



Companies Act 1989

1989 CHAPTER 40

PART VII

FINANCIAL MARKETS AND INSOLVENCY

Recognised investment exchanges and clearing houses

166 Powers^{F1}... to give directions.

- (1) The powers conferred by this section are exercisable in relation to a recognised UK investment exchange or [^{F2}recognised clearing house].
- (2) Where in any case an exchange or clearing house has not taken action under its default rules—
 - (a) if it appears to the [^{F3}appropriate regulator] that it could take action, [^{F4}the [^{F5}regulator]] may direct it to do so, and
 - (b) if it appears to the [^{F6}appropriate regulator] that it is proposing to take or may take action, [^{F4}the [^{F7}regulator]] may direct it not to do so.
- (3) Before giving such a direction the [^{F8}appropriate regulator] shall consult the exchange or clearing house in question; and [^{F9}it] shall not give a direction unless [^{F9}it] is satisfied, in the light of that consultation—
 - (a) in the case of a direction to take action, that failure to take action would involve undue risk to investors or other participants in the market, ^{F10}...
 - (b) in the case of a direction not to take action, that the taking of action would be premature or otherwise undesirable in the interests of investors or other participants in the market,
 - [^{F11}(c) in either case, that the direction is necessary having regard to the public interest in the stability of the financial system of the United Kingdom, or
 - (d) in either case, that the direction is necessary—
 - (i) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime), or
 - (ii) in connection with a particular exercise of a power under that Part.]

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Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Section 166. (See end of Document for details)

- [^{F12}(3A) The appropriate regulator may give a direction to a relevant office-holder appointed in respect of a defaulting clearing member to take any action, or refrain from taking any action, if the direction is given for the purposes of facilitating—
 - (a) the transfer of a clearing member client contract, a client trade or a qualifying collateral arrangement, or
 - (b) a qualifying property transfer.
- (3B) The relevant office-holder to whom a direction is given under subsection (3A)—
 - (a) must comply with the direction notwithstanding any duty on the relevant office-holder under any enactment relating to insolvency, but
 - (b) is not required to comply with the direction given if the value of the clearing member’s estate is unlikely to be sufficient to meet the office-holder’s reasonable expenses of complying.
- (3C) The expenses of the relevant office-holder in complying with a direction of the regulator under subsection (3A) are recoverable as part of the expenses incurred in the discharge of the office-holder’s duties.]
- (4) A direction shall specify the grounds on which it is given.
- (5) A direction not to take action may be expressed to have effect until the giving of a further direction (which may be a direction to take action or simply revoking the earlier direction).
- (6) No direction shall be given not to take action if, in relation to the person in question—
 - (a) a bankruptcy order or an award of sequestration of his estate has been made, or an interim receiver or interim trustee has been appointed, or
 - (b) a winding up order has been made, a resolution for voluntary winding up has been passed or an administrator, administrative receiver or provisional liquidator has been appointed;
 and any previous direction not to take action shall cease to have effect on the making or passing of any such order, award or appointment.
- (7) Where an exchange or clearing house has taken or been directed to take action under its default rules, the [^{F13}appropriate regulator] may direct it to do or not to do such things (being things which it has power to do under its default rules) as are specified in the direction.

^{F14}

- [^{F15}(7A) Where the exchange or clearing house is acting in accordance with a direction under subsection (2)(a) that was given only by virtue of paragraph (a) of subsection (3), the appropriate regulator shall not give a direction under subsection (7) unless it is satisfied that the direction under that subsection will not impede or frustrate the proper and efficient conduct of the default proceedings.
- (7B) Where the exchange or clearing house has taken action under its default rules without being directed to do so, the appropriate regulator shall not give a direction under subsection (7) unless—
 - (a) it is satisfied that the direction under that subsection will not impede or frustrate the proper and efficient conduct of the default proceedings, or
 - (b) it is satisfied that the direction is necessary—

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- (i) having regard to the public interest in the stability of the financial system of the United Kingdom,
 - (ii) to facilitate a proposed or possible use of a power under Part 1 of the Banking Act 2009 (special resolution regime), or
 - (iii) in connection with a particular exercise of a power under that Part.]
- (8) A direction under this section is enforceable, on the application of the [^{F16}regulator which gave the direction], by injunction or, in Scotland, by an order under section 45 of the ^{M1}Court of Session Act 1988; and where an exchange [^{F17}, a clearing house or a relevant office-holder] has not complied with a direction, the court may make such order as it thinks fit for restoring the position to what it would have been if the direction had been complied with.

[^{F18}(9) “The appropriate regulator”—

- (a) in relation to a recognised UK investment exchange, means the FCA, and
- (b) in relation to a [^{F19}recognised clearing house][^{F20}or a defaulting clearing member], means the Bank of England.]

Textual Amendments

- F1** Words in s. 166 heading omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\), ss. 111\(9\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F2** Words in s. 166(1) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\), regs. 1\(2\), 4\(11\)\(a\)](#) (with regs. 52-58)
- F3** Words in s. 166(2)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(2\)\(a\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F4** Words in s. 166(2)(a)(b) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 81\(2\)\(b\)](#)
- F5** Word in s. 166(2)(a) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(2\)\(b\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F6** Words in s. 166(2)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(3\)\(a\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F7** Word in s. 166(2)(b) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(3\)\(b\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F8** Words in s. 166(3) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(4\)\(a\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F9** Words in s. 166(3) substituted (1.12.2001) by [S.I. 2001/3649, arts. 1, 81\(3\)\(b\)](#)
- F10** Word in s. 166(3) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\), ss. 111\(4\)\(b\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F11** S. 166(3)(c)(d) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(4\)\(c\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F12** S. 166(3A)-(3C) inserted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\), regs. 1\(2\), 4\(11\)\(b\)](#) (with regs. 52-58)
- F13** Words in s. 166(7) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(5\)\(a\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F14** Words in s. 166(7) omitted (1.4.2013) by virtue of [Financial Services Act 2012 \(c. 21\), ss. 111\(5\)\(b\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F15** S. 166(7A)(7B) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(6\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)
- F16** Words in s. 166(8) substituted (1.4.2013) by [Financial Services Act 2012 \(c. 21\), ss. 111\(7\), 122\(3\)](#) (with [Sch. 20](#)); [S.I. 2013/423, art. 3, Sch.](#)

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Changes to legislation: There are currently no known outstanding effects for the Companies Act 1989, Section 166. (See end of Document for details)

- F17** Words in s. 166(8) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **4(11)(c)** (with regs. 52-58)
- F18** S. 166(9) inserted (1.4.2013) by [Financial Services Act 2012 \(c. 21\)](#), **ss. 111(8)**, 122(3) (with Sch. 20); [S.I. 2013/423](#), art. 3, Sch.
- F19** Words in s. 166(9)(b) substituted (1.4.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) Regulations 2013 \(S.I. 2013/504\)](#), regs. 1(2), **4(11)(d)** (with regs. 52-58)
- F20** Words in s. 166(9)(b) inserted (26.8.2013) by [The Financial Services and Markets Act 2000 \(Over the Counter Derivatives, Central Counterparties and Trade Repositories\) \(No. 2\) Regulations 2013 \(S.I. 2013/1908\)](#), regs. 1(3)(c), **2(6)**

Modifications etc. (not altering text)

- C1** S. 166 applied (with modifications) (1.4.2013) by [The Financial Services Act 2012 \(Transitional Provisions\) \(Miscellaneous Provisions\) Order 2013 \(S.I. 2013/442\)](#), arts. 1(3), **67(4)**

Commencement Information

- I1** S. 166 wholly in force at 1.10.1991; s. 166 in force for certain purposes at 25.4.1991 see s. 215 and [S.I. 1991/878](#), art. 2, **Sch.** (subject to savings in [art. 3\(2\)](#)) and wholly in force at 1.10.1991 see [S.I. 1991/2173](#), art. 2.

Marginal Citations

- M1** [1988 c. 36](#).

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Changes to legislation:

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