



# Insolvency Act 1986

## 1986 CHAPTER 45

### PART XII

#### PREFERENTIAL [F1 AND NON-PREFERENTIAL] DEBTS IN COMPANY AND INDIVIDUAL INSOLVENCY

##### Textual Amendments

- F1** Words in Pt. 12 heading inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **10** (with art. 3)

##### Modifications etc. (not altering text)

- C1** Pt. 12 (ss. 386, 387) extended with modifications by [Building Societies Act 1986 \(c. 53, SIF 16\)](#), ss. **54(3)(a)(5)(a)**, 90, 126(3), Sch. 15 (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **2(2)**)  
Pt. 12 (ss. 386, 387) applied (with modifications) (1.2.1993) by [Friendly Societies Act 1992 \(c. 40\)](#), ss. 21(1), 22, 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3** (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **3**)  
Pt. 12 (ss. 386, 387) modified (1.2.1993) by [Friendly Societies Act 1992 \(c. 40\)](#), s. 23, **Sch. 10 Pt. I para. 1(a)** (with ss. 7(5), 93(4)); S.I. 1993/16, art. 2, **Sch.3** (as amended (13.3.2018) by [The Small Business, Enterprise and Employment Act 2015 \(Consequential Amendments, Savings and Transitional Provisions\) Regulations 2018 \(S.I. 2018/208\)](#), regs. 1(3), **3**)  
Pt. 12 (ss. 386-387) applied (1.12.1994) by S.I. 1994/2421, **art. 4(3)(c)**  
Pt. 12 (ss. 386-387) applied (with modifications) (1.12.1994) by S.I. 1994/2421, art. 8(3)(4)(5)(8)(9), 10(2)(3)(6), Sch. 4 Pt. II, **Sch. 7**
- C2** Third Group of Parts (Pts. 12-19) applied to limited liability partnerships (with modifications) (E.W.S.) (6.4.2001) by S.I. 2001/1090, reg. 5, Schs. 3, 4 (as amended (4.3.2004) by S.I. 2004/355, **art. 10** and (1.10.2005) by S.I. 2005/1989, reg. 3, **Sch. 2** (with reg. 4) and (8.12.2017) by [The Insolvency \(Miscellaneous Amendments\) Regulations 2017 \(S.I. 2017/1119\)](#), reg. 1(1), Sch. 1 Pts. 2, 3)
- C3** Pts. 12-19 applied (with modifications) in part (E.W.) (2.1.2013) by [The Charitable Incorporated Organisations \(Insolvency and Dissolution\) Regulations 2012 \(S.I. 2012/3013\)](#), reg. 1, **Sch. para. 1(2)(a)(3)-(7)** (as amended (26.6.2020) by [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#),

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- s. 49(1), **Sch. 3 para. 49(3)** (with ss. 2(2), 5(2)); (7.7.2020) by The Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) Regulations 2020 (S.I. 2020/710), regs. 1, 4 (with reg. 6) (which affecting legislation is revoked and this amendment reversed (13.8.2020) by The Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/856), regs. 1(2), **2**); and (13.8.2020 immediately after the coming into force of S.I. 2020/856, **reg. 2**) by The Charitable Incorporated Organisations (Insolvency and Dissolution) (Amendment) (No. 2) Regulations 2020 (S.I. 2020/856), regs. 1(3), **5** (with reg. 7))
- C4** Pts. 12-19 applied (with modifications) (6.4.2014) by The Industrial and Provident Societies and Credit Unions (Arrangements, Reconstructions and Administration) Order 2014 (S.I. 2014/229), arts. 1, **4(c)**, **Sch. 3** (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **15(4)(b)**); and (18.7.2020) by The Co-operative and Community Benefit Societies and Credit Unions (Arrangements, Reconstructions and Administration) (Amendment) and Consequential Amendments Order 2020 (S.I. 2020/744), arts. 1, **8**)
- C5** Pt. 12 applied (with modifications) by 1986 c. 53, **Sch. 15A** (as amended (13.3.2018) by The Small Business, Enterprise and Employment Act 2015 (Consequential Amendments, Savings and Transitional Provisions) Regulations 2018 (S.I. 2018/208), regs. 1(3), **2(3)**)

### 386 Categories of preferential debts.

- (1) A reference in this Act to the preferential debts of a company or an individual is to the debts listed in Schedule 6 to this Act [<sup>F2</sup>(contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production [<sup>F3</sup>; debts owed to the Financial Services Compensation Scheme][<sup>F4</sup>; deposits covered by Financial Services Compensation Scheme][<sup>F5</sup>; other deposits [<sup>F6</sup>; certain HMRC debts]]]; and references to preferential creditors are to be read accordingly.
- [<sup>F7</sup>(1A) A reference in this Act to the “ordinary preferential debts” of a company or an individual is to the preferential debts listed in any of paragraphs 8 to 15B of Schedule 6 to this Act.
- (1B) A reference in this Act to the “secondary preferential debts” of a company or an individual is to the preferential debts listed in paragraph 15BA [<sup>F8</sup>, 15BB or 15D] of Schedule 6 to this Act.]
- (2) In [<sup>F9</sup>Schedule 6] “the debtor” means the company or the individual concerned.
- (3) Schedule 6 is to be read with [<sup>F10</sup>Schedule 4 to the Pension Schemes Act 1993] (occupational pension scheme contributions).

#### Textual Amendments

- F2** Words in s. 386(1) substituted (15.9.2003) by 2002 c. 40, ss. 251(3), 279 (with s. 249(6)); S.I. 2003/2093, **art. 2(1)**, **Sch. 1** (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F3** Words in s. 386(1) inserted (26.3.2015) by The Deposit Guarantee Scheme Regulations 2015 (S.I. 2015/486), regs. 1(2), **14(2)**
- F4** Words in s. 386(1) inserted (31.12.2014) by Financial Services (Banking Reform) Act 2013 (c. 33), **ss. 13(2)**, 148(5); S.I. 2014/3160, art. 2(1)(a)
- F5** Words in s. 386(1) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), **8(2)** (with art. 3)
- F6** Words in s. 386(1) inserted (with application in accordance with s. 98(7) of the amending Act) by Finance Act 2020 (c. 14), **s. 98(1)(a)**

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- F7** S. 386(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), **8(3)** (with art. 3)
- F8** Words in s. 386(1B) substituted (with application in accordance with s. 98(7) of the amending Act) by [Finance Act 2020 \(c. 14\)](#), s. **98(1)(b)**
- F9** Words in s. 386(2) substituted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **8(4)** (with art. 3)
- F10** Words in s. 386(3) substituted (7.2.1994) by 1993 c. 48, s. 190, **Sch. 8 para. 18** (with s. 6(8)); S.I. 1994/86, **art. 2**

**Modifications etc. (not altering text)**

- C6** S. 386 applied (with modifications) by [S.I. 1986/1999](#), art. 3, **Sch. 1 Pt. II**
- C7** S. 386 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 103**, 263(1)(2) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 2](#)
- C8** S. 386 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009 \(c. 1\)](#), **ss. 145**, 263(1)(2) (with s. 247); [S.I. 2009/296](#), **arts. 2, 3**, [Sch. para. 3](#)

**387 “The relevant date”.**

- (1) This section explains references in Schedule 6 to the relevant date (being the date which determines the existence and amount of a preferential debt).
- (2) For the purposes of section 4 in Part I ([<sup>F11</sup>consideration of] company voluntary arrangement), the relevant date in relation to a company which is not being wound up is—
  - [<sup>F12</sup>(a) if the company is in administration, the date on which it entered administration, and
  - (b) if the company is not in administration, the date on which the voluntary arrangement takes effect.]

<sup>F13</sup>(2A) .....

- (3) In relation to a company which is being wound up, the following applies—
  - (a) if the winding up is by the court, and the winding-up order was made immediately upon the discharge of an administration order, the relevant date is [<sup>F14</sup>the date on which the company entered administration];
    - <sup>F15</sup>(aa) .....
    - <sup>F15</sup>(ab) .....
  - (b) if the case does not fall within paragraph (a) <sup>F16</sup>... and the company—
    - (i) is being wound up by the court, and
    - (ii) had not commenced to be wound up voluntarily before the date of the making of the winding-up order,the relevant date is the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment has been made, the date of the winding-up order;
  - [<sup>F17</sup>(ba) if the case does not fall within paragraph (a) <sup>F18</sup>... or (b) and the company is being wound up following administration pursuant to paragraph 83 of Schedule B1, the relevant date is the date on which the company entered administration;]
  - (c) if the case does not fall within [<sup>F19</sup>paragraph (a) <sup>F20</sup>..., (b) or (ba)], the relevant date is the date of the passing of the resolution for the winding up of the company.

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- [<sup>F21</sup>(3A) In relation to a company which is in administration (and to which no other provision of this section applies) the relevant date is the date on which the company enters administration.]
- (4) In relation to a company in receivership (where section 40 or, as the case may be, section 59 applies), the relevant date is—
- (a) in England and Wales, the date of the appointment of the receiver by debenture-holders, and
  - (b) in Scotland, the date of the appointment of the receiver under section 53(6) or (as the case may be) 54(5).
- (5) For the purposes of section 258 in Part VIII (individual voluntary arrangements), the relevant date is, in relation to a debtor who is not an undischarged bankrupt
- [<sup>F22</sup>(a) where an interim order has been made under section 252 with respect to his proposal, the date of that order, and
- (b) in any other case, the date on which the voluntary arrangement takes effect.]
- (6) In relation to a bankrupt, the following applies—
- (a) where at the time the bankruptcy order was made there was an interim receiver appointed under section 286, the relevant date is the date on which the interim receiver was first appointed after [<sup>F23</sup>the making of the bankruptcy application or (as the case may be)] the presentation of the bankruptcy petition;
  - (b) otherwise, the relevant date is the date of the making of the bankruptcy order.

#### Textual Amendments

- F11** Words in s. 387(2)(2A) substituted (26.5.2015 for specified purposes, 6.4.2017 for E.W. in so far as not already in force, 6.4.2019 for S. in so far as not already in force) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), s. 164(1), [Sch. 9 para. 55](#); S.I. 2015/1329, reg. 3(d); S.I. 2016/1020, reg. 4(e) (with reg. 5) (as amended by S.I. 2017/363, reg. 3); S.I. 2019/816, reg. 4(c) (with reg. 5)
- F12** S. 387(2)(a)(b) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, [Sch. 17 para. 34\(2\)](#) (with s. 249(1)-(3)(6)); S.I. 2003/2093, [art. 2\(1\)](#), [Sch. 1](#) (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F13** S. 387(2A) omitted (26.6.2020) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), s. 49(1), [Sch. 3 para. 20](#) (with ss. 2(2), 5(2))
- F14** Words in s. 387(3)(a)(aa)(ab) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, [Sch. 17 para. 34\(3\)\(a\)](#) (with s. 249(1)-(3)(6)); S.I. 2003/2093, [art. 2\(1\)](#), [Sch. 1](#) (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F15** S. 387(3)(aa)(ab) omitted (31.12.2020) by virtue of [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 35\(a\)](#) (with regs. 4, 5); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F16** Words in s. 387(3)(b) omitted (31.12.2020) by virtue of [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 35\(b\)](#) (with regs. 4, 5); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)
- F17** S. 387(3)(ba) inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, [Sch. 17 para. 34\(3\)\(b\)](#) (with s. 249(1)-(3)(6)); S.I. 2003/2093, [art. 2\(1\)](#), [Sch. 1](#) (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F18** Words in s. 387(3)(ba) omitted (31.12.2020) by virtue of [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 35\(c\)](#) (with regs. 4, 5); 2020 c. 1, [Sch. 5 para. 1\(1\)](#)

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- F19** Words in s. 387(3)(c) substituted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 34(3)(c) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F20** Words in s. 387(3)(c) omitted (31.12.2020) by virtue of [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019](#) (S.I. 2019/146), reg. 1(3), **Sch. para. 35(d)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F21** S. 387(3A) inserted (15.9.2003) by 2002 c. 40, ss. 248(3), 279, Sch. 17 para. 34(4) (with s. 249(1)-(3)(6)); S.I. 2003/2093, **art. 2(1)**, Sch. 1 (subject to arts. 3-8 (as amended by S.I. 2003/2332, art. 2))
- F22** S. 387(5)(a)(b) substituted (1.1.2003) for words in s. 387(5) by 2000 c. 39, s. 3, **Sch. 3 para. 15**; S.I. 2002/2711, **art. 2** (subject to transitional provisions in arts. 3-5)
- F23** Words in s. 387(6)(a) inserted (6.4.2016) by [Enterprise and Regulatory Reform Act 2013](#) (c. 24), s. 103(3), **Sch. 19 para. 56**; S.I. 2016/191, art. 2 (with art. 3)

**Modifications etc. (not altering text)**

- C9** S. 387 applied (7.2.1994) by 1993 c. 48, s. 128, **Sch. 4 para. 4(1)(a)**; S.I. 1994/86, **art. 2**
- C10** S. 387 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), **ss. 103, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 2
- C11** S. 387 applied (with modifications) (17.2.2009 for certain purposes, otherwise 21.2.2009) by [Banking Act 2009](#) (c. 1), **ss. 145, 263(1)(2)** (with s. 247); S.I. 2009/296, **arts. 2, 3**, Sch. para. 3
- C12** S. 387(1)(5)(6) applied (with modifications) by S.I. 1986/1999, art. 3, **Sch. 1 Pt. II**

**[<sup>F24</sup>387A] Financial institutions and their non-preferential debts**

- (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, or
  - (f) a mixed-activity holding company.
- (2) The definitions in Article 4 of Regulation (EU) No. 575/2013 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

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- (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.
- (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).]

#### **Textual Amendments**

- F24** S. 387A inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **11** (with art. 3)

#### **Modifications etc. (not altering text)**

- C13** S. 387A applied (with modifications) (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. **1(2)**, 14(2) (with art. 3)
- C14** S. 387A 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), **113** (with reg. 108)

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