



# Companies Act 1989

## 1989 CHAPTER 40

### PART VII

#### FINANCIAL MARKETS AND INSOLVENCY

##### *Recognised investment exchanges and clearing houses*

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

- (1) This Part applies to the following descriptions of contract connected with a recognised investment exchange or recognised clearing house.

The contracts are referred to in this Part as “market contracts”.

- [<sup>F1</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>F2</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; and

- [<sup>F3</sup>(b) contracts entered into by the exchange with its members for the purpose of enabling the rights and liabilities of that member under transactions in investments to be settled.]

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.

- (2A) This Part does not apply to contracts falling within paragraph (a) of subsection (2) above where the exchange in question is a recognised overseas investment exchange.

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- [<sup>F4</sup>(3) In relation to a recognised clearing house, this Part applies to contracts entered into by the clearing house with a member of the clearing house for the purpose of enabling the rights and liabilities of that member under transactions in investments to be settled.]
- (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.

#### Textual Amendments

- F1** S. 155(2)(2A) substituted for s. 155(2) by S.I. 1991/880, **reg. 3**
- F2** Words in s. 155(2)(a) inserted (11.8.1998) by S.I. 1998/1748, **reg. 3(a)**
- F3** S. 155(2)(b) substituted (11.8.1998) by S.I. 1998/1748, **reg. 3(b)**
- F4** S. 155(3) substituted (11.8.1998) by S.I. 1998/1748, **reg.4**

#### Commencement Information

- I1** 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>F5</sup>**156** .....

#### Textual Amendments

- F5** S. 156 repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 75(e)**

- 157**
- (1) A recognised UK investment exchange or recognised UK clearing house shall give the [<sup>F6</sup>Authority] at least 14 days’ notice of any proposal to amend, revoke or add to its default rules; and the [<sup>F6</sup>Authority] may within 14 days from receipt of the notice direct the exchange or clearing house not to proceed with the proposal, in whole or in part.
- (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.

#### Textual Amendments

- F6** Words in s. 157(1) substituted (1.12.2001) by s.I. 2001/3649, arts. 1, 79

#### Commencement Information

- I2** 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)**)

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## 158 Modifications of the law of insolvency.

- (1) The general law of insolvency has effect in relation to market contracts, and action taken under the rules of a recognised investment exchange or recognised clearing house with respect to such contracts, 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—
  - (a) proceedings in respect of a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house, and
  - (b) proceedings in respect of a party to a market contract 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>F7</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>F8</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 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

- F7** 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))
- F8** 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))

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

- C1** 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

- I3** 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 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 recognised investment exchange or recognised clearing house as to the settlement of market contracts not dealt with under its default rules.
- (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 or the <sup>M2</sup>Bankruptcy (Scotland) Act 1985 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 or recognised clearing house of a market contract not dealt with under its default rules, or
  - (b) any action taken under the default rules of such an exchange or clearing house.

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, or in Scotland claimed in a winding up or sequestration, 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>F9</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

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- (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, a creditors' committee.]
- (5) For the purposes of [F10 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

**F9** S. 159 (4A) inserted by [S.I. 1991/880, reg. 4\(2\)](#)

**F10** Words in s. 159(5) substituted by [S.I. 1991/880, reg. 4\(3\)](#)

#### Commencement Information

**I4** 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.](#)

**M2** [1985 c. 66.](#)

## 160

- (1) It is the duty of—
- any person who has or had control of any assets of a defaulter, and
  - 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.

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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>F11</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

**F11** Words in s. 160(4) added by S.I. 1991/880, Pt. III reg. 5

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

**C2** 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).

#### Commencement Information

**I5** 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 or trustee of a defaulter or, in Scotland, a permanent trustee on the sequestrated estate of the defaulter shall not—
- declare or pay any dividend to the creditors, or
  - 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>F12</sup>section 126, 128, 130, 185 or 285 of, or paragraph 42 or 43 (including paragraph 43(6) as applied by paragraph 44) of Schedule B1 to, the Insolvency Act

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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>M3</sup>1985 or in the Debtors (Scotland) Act<sup>M4</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

**F12** 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](#)))

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

**C3** S. 161 amended by [S.I. 1991/880](#), [reg. 19\(1\)](#)

#### Commencement Information

**I6** S. 161 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), [art. 2](#), [Sch.](#)

#### Marginal Citations

**M3** [1985 c. 66](#).

**M4** [1987 c. 18](#).

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

(1) <sup>F13</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>F14</sup>Authority] on its proceedings stating in respect of each creditor or debtor the sum 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>F15</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>F16</sup>Authority] that a report is required for the purpose of insolvency proceedings in any part of the United Kingdom.

(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>F17</sup>Authority, it] shall publish notice of that fact in such manner as [<sup>F18</sup>it] thinks appropriate for bringing [<sup>F19</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.

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#### Textual Amendments

- F13** Words in s. 162(1) inserted by S.I. 1991/880, **reg. 6(2)**  
**F14** Word in s. 162(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(2)**  
**F15** S. 162(1A) inserted by S.I. 1991/880, **reg. 6(3)**  
**F16** Word in s. 162(1A) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(3)**  
**F17** Words in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(4)(a)**  
**F18** Word in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(4)(b)**  
**F19** Words in s. 162(4) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 80(4)(c)**

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

- C4** S. 162 applied (with modifications) (E.W.S.) (11.12.1999) by S.I. 1999/2979, **reg. 15(1)**

#### Commencement Information

- I7** 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.

- (1) The following provisions apply with respect to the net sum certified by a recognised investment exchange or recognised clearing house, upon proceedings under its default rules being duly completed in accordance with this Part, to be payable by or to a defaulter.
- (2) If, in England and Wales, a bankruptcy or winding-up order has been made, or a resolution for voluntary winding-up has been passed, the debt—
- is provable in the bankruptcy or winding up 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>M5</sup>1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of winding up,
- 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) or, in the case of a partnership, the date of the winding-up order.
- (3) If, in Scotland, an award of sequestration or a winding-up order has been made, or a resolution for voluntary winding up has been passed, the debt—
- may be claimed in the sequestration or winding up 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 or winding up,
- in the same way as a debt due before the date of sequestration (within the meaning of section 73(1) of the Bankruptcy (Scotland) Act <sup>M6</sup>1985) or the commencement of the winding up (within the meaning of section 129 of the Insolvency Act 1986).
- (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—
- that a bankruptcy petition or, in Scotland, a petition for sequestration was pending, or



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- (b) that a meeting of creditors had been summoned under section 98 of the Insolvency Act <sup>M7</sup>1986 or that a winding-up petition was pending, 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.

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

- C5** 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)**
- C6** S. 163(4)-(6) excluded in part (11.12.1999) by S.I. 1999/2979, **reg. 21(2)(a)**

**Commencement Information**

- I8** S. 163 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

**Marginal Citations**

- M5** 1986 c. 45.  
**M6** 1985 c. 66.  
**M7** 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, 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.
- 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>M8</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—
- (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,

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- (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, 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.
- (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 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 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 is recoverable from him by the relevant office-holder unless the court directs otherwise.
- (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 margin in relation to such a contract.
- (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.

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

**C7** S. 164 amended by S.I. 1991/880, reg. 19(1)

**C8** S. 164(4)-(6) excluded in part (11.12.1999) by S.I. 1999/2979, reg. 21(2)(b)

**Commencement Information**

**I9** S. 164 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

**Marginal Citations**

**M8** 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—
- (a) section 238 or 339 of the Insolvency Act 1986 (transactions at an under-value),
  - (b) section 239 or 340 of that Act (preferences), or
  - (c) section 423 of that Act (transactions defrauding creditors).
- (2) As respects Scotland, no decree shall be granted in relation to any such transaction—
- (a) under section 34 or 36 of the <sup>M9</sup>Bankruptcy (Scotland) Act 1985 or section 242 or 243 of the Insolvency Act 1986 (gratuitous alienations and unfair preferences), or
  - (b) at common law on grounds of gratuitous alienations or fraudulent preferences.

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- (3) This section applies to—
- (a) 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, and
  - (b) a disposition of property in pursuance of such a market contract.
- (4) Where margin is provided in relation to a market contract and (by virtue of subsection (3)(a) 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—
- (a) the provision of the margin,
  - (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 as to the application of property provided as margin.

#### Commencement Information

**I10** S. 165 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, Sch.

#### Marginal Citations

**M9** 1985 c. 66.

## 166 Powers of Secretary of State to give directions.

- (1) The powers conferred by this section are exercisable in relation to a recognised UK investment exchange or recognised UK 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>F20</sup>Authority] that it could take action, [<sup>F21</sup>the Authority] may direct it to do so, and
  - (b) if it appears to the [<sup>F20</sup>Authority] that it is proposing to take or may take action, [<sup>F21</sup>the Authority] may direct it not to do so.
- (3) Before giving such a direction the [<sup>F22</sup>Authority] shall consult the exchange or clearing house in question; and [<sup>F23</sup>it] shall not give a direction unless [<sup>F23</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, or
  - (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.
- (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—

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- (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 [F<sup>24</sup>Authority] 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.

The [F<sup>24</sup>Authority] shall not give such a direction unless [F<sup>25</sup>it is satisfied that the direction] will not impede or frustrate the proper and efficient conduct of the default proceedings.

- (8) A direction under this section is enforceable, on the application of the [F<sup>26</sup>Authority], by injunction or, in Scotland, by an order under section 45 of the <sup>M10</sup>Court of Session Act 1988; and where an exchange or clearing house 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.

#### Textual Amendments

- F20** Words in s. 166(2)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(2)(a)  
**F21** Words in s. 166(2)(a)(b) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(2)(b)  
**F22** Words in s. 166(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(3)(a)  
**F23** Words in s. 166(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(3)(b)  
**F24** Words in s. 166(7) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(4)(a)  
**F25** Words in s. 166(7) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(4)(b)  
**F26** Words in s. 166(8) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 81(5)

#### Commencement Information

- I11** 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.

#### Marginal Citations

- M10** 1988 c. 36.

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

- (1) Where there has been made or passed in relation to a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house—
- (a) a bankruptcy order or an award of sequestration of his estate, or an order appointing an interim receiver of his property, or
  - (b) an administration or winding up order, a resolution for voluntary winding up or an order appointing a provisional liquidator,
- and the exchange or clearing house has not taken action under its default rules in consequence of the order, award or resolution or the matters giving rise to it, a relevant

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office-holder appointed by, or in consequence of or in connection with, the order, award or resolution may apply to the [<sup>F27</sup>Authority].

[<sup>F28</sup>(1A) In subsection (1) a reference to 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 (c.45) (appointment by holder of qualifying floating charge), or
- (b) paragraph 22 of that Schedule (appointment by company or directors).]

(2) The application shall specify the exchange or clearing house concerned and the grounds on which it is made.

(3) On receipt of the application the [<sup>F29</sup>Authority] shall notify the exchange or clearing house, and unless within three business days after the day on which the notice is received the exchange or clearing house—

- (a) takes action under its default rules, or
- (b) notifies the [<sup>F29</sup>Authority] 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 the member or designated non-member in question is a party or to anything done by the 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>M11</sup>Banking and Financial Dealings Act 1971.

(4) The provisions of sections 158 to 165 are not disapplied if before the end of the period mentioned in subsection (3) the [<sup>F30</sup>Authority] gives the 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 the exchange or clearing house notifies the [<sup>F31</sup>Authority] 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>F31</sup>Authority], by injunction or, in Scotland, by an order under section 45 of the <sup>M12</sup>Court of Session Act 1988.

#### Textual Amendments

- F27** Words in s. 167(1) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 82(2)
- F28** S. 167(1A) inserted (15.9.2003) by 2002 c. 40, ss. 248, 279, Sch. 17 para. 46 (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))
- F29** Words in s. 167(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 82(3)
- F30** Words in s. 167(4) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 82(4)
- F31** Words in s. 167(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 82(5)

#### Commencement Information

- I12** 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

- M11** 1971 c. 80.

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(2) [**F34**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 [**F35**Financial Services and Markets Act 2000, the appropriate authority] may, before or after the revocation order, give such directions as [**F36**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.

**F37**(3A) “The appropriate authority” means—

- (a) in the case of an overseas investment exchange or clearing house, the Treasury; and
- (b) in the case of a UK investment exchange or clearing house, the Authority.]

**F33** (4) .....

(5) [**F38**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 [**F39**Treasury or the Authority].

**Textual Amendments****F33** S. 169(1)(4) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(g)**F34** Words in s. 169(2) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(2)**F35** Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(a)**F36** Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(b)**F37** S. 169(3A) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(4)**F38** Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(a)**F39** Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(b)**Modifications etc. (not altering text)****C9** S. 169(3) applied (with modifications) (E.W.S.) (15.8.1995) by S.I. 1995/2049, reg. 28

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**Commencement Information**

**I13** 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.](#)

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**Changes to legislation:**

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