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STATUTORY INSTRUMENTS

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**2018 No. 1244**

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

**PART 2**

**Amendments of the Insolvency Act 1986**

**Introduction**

4. The Insolvency Act 1986 is amended in accordance with this Part.

**Non-preferential debts in company voluntary arrangements**

5. In section 4 (decisions of the company and its creditors)(1), in subsection (4)—
- (a) in paragraph (b), omit the final “or”;
  - (b) after paragraph (c) insert—
    - “or
    - (d) in the case of a company which is a relevant financial institution (see section 387A), any non-preferential debt is to be paid otherwise than in accordance with the rules in section 176AZA(2) or (3).”;
  - (c) in the words after paragraph (c), omit “preferential”.

**Non-preferential debts in winding up of companies**

6. After section 176 insert—

*“Non-preferential debts*

**Non-preferential debts of financial institutions**

**176AZA.**—(1) This section applies in the winding up of a company which is a relevant financial institution.

(2) The company’s ordinary non-preferential debts shall be paid in priority to its secondary non-preferential debts.

(3) The company’s secondary non-preferential debts—

- (a) shall be paid in priority to its tertiary non-preferential debts, and

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(1) Section 4 was amended by the Insolvency Act 2000 (c.39), Schedule 2, paragraphs 1 and 4, the Deregulation Act 2015 c. 20 Schedule 6(6) paragraph 20(2)(c), the Small Business, Enterprise and Employment Act 2015 c. 26 Schedule 9(1) paragraph 4 and S.I. 2014/3486.

- (b) rank equally among themselves after the ordinary non-preferential debts and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.
- (4) See section 387A for definitions relevant to this section.”.

#### **Non-preferential debts in individual voluntary arrangements**

7. In section 258 (approval of debtors’ proposal)(2), in subsection (5)—
- (a) in paragraph (b), omit the final “or”;
  - (b) after paragraph (c) insert—
    - “or
    - (d) if the debtor is a relevant financial institution (see section 387A), any non-preferential debt is to be paid otherwise than in accordance with the rules in section 328(3A) (reading references to the bankrupt as references to the debtor),”;
  - (c) in the words after paragraph (c), omit “preferential”.

#### **Non-preferential debts in bankruptcy proceedings**

- 8.—(1) Section 328 (priority of debts)(3) is amended as follows.
- (2) After subsection (3) insert—
- “(3A) If the bankrupt is a relevant financial institution, subsection (3) does not apply but—
- (a) the bankrupt’s ordinary non-preferential debts shall be paid in priority to the bankrupt’s secondary non-preferential debts,
  - (b) the bankrupt’s ordinary non-preferential debts rank equally among themselves after the secondary preferential debts and shall be paid in full, unless the bankrupt’s estate is insufficient to meet them, in which case they abate in equal proportions,
  - (c) the bankrupt’s secondary non-preferential debts shall be paid in priority to the bankrupt’s tertiary non-preferential debts, and
  - (d) the bankrupt’s secondary non-preferential debts rank equally among themselves after the ordinary non-preferential debts and shall be paid in full, unless the bankrupt’s estate is insufficient to meet them, in which case they abate in equal proportions.

See section 387A for definitions relevant to this subsection.”.

- (3) In subsection (4), for the words from “that” to “subsection (3)” substitute—
- “—
- (a) where subsection (3) applies, that are preferential or rank equally under that subsection,
  - or
  - (b) where subsection (3A) applies, that are preferential or are referred to in that subsection,”.
9. In section 329 (debts to spouse or civil partner)(4), in subsection (2)(a)—
- (a) omit “debts and”;

(2) Section 258 was amended by the Insolvency Act 2000 c. 39 Schedule 3 paragraph 9, the Small Business, Enterprise and Employment Act 2015 c. 26 Schedule 9(2) paragraph 65 and S.I. 2014/3486.

(3) Section 328 was amended by S.I. 2014/3486.

(4) Section 329 was amended by the Civil Partnership Act 2004 c. 33 Sch.27 paragraph 116.

(b) for “328(3) and (4)” substitute “328(4)”.

## Interpretation

10. In the heading of Part 12(5), after “Preferential” insert “and non-preferential”.

11. After section 387 insert—

### “Financial institutions and their non-preferential debts

**387A.**—(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(6), or
- (f) a mixed-activity holding company.

(2) The definitions in Article 4 of Regulation (EU) No. 575/2013(7) 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
- (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(8).

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(5) Part 12 was amended by the Pension Schemes Act 1993 c. 48 Schedule 8 paragraph 18, the Insolvency Act 2000 c.39 Schedule 1 paragraph 9 and Schedule 3 paragraph 15, the Enterprise Act 2002 c. 40 Pt 10 s.251(3) and Schedule 17, paragraph 34, the Enterprise and Regulatory Reform Act 2013 c. 24 Schedule 19 paragraph 56, the Financial Services (Banking Reform) Act 2013 c. 33 Pt 2 s.13(2), the Small Business, Enterprise and Employment Act 2015 c. 26 Schedule 9(1) paragraph 55, S.I. 2002/1240, S.I. 2014/3486, S.I. 2015/486 and S.I. 2017/702.

(6) 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.

(7) 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.

(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.

(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).”.

### **Moratorium where directors propose voluntary arrangement**

**12.**—(1) Schedule A1 (moratorium where directors propose voluntary arrangement), paragraph 31 (approval of voluntary arrangement)(**9**) is amended as follows.

(2) In sub-paragraph (5) —

- (a) in paragraph (b), omit the final “or”;
- (b) after paragraph (c) insert—

“or

- (d) if the company is a relevant financial institution (see section 387A), any non-preferential debt is to be paid otherwise than in accordance with the rules in section 176AZA(2) or (3).”.

(3) In sub-paragraph (6), omit “preferential”.

### **Administration and secondary non-preferential debts**

**13.**—(1) Schedule B1 (administration)(**10**) is amended as follows.

(2) In paragraph 65 (distribution), in sub-paragraph (2)—

- (a) for “Section 175” substitute “Sections 175 and 176AZA”; and
- (b) for “it applies” substitute “they apply”.

(3) In paragraph 73 (protection for secured or preferential creditor)—

- (a) in the heading, for “secured or preferential” substitute “priority”;
- (b) in sub-paragraph (1), in paragraph (c), omit the final “or”;
- (c) in that sub-paragraph, after paragraph (d) insert—

“or

- (e) if the company is a relevant financial institution (see section 387A), would result in any non-preferential debt being paid otherwise than in accordance with the rules in section 176AZA(2) or (3).”.

(9) Schedule A1 was inserted by the Insolvency Act 2000 c. 39 Sch.1 para.4; paragraph 31 of Schedule A1 was amended by the Deregulation Act 2015 c. 20 Schedule 6(6) paragraph 20(2)(e)(ii), the Small Business, Enterprise and Employment Act 2015 c. 26 Schedule 9(1) paragraph 9 and S.I. 2014/3486.

(10) Schedule B1 was inserted by the Enterprise Act 2002 c. 40 Schedule 16 paragraph 1; paragraph 73 was amended by S.I. 2014/3486; there are other amendments but none is relevant.