

---

STATUTORY INSTRUMENTS

---

**1999 No. 2979**

**The Financial Markets and Insolvency  
(Settlement Finality) Regulations 1999**

**PART III**

**TRANSFER ORDERS EFFECTED THROUGH A  
DESIGNATED SYSTEM AND COLLATERAL SECURITY**

**Modifications of the law of insolvency**

**13.—**(1) The general law of insolvency has effect in relation to—

- (a) transfer orders effected through a designated system and action taken under the rules of a designated system with respect to such orders; and
- (b) collateral security,

subject to the provisions of this Part.

(2) Those provisions apply in relation to—

- (a) insolvency proceedings in respect of a participant in a designated system; and
- (b) insolvency proceedings in respect of a provider of collateral security in connection with the functions of a central bank, in so far as the proceedings affect the rights of the central bank to the collateral security;

but not in relation to any other insolvency proceedings, notwithstanding that rights or liabilities arising from transfer orders or collateral security fall to be dealt with in the proceedings.

(3) Subject to regulation 21, nothing in this Part shall have the effect of disapplying Part VII.

**Proceedings of designated system take precedence over insolvency proceedings**

**14.—**(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, sequestration or under a protected trust deed, or in the administration of an insolvent estate—

- (a) a transfer order;
- (b) the default arrangements of a designated system;
- (c) the rules of a designated system as to the settlement of transfer orders not dealt with under its default arrangements;
- (d) a contract for the purpose of realising collateral security in connection with participation in a designated system otherwise than pursuant to its default arrangements; or
- (e) a contract for the purpose of realising collateral security in connection with the functions of a central bank.

(2) The powers of a relevant office-holder in his capacity as such, and the powers of the court under the Insolvency Act 1986<sup>(1)</sup> or the Bankruptcy (Scotland) Act 1985<sup>(2)</sup>, shall not be exercised in such a way as to prevent or interfere with—

- (a) the settlement in accordance with the rules of a designated system of a transfer order not dealt with under its default arrangements;
- (b) any action taken under its default arrangements;
- (c) any action taken to realise collateral security in connection with participation in a designated system otherwise than pursuant to its default arrangements; or
- (d) any action taken to realise collateral security in connection with the functions of a central bank.

This does not prevent the court from afterwards making any such order or decree as is mentioned in regulation 17(1) or (2).

(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 transfer order which is the subject of action taken under default arrangements may not be proved in a winding up or bankruptcy, or in Scotland claimed in a winding up, sequestration or under a protected trust deed, until the completion of the action taken under default arrangements.

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

(5) Paragraph (1) has the effect that the following provisions (which relate to preferential debts and the payment of expenses etc) apply subject to paragraph (6), namely—

- (a) in the case of collateral security provided by a company (within the meaning of section 735 of the Companies Act 1985<sup>(3)</sup>)—
  - (i) section 175 of the Insolvency Act 1986, and
  - (ii) where the company is one in relation to which an administration order is made, section 19(4) of the Insolvency Act 1986, section 40 (or, in Scotland, section 59 and 60(1)(e)) of that Act, and section 196 of the Companies Act 1985; and
- (b) in the case of collateral security provided by an individual, section 328(1 and (2) of the Insolvency Act 1986 or, in Scotland, in the case of collateral security provided by an individual or a partnership, section 51 of the Bankruptcy (Scotland) Act 1985 and any like provision or rule of law affecting a protected trust deed.

(6) The claim of a participant or central bank to collateral security shall be paid in priority to—

- (a) the expenses of the winding up mentioned in sections 115 and 156 of the Insolvency Act 1986, the expenses of the bankruptcy within the meaning of that Act or, as the case may be, the remuneration and expenses of the administrator mentioned in section 19(4) of that Act, and
- (b) the preferential debts of the company or the individual (as the case may be) within the meaning given by section 386 of that Act,

unless the terms on which the collateral security was provided expressly provide that such expenses, remuneration or preferential debts are to have priority.

(7) As respects Scotland—

---

(1) 1986 c. 45.  
 (2) 1985 c. 66.  
 (3) 1985 c. 6.

- (a) the reference in paragraph (6)(a) to the expenses of bankruptcy shall be taken to be a reference to the matters mentioned in paragraphs (a) to (d) of section 51(1) of the Bankruptcy (Scotland) Act 1985, or any like provision or rule of law affecting a protected trust deed; and
- (b) the reference in paragraph (6)(b) to the preferential debts of the individual shall be taken to be a reference to the preferred debts of the debtor within the meaning of the Bankruptcy (Scotland) Act 1985, or any like definition applying with respect to a protected trust deed by virtue of any provision or rule of law affecting it.

### **Net sum payable on completion of action taken under default arrangements**

**15.**—(1) The following provisions apply with respect to any sum which is owed on completion of action taken under default arrangements by or to a defaulter but do not apply to any sum which (or to the extent that it) arises from a transfer order which is also a market contract within the meaning of Part VII, in which case sections 162 and 163 of the Companies Act 1989<sup>(4)</sup> apply subject to the modification made by regulation 21.

(2) If, in England and Wales, a bankruptcy or winding-up order has been made or a creditors' voluntary winding-up resolution has been passed, the debt—

- (a) is provable in the bankruptcy or winding up or, as the case may be, is payable to the relevant office-holder; and
- (b) shall be taken into account, where appropriate, under section 323 of the Insolvency Act 1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of winding up;

in the same way as a debt due before the commencement of 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 creditors' voluntary winding-up resolution has been passed, or a trust deed has been granted and it has become a protected trust deed, the debt—

- (a) may be claimed in the sequestration or winding up or under the protected trust deed or, as the case may be, is payable to the relevant office-holder; and
- (b) shall be taken into account for the purposes of any rule of law relating to set-off applicable in sequestration, winding up or in respect of a protected trust deed;

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 1985) or the commencement of the winding up (within the meaning of section 129 of the Insolvency Act 1986) or the grant of the trust deed.

### **Disclaimer of property, rescission of contracts, &c**

**16.**—(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 transfer order; or
- (b) a contract for the purpose of realising collateral security.

In the application of this paragraph 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 or a trustee under a protected trust deed granted by a defaulter is bound by any transfer order given by that

---

(4) 1989 c. 40.

defaulter and by any such contract as is mentioned in paragraph (1)(b) notwithstanding section 42 of the Bankruptcy (Scotland) Act 1985 or any rule of law having the like effect applying in liquidations or any like provision or rule of law affecting the protected trust deed.

(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), section 32(8) of the Bankruptcy (Scotland) Act 1985 (effect of dealing with debtor relating to estate vested in permanent trustee) and any like provision or rule of law affecting a protected trust deed, do not apply to—

- (a) a transfer order, or any disposition of property in pursuance of such an order;
- (b) the provision of collateral security;
- (c) a contract for the purpose of realising collateral security or any disposition of property in pursuance of such a contract; or
- (d) any disposition of property in accordance with the rules of a designated system as to the application of collateral security.

### **Adjustment of prior transactions**

17.—(1) No order shall be made in relation to a transaction to which this regulation applies under—

- (a) section 238 or 339 of the Insolvency Act 1986 (transactions at an undervalue);
  - (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 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.
- (3) This regulation applies to—
- (a) a transfer order, or any disposition of property in pursuance of such an order;
  - (b) the provision of collateral security;
  - (c) a contract for the purpose of realising collateral security or any disposition of property in pursuance of such a contract; or
  - (d) any disposition of property in accordance with the rules of a designated system as to the application of collateral security.

### *Collateral security charges*

### **Modifications of the law of insolvency**

18. The general law of insolvency has effect in relation to a collateral security charge and the action taken to enforce such a charge, subject to the provisions of regulation 19.

### **Administration orders, &c**

19.—(1) The following provisions of the Insolvency Act 1986 (which relate to administration orders and administrators) do not apply in relation to a collateral security charge—

- (a) sections 10(1)(b) and 11(3)(c) (restriction on enforcement of security while petition for administration order pending or order in force); and
- (b) section 15(1) and (2) (power of administrator to deal with charged property);

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

(2) However, where a collateral security charge falls to be enforced after an administration order has been made or a petition for an administration order has been presented, and there exists another charge over some or all of the same property ranking in priority to or *pari passu* with the collateral security charge, on the application of any person interested, the court may order that there shall be taken after enforcement of the collateral security charge such steps as the court may direct for the purpose of ensuring that the chargee under the other charge is not prejudiced by the enforcement of the collateral security charge.

(3) Sections 127 and 284 of the Insolvency Act 1986<sup>(5)</sup> (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition), section 32(8) of the Bankruptcy (Scotland) Act 1985<sup>(6)</sup> (effect of dealing with debtor relating to estate vested in permanent trustee) and any like provision or rule of law affecting a protected trust deed, do not apply to a disposition of property as a result of which the property becomes subject to a collateral security charge or any transactions pursuant to which that disposition is made.

### *General*

#### **Transfer order entered into designated system following insolvency**

**20.**—(1) This Part does not apply in relation to any transfer order given by a participant which is entered into a designated system after—

- (a) a court has made an order of a type referred to in regulation 22 in respect of that participant, or
- (b) that participant has passed a creditors' voluntary winding-up resolution, or
- (c) a trust deed granted by that participant has become a protected trust deed,

unless the conditions mentioned in paragraph (2) are satisfied.

(2) The conditions referred to in paragraph (1) are that—

- (a) the transfer order is carried out on the same day that the event specified in paragraph (1) (a), (b) or (c) occurs, and
- (b) the settlement agent, the central counterparty or the clearing house can show that it did not have notice of that event at the time of settlement of the transfer order.

(3) For the purposes of paragraph (2)(b), the relevant settlement agent, central counterparty or clearing house shall be taken to have notice of an event specified in paragraph (1)(a), (b) or (c) if it deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.

#### **Disapplication of certain provisions of Part VII**

**21.**—(1) The provisions of the Companies Act 1989 mentioned in paragraph (2) do not apply in relation to—

- (a) a market contract which is also a transfer order effected through a designated system; or
- (b) a market charge which is also a collateral security charge.

(2) The provisions referred to in paragraph (1) are as follows—

- (a) section 163(4) to (6) (net sum payable on completion of default proceedings);

---

<sup>(5)</sup> 1986 c. 45.

<sup>(6)</sup> 1985 c. 66.

- (b) section 164(4) to (6) (disclaimer of property, rescission of contracts, &c); and
- (c) section 175(5) and (6) (administration orders, &c).

### **Notification of insolvency order or passing of resolution for creditors' voluntary winding up**

**22.**—(1) Upon the making of an order for bankruptcy, sequestration, administration or winding up in respect of a participant in a designated system, the court shall forthwith notify both the system and the designating authority that such an order has been made.

(2) Following receipt of—

- (a) such notification from the court, or
- (b) notification from a participant of the passing of a creditors' voluntary winding-up resolution or of a trust deed becoming a protected trust deed, pursuant to paragraph 5(4) of the Schedule,

the designating authority shall forthwith inform the Treasury of the notification.

### **Applicable law relating to securities held as collateral security**

**23.** Where—

- (a) securities (including rights in securities) are provided as collateral security to a participant or a central bank (including any nominee, agent or third party acting on behalf of the participant or the central bank), and
- (b) a register, account or centralised deposit system located in an EEA State legally records the entitlement of that person to the collateral security,

the rights of that person as a holder of collateral security in relation to those securities shall be governed by the law of the EEA State or, where appropriate, the law of the part of the EEA State, where the register, account, or centralised deposit system is located.

### **Applicable law where insolvency proceedings are brought**

**24.** Where insolvency proceedings are brought in any jurisdiction against a person who participates, or has participated, in a system designated for the purposes of the Settlement Finality Directive, any question relating to the rights and obligations arising from, or in connection with, that participation and falling to be determined by a court in England and Wales or in Scotland shall (subject to regulation 23) be determined in accordance with the law governing that system.

### **Insolvency proceedings in other jurisdictions**

**25.**—(1) The references to insolvency law in section 426 of the Insolvency Act 1986 (co-operation between courts exercising jurisdiction in relation to insolvency) include, in relation to a part of the United Kingdom, this Part and, in relation to a relevant country or territory within the meaning of that section, so much of the law of that country or territory as corresponds to this Part.

(2) A court shall not, in pursuance of that section or any other enactment or rule of law, recognise or give effect to—

- (a) any order of a court exercising jurisdiction in relation to insolvency law in a country or territory outside the United Kingdom, or
- (b) any act of a person appointed in such a country or territory to discharge any functions under insolvency law,

in so far as the making of the order or the doing of the act would be prohibited in the case of a court in England and Wales or Scotland or a relevant office-holder by this Part.

(3) Paragraph (2) does not affect the recognition or enforcement of a judgment required to be recognised or enforced under or by virtue of the Civil Jurisdiction and Judgments Act 1982(7).

### **Systems designated in other EEA States, Northern Ireland and Gibraltar**

**26.**—(1) Where an equivalent overseas order or equivalent overseas security is subject to the insolvency law of England and Wales or Scotland, this Part shall apply—

- (a) in relation to the equivalent overseas order as it applies in relation to a transfer order; and
- (b) in relation to the equivalent overseas security as it applies in relation to collateral security in connection with a designated system.

(2) In paragraph (1)—

- (a) “equivalent overseas order” means an order having the like effect as a transfer order which is effected through a system designated for the purposes of the Settlement Finality Directive in another EEA State, Northern Ireland or Gibraltar; and
- (b) “equivalent overseas security” means any realisable assets provided under a charge or a repurchase or similar agreement, or otherwise (including money provided under a charge) for the purpose of securing rights and obligations potentially arising in connection with such a system.