



Employment Act 1989

1989 CHAPTER 38

Insolvency

18 Quantification of amounts for purposes of insolvency payments.

(1) Sections 122 and 123 of the 1978 Act (payments by Secretary of State on insolvency of employer) shall be amended as follows.

(2) In section 122 (payment to employee of certain unpaid debts of employer), the following subsection shall be substituted for subsection (11)—

“(11) If the Secretary of State is satisfied that he does not require such a statement in order to determine the amount of the debt that was owed to the employee on the relevant date and remains unpaid, he may make a payment under this section in respect of the debt without having received such a statement.”

(3) In section 123 (payment of unpaid contributions to occupational or personal pension scheme), the following subsection shall be substituted for subsection (9)—

“(9) If the Secretary of State is satisfied—

- (a) that he does not require a statement under subsection (7) in order to determine the amount of relevant contributions that was unpaid on the date on which the employer became insolvent and remains unpaid, or
- (b) that he does not require a certificate under subsection (8) in order to determine the amounts payable, paid or deducted as mentioned in subsections (3)(a) and (c) and (5),

he may make a payment under this section in respect of the contributions in question without having received such a statement or (as the case may be) such a certificate.”

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Employment Act 1989, Cross Heading: Insolvency. (See end of Document for details)

19 Recovery of insolvency payments made in respect of preferential or preferred debts.

(1) In section 125 of the 1978 Act (transfer of rights and remedies relating to debt in respect of which payment made by Secretary of State on insolvency of employer), the following subsections shall be substituted for subsection (2)—

“(2) Where a debt or any part of a debt in respect of which the Secretary of State has made a payment in pursuance of section 122 constitutes —

- (a) a preferential debt within the meaning of the Insolvency Act 1986 for the purposes of any provision of that Act (including any such provision as applied by any order made under that Act) or any provision of the Companies Act 1985; or
- (b) a preferred debt within the meaning of the Bankruptcy (Scotland) Act 1985 for the purposes of any provision of that Act (including any such provision as applied by section 11A of the Judicial Factors (Scotland) Act 1889),

then, without prejudice to the generality of subsection (1) above, there shall be included among the rights and remedies which become rights and remedies of the Secretary of State in accordance with that subsection any right arising under any such provision by reason of the status of the debt or that part of it as a preferential or preferred debt.

(2A) In computing for the purposes of any provision mentioned in subsection (2) (a) or (b) above the aggregate amount payable in priority to other creditors of the employer in respect of—

- (a) any claim of the Secretary of State to be so paid by virtue of subsection (2) above; and
- (b) any claim by the employee to be so paid made in his own right,

any claim falling within paragraph (a) above shall be treated as if it were a claim of the employee; but the Secretary of State shall be entitled, as against the employee, to be so paid in respect of any such claim of his (up to the full amount of the claim) before any payment is made to the employee in respect of any claim falling within paragraph (b) above.”

(2) The following subsections shall be inserted after subsection (3) of that section—

“(3A) Where the Secretary of State makes any such payment as is mentioned in subsection (3) above and the sum (or any part of the sum) falling to be paid by the employer on account of the contributions in respect of which the payment is made constitutes—

- (a) a preferential debt within the meaning of the Insolvency Act 1986 for the purposes of any provision mentioned in subsection (2)(a) above; or
- (b) a preferred debt within the meaning of the Bankruptcy (Scotland) Act 1985 for the purposes of any provision mentioned in subsection (2) (b) above,

then, without prejudice to the generality of subsection (3) above, there shall be included among the rights and remedies which become rights and remedies of the Secretary of State in accordance with that subsection any right arising under any such provision by reason of the status of that sum (or that part of it) as a preferential or preferred debt.

Status: Point in time view as at 01/02/1991.

Changes to legislation: There are currently no known outstanding effects for the Employment Act 1989, Cross Heading: Insolvency. (See end of Document for details)

- (3B) In computing for the purposes of any provision referred to in subsection (3A) (a) or (b) above the aggregate amount payable in priority to other creditors of the employer in respect of—
- (a) any claim of the Secretary of State to be so paid by virtue of subsection (3A) above; and
 - (b) any claim by the persons competent to act in respect of the scheme, any claim falling within paragraph (a) above shall be treated as if it were a claim of those persons; but the Secretary of State shall be entitled, as against those persons, to be so paid in respect of any such claim of his (up to the full amount of the claim) before any payment is made to them in respect of any claim falling within paragraph (b) above.”

Status:

Point in time view as at 01/02/1991.

Changes to legislation:

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