
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

Bankruptcy (Scotland) Act 2016

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⁽¹⁾.

(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,
- (d) a mixed financial holding company,

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

- (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⁽²⁾, or
 - (f) a mixed-activity holding company.
- (6) The definitions in Article 4 of Regulation (EU) No. 575/2013⁽³⁾ apply for the purposes of subsection (5).”

(2) 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.

(3) 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.