Draft Order laid before Parliament under paragraph 2(2) of Schedule 2 to the European Communities Act 1972 and section 90B(6) of the Building Societies Act 1986, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

BANKS AND BANKING
BUILDING SOCIETIES

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

Made - - - -	***
Coming into force - -	*1st January 2015*

The Treasury are designated(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**), in relation to financial services.

The Treasury, in exercise of the powers conferred by section 2(2) of the European Communities Act 1972, and section 90B(1) and (5) of the Building Societies Act 1986(**3**), make the following Order.

A draft of this Order has been laid before Parliament and approved by a resolution of each House of Parliament in accordance with paragraph 2(2) of Schedule 2 to the European Communities Act 1972, and section 90B(6) of the Building Societies Act 1986.

PART 1

Introductory Provisions

Citation and commencement

1.—(1) This Order may be cited as the Banks and Building Societies (Depositor Preference and Priorities) Order 2014.

(2) This Order comes into force on 1st January 2015.

(**1**) S.I. 2012/1759.
(**2**) 1972 c.68. Section 2(2) was amended by section 27 of the Legislative and Regulatory Reform Act 2006 (c.51) and by section 3 of, and the Schedule to, the European Union (Amendment) Act 2008 (c.7).
(**3**) 1986 c.53. Section 90B was inserted by section 2 of the Building Societies (Funding) and Mutual Societies (Transfers) Act 2007 (c. 26).

Extent

2. The amendments made by this Order have the same extent as the enactments amended.

Transitional provision

3.—(1) This Order has no effect in relation to any insolvency proceedings commenced before the date on which this Order comes into force.

(2) For this purpose—

(a) "insolvency proceedings" means——

(i) proceedings under the Bankruptcy (Scotland) Act 1985(**4**);

(ii) proceedings under the Insolvency Act 1986(**5**);

(iii) proceedings under the Insolvency (Northern Ireland) Order 1989(**6**);

(iv) proceedings under the Insolvent Partnerships Order 1994(**7**);

(v) proceedings under the Insolvent Partnerships Order (Northern Ireland) 1995(**8**); or

(vi) proceedings under Part 2 or 3 of the Banking Act 2009(**9**) (including proceedings under either of those Parts as applied to building societies by section 90C of the Building Societies Act 1986(**10**));

(b) insolvency proceedings commence on—

(i) the date of presentation of a petition for a winding-up order, 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 or building society 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(**11**) or paragraph 19 or 30 of Schedule B1 to the Insolvency (Northern Ireland) Order 1989(**12**);

(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.

(**4**) 1985 c.66 (S.).
(**5**) 1986 c.45.
(**6**) S.I. 1989/2405 (N.I.19).
(**7**) S.I. 1994/2421.
(**8**) S.R. (N.I.) 1995/225.
(**9**) 2009 c.1.
(**10**) 1986 c.53. Section 90C was inserted by S.I. 2009/805.
(**11**) Schedule B1 was inserted by the Enterprise Act 2002 (c.40), Schedule 16.
(**12**) Schedule B1 was inserted by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10), Schedule 1.

PART 2

Amendments of Insolvency Act 1986

Decisions of meetings

4.—(1) Section 4 of the Insolvency Act 1986 (decisions of meetings)(**13**) 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.

(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)(**14**) is amended as follows.

(**13**) Section 4 was amended by the Insolvency Act 2000 (c.39), Schedule 2, paragraphs 1 and 4.
(**14**) Section 258 was amended by the Insolvency Act 2000 (c.39), Schedule 3, paras 1 and 9.

(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.".

Categories of preferential debts

8.—(1) Section 386(**15**) 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.

(**15**) 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.

(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(**16**) 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(**17**) 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,".

(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(**18**) to the Insolvency Act 1986 (preferential debts) is amended as follows.

(**16**) Schedule A1 to the Insolvency Act 1986 was inserted by the Insolvency Act 2000 (c.39), Schedule 1, paragraphs 1 and 4.
(**17**) Schedule B1 to the Insolvency Act 1986 was inserted by the Enterprise Act 2002 (c.40), Schedule 16.
(**18**) 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