STATUTORY INSTRUMENTS

2010 No. 2993

FINANCIAL SERVICES AND MARKETS

The Financial Markets and Insolvency (Settlement Finality and Financial Collateral Arrangements) (Amendment) Regulations 2010

Made - - - -	*15th December 2010*
Laid before Parliament	*16th December 2010*
Coming into force - -	*6th April 2011*

The Treasury are a government department designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) in relation to measures—

(i) relating to investment firms and to the provision of investment services and to the operation of regulated markets and clearing or settlement systems;

(ii) relating to payment systems; and

(iii) relating to the provision of cash, securities and interests in securities as collateral, and to collateral security provided to the central banks of Member States or to the European Central Bank.

These Regulations make provision for a purpose mentioned in section 2(2) of the European Communities Act 1972 and it appears to the Treasury that it is expedient for the reference to Council Regulation (EC) No. 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters to be construed as a reference to that instrument as amended from time to time.

The Treasury make these Regulations in exercise of the powers conferred by section 2(2) of, and paragraph 1A of Schedule 2 to, the European Communities Act 1972(**3**)

Citation and commencement

1. These Regulations may be cited as the Financial Markets and Insolvency (Settlement Finality and Financial Collateral Arrangements) (Amendment) Regulations 2010, and come into force on 6th April 2011.

(**1**) S.I. 1993/2661, S.I. 1998/2793 and S.I. 2003/1888.
(**2**) 1972 c. 68. Section 2(2), and Schedule 2 to the 1972 Act were amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51); and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c. 7).
(**3**) Paragraph 1A of Schedule 2 was inserted by section 28 of the Legislative and Regulatory Reform Act 2006 (2006 c.51).

Amendment of the Financial Markets and Insolvency (Settlement Finality) Regulations 1999

2.—(1) The Financial Markets and Insolvency (Settlement Finality) Regulations 1999(**4**) are amended as follows.

(2) In regulation 2(1)—

(a) insert each of the following definitions at the appropriate place—

> ""business day" shall cover both day and night-time settlements and shall encompass all events happening during the business cycle of a system;"
>
> ""credit claims" means pecuniary claims arising out of an agreement whereby a credit institution grants credit in the form of a loan;"
>
> ""interoperable system" in relation to a system ("the first system"), means a second system whose system operator has entered into an arrangement with the system operator of the first system that involves cross-system execution of transfer orders;"
>
> ""system operator" means the entity or entities legally responsible for the operation of a system. A system operator may also act as a settlement agent, central counterparty or clearing house;";

(b) in the definition of "central counterparty", omit "designated";

(c) in the definition of "clearing house", omit "designated";

(d) in the definition of "collateral security"—

(i) after "including" insert "credit claims and";

(ii) in sub-paragraph (a), omit "designated" both times it occurs;

(e) in the definition of "credit institution" for "Article 4(1)(a)" substitute "Article 4(1)";

(f) in the definition of "default arrangements"—

(i) after "designated system" insert "or by a system which is an interoperable system in relation to that system"; and

(ii) after "participant" insert "or a system operator of an interoperable system";

(g) for the definition of "indirect participant" substitute—

> ""indirect participant" means an institution, central counterparty, settlement agent, clearing house or system operator—
>
> (a) which has a contractual relationship with a participant in a designated system that enables the indirect participant to effect transfer orders through that system, and
>
> (b) the identity of which is known to the system operator;";

(h) in the definition of "institution"—

(i) insert after sub-paragraph (a)—

> "(aa) an electronic money institution within the meaning of Article 2.1 of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC(**5**);";

(ii) omit the word "designated";

(i) in the definition of "participant", after sub-paragraph (a), insert—

(**4**) S.I. 1999/2979, amended by S.I. 2001/3929, 2002/1555, 2003/2096, 2006/50, 2006/3221, 2007/832, 2007/108, 2007/126, 2007/1655, 2009/1972.

(**5**) OJ L 267, 10.10.2009, p7.

"(aa) a system operator;";

(j) in the definition of "relevant office-holder"—

(i) at the end of paragraph (c), omit "or";

(ii) at the end of paragraph (d), insert "or";

(iii) after paragraph (d), insert—

"(e) any person appointed pursuant to insolvency proceedings of a country or territory outside the United Kingdom;";

(k) in the definition of "settlement account" omit "designated";

(l) in the definition of "settlement agent", omit "designated";

(m) in the definition of "the Settlement Finality Directive" insert at the end "as amended by Directive 2009/44/EC of the European Parliament and of the Council of 6 May 2009 amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements as regards linked systems and credit claims(**6**)";

(n) in the definition of "transfer order" after "a central bank" insert ", a central counterparty";

(o) for the definition of "winding-up", substitute—

""winding-up" means—

(a) winding up by the court or creditors' voluntary winding up within the meaning of the Insolvency Act 1986(**7**) or the Insolvency (Northern Ireland) Order 1989(**8**) (but does not include members' voluntary winding up within the meaning of that Act or that Order);

(b) sequestration of a Scottish partnership under the Bankruptcy (Scotland) Act 1985(**9**);

(c) bank insolvency within the meaning of the Banking Act 2009(**10**).".

(3) In regulation 4(1), after "designated system" insert "and identifying the system operator of that system".

(4) In regulation 5—

(a) in paragraph (2), after "charge" insert "the system operator of";

(b) in paragraph (3)(b)—

(i) for "system continues" substitute "system and its system operator continue";

(ii) for "is complying" substitute "are complying";

(iii) for "it is subject" substitute "they are subject".

(5) In regulation 7(1)(b)—

(a) after "the system" insert "or the system operator of that system";

(b) for "it is subject" substitute "they are subject".

(6) In regulation 7(4), after "consent of the" insert "system operator of the".

(7) In regulation 8(2) insert at the end "and to the system operator of that system".

(8) In regulation 9—

(**6**) OJ L 146, 10.6.2009, p37.
(**7**) 1986 c. 45.
(**8**) S.I. 1989/2405 (N.I. 19).
(**9**) 1985 c. 66.
(**10**) 2009 c. 1.

(a) in paragraph (1), after "to the designated system" insert "and to the system operator of that system";

(b) after paragraph (1), insert—

"(2) Where a designating authority, in accordance with paragraph (1), treats an indirect participant as a participant in a designated system, the liability of the participant through which that indirect participant passes transfer orders to the designated system is not affected.".

(9) In regulation 10—

(a) for paragraph (1), substitute—

"(1) The system operator of a designated system shall, when that system is declared to be a designated system, provide to the designating authority in writing a list of the participants (including the indirect participants) in the designated system and shall give written notice to the designating authority of any amendment to the list within seven days of such amendment.";

(b) in paragraphs (2), (3), (4) and (5), for "a designated system" in each place where it occurs substitute "the system operator of a designated system".

(10) In regulation 13—

(a) for paragraph (2)(a), substitute—

"(a) insolvency proceedings in respect of a participant in a designated system, or of a participant in a system which is an interoperable system in relation to that designated system;";

(b) at the end of paragraph (2)(b), insert "and";

(c) after paragraph (2)(b), insert—

"(c) insolvency proceedings in respect of a system operator of a designated system or of a system which is an interoperable system in relation to that designated system;";

(d) after paragraph (3), insert—

"(4) References in this Part to "insolvency proceedings" shall include—

(a) bank insolvency under Part 2 of the Banking Act 2009; and

(b) bank administration under Part 3 of the Banking Act 2009;".

(11) In regulation 14—

(a) in paragraph (1), after "insolvent estate" insert "or with the law relating to other insolvency proceedings of a country or territory outside the United Kingdom";

(b) in paragraph (1)(d), after "designated system" insert "or in a system which is an interoperable system in relation to that designated system";

(c) in paragraph (2)(b) for "its default arrangements" substitute "the default arrangements of a designated system";

(d) in paragraph (2)(c), after "designated system" insert "or in a system which is an interoperable system in relation to that designated system";

(e) for paragraph (5)(a)(iv), substitute—

"(iv) paragraph 100(3) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989, Article 31(4) of that Order, as it has effect by virtue of Article 4(1) of the Insolvency (Northern Ireland) Order 2005, and Article 50 of the Insolvency (Northern Ireland) Order 1989; and";

(f) in paragraph (5)(a)(v) after "2006" insert "(including that section as applied or modified by any enactment made under the Banking Act 2009)";

(g) in paragraph (6), after "participant" insert ", system operator".

(12) In regulation 15(1), after "default arrangements" insert "of a designated system".

(13) In regulation 20—

(i) in paragraph (1)(a), for "in respect of that participant" substitute—

"in respect of—

(i) that participant;

(ii) a participant in a system which is an interoperable system in relation to the designated system; or

(iii) a system operator which is not a participant in the designated system, or";

(b) in paragraph (1)(b) and (c), after "that participant" insert ", a participant in a system which is an interoperable system in relation to the designated system or a system operator of that designated system";

(c) in paragraph (2)—

(i) in sub-paragraph (a), for "same day" substitute "same business day of the designated system";

(ii) in sub-paragraph (b)—

(aa) for "the settlement agent, the central counterparty or the clearing house" substitute "the system operator";

(bb) for "the time of settlement of the transfer order" substitute "the time the transfer order became irrevocable";

(d) in paragraph (3), for "the relevant settlement agent, central counterparty or clearing house" substitute "the relevant system operator".

(14) In regulation 22(1), for "the system" substitute "the system operator of that designated system".

(15) In regulation 23(a)—

(a) after "a participant" insert ", a system operator";

(b) after "the participant" insert ", the system operator".

(16) In regulation 26—

(a) in paragraph (1)(b), omit "in connection with a designated system";

(b) for paragraph (2)(b), substitute—

"(b) "equivalent overseas security" means any realisable assets provided under a charge or a repurchase or similar agreement, or otherwise (including credit claims and money provided under a charge)—

(i) for the purpose of securing rights and obligations potentially arising in connection with such a system, or

(ii) to a central bank for the purpose of securing rights and obligations in connection with its operations in carrying out its functions as a central bank.".

(17) In the Schedule—

(a) in paragraph 1, insert at the end—

"(5) An arrangement entered into between interoperable systems shall not constitute a system.";

(b) in paragraph 3, for "system" in both places where it occurs, substitute "system operator";

(c) in paragraph 4, for "the system", substitute "the system operator";

(d) in paragraph 5, after sub-paragraph (1), insert—

"(1A) Where the system has one or more interoperable systems, the rules required under paragraph (1)(a) and (b) shall, as far as possible, be co-ordinated with the rules of those interoperable systems.

(1B) The rules of the system which are referred to in paragraph (1)(a) and (b) shall not be affected by any rules of that system's interoperable systems in the absence of express provision in the rules of the system and all of those interoperable systems.".

Existing designations

3. Nothing in these Regulations affects any designation order in force under the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 in relation to a designated system, and no system operator shall be required to apply for an amended designation order in consequence only of these Regulations.

Amendment of the Financial Collateral Arrangements (No. 2) Regulations 2003

4.—(1) The Financial Collateral Arrangements (No. 2) Regulations 2003(**11**) are amended as follows.

(2) In regulation 3—

(a) renumber the existing provision as paragraph (1);

(b) in paragraph (1)—

(i) insert in the appropriate place—

""credit claims" means pecuniary claims which arise out of an agreement whereby a credit institution, as defined in Article 4(1) of Directive 2006/48/EC of the European Parliament and of the Council relating to the taking up and pursuit of the business of credit institutions (recast), including the institutions listed in Article 2 of that Directive, grants credit in the form of a loan(**12**);";

(ii) in the definition of "financial collateral", for "cash or financial instruments" substitute "cash, financial instruments or credit claims";

(iii) in the definition of "reorganisation measures", in sub-paragraphs (c) and (d), after "Scottish partnership," on each occasion it occurs, insert "a protected trust deed within the meaning of";

(iv) in the definitions of "security financial collateral arrangement" and "security interest"—

(aa) for "equivalent financial collateral" substitute "financial collateral of the same or greater value",

(bb) after "excess financial collateral" insert "or to collect the proceeds of credit claims until further notice";

(v) for the definition of "winding up proceedings" substitute—

(**11**) S.I. 2003/3226. These Regulations have been amended by S.I. 2009/2462.
(**12**) OJ No L 177, 30.6.2006, p1 – 200.

""winding-up proceedings" means—

(a) winding up by the court or voluntary winding up within the meaning of the Insolvency Act 1986 or the Insolvency (Northern Ireland) Order 1989;

(b) sequestration of a Scottish partnership under the Bankruptcy (Scotland) Act 1985(**13**);

(c) bank insolvency within the meaning of the Banking Act 2009.";

(c) after paragraph (1), insert—

"(2) For the purposes of these Regulations "possession" of financial collateral in the form of cash or financial instruments includes the case where financial collateral has been credited to an account in the name of the collateral-taker or a person acting on his behalf (whether or not the collateral-taker, or person acting on his behalf, has credited the financial collateral to an account in the name of the collateral-provider on his, or that person's, books) provided that any rights the collateral-provider may have in relation to that financial collateral are limited to the right to substitute financial collateral of the same or greater value or to withdraw excess financial collateral.".

(3) In regulation 4—

(a) in paragraph (4), insert at the end "or, in Scotland, to relation to any charge created or arising under a financial collateral arrangement";

(b) in paragraph (5), omit "security" both times it occurs.

(4) In regulation 5, omit "security" both times it occurs.

(5) In regulation 6A(**14**), insert at the end, "or, in Scotland, to any charge created or arising under a financial collateral arrangement."

(6) In regulation 8—

(a) in paragraph (1)(a), omit "and";

(b) after paragraph (1)(a), insert—

"(aa) paragraph 65(2) (distribution);";

(c) at the end of paragraph (1)(b), insert "and";

(d) after paragraph (1)(b), insert—

"(c) paragraph 99(3) and (4) (administrator's remuneration, expenses and liabilities)."

(e) in paragraph (3)—

(i) at the end of sub-paragraph (b), insert "and";

(ii) after sub-paragraph (b), insert—

"(c) section 19(4) and 19(5) (administrator's remuneration, expenses and liabilities)."

(7) In regulation 9—

(a) at the end of paragraph (1)(a), omit "and";

(b) after paragraph (1)(b), insert—

"(c) Article 31(4) and (5) (administrator's remuneration, expenses and liabilities); and

(**13**) 1985 c. 66.
(**14**) Regulation 6A was inserted by S.I. 2009/2462.

(d) Paragraphs 44(2), 45 (restriction on enforcement of security), 66(2) (distribution), 71, 72 (power of administrator to deal with charged property), 100(3) and (4) (administrator's remuneration, expenses and liabilities) of Schedule B1 to the Order(**15**).".

(8) In regulation 10—

(a) after paragraph (2), insert—

"(2A) Sections 40 (or in Scotland, sections 59, 60(1)(e)) and 175 of the Insolvency Act 1986 (preferential debts) shall not apply to any debt which is secured by a charge created or otherwise arising under a financial collateral arrangement.

(2B) Section 176ZA of the Insolvency Act 1986 (expenses of winding up)(**16**) shall not apply in relation to any claim to any property which is subject to a disposition or created or otherwise arising under a financial collateral arrangement.";

(b) in paragraph (4), for "being wound up" substitute "subject to winding-up proceedings"; and

(c) in paragraph (6) after "floating charge)", insert "(including that section as applied or modified by any enactment made under the Banking Act 2009)".

(9) In regulation 11—

(a) after paragraph (1), insert—

"(1A) Article 50 of that Order (payment of debts out of assets subject to floating charge) shall not apply (if it would otherwise do so), to any charge created or otherwise arising under a financial collateral arrangement.";

(b) after paragraph (2), insert—

"(2A) Articles 149 of that Order (preferential debts) and 150ZA (expenses of winding up)(**17**) shall not apply (if they would otherwise do so) to any charge created or otherwise arising under a financial collateral arrangement.".

(10) In regulation 12—

(a) in paragraph (2)(b), after "winding-up of" insert "or, in Scotland, a petition for winding-up proceedings in relation to";

(b) in paragraph (3)—

(i) in paragraph (a), after "winding-up order" insert "or, in the case of a Scottish partnership, the award of sequestration", and

(ii) in paragraph (b) after "otherwise", insert "or, in the case of a Scottish partnership, when a protected trust deed is entered into";

(c) in paragraph (4) after "set-off)" insert ", or in Scotland, any rule of law with the same or similar effect to the effect of these Rules".

(11) In regulation 13(3)—

(a) in paragraph (a) after "winding-up order" insert "or, in the case of a Scottish partnership, the award of sequestration"; and

(b) in paragraph (b) after "otherwise" insert "or, in the case of a Scottish partnership, the date of registration of a protected trust deed".

(12) In regulation 15—

(a) after "goes into liquidation" insert "or administration";

(**15**) Schedule B1 was inserted by S.I. 2005/1455 (N.I. 10).
(**16**) Section 176ZA was inserted by the Companies Act 2006 (c.46), section 1282.
(**17**) Article 150ZA was inserted by the Companies Act 2006, section 1282.

(b) for "section 49(3) of the Bankruptcy (Scotland) Act 1985 as applied by rule 4.16(1)(c) of those rules (claims in foreign currency)" substitute "the provisions of the Bankruptcy (Scotland) Act 1985 referred to in those rules and such rules and provisions as applied by rule 2.41 of the Insolvency (Scotland) Rules 1986".

(13) After regulation 15, insert—

"**Insolvency proceedings in other jurisdictions**

15A.—(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 of these Regulations 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 by this Part in the case of a court in England and Wales or Scotland, the High Court in Northern Ireland or a relevant office holder.

(3) Paragraph (2) does not affect the recognition of a judgment required to be recognised or enforced under or by virtue of the Civil Jurisdiction and Judgments Act 1982(**18**) or Council Regulation (EC) No 44/2001 of 22nd December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters(**19**), as amended from time to time and as applied by the Agreement made on 19th October 2005 between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters(**20**).".

(14) In regulation 16—

(a) after paragraph (3), insert—

"(3A) In Scotland, paragraphs (1) and (3) apply to title transfer financial collateral arrangements as they apply to security financial collateral arrangements.";

(b) at the end insert—

"(5) This regulation does not apply in relation to credit claims.".

(15) For regulation 17, substitute—

"**Appropriation of financial collateral under a security financial collateral arrangement**

17.—(1) Where a security interest is created or arises under a security financial collateral arrangement on terms that include a power for the collateral-taker to appropriate the financial collateral, the collateral-taker may exercise that power in accordance with the terms of the security financial collateral arrangement, without any order for foreclosure from the courts (and whether or not the remedy of foreclosure would be available).

(**18**) 1982 c. 27.
(**19**) OJ L 12, 16.1.2001, p1-23.
(**20**) OJ L 299 16.11.2005, p62.

(2) Upon the exercise by the collateral-taker of the power to appropriate the financial collateral, the equity of redemption of the collateral-provider shall be extinguished and all legal and beneficial interest of the collateral-provider in the financial collateral shall vest in the collateral taker.".

Registration of charges: Scotland

5.—(1) The Bankruptcy and Diligence etc. (Scotland) Act 2007(**21**) has effect in relation to floating charges which are created by or otherwise arise under a financial collateral arrangement with the following modifications.

(2) In section 38 (creation of floating charges)—

(a) in subsection (3), after "subsection (3A)" insert ", subsection (3B)";

(b) after subsection (3A), insert—

"(3B) If a floating charge is created or otherwise arises under a security financial collateral arrangement, it is created when the document granting the floating charge is executed by the company granting the charge and without registration in the Register of Floating Charges.".

(3) In section 39 (advance notice of floating charges), for subsection (4), substitute—

"(4) This section does not apply—

(a) where a company proposes to grant a floating charge in favour of a central institution;

(b) where a floating charge is created or otherwise arises under a security financial collateral arrangement.".

(4) In section 42 (assignation of floating charges), after subsection (4), insert—

"(5) This section does not apply to the assignation (whether in whole or to a specified extent) of a floating charge which was created or otherwise arises under a security financial collateral arrangement.".

(5) In section 43 (alteration of floating charges), in subsection (4A)—

(a) at the end of paragraph (b), insert ", or";

(b) after paragraph (b), insert—

"(c) the floating charge was created or otherwise arises under a security financial collateral arrangement.".

(6) In section 44 (discharge of floating charges), for subsection (4), substitute—

"(4) This section does not apply where the floating charge to be discharged (whether in whole or to a specified extent)—

(a) is or has been held by a central institution, or

(b) was created or otherwise arises under a security financial collateral arrangement.".

(7) In section 47 (interpretation), after the definition of "fixed security", insert—

"security financial collateral arrangement" has the same meaning as in regulation 3 of the Financial Collateral Arrangements (No. 2) Regulations 2003;".

(**21**) 2007 asp 3, as amended by the Banking Act 2009 (c.1) s. 253. The provisions modified by these Regulations have not yet been commenced.

Michael Fabricant
Jeremy Wright
Two of the Lords Commissioners of Her Majesty's Treasury

15th December 2010

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Directive 2009/44/EC of the European Parliament and of the Council amending Directive 98/26/EC on settlement finality in payment and securities settlement systems and Directive 2002/47/EC on financial collateral arrangements (OJ L146, 10.6.09, p 37). The Directive seeks to make further provision for linked or "interoperable" systems, and ensure that credit claims may be used as financial collateral.

Regulation 2 amends the Financial Markets and Insolvency (Settlement Finality) Regulations 1999 (S.I. 1999/2979) ("the 1999 Regulations"). Paragraph (2) amends the definition of "collateral security" to include credit claims, and defines credit claims. It also amends the definitions of participant and indirect participant, adds new definitions of "business day", "interoperable system" and "system operator", and amends a number of definitions to provide for interoperable systems.

Paragraphs (3) to (7) and (9) amend regulations 4 to 8 and 10 of the 1999 Regulations so that obligations previously imposed on the designated system itself are now imposed on the system operator of that system. Paragraph (8) clarifies the liability of a participant through which an indirect participant passes transfer orders to the designated system.

Paragraphs (10) and (11) amend regulations 13 and 14 of the 1999 Regulations so that the protection given in relation to insolvency proceedings in respect of a participant in a designated system is now extended to insolvency proceedings in respect of the system operator of a designated system, and in respect of participants in interoperable systems of a designated system.

Paragraph (13) amends regulation 20 so that modifications made to the law of insolvency cease to apply to a transfer order entered into a designated system following the insolvency not only of a participant in that system (and of an interoperable system), but also of a system operator who is not a participant in the system, unless the transfer order is carried out on the same business day as the insolvency and the system operator did not have notice of it when the order was settled.

Paragraph (14) amends regulation 22 to require the system operator of a designated system to be informed when a court makes an insolvency order in relation to a participant in a designated system. Paragraph (15) amends regulation 23 so that the rule in that regulation for determining the applicable law in relation to securities held as collateral security also applies in relation to securities provided to a system operator.

Paragraph (16) amends regulation 26 to ensure that Part 3 of the Regulations applies to equivalent overseas security provided to a central bank just as it applies to such security provided in connection with a designated system, and amends the definition of "equivalent overseas security" accordingly.

Paragraph (17) amends paragraphs 1, 3 and 4 of the Schedule to the 1999 Regulations to clarify what is a "system" for the purpose of the Regulations. It also amends paragraph 5 of the Schedule to require the rules of interoperable systems in relation to the finality and revocation of a transfer order to be co-ordinated as far as possible.

Regulation 3 provides, for the avoidance of doubt, that these Regulations do not affect the designation of any existing designated system.

Regulation 4 amends the Financial Collateral Arrangements (No. 2) Regulations 2003 (S.I. 2003/3226) ("the 2003 Regulations"). Paragraph (2) inserts a new definition of "credit claims", amends the definitions of "financial collateral" and "security financial collateral arrangement" to include credit claims which are provided as financial collateral and inserts a definition of "possession" for the purposes of the Regulations.

Paragraphs (3) to (12) disapply a number of provisions of insolvency law in relation to financial collateral arrangements, and make some consequential amendments to reflect Scottish insolvency law.

Paragraph (13) ensures that an insolvency order made by a foreign court, or an act of a foreign insolvency office-holder, cannot be enforced by a UK court if such an order or act could not be made by a UK court or office-holder.

Paragraph (14) provides that the provision in the 2003 Regulations on the right of use apply to Scottish title transfer financial collateral arrangements in the same way as they apply to security financial collateral arrangements, and ensures that these provisions do not apply to credit claims. Paragraph (15) clarifies the power of appropriation in relation to security financial collateral arrangements.

Regulation 5 modifies the Bankruptcy and Diligence etc. (Scotland) Act 2007 (asp 3) in its application to floating charges which are created or arise under a financial collateral arrangement to ensure that such charges are created when the document creating the charge is executed, not when the charge is registered on the Scottish Register of Floating Charges, and makes further consequential amendments in relation to such charges.

An Impact Assessment of the effect of this instrument on the costs of business has been prepared and may be obtained from the Financial Regulation Strategy Team, HM Treasury, 1 Horse Guards Road, London SW1A 2HQ. It is also available on HM Treasury's website (www.hm-treasury.gov.uk), and is annexed to the Explanatory Memorandum which is available alongside this instrument on www.legislation.gov.uk.