
STATUTORY INSTRUMENTS

2018 No. 1244

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

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)(**1**), 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(**2**) is amended as follows.

(2) In section 152 (proposals)(**3**), 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—

(1) [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](#).

(2) [2008 c. 17](#).

(3) Section 152 was amended by [S.I. 2014/3486](#).

- (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
- (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)(4), 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)(5), 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)(6)—

(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—

(4) 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.

(5) 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.

(6) 2010 asp 17; section 80 was amended by S.I. 2013/496 and S.I. 2014/3486.

“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.”.

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)(7) 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—

“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(8).

(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).

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

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

(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,
- (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⁽⁹⁾, or
- (f) a mixed-activity holding company.

(6) The definitions in Article 4 of Regulation (EU) No. 575/2013⁽¹⁰⁾ apply for the purposes of subsection (5).”

45. In section 228 (interpretation)⁽¹¹⁾, 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⁽¹²⁾, insert the following entries at the appropriate places—

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

⁽⁹⁾ 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.

⁽¹⁰⁾ 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.

⁽¹¹⁾ Section 228 was amended by [S.I. 2017/210](#).

⁽¹²⁾ [S.I. 2011/245](#); amended by [S.I. 2017/400](#); there are other amending instruments, but none is relevant.