



Companies Act 1989

1989 CHAPTER 40

PART VII

FINANCIAL MARKETS AND INSOLVENCY

Supplementary provisions

182 Powers of court in relation to certain proceedings begun before commencement.

- (1) The powers conferred by this section are exercisable by the court where insolvency proceedings in respect of—
- (a) a member of a recognised investment exchange or a recognised clearing house, or
 - (b) a person by whom a market charge has been granted,
- are begun on or after 22nd December 1988 and before the commencement of this section.

That person is referred to in this section as “the relevant person”.

- (2) For the purposes of this section “insolvency proceedings” means proceedings under Part II, IV, V or IX of the ^{M1}Insolvency Act 1986 (administration, winding up and bankruptcy) or under the Bankruptcy (Scotland) Act [^{F1}2016]; and references in this section to the beginning of such proceedings are to—
- [^{F2}(za) the making of a bankruptcy application on which a bankruptcy order is made,]
- (a) the presentation of a petition on which an administration order, winding-up order, bankruptcy order or award of sequestration is made, or
 - (b) the passing of a resolution for voluntary winding up.
- (3) This section applies in relation to—
- (a) in England and Wales, the administration of the insolvent estate of a deceased person, and

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(b) in Scotland, the administration by a judicial factor appointed under section 11A of the ^{M2}Judicial Factors (Scotland) Act 1889 of the insolvent estate of a deceased person,
as it applies in relation to insolvency proceedings.

In such a case references to the beginning of the proceedings shall be construed as references to the death of the relevant person.

(4) The court may on an application made, within three months after the commencement of this section, by—

- (a) a recognised investment exchange or recognised clearing house, or
- (b) a person in whose favour a market charge has been granted,

make such order as it thinks fit for achieving, except so far as assets of the relevant person have been distributed before the making of the application, the same result as if the provisions of Schedule 22 had come into force on 22nd December 1988.

(5) The provisions of that Schedule (“the relevant provisions”) reproduce the effect of certain provisions of this Part as they appeared in the Bill for this Act as introduced into the House of Lords and published on that date.

(6) The court may in particular—

- (a) require the relevant person or a relevant office-holder—
 - (i) to return property provided as cover for margin or which was subject to a market charge, or to pay to the applicant or any other person the proceeds of realisation of such property, or
 - (ii) to pay to the applicant or any other person such amount as the court estimates would have been payable to that person if the relevant provisions had come into force on 22nd December 1988 and market contracts had been settled in accordance with the rules of the recognised investment exchange or recognised clearing house, or a proportion of that amount if the property of the relevant person or relevant office-holder is not sufficient to meet the amount in full;
- (b) provide that contracts, rules and dispositions shall be treated as not having been void;
- (c) modify the functions of a relevant office-holder, or the duties of the applicant or any other person, in relation to the insolvency proceedings, or indemnify any such person in respect of acts or omissions which would have been proper if the relevant provisions had been in force;
- (d) provide that conduct which constituted an offence be treated as not having done so;
- (e) dismiss proceedings which could not have been brought if the relevant provisions had come into force on 22nd December 1988, and reverse the effect of any order of a court which could not, or would not, have been made if those provisions had come into force on that date.

(7) An order under this section shall not be made against a relevant office-holder if the effect would be that his remuneration, costs and expenses could not be met.

Textual Amendments

- F1** Word in s. 182(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\(9\)](#)

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F2 S. 182(2)(za) inserted (6.4.2016) by [The Enterprise and Regulatory Reform Act 2013 \(Consequential Amendments\) \(Bankruptcy\) and the Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments\) Regulations 2016 \(S.I. 2016/481\)](#), reg. 1, **Sch. 1 para. 9(7)**

Modifications etc. (not altering text)

C1 S. 182 amended by [S.I. 1991/880](#), **reg. 19(1)**

Commencement Information

I1 S. 182 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), art. 2, **Sch.**

Marginal Citations

M1 [1986 c. 45.](#)

M2 [1889 c. 39.](#)

[^{F3}182A. Recognised central counterparties: disapplication of provisions on mutual credit and set-off

- (1) Nothing in the law of insolvency shall enable the setting off against each other of—
- positions and assets recorded in an account at a recognised central counterparty and held for the account of a client, an indirect client or a group of clients or indirect clients in accordance with Article 39 of the EMIR Level 1 Regulation [^{F4}, Article 3(1) of the EMIR Level 2 Regulation or Article 3(1) of the MIFIR Level 2 Regulation]; and
 - positions and assets recorded in any other account at the recognised central counterparty.]

- [^{F5}(2) Nothing in the law of insolvency shall enable the setting off against each other of—
- positions and assets recorded in an account at a clearing member and held for the account of an indirect client or a group of indirect clients in accordance with [^{F6}Article 4(2) of the EMIR Level 2 Regulation or Article 4(2) of the MIFIR Level 2 Regulation]; and
 - positions and assets recorded in any other account at the clearing member.]

Textual Amendments

- F3** S. 182A 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(15)** (with regs. 52-58)
- F4** Words in s. 182A(1)(a) substituted (3.1.2018) by [The Companies Act 1989 \(Financial Markets and Insolvency\) \(Amendment\) Regulations 2017 \(S.I. 2017/1247\)](#), regs. 1, **2(3)(a)**
- F5** S. 182A(2) 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(9)**
- F6** Words in s. 182A(2)(a) substituted (3.1.2018) by [The Companies Act 1989 \(Financial Markets and Insolvency\) \(Amendment\) Regulations 2017 \(S.I. 2017/1247\)](#), regs. 1, **2(3)(b)**

183 Insolvency proceedings in other jurisdictions.

- (1) The references to insolvency law in section 426 of the ^{M3}Insolvency Act 1986 (co-operation with courts exercising insolvency jurisdiction in other jurisdictions) include, in relation to a part of the United Kingdom, the provisions made by or under this Part

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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 any provisions made by or under 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 the United Kingdom or a relevant office-holder by provisions made by or under this Part.
- (3) Subsection (2) does not affect the recognition or enforcement of a judgment required to be recognised or enforced under or by virtue of the ^{M4}Civil Jurisdiction and Judgments Act 1982^{F7}....

Textual Amendments

F7 Words in s. 183(3) omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019 \(S.I. 2019/341\)](#), regs. 1(3), **2(6)** (with reg. 21) (as amended by [S.I. 2020/1301](#), regs. 1, 3, Sch. para. 23(b) and with savings in [S.I. 2019/680](#), reg. 11); 2020 c. 1, Sch. 5 para. 1(1)

Commencement Information

I2 S. 183 wholly in force at 25.4.1991 see s. 215 and [S.I. 1991/878](#), art. 2, [Sch.](#)

Marginal Citations

M3 1986 c. 45.

M4 1982 c. 27.

184 Indemnity for certain acts, &c.

- (1) Where a relevant office-holder takes any action in relation to property of a defaulter which is liable to be dealt with in accordance with the default rules of a [^{F8}recognised body], and believes and has reasonable grounds for believing that he is entitled to take that action, he is not liable to any person in respect of any loss or damage resulting from his action except in so far as the loss or damage is caused by the office-holder's own negligence.
- (2) Any failure by a [^{F9}recognised body] to comply with its own rules in respect of any matter shall not prevent that matter being treated for the purposes of this Part as done in accordance with those rules so long as the failure does not substantially affect the rights of any person entitled to require compliance with the rules.
- (3) No [^{F10}recognised body], nor any officer or servant or member of the governing body of a [^{F10}recognised body], shall be liable in damages for anything done or omitted in the discharge or purported discharge of any functions to which this subsection applies unless the act or omission is shown to have been in bad faith.
- (4) The functions to which subsection (3) applies are the functions of [^{F11}the recognised body] so far as relating to, or to matters arising out of—

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- (a) its default rules, or
 - (b) any obligations to which it is subject by virtue of this Part.
- (5) No person [^{F12}to whom the exercise of any function of a [^{F13}recognised body] is delegated under its default rules], nor any officer or servant of such a person, shall be liable in damages for anything done or omitted in the discharge or purported discharge of those functions unless the act or omission is shown to have been in bad faith.

Textual Amendments

- F8** Words in s. 184(1) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(23)(a)** (with regs. 7(4), 9(1))
- F9** Words in s. 184(2) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(23)(a)** (with regs. 7(4), 9(1))
- F10** Words in s. 184(3) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(23)(a)** (with regs. 7(4), 9(1))
- F11** Words in s. 184(4) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(23)(b)** (with regs. 7(4), 9(1))
- F12** Words in s. 184(5) substituted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1, 87**
- F13** Words in s. 184(5) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(23)(a)** (with regs. 7(4), 9(1))

Commencement Information

- I3** S. 184 wholly in force at 1.10.1991; s. 184 in force for certain purposes on 25.3.1991 see s. 215 and [S.I. 1991/488](#), **art. 2(2)**, s. 184 in force for certain purposes on 25.4.1991 see s. 215 and [S.I. 1991/878](#), **art. 2 Sch.**, s. 184 wholly in force at 1.10.1991 see [S.I. 1991/2173](#), art. 3

185 Power to make further provision by regulations.

- (1) The Secretary of State may by regulations make such further provision as appears to him necessary or expedient for the purposes of this Part.
- (2) Provision may, in particular, be made—
 - (a) for integrating the provisions of this Part with the general law of insolvency, and
 - (b) for adapting the provisions of this Part in their application to overseas investment exchanges and clearing houses.
- (3) Regulations under this section may add to, amend or repeal any of the provisions of this Part or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

[^{F14}(4) References in this section to the provisions of this Part include any provision made under section 301 of the Financial Services and Markets Act 2000.]

Textual Amendments

- F14** S. 185(4) inserted (1.12.2001) by [S.I. 2001/3649](#), **arts. 1, 88**

Modifications etc. (not altering text)

- C2** S. 185: certain functions made exercisable (7.6.1992) jointly by the Secretary of State and the Treasury by [S.I. 1992/1315](#), art. 4, **Sch. 2 para. 7** (with art. 6).

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Cross Heading: Supplementary provisions. (See end of Document for details)

Commencement Information

- I4** S. 185 wholly in force at 10.8.1998. In force for certain purposes at 25.3.1991 by s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#), and for all remaining purposes at 10.8.1998 by [S.I. 1998/1747, art. 2](#)

186 Supplementary provisions as to regulations.

- (1) Regulations under this Part may make different provision for different cases and may contain such incidental, transitional and other supplementary provisions as appear to the Secretary of State to be necessary or expedient.
- (2) Regulations under this Part shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament.

Modifications etc. (not altering text)

- C3** S. 186: certain functions made exercisable (7.6.1992) 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.186 wholly in force at 10.8.1998. In force for certain purposes at 25.3.1991 by s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#) and for all remaining purposes at 8.10.1998 by [S.I. 1998/1747, art. 2](#)

187 Construction of references to parties to market contracts.

- (1) Where a person enters into market contracts in more than one capacity, the provisions of this Part apply (subject as follows) as if the contracts entered into in each different capacity were entered into by different persons.
 - (2) References in this Part to a market contract to which a person is a party include (subject as follows, and unless the context otherwise requires) contracts to which he is party as agent.
- [^{F15}(2A) Subsections (1) and (2) do not apply to market contracts to which this Part applies by virtue of section 155(2B).]
- (3) The Secretary of State may by regulations—
 - (a) modify or exclude the operation of subsections (1) and (2), and
 - (b) make provision as to the circumstances in which a person is to be regarded for the purposes of those provisions as acting in different capacities.

Textual Amendments

- F15** S. 187(2A) 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\(16\)](#) (with regs. 52-58)

Modifications etc. (not altering text)

- C4** S. 187(1) amended by [S.I. 1991/880, reg. 16\(2\)](#)

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Commencement Information

- 16** S.187 wholly in force; s. 187(3) in force for certain purposes at 25.3.1991, s. 187 wholly in force at 25.4.1991 see s. 215(2) and [S.I. 1991/488, art. 2\(2\)](#); [S.I. 1991/878, art. 2, Sch.](#)

188 Meaning of “default rules” and related expressions.

- (1) In this Part “default rules” means rules of a [^{F16}recognised body] which provide for the taking of action in the event of a person [^{F17}(including another [^{F16}recognised body])] appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts [^{F18}connected with [^{F19}the recognised body], ^{F20}....]

[^{F21}(1A) In the case of a recognised central counterparty, “default rules” includes—

- (a) the default procedures referred to in Article 48 of the EMIR Level 1 Regulation; and
- (b) any rules of the recognised central counterparty which provide for the taking of action in accordance with a request or instruction from a clearing member under the default procedures referred to in [^{F22}Article 4(6) and (7) of the EMIR Level 2 Regulation or Article 4(6) and (7) of the MIFIR Level 2 Regulation] in respect of assets or positions held by the recognised central counterparty for the account of an indirect client or group of indirect clients.]

[^{F23}(1B) In the case of a recognised CSD, “default rules” includes the default rules and procedures referred to in Article 41 of the CSD regulation.]

- (2) References in this Part to a “defaulter” are to a person in respect of whom action has been taken by [^{F24}a recognised body] under its default rules, whether by declaring him to be a defaulter or otherwise; and references in this Part to “default” [^{F25}, “defaulting” and “non-defaulting”] shall be construed accordingly.

[^{F26}(2A) For the purposes of subsection (2), where a recognised central counterparty takes action under the rules referred to in subsection (1A)(b), the action is to be treated as taken in respect of the client providing the indirect clearing services.]

- (3) In this Part “default proceedings” means proceedings taken by [^{F27}a recognised body] under its default rules.

[^{F28}(3A) In this Part “default fund contribution” means—

- (a) contribution by a member or designated non-member of a recognised investment exchange to a fund which—
 - (i) is maintained by that exchange for the purpose of covering losses arising in connection with defaults by any of the members of the exchange, or defaults by any of the members or designated non-members of the exchange, and
 - (ii) may be applied for that purpose under the default rules of the exchange;
- (b) contribution by a member of a recognised clearing house to a fund which—
 - (i) is maintained by that clearing house for the purpose of covering losses arising in connection with defaults by any of the members of the clearing house, and
 - (ii) may be applied for that purpose under the default rules of the clearing house;
- (c) contribution by a recognised clearing house to a fund which—

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- ^{F29}(i) is maintained by another recognised body (A) for the purpose of covering losses arising in connection with defaults by recognised bodies other than A or by any of their members, and]
 - (ii) may be applied for that purpose under A's default rules; ^{F30} ...
 - (d) contribution by a recognised investment exchange to a fund which—
 - ^{F31}(i) is maintained by another recognised body (A) for the purpose of covering losses arising in connection with defaults by recognised bodies other than A or by any of their members, and]
 - (ii) may be applied for that purpose under A's default rules.]
 - ^{F32}(e) contribution by a member of a recognised CSD to a fund which—
 - (i) is maintained by that central securities depository for the purpose of covering losses arising in connection with defaults by any of the members of the central securities depository, and
 - (ii) may be applied for that purpose under the default rules of the central securities depository; or
 - (f) contribution by a recognised CSD to a fund which—
 - (i) is maintained by another recognised body (A) for the purpose of covering losses arising in connection with defaults by recognised bodies other than A or by any of their members, and
 - (ii) may be applied for that purpose under A's default rules.]
- (4) If ^{F33}a recognised body] takes action under its default rules in respect of a person, all subsequent proceedings under its rules for the purposes of or in connection with the settlement of market contracts to which the defaulter is a party shall be treated as done under its default rules.

Textual Amendments

- F16** Words in s. 188(1) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(24)(a)(i)** (with regs. 7(4), 9(1))
- F17** Words in s. 188(1) inserted (15.6.2009) by [The Financial Markets and Insolvency Regulations 2009 \(S.I. 2009/853\)](#), regs. 1(1), **2(15)(a)**
- F18** Words in s. 188(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(17)(a)** (with regs. 52-58)
- F19** Words in s. 188(1) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(24)(a)(ii)** (with regs. 7(4), 9(1))
- F20** Words in s. 188(1) 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(10)(a)**
- F21** S. 188(1A) 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(10)(b)**
- F22** Words in s. 188(1A)(b) substituted (3.1.2018) by [The Companies Act 1989 \(Financial Markets and Insolvency\) \(Amendment\) Regulations 2017 \(S.I. 2017/1247\)](#), regs. 1, **2(4)**
- F23** S. 188(1B) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(24)(b)** (with regs. 7(4), 9(1))
- F24** Words in s. 188(2) substituted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(24)(c)** (with regs. 7(4), 9(1))

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- F25** Words in s. 188(2) 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(17)(b)** (with regs. 52-58)
- F26** S. 188(2A) 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(10)(c)**
- F27** Words in s. 188(3) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(24)(c)** (with regs. 7(4), 9(1))
- F28** S. 188(3A) inserted (15.6.2009) by The Financial Markets and Insolvency Regulations 2009 (S.I. 2009/853), regs. 1(1), **2(15)(b)**
- F29** S. 188(3A)(c)(i) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(24)(d)(i)** (with regs. 7(4), 9(1))
- F30** Word in s. 188(3A)(c) omitted (28.11.2017) by virtue of The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(24)(d)(ii)** (with regs. 7(4), 9(1))
- F31** S. 188(3A)(d)(i) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(24)(d)(iii)** (with regs. 7(4), 9(1))
- F32** S. 188(3A)(e)(f) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(24)(d)(iv)** (with regs. 7(4), 9(1))
- F33** Words in s. 188(4) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(24)(e)** (with regs. 7(4), 9(1))

Commencement Information

- I7** S. 188 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

189 Meaning of “relevant office-holder”.

- (1) The following are relevant office-holders for the purposes of this Part—
- the official receiver,
 - any person acting in relation to a company as its liquidator, provisional liquidator, administrator or administrative receiver,
 - any person acting in relation to an individual (or, in Scotland, any debtor within the meaning of the Bankruptcy (Scotland) Act [^{F34}2016]) as his trustee in bankruptcy or interim receiver of his property or as [^{F35}trustee] or interim trustee in the sequestration of his estate,
 - any person acting as administrator of an insolvent estate of a deceased person.
- (2) In subsection (1)(b) “company” means any company, society, association, partnership or other body which may be wound up under the ^{M5}Insolvency Act 1986.

Textual Amendments

- F34** Word in s. 189(1)(c) 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(10)(a)**
- F35** Word in s. 189(1)(c) 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(10)(b)**

Commencement Information

- I8** S. 189 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

Marginal Citations

- M5** 1986 c.45.

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Cross Heading: Supplementary provisions. (See end of Document for details)

[^{F36}189A Meaning of “transfer”

- (1) In this Part, a reference to a transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement shall be interpreted in accordance with this section.
- (2) A transfer of a clearing member client contract or client trade includes—
 - (a) an assignment;
 - (b) a novation; and
 - (c) terminating or closing out the clearing member client contract or client trade and establishing an equivalent position between different parties.
- (3) Where a clearing member client contract is recorded in the accounts of a recognised central counterparty as a position held for the account of an indirect client or group of indirect clients, the clearing member client contract is to be treated as having been transferred if the position is transferred to a different account at the recognised central counterparty.
- (4) A reference to a transfer of a qualifying collateral arrangement includes an assignment or a novation.]

Textual Amendments

F36 S. 189A 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(11)**

190 Minor definitions.

- (1) In this Part—

“administrative receiver” has the meaning given by section 251 of the Insolvency Act 1986;
^{F37}

“charge” means any form of security, including a mortgage and, in Scotland, a heritable security;
^{F38}

[^{F39}“clearing member”, in relation to a recognised central counterparty, has the meaning given by Article 2(14) of the EMIR Level 1 Regulation;]

[^{F39}“client” has the meaning given by Article 2(15) of the EMIR Level 1 Regulation;]

[^{F40}“CSD regulation” means Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories;]

[^{F39}“EMIR Level 1 Regulation” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories;]

[^{F39}“EMIR Level 2 Regulation” means Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial

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counterparties, risk mitigation for OTC derivatives contracts not cleared by a CCP [^{F41}as amended by Commission Delegated Regulation (EU) 2017/2155 of 22 September 2017];]

[^{F42}“the FCA” means the Financial Conduct Authority;]

[^{F43}“indirect clearing services” has the same meaning as in the EMIR Level 2 Regulation;]

[^{F39}“indirect client” has the meaning given by Article 1(a) of the EMIR Level 2 Regulation;]

[^{F44}“interim trustee” has the same meaning as in the Bankruptcy (Scotland) Act 2016]

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.....
[^{F40}“member”, in relation to a central securities depository, means a participant of that central securities depository as defined in Article 2(1)(19) of the CSD regulation;]

[^{F39}“member of a clearing house” includes a clearing member of a recognised central counterparty;]

[^{F45}“MIFIR Level 2 Regulation” means Commission Delegated Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No. 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements;]

“overseas”, in relation to an investment exchange or clearing house [^{F46}or central securities depository], means having its head office outside the United Kingdom;

[^{F39}“position” has the same meaning as in the EMIR Level 1 Regulation;]

[^{F47}“the PRA” means the Prudential Regulation Authority;]

[^{F40}“recognised body” has the same meaning as in section 313 of the Financial Services and Markets Act 2000;]

^{F48}[^{F49}...“recognised central counterparty”, “recognised CSD”, “recognised clearing house”, “recognised investment exchange” [^{F50}“third country central counterparty”] and “third country CSD” have the same meaning as in the Financial Services and Markets Act 2000 (see section 285 of that Act);]

[^{F51}“sequestration” means sequestration under the Bankruptcy (Scotland) Act 2016;]

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.....
“set-off”, in relation to Scotland, includes compensation;

[^{F52}“The Stock Exchange” means the London Stock Exchange Limited;]

[^{F53}“UK”, in relation to an investment exchange, means having its head office in the United Kingdom.]

[^{F54}(2) References in this Part to settlement—

- (a) mean, in relation to a market contract, the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise;
- (b) include, in relation to a clearing member client contract or a clearing member house contract, a reference to its liquidation for the purposes of Article 48 of the EMIR Level 1 Regulation.]

(3) In this Part the expressions “margin” and “cover for margin” have the same meaning.

^{F55}(3A)

^{F56}(4)

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- (5) For the purposes of this Part a person shall be taken to have notice of a matter if he deliberately failed to make enquiries as to that matter in circumstances in which a reasonable and honest person would have done so.

This does not apply for the purposes of a provision requiring “actual notice”.

[^{F57}(6) References in this Part to the law of insolvency—

- (a) include references to every provision made by or under the Insolvency Act 1986 or the Bankruptcy (Scotland) Act [^{F58}2016]; and in relation to a building society references to insolvency law or to any provision of the Insolvency Act 1986 are to that law or provision as modified by the Building Societies Act 1986;
- (b) are also to be interpreted in accordance with the modifications made by the enactments mentioned in subsection (6B).

(6A) For the avoidance of doubt, references in this Part to administration, administrator, liquidator and winding up are to be interpreted in accordance with the modifications made by the enactments mentioned in subsection (6B).

(6B) The enactments referred to in subsections (6)(b) and (6A) are—

- (a) article 3 of, and the Schedule to, the Banking Act 2009 (Parts 2 and 3 Consequential Amendments) Order 2009;
- (b) article 18 of, and paragraphs 1(a), (2) and (3) of Schedule 2 to, the Building Societies (Insolvency and Special Administration) Order 2009; and
- (c) regulation 27 of, and Schedule 6 to, the Investment Bank Special Administration Regulations 2011.]

(7) In relation to Scotland, references in this Part—

- (a) to sequestration include references to the administration by a judicial factor of the insolvent estate of a deceased person, and
- (b) to an interim [^{F59}trustee or to a trustee in the sequestration of an estate] include references to a judicial factor on the insolvent estate of a deceased person, unless the context otherwise requires.

Textual Amendments

- F37** Words in s. 190 omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 70(2)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F38** Definitions of “clearing house”, “investment”, “investment exchange” and “recognised” in s. 190(1) repealed (1.12.2001) by [S.I. 2001/3649](#), **arts. 1**, 89(3)
- F39** Words in s. 190(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(18)(a)** (with regs. 52-58)
- F40** Words in s. 190(1) inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017 \(S.I. 2017/1064\)](#), regs. 1, **3(25)(a)** (with regs. 7(4), 9(1))
- F41** Words in s. 190(1) added (3.1.2018) by [The Companies Act 1989 \(Financial Markets and Insolvency\) \(Amendment\) Regulations 2017 \(S.I. 2017/1247\)](#), regs. 1, **2(5)(a)**
- F42** Words in s. 190 inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), s. 122(3), **Sch. 18 para. 70(3)** (with [Sch. 20](#)); [S.I. 2013/423](#), art. 3, [Sch.](#)
- F43** Words in s. 190 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(12)(a)**

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- F44** Words in s. 190(1) 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(11)(a)(i)**
- F45** Words in s. 190(1) inserted (3.1.2018) by The Companies Act 1989 (Financial Markets and Insolvency) (Amendment) Regulations 2017 (S.I. 2017/1247), regs. 1, **2(5)(b)**
- F46** Words in s. 190(1) inserted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(25)(b)** (with regs. 7(4), 9(1))
- F47** Words in s. 190 inserted (1.4.2013) by Financial Services Act 2012 (c. 21), s. 122(3), **Sch. 18 para. 70(4)** (with Sch. 20); S.I. 2013/423, art. 3, Sch.
- F48** Words in s. 190(1) omitted (31.12.2020) by virtue of The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), **2(7)(a)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F49** Words in s. 190(1) substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(25)(c)** (with regs. 7(4), 9(1))
- F50** Words in s. 190(1) inserted (31.12.2020) by The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), **2(7)(b)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F51** Words in s. 190(1) inserted (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(11)(a)(ii)**
- F52** Definition of “The Stock Exchange” in s. 190(1) substituted (1.12.2001) by S.I. 2001/3649, **arts. 1, 89(5)**
- F53** Words in s. 190(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(18)(b)(ii)** (with regs. 52-58)
- F54** S. 190(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(18)(c)** (with regs. 52-58)
- F55** S. 190(3A) 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(12)(b)**
- F56** S. 190(4) repealed (1.12.2001) by S.I. 2001/3649, **arts. 1, 89(6)**
- F57** S. 190(6)-(6B) substituted for s. 190(6) (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(18)(e)** (with regs. 52-58)
- F58** Word in s. 190(6)(a) 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(11)(b)**
- F59** Words in s. 190(7)(b) 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(11)(c)**

Commencement Information

- I9** S. 190 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

191 Index of defined expressions.

The following Table shows provisions defining or otherwise explaining expressions used in this Part (other than provisions defining or explaining an expression used only in the same section or paragraph)—

<i>[^{F60}Defined Expression</i>	<i>Section</i>
administration	Sections 190(6A) and (6B)

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Cross Heading: Supplementary provisions. (See end of Document for details)

<i>[^{F60} Defined Expression</i>	<i>Section</i>
administrator	Sections 190(6A) and (6B)
administrative receiver	Section 190(1)
[^{F61} authorised central securities depository services	Section 155(3D)]
charge	Section 190(1)
clearing member	Section 190(1)
clearing member client contract	Section 155(1)(a)
clearing member house contract	Section 155(1)(b)
client	Section 190(1)
client trade	Section 155(1)(c)
cover for margin	Section 190(3)
[^{F61} CSD regulation	Section 190(1)]
default fund contribution	Section 188(3A)
default rules (and related expressions)	Section 188
designated non-member	Section 155(2)
^{F62}	^{F62}
...	...
EMIR Level 1 Regulation	Section 190(1)
EMIR Level 2 Regulation	Section 190(1)
the FCA	Section 190(1)
[^{F63} indirect clearing services	Section 190(1)]
indirect client	Section 190(1)
insolvency law (and similar expressions)	Sections 190(6) and (6B)
interim trustee	Sections 190(1) and 190(7)(b)
liquidator	Sections 190(6A) and (6B)
margin	Section 190(3)
market charge	Section 173
market contract	Section 155
[^{F61} member (in relation to a central securities depository)	Section 190(1)]
member of a clearing house	Section 190(1)
[^{F64} MIFIR Level 2 Regulation	Section 190(1)]
notice	Section 190(5)
overseas (in relation to investment exchanges [^{F65} , clearing houses and central securities depositories])	Section 190(1)

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<i>[^{F60}Defined Expression</i>	<i>Section</i>
party (in relation to a market contract)	Section 187
^{F66}	^{F66}
...	...
the PRA	Section 190(1)
qualifying collateral arrangement	Section 155A(1)(a)
qualifying property transfers	Section 155A(1)(b)
[^{F61} recognised body	Section 190(1)]
recognised central counterparty	Section 190(1)
recognised clearing house	Section 190(1)
[^{F61} recognised CSD	Section 190(1)]
recognised investment exchange	Section 190(1)
relevant office-holder	Section 189
sequestration	Section 190(7)(a)
set off (in relation to Scotland)	Section 190(1)
settlement and related expressions (in relation to a market contract)	Section 190 (2)
The Stock Exchange	Section 190(1)
[^{F67} third country central counterparty	Section 190(1)]
[^{F61} third country CSD	Section 190(1)]
[^{F63} transfer	Section 189A]
[^{F68} interim trustee and trustee in the sequestration of an estate (in relation to Scotland)	section 190(1) and (7)(b)]
UK (in relation to investment exchanges)	Section 190(1)
winding up	Sections 190(6A) and (6B)]

Textual Amendments

- F60** S. 191 Table 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(19), [Sch.](#) (with regs. 52-58)
- F61** Words in s. 191 Table inserted (28.11.2017) by [The Central Securities Depositories Regulations 2017](#) (S.I. 2017/1064), regs. 1, **3(26)(a)** (with regs. 7(4), 9(1))
- F62** Words in s. 191 omitted (31.12.2020) by virtue of [The Financial Markets and Insolvency \(Amendment and Transitional Provision\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/341), regs. 1(3), **2(8)(a)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, [Sch. para. 23\(b\)](#) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F63** Words in s. 191 Table 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(13)**

Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Cross Heading: Supplementary provisions. (See end of Document for details)

- F64** Words in s. 191 inserted (3.1.2018) by The Companies Act 1989 (Financial Markets and Insolvency) (Amendment) Regulations 2017 (S.I. 2017/1247), regs. 1, **2(6)**
- F65** Words in s. 191 Table substituted (28.11.2017) by The Central Securities Depositories Regulations 2017 (S.I. 2017/1064), regs. 1, **3(26)(b)** (with regs. 7(4), 9(1))
- F66** S. 191 Table: entry omitted (30.11.2016) by virtue of The Bankruptcy (Scotland) Act 2016 (Consequential Provisions and Modifications) Order 2016 (S.I. 2016/1034), art. 1, **Sch. 1 para. 6(12)(a)**
- F67** Words in s. 191 inserted (31.12.2020) by The Financial Markets and Insolvency (Amendment and Transitional Provision) (EU Exit) Regulations 2019 (S.I. 2019/341), regs. 1(3), **2(8)(b)** (with reg. 21) (as amended by S.I. 2020/1301, regs. 1, 3, Sch. para. 23(b) and with savings in S.I. 2019/680, reg. 11); 2020 c. 1, Sch. 5 para. 1(1)
- F68** S. 191 Table: entry 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(12)(b)**

Commencement Information

- I10** S. 191 wholly in force at 25.4.1991 see s. 215 and S.I. 1991/878, art. 2, **Sch.**

Changes to legislation:

There are currently no known outstanding effects for the Companies Act 1989, Cross Heading:
Supplementary provisions.