

---

STATUTORY INSTRUMENTS

---

**1989 No. 2405**

**The Insolvency (Northern Ireland) Order 1989**

**PART XI**

**PREFERENTIAL [<sup>F1</sup>AND NON-PREFERENTIAL] DEBTS  
IN COMPANY AND INDIVIDUAL INSOLVENCY**

**[<sup>F1</sup>Financial institutions and their non-preferential debts**

**347A.**—(1) In this Order “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.

[ an investment holding company,]

<sup>F2</sup>(da)

[<sup>F3</sup>(e) a financial institution which is—

- (i) a subsidiary of an entity referred to in sub-paragraphs (a) to (da), and
- (ii) covered by the supervision of that entity on a consolidated basis by the Financial Conduct Authority in accordance with Part 9C rules or by the Prudential Regulation Authority in accordance with Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms or CRR rules, or,]

(f) a mixed-activity holding company.

(2) The definitions in Article 4 of Regulation (EU) No. 575/2013 apply for the purposes of paragraph (1) [<sup>F4</sup>except for the definitions of “consolidated basis” and “consolidated situation”].

[

<sup>F5</sup>(2A) For the purposes of paragraph (1)—

“on a consolidated basis” means on the basis of the consolidated situation;

“consolidated situation” means the situation that results from an entity being treated, for the purposes of Part 9C rules, Regulation (EU) 575/2013 or CRR rules (as appropriate), as if that entity and one or more other entities formed a single entity;

“CRR rules” has the meaning given in section 144A of the Financial Services and Markets Act 2000;

“Part 9C rules” has the meaning given in section 143F of the Financial Services and Markets Act 2000.]

(3) In this Order, in relation to a relevant financial institution—

**Changes to legislation:** *The Insolvency (Northern Ireland) Order 1989, Section 347A is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

- (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 Order, 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 paragraph(3)(b), “derivative” has the same meaning as in Article 2(5) of Regulation (EU) No 648/2012.
- (5) For the purposes of paragraph (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).]

- F1** Art. 347A inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **29** (with art. 3)
- F2** Art. 347A(1)(da) inserted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **3(2)(a)**
- F3** Art. 347A(1)(e) substituted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **3(2)(b)**
- F4** Words in art. 347A(2) inserted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **3(3)**
- F5** Art. 347A(2A) inserted (1.1.2022) by [The Financial Services Act 2021 \(Prudential Regulation of Credit Institutions and Investment Firms\) \(Consequential Amendments and Miscellaneous Provisions\) Regulations 2021 \(S.I. 2021/1376\)](#), regs. 1(3), **3(4)**

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

- C1** Art. 347A 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), **119** (with reg. 108)

**Changes to legislation:**

The Insolvency (Northern Ireland) Order 1989, Section 347A is up to date with all changes known to be in force on or before 23 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.

[View outstanding changes](#)

**Changes and effects yet to be applied to :**

- Instrument amended by [1998 c. 11 s. 23 Sch. 5 Pt.1 Ch. 3 para. 40](#)
- Instrument amended (prosp) by [S.I. 1994/279 \(N.I.\) art. 26\(1\)Sch. 2 para. 15](#)

**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 9 Pt. 2 para. 66 revoked by [1996 c. 23 s. 107\(2\)Sch. 4](#) (Amendment could not be applied. The relevant affected text is not available on [legislation.gov.uk](#))
- art. 2B inserted by [2016 c. 2 \(N.I.\) s. 2\(1\)](#)
- art. 208ZA applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by [S.I. 2023/1399 reg. 12](#) (This amendment not applied to [Legislation.gov.uk](#). S. 208ZA is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 208ZA-208ZB inserted by [2016 c. 2 \(N.I.\) s. 1\(1\)](#)
- art. 208ZB applied (with modifications) by S.I. 2021/716, reg. 37A (as inserted) by [S.I. 2023/1399 reg. 12](#) (This amendment not applied to [Legislation.gov.uk](#). S. 208ZB is inserted by the Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), s. 1(1) which is currently prospective.)
- art. 345A-345B inserted by [2016 c. 2 \(N.I.\) s. 1\(2\)](#)