
STATUTORY INSTRUMENTS

2003 No. 3226

The Financial Collateral Arrangements (No.2) Regulations 2003

PART 3

Modification of insolvency law

Close-out netting provisions to take effect in accordance with their terms

12.—(1) A close-out netting provision shall, subject to paragraph (2), take effect in accordance with its terms notwithstanding that the collateral-provider or collateral-taker under the arrangement is subject to winding-up proceedings or reorganisation measures.

(2) Paragraph (1) shall not apply if at the time that a party to a financial collateral arrangement entered into such an arrangement or that the relevant financial obligations came into existence—

- (a) that party was aware or should have been aware that winding up proceedings or reorganisation measures had commenced in relation to the other party;
 - [^{F1}(aa) in Scotland, that party had notice that [^{F2}a statement as to the affairs of the other party had been sent to the other party's creditors under section 99(1) of that Act]^{F3}... ;
 - (ab) in England and Wales, that party had notice that a statement as to the affairs of the other party had been sent to the other party's creditors under section 99(1) of that Act(c);
 - (ac) that party had notice that a meeting of creditors of the other party had been summoned under Article 84 of the Insolvency (Northern Ireland) Order 1989;]
 - (b) that party had notice ^{F4}... that a petition for the winding-up of [^{F5}or, in Scotland, a petition for winding-up proceedings in relation to] the other party was pending;
 - (c) that party had notice that an application for an administration order was pending or that any person had given notice of an intention to appoint an administrator; or
 - (d) that party had notice that an application for an administration order was pending or that any person had given notice of an intention to appoint an administrator and liquidation of the other party to the financial collateral arrangement was immediately preceded by an administration of that party.
- (3) For the purposes of paragraph (2)—
- (a) winding-up proceedings commence on the making of a winding-up order [^{F6}or, in the case of a Scottish partnership, the award of sequestration] by the court; and
 - (b) reorganisation measures commence on the appointment of an administrator, whether by a court or otherwise [^{F7}or, in the case of a Scottish partnership, when a protected trust deed is entered into].

[^{F8}(4) The following provisions of the Insolvency (England and Wales) Rules 2016, or, in Scotland, any rule of law with the same or similar effect to the effect of these Rules, do not apply to a close-out netting provision unless paragraph (2)(a) applies—

Status: Point in time view as at 31/12/2023.

Changes to legislation: The Financial Collateral Arrangements (No.2) Regulations 2003, Section 12 is up to date with all changes known to be in force on or before 29 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (a) in rule 14.24 (administration: mutual dealings and set-off), in paragraph (6), in the definition of “mutual dealings”, paragraphs (a) and (d); and
 - (b) in rule 14.25 (winding up: mutual dealings and set-off), in paragraph (6), in the definition of “mutual dealings”, paragraph (c).
- (4A) Rules 2.086(2)(a) and (d) and 4.096(2)(c) of the Insolvency Rules (Northern Ireland) 1991 (mutual credits and set off) do not apply to a close-out netting provision unless paragraph (2)(a) applies.]

[^{F9}(5) Nothing in this regulation prevents the Bank of England imposing a restriction on the effect of a close out netting provision in the exercise of its powers under Part 1 of the Banking Act 2009 [^{F10}or under Schedule 11 to the Financial Services and Markets Act 2023].]

Textual Amendments

- F1** Reg. 12(2)(aa)-(ac) inserted (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **8(a)** (with reg. 19)
- F2** Words in reg. 12(2)(aa) inserted (23.7.2019) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2019 \(S.I. 2019/1058\)](#), regs. 1, **5(a)** (with reg. 10)
- F3** Words in reg. 12(2)(aa) omitted (23.7.2019) by virtue of [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2019 \(S.I. 2019/1058\)](#), regs. 1, **5(b)** (with reg. 10)
- F4** Words in reg. 12(2)(b) omitted (13.3.2018) by virtue of [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **8(b)** (with reg. 19)
- F5** Words in reg. 12(2)(b) inserted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010 \(S.I. 2010/2993\)](#), regs. 1, **4(10)(a)** (with reg. 3)
- F6** Words in reg. 12(3)(a) inserted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010 \(S.I. 2010/2993\)](#), regs. 1, **4(10)(b)(i)** (with reg. 3)
- F7** Words in reg. 12(3)(b) inserted (6.4.2011) by [The Financial Markets and Insolvency \(Settlement Finality and Financial Collateral Arrangements\) \(Amendment\) Regulations 2010 \(S.I. 2010/2993\)](#), regs. 1, **4(10)(b)(ii)** (with reg. 3)
- F8** Reg. 12(4)(4A) substituted for reg. 12(4) (23.4.2019) by [The Financial Services and Markets \(Insolvency\) \(Amendment of Miscellaneous Enactments\) Regulations 2019 \(S.I. 2019/755\)](#), regs. 1, **3(2)**
- F9** Reg. 12(5) inserted (10.1.2015) by [The Bank Recovery and Resolution \(No. 2\) Order 2014 \(S.I. 2014/3348\)](#), art. 1(2), **Sch. 3 para. 9(3)**
- F10** Words in reg. 12(5) inserted (31.12.2023) by [The Resolution of Central Counterparties \(Modified Application of Corporate Law and Consequential Amendments\) Regulations 2023 \(S.I. 2023/1313\)](#), regs. 1(2), **16(3)**

Status:

Point in time view as at 31/12/2023.

Changes to legislation:

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