



Pension Schemes Act 1993

1993 CHAPTER 48

PART VII

INSOLVENCY OF EMPLOYERS

CHAPTER II

PAYMENT BY SECRETARY OF STATE OF UNPAID SCHEME CONTRIBUTIONS

123 Interpretation of Chapter II.

- (1) For the purposes of this Chapter, an employer shall be taken to be insolvent if, but only if, in England and Wales—
- (a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors;
 - (b) he has died and his estate falls to be administered in accordance with an order under section 421 of the ^{M1}Insolvency Act 1986; or
 - (c) where the employer is a company—
 - (i) a winding-up order ^{F1}... is made or a resolution for voluntary winding up is passed with respect to it [^{F2}or the company enters administration],
 - (ii) a receiver or manager of its undertaking is duly appointed,
 - (iii) possession is taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or
 - (iv) a voluntary arrangement proposed for the purpose of Part I of the ^{M1}Insolvency Act 1986 is approved under that Part.
- (2) For the purposes of this Chapter, an employer shall be taken to be insolvent if, but only if, in Scotland—
- (a) sequestration of his estate is awarded or he executes a trust deed for his creditors or enters into a composition contract;

Status: Point in time view as at 15/09/2003. This version of this provision has been superseded.

Changes to legislation: Pension Schemes Act 1993, Section 123 is up to date with all changes known to be in force on or before 06 July 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

- (b) he has died and a judicial factor appointed under section 11A of the ^{M2}Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent estate among his creditors; or
- (c) where the employer is a company—
- (i) a winding-up order ^{F3}... is made or a resolution for voluntary winding up is passed with respect to it [^{F4}or the company enters administration],
 - (ii) a receiver of its undertaking is duly appointed, or
 - (iii) a voluntary arrangement proposed for the purpose of Part I of the ^{M1}Insolvency Act 1986 is approved under that Part.
- (3) In this Chapter—
- “contract of employment”, “employee”, “employer” and “employment” and other expressions which are defined in [^{F5}the Employment Rights Act 1996] have the same meaning as in that Act;
- “holiday pay” means—
- (a) pay in respect of holiday actually taken; or
 - (b) any accrued holiday pay which under the employee’s contract of employment would in the ordinary course have become payable to him in respect of the period of a holiday if his employment with the employer had continued until he became entitled to a holiday;
- “occupational pension scheme” means any scheme or arrangement which provides or is capable of providing, in relation to employees in any description of employment, benefits, in the form of pensions or otherwise, payable to or in respect of any such employees on the termination of their employment or on their death or retirement.
- (4) For the purposes of this Chapter, the definition of “personal pension scheme” in section 1 has effect with the substitution for the words “employed earners” of the word “employees”.
- (5) Any reference in this Chapter to the resources of a scheme is a reference to the funds out of which the benefits provided by the scheme are from time to time payable.

Textual Amendments

- F1** Words in s. 123(1)(c)(i) omitted (15.9.2003) by virtue of [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 22(a)(i)** (with art. 6)
- F2** Words in s. 123(1)(c)(i) added (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 22(a)(ii)** (with art. 6)
- F3** Words in s. 123(2)(c)(i) omitted (15.9.2003) by virtue of [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 22(b)(i)** (with art. 6)
- F4** Words in s. 123(2)(c)(i) added (15.9.2003) by [The Enterprise Act 2002 \(Insolvency\) Order 2003 \(S.I. 2003/2096\)](#), art. 1(1), **Sch. para. 22(b)(ii)** (with art. 6)
- F5** Words in s. 123(3) substituted (22.8.1996) by [Employment Rights Act 1996 \(c. 18\)](#), s. 243, **Sch. 1 para. 61(2)** (with ss. 191-201)

Modifications etc. (not altering text)

- C1** [S. 123](#) applied (6.4.1997) by [Pensions Act 1995 \(c. 26\)](#), **ss. 81(8)**, 180(1) (with s. 121(5)); [S.I. 1997/664](#), art. 2(3), Sch. Pt. 2

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Commencement Information

I1 Ss. 1-187 in force at 7.2.1994 by [S.I. 1994/86, art. 2](#)

Marginal Citations

M1 [1986 c. 45.](#)

M2 [1889 c. 39.](#)

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