



# Companies Act 1989

## 1989 CHAPTER 40

### PART VII

#### FINANCIAL MARKETS AND INSOLVENCY

##### *[<sup>F1</sup>Recognised bodies]*

#### **161 Supplementary provisions as to default proceedings.**

- (1) If the court is satisfied on an application by a relevant office-holder that a party to a market contract with a defaulter intends to dissipate or apply his assets so as to prevent the office-holder recovering such sums as may become due upon the completion of the default proceedings, the court may grant such interlocutory relief (in Scotland, such interim order) as it thinks fit.
- (2) A liquidator<sup>[F1]</sup>, administrator] or trustee of a defaulter or, in Scotland, a <sup>[F2]</sup>trustee in the sequestration of the] 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 <sup>[F3]</sup>the recognised body] 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>[F4]</sup>section 126, 128, 130, 185 or 285 of, or paragraph <sup>[F5]</sup>40, 41,] 42 or 43 (<sup>[F6]</sup>including those paragraphs as applied by paragraph 44) of Schedule B1 to, the Insolvency Act 1986] (which restrict the taking of certain legal proceedings and other steps), and nothing in any rule of law in Scotland to the like effect as the said section 285, in the Bankruptcy (Scotland) Act <sup>M1</sup><sup>[F7]</sup>2016] or in the Debtors (Scotland)

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*Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Section 161. (See end of Document for details)*

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Act <sup>M2</sup> as to the effect of sequestration, shall affect any action taken by [<sup>F8</sup>a recognised body] for the purpose of its default proceedings.

#### Textual Amendments

- F1** 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))
- F2** Words in s. 161(2) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 6(3)(a)**
- F3** Words in s. 161(2) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(8)(a)** (with regs. 7(4), 9(1))
- F4** 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))
- F5** 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))
- F6** 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))
- F7** Word in s. 161(4) substituted (30.11.2016) by [The Bankruptcy \(Scotland\) Act 2016 \(Consequential Provisions and Modifications\) Order 2016 \(S.I. 2016/1034\)](#), art. 1, **Sch. 1 para. 6(3)(b)**
- F8** Words in s. 161(4) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(8)(b)** (with regs. 7(4), 9(1))

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

- C1** S. 161 amended by [S.I. 1991/880](#), **reg. 19(1)**
- C2** 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

- I1** S. 161 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), art. 2, **Sch.**

#### Marginal Citations

- M1** 1985 c. 66.
- M2** 1987 c. 18.

**Changes to legislation:**

There are currently no known outstanding effects for the Companies Act 1989, Section 161.