

ENGLISH TEXT OF THE RELEVANT DISPOSITIONS OF SECONDARY ACTS AND REGULATIONS AND RELATED ACTS AND REGULATIONS

INSOLVENCY ACT 1986

SECTION 10 Effect of application

(1) During the period beginning with the presentation of a petition for an administration order and ending with the making of such an order or the dismissal of the petition-

(a) no resolution may be passed or order made for the winding up of the company;

[(aa) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the leave of the court and subject to such terms as the court may impose;]

(b) no steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the leave of the court and subject to such terms as the court may impose; and

(c) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the leave of the court and subject to such terms as aforesaid.

(2) Nothing in subsection (1) requires the leave of the court-

(a) for the presentation of a petition for the winding up of the company,

(b) for the appointment of an administrative receiver of the company, or

(c) for the carrying out by such a receiver (whenever appointed) of any of his functions.

(3) Where -

(a) a petition for an administration order is presented at a time when there is an administrative receiver of the company, and

(b) the person by or on whose behalf the receiver was appointed has not consented to the making of the order,

the period mentioned in subsection (1) is deemed not to begin unless and until that person so consents.

(4) References in this section and the next to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements. (5) In the application of this section and the next to Scotland, references to execution being commenced or continued include references to diligence being carried out or continued, and references to distress being levied shall be omitted.

SECTION 11 Effect of order

(1) On the making of an administration order-

- (a) any petition for the winding up of the company shall be dismissed, and
- (b) any administrative receiver of the company shall vacate office.

(2) Where an administration order has been made, any receiver of part of the company's property shall vacate office on being required to do so by the administrator.

(3) During the period for which an administration order is in force-

- (a) no resolution may be passed or order made for the winding up of the company;
- (b) no administrative receiver of the company may be appointed;

[(ba) no landlord or other person to whom rent is payable may exercise any right of forfeiture by peaceable re-entry in relation to premises let to the company in respect of a failure by the company to comply with any term or condition of its tenancy of such premises, except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose;]

(c) no other steps may be taken to enforce any security over the company's property, or to repossess goods in the company's possession under any hire-purchase agreement, except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as the court may impose; and

(d) no other proceedings and no execution or other legal process may be commenced or continued, and no distress may be levied, against the company or its property except with the consent of the administrator or the leave of the court and subject (where the court gives leave) to such terms as aforesaid.

(4) Where at any time an administrative receiver of the company has vacated office under subsection (1)(b), or a receiver of part of the company's property has vacated office under subsection (2) -

- (a) his remuneration and any expenses properly incurred by him, and
- (b) any indemnity to which he is entitled out of the assets of the company,

shall be charged on and (subject to subsection (3) above) paid out of any property of the company which was in his custody or under his control at that time in priority to any security held by the person by or on whose behalf he was appointed.

(5) Neither an administrative receiver who vacates office under subsection (1)(b) nor a receiver who vacates office under subsection (2) is required on or after so vacating office to take any steps for the purpose of complying with any duty imposed on him by section 40 or 59 of this Act (duty to pay preferential creditors).

SECTION 15 Power to deal with charged property, etc

(1) The administrator of a company may dispose of or otherwise exercise his powers in relation to any property of the company which is subject to a security to which this subsection applies as if the property were not subject to the security.

(2) Where, on an application by the administrator, the court is satisfied that the disposal (with or without other assets) of -

- (a) any property of the company subject to a security to which this subsection applies, or
- (b) any goods in the possession of the company under a hire-purchase agreement,

would be likely to promote the purpose or one or more of the purposes specified in the administration order, the court may by order authorise the administrator to dispose of the property as if it were not subject to the security or to dispose of the goods as if all rights of the owner under the hire-purchase agreement were vested in the company.

(3) Subsection (1) applies to any security which, as created, was a floating charge; and subsection (2) applies to any other security.

(4) Where property is disposed of under subsection (1), the holder of the security has the same priority in respect of any property of the company directly or indirectly representing the property disposed of as he would have had in respect of the property subject to the security.

(5) It shall be a condition of an order under subsection (2) that-

(a) the net proceeds of the disposal, and

(b) where those proceeds are less than such amount as may be determined by the court to be the net amount which would be realised on a sale of the property or goods in the open market by a willing vendor, such sums as may be required to make good the deficiency,

shall be applied towards discharging the sums secured by the security or payable under the hire-purchase agreement.

(6) Where a condition imposed in pursuance of subsection (5) relates to two or more securities, that condition requires the net proceeds of the disposal and, where paragraph (b) of that subsection applies, the sums mentioned in that paragraph to be applied towards discharging the sums secured by those securities in the order of their priorities.

(7) An office copy of an order under subsection (2) shall, within 14 days after the making of the order, be sent by the administrator to the registrar of companies.

(8) If the administrator without reasonable excuse fails to comply with subsection (7), he is liable to a fine and, for continued contravention, to a daily default fine.

(9) References in this section to hire-purchase agreements include conditional sale agreements, chattel leasing agreements and retention of title agreements.

SECTION 19(4) Vacation of office

(4) His remuneration and any expenses properly incurred by him shall be charged on and paid out of any property of the company which is in his custody or under his control at that time in priority to any security to which section 15(1) then applies.

SECTION 40 Payment of debts out of assets subject to floating charge

1) The following applies, in the case of a company, where a receiver is appointed on behalf of the holders of any debentures of the company secured by a charge which, as created, was a floating charge.

(2) If the company is not at the time in course of being wound up, its preferential debts (within the meaning given to that expression by section 386 in Part XII) shall be paid out of the assets coming to the hands of the receiver in priority to any claims for principal or interest in respect of the debentures.

(3) Payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.

DEFINITION OF A RESOLUTION FOR VOLUNTARY WINDING UP

Resolutions for, and commencement of, voluntary winding up

SECTION 84 Circumstances in which a company may be voluntarily wound up

(1) A company may be wound up voluntarily -

(a) when the period (if any) fixed for the duration of the company by the articles expires, or the event (if any) occurs, on the occurrence of which the articles provide that the company is to be dissolved, and the company in general meeting has passed a resolution requiring it to be wound up voluntarily;

(b) if the company resolves by special resolution that it be wound up voluntarily;

(c) if the company resolves by extraordinary resolution to the effect that it cannot by reason of its liabilities continue its business, and that it is advisable to wind up.

(2) In this Act the expression “a resolution for voluntary winding up” means a resolution passed under any of the paragraphs of subsection (1).

(3) A resolution passed under paragraph (a) of subsection (1), as well as a special resolution under paragraph (b) and an extraordinary resolution under paragraph (c), is subject to section 380 of the Companies Act (copy of resolution to be forwarded to registrar of companies within 15 days).

SECTION 85 Notice of resolution to wind up

(1) When a company has passed a resolution for voluntary winding up, it shall, within 14 days after the passing of the resolution, give notice of the resolution by advertisement in the Gazette.

(2) If default is made in complying with this section, the company and every officer of it who is in default is liable to a fine and, for continued contravention, to a daily default fine.

For the purposes of this subsection the liquidator is deemed an officer of the company.

SECTION 86 Commencement of winding up

A voluntary winding up is deemed to commence at the time of the passing of the resolution for voluntary winding up.

Consequences of resolution to wind up

SECTION 87 Effect on business and status of company

- (1) In case of a voluntary winding up, the company shall from the commencement of the winding up cease to carry on its business, except so far as may be required for its beneficial winding up.
- (2) However, the corporate state and corporate powers of the company, notwithstanding anything to the contrary in its articles, continue until the company is dissolved.

SECTION 88 Avoidance of share transfers, etc after winding-up resolution

Any transfer of shares, not being a transfer made to or with the sanction of the liquidator, and any alteration in the status of the company's members, made after the commencement of a voluntary winding up, is void.

SECTION 89 Statutory declaration of solvency

- (1) Where it is proposed to wind up a company voluntarily, the directors (or, in the case of a company having more than two directors, the majority of them) may at a directors' meeting make a statutory declaration to the effect that they have made a full inquiry into the company's affairs and that, having done so, they have formed the opinion that the company will be able to pay its debts in full, together with interest at the official rate (as defined in section 251), within such period, not exceeding 12 months from the commencement of the winding up, as may be specified in the declaration.
- (2) Such a declaration by the directors has no effect for purposes of this Act unless-
 - (a) it is made within the 5 weeks immediately preceding the date of the passing of the resolution for winding up, or on that date but before the passing of the resolution, and
 - (b) it embodies a statement of the company's assets and liabilities as at the latest practicable date before the making of the declaration.
- (3) The declaration shall be delivered to the registrar of companies before the expiration of 15 days immediately following the date on which the resolution for winding up is passed.

(4) A director making a declaration under this section without having reasonable grounds for the opinion that the company will be able to pay its debts in full, together with interest at the official rate, within the period specified is liable to imprisonment or a fine, or both.

(5) If the company is wound up in pursuance of a resolution passed within 5 weeks after the making of the declaration, and its debts (together with interest at the official rate) are not paid or provided for in full within the period specified, it is to be presumed (unless the contrary is shown) that the director did not have reasonable grounds for his opinion.

(6) If a declaration required by subsection (3) to be delivered to the registrar is not so delivered within the time prescribed by that subsection, the company and every officer in default is liable to a fine and, for continued contravention, to a daily default fine.

SECTION 90 Distinction between “members” and “creditors” voluntary winding up

A winding up in the case of which a directors’ statutory declaration under section 89 has been made is a “members’ voluntary winding up”; and a winding up in the case of which such a declaration has not been made is a “creditors’ voluntary winding up”.

DEFINITION OF A CREDITORS’ WINDING UP

SECTION 96 Conversion to creditors’ voluntary winding up

As from the day on which the creditors’ meeting is held under section 95, this Act has effect as if-

(a) the directors’ declaration under section 89 had not been made; and

(b) the creditors’ meeting and the company meeting at which it was resolved that the company be wound up voluntarily were the meetings mentioned in section 98 in the next Chapter;

and accordingly the winding up becomes a creditors’ voluntary winding up.

Chapter IV Creditors’ Voluntary Winding Up

SECTION 97 Application of this Chapter

(1) Subject as follows, this Chapter applies in relation to a creditors' voluntary winding up.

(2) Sections 98 and 99 do not apply where, under section 96 in Chapter III, a members' voluntary winding up has become a creditors' voluntary winding up.

SECTION 98 Meeting of creditors

(1) The company shall-

(a) cause a meeting of its creditors to be summoned for a day not later than the 14th day after the day on which there is to be held the company meeting at which the resolution for voluntary winding up is to be proposed;

(b) cause the notices of the creditors' meeting to be sent by post to the creditors not less than 7 days before the day on which that meeting is to be held; and

(c) cause notice of the creditors' meeting to be advertised once in the Gazette and once at least in two newspapers circulating in the relevant locality (that is to say the locality in which the company's principal place of business in Great Britain was situated during the relevant period).

(2) The notice of the creditors' meeting shall state either-

(a) the name and address of a person qualified to act as an insolvency practitioner in relation to the company who, during the period before the day on which that meeting is to be held, will furnish creditors free of charge with such information concerning the company's affairs as they may reasonably require; or

(b) a place in the relevant locality where, on the two business days falling next before the day on which that meeting is to be held, a list of the names and addresses of the company's creditors will be available for inspection free of charge.

(3) Where the company's principal place of business in Great Britain was situated in different localities at different times during the relevant period, the duties imposed by subsections (1)(c) and (2)(b) above apply separately in relation to each of those localities.

(4) Where the company had no place of business in Great Britain during the relevant period, references in subsections (1)(c) and (3) to the company's principal place of business in Great Britain are replaced by references to its registered office.

(5) In this section "the relevant period" means the period of 6 months immediately preceding the day on which were sent the notices summoning the company meeting at which it was resolved that the company be wound up voluntarily.

(6) If the company without reasonable excuse fails to comply with subsection (1) or (2), it is guilty of an offence and liable to a fine.

SECTION 99 Directors to lay statement of affairs before creditors

(1) The directors of the company shall-

- (a) make out a statement in the prescribed form as to the affairs of the company;
- (b) cause that statement to be laid before the creditors' meeting under section 98; and
- (c) appoint one of their number to preside at that meeting;

and it is the duty of the director so appointed to attend the meeting and preside over it.

(2) The statement as to the affairs of the company shall be verified by affidavit by some or all of the directors and shall show-

- (a) particulars of the company's assets, debts and liabilities;
- (b) the names and addresses of the company's creditors;
- (c) the securities held by them respectively;
- (d) the dates when the securities were respectively given; and
- (e) such further or other information as may be prescribed.

(3) If-

- (a) the directors without reasonable excuse fail to comply with subsection (1) or (2); or
- (b) any director without reasonable excuse fails to comply with subsection (1), so far as requiring him to attend and preside at the creditors' meeting,

the directors are or (as the case may be) the director is guilty of an offence and liable to a fine.

SECTION 100 Appointment of liquidator

(1) The creditors and the company at their respective meetings mentioned in section 98 may nominate a person to be liquidator for the purpose of winding up the company's affairs and distributing its assets.

(2) The liquidator shall be the person nominated by the creditors or, where no person has been so nominated, the person (if any) nominated by the company.

(3) In the case of different persons being nominated, any director, member or creditor of the company may, within 7 days after the date on which the nomination was made by the creditors, apply to the court for an order either-

(a) directing that the person nominated as liquidator by the company shall be liquidator instead of or jointly with the person nominated by the creditors, or

(b) appointing some other person to be liquidator instead of the person nominated by the creditors.

SECTION 101 Appointment of liquidation committee

(1) The creditors at the meeting to be held under section 98 or at any subsequent meeting may, if they think fit, appoint a committee ("the liquidation committee") of not more than 5 persons to exercise the functions conferred on it by or under this Act.

(2) If such a committee is appointed, the company may, either at the meeting at which the resolution for voluntary winding up is passed or at any time subsequently in general meeting, appoint such number of persons as they think fit to act as members of the committee, not exceeding 5.

(3) However, the creditors may, if they think fit, resolve that all or any of the persons so appointed by the company ought not to be members of the liquidation committee; and if the creditors so resolve-

(a) the persons mentioned in the resolution are not then, unless the court otherwise directs, qualified to act as members of the committee; and

(b) on any application to the court under this provision the court may, if it thinks fit, appoint other persons to act as such members in place of the persons mentioned in the resolution.

(4) In Scotland, the liquidation committee has, in addition to the powers and duties conferred and imposed on it by this Act, such of the powers and duties of commissioners on a bankrupt estate as may be conferred and imposed on liquidation committees by the rules.

SECTION 102 Creditors' meeting where winding up converted under s 96

Where, in the case of a winding up which was, under section 96 in Chapter III, converted to a creditors' voluntary winding up, a creditors' meeting is held in accordance with section 95, any appointment made or committee established by that meeting is deemed to have been made or established by a meeting held in accordance with section 98 in this Chapter.

SECTION 103 Cesser of directors' powers

On the appointment of a liquidator, all the powers of the directors cease, except so far as the liquidation committee (or, if there is no such committee, the creditors) sanction their continuance.

SECTION 104 Vacancy in office of liquidator

If a vacancy occurs, by death, resignation or otherwise, in the office of a liquidator (other than a liquidator appointed by, or by the direction of, the court) the creditors may fill the vacancy.

SECTION 105 Meetings of company and creditors at each year's end

(1) If the winding up continues for more than one year, the liquidator shall summon a general meeting of the company and a meeting of the creditors at the end of the first year from the commencement of the winding up, and of each succeeding year, or at the first convenient date within 3 months from the end of the year or such longer period as the Secretary of State may allow.

(2) The liquidator shall lay before each of the meetings an account of his acts and dealings and of the conduct of the winding up during the preceding year.

(3) If the liquidator fails to comply with this section, he is liable to a fine.

(4) Where under section 96 a members' voluntary winding up has become a creditors' voluntary winding up, and the creditors' meeting under section 95 is held 3 months or less before the end of the first year from the commencement of the winding up, the liquidator is not required by this section to summon a meeting of creditors at the end of that year.

SECTION 106 Final meeting prior to dissolution

(1) As soon as the company's affairs are fully wound up, the liquidator shall make up an account of the winding up, showing how it has been conducted and the company's property has been disposed of, and thereupon shall call a general meeting of the company and a meeting of the creditors for the purpose of laying the account before the meetings and giving an explanation of it.

(2) Each such meeting shall be called by advertisement in the Gazette specifying the time, place and object of the meeting, and published at least one month before it.

(3) Within one week after the date of the meetings (or, if they are not held on the same date, after the date of the later one) the liquidator shall send to the registrar of companies a copy of the account, and shall make a return to him of the holding of the meetings and of their dates.

(4) If the copy is not sent or the return is not made in accordance with subsection (3), the liquidator is liable to a fine and, for continued contravention, to a daily default fine.

(5) However, if a quorum is not present at either such meeting, the liquidator shall, in lieu of the return required by subsection (3), make a return that the meeting was duly summoned and that no quorum was present; and upon such return being made the provisions of that subsection as to the making of the return are, in respect of that meeting, deemed complied with.

(6) If the liquidator fails to call a general meeting of the company or a meeting of the creditors as required by this section, he is liable to a fine.

SECTION 115 Expenses of voluntary winding up

All expenses properly incurred in the winding up, including the remuneration of the liquidator, are payable out of the company's assets in priority to all other claims.

SECTION 127 Avoidance of property dispositions, etc

In a winding up by the court, any disposition of the company's property, and any transfer of shares, or alteration in the status of the company's members, made after the commencement of the winding up is, unless the court otherwise orders, void.

Commencement of winding up

SECTION 129 Commencement of winding up by the court

(1) If, before the presentation of a petition for the winding up of a company by the court, a resolution has been passed by the company for voluntary winding up, the winding up of the company is deemed to have commenced at the time of the passing of the resolution; and unless the court, on proof of fraud or mistake, directs otherwise, all proceedings taken in the voluntary winding up are deemed to have been validly taken.

(2) In any other case, the winding up of a company by the court is deemed to commence at the time of the presentation of the petition for winding up.

SECTION 156 Payment of expenses of winding up

The court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the assets of the expenses incurred in the winding up in such order of priority as the court thinks just.

Preferential debts

SECTION 175 Preferential debts (general provision)

(1) In a winding up the company's preferential debts (within the meaning given by section 386 in Part XII) shall be paid in priority to all other debts.

(2) Preferential debts-

(a) rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions; and

(b) so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures secured by, or holders of, any floating charge created by the company, and shall be paid accordingly out of any property comprised in or subject to that charge.

Disclaimer (England and Wales only)

SECTION 178 Power to disclaim onerous property

(1) This and the next two sections apply to a company that is being wound up in England and Wales.

(2) Subject as follows, the liquidator may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it, or otherwise exercised rights of ownership in relation to it.

(3) The following is onerous property for the purposes of this section-

(a) any unprofitable contract, and

(b) any other property of the company which is unsaleable or not readily saleable or is such that it may give rise to a liability to pay money or perform any other onerous act.

(4) A disclaimer under this section-

(a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the company in or in respect of the property disclaimed; but

(b) does not, except so far as is necessary for the purpose of releasing the company from any liability, affect the rights or liabilities of any other person.

(5) A notice of disclaimer shall not be given under this section in respect of any property if-

(a) a person interested in the property has applied in writing to the liquidator or one of his predecessors as liquidator requiring the liquidator or that predecessor to decide whether he will disclaim or not, and

(b) the period of 28 days beginning with the day on which that application was made, or such longer period as the court may allow, has expired without a notice of disclaimer having been given under this section in respect of that property.

(6) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed a creditor of the company to the extent of the loss or damage and accordingly may prove for the loss or damage in the winding up.

Miscellaneous matters

SECTION 186 Rescission of contracts by the court

(1) The court may, on the application of a person who is, as against the liquidator, entitled to the benefit or subject to the burden of a contract made with the company, make an order rescinding the contract on such terms as to payment by or to either party of damages for the non-performance of the contract, or otherwise as the court thinks just.

(2) Any damages payable under the order to such a person may be proved by him as a debt in the winding up.

Adjustment of prior transactions (administration and liquidation)

SECTION 238 Transactions at an undervalue (England and Wales)

(1) This section applies in the case of a company where-

- (a) an administration order is made in relation to the company, or
- (b) the company goes into liquidation;

and “the office-holder” means the administrator or the liquidator, as the case may be.

(2) Where the company has at a relevant time (defined in section 240) entered into a transaction with any person at an undervalue, the office-holder may apply to the court for an order under this section.

(3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not entered into that transaction.

(4) For the purposes of this section and section 241, a company enters into a transaction with a person at an undervalue if-

- (a) the company makes a gift to that person or otherwise enters into a transaction with that person on terms that provide for the company to receive no consideration, or
- (b) the company enters into a transaction with that person for a consideration the value of which, in money or money’s worth, is significantly less than the value, in money or money’s worth, of the consideration provided by the company.

(5) The court shall not make an order under this section in respect of a transaction at an undervalue if it is satisfied-

- (a) that the company which entered into the transaction did so in good faith and for the purpose of carrying on its business, and
- (b) that at the time it did so there were reasonable grounds for believing that the transaction would benefit the company.

SECTION 239 Preferences (England and Wales)

- (1) This section applies as does section 238.
- (2) Where the company has at a relevant time (defined in the next section) given a preference to any person, the office-holder may apply to the court for an order under this section.
- (3) Subject as follows, the court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if the company had not given that preference.
- (4) For the purposes of this section and section 241, a company gives a preference to a person if-
 - (a) that person is one of the company's creditors or a surety or guarantor for any of the company's debts or other liabilities, and
 - (b) the company does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the company going into insolvent liquidation, will be better than the position he would have been in if that thing had not been done.
- (5) The court shall not make an order under this section in respect of a preference given to any person unless the company which gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (4)(b).
- (6) A company which has given a preference to a person connected with the company (otherwise than by reason only of being its employee) at the time the preference was given is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (5).
- (7) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

SECTION 247 "Insolvency" and "go into liquidation"

- (1) In this Group of Parts, except in so far as the context otherwise requires, "insolvency", in relation to a company, includes the approval of a voluntary arrangement under Part I, the making of an administration order or the appointment of an administrative receiver.
- (2) For the purposes of any provision in this Group of Parts, a company goes into liquidation if it passes a resolution for voluntary winding up or an order for its winding up is made by the court at a time when it has not already gone into liquidation by passing such a resolution.

SECTION 284 Restrictions on dispositions of property

(1) Where a person is adjudged bankrupt, any disposition of property made by that person in the period to which this section applies is void except to the extent that it is or was made with the consent of the court, or is or was subsequently ratified by the court.

(2) Subsection (1) applies to a payment (whether in cash or otherwise) as it applies to a disposition of property and, accordingly, where any payment is void by virtue of that subsection, the person paid shall hold the sum paid for the bankrupt as part of his estate.

(3) This section applies to the period beginning with the day of the presentation of the petition for the bankruptcy order and ending with the vesting, under Chapter IV of this Part, of the bankrupt's estate in a trustee.

(4) The preceding provisions of this section do not give a remedy against any person-

(a) in respect of any property or payment which he received before the commencement of the bankruptcy in good faith, for value and without notice that the petition had been presented, or

(b) in respect of any interest in property which derives from an interest in respect of which there is, by virtue of this subsection, no remedy.

(5) Where after the commencement of his bankruptcy the bankrupt has incurred a debt to a banker or other person by reason of the making of a payment which is void under this section, that debt is deemed for the purposes of any of this Group of Parts to have been incurred before the commencement of the bankruptcy unless-

(a) that banker or person had notice of the bankruptcy before the debt was incurred, or

(b) it is not reasonably practicable for the amount of the payment to be recovered from the person to whom it was made.

(6) A disposition of property is void under this section notwithstanding that the property is not or, as the case may be, would not be comprised in the bankrupt's estate; but nothing in this section affects any disposition made by a person of property held by him on trust for any other person.

Disclaimer of onerous property

SECTION 315 Disclaimer (general power)

(1) Subject as follows, the trustee may, by the giving of the prescribed notice, disclaim any onerous property and may do so notwithstanding that he has taken possession of it, endeavoured to sell it or otherwise exercised rights of ownership in relation to it.

(2) The following is onerous property for the purposes of this section, that is to say-

(a) any unprofitable contract, and

(b) any other property comprised in the bankrupt's estate which is unsaleable or not readily saleable, or is such that it may give rise to a liability to pay money or perform any other onerous act.

(3) A disclaimer under this section-

(a) operates so as to determine, as from the date of the disclaimer, the rights, interests and liabilities of the bankrupt and his estate in or in respect of the property disclaimed, and

(b) discharges the trustee from all personal liability in respect of that property as from the commencement of his trusteeship,

but does not, except so far as is necessary for the purpose of releasing the bankrupt, the bankrupt's estate and the trustee from any liability, affect the rights or liabilities of any other person.

(4) A notice of disclaimer shall not be given under this section in respect of any property that has been claimed for the estate under section 307 (after-acquired property) or 308 (personal property of bankrupt exceeding reasonable replacement value) [or 308A], except with the leave of the court.

(5) Any person sustaining loss or damage in consequence of the operation of a disclaimer under this section is deemed to be a creditor of the bankrupt to the extent of the loss or damage and accordingly may prove for the loss or damage as a bankruptcy debt.

SECTION 323 Mutual credit and set-off

(1) This section applies where before the commencement of the bankruptcy there have been mutual credits, mutual debts or other mutual dealings between the bankrupt and any creditor of the bankrupt proving or claiming to prove for a bankruptcy debt.

(2) An account shall be taken of what is due from each party to the other in respect of the mutual dealings and the sums due from one party shall be set off against the sums due from the other.

(3) Sums due from the bankrupt to another party shall not be included in the account taken under subsection (2) if that other party had notice at the time they became due that a bankruptcy petition relating to the bankrupt was pending.

(4) Only the balance (if any) of the account taken under subsection (2) is provable as a bankruptcy debt or, as the case may be, to be paid to the trustee as part of the bankrupt's estate.

SECTION 328 Priority of debts

(1) In the distribution of the bankrupt's estate, his preferential debts (within the meaning given by section 386 in Part XII) shall be paid in priority to other debts.

(2) Preferential debts rank equally between themselves after the expenses of the bankruptcy and shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.

(3) Debts which are neither preferential debts nor debts to which the next section applies also rank equally between themselves and, after the preferential debts, shall be paid in full unless the bankrupt's estate is insufficient for meeting them, in which case they abate in equal proportions between themselves.

(4) Any surplus remaining after the payment of the debts that are preferential or rank equally under subsection (3) shall be applied in paying interest on those debts in respect of the periods during which they have been outstanding since the commencement of the bankruptcy; and interest on preferential debts ranks equally with interest on debts other than preferential debts.

(5) The rate of interest payable under subsection (4) in respect of any debt is whichever is the greater of the following-

(a) the rate specified in section 17 of the Judgments Act 1838 at the commencement of the bankruptcy, and

(b) the rate applicable to that debt apart from the bankruptcy.

(6) This section and the next are without prejudice to any provision of this Act or any other Act under which the payment of any debt or the making of any other payment is, in the event of bankruptcy, to have a particular priority or to be postponed.

Adjustment of prior transactions, etc

SECTION 339 Transactions at an undervalue

(1) Subject as follows in this section and sections 341 and 342, where an individual is adjudged bankrupt and he has at a relevant time (defined in section 341) entered into a transaction with any person at an undervalue, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not entered into that transaction.

(3) For the purposes of this section and sections 341 and 342, an individual enters into a transaction with a person at an undervalue if-

(a) he makes a gift to that person or he otherwise enters into a transaction with that person on terms that provide for him to receive no consideration,

(b) he enters into a transaction with that person in consideration of marriage, or

(c) he enters into a transaction with that person for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by the individual.

SECTION 340 Preferences

(1) Subject as follows in this and the next two sections, where an individual is adjudged bankrupt and he has at a relevant time (defined in section 341) given a preference to any person, the trustee of the bankrupt's estate may apply to the court for an order under this section.

(2) The court shall, on such an application, make such order as it thinks fit for restoring the position to what it would have been if that individual had not given that preference.

(3) For the purposes of this and the next two sections, an individual gives a preference to a person if-

(a) that person is one of the individual's creditors or a surety or guarantor for any of his debts or other liabilities, and

(b) the individual does anything or suffers anything to be done which (in either case) has the effect of putting that person into a position which, in the event of the individual's bankruptcy, will be better than the position he would have been in if that thing had not been done.

(4) The court shall not make an order under this section in respect of a preference given to any person unless the individual who gave the preference was influenced in deciding to give it by a desire to produce in relation to that person the effect mentioned in subsection (3)(b) above.

(5) An individual who has given a preference to a person who, at the time the preference was given, was an associate of his (otherwise than by reason only of being his employee) is presumed, unless the contrary is shown, to have been influenced in deciding to give it by such a desire as is mentioned in subsection (4).

(6) The fact that something has been done in pursuance of the order of a court does not, without more, prevent the doing or suffering of that thing from constituting the giving of a preference.

SECTION 345 Contracts to which bankrupt is a party

(1) The following applies where a contract has been made with a person who is subsequently adjudged bankrupt.

(2) The court may, on the application of any other party to the contract, make an order discharging obligations under the contract on such terms as to payment by the applicant or the bankrupt of damages for non-performance or otherwise as appear to the court to be equitable.

(3) Any damages payable by the bankrupt by virtue of an order of the court under this section are provable as a bankruptcy debt.

(4) Where an undischarged bankrupt is a contractor in respect of any contract jointly with any person, that person may sue or be sued in respect of the contract without the joinder of the bankrupt.

SECTION 386 Categories of preferential debts

(1) A reference in this Act to the preferential debts of a company or an individual is to the debts listed in Schedule 6 to this Act (money owed to the Inland Revenue for income tax deducted at source; VAT, [insurance premium tax,] [landfill tax,] [climate change levy,] [aggregates levy,] car tax, betting and gaming duties[, beer duty][, lottery duty][, air passenger duty]; social security and pension scheme contributions; remuneration etc of employees[; levies on coal and steel production]); and references to preferential creditors are to be read accordingly.

(2) In that Schedule “the debtor” means the company or the individual concerned.

(3) Schedule 6 is to be read with [Schedule 4 to the Pension Schemes Act 1993] (occupational pension scheme contributions).

SECTION 423 Transactions defrauding creditors

(1) This section relates to transactions entered into at an undervalue; and a person enters into such a transaction with another person if-

(a) he makes a gift to the other person or he otherwise enters into a transaction with the other on terms that provide for him to receive no consideration;

(b) he enters into a transaction with the other in consideration of marriage; or

(c) he enters into a transaction with the other for a consideration the value of which, in money or money's worth, is significantly less than the value, in money or money's worth, of the consideration provided by himself.

(2) Where a person has entered into such a transaction, the court may, if satisfied under the next subsection, make such order as it thinks fit for-

(a) restoring the position to what it would have been if the transaction had not been entered into, and

(b) protecting the interests of persons who are victims of the transaction.

(3) In the case of a person entering into such a transaction, an order shall only be made if the court is satisfied that it was entered into by him for the purpose-

(a) of putting assets beyond the reach of a person who is making, or may at some time make, a claim against him, or

(b) of otherwise prejudicing the interests of such a person in relation to the claim which he is making or may make.

(4) In this section "the court" means the High Court or-

(a) if the person entering into the transaction is an individual, any other court which would have jurisdiction in relation to a bankruptcy petition relating to him;

(b) if that person is a body capable of being wound up under Part IV or V of this Act, any other court having jurisdiction to wind it up.

(5) In relation to a transaction at an undervalue, references here and below to a victim of the transaction are to a person who is, or is capable of being, prejudiced by it; and in the following two sections the person entering into the transaction is referred to as "the debtor".

SECTION 426 Co-operation between courts exercising jurisdiction in relation to insolvency

(1) An order made by a court in any part of the United Kingdom in the exercise of jurisdiction in relation to insolvency law shall be enforced in any other part of the United Kingdom as if it were made by a court exercising the corresponding jurisdiction in that other part.

(2) However, without prejudice to the following provisions of this section, nothing in subsection (1) requires a court in any part of the United Kingdom to enforce, in relation to property situated in that part, any order made by a court in any other part of the United Kingdom.

(3) The Secretary of State, with the concurrence in relation to property situated in England and Wales of the Lord Chancellor, may by order make provision for securing that a trustee or assignee under the insolvency law of any part of the United Kingdom has, with such modifications as may be specified in the order, the same rights in relation to any property situated in another part of the United Kingdom as he would have in the corresponding circumstances if he were a trustee or assignee under the insolvency law of that other part.

(4) The courts having jurisdiction in relation to insolvency law in any part of the United Kingdom shall assist the courts having the corresponding jurisdiction in any other part of the United Kingdom or any relevant country or territory.

(5) For the purposes of subsection (4) a request made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory is authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law which is applicable by either court in relation to comparable matters falling within its jurisdiction.

In exercising its discretion under this subsection, a court shall have regard in particular to the rules of private international law.

(6) Where a person who is a trustee or assignee under the insolvency law of any part of the United Kingdom claims property situated in any other part of the United Kingdom (whether by virtue of an order under subsection (3) or otherwise), the submission of that claim to the court exercising jurisdiction in relation to insolvency law in that other part shall be treated in the same manner as a request made by a court for the purpose of subsection (4).

(7) Section 38 of the Criminal Law Act 1977 (execution of warrant of arrest throughout the United Kingdom) applies to a warrant which, in exercise of any jurisdiction in relation to insolvency law, is issued in any part of the United Kingdom for the arrest of a person as it applies to a warrant issued in that part of the United Kingdom for the arrest of a person charged with an offence.

(8) Without prejudice to any power to make rules of court, any power to make provision by subordinate legislation for the purpose of giving effect in relation to companies or individuals to the insolvency law of any part of the United Kingdom includes power to make provision for the purpose of giving effect in that part to any provision made by or under the preceding provisions of this section.

(9) An order under subsection (3) shall be made by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(10) In this section “insolvency law” means-

(a) in relation to England and Wales, provision [extending to England and Wales and] made by or under this Act or sections [1A,] 6 to 10, [12 to 15], 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986 [and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act];

(b) in relation to Scotland, provision extending to Scotland and made by or under this Act, sections [1A,] 6 to 10, [12 to 15], 19(c) and 20 (with Schedule 1) of the Company Directors Disqualification Act 1986 [and sections 1 to 17 of that Act as they apply for the purposes of those provisions of that Act], Part XVIII of the Companies Act or the Bankruptcy (Scotland) Act 1985;

(c) in relation to Northern Ireland, provision made by or under [the Insolvency (Northern Ireland) Order 1989];

(d) in relation to any relevant country or territory, so much of the law of that country or territory as corresponds to provisions falling within any of the foregoing paragraphs;

and references in this subsection to any enactment include, in relation to any time before the coming into force of that enactment the corresponding enactment in force at that time.

(11) In this section “relevant country or territory” means-

(a) any of the Channel Islands or the Isle of Man, or

(b) any country or territory designated for the purposes of this section by the Secretary of State by order made by statutory instrument.

[(12) In the application of this section to Northern Ireland-

(a) for any reference to the Secretary of State there is substituted a reference to the Department of Economic Development in Northern Ireland;

(b) in subsection (3) for the words “another part of the United Kingdom” and the words “that other part” there are substituted the words “Northern Ireland”;

(c) for subsection (9) there is substituted the following subsection-

“(9) An order made under subsection (3) by the Department of Economic Development in Northern Ireland shall be a statutory rule for the purposes of the Statutory Rules (Northern Ireland) Order 1979 and shall be subject to negative resolution within the meaning of section 41(6) of the Interpretation Act (Northern Ireland) 1954.”.]

FINANCIAL MARKETS AND INSOLVENCY (MONEY MARKET) REGULATIONS 1995; SI 1995/2049

DEFINITION OF A LISTED PERSON

Interpretation of the Regulations

SECTION 2

In these Regulations-

"the Act" means the Companies Act 1989;

"the 1986 Act" means the Financial Services Act 1986[2];

"business day" has the same meaning as in section 167(3) of the Act;

"defaulter" means a person in respect of whom action has been taken by a listed person under his default rules, whether by declaring the person in respect of whom action has been taken to be a defaulter or otherwise;

"default rules" means the rules of a listed person which provide for the taking of action in the event of a person appearing to be unable, or likely to become unable, to meet this liabilities in respect of one or more money market contracts or related contracts;

"the list" means the list maintained by the Bank of England for the purposes of section 171 of the Act;

"listed person" means a person for the time being included in the list;

"money market charge" means a charge, whether fixed or floating, granted in favour of a listed person for the purpose of securing debts or liabilities arising in connection with the settlement of money market contracts or related contracts;

"money market contract" means a contract for the acquisition or disposal of currency of the United Kingdom or of any other country or territory, being a contract in relation to which a listed person provides settlement arrangements;

"Part VII" means Part VII of the Act;

"related contract" means a contract other than a money market contract effected by a listed person under his default rules for the purpose of enabling the settlement of a money market contract or another related contract;

"rules" means the rules made or conditions imposed by a listed person with respect to the provision by that person of settlement arrangements.

NOTES

These regulations were revoked by the Financial Services and Markets Act 2000 (Consequential Amendments and Repeals) Order 2001; SI 2001/3649; s.513

In Force: 1st December 2001

HUMAN RIGHTS ACT 1998

Public authorities

SECTION 6 Acts of public authorities

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

COMPANIES ACT 1985

[SECTION196 Payment of debts out of assets subject to floating charge (England and Wales)]

[(1) The following applies in the case of a company registered in England and Wales, where debentures of the company are secured by a charge which, as created, was a floating charge.

(2) If possession is taken, by or on behalf of the holders of any of the debentures, of any property comprised in or subject to the charge, and the company is not at that time in course of being wound up, the company's preferential debts shall be paid out of assets coming to the hands of the person taking possession in priority to any claims for principal or interest in respect of the debentures.

(3) "Preferential debts" means the categories of debts listed in Schedule 6 to the Insolvency Act; and for the purposes of that Schedule "the relevant date" is the date of possession being taken as above mentioned.

(4) Payments made under this section shall be recouped, as far as may be, out of the assets of the company available for payment of general creditors.]

[SECTION 735B Relationship of this Act to [Part 6 of the Financial Services and Markets Act 2000]]

[In [sections 704(5), (7) and (8)], 706(1), 707(1), 707A(1), 708(1)(a) and (4), 709(1) and (3), 710A and 713(1) references to the Companies Acts include [Part 6 of the Financial Services and Markets Act 2000].]

COMPANIES ACT 1989

Part VII Financial Markets and Insolvency

Introduction

SECTION154 Introduction

This Part has effect for the purposes of safeguarding the operation of certain financial markets by provisions with respect to-

- (a) the insolvency, winding up or default of a person party to transactions in the market (sections 155 to 172),
- (b) the effectiveness or enforcement of certain charges given to secure obligations in connection with such transactions (sections 173 to 176), and

(c) rights and remedies in relation to certain property provided as cover for margin in relation to such transactions or subject to such a charge (sections 177 to 181).

Recognised investment exchanges and clearing houses

SECTION 155 Market contracts

(1) This Part applies to the following descriptions of contract connected with a recognised investment exchange or recognised clearing house.

The contracts are referred to in this Part as “market contracts”.

[(2) Except as provided in subsection (2A), in relation to a recognised investment exchange this Part applies to-

(a) contracts entered into by a member or designated non-member of the exchange [with a person other than the exchange] which are either

(i) contracts made on the exchange or on an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; or

(ii) contracts in the making of which the member or designated non-member was subject to the rules of the exchange or of an exchange to whose undertaking the exchange has succeeded whether by amalgamation, merger or otherwise; and

[(b) contracts entered into by the exchange with its members for the purpose of enabling the rights and liabilities of that member under transactions in investments to be settled].

A “designated non-member” means a person in respect of whom action may be taken under the default rules of the exchange but who is not a member of the exchange.

(2A) This Part does not apply to contracts falling within paragraph (a) of subsection (2) above where the exchange in question is a recognised overseas investment exchange.]

[(3) In relation to a recognised clearing house, this Part applies to contracts entered into by the clearing house with a member of the clearing house for the purpose of enabling the rights and liabilities of that member under transactions in investments to be settled.]

(4) The Secretary of State may by regulations make further provision as to the contracts to be treated as “market contracts”, for the purposes of this Part, in relation to a recognised investment exchange or recognised clearing house.

(5) The regulations may add to, amend or repeal the provisions of subsections (2) and (3) above.

NOTES

Transfer of Functions

Functions of the Secretary of State transferred to the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 2(1)(c).

SECTION 156 Additional requirements for recognition: default rules, &c.

[Repealed by SI 2001/3649, art 75(e). Date in force: 1 December 2001: see SI 2001/3649, art 1.]

1) The [1986 c. 60.] Financial Services Act 1986 shall have effect as if the requirements set out in Schedule 21 to this Act (the "additional requirements") were among those specified in that Act for recognition of an investment exchange or clearing house.

(2) In particular, that Act shall have effect-

(a) as if the requirements set out in Part I of that Schedule were among those specified in Schedule 4 to that Act (requirements for recognition of UK investment exchange),

(b) as if the requirements set out in Part II of that Schedule were among those specified in section 39(4) of that Act (requirements for recognition of UK clearing house), and

(c) as if the requirement set out in Part III of that Schedule was among those specified in section 40(2) of that Act (requirements for recognition of overseas investment exchange or clearing house).

(3) The additional requirements do not affect the status of an investment exchange or clearing house recognised before the commencement of this section, but if the Secretary of State is of the opinion that any of those requirements is not met in the case of such a body, he shall within one month of commencement give notice to the body stating his opinion.

(4) Where the Secretary of State gives such a notice, he shall not-

(a) take action to revoke the recognition of such a body on the ground that any of the additional requirements is not met, unless he considers it essential to do so in the interests of investors, or

(b) apply on any such ground for a compliance order under section 12 of the Financial Services Act 1986,

until after the end of the period of six months beginning with the date on which the notice was given.

(5) The Secretary of State may extend, or further extend, that period if he considers there is good reason to do so.

NOTES

Amendment

Repealed by SI 2001/3649, art 75(e).

Date in force: 1 December 2001: see SI 2001/3649, art 1.

SECTION 157 Change in default rules

(1) A recognised UK investment exchange or recognised UK clearing house shall give the [Authority] at least 14 days' notice of any proposal to amend, revoke or add to its default rules; and the [Authority] may within 14 days from receipt of the notice direct the exchange or clearing house not to proceed with the proposal, in whole or in part.

(2) A direction under this section may be varied or revoked.

(3) Any amendment or revocation of, or addition to, the default rules of an exchange or clearing house in breach of a direction under this section is ineffective.

SECTION 158 Modifications of the law of insolvency

(1) The general law of insolvency has effect in relation to market contracts, and action taken under the rules of a recognised investment exchange or recognised clearing house with respect to such contracts, subject to the provisions of sections 159 to 165.

(2) So far as those provisions relate to insolvency proceedings in respect of a person other than a defaulter, they apply in relation to-

(a) proceedings in respect of a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house, and

(b) proceedings in respect of a party to a market contract begun after a recognised investment exchange or recognised clearing house has taken action under its default rules in relation to a person party to the contract as principal,

but not in relation to any other insolvency proceedings, notwithstanding that rights or liabilities arising from market contracts fall to be dealt with in the proceedings.

(3) The reference in subsection (2)(b) to the beginning of insolvency proceedings is to-

(a) the presentation of a bankruptcy petition or a petition for sequestration of a person's estate, or

(b) the presentation of a petition for an administration order or a winding-up petition or the passing of a resolution for voluntary winding up, or

(c) the appointment of an administrative receiver.

(4) The Secretary of State may make further provision by regulations modifying the law of insolvency in relation to the matters mentioned in subsection (1).

(5) The regulations may add to, amend or repeal the provisions mentioned in subsection (1), and any other provision of this Part as it applies for the purposes of those provisions, or provide that those provisions have effect subject to such additions, exceptions or adaptations as are specified in the regulations.

NOTES

Transfer of Functions

Functions of the Secretary of State, to be exercised jointly with the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 4, Sch 2, para 7.

SECTION 159 Proceedings of exchange or clearing house take precedence over insolvency procedures

(1) None of the following shall be regarded as to any extent invalid at law on the ground of inconsistency with the law relating to the distribution of the assets of a person on bankruptcy, winding up or sequestration, or in the administration of an insolvent estate-

(a) a market contract,

(b) the default rules of a recognised investment exchange or recognised clearing house,

(c) the rules of a recognised investment exchange or recognised clearing house as to the settlement of market contracts not dealt with under its default rules.

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

(a) the settlement in accordance with the rules of a recognised investment exchange or recognised clearing house of a market contract not dealt with under its default rules, or

(b) any action taken under the default rules of such an exchange or clearing house.

This does not prevent a relevant office-holder from afterwards seeking to recover any amount under section 163(4) or 164(4) or prevent the court from afterwards making any such order or decree as is mentioned in section 165(1) or (2) (but subject to subsections (3) and (4) of that section).

(3) Nothing in the following provisions of this Part shall be construed as affecting the generality of the above provisions.

(4) A debt or other liability arising out of a market contract which is the subject of default proceedings may not be proved in a winding up or bankruptcy, or in Scotland claimed in a winding up or sequestration, until the completion of the default proceedings.

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

[(4A) However, prior to the completion of default proceedings-

(a) where it appears to the chairman of the meeting of creditors that a sum will be certified under section 162(1) to be payable, subsection (4) shall not prevent any proof or claim including or consisting of an estimate of that sum which has been lodged or, in Scotland, submitted, from being admitted or, in Scotland, accepted, for the purpose only of determining the entitlement of a creditor to vote at a meeting of creditors; and

(b) a creditor whose claim or proof has been lodged and admitted or, in Scotland, submitted and accepted, for the purpose of determining the entitlement of a creditor to vote at a meeting of creditors and which has not been subsequently wholly withdrawn, disallowed or rejected, is eligible as a creditor to be a member of a liquidation committee or, in bankruptcy proceedings in England and Wales, a creditors' committee.]

(5) For the purposes of [subsections (4) and (4A)] the default proceedings shall be taken to be completed in relation to a person when a report is made under section 162 stating the sum (if any) certified to be due to or from him.

SECTION 160 Duty to give assistance for purposes of default proceedings

(1) It is the duty of-

(a) any person who has or had control of any assets of a defaulter, and

(b) any person who has or had control of any documents of or relating to a defaulter,

to give a recognised investment exchange or recognised clearing house such assistance as it may reasonably require for the purposes of its default proceedings.

This applies notwithstanding any duty of that person under the enactments relating to insolvency.

(2) A person shall not under this section be required to provide any information or produce any document which he would be entitled to refuse to provide or produce on grounds of legal professional privilege in proceedings in the High Court or on grounds of confidentiality as between client and professional legal adviser in proceedings in the Court of Session.

(3) Where original documents are supplied in pursuance of this section, the exchange or clearing house shall return them forthwith after the completion of the relevant default proceedings, and shall in the meantime allow reasonable access to them to the person by whom they were supplied and to any person who would be entitled to have access to them if they were still in the control of the person by whom they were supplied.

(4) The expenses of a relevant office-holder in giving assistance under this section are recoverable as part of the expenses incurred by him in the discharge of his duties; and he shall not be required under this section to take any action which involves expenses which cannot be so recovered, unless the exchange or clearing house undertakes to meet them.

There shall be treated as expenses of his such reasonable sums as he may determine in respect of time spent in giving the assistance [and for the purpose of determining the priority in which his expenses are payable out of the assets, sums in respect of time spent shall be treated as his remuneration and other sums shall be treated as his disbursements or, in Scotland, outlays].

(5) The Secretary of State may by regulations make further provision as to the duties of persons to give assistance to a recognised investment exchange or recognised clearing house for the purposes of its default proceedings, and the duties of the exchange or clearing house with respect to information supplied to it.

The regulations may add to, amend or repeal the provisions of subsections (1) to (4) above.

(6) In this section “document” includes information recorded in any form.

NOTES

Transfer of Functions

Functions of the Secretary of State, to be exercised jointly with the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 4, Sch 2, para 7.

SECTION 161 Supplementary provisions as to default proceedings

(1) If the court is satisfied on an application by a relevant office-holder that a party to a market contract with a defaulter intends to dissipate or apply his assets so as to prevent the office-holder recovering such sums as may become due upon the completion of the default proceedings, the court may grant such interlocutory relief (in Scotland, such interim order) as it thinks fit.

(2) A liquidator or trustee of a defaulter or, in Scotland, a permanent trustee on the sequestrated estate of the defaulter shall not-

(a) declare or pay any dividend to the creditors, or

(b) return any capital to contributories,

unless he has retained what he reasonably considers to be an adequate reserve in respect of any claims arising as a result of the default proceedings of the exchange or clearing house concerned.

(3) The court may on an application by a relevant office-holder make such order as it thinks fit altering or dispensing from compliance with such of the duties of his office as are affected by the fact that default proceedings are pending or could be taken, or have been or could have been taken.

(4) Nothing in section 10(1)(c), 11(3), 126, 128, 130, 185 or 285 of the Insolvency Act 1986 (which restrict the taking of certain legal proceedings and other steps), and nothing in any rule of law in Scotland to the like effect as the said section 285, in the Bankruptcy (Scotland) Act 1985 or in the Debtors (Scotland) Act 1987 as to the effect of sequestration, shall affect any action taken by an exchange or clearing house for the purpose of its default proceedings.

SECTION 162 Duty to report on completion of default proceedings

(1) [Subject to subsection (1A),] a recognised investment exchange or recognised clearing house shall, on the completion of proceedings under its default rules, report to the [Authority] on its proceedings stating in respect of each creditor or debtor the sum certified by them to be payable from or to the defaulter or, as the case may be, the fact that no sum is payable.

[(1A) A recognised overseas investment exchange or recognised overseas clearing house shall not be subject to the obligation under subsection (1) unless it has been notified by the [Authority] that a report is required for the purpose of insolvency proceedings in any part of the United Kingdom.]

(2) The exchange or clearing house may make a single report or may make reports from time to time as proceedings are completed with respect to the transactions affecting particular persons.

(3) The exchange or clearing house shall supply a copy of every report under this section to the defaulter and to any relevant office-holder acting in relation to him or his estate.

(4) When a report under this section is received by the [Authority, it] shall publish notice of that fact in such manner as [it] thinks appropriate for bringing [the report] to the attention of creditors and debtors of the defaulter.

(5) An exchange or clearing house shall make available for inspection by a creditor or debtor of the defaulter so much of any report by it under this section as relates to the sum (if any) certified to be due to or from him or the method by which that sum was determined.

(6) Any such person may require the exchange or clearing house, on payment of such reasonable fee as the exchange or clearing house may determine, to provide him with a copy of any part of a report which he is entitled to inspect.

NOTES

Transfer of Functions

Functions of the Secretary of State transferred to the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 2(1)(c).

SECTION 163 Net sum payable on completion of default proceedings

(1) The following provisions apply with respect to the net sum certified by a recognised investment exchange or recognised clearing house, upon proceedings under its default rules being duly completed in accordance with this Part, to be payable by or to a defaulter.

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

(a) is provable in the bankruptcy or winding up or, as the case may be, is payable to the relevant office-holder, and

(b) shall be taken into account, where appropriate, under section 323 of the Insolvency Act 1986 (mutual dealings and set-off) or the corresponding provision applicable in the case of winding up,

in the same way as a debt due before the commencement of the bankruptcy, the date on which the body corporate goes into liquidation (within the meaning of section 247 of the Insolvency Act 1986) or, in the case of a partnership, the date of the winding-up order.

(3) If, in Scotland, an award of sequestration or a winding-up order has been made, or a resolution for voluntary winding-up has been passed, the debt-

(a) may be claimed in the sequestration or winding up or, as the case may be, is payable to the relevant office-holder, and

(b) shall be taken into account for the purposes of any rule of law relating to set-off applicable in sequestration or winding up,

in the same way as a debt due before the date of sequestration (within the meaning of section 73(1) of the Bankruptcy (Scotland) Act 1985) or the commencement of the winding up (within the meaning of section 129 of the Insolvency Act 1986).

(4) However, where (or to the extent that) a sum is taken into account by virtue of subsection (2)(b) or (3)(b) which arises from a contract entered into at a time when the creditor had notice-

(a) that a bankruptcy petition or, in Scotland, a petition for sequestration was pending, or

(b) that a meeting of creditors had been summoned under section 98 of the Insolvency Act 1986 or that a winding-up petition was pending,

the value of any profit to him arising from the sum being so taken into account (or being so taken into account to that extent) is recoverable from him by the relevant office-holder unless the court directs otherwise.

(5) Subsection (4) does not apply in relation to a sum arising from a contract effected under the default rules of a recognised investment exchange or recognised clearing house.

(6) Any sum recoverable by virtue of subsection (4) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.

NOTES

SECTION 164 Disclaimer of property, rescission of contracts, &c

(1) Sections 178, 186, 315 and 345 of the Insolvency Act 1986 (power to disclaim onerous property and court's power to order rescission of contracts, &c.) do not apply in relation to-

(a) a market contract, or

(b) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to market contracts.

In the application of this subsection in Scotland, the reference to sections 178, 315 and 345 shall be construed as a reference to any rule of law having the like effect as those sections.

(2) In Scotland, a permanent trustee on the sequestrated estate of a defaulter or a liquidator is bound by any market contract to which that defaulter is a party and by any contract as is mentioned in subsection (1)(b) above notwithstanding section 42 of the Bankruptcy (Scotland) Act 1985 or any rule of law to the like effect applying in liquidations.

(3) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition), and section 32(8) of the Bankruptcy (Scotland) Act 1985 (effect of dealing with debtor relating to estate vested in permanent trustee), do not apply to-

(a) a market contract, or any disposition of property in pursuance of such a contract,

(b) the provision of margin in relation to market contracts,

(c) a contract effected by the exchange or clearing house for the purpose of realising property provided as margin in relation to a market contract, or any disposition of property in pursuance of such a contract, or

(d) any disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin.

(4) However, where-

(a) a market contract is entered into by a person who has notice that a petition has been presented for the winding up or bankruptcy or sequestration of the estate of the other party to the contract, or

(b) margin in relation to a market contract is accepted by a person who has notice that such a petition has been presented in relation to the person by whom or on whose behalf the margin is provided,

the value of any profit to him arising from the contract or, as the case may be, the amount or value of the margin is recoverable from him by the relevant office-holder unless the court directs otherwise.

(5) Subsection (4)(a) does not apply where the person entering into the contract is a recognised investment exchange or recognised clearing house acting in accordance with its rules, or where the contract is effected under the default rules of such an exchange or clearing house; but subsection (4)(b) applies in relation to the provision of margin in relation to such a contract.

(6) Any sum recoverable by virtue of subsection (4) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.

SECTION 165 Adjustment of prior transactions

(1) No order shall be made in relation to a transaction to which this section applies under-

- (a) section 238 or 339 of the Insolvency Act 1986 (transactions at an under-value),
- (b) section 239 or 340 of that Act (preferences), or
- (c) section 423 of that Act (transactions defrauding creditors),

(2) As respects Scotland, no decree shall be granted in relation to any such transaction-

- (a) under section 34 or 36 of the Bankruptcy (Scotland) Act 1985 or section 242 or 243 of the Insolvency Act 1986 (gratuitous alienations and unfair preferences), or
- (b) at common law on grounds of gratuitous alienations or fraudulent preferences.

(3) This section applies to-

- (a) a market contract to which a recognised investment exchange or recognised clearing house is a party or which is entered into under its default rules, and
- (b) a disposition of property in pursuance of such a market contract.

(4) Where margin is provided in relation to a market contract and (by virtue of subsection (3)(a) or otherwise) no such order or decree as is mentioned in subsection (1) or (2) has been, or could be, made in relation to that contract, this section applies to-

- (a) the provision of the margin,
- (b) any contract effected by the exchange or clearing house in question for the purpose of realising the property provided as margin, and
- (c) any disposition of property in accordance with the rules of the exchange or clearing house as to the application of property provided as margin.

SECTION 166 Powers of Secretary of State to give directions

- (1) The powers conferred by this section are exercisable in relation to a recognised UK investment exchange or recognised UK 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 [Authority] that it could take action, [the Authority] may direct it to do so, and
 - (b) if it appears to the [Authority] that it is proposing to take or may take action, [the Authority] may direct it not to do so.
- (3) Before giving such a direction the [Authority] shall consult the exchange or clearing house in question; and [it] shall not give a direction unless [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, or
 - (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.
- (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 [Authority] 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.

The [Authority] shall not give such a direction unless [it is satisfied that the direction] will not impede or frustrate the proper and efficient conduct of the default proceedings.

(8) A direction under this section is enforceable, on the application of the [Authority], by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988; and where an exchange or clearing house 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.

NOTES

Transfer of Functions

Functions of the Secretary of State transferred to the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 2(1)(c).

SECTION 167 Application to determine whether default proceedings to be taken

(1) Where there has been made or passed in relation to a member or designated non-member of a recognised investment exchange or a member of a recognised clearing house-

(a) a bankruptcy order or an award of sequestration of his estate, or an order appointing an interim receiver of his property, or

(b) an administration or winding up order, a resolution for voluntary winding up or an order appointing a provisional liquidator,

and the exchange or clearing house has not taken action under its default rules in consequence of the order, award or resolution or the matters giving rise to it, a relevant office-holder appointed by, or in consequence of or in connection with, the order, award or resolution may apply to the [Authority].

(2) The application shall specify the exchange or clearing house concerned and the grounds on which it is made.

(3) On receipt of the application the [Authority] shall notify the exchange or clearing house, and unless within three business days after the day on which the notice is received the exchange or clearing house-

(a) takes action under its default rules, or

(b) notifies the [Authority] that it proposes to do so forthwith,

then, subject as follows, the provisions of sections 158 to 165 above do not apply in relation to market contracts to which the member or designated non-member in question is a party or to anything done by the exchange or clearing house for the purposes of, or in connection with, the settlement of any such contract.

For this purpose a “business day” means any day which is not a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday in any part of the United Kingdom under the Banking and Financial Dealings Act 1971.

(4) The provisions of sections 158 to 165 are not disapplied if before the end of the period mentioned in subsection (3) the [Authority] gives the exchange or clearing house a direction under section 166(2)(a) (direction to take action under default rules).

No such direction may be given after the end of that period.

(5) If the exchange or clearing house notifies the [Authority] that it proposes to take action under its default rules forthwith, it shall do so; and that duty is enforceable, on the application of the [Authority], by injunction or, in Scotland, by an order under section 45 of the Court of Session Act 1988.

NOTES

Transfer of Functions

Functions of the Secretary of State transferred to the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 2(1)(c).

SECTION 168 Delegation of functions to designated agency.

[Repealed by SI 2001/3649, art 75(f). Date in force: 1 December 2001: see SI 2001/3649, art 1.]

(1) Section 114 of the Financial Services Act 1986 (power to transfer functions to designated agency) applies to the functions of the Secretary of State under this Part in relation to a UK investment exchange or clearing house, with the exception of his functions with respect to the making of orders and regulations.

(2) If immediately before the commencement of this section-

(a) a designated agency is exercising all functions in relation to such bodies which are capable of being transferred under that section, and

(b) no draft order is lying before Parliament resuming any of those functions,
the order bringing this section into force shall have effect as a delegation order made under that section transferring to that agency all the functions which may be transferred by virtue of this section.

(3) The Secretary of State may-

(a) in the circumstances mentioned in subsection (3), (4) or (5) of section 115 of the [1986 c. 60.] Financial Services Act 1986, or

(b) if it appears to him that a designated agency is unable or unwilling to discharge all or any of the functions under this Part which have been transferred to it,
make an order under that section resuming all functions under this Part which have been transferred to the agency.

This does not affect his power to make an order under subsection (1) or (2) of that section with respect to such functions.

NOTES

Amendment

Repealed by SI 2001/3649, art 75(f).

Date in force: 1 December 2001: see SI 2001/3649, art 1.

SECTION 169 Supplementary provisions

(1) Section 61 of the Financial Services Act 1986 (injunctions and restitution orders) applies in relation to a contravention of any provision of the rules of a recognised investment exchange or recognised clearing house relating to the matters mentioned in Schedule 21 to this Act as it applies in relation to a contravention of any provision of such rules relating to the carrying on of investment business. **[Repealed by SI 2001/3649, art 75(g). Date in force: 1 December 2001: see SI 2001/3649, art 1.]**

(2) [Sections 296 and 297 of the Financial Services and Markets Act 2000 apply] in relation to a failure by a recognised investment exchange or recognised clearing house to comply with an obligation under this Part as to a failure to comply with an obligation under that Act.

(3) Where the recognition of an investment exchange or clearing house is revoked under the [Financial Services and Markets Act 2000, the appropriate authority] may, before or after the revocation order, give such directions as [it] thinks fit with respect to the continued application of the provisions of this Part, with such exceptions, additions and adaptations as may be specified in the direction, in relation to cases where a relevant event of any description specified in the directions occurred before the revocation order takes effect.

[(3A) “The appropriate authority” means-

(a) in the case of an overseas investment exchange or clearing house, the Treasury; and

(b) in the case of a UK investment exchange or clearing house, the Authority.]

(4) The references in sections 119 and 121 of the [1986 c. 60.] Financial Services Act 1986 (competition) to what is necessary for the protection of investors shall be construed as including references to what is necessary for the purposes of this Part. **[Repealed by SI 2001/3649, art 75(g). Date in force: 1 December 2001: see SI 2001/3649, art 1.]**

(5) [Regulations under section 414 of the Financial Services and Markets Act 2000 (service of notices) may make provision] in relation to a notice, direction or other document required or authorised by or under this Part to be given to or served on any person other than the [Treasury or the Authority].

NOTES

Transfer of Functions

Functions of the Secretary of State transferred to the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 2(1)(c).

Other exchanges and clearing houses

SECTION 170 Certain overseas exchanges and clearing houses

(1) The Secretary of State [and the Treasury] may by regulations provide that this Part applies in relation to contracts connected with an overseas investment exchange or clearing house which is approved by [the Treasury] in accordance with such procedures as may be specified in the regulations, as satisfying such requirements as may be so specified, as it applies in relation to contracts connected with a recognised investment exchange or clearing house.

(2) The [Treasury] shall not approve an overseas investment exchange or clearing house unless [they are] satisfied-

(a) that the rules and practices of the body, together with the law of the country in which the body's head office is situated, provide adequate procedures for dealing with the default of persons party to contracts connected with the body, and

(b) that it is otherwise appropriate to approve the body.

(3) The reference in subsection (2)(a) to default is to a person being unable to meet his obligations.

(4) The regulations may apply in relation to the approval of a body under this section such of the provisions of the [Financial Services and Markets Act 2000] as the Secretary of State considers appropriate.

(5) The Secretary of State may make regulations which, in relation to a body which is so approved-

(a) apply such of the provisions of the [Financial Services and Markets Act 2000] as the Secretary of State considers appropriate, and

(b) provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient;

and different provision may be made with respect to different bodies or descriptions of body.

(6) Where the regulations apply any provisions of the [Financial Services and Markets Act 2000], they may provide that those provisions apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient.

NOTES

Transfer of Functions

Functions of the Secretary of State, exercised under sub-s (1), transferred to the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 2(1)(c), remainder to be exercised jointly with the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 4, Sch 2, para 7.

SECTION 171 Certain money market institutions

[Repealed by SI 2001/3649, art 75(h); for the continued effect of this section see SI 2001/3650, art 24. Date in force: 1 December 2001: see SI 2001/3649, art 1.]

(1) The Secretary of State may by regulations provide that this Part applies to contracts of any specified description in relation to which settlement arrangements are provided by a person for the time being included in a list maintained by the Bank of England for the purposes of this section, as it applies to contracts connected with a recognised investment exchange or recognised clearing house.

(2) The Secretary of State shall not make any such regulations unless he is satisfied, having regard to the extent to which the contracts in question-

- (a) involve, or are likely to involve, investments falling within paragraph 2 of Schedule 5 to the [1986 c. 60.] Financial Services Act 1986 (money market investments), or

- (b) are otherwise of a kind dealt in by persons supervised by the Bank of England, that it is appropriate that the arrangements should be subject to the supervision of the Bank of England.

(3) The approval of the Treasury is required for-

- (a) the conditions imposed by the Bank of England for admission to the list maintained by it for the purposes of this section, and

- (b) the arrangements for a person's admission to and removal from the list; and any regulations made under this section shall cease to have effect if the approval of the Treasury is withdrawn, but without prejudice to their having effect again if approval is given for fresh conditions or arrangements.

(4) The Bank of England shall publish the list as for the time being in force and provide a certified copy of it at the request of any person wishing to refer to it in legal proceedings.

A certified copy shall be evidence (in Scotland, sufficient evidence) of the contents of the list; and a copy purporting to be certified by or on behalf of the Bank shall be deemed to have been duly certified unless the contrary is shown.

(5) Regulations under this section may, in relation to a person included in the list-

(a) apply, with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient, such of the provisions of the [1986 c. 60.] Financial Services Act 1986 as he considers appropriate, and

(b) provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient.

(6) Before making any regulations under this section, the Secretary of State shall consult the Treasury and the Bank of England.

(7) In section 84(1) of the [1987 c. 22.] Banking Act 1987 (disclosure of information obtained under that Act), in the Table showing the authorities to which, and functions for the purposes of which, disclosure may be made, at the end add-

A person included in the list maintained by the Bank for the purposes of section 171 of the Companies Act 1989. Functions under settlement arrangements to which regulations under that section relate.

SECTION 172 Settlement arrangements provided by the Bank of England

(1) The Secretary of State may by regulations provide that this Part applies to contracts of any specified description in relation to which settlement arrangements are provided by the Bank of England, as it applies to contracts connected with a recognised investment exchange or recognised clearing house.

(2) Regulations under this section may provide that the provisions of this Part apply with such exceptions, additions and adaptations as appear to the Secretary of State to be necessary or expedient.

(3) Before making any regulations under this section, the Secretary of State [and the Treasury shall consult] the Bank of England.

NOTES

Transfer of Functions

Functions of the Secretary of State to be exercised jointly with the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 4, Sch 2, para 7.

Market charges

SECTION 173 Market charges

(1) In this Part “market charge” means a charge, whether fixed or floating, granted-

(a) in favour of a recognised investment exchange, for the purpose of securing debts or liabilities arising in connection with the settlement of market contracts,

[(aa) in favour of The Stock Exchange, for the purpose of securing debts or liabilities arising in connection with short term certificates;]

(b) in favour of a recognised clearing house, for the purpose of securing debts or liabilities arising in connection with their ensuring the performance of market contracts, or

(c) in favour of a person who agrees to make payments as a result of the transfer [or allotment] of specified securities made through the medium of a computer-based system established by the Bank of England and The Stock Exchange, for the purpose of securing debts or liabilities of the transferee [or allottee] arising in connection therewith.

(2) Where a charge is granted partly for purposes specified in subsection (1)(a), [(aa),] (b) or (c) and partly for other purposes, it is a “market charge” so far as it has effect for the specified purposes.

(3) [In subsection (1)-

“short term certificate” means an instrument issued by The Stock Exchange undertaking to procure the transfer of property of a value and description specified in the instrument to or to the order of the person to whom the instrument is issued or his endorsee or to a person acting on behalf of either of them and also undertaking to make appropriate payments in cash, in the event that the obligation to procure the transfer of property cannot be discharged in whole or in part;]

“specified securities” means securities for the time being specified in the list in Schedule 1 to the Stock Transfer Act 1982, and includes any right to such securities; and

“transfer”, in relation to any such securities or right, means a transfer of the beneficial interest.

(4) The Secretary of State may by regulations make further provision as to the charges granted in favour of any such person as is mentioned in subsection (1)(a), (b) or (c) which are to be treated as “market charges” for the purposes of this Part; and the regulations may add to, amend or repeal the provisions of subsections (1) to (3) above.

(5) The regulations may provide that a charge shall or shall not be treated as a market charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.

(6) Before making regulations under this section in relation to charges granted in favour of a person within subsection (1)(c), the Secretary of State [and the Treasury shall consult] the Bank of England.

NOTES

Transfer of Functions

Functions of the Secretary of State to be exercised jointly with the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 4, Sch 2, para 7.

SECTION 174 Modifications of the law of insolvency

(1) The general law of insolvency has effect in relation to market charges and action taken in enforcing them subject to the provisions of section 175.

(2) The Secretary of State may by regulations make further provision modifying the law of insolvency in relation to the matters mentioned in subsection (1).

(3) The regulations may add to, amend or repeal the provisions mentioned in subsection (1), and any other provision of this Part as it applies for the purposes of those provisions, or provide that those provisions have effect with such exceptions, additions or adaptations as are specified in the regulations.

(4) The regulations may make different provision for cases defined by reference to the nature of the charge, the nature of the property subject to it, the circumstances, nature or extent of the obligations secured by it or any other relevant factor.

(5) Before making regulations under this section in relation to charges granted in favour of a person within section 173(1)(c), the Secretary of State [and the Treasury shall consult] the Bank of England.

NOTES

Transfer of Functions

Functions of the Secretary of State to be exercised jointly with the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 4, Sch 2, para 7.

SECTION 175 Administration orders, &c

(1) The following provisions of the Insolvency Act 1986 (which relate to administration orders and administrators) do not apply in relation to a market charge-

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

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

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

(3) The following provisions of the Insolvency Act 1986 (which relate to the powers of receivers) do not apply in relation to a market charge-

- (a) section 43 (power of administrative receiver to dispose of charged property), and
- (b) section 61 (power of receiver in Scotland to dispose of an interest in property).

(4) Sections 127 and 284 of the Insolvency Act 1986 (avoidance of property dispositions effected after commencement of winding up or presentation of bankruptcy petition), and section 32(8) of the Bankruptcy (Scotland) Act 1985 (effect of dealing with debtor relating to estate vested in permanent trustee), do not apply to a disposition of property as a result of which the property becomes subject to a market charge or any transaction pursuant to which that disposition is made.

(5) However, if a person (other than the chargee under the market charge) who is party to a disposition mentioned in subsection (4) has notice at the time of the disposition that a petition has been presented for the winding up or bankruptcy or sequestration of the estate of the party making the disposition, the value of any profit to him arising from the disposition is recoverable from him by the relevant office-holder unless the court directs otherwise.

(6) Any sum recoverable by virtue of subsection (5) ranks for priority, in the event of the insolvency of the person from whom it is due, immediately before preferential or, in Scotland, preferred debts.

(7) In a case falling within both subsection (4) above (as a disposition of property as a result of which the property becomes subject to a market charge) and section 164(3) (as the provision of margin in relation to a market contract), section 164(4) applies with respect to the recovery of the amount or value of the margin and subsection (5) above does not apply.

SECTION 176 Power to make provision about certain other charges

(1) The Secretary of State may by regulations provide that the general law of insolvency has effect in relation to charges of such descriptions as may be specified in the regulations, and action taken in enforcing them, subject to such provisions as may be specified in the regulations.

(2) The regulations may specify any description of charge granted in favour of-

(a) a body approved under section 170 (certain overseas exchanges and clearing houses),

(b) a person included in the list maintained by the [. . . Authority] for the purposes of [section 301 of the Financial Services and Markets Act 2000] (certain money market institutions),

(c) the Bank of England,

[(d) a person who has permission under Part 4 of the Financial Services and Markets Act 2000 to carry on a relevant regulated activity, or

(e) an international securities self-regulating organisation approved for the purposes of an order made under section 22 of the Financial Services and Markets Act 2000,]

for the purpose of securing debts or liabilities arising in connection with or as a result of the settlement of contracts or the transfer of assets, rights or interests on a financial market.

(3) The regulations may specify any description of charge granted for that purpose in favour of any other person in connection with exchange facilities or clearing services provided by a recognised investment exchange or recognised clearing house or by any such body, person, authority or organisation as is mentioned in subsection (2).

(4) Where a charge is granted partly for the purpose specified in subsection (2) and partly for other purposes, the power conferred by this section is exercisable in relation to the charge so far as it has effect for that purpose.

(5) The regulations may-

(a) make the same or similar provision in relation to the charges to which they apply as is made by or under sections 174 and 175 in relation to market charges, or

(b) apply any of those provisions with such exceptions, additions or adaptations as are specified in the regulations.

[(6) Before making regulations under this section relating to a description of charges defined by reference to their being granted in favour of a person included in the list maintained by the . . . Authority for the purposes of [section 301 of the Financial Services and Markets Act 2000], or in connection with exchange facilities or clearing services provided by a person included in that list, the Secretary of State and the Treasury shall consult the Authority and the Bank of England.

(6A) Before making regulations under this section relating to a description of charges defined by reference to their being granted in favour of the Bank of England, or in connection with settlement arrangements provided by the Bank, the Secretary of State and the Treasury shall consult the Bank.]

(7) Regulations under this section may provide that they apply or do not apply to a charge if or to the extent that it secures obligations of a specified description, is a charge over property of a specified description or contains provisions of a specified description.

[(8) For the purposes of subsection (2)(d), “relevant regulated activity” means-

(a) dealing in investments as principal or as agent;

(b) arranging deals in investments;

(c) managing investments;

(d) safeguarding and administering investments;

(e) sending dematerialised instructions; or

(f) establishing etc a collective investment scheme.

(9) Subsection (8) must be read with-

(a) section 22 of the Financial Services and Markets Act 2000;

(b) any relevant order under that section; and

(c) Schedule 2 to that Act.]

NOTES

Transfer of Functions

Functions of the Secretary of State to be exercised jointly with the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 4, Sch 2, para 7.

Market property

SECTION 177 Application of margin not affected by certain other interests

(1) The following provisions have effect with respect to the application by a recognised investment exchange or recognised clearing house of property (other than land) held by the exchange or clearing house as margin in relation to a market contract.

(2) So far as necessary to enable the property to be applied in accordance with the rules of the exchange or clearing house, it may be so applied notwithstanding any prior equitable interest or right, or any right or remedy arising from a breach of fiduciary duty, unless the exchange or clearing house had notice of the interest, right or breach of duty at the time the property was provided as margin.

(3) No right or remedy arising subsequently to the property being provided as margin may be enforced so as to prevent or interfere with the application of the property by the exchange or clearing house in accordance with its rules.

(4) Where an exchange or clearing house has power by virtue of the above provisions to apply property notwithstanding an interest, right or remedy, a person to whom the exchange or clearing house disposes of the property in accordance with its rules takes free from that interest, right or remedy.

SECTION 178 Priority of floating market charge over subsequent charges

(1) The Secretary of State may by regulations provide that a market charge which is a floating charge has priority over a charge subsequently created or arising, including a fixed charge.

(2) The regulations may make different provision for cases defined, as regards the market charge or the subsequent charge, by reference to the description of charge, its terms, the circumstances in which it is created or arises, the nature of the charge, the person in favour of whom it is granted or arises or any other relevant factor.

NOTES

Transfer of Functions

Functions of the Secretary of State transferred to the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 2(1)(c).

SECTION 179 Priority of market charge over unpaid vendor's lien

Where property subject to an unpaid vendor's lien becomes subject to a market charge, the charge has priority over the lien unless the chargee had actual notice of the lien at the time the property became subject to the charge.

SECTION 180 Proceedings against market property by unsecured creditors

(1) Where property (other than land) is held by a recognised investment exchange or recognised clearing house as margin in relation to market contracts or is subject to a market charge, no execution or other legal process for the enforcement of a judgment or order may be commenced or continued, and no distress may be levied, against the property by a person not seeking to enforce any interest in or security over the property, except with the consent of-

(a) in the case of property provided as cover for margin, the investment exchange or clearing house in question, or

(b) in the case of property subject to a market charge, the person in whose favour the charge was granted.

(2) Where consent is given the proceedings may be commenced or continued notwithstanding any provision of the Insolvency Act 1986 or the Bankruptcy (Scotland) Act 1985.

(3) Where by virtue of this section a person would not be entitled to enforce a judgment or order against any property, any injunction or other remedy granted with a view to facilitating the enforcement of any such judgment or order shall not extend to that property.

(4) In the application of this section to Scotland, the reference to execution being commenced or continued includes a reference to diligence being carried out or continued, and the reference to distress being levied shall be omitted.

SECTION 181 Power to apply provisions to other cases

(1) [A power to which this subsection applies includes the] power to apply sections 177 to 180 to any description of property provided as cover for margin in relation to contracts in relation to which the power is exercised or, as the case may be, property subject to charges in relation to which the power is exercised.

(2) The regulations may provide that those sections apply with such exceptions, additions and adaptations as may be specified in the regulations.

[(3) Subsection (1) applies to the powers of the Secretary of State and the Treasury to act jointly under-

(a) sections 170, 172 and 176 of this Act; and

(b) section 301 of the Financial Services and Markets Act 2000 (supervision of certain contracts).]

NOTES

Transfer of Functions

Functions of the Secretary of State to be exercised jointly with the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 4, Sch 2, para 7.

Supplementary provisions

SECTION 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 Insolvency Act 1986 (administration, winding up and bankruptcy) or under the Bankruptcy (Scotland) Act 1985; and references in this section to the beginning of such proceedings are to-

(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

(b) in Scotland, the administration by a judicial factor appointed under section 11A of the 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.

SECTION 183 Insolvency proceedings in other jurisdictions

(1) The references to insolvency law in section 426 of the 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 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 Civil Jurisdiction and Judgments Act 1982 [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].

SECTION 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 recognised investment exchange or recognised clearing house, 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 recognised investment exchange or recognised clearing house 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 recognised investment exchange or recognised clearing house, nor any officer or servant or member of the governing body of a recognised investment exchange or recognised clearing house, 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 the exchange or clearing house so far as relating to, or to matters arising out of-

(a) its default rules, or

(b) any obligations to which it is subject by virtue of this Part.

(5) No person [to whom the exercise of any function of a recognised investment exchange or recognised clearing house 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.

SECTION 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.

[(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.]

NOTES

Transfer of Functions

Functions of the Secretary of State to be exercised jointly with the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 4, Sch 2, para 7.

SECTION 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.

NOTES

Transfer of Functions

Functions of the Secretary of State to be exercised, in part, jointly with the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 4, Sch 2, para 7(1),(3).

SECTION 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.

(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.

NOTES

Transfer of Functions

Functions of the Secretary of State transferred to the Treasury, by the Transfer of Functions (Financial Services) Order 1992, SI 1992/1315, art 2(1)(c).

SECTION 188 Meaning of "default rules" and related expressions

(1) In this Part “default rules” means rules of a recognised investment exchange or recognised clearing house which provide for the taking of action in the event of a person appearing to be unable, or likely to become unable, to meet his obligations in respect of one or more market contracts connected with the exchange or clearing house.

(2) References in this Part to a “defaulter” are to a person in respect of whom action has been taken by a recognised investment exchange or recognised clearing house under its default rules, whether by declaring him to be a defaulter or otherwise; and references in this Part to “default” shall be construed accordingly.

(3) In this Part “default proceedings” means proceedings taken by a recognised investment exchange or recognised clearing house under its default rules.

(4) If an exchange or clearing house 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.

SECTION 190 Minor definitions

(1) In this Part-

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

[“the Authority” means the Financial Services Authority;]

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

“interim trustee” and “permanent trustee” have the same meaning as in the Bankruptcy (Scotland) Act 1985;

“overseas”, in relation to an investment exchange or clearing house, means having its head office outside the United Kingdom;

[“recognised clearing house” and “recognised investment exchange” have the same meaning as in the Financial Services and Markets Act 2000;]

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

[“The Stock Exchange” means the London Stock Exchange Limited;]

“UK”, in relation to an investment exchange or clearing house, means having its head office in the United Kingdom.

(2) References in this Part to settlement in relation to a market contract are to the discharge of the rights and liabilities of the parties to the contract, whether by performance, compromise or otherwise.

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

(4) References in this Part to ensuring the performance of a transaction have the same meaning as in the [1986 c. 60.] Financial Services Act 1986. **[Repealed by SI 2001/3649, art 89(1), (6). Date in force: 1 December 2001: see SI 2001/3649, art 1]**

(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”.

(6) References in this Part to the law of insolvency include references to every provision made by or under the Insolvency Act 1986 or the Bankruptcy (Scotland) Act 1985; 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.

(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 or permanent trustee include references to a judicial factor on the insolvent estate of a deceased person,

unless the context otherwise requires.

SECTION 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)-

administrative receiver	section 190(1)
[the Authority	section 190(1)]
charge	section 190(1)
cover for margin	section 190(3)
default rules (and related expressions)	section 188
designated non-member	section 155(2)
insolvency law (and similar expressions)	section 190(6)
interim trustee	section 190(1) and (7)(b)
margin	section 190(3)
market charge	section 173
market contract	section 155
notice	section 190(5)
overseas (in relation to an investment exchange or clearing house)	section 190(1)
party (in relation to a market contract)	section 187
permanent trustee	section 190(1) and (7)(b)
[recognised clearing house and 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)
trustee, interim or permanent (in relation to Scotland)	section 190(7)(b)
UK (in relation to an investment exchange or clearing house)	section 190(1).