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(**1**) for the purposes of section 2(2) of the European Communities Act 1972(**2**) 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(**3**) is amended as follows.

(2) In section 166 (applications for payments)(**4**)—

(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

(**1**) S.I. 2005/1971 article 2.
(**2**) 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.
(**3**) 1996 c.18.
(**4**) Section 166 was amended by S.I. 2001/1090; there are other amending instruments but none is relevant.

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

(b) after subsection (8) insert—

"(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)(**5**)—

(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—

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