



# Insolvency Act 1994

## 1994 CHAPTER 7

An Act to amend the Insolvency Act 1986 in relation to contracts of employment adopted by administrators, administrative receivers and certain other receivers; and to make corresponding provision for Northern Ireland. [24th March 1994]

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### **1 Administrators: priority of liabilities under adopted contracts of employment**

- (1) Section 19 of the Insolvency Act 1986 (vacation of office) shall be amended as provided by subsections (2) to (6) below.
- (2) In subsection (3) (which provides for the next two subsections to apply where a person ceases to be administrator) for “next two” there shall be substituted “following”.
- (3) In subsection (5) (which provides for certain debts and liabilities incurred during administration, including those incurred under contracts of employment adopted by the administrator, to be charged on the company's property in priority to his remuneration and expenses) the words “or contracts of employment adopted” shall be omitted.
- (4) After the first paragraph of that subsection there shall be inserted—
  - “(6) Any sums payable in respect of liabilities incurred, while he was administrator, under contracts of employment adopted by him or a predecessor of his in the carrying out of his or the predecessor's functions shall, to the extent that the liabilities are qualifying liabilities, be charged on and paid out of any such property as is mentioned in subsection (4) and enjoy the same priority as any sums to which subsection (5) applies.”
- (5) The second paragraph of that subsection (which provides that an administrator is not to be taken to have adopted a contract of employment by reason of any acts or

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omissions within 14 days after his appointment) shall become the second paragraph of the subsection inserted by subsection (4) above.

(6) At the end of the section there shall be inserted—

“(7) For the purposes of subsection (6), a liability under a contract of employment is a qualifying liability if—

- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme, and
- (b) it is in respect of services rendered wholly or partly after the adoption of the contract.

(8) There shall be disregarded for the purposes of subsection (6) so much of any qualifying liability as represents payment in respect of services rendered before the adoption of the contract.

(9) For the purposes of subsections (7) and (8)—

- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and
- (b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(10) In subsection (9)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.”

(7) This section shall have effect in relation to contracts of employment adopted on or after 15th March 1994.

## **2 Administrative receivers: extent of personal liability on adopted contracts of employment**

(1) Section 44 of the Insolvency Act 1986 (personal liability of administrative receiver for certain contracts) shall be amended as provided by subsections (2) and (3) below.

(2) In subsection (1)(b) (liability for contracts of employment adopted in carrying out his functions) after “provides) and” there shall be inserted “, to the extent of any qualifying liability,”.

(3) After subsection (2) there shall be inserted—

“(2A) For the purposes of subsection (1)(b), a liability under a contract of employment is a qualifying liability if—

- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,
- (b) it is incurred while the administrative receiver is in office, and
- (c) it is in respect of services rendered wholly or partly after the adoption of the contract.

(2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of subsection (1)(b) is payable in respect of services rendered

partly before and partly after the adoption of the contract, liability under subsection (1)(b) shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.

(2C) For the purposes of subsections (2A) and (2B)—

- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and
- (b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(2D) In subsection (2C)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.”

(4) This section shall have effect in relation to contracts of employment adopted on or after 15th March 1994.

### **3 Receivers (Scotland): extent of personal liability on, and agency in relation to, adopted contracts of employment**

(1) Section 57 of the Insolvency Act 1986 (agency and personal liability of receiver for certain contracts) shall be amended as provided by subsections (2) to (4) below.

(2) After subsection (1) there shall be inserted—

“(1A) Without prejudice to subsection (1), a receiver is deemed to be the agent of the company in relation to any contract of employment adopted by him in the carrying out of his functions.”

(3) In subsection (2) (liability for certain contracts entered into or adopted in carrying out receiver’s functions), after “provides, and” there shall be inserted “, to the extent of any qualifying liability,”.

(4) After subsection (2) there shall be inserted—

“(2A) For the purposes of subsection (2), a liability under a contract of employment is a qualifying liability if—

- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,
- (b) it is incurred while the receiver is in office, and
- (c) it is in respect of services rendered wholly or partly after the adoption of the contract.

(2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of subsection (2) is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under that subsection shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.

(2C) For the purposes of subsections (2A) and (2B)—

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- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and
- (b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

(2D) In subsection (2C)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the enactments relating to social security as earnings in respect of that period.”

- (5) This section shall have effect in relation to contracts of employment adopted on or after 15th March 1994.

#### **4 Corresponding provision for Northern Ireland**

Schedule 1 to this Act (which makes provision for Northern Ireland corresponding to that made by sections 1 and 2 above) shall have effect.

#### **5 Short title, repeals and extent**

- (1) This Act may be cited as the Insolvency Act 1994.
- (2) The enactments mentioned in Schedule 2 to this Act are hereby repealed to the extent specified in the third column of that Schedule.
- (3) The extent of any amendment or repeal of an enactment made by this Act is the same as that of the enactment amended or repealed.

## SCHEDULES

### SCHEDULE 1

Section 4.

#### CORRESPONDING PROVISION FOR NORTHERN IRELAND

- 1 (1) Article 31 of the Insolvency (Northern Ireland) Order 1989 (vacation of office) shall be amended as follows.
- (2) In paragraph (3) (which provides for paragraphs (4) and (5) to apply where a person ceases to be administrator) for “paragraphs (4) and (5)” there shall be substituted “the following paragraphs”.
- (3) In paragraph (5) (which provides for certain debts and liabilities incurred during administration, including those incurred under contracts of employment adopted by the administrator, to be charged on the company’s property in priority to his remuneration and expenses) the words “or contracts of employment adopted” and the words from “and for the purpose” to the end shall be omitted.
- (4) At the end there shall be inserted—
- “(6) Any sums payable in respect of liabilities incurred, while he was administrator, under contracts of employment adopted by him or a predecessor of his in the carrying out of his or the predecessor’s functions shall, to the extent that the liabilities are qualifying liabilities, be charged on and paid out of any such property as is mentioned in paragraph (4) and enjoy the same priority as any sums to which paragraph (5) applies; and for the purpose of this paragraph the administrator is not to be taken to have adopted a contract of employment by reason of anything done or omitted to be done within 14 days from his appointment.
- (7) For the purposes of paragraph (6), a liability under a contract of employment is a qualifying liability if—
- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme, and
- (b) it is in respect of services rendered wholly or partly after the adoption of the contract.
- (8) There shall be disregarded for the purposes of paragraph (6) so much of any qualifying liability as represents payment in respect of services rendered before the adoption of the contract.
- (9) For the purposes of paragraphs (7) and (8)—
- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and
- (b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.

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- (10) In paragraph (9)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the statutory provisions relating to social security as earnings in respect of that period.”
- 2 (1) Article 54 of the Insolvency (Northern Ireland) Order 1989 (personal liability of administrative receiver for certain contracts) shall be amended as follows.
- (2) In paragraph (1)(b) (liability for contracts of employment adopted in carrying out his functions) after “provides) and” there shall be inserted “, to the extent of any qualifying liability,”.
- (3) After paragraph (2) there shall be inserted—
- “(2A) For the purposes of paragraph (1)(b), a liability under a contract of employment is a qualifying liability if—
- (a) it is a liability to pay a sum by way of wages or salary or contribution to an occupational pension scheme,
  - (b) it is incurred while the administrative receiver is in office, and
  - (c) it is in respect of services rendered wholly or partly after the adoption of the contract.
- (2B) Where a sum payable in respect of a liability which is a qualifying liability for the purposes of paragraph (1)(b) is payable in respect of services rendered partly before and partly after the adoption of the contract, liability under paragraph (1)(b) shall only extend to so much of the sum as is payable in respect of services rendered after the adoption of the contract.
- (2C) For the purposes of paragraphs (2A) and (2B)—
- (a) wages or salary payable in respect of a period of holiday or absence from work through sickness or other good cause are deemed to be wages or (as the case may be) salary in respect of services rendered in that period, and
  - (b) a sum payable in lieu of holiday is deemed to be wages or (as the case may be) salary in respect of services rendered in the period by reference to which the holiday entitlement arose.
- (2D) In paragraph (2C)(a), the reference to wages or salary payable in respect of a period of holiday includes any sums which, if they had been paid, would have been treated for the purposes of the statutory provisions relating to social security as earnings in respect of that period.”
- 3 The preceding provisions shall have effect in relation to contracts of employment adopted on or after 15th March 1994.

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SCHEDULE 2

Section 5.

REPEALS

<i>Chapter</i>	<i>Short title</i>	<i>Extent of repeal</i>
1986 c. 45.	The Insolvency Act 1986.	In section 19(5), the words “or contracts of employment adopted”.
S.I. 1989/2405 (N.I. 19).	The Insolvency (Northern Ireland) Order 1989.	In Article 31(5), the words “or contracts of employment adopted” and the words from “and for the purpose” to the end.