



Insolvency Act 1986

1986 CHAPTER 45

PART IX

BANKRUPTCY

CHAPTER IV

ADMINISTRATION BY TRUSTEE

Distribution of bankrupt's estate

328 Priority of debts.

(1) In the distribution of the bankrupt's estate, his preferential debts ^{F1}... shall be paid in priority to other debts.

[^{F2}(1A) Ordinary preferential debts rank equally among themselves after the expenses of the bankruptcy and shall be paid in full, unless the bankrupt's estate is insufficient to meet them, in which case they abate in equal proportions between themselves.

(1B) Secondary preferential debts rank equally among themselves after the ordinary 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 between themselves.]

^{F3}(2)

(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.

[^{F4}(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,

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- (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.]

- (4) Any surplus remaining after the payment of the debts [^{F5}—
- (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,]

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 ^{M1}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.

[^{F6}(7) In this section “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in section 386 in Part 12.]

Textual Amendments

- F1** Words in s. 328(1) omitted (1.1.2015) by virtue of [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **7(2)** (with art. 3)
- F2** S. 328(1A)(1B) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **7(3)** (with art. 3)
- F3** S. 328(2) omitted (1.1.2015) by virtue of [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **7(4)** (with art. 3)
- F4** S. 328(3A) inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **8(2)** (with art. 3)
- F5** S. 328(4)(a)(b) substituted for words (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **8(3)** (with art. 3)
- F6** S. 328(7) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **7(5)** (with art. 3)

Modifications etc. (not altering text)

- C1** S. 328 applied (with modifications) by [S.I. 1986/1999](#), art. 3, **Sch. 1 Pt. II**

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- C2** S. 328 excluded (10.8.2005) by [The Insurers \(Reorganisation and Winding Up\) Regulations 2004 \(S.I. 2004/353\)](#), [reg. 20](#) (as amended (10.8.2005) by [S.I. 2005/1998](#), [regs. 2\(3\)](#), [40\(1\)–\(5\)](#))
- C3** S. 328 modified (1.12.1994) by [S.I. 1994/2421](#), [art. 11\(2\)\(3\)](#), [Sch. 7 para. 21](#) (as amended (8.12.2017) by [The Insolvency \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/1119\)](#), [reg. 1\(1\)](#), [Sch. 2 para. 7\(4\)](#)); and (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), [arts. 1\(2\)](#), [21](#) (with [art. 3](#)); and (28.12.2020) (temp.) by [The Bank Recovery and Resolution \(Amendment\) \(EU Exit\) Regulations 2020 \(S.I. 2020/1350\)](#), [regs. 1\(4\)](#), [121\(5\)](#))
- C4** S. 328 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\(4\)](#), [112](#) (with [reg. 108](#))
- C5** S. 328(1)–(3)(6) modified (1.12.1994) by [S.I. 1994/2421](#), [art. 8](#), [Sch. 4 Pt. II para. 23](#)
- C6** S. 328(1)(2) applied (11.12.1999) by [S.I. 1999/2979](#), [reg. 14\(5\)](#)
- C7** S. 328(4)(5) applied (with modifications) (1.12.1994) by [S.I. 1994/2421](#), [arts. 8\(3\)\(9\)](#), [10\(6\)](#), [Sch. 4 Pt. II para. 24](#)

Marginal Citations

- M1** [1838 c. 110](#).

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

- Act amendment to earlier affecting provision S.I. 1986/1999, art. 3, Sch. 1 Pt. 2 by [S.I. 2017/1119 Sch. 3 para. 1](#)
- Act savings and transitional provisions for amendments by S.I. 2022/1166 by [S.I. 2022/1172 Regulations](#)

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

- s. 41HB(2) words substituted by [2018 c. 14 s. 1\(3\)\(b\)](#)