
DRAFT STATUTORY INSTRUMENTS

2014 No.

The Banks and Building Societies (Depositor Preference and Priorities) Order 2014

PART 2

Amendments of Insolvency Act 1986

Decisions of meetings

- 4.—(1) Section 4 of the Insolvency Act 1986 (decisions of meetings)⁽¹⁾ is amended as follows.
- (2) In subsection (4)—
- (a) omit the “or” at the end of paragraph (a);
 - (b) after paragraph (a) insert—
 - “(aa) any ordinary preferential debt of the company is to be paid otherwise than in priority to any secondary preferential debts that it may have,”;
 - (c) in paragraph (b)—
 - (i) for “a preferential debt”, substitute “an ordinary preferential debt”, and
 - (ii) for “another”, substitute “another ordinary”;
 - (d) at the end of paragraph (b), insert—
 - “or
 - (c) a preferential creditor of the company is to be paid an amount in respect of a secondary preferential debt that bears to that debt a smaller proportion than is borne to another secondary preferential debt by the amount that is to be paid in respect of that other debt.”.
- (3) In subsection (7), after “preferential debts” insert “, ordinary preferential debts, secondary preferential debts”.

Preferential debts

- 5.—(1) Section 175 of the Insolvency Act 1986 (preferential debts: general provision) is amended as follows.
- (2) In subsection (1) omit “(within the meaning given by section 386 in Part XII)”.
- (3) After subsection (1) insert—
 - “(1A) Ordinary preferential debts rank equally among themselves after the expenses of the winding up and shall be paid in full, unless the assets are insufficient to meet them, in which case they abate in equal proportions.

⁽¹⁾ Section 4 was amended by the Insolvency Act 2000 (c.39), Schedule 2, paragraphs 1 and 4.

(1B) Secondary preferential debts rank equally among themselves after the ordinary 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) In subsection (2), omit paragraph (a) and the “and” immediately following it.

(5) After subsection (2), insert—

“(3) In this section “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in section 386 in Part 12.”.

Decisions of creditors’ meetings and preferential debts

6.—(1) Section 258 of the Insolvency Act 1986 (decisions of creditors’ meeting)(2) is amended as follows.

(2) In subsection (5)—

(a) omit the “or” at the end of paragraph (a);

(b) after paragraph (a) insert—

“(aa) any ordinary preferential debt of the debtor is to be paid otherwise than in priority to any secondary preferential debts that the debtor may have,”;

(c) in paragraph (b)—

(i) for “a preferential debt”, substitute “an ordinary preferential debt”, and

(ii) for “another”, substitute “another ordinary”;

(d) at the end of paragraph (b), insert—

“or

(c) a preferential creditor of the debtor is to be paid an amount in respect of a secondary preferential debt that bears to that debt a smaller proportion than is borne to another secondary preferential debt by the amount that is to be paid in respect of that other debt.”.

(3) In subsection (7), for “has” substitute “, “ordinary preferential debt” and “secondary preferential debt” each has”.

Priority of debts

7.—(1) Section 328 of the Insolvency Act 1986 (priority of debts) is amended as follows.

(2) In subsection (1) omit “(within the meaning given by section 386 in Part XII)”.

(3) After subsection (1) insert—

“(1A) Ordinary preferential debts rank equally among themselves after the expenses of the bankruptcy and shall be paid in full, unless the bankrupt’s estate is insufficient to meet them, in which case they abate in equal proportions between themselves.

(1B) Secondary preferential debts rank equally among themselves after the ordinary 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 between themselves.”.

(4) Omit subsection (2).

(5) After subsection (6) insert—

“(7) In this section “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in section 386 in Part 12.”.

(2) Section 258 was amended by the Insolvency Act 2000 (c.39), Schedule 3, paras 1 and 9.

Categories of preferential debts

8.—(1) Section 386(3) of the Insolvency Act 1986 (categories of preferential debts) is amended as follows.

(2) In subsection (1), after “Compensation Scheme”, insert “; other deposits”.

(3) After subsection (1), insert—

“(1A) A reference in this Act to the “ordinary preferential debts” of a company or an individual is to the preferential debts listed in any of paragraphs 8 to 15B of Schedule 6 to this Act.

(1B) A reference in this Act to the “secondary preferential debts” of a company or an individual is to the preferential debts listed in paragraph 15BA or 15BB of Schedule 6 to this Act.”.

(4) In subsection (2), for “that Schedule” substitute “Schedule 6”.

Moratorium where directors propose voluntary arrangement and preferential debts

9.—(1) Schedule A1(4) to the Insolvency Act 1986 (moratorium where directors propose voluntary arrangement) is amended as follows.

(2) In paragraph 31(5)—

(a) omit the “or” at the end of paragraph (a);

(b) after paragraph (a) insert—

“(aa) any ordinary preferential debt of the company is to be paid otherwise than in priority to any secondary preferential debts that it may have,”;

(c) in paragraph (b)—

(i) for “a preferential debt”, substitute “an ordinary preferential debt”, and

(ii) for “another”, substitute “another ordinary”;

(d) at the end of paragraph (b), insert—

“or

(c) a preferential creditor of the company is to be paid an amount in respect of a secondary preferential debt that bears to that debt a smaller proportion than is borne to another secondary preferential debt by the amount that is to be paid in respect of that other debt.”.

(3) In paragraph 31(8), after “preferential debts” insert “, ordinary preferential debts, secondary preferential debts”.

Administration and preferential debts

10.—(1) Schedule B1(5) to the Insolvency Act 1986 (administration), paragraph 73(1) is amended as follows.

(2) Omit the “or” at the end of paragraph (b).

(3) After paragraph (b) insert—

“(bb) would result in an ordinary preferential debt of the company being paid otherwise than in priority to any secondary preferential debts that it may have,”.

(3) Section 386 was amended by the Enterprise Act 2002 (c.40), section 251(3), the Financial Services (Banking Reform) Act 2013 (c.33), section 13, and the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 18.

(4) Schedule A1 to the Insolvency Act 1986 was inserted by the Insolvency Act 2000 (c.39), Schedule 1, paragraphs 1 and 4.

(5) Schedule B1 to the Insolvency Act 1986 was inserted by the Enterprise Act 2002 (c.40), Schedule 16.

(4) In paragraph (c), for “his debt” substitute “an ordinary preferential debt”.

(5) At the end of paragraph (c), insert—

“or

(d) would result in one preferential creditor of the company being paid a smaller proportion of a secondary preferential debt than another.”.

Additional preferential debts

11.—(1) Schedule 6(6) to the Insolvency Act 1986 (preferential debts) is amended as follows.

(2) After paragraph 15B, insert—

“Category 8: Other deposits

15BA. So much of any amount owed at the relevant date by the debtor to one or more eligible persons in respect of an eligible deposit as exceeds any compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to that person or those persons.

15BB. An amount owed at the relevant date by the debtor to one or more eligible persons in respect of a deposit that—

- (a) was made through a non-EEA branch of a credit institution authorised by the competent authority of an EEA state, and
- (b) would have been an eligible deposit if it had been made through an EEA branch of that credit institution.”.

(3) In the italic heading before paragraph 15C, for “Category 7” substitute “Categories 7 and 8”.

(4) In paragraph 15C—

- (a) in sub-paragraph (1), for “paragraph 15B” substitute “paragraphs 15B to 15BB”;
- (b) in sub-paragraph (2), for “this purpose” substitute “the purposes of those paragraphs and this paragraph”; and
- (c) after sub-paragraph (2), insert—

“(3) In paragraphs 15BA and 15BB, “eligible person” means—

- (a) an individual, or
- (b) a micro-enterprise, a small enterprise or a medium-sized enterprise, each of those terms having the meaning given in Article 2.1(107) of Directive 2014/59/EU of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.(7)

(4) In paragraph 15BB—

- (a) “credit institution” has the meaning given in Article 4.1(1) of the capital requirements regulation;
- (b) “EEA branch” means a branch, as defined in Article 4.1(17) of the capital requirements regulation, which is established in an EEA state;
- (c) “non-EEA branch” means a branch, as so defined, which is established in a country which is not an EEA state;

(6) Schedule 6 to the Insolvency Act 1986 was amended by the Enterprise Act 2002 (c.40), section 251, and Schedule 26; the Pension Schemes Act 1993 (c.48), Schedule 8, paragraph 18; the Employment Rights Act 1996 (c.18), Schedule 1, paragraph 29, the Enterprise and Regulatory Reform Act 2013 (c.24), Schedule 19, paragraphs 1, 64; the Financial Services (Banking Reform) Act 2013 (c.33), section 13 and S.I. 2008/948; 1987/2093.

(7) OJ no L173, 12.6.2014, p.190.

and for this purpose “the capital requirements regulation” means Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26th June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012⁽⁸⁾.”.

(8) OJ no L176, 27.6.2013, p.1. For corrigenda see OJ no L208, 2.8.2013 p.68 and OJ no L321, 30.11.2013 p. 6.