STATUTORY INSTRUMENTS

2017 No. 1205

INSOLVENCY

The Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017

Made - - - -	*4th December 2017*
Laid before Parliament	*5th December 2017*
Coming into force - -	26th December 2017

The Secretary of State is designated(**a**) for the purposes of section 2(2) of the European Communities Act 1972(**b**) in relation to the protection of employees in the event of the insolvency of their employer.

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972.

Citation and commencement

1. These Regulations may be cited as the Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 and come into force on 26th December 2017.

Amendments to the Employment Rights Act 1996

2.—(1) The Employment Rights Act 1996(**c**) is amended as follows.

(2) In section 166 (applications for payments)(**d**)—

(a) in subsection (5)—

(i) in paragraph (a) after "(6)" insert "or (8A)";

(ii) in paragraph (b) after "(7)" insert "or (8A)" and at the end of that paragraph omit "and";

(iii) in paragraph (c) after "(8)" insert "or (8A)"; and

(iv) at the end of paragraph (c) insert—

"; and

(d) where the employer is not any of the above, if (but only if) subsection (8A) is satisfied.";

(b) after subsection (8) insert—

(**a**) S.I. 2005/1971 article 2.
(**b**) 1972 c.68. Section 2(2) was amended by the Legislative and Regulatory Reform Act 2006 (c.51) section 27 and by the European Union (Amendment) Act 2008 (c.7) section 3 and the Schedule.
(**c**) 1996 c.18.
(**d**) Section 166 was amended by S.I. 2001/1090; there are other amending instruments but none is relevant.

"(8A) This subsection is satisfied in the case of an employer if—

(a) a request has been made for the first opening of collective proceedings—

(i) based on the insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a member State, and

(ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and

(b) the competent authority has—

(i) decided to open the proceedings, or

(ii) established that the employer's undertaking or business has been definitively closed down and the available assets of the employer are insufficient to warrant the opening of the proceedings.

(8B) For the purposes of subsection (8A)—

(a) "liquidator or person performing a similar task" includes the official receiver or an administrator, trustee in bankruptcy, judicial factor, supervisor of a voluntary arrangement, or person performing a similar task,

(b) "competent authority" includes—

(i) a court,

(ii) a meeting of creditors,

(iii) a creditors' committee,

(iv) the creditors by a decision procedure, and

(v) an authority of a member State empowered to open insolvency proceedings, to confirm the opening of such proceedings or to take decisions in the course of such proceedings.

(8C) An employee may apply under this section only if he or she worked or habitually worked in Great Britain in that employment to which the application relates.".

(3) In section 183 (insolvency)(**a**)—

(a) in subsection (1)—

(i) in paragraph (a) after "(2)" insert "or (4A)";

(ii) in paragraph (b) after "(3)" insert "or (4A)" and at the end of that paragraph omit "and";

(iii) in paragraph (c) after "(4)" insert "or (4A)";

(iv) at the end of paragraph (c) insert—

"; and

(d) where the employer is not any of the above, if (but only if) subsection (4A) is satisfied.";

(b) after subsection (4) insert—

"(4A) This subsection is satisfied in the case of an employer if—

(a) a request has been made for the first opening of collective proceedings—

(i) based on the insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a member State, and

(ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and

(b) the competent authority has—

(i) decided to open the proceedings, or

(**a**) Section 183 was amended by S.I. 2001/1090; there are other amending instruments but none is relevant.

(ii) established that the employer's undertaking or business has been definitively closed down and the available assets of the employer are insufficient to warrant the opening of the proceedings.

(4B) For the purposes of subsection (4A)—

(a) "liquidator or person performing a similar task" includes the official receiver or an administrator, trustee in bankruptcy, judicial factor, supervisor of a voluntary arrangement, or person performing a similar task,

(b) "competent authority" includes—

(i) a court,

(ii) a meeting of creditors,

(iii) a creditors' committee,

(iv) the creditors by a decision procedure, and

(v) an authority of a member State empowered to open insolvency proceedings, to confirm the opening of such proceedings or to take decisions in the course of such proceedings.

(4C) An employee may apply under section 182 (employee's rights on insolvency of employer) only if he or she worked or habitually worked in England, Wales or Scotland in that employment to which the application relates.".

Amendments to the Pension Schemes Act 1993

3.—(1) The Pension Schemes Act 1993(**a**) is amended as follows—

(2) In section 123(interpretation of chapter 2)(**b**)—

(a) in subsection (1)—

(i) in paragraph (b) after "Insolvency Act 1986;" omit "or"; and

(ii) at the end of paragraph (c) insert—

"or

(d) where subsection (2A) is satisfied.";

(b) after subsection (2) insert—

"(2A) This subsection is satisfied if—

(a) a request has been made for the first opening of collective proceedings—

(i) based on the insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a member State; and

(ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task; and

(b) the competent authority has—

(i) decided to open the proceedings; or

(ii) established that the employer's undertaking or business has been definitively closed down and the available assets of the employer are insufficient to warrant the opening of the proceedings.

(2B) For the purposes of subsection (2A)—

(a) "liquidator or person performing a similar task" includes the official receiver or an administrator, trustee in bankruptcy, judicial factor, supervisor of a voluntary arrangement, or person performing a similar task,

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(**a**) 1993 c.48.

(**b**) Section 123 was amended by 2016/481, Pensions Act 2004 (c.35) and Pensions Act 2014 (c.19); there are other amending instruments but none is relevant.

(b) "competent authority" includes—

(i) a court,

(ii) a meeting of creditors,

(iii) a creditors' committee,

(iv) the creditors by a decision procedure, and

(v) an authority of a member State empowered to open insolvency proceedings, to confirm the opening of such proceedings or to take decisions in the course of such proceedings.

(2C) An application under section 124 may only be made in respect of a worker who worked or habitually worked in Great Britain in that employment to which the application relates.".

Margot James
Parliamentary Under Secretary of State for Employment Relations and Consumer Affairs
4th December 2017 Department for Business, Energy and Industrial Strategy

EXPLANATORY NOTE

(This note is not part of these Regulations)

These Regulations amend the transposition of Directive 2008/94 EC of the European Parliament and the Council on the protection of employees in the event of the insolvency of their employer ("the Directive")(**a**).

The Directive provides for payment to employees of certain sums due to them arising from contracts of employment where collective insolvency proceedings have been opened in respect of an employer based in a member State.

Sections 166 and 182 of the Employment Rights Act 1996 ("ERA 1996") and the Pension Schemes Act 1993 ("the PSA 1993") (together "the Acts") provide for payment to employees of certain sums owed to employees and unpaid pensions contributions in circumstances where their employer becomes insolvent. Sections 166 and 183 of ERA 1996 and sections 123 and 124 of the PSA 1993 make provision as to when an employer becomes insolvent for those purposes. Regulations 2 and 3 extend the circumstances in which an employer becomes insolvent to bring the provisions of the Acts in line with the Directive.

An impact assessment has not been prepared in respect of these Regulations as minimal or no impact on the private or voluntary sector is foreseen.

An Explanatory Memorandum has been prepared and is available alongside these Regulations at www.legislation.gov.uk.

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(**a**) OJ No L283, 28.10.2008, p. 36.

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