



Companies Act 1989

1989 CHAPTER 40

PART VII

FINANCIAL MARKETS AND INSOLVENCY

Recognised investment exchanges and clearing houses

155 Market contracts.

[^{F1}(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).]

[^{F2}(1A) The parties referred to in subsections (1)(a) and (c) are—

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

[^{F3}(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 [^{F4}with a person other than the exchange] which are either

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- (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; ^{F5}...
- [^{F6}(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.

[^{F7}(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)).]

[^{F8}(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) [^{F9}or (2D)]; 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.]

[^{F10}(2D) A client trade is also excluded by this subsection from subsection (2B)(c) if—

- (a) the client trade was entered into by a client in the course of providing indirect clearing services to an indirect client;
- (b) the client defaults; and
- (c) the clearing member client contract corresponding to the client trade is not transferred within—
 - (i) the period specified for this purpose in the default rules of the recognised central counterparty; or

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- (ii) if no such period is specified in the default rules of the recognised central counterparty, a period of 14 days beginning with the day on which proceedings in respect of the client's insolvency are begun.]

[^{F11}(3) In relation to a recognised clearing house [^{F12}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.]

[^{F13}(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.]

[^{F14}(3B) The reference in subsection (2D)(c)(ii) to the beginning of insolvency proceedings is to—

- (a) the presentation of a bankruptcy petition or a petition for sequestration of a client's estate, or
- (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, or
- (c) the appointment of an administrative receiver.

(3C) In subsection (3B)(b) the reference to an application for an administration order is to 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 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.

Status: Point in time view as at 26/08/2013.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Cross Heading: Recognised investment exchanges and clearing houses. (See end of Document for details)

Textual Amendments

- F1** 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)
- F2** 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)
- F3** S. 155(2)(2A) substituted for s. 155(2) by S.I. 1991/880, **reg. 3**
- F4** Words in s. 155(2)(a) inserted (11.8.1998) by S.I. 1998/1748, **reg. 3(a)**
- F5** 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)**
- F6** 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)**
- F7** 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)**
- F8** 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)
- F9** Words in s. 155(2B)(c) inserted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013](#) (S.I. 2013/1908), regs. 1(3)(c), **2(2)(a)**
- F10** S. 155(2D) inserted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013](#) (S.I. 2013/1908), regs. 1(3)(c), **2(2)(b)**
- F11** 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)**
- F12** 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)
- F13** 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)**
- F14** S. 155(3B)(3C) inserted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013](#) (S.I. 2013/1908), regs. 1(3)(c), **2(2)(c)**

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.

[^{F15}155A] Qualifying collateral arrangements and qualifying property transfers

- (1) In this Part—
- (a) “qualifying collateral arrangements” means the contracts and contractual obligations to which this Part applies by virtue of subsection (2); and
 - (b) “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—

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- (a) 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
 - (b) 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)—
- (a) “property” has the meaning given by section 436(1) of the Insolvency Act 1986 and
 - (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;
 - ^{F16}(aa) [payments of money by a clearing member to indirect clients in accordance with Article 4(5) of the EMIR Level 2 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.]
 - ^{F17}(c) transfers of property to the extent that they—
 - (i) are made by a clearing member to a non-defaulting client or another clearing member instead of, or in place of, a defaulting client;
 - (ii) represent the termination or close out value of a client trade which is transferred from a defaulting client to another clearing member or a non-defaulting client; and
 - (iii) do not exceed the termination or close out value of the clearing member client contract corresponding to that client trade, as determined in accordance with the default rules of the recognised central counterparty.]

Textual Amendments

- F15** 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)
- F16** S. 155A(4)(aa) inserted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013 \(S.I. 2013/1908\)](#), regs. 1(3)(c), **2(3)(a)**

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F17 S. 155A(4)(c) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(3)(b)**

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Textual Amendments

F18 S. 156 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(e)

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- (1) A recognised UK investment exchange or [^{F19}recognised clearing house] shall give the [^{F20}appropriate regulator] at least [^{F21}three months] notice of any proposal to amend, revoke or add to its default rules; and the [^{F22}regulator] may within [^{F21}three months] from receipt of the notice direct the exchange or clearing house not to proceed with the proposal, in whole or in part.
- [^{F23}(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.
- [^{F24}(4) The appropriate regulator”—
- (a) in relation to a recognised UK investment exchange, means the FCA, and
 - (b) in relation to a [^{F25}recognised clearing house], means the Bank of England.]

Textual Amendments

- F19** 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)
- F20** 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.
- F21** 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)
- F22** 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.
- F23** 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)
- F24** 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.
- F25** 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)

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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))

158 Modifications of the law of insolvency.

- [^{F26}(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 [^{F27}or client] as a principal, action taken to transfer ^{F28}... 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—
- [^{F29}(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 [^{F30}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
 - [^{F31}(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.
- [^{F32}(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

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- 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 [F33 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

- F26** 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)
- F27** Words in s. 158(1)(d) inserted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013](#) (S.I. 2013/1908), regs. 1(3)(c), **2(4)(a)**
- F28** Word in s. 158(1)(d) omitted (26.8.2013) by virtue of [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013](#) (S.I. 2013/1908), regs. 1(3)(c), **2(4)(b)**
- F29** 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))
- F30** 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)
- F31** 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))
- F32** 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))
- F33** 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)

- 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.

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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 [^{F34}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 [^{F35}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 [^{F36}under its default rules,]
 - [^{F37}(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 [^{F38}or client] as principal, a transfer of [^{F39}a 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 ^{M1}Insolvency Act 1986 [^{F40}, 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 [^{F41},] or recognised clearing house [^{F42}which is not a recognised central counterparty,] of a market contract not dealt with under its default rules, ^{F43}...
 - (b) any action taken under the default rules of [^{F44}a recognised investment exchange,] or [^{F45}clearing house which is not a recognised central counterparty,]
 - [^{F46}(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 [^{F47}or client] as principal, the transfer of [^{F48}a 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),

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(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 [^{F49}or in the administration of a company or other body], or in Scotland claimed in a winding up or sequestration [^{F49}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.

^{F50}[(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, [^{F51}or in the administration of a company or other body] a creditors' committee.]

(5) For the purposes of [^{F52}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

F34 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))

F35 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)

F36 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)

F37 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)

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- F38** Words in s. 159(1)(f) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(5)(a)(i)**
- F39** Words in s. 159(1)(f) substituted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(5)(a)(ii)**
- F40** 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)
- F41** 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)
- F42** 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)
- F43** 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)
- F44** 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)
- F45** 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)
- F46** 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)
- F47** Words in s. 159(2)(d) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(5)(b)(i)**
- F48** Words in s. 159(2)(d) substituted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(5)(b)(ii)**
- F49** 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))
- F50** S. 159(4A) inserted by S.I. 1991/880, **reg. 4(2)**
- F51** 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))
- F52** 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.

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,

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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 [^{F53}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

F53 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](#)

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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^[F54], 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 ^[F55]section 126, 128, 130, 185 or 285 of, or paragraph ^[F56]40, 41,] 42 or 43 (^[F57]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 ^{M2}1985 or in the Debtors (Scotland) Act ^{M3} 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

- F54** 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))
- F55** 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))
- F56** 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))
- F57** 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)

- C3** S. 161 amended by [S.I. 1991/880](#), **reg. 19(1)**
- C4** 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))

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

- M2** 1985 c. 66.
M3 1987 c. 18.

Status: Point in time view as at 26/08/2013.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Cross Heading: Recognised investment exchanges and clearing houses. (See end of Document for details)

162 Duty to report on completion of default proceedings.

- (1) ^{F58}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 [^{F59}appropriate regulator] on its proceedings stating in respect of each creditor or debtor the sum [^{F60}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.
- ^{F61}(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 [^{F62}appropriate regulator] that a report is required for the purpose of insolvency proceedings in any part of the United Kingdom.
- ^{F63}(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 [^{F64}[^{F65}appropriate regulator], it] shall publish notice of that fact in such manner as [^{F66}it] thinks appropriate for bringing [^{F67}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.
- ^{F68}(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

F58 Words in s. 162(1) inserted by S.I. 1991/880, **reg. 6(2)**

F59 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.

F60 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)

F61 S. 162(1A) inserted by S.I. 1991/880, **reg. 6(3)**

F62 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.

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- F63** 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)
- F64** Words in s. 162(4) substituted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 80(4)(a)
- F65** 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.](#)
- F66** Word in s. 162(4) substituted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 80(4)(b)
- F67** Words in s. 162(4) substituted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 80(4)(c)
- F68** 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)

- C5** 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.

[^{F69}(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[^{F70}, 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[^{F71}, 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 ^{M4}1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of winding up [^{F72}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)[^{F73}, or enters administration] or, in the case of a partnership, the date of the winding-up order [^{F74}or the date on which the partnership enters administration].

- (3) If, in Scotland, an award of sequestration or a winding-up [^{F75}or administration] order has been made, or a resolution for voluntary winding up has been passed, the debt—
- may be claimed in the sequestration[^{F76}, 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[^{F77}, winding up or administration],

in the same way as a debt due before the date of sequestration (within the meaning of section 73(1) of the ^{M5}Bankruptcy (Scotland) Act 1985) or the commencement of the winding up (within the meaning of section 129 of the Insolvency Act 1986) [^{F78}or the date on which the body corporate enters administration].

[^{F79}(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—

- paragraph 14 of Schedule B1 to the Insolvency Act 1986 (appointment by holder of qualifying floating charge); or

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- (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, ^{F80} ...
 - (b) that a meeting of creditors had been summoned under section 98 of the Insolvency Act ^{M6}1986 or that a winding-up petition was pending, [^{F81}or
 - ^{F82}(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

- F69** 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)
- F70** 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))
- F71** 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))
- F72** 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))
- F73** 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))
- F74** 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))
- F75** 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))
- F76** 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))
- F77** 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))
- F78** 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))
- F79** 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))
- F80** 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))
- F81** 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))
- F82** 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))

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Modifications etc. (not altering text)

- C6** 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)**
- C7** 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

- 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, ^{F83}...
 - ^{F84}(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 [^{F85}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 ^{M7}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,
 - ^{F86}(ba) the provision of default fund contribution to the exchange or clearing house,]
 - ^{F87}(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 [^{F88}or

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- 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 [^{F89}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 [^{F90}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 [^{F91}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 [^{F91}or default fund contribution] is recoverable from him by the relevant office-holder unless the court directs otherwise.
- [^{F92}(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

- F83** 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)
- F84** 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)
- F85** 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))
- F86** 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))
- F87** 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)
- F88** 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))
- F89** 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))
- F90** 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))

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F91 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))

F92 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)

C8 S. 164 amended by S.I. 1991/880, **reg. 19(1)**

C9 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

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 ^{M8}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, ^{F93} ...
 - ^{F94}(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)^{F95}, (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—
- the provision of the margin,
 - ^{F96}(ab) a qualifying collateral arrangement,
 - any contract effected by the exchange or clearing house in question for the purpose of realising the property provided as margin, and
 - any disposition of property in accordance with the rules of the exchange or clearing house ^{F97}in question] as to the application of property provided as margin.

^{F98}(5) This section also applies to—

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- (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, ^{F99}...
- (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 [^{F100}contribution,]
- ^{F101}(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

- F93** 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)
- F94** 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)
- F95** 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)
- F96** 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)
- F97** 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))
- F98** 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))
- F99** 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)
- F100** 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)
- F101** 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)

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

- M8** 1985 c. 66.

166 Powers ^{F102}... to give directions.

- (1) The powers conferred by this section are exercisable in relation to a recognised UK investment exchange or [^{F103}recognised clearing house].

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- (2) Where in any case an exchange or clearing house has not taken action under its default rules—
- (a) if it appears to the [^{F104}appropriate regulator] that it could take action, [^{F105}the [^{F106}regulator]] may direct it to do so, and
 - (b) if it appears to the [^{F107}appropriate regulator] that it is proposing to take or may take action, [^{F105}the [^{F108}regulator]] may direct it not to do so.
- (3) Before giving such a direction the [^{F109}appropriate regulator] shall consult the exchange or clearing house in question; and [^{F110}it] shall not give a direction unless [^{F110}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, ^{F111}...
 - (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,
 - ^{F112}(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.]
- ^{F113}(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.]
- (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;

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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 ^{F114}appropriate 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.

^{F115}

- ^{F116}(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 ^{F117}regulator which gave the direction], by injunction or, in Scotland, by an order under section 45 of the ^{M9}Court of Session Act 1988; and where an exchange^{F118}, 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.

- ^{F119}(9) “The appropriate regulator”—

- (a) in relation to a recognised UK investment exchange, means the FCA, and
- (b) in relation to a ^{F120}recognised clearing house]^{F121} or a defaulting clearing member], means the Bank of England.]

Textual Amendments

- F102** 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.](#)
- F103** 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)
- F104** 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.](#)
- F105** Words in s. 166(2)(a)(b) substituted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 81(2)(b)
- F106** 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.](#)

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- F107** 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.
- F108** 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.
- F109** 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.
- F110** Words in s. 166(3) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1**, 81(3)(b)
- F111** 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.
- F112** 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.
- F113** 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)
- F114** 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.
- F115** 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.
- F116** 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.
- F117** 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.
- F118** 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)
- F119** 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.
- F120** 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)
- F121** Words in s. 166(9)(b) inserted (26.8.2013) by The Financial Services and Markets Act 2000 (Over the Counter Derivatives, Central Counterparties and Trade Repositories) (No. 2) Regulations 2013 (S.I. 2013/1908), regs. 1(3)(c), **2(6)**

Modifications etc. (not altering text)

- C10** 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

- 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

- M9** 1988 c. 36.

167 Application to determine whether default proceedings to be taken.

- [^{F122}(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,^{F123} ...

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- (b) a recognised clearing house or a member of a recognised clearing house^[F124],
or
- (c) a client which is providing indirect clearing services to an indirect client.]

The investment exchange, member, designated non-member ^[F125]clearing house or client] 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 ^[F126]appropriate regulator[.]
- (2) The application shall specify ^[F127]the responsible exchange or clearing house] and the grounds on which it is made.
- (3) On receipt of the application the ^[F128]appropriate regulator] shall notify ^[F129]the responsible exchange or clearing house], and unless within three business days after the day on which the notice is received ^[F129]the responsible exchange or clearing house]—
- (a) takes action under its default rules, or
 - (b) notifies the ^[F128]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 ^[F130]the person in default] is a party or to anything done by ^[F129]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 ^{M10}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 ^[F131]appropriate regulator] gives ^[F132]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 ^[F133]the responsible exchange or clearing house] notifies the ^[F134]appropriate regulator] that it proposes to take action under its default rules forthwith, it shall do

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so; and that duty is enforceable, on the application of the [^{F134}appropriate regulator], by injunction or, in Scotland, by an order under section 45 of the ^{M11}Court of Session Act 1988.

[^{F135}(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

- F122** 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))
- F123** Word in s. 167(1)(a) omitted (26.8.2013) by virtue of [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013 \(S.I. 2013/1908\)](#), regs. 1(3)(c), **2(7)(a)**
- F124** S. 167(1)(c) and word inserted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013 \(S.I. 2013/1908\)](#), regs. 1(3)(c), **2(7)(b)**
- F125** Words in s. 167(1) substituted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013 \(S.I. 2013/1908\)](#), regs. 1(3)(c), **2(7)(c)**
- F126** 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.](#)
- F127** 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))
- F128** 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.](#)
- F129** 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))
- F130** 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))
- F131** 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.](#)
- F132** 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))
- F133** 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))
- F134** 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.](#)
- F135** 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)

- C11** 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

- 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

- M10** 1971 c. 80.

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M11 1988 c. 36.

^{F136}**168**

Textual Amendments

F136 S. 168 repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(f)

169 Supplementary provisions.

^{F137}(1)

(2) [^{F138}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 [^{F139}Financial Services and Markets Act 2000, the appropriate authority] may, before or after the revocation order, give such directions as [^{F140}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.

[^{F141}(3A) “The appropriate authority” means—

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

[^{F142}(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.]]

^{F137}(4)

(5) [^{F143}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 [^{F144}Treasury][^{F145}, the FCA or the Bank of England]].

Textual Amendments

F137 S. 169(1)(4) repealed (1.12.2001) by S.I. 2001/3649, arts. 1, 75(g)

F138 Words in s. 169(2) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(2)

F139 Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(a)

F140 Words in s. 169(3) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(3)(b)

F141 S. 169(3A) inserted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(4)

F142 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.

F143 Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(a)

F144 Words in s. 169(5) substituted (1.12.2001) by S.I. 2001/3649, arts. 1, 83(5)(b)

F145 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 26/08/2013.

*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989,
Cross Heading: Recognised investment exchanges and clearing houses. (See end of Document for details)*

Modifications etc. (not altering text)

C12 S. 169(3) applied (with modifications) (E.W.S.) (15.8.1995) by [S.I. 1995/2049](#), **reg. 28**

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.**

Status:

Point in time view as at 26/08/2013.

Changes to legislation:

There are currently no known outstanding effects for the Companies Act 1989, Cross Heading:
Recognised investment exchanges and clearing houses.