



# Employment Rights Act 1996

## 1996 CHAPTER 18

### PART XII

#### INSOLVENCY OF EMPLOYERS

##### Modifications etc. (not altering text)

- C1** Pt. 12 modified (6.4.2006 with application in accordance with reg. 21(1) of the amending S.I.) by [The Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 1(2), 8

#### **182 Employee's rights on insolvency of employer.**

If, on an application made to him in writing by an employee, the Secretary of State is satisfied that—

- (a) the employee's employer has become insolvent,
- (b) the employee's employment has been terminated, and
- (c) on the appropriate date the employee was entitled to be paid the whole or part of any debt to which this Part applies,

the Secretary of State shall, subject to section 186, pay the employee out of the National Insurance Fund the amount to which, in the opinion of the Secretary of State, the employee is entitled in respect of the debt.

#### **183 Insolvency.**

- (1) An employer has become insolvent for the purposes of this Part—
  - (a) where the employer is an individual, if (but only if) subsection (2) is satisfied, and
  - (b) where the employer is a company, if (but only if) subsection (3) is satisfied.
- (2) This subsection is satisfied in the case of an employer who is an individual—
  - (a) in England and Wales if—

*Status: Point in time view as at 01/04/2001.*

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- (i) he has been adjudged bankrupt or has made a composition or arrangement with his creditors, or
- (ii) he has died and his estate falls to be administered in accordance with an order under section 421 of the <sup>M1</sup>Insolvency Act 1986, and
- (b) in Scotland if—
  - (i) sequestration of his estate has been awarded or he has executed a trust deed for his creditors or has entered into a composition contract, or
  - (ii) he has died and a judicial factor appointed under section 11A of the <sup>M2</sup>Judicial Factors (Scotland) Act 1889 is required by that section to divide his insolvent estate among his creditors.
- (3) This subsection is satisfied in the case of an employer which is a company—
  - (a) if a winding up order or an administration order has been made, or a resolution for voluntary winding up has been passed, with respect to the company,
  - (b) if a receiver or (in England and Wales only) a manager of the company's undertaking has been duly appointed, or (in England and Wales only) possession has been 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
  - (c) if a voluntary arrangement proposed in the case of the company for the purposes of Part I of the <sup>M3</sup>Insolvency Act 1986 has been approved under that Part of that Act.

#### Marginal Citations

- M1** 1986 c. 45.
- M2** 1889 c. 39.
- M3** 1986 c. 45.

## 184 Debts to which Part applies.

- (1) This Part applies to the following debts—
  - (a) any arrears of pay in respect of one or more (but not more than eight) weeks,
  - (b) any amount which the employer is liable to pay the employee for the period of notice required by section 86(1) or (2) or for any failure of the employer to give the period of notice required by section 86(1),
  - (c) any holiday pay—
    - (i) in respect of a period or periods of holiday not exceeding six weeks in all, and
    - (ii) to which the employee became entitled during the twelve months ending with the appropriate date,
  - (d) any basic award of compensation for unfair dismissal [<sup>F1</sup>or so much of an award under a designated dismissal procedures agreement as does not exceed any basic award of compensation for unfair dismissal to which the employee would be entitled but for the agreement], and
  - (e) any reasonable sum by way of reimbursement of the whole or part of any fee or premium paid by an apprentice or articled clerk.
- (2) For the purposes of subsection (1)(a) the following amounts shall be treated as arrears of pay—

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- (a) a guarantee payment,
  - (b) any payment for time off under Part VI of this Act or section 169 of the <sup>M4</sup>Trade Union and Labour Relations (Consolidation) Act 1992 (payment for time off for carrying out trade union duties etc.),
  - (c) remuneration on suspension on medical grounds under section 64 of this Act and remuneration on suspension on maternity grounds under section 68 of this Act, and
  - (d) remuneration under a protective award under section 189 of the Trade Union and Labour Relations (Consolidation) Act 1992.
- (3) In subsection (1)(c) “holiday pay”, in relation to an employee, means—
- (a) pay in respect of a holiday actually taken by the employee, 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.
- (4) A sum shall be taken to be reasonable for the purposes of subsection (1)(e) in a case where a trustee in bankruptcy, or (in Scotland) a permanent or interim trustee (within the meaning of the <sup>M5</sup>Bankruptcy (Scotland) Act 1985), or liquidator has been or is required to be appointed—
- (a) as respects England and Wales, if it is admitted to be reasonable by the trustee in bankruptcy or liquidator under section 348 of the <sup>M6</sup>Insolvency Act 1986 (effect of bankruptcy on apprenticeships etc.), whether as originally enacted or as applied to the winding up of a company by rules under section 411 of that Act, and
  - (b) as respects Scotland, if it is accepted by the permanent or interim trustee or liquidator for the purposes of the sequestration or winding up.

#### Textual Amendments

**F1** Words in s. 184(1)(d) inserted (1.8.1998) by 1998 c. 8, s. 12(4); S.I. 1998/1658, art. 2(1), **Sch. 1**

#### Modifications etc. (not altering text)

**C2** S. 184(1)(d): power to modify conferred (1.8.1998) by 1992 c. 52, s. 212A(9) (as inserted (1.8.1998) by 1998 c. 8, s. 7; S.I. 1998/1658, art. 2(1), **Sch. 1**)

S. 184(1)(d) extended (21.5.2001) by S.I. 2001/1185, **art. 6**

**C3** S. 184(1)(d) modified (6.4.2004) by The ACAS Arbitration Scheme (Great Britain) Order 2004 (S.I. 2004/753), arts. 1(1), 7

#### Marginal Citations

**M4** 1992 c. 52.

**M5** 1985 c. 66.

**M6** 1986 c. 45.

## 185 The appropriate date.

In this Part “the appropriate date”—

- (a) in relation to arrears of pay (not being remuneration under a protective award made under section 189 of the <sup>M7</sup>Trade Union and Labour Relations

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- (Consolidation) Act 1992) and to holiday pay, means the date on which the employer became insolvent,
- (b) in relation to a basic award of compensation for unfair dismissal and to remuneration under a protective award so made, means whichever is the latest of—
- (i) the date on which the employer became insolvent,
  - (ii) the date of the termination of the employee’s employment, and
  - (iii) the date on which the award was made, and
- (c) in relation to any other debt to which this Part applies, means whichever is the later of—
- (i) the date on which the employer became insolvent, and
  - (ii) the date of the termination of the employee’s employment.

#### Marginal Citations

M7 1992 c. 52.

### 186 Limit on amount payable under section 182.

- (1) The total amount payable to an employee in respect of any debt to which this Part applies, where the amount of the debt is referable to a period of time, shall not exceed—
- (a) [<sup>F2</sup>£240] in respect of any one week, or
  - (b) in respect of a shorter period, an amount bearing the same proportion to [<sup>F2</sup>£240] as that shorter period bears to a week.

<sup>F3</sup>(2) .....

#### Textual Amendments

**F2** Sums in s. 186(1)(a)(b) substituted (1.2.2001) by S.I. 2001/21, art. 3, Sch. (subject to art. 4) (which S.I. was revoked (1.2.2002) by S.I. 2002/10, art. 2 (subject to art. 4)

**F3** S. 186(2) repealed (17.12.1999) by 1999 c. 26, ss. 36(1)(3), 44, Sch. 9(10); S.I. 1999/3374, art. 2(b) (c), Sch.

#### Modifications etc. (not altering text)

**C4** S. 186(1)(a)(b): power to amend conferred (17.12.1999) by 1999 c. 26, s. 34(1)(d); S.I. 1999/3374, art. 2(a)

### 187 Role of relevant officer.

- (1) Where a relevant officer has been, or is required to be, appointed in connection with an employer’s insolvency, the Secretary of State shall not make a payment under section 182 in respect of a debt until he has received a statement from the relevant officer of the amount of that debt which appears to have been owed to the employee on the appropriate date and to remain unpaid.
- (2) If the Secretary of State is satisfied that he does not require a statement under subsection (1) in order to determine the amount of a debt which was owed to the

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employee on the appropriate date and remains unpaid, he may make a payment under section 182 in respect of the debt without having received such a statement.

- (3) A relevant officer shall, on request by the Secretary of State, provide him with a statement for the purposes of subsection (1) as soon as is reasonably practicable.
- (4) The following are relevant officers for the purposes of this section—
  - (a) a trustee in bankruptcy or a permanent or interim trustee (within the meaning of the <sup>M8</sup>Bankruptcy (Scotland) Act 1985),
  - (b) a liquidator,
  - (c) an administrator,
  - (d) a receiver or manager,
  - (e) a trustee under a composition or arrangement between the employer and his creditors, and
  - (f) a trustee under a trust deed for his creditors executed by the employer.
- (5) In subsection (4)(e) “trustee” includes the supervisor of a voluntary arrangement proposed for the purposes of, and approved under, Part I or VIII of the <sup>M9</sup>Insolvency Act 1986.

#### Marginal Citations

**M8** 1985 c. 66.

**M9** 1986 c. 45.

## 188 Complaints to [<sup>F4</sup>employment tribunals].

- (1) A person who has applied for a payment under section 182 may present a complaint to an [<sup>F4</sup>employment tribunal]—
  - (a) that the Secretary of State has failed to make any such payment, or
  - (b) that any such payment made by him is less than the amount which should have been paid.
- (2) An [<sup>F4</sup>employment tribunal] shall not consider a complaint under subsection (1) unless it is presented—
  - (a) before the end of the period of three months beginning with the date on which the decision of the Secretary of State on the application was communicated to the applicant, or
  - (b) within such further period as the tribunal considers reasonable in a case where it is not reasonably practicable for the complaint to be presented before the end of that period of three months.
- (3) Where an [<sup>F4</sup>employment tribunal] finds that the Secretary of State ought to make a payment under section 182, the tribunal shall—
  - (a) make a declaration to that effect, and
  - (b) declare the amount of any such payment which it finds the Secretary of State ought to make.

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#### Textual Amendments

- F4** Words in s. 188(1)-(3) and sidenote to s. 1888 substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a)(b) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

### 189 Transfer to Secretary of State of rights and remedies.

- (1) Where, in pursuance of section 182, the Secretary of State makes a payment to an employee in respect of a debt to which this Part applies—
- (a) on the making of the payment any rights and remedies of the employee in respect of the debt (or, if the Secretary of State has paid only part of it, in respect of that part) become rights and remedies of the Secretary of State, and
  - (b) any decision of an [<sup>F5</sup>employment tribunal] requiring an employer to pay that debt to the employee has the effect that the debt (or the part of it which the Secretary of State has paid) is to be paid to the Secretary of State.
- (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 182 constitutes—
- (a) a preferential debt within the meaning of the <sup>M10</sup>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 <sup>M11</sup>Companies Act 1985, or
  - (b) a preferred debt within the meaning of the <sup>M12</sup>Bankruptcy (Scotland) Act 1985 for the purposes of any provision of that Act (including any such provision as applied by section 11A of the <sup>M13</sup>Judicial Factors (Scotland) Act 1889),
- the rights which become rights of the Secretary of State in accordance with subsection (1) include 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.
- (3) In computing for the purposes of any provision mentioned in subsection (2)(a) or (b) 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 paid in priority to other creditors of the employer by virtue of subsection (2), and
  - (b) any claim by the employee to be so paid made in his own right,
- any claim of the Secretary of State to be so paid by virtue of subsection (2) shall be treated as if it were a claim of the employee.
- (4) 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 by the employee to be so paid made in his own right.
- (5) Any sum recovered by the Secretary of State in exercising any right, or pursuing any remedy, which is his by virtue of this section shall be paid into the National Insurance Fund.

#### Textual Amendments

- F5** Words in s. 189(1)(b) substituted (1.8.1998) by 1998 c. 8, s. 1(2)(a) (with s. 16(2)); S.I. 1998/1658, art. 2(1), Sch. 1

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#### **Marginal Citations**

- M10** 1986 c. 45.
- M11** 1985 c. 6.
- M12** 1985 c. 66.
- M13** 1889 c. 39.

### **190 Power to obtain information.**

- (1) Where an application is made to the Secretary of State under section 182 in respect of a debt owed by an employer, the Secretary of State may require—
  - (a) the employer to provide him with such information as he may reasonably require for the purpose of determining whether the application is well-founded, and
  - (b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Secretary of State any such document in that person's custody or under his control which is of such a description as the Secretary of State may require.
- (2) Any such requirement—
  - (a) shall be made by notice in writing given to the person on whom the requirement is imposed, and
  - (b) may be varied or revoked by a subsequent notice so given.
- (3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this section he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (4) If a person, in purporting to comply with a requirement of a notice under this section, knowingly or recklessly makes any false statement he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (5) Where an offence under this section committed by a body corporate is proved—
  - (a) to have been committed with the consent or connivance of, or
  - (b) to be attributable to any neglect on the part of,  
any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he (as well as the body corporate) is guilty of the offence and liable to be proceeded against and punished accordingly.
- (6) Where the affairs of a body corporate are managed by its members, subsection (5) applies in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

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