



Bankruptcy (Scotland) Act 2016

2016 asp 21

PART 10

CLAIMS, DIVIDENDS AND DISTRIBUTION ETC.

Distribution

[^{F1}129A Section 129: interpretation

- (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.
- (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—
 - (a) a credit institution,
 - (b) an investment firm,
 - (c) a financial holding company,

Changes to legislation: Bankruptcy (Scotland) Act 2016, Section 129A is up to date with all changes known to be in force on or before 16 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (d) a mixed financial holding company,
 - [an investment holding company,]
 - ^{F2}(da)
 - ^{F3}(e) a financial institution which is—
 - (i) a subsidiary of an entity referred to in paragraphs (a) to (da), and
 - (ii) covered by the supervision of that entity on a consolidated basis by the Financial Conduct Authority in accordance with Part 9C rules or by the Prudential Regulation Authority in accordance with [Regulation \(EU\) No 575/2013](#) of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms or CRR rules, or,]
 - (f) a mixed-activity holding company.
- (6) The definitions in Article 4 of Regulation (EU) No. 575/2013 apply for the purposes of subsection (5) [^{F4}except for the definitions of “consolidated basis” and “consolidated situation”].
- [For the purposes of subsection (5)—
- ^{F5}(7) “on a consolidated basis” means on the basis of the consolidated situation; “consolidated situation” means the situation that results from an entity being treated, for the purposes of Part 9C rules, Regulation (EU) 575/2013 or CRR rules (as appropriate), as if that entity and one or more other entities formed a single entity; “CRR rules” has the meaning given in section 144A of the Financial Services and Markets Act 2000; “Part 9C rules” has the meaning given in section 143F of the Financial Services and Markets Act 2000.]]

Textual Amendments

- F1** S. 129A inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **44** (with art. 3)
- F2** S. 129A(5)(da) inserted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **10(2)(a)**
- F3** S. 129A(5)(e) substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **10(2)(b)**
- F4** Words in s. 129A(6) inserted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **10(3)**
- F5** S. 129A(7) inserted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **10(4)**

Modifications etc. (not altering text)

- C1** S. 129A modified (28.12.2020 until IP completion day when the amending provision ceases to have effect in accordance with reg. 1(4) of the amending S.I.) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), regs. 1(4), **128** (with reg. 108)

Changes to legislation:

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 78(2)(a) words in s. 78(2) renumbered as s. 78(2)(a) by [2019 asp 4 s. 7\(2\)\(a\)](#)
- s. 78(2)(b) and word inserted by [2019 asp 4 s. 7\(2\)\(b\)](#)