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STATUTORY INSTRUMENTS

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**2018 No. 1244**

**FINANCIAL SERVICES  
BANKS AND BANKING  
BUILDING SOCIETIES**

The Banks and Building Societies  
(Priorities on Insolvency) Order 2018

*Made* - - - - 27th November 2018  
*Laid before Parliament* 28th November 2018  
*Coming into force* - - 19th December 2018

The Treasury are designated (1) for the purposes of section 2(2) of the European Communities Act 1972(2) in relation to financial services.

The Treasury make the following Order in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

**PART 1**

**Introductory Provisions**

**Citation and commencement**

1.—(1) This Order may be cited as the Banks and Building Societies (Priorities on Insolvency) Order 2018.

(2) This Order comes into force on 19th December 2018.

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(1) [S.I. 2012/1759](#).

(2) [1972 c.68](#). Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act [2006 \(c.51\)](#) and by section 3 of, and the Schedule to, the European Union (Amendment) Act [2008 \(c.7\)](#). By virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act [1993 \(c.51\)](#), regulations may be made under section 2(2) of the European Communities Act 1972 to implement obligations of the United Kingdom created or arising by or under the Agreement on the European Economic Area signed at Oporto on 2nd May 1993 (Cm 2073) and the Protocol adjusting the Agreement signed in Brussels on 17th March 1993 (Cm 2183). Section 2 was repealed by European Union (Withdrawal) Act [2018 c.16](#), section 1 (date to be appointed).

## Extent

2. The amendments made by this Order have the same extent as the enactments amended.

## Transitional provision

3.—(1) This Order has no effect in relation to insolvency proceedings which are commenced before the date on which this Order comes into force.

(2) For this purpose—

(a) “insolvency proceedings” means—

- (i) proceedings under the Insolvency Act 1986<sup>(3)</sup>;
- (ii) proceedings under the Insolvency (Northern Ireland) Order 1989<sup>(4)</sup>;
- (iii) proceedings under the Insolvent Partnerships Order 1994<sup>(5)</sup>;
- (iv) proceedings under the Insolvent Partnerships Order (Northern Ireland) 1995<sup>(6)</sup>;
- (v) proceedings under Part 2 or 3 of the Banking Act 2009<sup>(7)</sup> (including proceedings under either of those Parts as applied to building societies by section 90C of the Building Societies Act 1986<sup>(8)</sup>);
- (vi) proceedings under the Investment Bank Special Administration Regulations 2011<sup>(9)</sup>; or
- (vii) proceedings under the Bankruptcy (Scotland) Act 2016<sup>(10)</sup>;

(b) insolvency proceedings commence on—

- (i) the date of presentation of a petition for a winding-up order, bank insolvency order, special administration (bank insolvency) order, building society insolvency order, bankruptcy order or award of sequestration;
- (ii) the date on which an application is made for an administration order, bank administration order, investment bank special administration order, special administration (bank administration) order or building society special administration order;
- (iii) the date on which notice of appointment of an administrator is given under paragraph 18 or 29 of Schedule B1 to the Insolvency Act 1986<sup>(11)</sup> or paragraph 19 or 30 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989<sup>(12)</sup>;
- (iv) the date on which a proposal is made by the directors of a company for a company voluntary arrangement under Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989 or by an individual debtor for an individual voluntary arrangement under Part 8 of the Insolvency Act 1986 or Part 8 of the Insolvency (Northern Ireland) Order 1989;

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<sup>(3)</sup> 1986 c.45.

<sup>(4)</sup> S.I. 1989/2045 (N.I. 19); amended by the Insolvency (Northern Ireland) Order 2002 (S.I. 2002 No. 3152 (N.I. 6), S.R. 2004 No. 307, the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10), S.I. 2014 No. 3486, paragraph 83 of schedule 29 to the Civil Partnership Act 2004 (c.33)); there are other amending instruments but none is relevant.

<sup>(5)</sup> S.I. 1994/2421, amended by S.I. 2002/2708, S.I. 2005/1516, S.I. 2014/3486, S.I. 2017/1119; there are other amending instruments but none is relevant.

<sup>(6)</sup> S.R. (N.I.) 1995 No.225.

<sup>(7)</sup> 2009 c.1.

<sup>(8)</sup> 1986 c.53; Section 90C was inserted by S.I. 2009/805.

<sup>(9)</sup> S.I. 2011/245; amended by S.I. 2017/400; there are other amending instruments but none is relevant.

<sup>(10)</sup> 2016 asp 21.

<sup>(11)</sup> Schedule B1 was inserted by the Enterprise Act 2002 c. 40 Schedule 16. There are no amendments to either paragraph 18 or paragraph 29.

<sup>(12)</sup> Schedule B1 was inserted by S.I. 2005/1455 (N.I. 10), Schedule 1. There are no amendments to either paragraph 19 or paragraph 30.

- (v) the date on which a resolution for voluntary winding-up is passed.

## PART 2

### Amendments of the Insolvency Act 1986

#### Introduction

4. The Insolvency Act 1986 is amended in accordance with this Part.

#### Non-preferential debts in company voluntary arrangements

5. In section 4 (decisions of the company and its creditors)(13), in subsection (4)—
- (a) in paragraph (b), omit the final “or”;
  - (b) after paragraph (c) insert—
    - “or
    - (d) in the case of a company which is a relevant financial institution (see section 387A), any non-preferential debt is to be paid otherwise than in accordance with the rules in section 176AZA(2) or (3).”;
  - (c) in the words after paragraph (c), omit “preferential”.

#### Non-preferential debts in winding up of companies

6. After section 176 insert—

*“Non-preferential debts*

#### Non-preferential debts of financial institutions

**176AZA.**—(1) This section applies in the winding up of a company which is a relevant financial institution.

(2) The company’s ordinary non-preferential debts shall be paid in priority to its secondary non-preferential debts.

(3) The company’s secondary non-preferential debts—

- (a) shall be paid in priority to its tertiary non-preferential debts, and
- (b) rank equally among themselves after the ordinary non-preferential debts and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.

(4) See section 387A for definitions relevant to this section.”.

#### Non-preferential debts in individual voluntary arrangements

7. In section 258 (approval of debtors’ proposal)(14), in subsection (5)—

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(13) Section 4 was amended by the Insolvency Act 2000 (c.39), Schedule 2, paragraphs 1 and 4, the Deregulation Act 2015 c. 20 Schedule 6(6) paragraph 20(2)(c), the Small Business, Enterprise and Employment Act 2015 c. 26 Schedule 9(1) paragraph 4 and S.I. 2014/3486.

(14) Section 258 was amended by the Insolvency Act 2000 c. 39 Schedule 3 paragraph 9, the Small Business, Enterprise and Employment Act 2015 c. 26 Schedule 9(2) paragraph 65 and S.I. 2014/3486.

- (a) in paragraph (b), omit the final “or”;
- (b) after paragraph (c) insert—
  - “or
  - (d) if the debtor is a relevant financial institution (see section 387A), any non-preferential debt is to be paid otherwise than in accordance with the rules in section 328(3A) (reading references to the bankrupt as references to the debtor),”;
- (c) in the words after paragraph (c), omit “preferential”.

### **Non-preferential debts in bankruptcy proceedings**

**8.**—(1) Section 328 (priority of debts)(**15**) is amended as follows.

(2) After subsection (3) insert—

“(3A) If the bankrupt is a relevant financial institution, subsection (3) does not apply but—

- (a) the bankrupt’s ordinary non-preferential debts shall be paid in priority to the bankrupt’s secondary non-preferential debts,
- (b) the bankrupt’s ordinary non-preferential debts rank equally among themselves after the secondary preferential debts and shall be paid in full, unless the bankrupt’s estate is insufficient to meet them, in which case they abate in equal proportions,
- (c) the bankrupt’s secondary non-preferential debts shall be paid in priority to the bankrupt’s tertiary non-preferential debts, and
- (d) the bankrupt’s secondary non-preferential debts rank equally among themselves after the ordinary non-preferential debts and shall be paid in full, unless the bankrupt’s estate is insufficient to meet them, in which case they abate in equal proportions.

See section 387A for definitions relevant to this subsection.”.

(3) In subsection (4), for the words from “that” to “subsection (3)” substitute—

“—

- (a) where subsection (3) applies, that are preferential or rank equally under that subsection, or
- (b) where subsection (3A) applies, that are preferential or are referred to in that subsection,”.

**9.** In section 329 (debts to spouse or civil partner)(**16**), in subsection (2)(a)—

- (a) omit “debts and”;
- (b) for “328(3) and (4)” substitute “328(4)”.

### **Interpretation**

**10.** In the heading of Part 12(**17**), after “Preferential” insert “and non-preferential”.

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(15) Section 328 was amended by [S.I. 2014/3486](#).

(16) Section 329 was amended by the Civil Partnership Act 2004 c. 33 Sch.27 paragraph 116.

(17) Part 12 was amended by the Pension Schemes Act 1993 c. 48 Schedule 8 paragraph 18, the Insolvency Act 2000 c.39 Schedule 1 paragraph 9 and Schedule 3 paragraph 15, the Enterprise Act 2002 c. 40 Pt 10 s.251(3) and Schedule 17, paragraph 34, the Enterprise and Regulatory Reform Act 2013 c. 24 Schedule 19 paragraph 56, the Financial Services (Banking Reform) Act 2013 c. 33 Pt 2 s.13(2), the Small Business, Enterprise and Employment Act 2015 c. 26 Schedule 9(1) paragraph 55, [S.I. 2002/1240](#), [S.I. 2014/3486](#), [S.I. 2015/486](#) and [S.I. 2017/702](#).

11. After section 387 insert—

**“Financial institutions and their non-preferential debts**

**387A.**—(1) In this Act “relevant financial institution” means any of the following—

- (a) a credit institution,
- (b) an investment firm,
- (c) a financial holding company,
- (d) a mixed financial holding company,
- (e) a financial institution which is—
  - (i) a subsidiary of an entity referred to in sub-paragraphs (a) to (d), and
  - (ii) covered by the supervision of that entity on a consolidated basis in accordance with Articles 6 to 17 of Regulation (EU) No 575/2013<sup>(18)</sup>, or
- (f) a mixed-activity holding company.

(2) The definitions in Article 4 of Regulation (EU) No. 575/2013<sup>(19)</sup> apply for the purposes of subsection (1).

(3) In this Act, in relation to a relevant financial institution—

- (a) “ordinary non-preferential debts” means non-preferential debts which are neither secondary non-preferential debts nor tertiary non-preferential debts;
- (b) “secondary non-preferential debts” means non-preferential debts issued under an instrument where—
  - (i) the original contractual maturity of the instrument is of at least one year,
  - (ii) the instrument is not a derivative and contains no embedded derivative, and
  - (iii) the relevant contractual documentation and where applicable the prospectus related to the issue of the debts explain the priority of the debts under this Act, and
- (c) “tertiary non-preferential debts” means all subordinated debts, including (but not limited to) debts under Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments (all within the meaning of Part 1 of the Banking Act 2009).

(4) In subsection (3)(b), “derivative” has the same meaning as in Article 2(5) of Regulation (EU) No 648/2012<sup>(20)</sup>.

(5) For the purposes of subsection (3)(b)(ii) an instrument does not contain an embedded derivative merely because—

- (a) it provides for a variable interest rate derived from a broadly used reference rate, or
- (b) it is not denominated in the domestic currency of the person issuing the debt (provided that the principal, repayment and interest are denominated in the same currency).”.

<sup>(18)</sup> OJ L 176, 27.6.2013, p. 1; there are no relevant amendments; for corrigenda see OJ L 208, 2/9/13, p.68, OJ no L321, 30/11/2013 p. 6. and OJ L 20, 25.1.2017, p. 2.

<sup>(19)</sup> OJ L 176, 27.6.2013, p. 1; there are no relevant amendments; for corrigenda see OJ L 208, 2/9/13, p.68, OJ no L321, 30/11/2013 p. 6. and OJ L 20, 25.1.2017, p. 2.

<sup>(20)</sup> OJ L 201, 27.7.2012, p. 1; there are no relevant amendments; for corrigenda see OJ L 321, 30/11/2013, p.6.

### **Moratorium where directors propose voluntary arrangement**

**12.**—(1) Schedule A1 (moratorium where directors propose voluntary arrangement), paragraph 31 (approval of voluntary arrangement)(**21**) is amended as follows.

(2) In sub-paragraph (5) —

(a) in paragraph (b), omit the final “or”;

(b) after paragraph (c) insert—

“or

(d) if the company is a relevant financial institution (see section 387A), any non-preferential debt is to be paid otherwise than in accordance with the rules in section 176AZA(2) or (3).”

(3) In sub-paragraph (6), omit “preferential”.

### **Administration and secondary non-preferential debts**

**13.**—(1) Schedule B1 (administration)(**22**) is amended as follows.

(2) In paragraph 65 (distribution), in sub-paragraph (2)—

(a) for “Section 175” substitute “Sections 175 and 176AZA”; and

(b) for “it applies” substitute “they apply”.

(3) In paragraph 73 (protection for secured or preferential creditor)—

(a) in the heading, for “secured or preferential” substitute “priority”;

(b) in sub-paragraph (1), in paragraph (c), omit the final “or”;

(c) in that sub-paragraph, after paragraph (d) insert—

“or

(e) if the company is a relevant financial institution (see section 387A), would result in any non-preferential debt being paid otherwise than in accordance with the rules in section 176AZA(2) or (3).”

## **PART 3**

### **Amendments of the Banking Act 2009**

#### **Amendments of the Banking Act 2009**

**14.** In section 103 of the Banking Act 2009 (general powers, duties and effect), in the Table of applied provisions of the Insolvency Act 1986—

(1) after the entry for section 176 insert:

“Section 176AZA	Non-preferential debts of financial institutions”
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(2) before the entry for section 389, insert:

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(21) Schedule A1 was inserted by the Insolvency Act 2000 c. 39 Sch.1 para.4; paragraph 31 of Schedule A1 was amended by the Deregulation Act 2015 c. 20 Schedule 6(6) paragraph 20(2)(e)(ii), the Small Business, Enterprise and Employment Act 2015 c. 26 Schedule 9(1) paragraph 9 and S.I. 2014/3486.

(22) Schedule B1 was inserted by the Enterprise Act 2002 c. 40 Schedule 16 paragraph 1; paragraph 73 was amended by S.I. 2014/3486; there are other amendments but none is relevant.

“Section 387A	Financial institutions and their non-preferential debts”
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## PART 4

### Amendments of the Insolvent Partnerships Order 1994

#### Amendments of the Insolvent Partnerships Order 1994

15. The Insolvent Partnerships Order 1994 is amended in accordance with this Part.

16. In paragraph (3) of Article 4 (Voluntary arrangement of insolvent partnership)(23), before paragraph (a) insert:

“(za) section 176AZA in Part IV,”.

17. In paragraph (5) of Article 6 (Administration in relation to insolvent partnership)(24), before paragraph (a) insert:

“(za) section 176AZA in Part IV,”.

18.—(1) Schedule 1 (modified provisions of Part 1 of, and Schedule A1 to, the Insolvency Act 1986 (company voluntary arrangements) as applied by Article 4)(25), is amended as follows.

(2) In modified section 4(4) (Decisions of the members of the partnership and its creditors)—

(a) in paragraph (b) at the end omit the final “or”;

(b) after paragraph (c) insert—

“or

(d) in the case of a company which is a relevant financial institution (see section 387A), any non-preferential debt is to be paid otherwise than in accordance with the rules in section 176AZA(2) or (3).”;

(c) in the words after paragraph (c), omit “preferential”.

19.—(1) Schedule 2 to the Insolvent Partnerships Order 1994 (modified provisions of Schedule B1 to the Insolvency Act 1986 (Administration) as applied by Article 6)(26), is amended as follows.

(2) In paragraph 23, in modified paragraph 65(2), for “Section 175(1) and (2)(a)” substitute “Section 175(1), (1A), (1B), and (3) and section 176AZA”.

(3) In paragraph 25, in modified section 73(1)—

(a) in paragraph (c) at the end omit “or”;

(b) in paragraph (d) at the end insert—

“or

(e) if the company is a relevant financial institution (see section 387A), any non-preferential debt is to be paid otherwise than in accordance with the rules in section 176AZA(2) or (3).”.

(23) Article 4 was partially substituted by S.I. 2002/2708.

(24) Article 6 was substituted by S.I. 2005/1516.

(25) Schedule 1 was substituted by S.I. 2002/2708 and amended by S.I. 2014/3486 and S.I. 2017/540; there are other amendments but none is relevant.

(26) Schedule 2 was substituted by S.I. 2005/1516 and amended by S.I. 2005/1516 and S.I. 2014/3486; there are other amendments but none is relevant.

**20.**—(1) Paragraph 23 of Schedule 4 (provisions of the Insolvency Act 1986 which apply with modifications for the purposes of Article 8 to winding up of insolvent partnership on creditor’s petition where concurrent petitions are presented against one or more members)(27), is amended as follows.

(2) In the opening words, after “Sections 175” insert “, 176AZA”.

(3) In modified section 175A(2) (Priority of debts in joint estate), for paragraph (b) substitute—

“(b) the ordinary non-preferential debts;

(ba) the secondary non-preferential debts;

(bb) the tertiary non-preferential debts;”.

(4) in modified section 175A(4), for “paragraphs (a), (aa) and (b)” substitute “paragraphs (a) to (ba)”.

(5) After modified section 175A(5) insert—

“(5A) Where the joint estate is not sufficient for the payment of the secondary non-preferential debts in accordance with paragraph (ba) of subsection (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank equally with the debts of the member referred to in section 175B(1)(ba) below.

(5B) Where the joint estate is not sufficient for the payment of the tertiary non-preferential debts in accordance with paragraph (bb) of subsection (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank as a debt of the member in accordance with section 175B(1)(bc) below.”.

(6) In modified section 175A(6), for “paragraphs (a), (aa) and (b)” substitute “paragraphs (a) to (bb)”.

(7) In modified section 175A(9), after “(5),” insert “(5A), (5B),”.

(8) In modified section 175B(1) (Priority of debts in separate estate), for paragraph (b) substitute

“(b) the ordinary non-preferential debts (including any debt referred to in section 175A(5)(a));

(ba) the secondary non-preferential debts (including any debt referred to in section 175A(5A)(a));

(bb) the tertiary non-preferential debts;

(bc) the debt referred to in section 175A(5B)(a);”.

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(27) Schedule 4 was amended by [S.I. 2014/3486](#) and [S.I. 2017/1119](#); there are other amendments but none is relevant.



(9) In modified section 175B(2), for “paragraphs (a), (aa) and (b)” substitute “paragraphs (a) to (ba)”.

(10) In modified section 175C(3), after “175A(5)(a)” insert “, (5A)(a), (5B)(a)”.

(11) In modified section 175C(4), for “debts which are neither preferential nor postponed debts” substitute “ordinary non-preferential debts, secondary non-preferential debts and tertiary non-preferential debts”.

(12) In modified section 175C(8)(b), after “175A(5),” insert “(5A), (5B),”.

**21.**—(1) Paragraph 21 of Schedule 7 (provisions of the Insolvency Act 1986 which apply with modifications for the purposes of Article 11 where joint bankruptcy petition presented by individual members without winding up partnership as unregistered company)(**28**), is amended as follows.

(2) In modified section 328A(2) (Priority of debts in joint estate), for paragraph (b) substitute—

“(b) the ordinary non-preferential debts;

(ba) the secondary non-preferential debts;

(bb) the tertiary non-preferential debts;”.

(3) In modified section 328A(4) for “paragraphs (a), (aa) and (b)” substitute “paragraphs (a) to (ba)”.

(4) After modified section 328A(5) insert—

“(5A) Where the joint estate is not sufficient for the payment of the secondary non-preferential debts in accordance with paragraph (ba) of subsection (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank equally with the debts of the member referred to in section 328B(1)(ba) below.

(5B) Where the joint estate is not sufficient for the payment of the tertiary non-preferential debts in accordance with paragraph (bb) of subsection (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

(a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(b) shall rank as a debt of the member in accordance with section 328B(1)(bc) below.”.

(5) In modified section 328A(6) for “paragraphs (a), (aa) and (b)” substitute “paragraphs (a) to (bb)”.

(6) In modified section 328A(9), after “(5),” insert “(5A), (5B),”.

(7) In modified section 328B(1) (Priority of debts in separate estate), for paragraph (b) substitute

—  
“(b) the ordinary non-preferential debts (including any debt referred to in section 328A(5)(a));

- (ba) the secondary non-preferential debts (including any debt referred to in section 328A(5A)(a));
- (bb) the tertiary non-preferential debts;
- (bc) the debt referred to in section 175A(5B)(a);”.
- (8) In modified section 328B(2) for “paragraphs (a), (aa) and (b)” substitute “paragraphs (a) to (ba)”.
- (9) In modified section 328C(3), after “328A(5)(a)” insert “, (5A)(a), (5B)(a)”.
- (10) In modified section 328C(4), for “debts which are neither preferential nor postponed debts” substitute “ordinary non-preferential debts, secondary non-preferential debts and tertiary non-preferential debts”.
- (11) In modified section 328C(8)(b), after “328A(5),” insert “(5A), (5B),”.

## PART 5

### Amendments of the Insolvency (Northern Ireland) Order 1989

#### Introduction

- 22.** The Insolvency (Northern Ireland) Order 1989<sup>(29)</sup> is amended in accordance with this Part.

#### Non-preferential debts in company voluntary arrangements

- 23.** In Article 17 (decisions of meetings), in paragraph (4)<sup>(30)</sup>—
- (a) in the words before paragraph (a) omit “preferential”,
  - (b) in sub-paragraph (b), omit the final “or”;
  - (c) after sub-paragraph (c) insert—
    - “or
    - (d) in the case of a company which is a relevant financial institution (see Article 347A), any non-preferential debt is to be paid otherwise than in accordance with the rules in Article 150ZZA(2) or (3).”

#### Non-preferential debts in winding up of companies

- 24.** After Article 150 insert—

*“Non-preferential debts*

##### **Non-preferential debts of financial institutions**

**150ZZA.**—(1) This Article applies in the winding up of a company that is a relevant financial institution.

(2) The company’s ordinary non-preferential debts are to be paid in priority to its secondary non-preferential debts.

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<sup>(29)</sup> S.I. 1989/2405 (N.I. 19). Relevant amendments have been made by the Insolvency (Northern Ireland) Order 2002 (S.I. 2002 No. 3152 (N.I. 6)), S.R. 2004 No. 307, the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), S.I. 2014 No. 3486, paragraph 83 of schedule 29 to the Civil Partnership Act 2004 (c.33).

<sup>(30)</sup> as amended by S.I. 2014/3486 Part 4 articles 16(a) and (b).

- (3) The company’s secondary non-preferential debts—
  - (a) are to be paid in priority to its tertiary non-preferential debts, and
  - (b) rank equally among themselves after the ordinary non-preferential debts and are to be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.
- (4) See Article 347A for definitions relevant to this Article.”.

### **Non-preferential debts in individual voluntary arrangements**

**25.**—(1) Article 232 (decisions of creditors’ meeting)(**31**) is amended as follows.

- (2) In paragraph (6)—
  - (a) in sub-paragraph (b), omit the final “or”;
  - (b) after sub-paragraph (c) insert—
    - “or
    - (d) if the debtor is a relevant financial institution (see Article 347A), any non-preferential debt is to be paid otherwise than in accordance with the rules in Article 300(3A) (reading references to the bankrupt as references to the debtor).”.
- (3) In paragraph (7), omit “preferential”.

### **Non-preferential debts in bankruptcy proceedings**

**26.**—(1) Article 300 (priority of debts)(**32**) is amended as follows.

- (2) After paragraph (3) insert—
  - “(3A) If the bankrupt is a relevant financial institution, paragraph (3) does not apply but—
    - (a) the bankrupt’s ordinary non-preferential debts are to be paid in priority to the bankrupt’s secondary non-preferential debts,
    - (b) the bankrupt’s ordinary non-preferential debts rank equally among themselves after the secondary preferential debts and are to be paid in full, unless the bankrupt’s estate is insufficient to meet them, in which case they abate in equal proportions,
    - (c) the bankrupt’s secondary non-preferential debts are to be paid in priority to the bankrupt’s tertiary non-preferential debts, and
    - (d) the bankrupt’s secondary non-preferential debts rank equally among themselves after the ordinary non-preferential debts and are to be paid in full, unless the bankrupt’s estate is insufficient to meet them, in which case they abate in equal proportions.

See Article 347A for definitions relevant to this paragraph.”.

- (3) In paragraph (4)—
  - (a) for the words from “that” to “paragraph (3)” substitute—
    - “\_\_
    - (a) where paragraph (3) applies, that are preferential or rank equally under that paragraph, or

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(31) amended by S.I. 2014/3486, there is another amendment but it is not relevant.

(32) amended by S.I. 2014/3486, Part 4, Article 19 (subject to transitional provisions specified in S.I. 2014/3486, Article 3).

- (b) where paragraph (3A) applies, that are preferential or are referred to in that paragraph,”;
  - (b) for “period” substitute “periods”.
27. In Article 302 (debts to spouse or civil partner)(33), in paragraph (2)(a)—
- (a) omit “debts and”;
  - (b) for “300(3) and (4)” substitute “300(4)”.

## Interpretation

28. In the heading of Part 11, after “Preferential” insert “and non-preferential”.
29. After Article 347 insert—

### “Financial institutions and their non-preferential debts

- 347A.—(1) In this Order “relevant financial institution” means any of the following—
- (a) a credit institution,
  - (b) an investment firm,
  - (c) a financial holding company,
  - (d) a mixed financial holding company.
  - (e) a financial institution which is—
    - (i) a subsidiary of an entity referred to in sub-paragraphs (a) to (d), and
    - (ii) covered by the supervision of that entity on a consolidated basis in accordance with Articles 6 to 17 of Regulation (EU) No 575/2013(34), or
  - (f) a mixed-activity holding company.
- (2) The definitions in Article 4 of Regulation (EU) No. 575/2013(35) apply for the purposes of paragraph (1).
- (3) In this Order, in relation to a relevant financial institution—
- (a) “ordinary non-preferential debts” means non-preferential debts which are neither secondary non-preferential debts nor tertiary non-preferential debts;
  - (b) “secondary non-preferential debts” means non-preferential debts issued under an instrument where—
    - (i) the original contractual maturity of the instrument is of at least one year,
    - (ii) the instrument is not a derivative and contains no embedded derivative, and
    - (iii) the relevant contractual documentation and where applicable the prospectus related to the issue of the debts explain the priority of the debts under this Order, and
  - (c) “tertiary non-preferential debts” means all subordinated debts, including (but not limited to) debts under Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments (all within the meaning of Part 1 of the Banking Act 2009).

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(33) amended by the Civil Partnership Act 2004 (c.33) Schedule 29, paragraph 83.

(34) OJ L 176, 27.6.2013, p. 1; there are no relevant amendments; for corrigenda see OJ L 208, 2/9/13, p.68, OJ no L321, 30/11/2013 p. 6. and OJ L 20, 25.1.2017, p. 2.

(35) OJ L 176, 27.6.2013, p. 1; there are no relevant amendments; for corrigenda see OJ L 208, 2/9/13, p.68, OJ no L321, 30/11/2013 p. 6. and OJ L 20, 25.1.2017, p. 2.

(4) In paragraph(3)(b), “derivative” has the same meaning as in Article 2(5) of Regulation (EU) No 648/2012(36).

(5) For the purposes of paragraph (3)(b)(ii) an instrument does not contain an embedded derivative merely because—

- (a) it provides for a variable interest rate derived from a broadly used reference rate, or
- (b) it is not denominated in the domestic currency of the person issuing the debt (provided that the principal, repayment and interest are denominated in the same currency).”.

### **Moratorium where directors propose voluntary arrangement**

**30.**—(1) In Schedule A1 (moratorium where directors propose voluntary arrangement), paragraph 41 (approval of voluntary arrangement)(37) is amended as follows.

(2) In sub-paragraph (5)(b)(38), omit the final “or”.

(3) After sub-paragraph (5)(c) insert—

“or

(d) if the company is a relevant financial institution (see Article 347A), any non-preferential debt is to be paid otherwise than in accordance with the rules in Article 150ZZA(2) or (3).”.

(4) In sub-paragraph (6), omit “preferential”.

### **Administration and secondary non-preferential debts**

**31.**—(1) Schedule B1 (administration)(39) is amended as follows.

(2) In paragraph 66 (distribution)(40), in sub-paragraph (2)—

(a) for “Article 149” substitute “Articles 149 and 150ZZA”, and

(b) for “it applies” substitute “they apply”.

(3) In paragraph 74 (protection for secured or preferential creditor)(41)—

(a) in the heading, for “secured or preferential” substitute “priority”;

(b) in sub-paragraph (1)(c), omit the final “or”;

(c) after sub-paragraph (1)(d) insert—

“or

(e) if the company is a relevant financial institution (see Article 347A), would result in any non-preferential debt being paid otherwise than in accordance with the rules in Article 150ZZA(2) or (3).”.

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(36) OJ L 201, 27.7.2012, p. 1; there are no relevant amendments; for corrigenda see OJ L 321, 30/11/2013, p.6.

(37) Amended by S.R. 2004 No. 307.

(38) Words revoked by S.I. 2014/3486.

(39) added by S.I. 2005/1455 (N.I. 10), Schedule 1, paragraph 1.

(40) added by S.I. 2005/1455 (N.I. 10), Schedule 1, paragraph 1.

(41) added by S.I. 2005/1455 (N.I. 10), Schedule 1, paragraph 1; amended by S.I. 2014/3486.

## PART 6

### Amendments of Insolvent Partnerships Order (Northern Ireland) 1995

#### Amendments to the Insolvent Partnerships Order (Northern Ireland) 1995

**32.** The Insolvent Partnerships Order (Northern Ireland) 1995(**42**) is amended in accordance with this Part.

**33.** In paragraph (3) of Article 4 (voluntary arrangement of insolvent partnership)(**43**), after sub-paragraph (a) insert:

“(za) Article 150ZZA in Part 5,”.

**34.** In paragraph (3) of Article 6 (administration in relation to insolvent partnership)(**44**), after sub-paragraph (a) insert:

“(za) Article 150ZZA in Part 5,”.

**35.** In Schedule 1 (modified provisions of Part II of, and Schedule A1 to, the 1989 Order (company voluntary arrangements) as applied by Article 4)(**45**), in modified Article 17(4) (decisions of meetings)—

- (a) in the words before paragraph (a), omit “preferential”;
- (b) in paragraph (b) omit the final “or”;
- (c) after paragraph (c) insert—

“or

- (d) in the case of a company which is a relevant financial institution (see Article 347A), any non-preferential debt is to be paid otherwise than in accordance with the rules in Article 150ZZA(2) or (3).”.

**36.—**(1) Schedule 2 (modified provisions of Schedule B1 to the 1989 Order (administration) as applied by Article 6)(**46**), is amended as follows.

(2) In paragraph 31, in modified paragraph 66(2), for “Article 149(1) and (2)(a)” substitute “Article 149(1), (1A), (1B), and (3) and Article 150ZZA”.

(3) In paragraph 35, in modified Article 74(1)—

- (a) in sub-paragraph (c) omit the final “or”;
- (b) in sub-paragraph (d) at the end insert—

“or

- (e) if the company is a relevant financial institution (see Article 347A), any non-preferential debt is to be paid otherwise than in accordance with the rules in Article 150ZZA(2) or (3).”.

**37.—**(1) Paragraph 23 of Schedule 4 (provisions of the 1989 Order which apply with modifications for the purposes of Article 8 to winding up of insolvent partnership on creditor’s petition where concurrent petitions are presented against one or more members)(**47**), is amended as follows.

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(42) S.R. (N.I.) 1995 No.225.

(43) partially substituted by Article 4 of Insolvent Partnerships (Amendment No. 3) Order (Northern Ireland) 2003/550

(44) Article 6 was substituted by S.R. 2006 No.515.

(45) Schedule 1 was substituted by S.R. 2003 No.550 and amended by S.I. 2014/3486.

(46) Schedule 2 was substituted by S.R. 2006 and amended by S.R. 2006 No. 515 and S.I. 2014/3486.

(47) Schedule 4 was amended by S.I. 2014/3486.

- (2) In the opening words, after “Articles 149” insert “, 150ZZA”.
- (3) In modified Article 149A(2) (priority of debts in joint estate), for sub-paragraph (b) substitute—
- “ (b) the ordinary non-preferential debts;  
 (ba) the secondary non-preferential debts;  
 (bb) the tertiary non-preferential debts;”.
- (4) In modified Article 149A(4), for “sub-paragraphs (a), (aa) and (b)” substitute “sub-paragraphs (a) to (ba)”.
- (5) After modified Article 149A(5) insert—
- “(5A) Where the joint estate is not sufficient for the payment of the secondary non-preferential debts in accordance with sub-paragraph (ba) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—
- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank equally with the debts of the member referred to in Article 149B(1)(ba);
- (5B) Where the joint estate is not sufficient for the payment of the tertiary non-preferential debts in accordance with sub-paragraph (bb) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and the aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—
- (a) shall be a debt payable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank as a debt of the member in accordance with Article 149B(1)(bc).”.
- (6) In modified Article 149A(6), for “sub-paragraphs (a), (aa) and (b)” substitute “sub-paragraphs (a) to (bb)”.
- (7) In modified Article 149A(9), after “(5),” insert “(5A), (5B),”.
- (8) In modified Article 149B(1) (priority of debts in separate estate), for sub-paragraph (b) substitute—
- “(b) the ordinary non-preferential debts (including any debt referred to in Article 149A(5) (a));  
 (ba) the secondary non-preferential debts (including any debt referred to in Article 149A(5A) (a));  
 (bb) the tertiary non-preferential debts;  
 (bc) the debt referred to in Article 149A(5B)(a);”.
- (9) In modified Article 149B(2), for “sub-paragraphs (a), (aa) and (b)” substitute “sub-paragraphs (a) to (ba)”.
- (10) In modified Article 149C(3), after “149A(5)(a)” insert “, (5A)(a), (5B)(a)”.
- (11) In modified Article 149C(4), for “debts which are neither preferential debts nor postponed debts” substitute “ordinary non-preferential debts, secondary non-preferential debts and tertiary non-preferential debts”.
- (12) In modified Article 149C(8)(b), after “149A(5),” insert “(5A), (5B),”.

**38.**—(1) Paragraph 21 of Schedule 7 (provisions of the 1989 Order which apply with modifications for the purposes of Article 11 where joint bankruptcy petition is presented by individual members without winding up partnership as unregistered company)(48), is amended as follows.

(2) In paragraph (2) of modified Article 300A (priority of debts in joint estate), for sub-paragraph (b) substitute—

- “(b) the ordinary non-preferential debts;
- (ba) the secondary non-preferential debts;
- (bb) the tertiary non-preferential debts;”.

(3) In modified Article 300A(4), for “sub-paragraphs (a), (aa) and (b)” substitute “sub-paragraphs (a) to (ba)”.

(4) After modified Article 300A(5) insert—

“(5A) Where the joint estate is not sufficient for the payment of the secondary non-preferential debts in accordance with sub-paragraph (ba) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank equally with the debts of the member referred to in Article 300B(1)(ba).

(5B) Where the joint estate is not sufficient for the payment of the tertiary non-preferential debts in accordance with paragraph (bb) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—

- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank as a debt of the member in accordance with Article 300B(1)(bc).”.

(5) In modified Article 300A(6), for “sub-paragraphs (a), (aa) and (b)” substitute “sub-paragraphs (a) to (bb)”.

(6) In modified Article 300A(9), after “(5),” insert “(5A), (5B),”.

(7) In modified Article 300B(1) (priority of debts in separate estate), for paragraph (b) substitute

- “(b) the ordinary non-preferential debts (including any debt referred on in Article 300A(5) (a));
- (ba) the secondary non-preferential debts (including any debt referred to in Article 300A(5A) (a));
- (bb) the tertiary non-preferential debts;
- (bc) the debt referred to in Article 300A(5B)(a);”.

(8) In modified Article 300B(2) for “sub-paragraphs (a), (aa) and (b)” substitute “sub-paragraphs (a) to (ba)”.

(9) In modified Article 300C(3), after “300A(5)(a)” insert “, (5A)(a), (5B)(a),”.



(10) In modified Article 300C(4), for “debts which are neither preferential debts nor postponed debts” substitute “ordinary non-preferential debts, secondary non-preferential debts and tertiary non-preferential debts”.

(11) In modified Article 300C(8)(b), after “300A(5),” insert “(5A), (5B),”.

## PART 7

### Further Amendments relating to Parts 2 to 6

#### Housing Act 1996

**39.**—(1) In section 44 of the Housing Act 1996 (proposals as to ownership and management of landlord’s land)(**49**), subsection (4) is amended as follows.

(2) In paragraph (b), omit the final “or”.

(3) After paragraph (c), insert—

“or

(d) if the landlord is a relevant financial institution—

(i) an ordinary non-preferential debt of the landlord is to be paid otherwise than in priority to any secondary non-preferential debts of the landlord,

(ii) a secondary non-preferential debt of the landlord is to be paid otherwise than in priority to any tertiary non-preferential debts of the landlord, or

(iii) a secondary non-preferential creditor is to be paid a smaller proportion of a secondary non-preferential debt of the landlord than another secondary non-preferential creditor, except with the concurrence of the creditor concerned.”.

(4) In the final sentence, after “secondary preferential debts” insert “, ordinary non-preferential debts, secondary non-preferential debts, tertiary non-preferential debts, relevant financial institution”.

#### Housing and Regeneration Act 2008

**40.**—(1) The Housing and Regeneration Act 2008(**50**) is amended as follows.

(2) In section 152 (proposals)(**51**), in subsection (4)—

(a) in paragraph (b), omit the final “or”;

(b) after paragraph (c), insert—

“or

(d) if the registered provider is a relevant financial institution—

(i) an ordinary non-preferential debt being paid otherwise than in priority to a secondary non-preferential debt,

(ii) a secondary non-preferential debt being paid otherwise than in priority to a tertiary non-preferential debt, or

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(49) 1996 c. 52; section 44 was amended by the Charities Act 2006 c. 50 Schedule 8 paragraph 187, the Housing and Regeneration Act 2008 c. 17 Part 2 chapter 1 section 61(7), the Co-operative and Community Benefit Societies Act 2014 c. 14 Schedule 4(2) paragraph 56 and S.I. 2014/3486.

(50) 2008 c. 17.

(51) Section 152 was amended by S.I. 2014/3486.

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- (iii) a secondary non-preferential creditor (Creditor 1) being paid a smaller proportion of a secondary non-preferential debt than another secondary non-preferential creditor (Creditor 2) (unless Creditor 1 consents).”.

(3) In section 275 (general)(52), for “and “secondary preferential debt”” substitute “; “ordinary non-preferential debt”, “secondary preferential debt”, “secondary non-preferential debt”, “tertiary non-preferential debt” and “relevant financial institution””.

(4) In section 276 (index of defined terms)(53), in the table, insert the following entries at the appropriate places—

“Ordinary non-preferential debt	Section 275”
“Relevant financial institution	Section 275”
“Secondary non-preferential debt	Section 275”
“Tertiary non-preferential debt	Section 275”

### **Housing (Scotland) Act 2010**

**41.** In section 80 of the Housing (Scotland) Act 2010 (proposals: formulation)(54)—

(a) in subsection (5)—

- (i) omit the “or” after paragraph (b), and  
(ii) after paragraph (c), insert—

“or

(d) where the debtor is a relevant financial institution—

- (i) secondary non-preferential debts being paid before ordinary non-preferential debts,  
(ii) tertiary non-preferential debts being paid before secondary non-preferential debts, or  
(iii) creditors being paid different proportions of secondary non-preferential debts (except where affected creditors agree to be paid a smaller proportion).”, and

(b) after subsection (5) insert—

“(6) In this section—

“ordinary non-preferential debts” has the meaning given by section 129(1)(g) of the Bankruptcy (Scotland) Act 2016;

“secondary non-preferential debts” and “tertiary non-preferential debts” have the meanings given by section 129A of the Bankruptcy (Scotland) Act 2016.”.

(52) Section 275 was amended by the Charities Act 2011 c. 25 Schedule 7(2) paragraph 135, the Co-operative and Community Benefit Societies Act 2014 c. 14 Schedule 4(2) paragraphs 122 and 136, the Housing and Planning Act 2016 c. 22 Schedule 4(4) paragraph 38 and Schedule 6 paragraph 9 and S.I. 2014/2486.

(53) Section 276 was amended by the Localism Act 2011 c. 20 Schedule 16(1) paragraph 53 and Schedule 25(26) paragraph 1, the Co-operative and Community Benefit Societies Act 2014 c. 14 Schedule 4(2) paragraph 123 and paragraph 137, the Housing and Planning Act 2016 c. 22 Schedule 6 paragraph 10, S.I. 2010/844 and S.I. 2018/1040.

(54) 2010 asp 17; section 80 was amended by S.I. 2013/496 and S.I. 2014/3486.

## **Bankruptcy (Scotland) Act 2016**

**42.** The Bankruptcy (Scotland) Act 2016 is amended in accordance with articles 43 to 45.

**43.—**(1) Section 129 (priority in distribution)(**55**) is amended as follows.

(2) In subsection (1)—

(a) in paragraph (g), after “ordinary” insert “non-preferential”,

(b) after paragraph (g) insert—

“(ga) secondary non-preferential debts,

(gb) tertiary non-preferential debts,”, and

(c) in paragraph (h)—

(i) omit the “and” after sub-paragraph (ii),

(ii) in sub-paragraph (iii), after “ordinary” insert “non-preferential”, and

(iii) after sub-paragraph (iii) insert—

“(iv) the secondary non-preferential debts, and

(v) the tertiary non-preferential debts.”.

(3) After subsection (3) insert—

“(3A) In subsection (1), “secondary non-preferential debts” and “tertiary non-preferential debts” have the meanings given by section 129A.”

**44.** After section 129 insert—

### **“Section 129: interpretation**

**129A.—**(1) In this Act, “secondary non-preferential debts” means non-preferential debts issued by a relevant financial institution under an instrument where—

(a) the original contractual maturity of the instrument is of at least one year,

(b) the instrument is not a derivative and contains no embedded derivative, and

(c) the relevant contractual documentation and where applicable the prospectus related to the issue of the debts explain the priority of the debts under this Act.

(2) In subsection (1)(b), “derivative” has the same meaning as in Article 2(5) of Regulation (EU) No 648/2012(**56**).

(3) For the purposes of subsection (1)(b) an instrument does not contain an embedded derivative merely because—

(a) it provides for a variable interest rate derived from a broadly used reference rate, or

(b) it is not denominated in the domestic currency of the person issuing the debt (provided that the principal, repayment and interest are denominated in the same currency).

(4) In this Act, “tertiary non-preferential debts” means all subordinated debts, including (but not limited to) debts under Common Equity Tier 1 instruments, Additional Tier 1 instruments and Tier 2 instruments (all within the meaning of Part 1 of the Banking Act 2009).

(5) In this section, “relevant financial institution” means any of the following—

(55) Section 129 was amended by [S.S.I. 2017/210](#).

(56) OJ L 201, 27.7.2012, p. 1; there are no relevant amendments; for corrigenda see OJ L 321, 30/11/2013, p.6.

- (a) a credit institution,
- (b) an investment firm,
- (c) a financial holding company,
- (d) a mixed financial holding company,
- (e) a financial institution which is—
  - (i) a subsidiary of an entity referred to in sub-paragraphs (a) to (d), and
  - (ii) covered by the supervision of that entity on a consolidated basis in accordance with Articles 6 to 17 of Regulation (EU) No 575/2013<sup>(57)</sup>, or
- (f) a mixed-activity holding company.

(6) The definitions in Article 4 of Regulation (EU) No. 575/2013<sup>(58)</sup> apply for the purposes of subsection (5).”

45. In section 228 (interpretation)<sup>(59)</sup>, in subsection (1), omit the definition of “ordinary debt”.

#### **Amendment of the Investment Bank Special Administration Regulations 2011**

46. In the table in Schedule 5 (Table of enactments referred to in these Regulations together with the equivalent enactment having effect in relation to Northern Ireland) of the Investment Bank Special Administration Regulations 2011<sup>(60)</sup>, insert the following entries at the appropriate places—

“Section 176AZA	Article 150ZZA”	
“Section 387A	Article 347A”	

## **PART 8**

### **Review**

#### **Review**

47.—(1) The Treasury must from time to time—

- (a) carry out a review of the regulatory provision contained in articles 4 to 46 of this Order, and
- (b) publish a report setting out the conclusions of the review.

(2) In carrying out the review, the Treasury must, so far as is reasonable, have regard to how Article 1 of Directive (EU) 2017/2399 of the European Parliament and of the Council amending [Directive 2014/59/EU](#) as regards the ranking of unsecured debt instruments in insolvency hierarchy<sup>(61)</sup> (which is implemented by means of articles 4 to 46 of this Order) is implemented in other EEA States.

(3) The report must in particular—

- (a) set out the objectives intended to be achieved by the regulatory provision referred to in paragraph (1)(a);

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<sup>(57)</sup> OJ L 176, 27.6.2013, p. 1; there are no relevant amendments; for corrigenda see OJ L 208, 2/9/13, p.68, OJ no L321, 30/11/2013 p. 6. and OJ L 20, 25.1.2017, p. 2.

<sup>(58)</sup> OJ L 176, 27.6.2013, p. 1; there are no relevant amendments; for corrigenda see OJ L 208, 2/9/13, p.68, OJ no L321, 30/11/2013 p. 6. and OJ L 20, 25.1.2017, p. 2.

<sup>(59)</sup> Section 228 was amended by [S.I. 2017/210](#).

<sup>(60)</sup> [S.I. 2011/245](#); amended by [S.I. 2017/400](#); there are other amending instruments, but none is relevant.

<sup>(61)</sup> OJ L 345, 27.12.2017, p. 96–101

- (b) assess the extent to which those objectives are achieved; and
  - (c) assess whether those objectives remain appropriate, and, if so, the extent to which they could be achieved in another way which involves less onerous regulatory provision
- (4) The first report must be published before the end of a period of 5 years beginning with the day on which these Regulations come into force.
- (5) Subsequent reports must be published at intervals not exceeding 5 years.
- (6) In paragraph (1)(a), “regulatory provision” has the same meaning as in sections 28 to 32 of the Small Business, Enterprise and Employment Act 2015(62) (see section 32 of that Act).

27th November 2018

*Mike Freer*  
*Rebecca Harris*  
Two of the Lords Commissioners of Her  
Majesty’s Treasury

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order implements the obligations in *Directive (EU) 2017/2399 of the European Parliament and of the Council amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy* (the Directive). The Directive provides for a new class of non-preferred senior debt to be issued by credit institutions, investment firms and others. In insolvency proceedings, debts in this class are to rank below ordinary unsecured debts but above own funds investments and subordinated liabilities that do not qualify as own funds instruments.

Institutions may issue this new class of secondary non-preferential debt to meet their obligation to have sufficient loss-absorbing and recapitalisation capacity to enable the Bank of England to implement the institution's resolution strategy, preventing any failure of those institutions from having an impact on financial stability. The new class of secondary non-preferential debt is a harmonisation measure which the EU intends should reduce the risk of distortion in competition in the internal market. A principle underlying the system of resolution of institutions under *Directive 2014/59/EU* is that creditors' losses in resolution of the institution are to be no greater than the losses that they would have incurred under normal insolvency proceedings. The new class of debt will provide institutions with a new option for meeting requirements for their loss-absorbing and recapitalisation policy. As this new class of debt comes below other senior debt in the creditor hierarchy, it is intended to enhance legal certainty and thereby reduce the risk that any creditor is left worse off in the event of resolution of an institution than they would have been if the institution had instead entered normal insolvency proceedings.

Parts 2 and 4 of the Order implement the Directive by amendments to the Insolvency Act 1986 and the Insolvent Partnerships Order 1994 respectively.

Parts 3 makes consequential amendments to the Banking Act 2009.

The Directive is implemented in Northern Ireland by Parts 5 and 6 of the Order which respectively amend the Insolvency (Northern Ireland) Order 1989 and the Insolvent Partnerships Order (Northern Ireland) 1995.

Part 7 makes implementing amendments to the Scottish legislation in respect of bankruptcy, the Bankruptcy (Scotland) Act 2016. Part 7 also makes amendments to several pieces of housing legislation (the Housing Act 1996, the Housing and Regeneration Act 2008 and the Housing (Scotland) Act 2010) which contain procedures for making proposals (including in relation to debts) on insolvency of providers of social housing. It also makes a consequential amendment to the Investment Bank Special Administration Regulations 2011.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Her Majesty's Treasury, 1 Horse Guards Road, London SW1A 2HQ or on HM Treasury's website ([www.gov.uk/treasury](http://www.gov.uk/treasury)), and is published with the Explanatory Memorandum alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).