
EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements the obligation in Article 108 of Directive 2014/59/EU of the European Parliament and of the Council establishing a framework for the recovery and resolution of credit institutions and investment firms (OJ L 173, 12.6.2014, p.190) (“the Directive”) to ensure that both deposits which are eligible for compensation under the financial services compensation scheme (“eligible deposits”) and other deposits which would be eligible deposits but for the fact that they are made in branches of UK banks outside the EEA, are treated as preferential debts, and that eligible deposits are given a higher priority within the class of preferential debts than other deposits.

The Order also alters the priorities for the distribution of the assets of a building society on winding up. Sections 88 and 89 of the Building Societies Act 1986 (c.53) provide that a building society may be wound up voluntarily or by the court under the enactments specified in paragraph 1 of Schedule 15 to that Act applicable to the winding up of companies. Schedule 15 modifies those enactments in their application to building societies.

Article 3 ensures that the Order will only apply to insolvency proceedings in relation to banks and building societies which are commenced after the Order comes into force.

Part 2 of the Order amends the Insolvency Act 1986 (c.45) (to implement Article 108 of the Directive).

Schedule 6 to the Insolvency Act 1986 is amended (by article 11) to provide for two new categories of preferential debts for deposits which are not eligible deposits. Section 386 is amended by article 8, to provide that existing preferential debts are to be “ordinary preferential debts”. The new preferential debts created by the amendment to Schedule 6 will be “secondary preferential debts”.

Sections 175 and 328 of the Insolvency Act 1986 are amended to ensure that secondary preferential debts will rank after ordinary preferential debts on insolvency, and will therefore be paid last if there are insufficient assets to pay all the preferential debts (see article 5 amending section 175 and article 7 amending section 328).

Sections 4(4) and 258(5) of, and paragraphs 31(5) of Schedule A1 and 73(1) of Schedule B1 to, the Insolvency Act 1986 are amended to ensure that voluntary arrangements and a statement of proposals made by an administrator may not provide that preferential creditors with ordinary preferential debts are paid after preferential creditors with secondary preferential debts. These amendments also ensure that preferential creditors with secondary preferential debts must receive the same proportion of their debts (see article 4, which amends section 4, article 6 amending section 258, article 9 amending Schedule A1 and article 10 amending Schedule B1).

Part 3 of the Order makes equivalent amendments to the Insolvent Partnerships Order 1994 (“the 1994 Order”). Article 12 amends the modified section 4 of the Act set out in Schedule 1 to the 1994 Order. Article 13 amends the modified paragraph 73 of Schedule B1 set out in paragraph 25 of Schedule 2 to the 1994 Order. Article 14 amends modified sections 175A and 175B of the Insolvency Act 1986, set out in paragraph 23 of Schedule 4 to the 1994 Order, to provide for ordinary preferential debts and secondary preferential debts and their order of priority in joint and separate estates. Article 15 amends modified sections 328A and 328B of the Insolvency Act 1986, set out in paragraph 21 of Schedule 7 to the 1994 Order, providing for ordinary and secondary preferential debts and their order of priority in joint and separate estates where bankruptcy petitions are presented by individual members of a partnership.

Part 4 of the Order amends the equivalent provisions of the Insolvency (Northern Ireland) Order 1989. Part 5 of the Order amends the equivalent provisions of the Insolvent Partnerships Order (Northern Ireland) 1995.

Part 6 of the Order makes further amendments consequential on the changes made in Parts 2 to 5. Article 28 amends the equivalent provisions of the Bankruptcy (Scotland) Act 1985 (c. 66).

Articles 29 and 30 amend section 44 of the Housing Act 1996 (c. 52) and section 152 of the Housing and Regeneration Act 2008 (c.17) respectively to provide for ordinary preferential debts and secondary preferential debts and their order of priority. Article 31 amends section 80 of the Housing (Scotland) Act 2010 (asp 17) for this purpose.

Part 7 (articles 32 to 34) amends Schedule 15 to the Building Societies Act 1986 (c. 53) to make provision for the purpose of ensuring that, on the winding up of a building society, any assets available for satisfying the society's liabilities to creditors or to shareholders are applied in satisfying those liabilities *pari passu*.

Part 8 (articles 35 and 36) amends Schedule 2 to the Building Societies Act 1986 so that the requirement to make rules for the distribution of any surplus after payments to creditors is, in the case of winding up, a requirement to make rules for the distribution of any surplus after payments to creditors and shareholders, and to make transitional provision.

Article 36 ensures that any existing building society rule dealing with members' entitlement to participate in the distribution of surplus assets after creditors have been paid when a building society is wound up or dissolved by consent, which does not satisfy the requirements in paragraphs 14 and 15 of the Table in paragraph 3(2) of Schedule to the Building Societies Act 1986 as amended, will not apply if the building society is wound up after the Order comes into force. Instead a default rule will apply until the Building Society has revised its rules to take account of the changes made by the Order.

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), and is published with the Explanatory Memorandum alongside the instrument on www.legislation.gov.uk.