

## Clause 1: HMRC debts: priority on insolvency

### Summary

1. This clause amends the Insolvency Act 1986 and the Bankruptcy (Scotland) Act 2016 giving HM Revenue and Customs (HMRC) priority in the recovery of Value Added Tax (VAT) and certain other debts owed to HMRC in insolvency proceedings by making HMRC a secondary preferential creditor. The changes come into effect on 6 April 2020.

### Details of the clause

2. Subsection (1) amends section 386 of the Insolvency Act 1986 to include certain HMRC debts as a new category of secondary preferential debt.
3. Subsection (2) defines which HMRC debts have secondary preferential debt status. These are VAT and other amounts owed to HMRC that qualify as a relevant deduction being a deduction of a kind specified in regulations made by HMRC.
4. Subsection (3) amends section 129(2) of Bankruptcy (Scotland) Act 2016 to include certain HMRC debts as a new category of secondary preferential debt.
5. Subsection (4) defines which HMRC debts have secondary preferential debt status in Scotland. These are VAT and other amounts owed to HMRC that qualify as a relevant deduction being a deduction of a kind specified in regulations made by HMRC.
6. Subsection (5) sets out the commencement date of 6 April 2020.
7. Subsection (6) ensures that HMRC do not obtain preferential status for any debt in insolvency proceedings with a relevant date before 6 April 2020. Section 387 of the Insolvency Act defines "the relevant date" referred to in this subsection.

### Background note

8. When a business enters a formal insolvency process, the order of distribution of assets to creditors is set by law.
9. Preferential debts are paid after fixed charges and the expenses of the insolvency but before the holders of floating charges and all other unsecured creditors. The current categories of preferential debt in England and Wales is defined by Section 386 and Schedule 6 of the Insolvency Act 1986.
10. In Scotland, the current categories of preferential creditors is defined by section 129 and Schedule 3 of the Bankruptcy (Scotland) Act 2016.
11. HMRC is currently an unsecured creditor for all of its debts.
12. From 6 April 2020, the government will change this by moving HMRC up the creditor

hierarchy for certain debts owed to it, so that when a business enters insolvency, more of the taxes paid in good faith by that business' employees and customers will fund public services, rather than these being distributed to other creditors such as financial institutions.

13. This clause achieves this by amending insolvency legislation to make HMRC a secondary preferential creditor certain debts due to HMRC. The debts included are VAT and through the making of regulations by HMRC, other taxes or amounts due to HMRC paid by employees or customers through a deduction by the business for example from wages or prices charged such as PAYE (including student loan repayments), Employee NICs and Construction Industry Scheme deductions.
14. HMRC will remain an unsecured creditor for taxes levied directly on businesses, such as Corporation Tax and Employer NICs.
15. If you have any questions about this change, or comments on the legislation, please contact Ademola Adetosoye on 03000 586040 (email: [ademola.adetosoye@hmrc.gov.uk](mailto:ademola.adetosoye@hmrc.gov.uk)).