(3)

#### **Commencement Information**

**I23** S. 180 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch. (subject to certain savings in art. 3(7)).

#### **Marginal Citations**

**M14** 1986 c. 45.

**M15** 1985 c. 66.

### **181 Power to apply provisions to other cases.**

(1) [<sup>F168</sup>A power to which this subsection applies includes the] power to apply sections 177 to 180 to any description of property provided as cover for margin in relation to contracts in relation to which the power is exercised or, as the case may be, property subject to charges in relation to which the power is exercised.

(2) The regulations may provide that those sections apply with such exceptions, additions and adaptations as may be specified in the regulations.

[<sup>F169</sup>(3) Subsection (1) applies to the powers of the Secretary of State and the Treasury to act jointly under—

(a) sections 170, 172 and 176 of this Act; and

(b) section 301 of the Financial Services and Markets Act 2000 (supervision of certain contracts).]

#### **Textual Amendments**

**F168** Words in s. 181(1) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 86(2)

**F169** S. 181(3) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 86(3)

#### **Modifications etc. (not altering text)**

**C29** S. 181: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by S.I. 1992/1315, art. 4, Sch. 2 para. 7 (with art. 6).

#### **Commencement Information**

**I24** S. 181 wholly in force: s. 181 not in force at Royal Assent see s. 215(1)(2); s. 181 in force for certain purposes at 25.3.1991 by S.I. 1991/488, art. 2(2); s. 181 wholly in force at 4.7.1995 by S.I. 1995/1591, art. 2

### *Supplementary provisions*

### **182 Powers of court in relation to certain proceedings begun before commencement.**

(1) The powers conferred by this section are exercisable by the court where insolvency proceedings in respect of—

(a) a member of a recognised investment exchange or a recognised clearing house, or

(b) a person by whom a market charge has been granted,

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are begun on or after 22nd December 1988 and before the commencement of this section.

That person is referred to in this section as “the relevant person”.

- (2) For the purposes of this section “insolvency proceedings” means proceedings under Part II, IV, V or IX of the <sup>M16</sup>Insolvency Act 1986 (administration, winding up and bankruptcy) or under the <sup>M17</sup>Bankruptcy (Scotland) Act 1985; and references in this section to the beginning of such proceedings are to—
- (a) the presentation of a petition on which an administration order, winding-up order, bankruptcy order or award of sequestration is made, or
  - (b) the passing of a resolution for voluntary winding up.
- (3) This section applies in relation to—
- (a) in England and Wales, the administration of the insolvent estate of a deceased person, and
  - (b) in Scotland, the administration by a judicial factor appointed under section 11A of the <sup>M18</sup>Judicial Factors (Scotland) Act 1889 of the insolvent estate of a deceased person,
- as it applies in relation to insolvency proceedings.

In such a case references to the beginning of the proceedings shall be construed as references to the death of the relevant person.

- (4) The court may on an application made, within three months after the commencement of this section, by—
- (a) a recognised investment exchange or recognised clearing house, or
  - (b) a person in whose favour a market charge has been granted,
- make such order as it thinks fit for achieving, except so far as assets of the relevant person have been distributed before the making of the application, the same result as if the provisions of Schedule 22 had come into force on 22nd December 1988.
- (5) The provisions of that Schedule (“the relevant provisions”) reproduce the effect of certain provisions of this Part as they appeared in the Bill for this Act as introduced into the House of Lords and published on that date.
- (6) The court may in particular—
- (a) require the relevant person or a relevant office-holder—
    - (i) to return property provided as cover for margin or which was subject to a market charge, or to pay to the applicant or any other person the proceeds of realisation of such property, or
    - (ii) to pay to the applicant or any other person such amount as the court estimates would have been payable to that person if the relevant provisions had come into force on 22nd December 1988 and market contracts had been settled in accordance with the rules of the recognised investment exchange or recognised clearing house, or a proportion of that amount if the property of the relevant person or relevant office-holder is not sufficient to meet the amount in full;
  - (b) provide that contracts, rules and dispositions shall be treated as not having been void;
  - (c) modify the functions of a relevant office-holder, or the duties of the applicant or any other person, in relation to the insolvency proceedings, or indemnify

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any such person in respect of acts or omissions which would have been proper if the relevant provisions had been in force;

- (d) provide that conduct which constituted an offence be treated as not having done so;
- (e) dismiss proceedings which could not have been brought if the relevant provisions had come into force on 22nd December 1988, and reverse the effect of any order of a court which could not, or would not, have been made if those provisions had come into force on that date.

- (7) An order under this section shall not be made against a relevant office-holder if the effect would be that his remuneration, costs and expenses could not be met.

**Modifications etc. (not altering text)**

**C30** S. 182 amended by [S.I. 1991/880](#), [reg. 19\(1\)](#)

**Commencement Information**

**I25** S. 182 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), [art. 2](#), [Sch.](#)

**Marginal Citations**

**M16** [1986 c. 45](#).

**M17** [1985 c. 66](#).

**M18** [1889 c. 39](#).

**[<sup>F170</sup>182A] Recognised central counterparties: disapplication of provisions on mutual credit and set-off**

- (1) Nothing in the law of insolvency shall enable the setting off against each other of—
- (a) positions and assets recorded in an account at a recognised central counterparty and held for the account of a client, an indirect client or a group of clients or indirect clients in accordance with Article 39 of the EMIR Level 1 Regulation or Article 3(1) of the EMIR Level 2 Regulation; and
  - (b) positions and assets recorded in any other account at the recognised central counterparty.]

**Textual Amendments**

**F170** S. 182A 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\(15\)](#) (with [regs. 52-58](#))

**183 Insolvency proceedings in other jurisdictions.**

- (1) The references to insolvency law in section 426 of the <sup>M19</sup>Insolvency Act 1986 (co-operation with courts exercising insolvency jurisdiction in other jurisdictions) include, in relation to a part of the United Kingdom, the provisions made by or under this Part and, in relation to a relevant country or territory within the meaning of that section, so much of the law of that country or territory as corresponds to any provisions made by or under this Part.

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- (2) A court shall not, in pursuance of that section or any other enactment or rule of law, recognise or give effect to—
- (a) any order of a court exercising jurisdiction in relation to insolvency law in a country or territory outside the United Kingdom, or
  - (b) any act of a person appointed in such a country or territory to discharge any functions under insolvency law,
- in so far as the making of the order or the doing of the act would be prohibited in the case of a court in the United Kingdom or a relevant office-holder by provisions made by or under this Part.
- (3) Subsection (2) does not affect the recognition or enforcement of a judgment required to be recognised or enforced under or by virtue of the <sup>M20</sup>Civil Jurisdiction and Judgments Act 1982 [<sup>F171</sup>or Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters][<sup>F172</sup>, as amended from time to time and as applied by the Agreement made on 19th October 2005 between the [<sup>F173</sup>European Union] and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (OJNo. L 299 16.11.2005 at p62)] .

#### Textual Amendments

**F171** Words in s. 183(3) inserted (3.1.2002) by S.I. 2001/3929, art. 5, **Sch. 3 para. 21**

**F172** Words in s. 183(3) inserted (1.7.2007) by The Civil Jurisdiction and Judgments Regulations 2007 (S.I. 2007/1655), reg. 5, **Sch. para. 15(2)**

**F173** Words in Act substituted (22.4.2011) by The Treaty of Lisbon (Changes in Terminology) Order 2011 (S.I. 2011/1043), arts. 2, 3, 4 (with art. 3(2)(3), 4(2), 6(4)(5))

#### Commencement Information

**I26** S. 183 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

#### Marginal Citations

**M19** 1986 c. 45.

**M20** 1982 c. 27.

## 184 Indemnity for certain acts, &c.

- (1) Where a relevant office-holder takes any action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a recognised investment exchange or recognised clearing house, and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by the office-holder's own negligence.
- (2) Any failure by a recognised investment exchange or recognised clearing house to comply with its own rules in respect of any matter shall not prevent that matter being treated for the purposes of this Part as done in accordance with those rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the rules.
- (3) No recognised investment exchange or recognised clearing house, nor any officer or servant or member of the governing body of a recognised investment exchange or

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recognised clearing house, shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this subsection applies unless the act or omission is shown to have been in bad faith.

- (4) The functions to which subsection (3) applies are the functions of the exchange or clearing house so far as relating to, or to matters arising out of—
  - (a) its default rules, or
  - (b) any obligations to which it is subject by virtue of this Part.
- (5) No person [<sup>F174</sup>to whom the exercise of any function of a recognised investment exchange or recognised clearing house is delegated under its default rules], nor any officer or servant of such a person, shall be liable in damages for anything done or omitted in the discharge or purported discharge of those functions unless the act or omission is shown to have been in bad faith.

#### Textual Amendments

**F174** Words in s. 184(5) substituted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 87](#)

#### Commencement Information

**I27** S. 184 wholly in force at 1.10.1991; s. 184 in force for certain purposes on 25.3.1991 see s. 215 and [S.I. 1991/488](#), [art. 2\(2\)](#), s. 184 in force for certain purposes on 25.4.1991 see s. 215 and [S.I. 1991/878](#), [art. 2 Sch.](#), s. 184 wholly in force at 1.10.1991 see [S.I. 1991/2173](#), art. 3

### 185 Power to make further provision by regulations.

- (1) The Secretary of State may by regulations make such further provision as appears to him necessary or expedient for the purposes of this Part.
- (2) Provision may, in particular, be made—
  - (a) for integrating the provisions of this Part with the general law of insolvency, and
  - (b) for adapting the provisions of this Part in their application to overseas investment exchanges and clearing houses.
- (3) Regulations under this section may add to, amend or repeal any of the provisions of this Part or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.
- [<sup>F175</sup>(4) References in this section to the provisions of this Part include any provision made under section 301 of the Financial Services and Markets Act 2000.]

#### Textual Amendments

**F175** S. 185(4) inserted (1.12.2001) by [S.I. 2001/3649](#), [arts. 1, 88](#)

#### Modifications etc. (not altering text)

**C31** S. 185: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by [S.I. 1992/1315](#), [art. 4](#), [Sch. 2 para. 7](#) (with [art. 6](#)).



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#### Commencement Information

**I28** S. 185 wholly in force at 10.8.1998. In force for certain purposes at 25.3.1991 by s. 215(2) and [S.I. 1991/488](#), [art. 2\(2\)](#), and for all remaining purposes at 10.8.1998 by [S.I. 1998/1747](#), [art. 2](#)

### 186 Supplementary provisions as to regulations.

- (1) Regulations under this Part may make different provision for different cases and may contain such incidental, transitional and other supplementary provisions as appear to the Secretary of State to be necessary or expedient.
- (2) Regulations under this Part shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Modifications etc. (not altering text)

**C32** S. 186: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by [s.I. 1992/1315](#), [art. 4](#), [Sch. 2 para. 7](#) (with [art. 6](#))

#### Commencement Information

**I29** S.186 wholly in force at 10.8.1998. In force for certain purposes at 25.3.1991 by s. 215(2) and [S.I. 1991/488](#), [art. 2\(2\)](#) and for all remaining purposes at 8.10.1998 by [S.I. 1998/1747](#), [art. 2](#)

### 187 Construction of references to parties to market contracts.

- (1) Where a person enters into market contracts in more than one capacity, the provisions of this Part apply (subject as follows) as if the contracts entered into in each different capacity were entered into by different persons.
  - (2) References in this Part to a market contract to which a person is a party include (subject as follows, and unless the context otherwise requires) contracts to which he is party as agent.
- [<sup>F176</sup>(2A) Subsections (1) and (2) do not apply to market contracts to which this Part applies by virtue of section 155(2B).]
- (3) The Secretary of State may by regulations—
    - (a) modify or exclude the operation of subsections (1) and (2), and
    - (b) make provision as to the circumstances in which a person is to be regarded for the purposes of those provisions as acting in different capacities.

#### Textual Amendments

**F176** S. 187(2A) 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\(16\)](#) (with [regs. 52-58](#))

#### Modifications etc. (not altering text)

**C33** S. 187(1) amended by [S.I. 1991/880](#), [reg. 16\(2\)](#)

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

### Commencement Information

**I30** S.187 wholly in force; s. 187(3) in force for certain purposes at 25.3.1991, s. 187 wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488](#), [art. 2\(2\)](#); [S.I. 1991/878](#), [art. 2](#), [Sch.](#)

## 188 Meaning of “default rules” and related expressions.

- (1) In this Part “default rules” means rules of a recognised investment exchange or recognised clearing house which provide for the taking of action in the event of a person [<sup>F177</sup>(including another recognised investment exchange or recognised clearing house)] appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts [<sup>F178</sup>connected with the exchange or clearing house, and in the case of a recognised central counterparty, “default rules” includes the default procedures referred to in Article 48 of the EMIR Level 1 Regulation.]
- (2) References in this Part to a “defaulter” are to a person in respect of whom action has been taken by a recognised investment exchange or recognised clearing house under its default rules, whether by declaring him to be a defaulter or otherwise; and references in this Part to “default” [<sup>F179</sup>, “defaulting” and “non-defaulting”] shall be construed accordingly.
- (3) In this Part “default proceedings” means proceedings taken by a recognised investment exchange or recognised clearing house under its default rules.

[<sup>F180</sup>(3A) In this Part “default fund contribution” means—

- (a) contribution by a member or designated non-member of a recognised investment exchange to a fund which—
  - (i) is maintained by that exchange for the purpose of covering losses arising in connection with defaults by any of the members of the exchange, or defaults by any of the members or designated non-members of the exchange, and
  - (ii) may be applied for that purpose under the default rules of the exchange;
- (b) contribution by a member of a recognised clearing house to a fund which—
  - (i) is maintained by that clearing house for the purpose of covering losses arising in connection with defaults by any of the members of the clearing house, and
  - (ii) may be applied for that purpose under the default rules of the clearing house;
- (c) contribution by a recognised clearing house to a fund which—
  - (i) is maintained by a recognised investment exchange or another recognised clearing house (A) for the purpose of covering losses arising in connection with defaults by recognised clearing houses or recognised investment exchanges other than A or by any of their members, and
  - (ii) may be applied for that purpose under A’s default rules; or
- (d) contribution by a recognised investment exchange to a fund which—
  - (i) is maintained by a recognised clearing house or another recognised investment exchange (A) for the purpose of covering losses arising in connection with defaults by recognised investment exchanges or recognised clearing houses other than A or by any of their members, and

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(ii) may be applied for that purpose under A’s default rules.]

- (4) If an exchange or clearing house takes action under its default rules in respect of a person, all subsequent proceedings under its rules for the purposes of or in connection with the settlement of market contracts to which the defaulter is a party shall be treated as done under its default rules.

#### Textual Amendments

- F177** Words in s. 188(1) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(15)(a)**
- F178** Words in s. 188(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(17)(a)** (with regs. 52-58)
- F179** Words in s. 188(2) 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(17)(b)** (with regs. 52-58)
- F180** S. 188(3A) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(15)(b)**

#### Commencement Information

- I31** S. 188 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), art. 2, [Sch.](#)

### 189 Meaning of “relevant office-holder”.

- (1) The following are relevant office-holders for the purposes of this Part—
- the official receiver,
  - any person acting in relation to a company as its liquidator, provisional liquidator, administrator or administrative receiver,
  - any person acting in relation to an individual (or, in Scotland, any debtor within the meaning of the <sup>M21</sup>Bankruptcy (Scotland) Act 1985) as his trustee in bankruptcy or interim receiver of his property or as permanent or interim trustee in the sequestration of his estate,
  - any person acting as administrator of an insolvent estate of a deceased person.
- (2) In subsection (1)(b) “company” means any company, society, association, partnership or other body which may be wound up under the <sup>M22</sup>Insolvency Act 1986.

#### Commencement Information

- I32** S. 189 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), art. 2, [Sch.](#)

#### Marginal Citations

- M21** 1985 c. 66.  
**M22** 1986 c.45.

### 190 Minor definitions.

- (1) In this Part—

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

“administrative receiver” has the meaning given by section 251 of the Insolvency Act 1986;

F181 .....

“charge” means any form of security, including a mortgage and, in Scotland, a heritable security;

F182 .....

[<sup>F183</sup>“clearing member” , in relation to a recognised central counterparty, has the meaning given by Article 2(14) of the EMIR Level 1 Regulation;]

[<sup>F183</sup>“client” has the meaning given by Article 2(15) of the EMIR Level 1 Regulation;]

[<sup>F183</sup>“EMIR Level 1 Regulation” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;]

[<sup>F183</sup>“EMIR Level 2 Regulation” means Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, risk mitigation for OTC derivatives contracts not cleared by a CCP;]

[<sup>F184</sup>“the FCA” means the Financial Conduct Authority;]

[<sup>F183</sup>“indirect client” has the meaning given by Article 1(a) of the EMIR Level 2 Regulation;]

“interim trustee” and “permanent trustee” have the same meaning as in the Bankruptcy (Scotland) Act 1985;

F182 .....

[<sup>F183</sup>“member of a clearing house” includes a clearing member of a recognised central counterparty;]

“overseas”, in relation to an investment exchange or clearing house, means having its head office outside the United Kingdom;

[<sup>F183</sup>“position” has the same meaning as in the EMIR Level 1 Regulation;]

[<sup>F185</sup>“the PRA” means the Prudential Regulation Authority;]

[<sup>F186</sup>“recognised central counterparty”, “recognised clearing house” and “recognised investment exchange” have the same meaning as in the Financial Services and Markets Act 2000;]

F182 .....

“set-off”, in relation to Scotland, includes compensation;

[<sup>F187</sup>“The Stock Exchange” means the London Stock Exchange Limited;]

[<sup>F188</sup>“UK”, in relation to an investment exchange, means having its head office in the United Kingdom.]

[<sup>F189</sup>(2) References in this Part to settlement—

- (a) mean, in relation to a market contract, the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise;
- (b) include, in relation to a clearing member client contract or a clearing member house contract, a reference to its liquidation for the purposes of Article 48 of the EMIR Level 1 Regulation.]

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

- (3) In this Part the expressions “margin” and “cover for margin” have the same meaning.
- [<sup>F190</sup>(3A) In this Part, a reference to a transfer of a clearing member client contract or a client trade includes—
- (a) an assignment;
  - (b) a novation; and
  - (c) closing out or terminating the clearing member client contract or client trade and establishing an equivalent position between different parties;
- and a reference to a transfer of a qualifying collateral arrangement includes an assignment or a novation.]
- [<sup>F191</sup>(4) .....
- (5) For the purposes of this Part a person shall be taken to have notice of a matter if he deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.
- This does not apply for the purposes of a provision requiring “actual notice”.
- [<sup>F192</sup>(6) References in this Part to the law of insolvency—
- (a) include references to every provision made by or under the Insolvency Act 1986 or the Bankruptcy (Scotland) Act 1985; and in relation to a building society references to insolvency law or to any provision of the Insolvency Act 1986 are to that law or provision as modified by the Building Societies Act 1986;
  - (b) are also to be interpreted in accordance with the modifications made by the enactments mentioned in subsection (6B).
- (6A) For the avoidance of doubt, references in this Part to administration, administrator, liquidator and winding up are to be interpreted in accordance with the modifications made by the enactments mentioned in subsection (6B).
- (6B) The enactments referred to in subsections (6)(b) and (6A) are—
- (a) article 3 of, and the Schedule to, the Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009;
  - (b) article 18 of, and paragraphs 1(a), (2) and (3) of Schedule 2 to, the Building Societies (Insolvency and Special Administration) Order 2009; and
  - (c) regulation 27 of, and Schedule 6 to, the Investment Bank Special Administration Regulations 2011.]

(7) In relation to Scotland, references in this Part—

    - (a) to sequestration include references to the administration by a judicial factor of the insolvent estate of a deceased person, and
    - (b) to an interim or permanent trustee include references to a judicial factor on the insolvent estate of a deceased person,

unless the context otherwise requires.

#### Textual Amendments

**F181** Words in s. 190 omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), [Sch. 18 para. 70\(2\)](#) (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)

*Status: Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

- F182** Definitions of “clearing house”, “investment”, “investment exchange” and “recognised” in s. 190(1) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 89(3)
- F183** Words in s. 190(1) 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(18)(a)** (with regs. 52-58)
- F184** Words in s. 190 inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 70(3)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F185** Words in s. 190 inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 70(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F186** Words in s. 190(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(18)(b)(i)** (with regs. 52-58)
- F187** Definition of “The Stock Exchange” in s. 190(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 89(5)
- F188** Words in s. 190(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(18)(b)(ii)** (with regs. 52-58)
- F189** S. 190(2) 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(18)(c)** (with regs. 52-58)
- F190** S. 190(3A) 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(18)(d)** (with regs. 52-58)
- F191** S. 190(4) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1**, 89(6)
- F192** S. 190(6)-(6B) substituted for s. 190(6) (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(18)(e)** (with regs. 52-58)

#### Commencement Information

- I33** S. 190 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

## 191 Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section or paragraph)—

<i><sup>F193</sup>Defined Expression</i>	<i>Section</i>
administration	Sections 190(6A) and (6B)
administrator	Sections 190(6A) and (6B)
administrative receiver	Section 190(1)
charge	Section 190(1)
clearing member	Section 190(1)
clearing member client contract	Section 155(1)(a)
clearing member house contract	Section 155(1)(b)
client	Section 190(1)
client trade	Section 155(1)(c)

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)*

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<i><sup>F193</sup>Defined Expression</i>	<i>Section</i>
cover for margin	Section 190(3)
default fund contribution	Section 188(3A)
default rules (and related expressions)	Section 188
designated non-member	Section 155(2)
EMIR Level 1 Regulation	Section 190(1)
EMIR Level 2 Regulation	Section 190(1)
the FCA	Section 190(1)
indirect client	Section 190(1)
insolvency law (and similar expressions)	Sections 190(6) and (6B)
interim trustee	Sections 190(1) and 190(7)(b)
liquidator	Sections 190(6A) and (6B)
margin	Section 190(3)
market charge	Section 173
market contract	Section 155
member of a clearing house	Section 190(1)
notice	Section 190(5)
overseas (in relation to investment exchanges and clearing houses)	Section 190(1)
party (in relation to a market contract)	Section 187
permanent trustee	Sections 190(1) and 190(7)(b)
the PRA	Section 190(1)
qualifying collateral arrangement	Section 155A(1)(a)
qualifying property transfers	Section 155A(1)(b)
recognised central counterparty	Section 190(1)
recognised clearing house	Section 190(1)
recognised investment exchange	Section 190(1)
relevant office-holder	Section 189
sequestration	Section 190(7)(a)
set off (in relation to Scotland)	Section 190(1)
settlement and related expressions (in relation to a market contract)	Section 190 (2)
The Stock Exchange	Section 190(1)
trustee, interim or permanent (in relation to Scotland)	Section 190(7)(b)
UK (in relation to investment exchanges)	Section 190(1)



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**Changes to legislation:** There are currently no known outstanding effects for the Companies Act 1989, Part VII. (See end of Document for details)

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<i>[<sup>F193</sup>Defined Expression</i>	<i>Section</i>
winding up	Sections 190(6A) and (6B)]

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**Textual Amendments**

**F193** S. 191 Table 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(19), [Sch.](#) (with regs. 52-58)

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**Commencement Information**

**I34** S. 191 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), art. 2, [Sch.](#)

**Status:**

Point in time view as at 01/04/2013. This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 1989, Part VII.