EXPLANATORY NOTE

(This note is not part of the Order)

This Order implements the obligations in *Directive (EU) 2017/2399 of the European Parliament and of the Council amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in insolvency hierarchy* (the Directive). The Directive provides for a new class of non-preferred senior debt to be issued by credit institutions, investment firms and others. In insolvency proceedings, debts in this class are to rank below ordinary unsecured debts but above own funds investments and subordinated liabilities that do not qualify as own funds instruments.

Institutions may issue this new class of secondary non-preferential debt to meet their obligation to have sufficient loss-absorbing and recapitalisation capacity to enable the Bank of England to implement the institution's resolution strategy, preventing any failure of those institutions from having an impact on financial stability. The new class of secondary non-preferential debt is a harmonisation measure which the EU intends should reduce the risk of distortion in competition in the internal market. A principle underlying the system of resolution of institutions under Directive 2014/59/EU is that creditors' losses in resolution of the institution are to be no greater than the losses that they would have incurred under normal insolvency proceedings. The new class of debt will provide institutions with a new option for meeting requirements for their loss-absorbing and recapitalisation policy. As this new class of debt comes below other senior debt in the creditor hierarchy, it is intended to enhance legal certainty and thereby reduce the risk that any creditor is left worse off in the event of resolution of an institution than they would have been if the institution had instead entered normal insolvency proceedings.

Parts 2 and 4 of the Order implement the Directive by amendments to the Insolvency Act 1986 and the Insolvent Partnerships Order 1994 respectively.

Parts 3 makes consequential amendments to the Banking Act 2009.

The Directive is implemented in Northern Ireland by Parts 5 and 6 of the Order which respectively amend the Insolvency (Northern Ireland) Order 1989 and the Insolvent Partnerships Order (Northern Ireland) 1995.

Part 7 makes implementing amendments to the Scottish legislation in respect of bankruptcy, the Bankruptcy (Scotland) Act 2016. Part 7 also makes amendments to several pieces of housing legislation (the Housing Act 1996, the Housing and Regeneration Act 2008 and the Housing (Scotland) Act 2010) which contain procedures for making proposals (including in relation to debts) on insolvency of providers of social housing. It also makes a consequential amendment to the Investment Bank Special Administration Regulations 2011.

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.