DRAFT STATUTORY INSTRUMENTS

2020 No.

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

PART 5

Other Provision made under the European Communities Act 1972

CHAPTER 1

Suspension of obligations, interests and rights

Interpretation

81. In this Chapter—

"the Act" means the Banking Act 2009;

"bank" has the meaning given in section 2 of the Act;

"banking group company" has the meaning given in section 81D of the Act;

"business day" and "excluded person" have the meanings given in section 70D of the Act;

"the FCA" and "the PRA" have the meanings given in section 3(1) of the Act;

"mandatory reduction instrument" has the meaning given in section 6B of the Act;

"resolution instrument" has the same meaning as in the Act;

"stabilisation options" and "stabilisation powers" have the meanings given in section 1 of the Act.

82. The exercise of any of the powers in this Chapter is to be treated as a "crisis management measure" under section 48Z of the Act.

Suspension of obligations prior to exercise of stabilisation powers

83.—(1) The Bank of England may make an instrument suspending obligations to make a payment, or delivery, under a contract where one of the parties to the contract is a bank and the conditions specified in paragraph (2) are met in relation to the bank.

(2) These conditions are that:

(a) the PRA has determined that Condition 1 in section 7 of the Act is met, having consulted the Bank of England;

(b) the Bank of England has determined that no action referred to in Condition 2 in that section will be taken immediately, having consulted the PRA, the FCA and the Treasury;

(c) the Bank of England has determined that the suspension would prevent further deterioration of the financial position of the bank, having consulted the PRA and the FCA;

(d) the suspension—

(i) would allow additional time for the Bank of England to determine whether Conditions 3 and 4 in section 7 of the Act are met;

(ii) would allow additional time for determination of which stabilisation option is appropriate; or

(iii) would assist with the effective exercise of one or more of the stabilisation powers.

(3) A suspension imposed under paragraph (1) does not apply to payments or deliveries to excluded persons.

(4) Subject to paragraph (3), a suspension imposed under subsection (1) suspends all obligations to make a payment or delivery under the contract in question, whether the obligation is that of the bank or of any other party to the contract.

(5) Before exercising the power in paragraph (1) the Bank of England must have regard to—

(a) the impact a suspension might have on the orderly functioning of the financial markets; and

(b) rules and supervisory and judicial powers to safeguard the rights of creditors (including equal treatment) in normal insolvency proceedings (in view of the potential application of such proceedings to the bank following a determination that Condition 3 or 4 in section 7 of the Act is not met).

(6) In paragraph (5)(b), "normal insolvency proceedings" has the meaning given in section 12AA of the Act.

(7) A suspension imposed under paragraph (1)—

(a) must be as short in duration as is reasonably practicable;

(b) begins when the instrument providing for the suspension is first published;

(c) may not continue to apply after the end of the period that the Bank of England considers likely to be required to carry out the determinations referred to in paragraph (2)(c) and (d)(i) and (ii); and

(d) in any event must end no later than midnight at the end of the first business day following the day on which the instrument providing for the suspension is published.

(8) Where a payment or delivery under the contract concerned would have fallen due within the period of the suspension, that payment or delivery obligation is treated as falling due immediately on the expiry of the suspension.

Suspension of security interests prior to exercise of stabilisation powers

84.—(1) Where the Bank of England imposes a suspension under regulation 83(1) in respect of a bank, the Bank may make an instrument suspending the rights of a secured creditor of the bank to enforce any security interest the creditor has in relation to any assets of the bank.

(2) But the Bank of England may not suspend the rights of an excluded person to enforce any security interest that person may have in relation to any asset of the bank which has been pledged or provided to the excluded person in question as collateral or as cover for margin.

(3) The Bank of England must ensure that any restrictions on the enforcement of security interests which it imposes by virtue of paragraph (1) are applied consistently with any such restrictions imposed on a banking group company in the same group by virtue of regulation 88.

(4) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in paragraph (1).

(5) A suspension under paragraph (1)—

(a) begins when the suspension under regulation 83(1) begins; and

(b) ends when the suspension under regulation 83(1) ends.

(6) For the purposes of this regulation, a "security interest" means an interest or right held for the purpose of securing the payment of money or the performance of any other obligation.

Suspension of termination rights prior to exercise of stabilisation powers

85.—(1) Where the Bank of England imposes a suspension under regulation 83(1) in respect of a bank, the Bank may make an instrument suspending the termination rights of any party to a qualifying contract (other than a party who is an excluded person).

(2) A contract is a "qualifying contract" for the purpose of this regulation if—

(a) one of the parties to the contract is the bank and all the obligations under the contract to make a payment, make a delivery or provide collateral continue to be performed; or

(b) one of the parties to the contract is a subsidiary undertaking of the bank and the condition in paragraph (3) is met.

(3) The condition is that—

(a) the obligations of the subsidiary undertaking are guaranteed or otherwise supported by the bank,

(b) the termination rights under the contract are triggered by the insolvency or the financial condition of the bank; and

(c) if a property transfer instrument may be made in relation to the bank—

(i) all the assets and liabilities relating to the contract have been or are being transferred to, or assumed by, a single transferee; or

(ii) the Bank of England is providing adequate protection for the performance of the obligations of the subsidiary undertaking under the contract in any other way.

(4) The Bank of England must have regard to the impact a suspension might have on the orderly functioning of the financial markets before exercising the power in paragraph (1).

(5) A suspension under paragraph (1)—

(a) begins when the suspension under regulation 83(1) begins; and

(b) ends when the suspension under regulation 83(1) ends.

(6) A person may exercise a termination right under a contract before the expiry of the suspension if that person is given notice by the Bank of England that the rights and liabilities of the bank covered by the contract are not—

(a) to be transferred to another undertaking through the exercise of a stabilisation power; or

(b) to be made subject to a mandatory reduction instrument or a resolution instrument.

(7) If—

(a) no notice has been given by the Bank of England under paragraph (6); and

(b) a termination right has been triggered otherwise than through the exercise of a stabilisation power or the imposition of a suspension under paragraph (1) (or the occurrence of an event directly linked to the exercise of a stabilisation power),

a person may, on the expiry of the suspension, exercise the termination right in accordance with the terms of the contract.

(8) But, where the rights and liabilities of the bank or the subsidiary undertaking under the contract have been transferred to another undertaking, paragraph (7) applies only if the event giving rise to the termination right has been triggered by that undertaking.

(9) For the purposes of this regulation, "termination right" means—

(a) a right to terminate a contract;

(b) a right to accelerate, close out, set-off or net obligations, or any similar provision that suspends, modifies or extinguishes an obligation of a party to the contract; or

(c) a provision that prevents an obligation from arising under the contract.

Suspension prior to exercise of stabilisation powers: procedure

86.—(1) The following sections of the Act apply in relation to an instrument under regulation 83, 84 or 85 as they apply to a resolution instrument—

(a) section 48O;

(b) section 48Q;

(c) section 48R;

(d) section 48S; and

(e) section 48T.

(2) Where the Bank of England makes one or more instruments under regulation 83, 84 or 85 in respect of a bank, the Bank must, on request by the Treasury, report to the Chancellor of the Exchequer about—

(a) the exercise of the power to make an instrument;

(b) the activities of the bank; and

(c) any other matters in relation to the bank that the Treasury may specify.

(3) In relation to the matters in paragraphs (2)(a) and (b), the report must comply with any requirements that the Treasury may specify.

(4) The Chancellor of the Exchequer must lay a copy of each report under subsection (2) before Parliament.

Restriction on subsequent suspension

87. If the Bank of England exercises its powers under regulation 83(1) to impose a suspension, the Bank may not exercise its powers under section 70A to 70C of the Act in respect of the bank in question.

Groups

88.—(1) Regulations 83 to 87 apply to banking group companies incorporated in, or formed under the law of any part of, the United Kingdom with the following modifications.

(2) For the condition specified in regulation 83(2)(a) substitute—

(a) the PRA is satisfied that Condition 1 in section 7 of the Act is met in respect of a bank in the same group as the banking group company, having consulted the Bank of England;

(b) the EU resolution authority of an EU institution in the same group is satisfied that the condition set out in point (a) of Article 32(1) of the recovery and resolution directive is met in relation to that EU institution; or

(c) a relevant third-country authority of a third-country institution in the same group is satisfied that any equivalent condition required by the law of the third country is met in relation to that third-country institution.

(3) For the condition specified in regulation 83(2)(b) substitute—

(a) the Bank of England has determined that no action referred to in Condition 2 in section 7 of the Act will be taken immediately in respect of a bank in the same group as the banking group company, having consulted the PRA, the FCA and the Treasury; or

(b) the EU resolution authority of an EU institution in the same group is satisfied that the condition set out in point (b) of Article 33a(1) of the recovery and resolution directive is met in relation to that EU institution.

(4) For the condition specified in regulation 83(2)(c) substitute—

(a) the Bank of England has determined that the suspension would prevent further deterioration of the financial position of a bank in the same group as the banking group company, having consulted the PRA and the FCA; or

(b) the EU resolution authority of an EU institution in the same group as the banking group company is satisfied that the condition set out in point (c) of Article 33a(1) of the recovery and resolution directive is met in relation to that EU institution.

(5) For the condition specified in regulation 83(2)(d) substitute—

(i) the suspension would allow additional time for the Bank of England to determine whether Conditions 2 and 3 in section 81B of the Act (sale to commercial purchaser and transfer to a bridge bank) are met;

(ii) the suspension would allow additional time for determination of which stabilisation option is appropriate;

(iii) the suspension would assist with the effective exercise of one or more of the stabilisation powers; or

(iv) the suspension is necessary for an EU resolution authority to take any decision referred to in point (d) of Article 33a(1) of the recovery and resolution directive.

(6) In this regulation—

"EU institution" has the meaning given in section 81AA(14) of the Act;

"EU resolution authority" means a resolution authority within the meaning given by Article 2.1(18) of the recovery and resolution directive (other than the Bank of England);

"group" has the meaning given by section 81D(7) of the Act;

"the recovery and resolution directive" has the meaning given in section 3(1) of the Act;

"relevant third-country authority" has the meaning given by Article 2.1(90) of the recovery and resolution directive;

"third-country institution" has the meaning given by section 89H(7) of the Act.

Suspension of obligations when Bank is exercising a stabilisation power

89. The Bank of England may exercise its powers under section 70A of the Act as if subsection (2)(a) were omitted.

Modification of Part for banks not regulated by the PRA

90. In the application of this Part to an FCA-regulated bank the following modifications apply—

(a) in regulation 83(2)—

(i) in paragraph (a) treat the reference to PRA as reference to the FCA;

(ii) in paragraphs (b) and (c) the reference to the PRA does not apply unless the bank has as a member of its immediate group a PRA-authorised person;

(b) in regulation 88—

(i) in paragraph (2)(a) treat the reference to PRA as reference to the FCA;

(ii) in paragraphs (3)(a) and (4)(a) the reference to the PRA does not apply unless the bank has as a member of its immediate group a PRA-authorised person.

CHAPTER 2

Power to prohibit distributions

Power to prohibit distributions

91.—(1) This regulation applies where a relevant person—

(a) meets the combined buffer requirement, but

(b) would not do so but for reliance upon own funds and eligible liabilities that are relied upon also for the purposes of meeting the requirement under section 3A(4) of the Banking Act 2009.

(2) In this regulation—

"Additional Tier 1 instruments" has the meaning given in section 3(1) of the Banking Act 2009;

"bank" has the meaning given in section 2 of the Banking Act 2009;

"combined buffer requirement" has the meaning given in regulation 2(1) of the Capital Requirements (Capital Buffers and Macro-prudential Measures) Regulations 2014(**1**);

"Common Equity Tier 1 instruments" has the meaning given in section 3(1) of the Banking Act 2009;

"competent authority" has the meaning given in article 2(1) of the Bank Recovery and Resolution (No 2) Order 2014;

"eligible liabilities" has the meaning given in section 3(1) of the Banking Act 2009;

"failure" means an occurrence of this regulation applying;

"group" has the meaning given in section 3(2)(b) of the Banking Act 2009;

"own funds" has the meaning given in section 3(1) of the Banking Act 2009;

"recovery and resolution directive" has the meaning given in section 3(1) of the Banking Act 2009;

"relevant person" has the meaning given in section 3A of the Banking Act 2009;

"resolvability" means the subject matter of assessment under Part 6 of the Bank Recovery and Resolution (No.2) Order 2014.

(3) The relevant person must notify the Bank of England without delay that this regulation applies.

(4) The Bank of England may prohibit the relevant person from distributing more than the maximum distributable amount through any of the following actions—

(a) making a distribution in connection with Common Equity Tier 1 instruments;

(b) creating an obligation to pay variable remuneration or discretionary pension benefits, or to pay variable remuneration if the obligation to pay was created at a time when the relevant person failed to meet the combined buffer requirement; or

(c) make payments on Additional Tier 1 instruments.

(5) Before exercising the power under paragraph (4) the Bank of England must—

(a) consult the competent authority;

(b) carry out an assessment of—

(i) the reasons for, and the duration and magnitude of, the failure, and its impact on the resolvability of the relevant person;

(**1**) S.I. 2014/894.

(ii) the development of the relevant person's financial situation and the likelihood of Condition 1 provided for in section 7 of the Banking Act 2009 being fulfilled in relation to it, or a bank in the same group, in the foreseeable future;

(iii) the prospect that the relevant person will within a reasonable time frame be able to meet the combined buffer requirement without relying upon own funds and eligible liabilities that it relies upon also for the purposes of meeting the requirement under section 3A(4) of the Banking Act 2009;

(iv) where the relevant person is unable to replace liabilities that no longer meet the eligibility or maturity criteria laid down in Articles 72b and 72c of Regulation (EU) No 575/2013, whether that inability is idiosyncratic or is due to market wide disturbance;

(v) whether the exercise of the power under paragraph (4) is the most adequate and proportionate means of addressing the situation of the relevant person, including consideration of the potential impact on both the financing conditions and resolvability of the relevant person.

(6) The Bank must repeat its assessment under paragraph (5)(b) at intervals of no more than one month until the failure ends.

(7) If—

(a) failure continues for nine months after notification is given under paragraph (3); and

(b) not more than one of the conditions specified in paragraph (8) is met;

(c) the Bank of England must exercise its power under paragraph (4).

(8) The conditions are that the Bank of England assesses that—

(a) the failure is due to a serious disturbance to the functioning of financial markets which leads to broad-based market stress across more than one segment of financial markets;

(b) the disturbance not only results in the increased price volatility of the own funds and eligible liabilities of the relevant person or increased costs for the entity, but also leads to a full or partial closure of markets which prevents the relevant person from issuing own funds and eligible liabilities on those markets;

(c) the closure of markets is observed not only for the relevant person, but also for at least several other entities;

(d) the disturbance prevents the relevant person from issuing sufficient own funds and eligible liabilities to end the failure;

(e) exercise of the power would lead to negative spill-over effects for at least one part of the banking sector, thereby potentially undermining financial stability.

(9) Where at least two of the conditions specified in paragraph (8) are met the Bank of England must—

(a) notify the competent authority and explain its assessment in writing;

(b) review its assessment under paragraph (8) at intervals of no more than one month.

(10) When the Bank of England is satisfied that the failure has ended the Bank of England must without delay notify the relevant person that the prohibition under paragraph (4) has ceased to have effect.

(11) For the purposes of paragraph (4) the maximum distributable amount is to be calculated by multiplying the sum calculated in accordance with paragraph (12) by the factor determined in accordance with paragraph (13).

(12) The sum referred to in paragraph (11) is A + B – C, where—

"A" is any interim profits not included in Common Equity Tier 1 instruments pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any distribution of profits or any payment resulting from the actions referred to in paragraph (4);

"B" is any year-end profits not included in Common Equity Tier 1 instruments pursuant to Article 26(2) of Regulation (EU) No 575/2013, net of any such distribution of profits or payment;

"C" is amounts which would be payable by tax if A and B were to be retained.

(13) The factor referred to in paragraph (11) is determined as follows—

(a) where the Common Equity Tier 1 instruments maintained by the relevant person which are not used to meet any of the requirements set out in Article 92a of Regulation (EU) No 575/2013 and under section 3A(4) of the Banking Act 2009, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92(3) of Regulation (EU) No 575/2013, are within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

(b) where the Common Equity Tier 1 instruments maintained by the relevant person which are not used to meet any such requirements are within the second quartile of the combined buffer requirement, the factor shall be 0.2;

(c) where the Common Equity Tier 1 instruments maintained by the relevant person which are not used to meet any such requirements are within the third quartile of the combined buffer requirement, the factor shall be 0.4;

(d) the Common Equity Tier 1 instruments maintained by the relevant person which are not used to meet any such requirements are within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6.

(14) For the purposes of paragraph (13) the lower bound of quartile and upper bound of quartile are calculated as follows—

$$\text{Lower bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times (Q_n - 1)$$

$$\text{Upper bound of quartile} = \frac{\text{Combined buffer requirement}}{4} \times Q_n$$

Where—

'Q_n' is the ordinal number of the quartile concerned.

(15) The maximum distributable amount is not reduced by any amount resulting from any of the actions referred to in paragraph (4).

CHAPTER 3

Transfer of losses or capital between members of a group

Transfer of losses or capital between members of a group

92.—(1) When exercising the functions conferred by section 81B(2) of the Banking Act 2009, the PRA, Bank of England, EU regulation authority or relevant third-country authority (as the case may be) must treat subsection (2A) of that section as if it were omitted.

(2) When exercising the functions conferred by section 81ZBA(2) of that Act, the PRA, Bank of England, EU regulation authority or relevant third-country authority (as the case may be) must treat subsection (2A) of that section as if it were omitted.

(3) When exercising the functions conferred by section 81BA(2) of that Act, the PRA, Bank of England, EU regulation authority or relevant third-country authority (as the case may be) must treat subsection (2A) of that section as if it were omitted.

CHAPTER 4

Contractual recognition of bail-in

Interpretation

93. In this Chapter—

"the Act" means the Banking Act 2009,

"additional Tier 1 instruments" has the meaning given by section 3(1) of the Act,

"the FCA" has the meaning given in section 3(1) of the Act,

"fully secured liability" means a liability which, at the time it is created, is fully secured and governed by contractual terms that oblige the debtor to maintain the liability fully collateralised on a continuous basis in compliance with regulatory requirements in EU law or of the law of a third country achieving effects that can be deemed equivalent to EU law.

"mandatory reduction provision" has the meaning given by section 6B(2) of the Act,

"the PRA" has the meaning given in section 3(1) of the Act,

"the recovery and resolution directive" has the meaning given by section 3(1) of the Act,

"special bail-in provision" has the meaning given by section 48B(1) of the Act,

"Tier 2 instruments" has the meaning given by section 3(1) of the Act, and

"unsecured liability" means—

(a) for liabilities created on or before 31 July 2016, a liability under which the right of the creditor to payment or other form of performance is not—

(i) secured by a charge, pledge, lien, or mortgage; or

(ii) subject to other collateral arrangements, including liabilities arising from repurchase transactions and other title transfer collateral arrangements; and

(b) for liabilities created after 31 July 2016, a liability that is not a fully secured liability.

Requirement to include a contractual term recognising bail-in

94.—(1) A relevant undertaking must include a relevant term in a relevant contract.

(2) For the purposes of paragraph (1)—

(a) a relevant undertaking is an undertaking to which regulation 95 applies;

(b) a relevant contract is a contract to which regulation 96 applies; and

(c) a relevant term is a term which meets the requirements in regulation 97.

Undertakings required to include a contractual term

95.—(1) This regulation applies to an undertaking which is—

(a) an institution;

(b) a financial holding company;

(c) a mixed financial holding company; or

(d) a relevant MAHC.

(2) Notwithstanding paragraph (1), this regulation does not apply to an undertaking to which regulation 99(2) applies.

(3) In this regulation, "institution", "financial holding company", "mixed financial holding company", and "relevant MAHC" each have the meaning given by section 3A(8) of the Act.

Contracts for which a contractual term is required

96.—(1) This regulation applies to a contract governing a liability, provided that such liability is—

(a) not an excluded liability;

(b) not an excluded deposit;

(c) governed by the law of a third country; and

(d) a liability of a type described in paragraph (3).

(2) Notwithstanding paragraph (1), this regulation does not apply to a liability to which regulation 99(1) applies.

(3) This paragraph applies to a liability—

(a) created on or after 28 December 2020, regardless of whether it is created under an agreement entered into before 28 December 2020 (including under a master or framework agreement between the contracting parties governing multiple liabilities);

(b) created before 28 December 2020, if the agreement governing the liability is subject to a material amendment on or after 28 December 2020.

(4) An amendment is material for the purposes of paragraph (3) if it affects the substantive rights and obligations of a party to the agreement.

(5) In this regulation—

"amendment" includes an automatic amendment,

"excluded deposit" means a liability which would become a secondary preferential debt within the meaning of section 386(1B) of the Insolvency Act 1986, and

"excluded liability" has the meaning given by section 48B(8) of the Act, except that a liability is not to be regarded as secured for the purposes of section 48B(8)(b) where—

(a) it was created after 31 July 2016; and

(b) at the time it was created, it was not a fully secured liability.

Content of required term

97. A term meets the requirements of this regulation where all creditors or parties to the agreement creating the liability—

(a) recognise that the liability may be subject to the exercise of a power by the Bank of England to make special bail-in provision or mandatory reduction provision; and

(b) agree to be bound by any reduction of the principal or outstanding amount due or by any conversion or cancellation effected by the exercise of that power.

Evidence to demonstrate compliance with regulation 94 obligation

98.—(1) The Bank of England may require an undertaking to which regulation 95 applies to provide a properly reasoned legal opinion on the legal enforceability and effectiveness of a term under regulation 97 to one or more of the following—

(a) the Bank of England;

(b) the PRA; or

(c) the FCA.

(2) A legal opinion under paragraph (1) must be prepared by an individual appropriately qualified in the relevant third country.

Exclusions

99.—(1) The obligation in regulation 94(1) does not apply where the Bank of England determines that contracts to which regulation 96 would otherwise apply can be subject to write down and conversion powers pursuant to the law of a third country or a binding agreement concluded with a third country.

(2) The Bank of England may determine that the obligation in regulation 94(1) does not apply to an undertaking in respect of which it has determined it would not exercise stabilisation powers under Part 1 of the Act.

Determination of impracticality

100.—(1) An undertaking to which regulation 95 applies may determine that it is impracticable, whether legally or otherwise, to comply with the requirement in regulation 94(1) in relation to a particular contract.

(2) An undertaking may not make a determination under paragraph (1) in relation to—

(a) Additional Tier 1 instruments;

(b) Tier 2 instruments;

(c) debt instruments referred to in point (48)(ii) of Article 2(1) of the recovery and resolution directive, where those instruments are unsecured liabilities; or

(d) any other liability which is not senior to the liabilities referred to in points (a), (b) and (c) of Article 108(2) and in Article 108(3) of the recovery and resolution directive.

(3) Where a determination under paragraph (1) has been made, the undertaking must notify the Bank of England.

(4) A notification under paragraph (3) must include—

(a) the designation of the class of liability; and

(b) justification of the determination.

Suspension of the regulation 94 obligation

101.—(1) Where the Bank of England receives a notification under regulation 100(3), the obligation in regulation 94(1) is automatically suspended in relation to that particular contract from the moment of receipt.

(2) Regulations made under section 414 of the Financial Services and Markets Act 2000 (services of notices) and subsection (4) of that section apply to any notification under paragraph 102(1).

Assessment of the determination of impracticability

102.—(1) Where the Bank of England has received a notification under regulation 100(3), it may assess the effect of such notification on the resolvability of that undertaking.

(2) An assessment under paragraph (1) must take into account the need to ensure the resolvability of the undertaking.

(3) The Bank of England may request further information from the undertaking in order to carry out the assessment in paragraph (1).

(4) An undertaking must comply with a request under paragraph (3) within a reasonable period from receipt of the request.

Determination that term is not impracticable

103.—(1) Where the Bank of England concludes, following an assessment under regulation 102(1), that it is not impracticable to comply with the obligation in regulation 94(1) in relation to a particular contract—

(a) it must, within a reasonable period from the notification in regulation 100(3), require the undertaking to comply with the obligation; and

(b) it may require the undertaking to amend its practices on determinations under regulation 100(1).

(2) An undertaking must comply with any requirement imposed under paragraph (1).

Assessment of resolvability

104.—(1) Where the Bank of England determines that the condition in paragraph (3) is met, the Bank of England must immediately assess the impact of this condition on the resolvability of the undertaking.

(2) An assessment under paragraph (1) must consider the impact of a risk of breaching the creditor safeguards in Article 73 of the recovery and resolution directive when applying write-down and conversion powers to eligible liabilities.

(3) The condition referred to in paragraph (1) is that the combined total of the following liabilities comprises more than 10% of a relevant class of liabilities—

(a) liabilities in respect of which an undertaking has not included a term under regulation 97 because a determination under regulation 100(1) has been made; and

(b) liabilities which are excluded under section 48B(8) of the Act or which the Bank of England considers to be likely to be excluded under section 48B(10) of the Act from the exercise of a power to make special bail-in provision.

(4) A class of liabilities is relevant for the purposes of paragraph (3) if it contains eligible liabilities.

(5) In this regulation, "eligible liabilities" has the meaning given by section 3A(4A) of the Act.

Exercise of power to remove impediments to resolvability

105. The Bank of England must exercise its powers under section 3A of the Act where an assessment under regulation 104(1) concludes that the liabilities described in regulation 104(3)(a) create a substantive impediment to resolvability.

Exclusion of liabilities from the minimum requirement for own funds and eligible liabilities

106. A liability is not included within an undertaking's minimum requirement for own funds and eligible liabilities, as required by section 3A(4B) of the Act, if, in relation to that liability, the obligation in regulation 94(1)—

(a) has not been complied with; or

(b) is suspended under regulation 101(1).

Exercise of resolution powers where contractual term not included

107. Nothing in this Chapter restricts the Bank of England's ability to exercise a power to make special bail-in provision or mandatory reduction provision where the obligation in regulation 94(1) does not apply or is not met.

CHAPTER 5

Amendments to priority of debts in insolvency

Transitional provision

108.—(1) This Chapter has no effect in relation to insolvency proceedings which are commenced before the date on which it comes into force or which are commenced after IP completion day.

(2) For this purpose—

(a) "insolvency proceedings" means—

(i) proceedings under the Insolvency Act 1986(**2**);

(ii) proceedings under the Insolvency (Northern Ireland) Order 1989(**3**);

(iii) proceedings under the Insolvent Partnerships Order 1994(**4**);

(iv) proceedings under the Insolvent Partnerships Order (Northern Ireland) 1995(**5**);

(v) proceedings under Part 2 or 3 of the Banking Act 2009 (including proceedings under either of those Parts as applied to building societies by section 90C of the Building Societies Act 1986(**6**));

(vi) proceedings under the Investment Bank Special Administration Regulations 2011(**7**); or

(vii) proceedings under the Bankruptcy (Scotland) Act 2016(**8**);

(b) insolvency proceedings commence on—

(i) the date of presentation of a petition for a winding-up order, bank insolvency order, special administration (bank insolvency) order, building society insolvency order, bankruptcy order or award of sequestration;

(ii) the date on which an application is made for an administration order, bank administration order, investment bank special administration order, special administration (bank administration) order or building society special administration order;

(iii) the date on which notice of appointment of an administrator is given under paragraph 18 or 29 of Schedule B1 to the Insolvency Act 1986(**9**) or paragraph 19 or 30 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989(**10**);

(**2**) 1986 c.45.
(**3**) S.I. 1989/2045 (N.I.19); amended by the Insolvency (Northern Ireland) Order 2002 (S.I. 2002 No. 3152 (N.I. 6)), S.R. 2004 No. 307, the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I.10)), S.I. 2014 No. 3486, paragraph 83 of schedule 29 to the Civil Partnership Act 2004 (c.33), S.I. 2018/1244, the Corporate Insolvency and Governance Act 2020 (c.12); there are other amending instruments but none is relevant.
(**4**) S.I. 1994/2421, amended by S.I. 2002/2708, S.I. 2005/1516, S.I. 2014/3486, S.I. 2017/1119 and S.I. 2018/1244; there are other amending instruments but none is relevant.
(**5**) S.R. (N.I.) 1995 No.225.
(**6**) 1986 c.53; Section 90C was inserted by S.I. 2009/805.
(**7**) S.I. 2011/245; amended by S.I. 2017/400; there are other amending instruments but none is relevant.
(**8**) 2016 asp 21.
(**9**) Schedule B1 was inserted by the Enterprise Act 2002 (c. 40) Schedule 16. There are no amendments to either paragraph 18 or paragraph 29.
(**10**) Schedule B1 was inserted by S.I. 2005/1455 (N.I.10), Schedule 1. There are no amendments to either paragraph 19 or paragraph 30.

(iv) the date on which a proposal is made by the directors of a company for a company voluntary arrangement under Part 1 of the Insolvency Act 1986 or Part 2 of the Insolvency (Northern Ireland) Order 1989 or by an individual debtor for an individual voluntary arrangement under Part 8 of the Insolvency Act 1986 or Part 8 of the Insolvency (Northern Ireland) Order 1989;

(v) the date on which a resolution for voluntary winding-up is passed.

Amendment of the Insolvency Act 1986

Introduction

109. The Insolvency Act 1986 is modified in accordance with regulations 110 to 114.

Non-preferential debts in company voluntary arrangements

110. Section 4 (decisions of the company and its creditors)(**11**) applies as if in subsection (4)(d) for "or (3)" there were substituted ", (3) or (3A)".

Non-preferential debts in winding up of companies

111. Section 176AZA (non-preferential debts of financial institutions)(**12**) applies as if after subsection (3) there were inserted—

"(3A) The company's tertiary non-preferential debts shall be paid in priority to its quaternary non-preferential debts.".

Non-preferential debts in bankruptcy proceedings

112. Section 328 (priority of debts)(**13**) applies as if in subsection (3A)—

(a) in paragraph (c), the "and" were omitted;

(b) after paragraph (d), there were inserted—

"and

(e) the bankrupt's tertiary non-preferential debts shall be paid in priority to the bankrupt's quaternary non-preferential debts.".

Interpretation

113. Section 387A (financial institutions and their non-preferential debts)(**14**) applies as if in subsection (3)—

(a) in paragraph (a), for "neither secondary non-preferential debts nor tertiary non-preferential debts" there were substituted "not secondary non-preferential debts, tertiary non-preferential debts or quaternary non-preferential debts";

(b) in paragraph (b), the final "and" were omitted;

(c) for paragraph (c) there were substituted—

(**11**) Section 4 was amended by the Insolvency Act 2000 (c.39), Schedule 2, paragraphs 1 and 4, the Deregulation Act 2015 (c. 20) Schedule 6(6) paragraph 20(2)(c), the Small Business, Enterprise and Employment Act 2015 (c. 26) Schedule 9(1) paragraph 4, S.I. 2014/3486 and S.I. 2018/1244.

(**12**) Section 176AZA was inserted by S.I. 2018/1244.

(**13**) Section 328 was amended by S.I. 2014/3486 and S.I. 2018/1244.

(**14**) Section 387A was inserted by S.I. 2018/1244.

"(c) "tertiary non-preferential debts" means subordinated debts that are not quaternary non-preferential debts, and

(d) "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).".

Administration

114. Schedule B1 (administration)(**15**) applies as if in paragraph 73(1)(e) (protection for priority creditor) for "or (3)" there were substituted ", (3) or (3A)".

Amendment of the Insolvency (Northern Ireland) Order 1989

Introduction

115. The Insolvency (Northern Ireland) Order 1989 is modified in accordance with regulations 116 to 120.

Non-preferential debts in company voluntary arrangements

116. Article 17 (decisions of meetings)(**16**) applies as if in paragraph (4)(d) for "or (3)" there were substituted ", (3) or (3A)".

Non-preferential debts in winding up of companies

117. Article 150ZZA (non-preferential debts of financial institutions)(**17**) applies as if after paragraph (3) there were inserted—

"(3A) The company's tertiary non-preferential debts are to be paid in priority to its quaternary non-preferential debts.".

Non-preferential debts in bankruptcy proceedings

118. Article 300 (priority of debts)(**18**) applies as if in paragraph (3A)—

(a) in sub-paragraph (c), "and" were omitted;

(b) after sub-paragraph (d) there were inserted—

"and

(e) the bankrupt's tertiary non-preferential debts are to be paid in priority to the bankrupt's quaternary non-preferential debts.".

Interpretation

119. Article 347A (financial institutions and their non-preferential debts)(**19**) applies as if in paragraph (3)—

(**15**) Schedule B1 was inserted by the Enterprise Act 2002 (c. 40) Schedule 16 paragraph 1; paragraph 73 was amended by S.I. 2014/3486 and S.I. 2018/1244; there are other amending instruments but none is relevant.
(**16**) Article 17(4)(d) was inserted by S.I. 2018/1244 Pt 5 art. 23(c).
(**17**) Article 150ZZA was inserted by S.I. 2018/1244 Pt 5 art. 24.
(**18**) Article 300(3A) was inserted by S.I. 2018/1244 Pt 5 art. 26.
(**19**) Article 347A was inserted by S.I. 2018/1244 Pt 5 art.29.

(a) in paragraph (a), for "neither secondary non-preferential debts nor tertiary non-preferential debts" there were substituted "not secondary non-preferential debts, tertiary non-preferential debts or quaternary non-preferential debts";

(b) in sub-paragraph (b)(iii), the final "and" were omitted;

(c) for sub-paragraph (c) there were substituted—

"(c) "tertiary non-preferential debts" means subordinated debts that are not quaternary non-preferential debts, and

(d) "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).".

Administration

120. Schedule B1 (administration)(**20**) applies as if in paragraph 74(1)(e) (protection for priority creditor) for "or (3)" there were substituted ", (3) or (3A)".

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)(**21**) 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)(**22**) 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)(**23**) 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

(**20**) Schedule B1 was inserted by S.I. 2005/1455 (N.I.10), Schedule 1, paragraph 1. Paragraph 74(1)(e) was inserted by S.I. 2018/1244, Pt 5 art.31(3)(c).

(**21**) 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.

(**22**) 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.

(**23**) 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.

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 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)(**24**) 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)—

(**24**) 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)(**25**) 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)(**26**) 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)(**27**) 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

(**25**) Schedule 1 was substituted by S.R. 2003 No.550 and amended by S.I. 2014/3486 and S.I. 2018/1244.
(**26**) 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.
(**27**) 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)(**28**) 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;";

(**28**) Schedule 7 was amended by S.I. 2014/3486 and S.I. 2018/1244.

(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)(**29**) 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(**30**) applies as if it were modified as follows—

(a) in section 152 (proposals)(**31**), 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)(**32**), after ““tertiary non-preferential debt”” there were inserted “, “quaternary non-preferential debt””;

(c) in section 276 (index of defined terms)(**33**), in the table, there were inserted the following entry at the appropriate place—

“Quaternary non-preferential debt	Section 275”.

(**29**) 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.

(**30**) 2008 c. 17.

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

(**32**) 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.

(**33**) 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)(**34**) 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)(**35**) 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)(**36**) 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).".

(**34**) 2010 asp 17; section 80 was amended by S.I. 2013/496, S.I. 2014/3486 and S.I. 2018/1244.
(**35**) Section 129 was amended by S.S.I. 2017/210, S.I. 2018/1244 and S.S.I. 2019/94.
(**36**) Section 129A was inserted by S.I. 2018/1244.