

Status: Point in time view as at 01/01/2022.

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STATUTORY INSTRUMENTS

1989 No. 2405

The Insolvency (Northern Ireland) Order 1989

PART XI

PREFERENTIAL ^{F1}AND NON-PREFERENTIAL] DEBTS IN COMPANY AND INDIVIDUAL INSOLVENCY

F1 Words in Pt. 11 heading inserted (19.12.2018) by [The Banks and Building Societies \(Priorities on Insolvency\) Order 2018 \(S.I. 2018/1244\)](#), arts. 1(2), **28** (with art. 3)

Modifications etc. (not altering text)

C1 Pts. 11-14 modified by S.R. 2004/307 (as amended (1.10.2006) by [Limited Liability Partnerships \(Amendment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/377\)](#), reg. 3, **Sch. 2**; (temp.) (27.4.2020 retrospective) by virtue of [Corporate Insolvency and Governance Act 2020 \(c. 12\)](#), Sch. 11 para. 8(1)(2), **14** (with ss. 2(2), 5(2)); (26.6.2020) by [The Limited Liability Partnerships \(Amendment etc.\) Regulations 2020 \(S.I. 2020/643\)](#), reg. 1(1), **Sch. 2** (with reg. 3); (16.2.2021) by [The Limited Liability Partnerships \(Amendment etc.\) Regulations 2021 \(S.I. 2021/60\)](#), reg. 1(1), **Sch. 2** (with reg. 4(2))

Categories of preferential debts

346.—(1 ^{F2} A reference in this Order to the preferential debts of a company or an individual is to the debts listed in Schedule 4^{F3} (contributions to occupational pension schemes; remuneration, &c. of employees; levies on coal and steel production ^{F4}; debts owed to the Financial Services Compensation Scheme]^{F5}; deposits covered by the Financial Services Compensation Scheme; other deposits]^{F6}; certain HMRC debts)); and references to preferential creditors are to be read accordingly.

^{F7}(1A) A reference in this Order to the “ordinary preferential debts” of a company or an individual is to the preferential debts listed in any of paragraphs 8 to 18 of Schedule 4 to this Order.

(1B) A reference in this Order to the “secondary preferential debts” of a company or an individual is to the preferential debts listed in paragraphs 19 ^{F8}, 20 or 22] of Schedule 4 to this Order.]

(2 ^{F2} In Schedule 4 “the debtor” means the company or the individual concerned.

(3) Schedule 4 is to be read with Schedule 4 to the Social Security Pensions (Northern Ireland) Order 1975^{F9} (occupational pension scheme contributions).

F2 mod. by SR 2004/307

F3 Words in art. 346(1) substituted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 6(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)

F4 Words in art. 346(1) inserted (26.3.2015) by [The Deposit Guarantee Scheme Regulations 2015 \(S.I. 2015/486\)](#), regs. 1(2), **15(2)**

F5 Words in art. 346(1) inserted (1.1.2015) by [The Banks and Building Societies \(Depositor Preference and Priorities\) Order 2014 \(S.I. 2014/3486\)](#), arts. 1(2), **20(2)** (with art. 3)

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| F6 | Words in art. 346(1) inserted (with application in accordance with s. 98(7) of the amending Act) by Finance Act 2020 (c. 14), s. 98(5)(a) |
| F7 | Art. 346(1A)(1B) inserted (1.1.2015) by The Banks and Building Societies (Depositor Preference and Priorities) Order 2014 (S.I. 2014/3486), arts. 1(2), 20(3) (with art. 3) |
| F8 | Words in art. 346(1B) substituted (with application in accordance with s. 98(7) of the amending Act) by Finance Act 2020 (c. 14), s. 98(5)(b) |
| F9 | 1975 NI 15 |

“The relevant date”

347.—(1) This Article explains references in Schedule 4 to the relevant date (being the date which determines the existence and amount of a preferential debt).

(2) For the purposes of Article 17 (meetings to consider company voluntary arrangement), the relevant date in relation to a company which is not being wound up is—

- [^{F10}(a) if the company is in administration, the date on which it entered administration, and
- (b) if the company is not in administration, the date on which the voluntary arrangement takes effect.]

[^{F11}(2A)

(3) In relation to a company which is being wound up, the following applies—

- (a) if the winding up is by the High Court, and the winding#up order was made immediately upon the discharge of an administration order, the relevant date is [^{F12}the date on which the company entered administration];

[^{F13}(aa)

[^{F13}(ab)

- (b) if the case does not fall within sub#paragraph (a)^{F14} ... and the company—

- (i) is being wound up by the Court, and

- (ii) had not commenced to be wound up voluntarily before the date of the making of the winding#up order,

the relevant date is the date of the appointment (or first appointment) of a provisional liquidator or, if no such appointment has been made, the date of the winding#up order;

[^{F15}(ba) if the case does not fall within sub-paragraph (a)^{F16} ... or (b) and the company is being wound up following administration pursuant to paragraph 84 of Schedule B1, the relevant date is the date on which the company entered administration;]

- (c) ^{F17} if the case does not fall within [^{F18} sub-paragraph (a), ^{F19} ... (b) or (ba)], the relevant date is the date of the passing of the resolution for the winding up of the company.

[^{F20}(3A) In relation to a company which is in administration (and to which no other provision of this Article applies) the relevant date is the date on which the company enters administration.]

(4) In relation to a company in receivership (where Article 50 applies), the relevant date is the date of the appointment of the receiver by debenture#holders.

(5) ^{F17} For the purposes of Article 232 (meeting to consider individual voluntary arrangements), the relevant date is, in relation to a debtor who is not an undischarged bankrupt

- [^{F21}(a) where an interim order has been made under Article 226 with respect to his proposal, the date of that order, and

- (b) in any other case, the date on which the voluntary arrangement takes effect.]

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- (6)^{F17} In relation to a bankrupt, the following applies—
- (a) where at the time the bankruptcy order was made there was an interim receiver appointed under Article 259, the relevant date is the date on which the interim receiver was first appointed after the presentation of the bankruptcy petition;
 - (b) otherwise, the relevant date is the date of the making of the bankruptcy order.
- [^{F22}(7) Nothing in this Article affects the definition of “the relevant date” in Article 5(1A).]

- F10** Art. 347(2)(a)(b) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 42(2) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F11** Art. 347(2A) omitted (26.6.2020) by virtue of Corporate Insolvency and Governance Act 2020 (c. 12), s. 49(1), **Sch. 7 para. 22** (with ss. 2(2), 5(2))
- F12** Words in art. 347(3)(a)(aa)(ab) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 42(3)(a) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F13** Art. 347(3)(aa)(ab) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 180(a)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F14** Words in art. 347(3)(b) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 180(b)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F15** Art. 347(3)(ba) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 42(3)(b) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F16** Words in art. 347(3)(ba) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 180(c)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F17** mod. by SR 2004/307
- F18** Words in art. 347(3)(c) substituted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 42(3)(c) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F19** Words in art. 347(3)(c) omitted (31.12.2020) by virtue of The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 180(d)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F20** Art. 347(3A) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 42(4) (with art. 4); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2 - 7**)
- F21** 2002 NI 6
- F22** Art. 347(7) inserted (1.4.2016) by Insolvency (Amendment) Act (Northern Ireland) 2016 (c. 2), **ss. 9(5), 28(2)** (with Sch. 2 paras. 6-10); S.R. 2016/203, art. 2

[^{F23}**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,]

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^{F24}(da)

^{F25}(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) [^{F26}except for the definitions of “consolidated basis” and “consolidated situation”].

^{F27}(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—

(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).]

F23 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)

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- F24** 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)**
- F25** 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)**
- F26** 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)**
- F27** 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)

- C2** 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)

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