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DRAFT STATUTORY INSTRUMENTS

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**2014 No.**

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

**PART 4**

**Amendments of Insolvency (Northern Ireland) Order 1989**

**Decisions of meetings and preferential debts**

**16.**—(1) Article 17 of the Insolvency (Northern Ireland) Order 1989 (decisions of meetings)<sup>(1)</sup> is amended as follows.

(2) In paragraph (4)—

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

(b) after sub-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 sub-paragraph (b)—

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

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

(d) at the end of sub-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 (7), for “has” substitute “, “ordinary preferential debt” and “secondary preferential debt” each has”.

**Preferential debts: general provision**

**17.**—(1) Article 149 of the Insolvency (Northern Ireland) Order 1989 (preferential debts: general provision) is amended as follows.

(2) In paragraph (1) omit “(within the meaning of Article 346)”.

(3) After paragraph (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.

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<sup>(1)</sup> S.I. 1989/2405 (N.I. 19). Article 17 was amended by S.I. 2002/3152 (N.I. 6).

(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 paragraph (2), omit paragraph (a) and the “and” immediately following it.

(5) After paragraph (2), insert—

“(3) In this Article “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in Article 346.”.

### **Decisions of creditors’ meetings and preferential debts**

**18.**—(1) Article 232 of the Insolvency (Northern Ireland) Order 1989 (decisions of creditors’ meeting)(2) is amended as follows.

(2) In paragraph (6)—

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

(b) after sub-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 sub-paragraph (b)—

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

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

(d) at the end of sub-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 paragraph (9), for “has” substitute “, “ordinary preferential debt” and “secondary preferential debt” each has”.

### **Priority of debts**

**19.**—(1) Article 300 of the Insolvency (Northern Ireland) Order 1989 (priority of debts) is amended as follows.

(2) In paragraph (1) omit “(within the meaning of Article 346)”.

(3) After paragraph (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 paragraph (2).

(5) After paragraph (6) insert—

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(2) Article 232 of S.I. 1989/2405 (N.I. 19) was amended by S.I. 2002/3152 (N.I. 6).

“(7) In this Article “preferential debts”, “ordinary preferential debts” and “secondary preferential debts” each has the meaning given in Article 346.”.

### **Categories of preferential debts**

**20.**—(1) Article 346 of the Insolvency (Northern Ireland) Order 1989 (categories of preferential debts)(3) is amended as follows.

(2) In paragraph (1), after “steel production” insert “; deposits covered by the Financial Services Compensation Scheme; other deposits”.

(3) After paragraph (1), insert—

“(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 or 20 of Schedule 4 to this Order.”.

### **Moratorium where directors propose voluntary arrangement and preferential debts**

**21.**—(1) Schedule A1 to the Insolvency (Northern Ireland) Order 1989 (moratorium where directors propose voluntary arrangement)(4) is amended as follows.

(2) In paragraph 41(5)—

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

(b) after sub-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 sub-paragraph (b)—

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

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

(d) at the end of sub-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 41(8), after “preferential debts” insert “, ordinary preferential debts, secondary preferential debts”.

### **Administration and preferential debts**

**22.**—(1) Paragraph 74(1) of Schedule B1 to the Insolvency (Northern Ireland) Order 1989 (protection for preferential creditors)(5) is amended as follows.

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

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(3) Article 346 was amended by [S.I. 2005/1455 \(N.I. 10\)](#).

(4) Schedule A1 was inserted by [S.I. 2002/3152 \(N.I. 6\)](#). There are a number of amendments to Schedule A1 but none are relevant to this Order.

(5) Schedule B1 was inserted by [S.I. 2005/1455 \(N.I. 10\)](#), and amended by [S.I. 2007/2974](#) and [2008/948](#).

(3) After paragraph (b) insert—

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

(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**

**23.** In Schedule 4 to the Insolvency (Northern Ireland) Order 1989 (categories of preferential debts)(6), after paragraph 17 insert—

#### **“Category 7: Deposits covered by Financial Services Compensation Scheme**

**18.** So much of any amount owed at the relevant date by the debtor in respect of an eligible deposit as does not exceed the compensation that would be payable in respect of the deposit under the Financial Services Compensation Scheme to the person or persons to whom the amount is owed.

#### **Category 8: Other deposits**

**19.** 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.

**20.** 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.

#### **Interpretation for Categories 7 and 8**

**21.—**(1) In paragraphs 18 to 20 “eligible deposit” means a deposit in respect of which the person, or any of the persons, to whom it is owed would be eligible for compensation under the Financial Services Compensation Scheme.

(2) For the purposes of those paragraphs and this paragraph a “deposit” means rights of the kind described in—

- (a) paragraph 22 of Schedule 2 to the Financial Services and Markets Act 2000(7) (deposits), or
- (b) section 1(2)(b) of the Dormant Banks and Building Society Accounts Act 2008(8) (balances transferred under that Act to authorised reclaim fund).

(3) In paragraphs 19 and 20, “eligible person” means—

(6) Schedule 4 was amended by S.I. 2005/1455 (N.I. 10). There are other amendments not relevant to this Order.

(7) 2000 c.8.

(8) 2008 c.31.

- (a) an individual, or
  - (b) a micro-enterprise, a small enterprise or medium-sized enterprise, each of those terms having the meaning given in Article 2.1(107) of the Directive 2014/59/EU of 15th May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms<sup>(9)</sup>.
- (4) In paragraph 20—
- (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;

and for this purpose “the capital requirements regulation” means 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 and amending Regulation (EU) No 648/2012<sup>(10)</sup>.”.

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<sup>(9)</sup> OJ no 173, 12/6/2014, p 190.

<sup>(10)</sup> 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.