
STATUTORY INSTRUMENTS

2020 No. 1350

**The Bank Recovery and Resolution
(Amendment) (EU Exit) Regulations 2020**

PART 5

Other Provision made under the European Communities Act 1972

CHAPTER 5

Amendments to priority of debts in insolvency

Further Amendment of Insolvency Legislation

Amendments of the Insolvent Partnerships Order 1994

121.—(1) The Insolvent Partnerships Order 1994 is modified in accordance with this regulation.

(2) Schedule 1 (modified provisions of Part 1 of, and Schedule A1 to, the Insolvency Act 1986 (company voluntary arrangements) as applied by article 4)(1) applies as if in modified section 4(4) (decisions of the members of the partnership and its creditors) at the end of paragraph (d) for “or (3)” there were substituted “, (3) or (3A)”.

(3) In Schedule 2 (modified provisions of Part 2 of and Schedule B1 to the Insolvency Act 1986 (administration) as applied by article 6)(2) applies as if in paragraph 25, in modified section 73(1) at the end of paragraph (e) for “or (3)” there were substituted “, (3) or (3A)”.

(4) Paragraph 23 of Schedule 4 (provisions of the Insolvency Act 1986 which apply with modifications for the purposes of article 8 to winding up of insolvent partnership on creditor’s petition where concurrent petitions are presented against one or more members)(3) applies as if—

(a) in modified section 175A (priority of debts in joint estate)—

(i) in subsection (2), after paragraph (bb) there were inserted—

“(bc) the quaternary non-preferential debts;”;

(ii) in subsection (5B)(b) for “section 175B(1)(bc)” there were substituted “section 175B(1)(bb)”;

(iii) after subsection (5B) there were inserted—

“(5C) Where the joint estate is not sufficient for the payment of the quaternary non-preferential debts in accordance with paragraph (bc) of subsection (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that

(1) Schedule 1 was substituted by [S.I. 2002/2708](#) and amended by [S.I. 2014/3486](#), [S.I. 2017/540](#) and [S.I. 2018/1244](#); there are other amending instruments but none is relevant.

(2) Schedule 2 was substituted by [S.I. 2005/1516](#) and amended by [S.I. 2005/1516](#), [S.I. 2014/3486](#) and [S.I. 2018/1244](#); there are other amending instruments but none is relevant.

(3) Schedule 4 was amended by [S.I. 2014/3486](#), [S.I. 2017/1119](#) and [S.I. 2018/1244](#); there are other amending instruments but none is relevant.

- aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—
- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
 - (b) shall rank as a debt of the member in accordance with section 175B(1)(bc).”;
- (iv) in subsection (9) after “(5B),” there were inserted “(5C),”;
- (b) in modified section 175B(1) (priority of debts in separate estate)—
- (i) at the end of paragraph (bb) there were inserted “(including any debt referred to in section 175A(5B)(a))”;
 - (ii) after paragraph (bb) there were inserted—
 - “(bba) the quaternary non-preferential debts;”;
 - (iii) for paragraph (bc) there were substituted—
 - “(bc) the debt referred to in section 175A(5C)(a);”;
- (c) in modified section 175C (provisions generally applicable in distribution of joint and separate estates)—
- (i) in subsection (3), after “(5B)(a)” there were inserted “, (5C)(a)”;
 - (ii) in subsection (4), for “and tertiary non-preferential debts” there were substituted “, tertiary non-preferential debts and quaternary non-preferential debts”;
 - (iii) in paragraph (8)(b), after “(5B),” there were inserted “(5C),”.
- (5) Paragraph 21 of Schedule 7 (provisions of the Insolvency Act 1986 which apply with modifications for the purposes of article 11 where joint bankruptcy petition presented by individual members without winding up partnership as unregistered company)(4) applies as if—
- (a) in modified section 328A (priority of debts in joint estate)—
 - (i) in subsection (2), after paragraph (bb) there were inserted—
 - “(bc) the quaternary non-preferential debts;”;
 - (ii) in subsection (5B)(b), for “section 328B(1)(bc)” there were substituted “section 328B(1)(bb)”;
 - (iii) after subsection (5B) there were inserted—
 - “(5C) Where the joint estate is not sufficient for the payment of the quaternary non-preferential debts in accordance with paragraph (bc) of subsection (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—
 - (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
 - (b) shall rank as a debt of the member in accordance with section 328B(1)(bc).”;
 - (iv) in subsection (9), after “(5B),” there were inserted “(5C),”;
 - (b) in modified section 328B(1), (priority of debts in separate estate)—

(4) Schedule 7 was amended by [S.I. 2014/3486](#), [S.I. 2017/1119](#) and [S.I. 2018/1244](#); there are other amendments but none is relevant.

- (i) at the end of paragraph (bb) there were inserted “(including any debt referred to in section 328A(5B)(a))”;
- (ii) after paragraph (bb) there were inserted—
 - “(bba) the quaternary non-preferential debts;”;
- (iii) for paragraph (bc) there were substituted—
 - “(bc) the debt referred to in section 328A(5C)(a);”;
- (c) in modified section 328C (provisions generally applicable in distribution of joint and separate estates)—
 - (i) in subsection (3), after “(5B)(a)” there were inserted “, (5C)(a)”.
 - (ii) in subsection (4), for “and tertiary non-preferential debts” there were substituted “, tertiary non-preferential debts and quaternary non-preferential debts”.
 - (iii) in paragraph (8)(b), after “(5B),” there were inserted “(5C),”.

Amendments of the Insolvent Partnerships Order (Northern Ireland) 1995

122.—(1) The Insolvent Partnerships Order (Northern Ireland) 1995 is modified in accordance with this regulation.

(2) Schedule 1 (modified provisions of Part 2 of, and Schedule A1 to, the Insolvency (Northern Ireland) Order 1989 (company voluntary arrangements) as applied by article 4)(5) applies as if in modified Article 17(4) (decisions of meetings), in sub-paragraph (d), for “or (3)” there were substituted “, (3) or (3A)”.

(3) Schedule 2 (modified provisions of Schedule B1 and Schedule 1 to the Insolvency (Northern Ireland) Order 1989 (administration) as applied by article 6)(6) applies as if in paragraph 35, in modified paragraph 74(1), in sub-paragraph (e), for “or (3)” there were substituted “, (3) or (3A)”.

(4) Paragraph 23 of Schedule 4 (provisions of the Insolvency (Northern Ireland) Order 1989 which apply with modifications for the purposes of article 8 to the winding up of an insolvent partnership on a creditor’s petition where concurrent petitions are presented against one or more members)(7) applies as if—

- (a) in modified Article 149A (priority of debts in joint estate)—
 - (i) in paragraph (2), after sub-paragraph (bb) there were inserted—
 - “(bc) the quaternary non-preferential debts;”;
 - (ii) in sub-paragraph (5B)(b), for “Article 149B(1)(bc)” there were substituted “Article 149B(1)(bb)”;
 - (iii) after paragraph (5B) there were inserted—
 - “(5C) Where the joint estate is not sufficient for the payment of the quaternary non-preferential debts in accordance with sub-paragraph (bc) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—
 - (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and

(5) Schedule 1 was substituted by [S.R. 2003 No.550](#) and amended by [S.I. 2014/3486](#) and [S.I. 2018/1244](#).

(6) Schedule 2 was substituted by [S.R. 2006 No.515](#) and amended by [S.I. 2014/3486](#) and [S.I. 2018/1244](#); there are other amendments but none is relevant.

(7) Schedule 4 was amended by [S.I. 2014/3486](#) and [S.I. 2018/1244](#); there are other amendments but none is relevant.

- (b) shall rank as a debt of the member in accordance with Article 149B(1)(bc).”;
- (iv) in paragraph (9), after “(5B),” there were inserted “(5C),”;
- (b) in modified Article 149B(1) (priority of debts in separate estate)—
- (i) at the end of sub-paragraph (bb) there were inserted “(including any debt referred to in Article 149A(5B)(a))”;
- (ii) after sub-paragraph (bb) there were inserted—
- “(bba) the quaternary non-preferential debts;”;
- (iii) for sub-paragraph (bc) there were substituted—
- “(bc) the debt referred to in Article 149A(5C)(a);”;
- (c) in modified Article 149C (provisions generally applicable in distribution of joint and separate estates)—
- (i) in paragraph (3), after “(5B)(a)” insert “, (5C)(a)”;
- (ii) in paragraph (4), for “and tertiary non-preferential debts” substitute “, tertiary non-preferential debts and quaternary non-preferential debts”;
- (iii) in sub-paragraph (8)(b), after “(5B),” insert “(5C),”.
- (5) Paragraph 21 of Schedule 7 (provisions of the Insolvency (Northern Ireland) Order 1989 which apply with modifications for the purposes of article 11 where a joint bankruptcy petition is presented by individual members without winding up the partnership as an unregistered company)(8) applies as if—
- (a) in modified Article 300A (priority of debts in joint estate)—
- (i) in paragraph (2), after sub-paragraph (bb) there were inserted—
- “(bc) the quaternary non-preferential debts;”;
- (ii) in paragraph (5B), for “Article 300B(1)(bc)” there were substituted “Article 300B(1)(bb)”;
- (iii) after paragraph (5B) there were inserted—
- “(5C) Where the joint estate is not sufficient for the payment of the quaternary non-preferential debts in accordance with sub-paragraph (bc) of paragraph (2), the responsible insolvency practitioner shall aggregate the value of those debts to the extent that they have not been satisfied or are not capable of being satisfied, and that aggregate amount shall be a claim against the separate estate of each member of the partnership against whom an insolvency order has been made which—
- (a) shall be a debt provable by the responsible insolvency practitioner in each such estate, and
- (b) shall rank as a debt of the member in accordance with Article 300B(1)(bc).”;
- (iv) in paragraph (9) after “(5B),” there were inserted “(5C),”;
- (b) in modified Article 300B(1) (priority of debts in separate estate)—
- (i) at the end of sub-paragraph (bb) there were inserted “(including any debt referred to in Article 300A(5B)(a))”;
- (ii) after sub-paragraph (bb) there were inserted—
- “(bba) the quaternary non-preferential debts;”;

- (iii) for sub-paragraph (bc) there were substituted—
 - “(bc) the debt referred to in Article 300A(5C)(a);”;
- (c) in modified Article 300C (provisions generally applicable in distribution of joint and separate estates)—
 - (i) in paragraph (3), after “(5B)(a)” there were inserted “, (5C)(a)”;
 - (ii) in paragraph (4), for “and tertiary non-preferential debts” there were substituted “, tertiary non-preferential debts and quaternary non-preferential debts”;
 - (iii) in sub-paragraph (8)(b), after “(5B),” there were inserted “(5C),”.

Housing Act 1996

123. Section 44 of the Housing Act 1996 (proposals as to ownership and management of landlord’s land)(9) applies as if subsection (4) were modified as follows—

- (a) in paragraph (d)(ii), the final “or” were omitted;
- (b) after paragraph (d)(iii), there were inserted—
 - “or
 - (iv) a tertiary non-preferential debt of the landlord is to be paid otherwise than in priority to any quaternary non-preferential debts of the landlord”;
- (c) in the words after paragraph (d), after “tertiary non-preferential debts” there were inserted “, quaternary non-preferential debts”.

Housing and Regeneration Act 2008

124. The Housing and Regeneration Act 2008(10) applies as if it were modified as follows—

- (a) in section 152 (proposals)(11), in subsection (4)—
 - (i) in paragraph (d)(ii), the final “or” were omitted;
 - (ii) after paragraph (d)(iii), there were inserted—
 - “or
 - (iv) a tertiary non-preferential debt being paid otherwise than in priority to a quaternary non-preferential debt.”;
- (b) in section 275 (general)(12), after ““tertiary non-preferential debt”” there were inserted “, “quaternary non-preferential debt””;
- (c) in section 276 (index of defined terms)(13), in the table, there were inserted the following entry at the appropriate place—

“Quaternary non-preferential debt	Section 275”.
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(9) 1996 c. 52; section 44 was amended by the Charities Act 2006 (c. 50) Schedule 8 paragraph 187, the Housing and Regeneration Act 2008 (c. 17) Part 2 chapter 1 section 61(7), the Co-operative and Community Benefit Societies Act 2014 (c. 14) Schedule 4(2) paragraph 56, S.I. 2014/3486 and S.I. 2018/1244.

(10) 2008 c. 17.

(11) Section 152 was amended by S.I. 2014/3486 and S.I. 2018/1244.

(12) Section 275 was amended by the Charities Act 2011 (c. 25) Schedule 7(2) paragraph 135, the Co-operative and Community Benefit Societies Act 2014 (c. 14) Schedule 4(2) paragraphs 122 and 136, the Housing and Planning Act 2016 (c. 22) Schedule 4(4) paragraph 38 and Schedule 6 paragraph 9, S.I. 2014/2486 and S.I. 2018/1244.

(13) Section 276 was amended by the Localism Act 2011 (c. 20) Schedule 16(1) paragraph 53 and Schedule 25(26) paragraph 1, the Co-operative and Community Benefit Societies Act 2014 (c. 14) Schedule 4(2) paragraph 123 and paragraph 137, the Housing and Planning Act 2016 (c. 22) Schedule 6 paragraph 10, S.I. 2010/844, S.I. 2018/1040 and S.I. 2018/1244.

Housing (Scotland) Act 2010

125. Section 80 of the Housing (Scotland) Act 2010 (proposals: formulation)(**14**) applies as if it were modified as follows—

- (a) in subsection (5)—
 - (i) the “or” after paragraph (d)(ii) were omitted, and
 - (ii) after paragraph (d)(iii), there were inserted—
 - “or
 - (iv) quaternary non-preferential debts being paid before tertiary non-preferential debts,” and
- (b) in subsection (6), for “and “tertiary non-preferential debts”” there were substituted “, “tertiary non-preferential debts” and “quaternary non-preferential debts””.

Bankruptcy (Scotland) Act 2016

126. The Bankruptcy (Scotland) Act 2016 is modified in accordance with regulations [127](#) and [128](#).

127. Section 129 (priority in distribution)(**15**) applies as if it were modified as follows.

- (a) in subsection (1)—
 - (i) after paragraph (gb) there were inserted—
 - “(gc) quaternary non-preferential debts,” and
 - (ii) in paragraph (h)—
 - (aa) the “and” after sub-paragraph (iv) were omitted, and
 - (bb) after sub-paragraph (v) there were inserted—
 - “and
 - (vi) the quaternary non-preferential debts.”
- (b) in subsection (3A), for “and “tertiary non-preferential debts”” there were substituted “, “tertiary non-preferential debts” and “quaternary non-preferential debts””.

128. Section 129A (section 129: interpretation)(**16**) applies as if for subsection (4) there were substituted—

“(4) In this Act, “tertiary non-preferential debts” means subordinated debts that are not quaternary non-preferential debts.

(4A) In this Act, “quaternary non-preferential debts” means debts under instruments the whole or part of which constitute Common Equity Tier 1 instruments, Additional Tier 1 instruments or Tier 2 instruments (all within the meaning of Part 1 of the Banking Act 2009).”.

(14) [2010 asp 17](#); section 80 was amended by [S.I. 2013/496](#), [S.I. 2014/3486](#) and [S.I. 2018/1244](#).

(15) Section 129 was amended by [S.S.I. 2017/210](#), [S.I. 2018/1244](#) and [S.S.I. 2019/94](#).

(16) Section 129A was inserted by [S.I. 2018/1244](#).