



Number 21 of 1984

PROTECTION OF EMPLOYEES (EMPLOYERS' INSOLVENCY) ACT 1984

REVISED

Updated to 4 October 2011

This Revised Act is an administrative consolidation of the *Protection of Employees (Employers Insolvency) Act 1984*. It is prepared by the Law Reform Commission in accordance with its function under the *Law Reform Commission Act 1975* (3/1975) to keep the law under review and to undertake revision and consolidation of statute law.

All Acts up to and including *Insurance (Amendment) Act 2011* (26/2011), enacted 30 September 2011, and all statutory instruments up to and including *Civil Law (Miscellaneous Provisions) Act 2011 (Commencement) Order 2011* (S.I. No. 508 of 2011), made 4 October 2011, were considered in the preparation of this Revised Act.

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Introduction

This Revised Act presents the text of the Act as it has been amended since enactment, and preserves the format in which it was passed.

Related legislation

Protection of Employees (Employers' Insolvency) Acts 1984 to 2004: this Act is one of a group of Acts included in this collective citation, to be construed together as one (*Industrial Relations (Miscellaneous Provisions) Act 2004* (4/2004), s. 17(3)). The Acts in this group are:

- *Protection of Employees (Employers' Insolvency) Act 1984* (21/1984)
- *Social Welfare Act 1990* (5/1990), s. 28
- *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991), insofar as it relates to the collectively cited *Protection of Employees (Employers' Insolvency) Acts 1984 and 1990* (repealed)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001), insofar as it relates to the collectively cited *Protection of Employees (Employers' Insolvency) Acts 1984 and 1990*
- *Industrial Relations (Miscellaneous Provisions) Act 2004* (4/2004), ss. 15 and 17(3)

Annotations

This Revised Act is annotated and includes textual and non-textual amendments, statutory instruments made pursuant to the Act and previous affecting provisions.

An explanation of how to read annotations is available at www.lawreform.ie/annotations.

Material not updated in this revision

Where other legislation is amended by this Act, those amendments may have been superseded by other amendments in other legislation, or the amended legislation may have been repealed or revoked. This information is not represented in this revision but will be reflected in a revision of the amended legislation if one is available. A list of legislative changes to any Act, and to statutory instruments from 2000, may be found in the Legislation Directory at www.irishstatutebook.ie.

Acts which affect or previously affected this revision

- *Criminal Justice Act 2011* (22/2011)
- *Employment Permits Act 2006* (16/2006)
- *Social Welfare Consolidation Act 2005* (26/2005)
- *Industrial Relations (Miscellaneous Provisions) Act 2004* (4/2004)
- *Redundancy Payments Act 2003* (14/2003)
- *Pensions (Amendment) Act 2002* (18/2002)
- *Protection of Employees (Part-Time Work) Act 2001* (45/2001)
- *Carer's Leave Act 2001* (19/2001)
- *National Minimum Wage Act 2000* (5/2000)
- *Parental Leave Act 1998* (30/1998)
- *Employment Equality Act 1998* (21/1998)
- *Organisation of Working Time Act 1997* (20/1997)
- *Adoptive Leave Act 1995* (2/1995)
- *Maternity Protection Act 1994* (34/1994)
- *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991)
- *Pensions Act 1990* (25/1990)
- *Social Welfare Act 1990* (5/1990)
- *Social Welfare Act 1986* (8/1986)

All Acts up to and including *Insurance (Amendment) Act 2011* (26/2011), enacted 30 September 2011, were considered in the preparation of this revision.

Statutory instruments which affect or previously affected this revision

- *Protection of Employees (Employers' Insolvency) Procedures Regulations 2011* (S.I. No. 504 of 2011)
- *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 2005* (S.I. No. 682 of 2005)
- *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005)
- *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 2004* (S.I. No. 696 of 2004)
- *Protection of Employees (Employers' Insolvency) (Forms and Procedure) (Amendment) Regulations 2003* (S.I. No. 197 of 2003)
- *Protection of Employees (Employers' Insolvency) (Forms and Procedure) (Amendment) Regulations 2001* (S.I. No. 581 of 2001)
- *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 2001* (S.I. No. 42 of 2001)
- *Protection of Employees (Employers' Insolvency) Act 1984 (Amendment Order) Order 1988* (S.I. No. 48 of 1988)
- *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 1994* (S.I. No. 62 of 1994)
- *Protection of Employees (Employers' Insolvency) (Forms and Procedure) (Amendment) Regulations 1991* (S.I. No. 349 of 1991)
- *Protection of Employees (Employers' Insolvency) (Occupational Pension Scheme) (Forms and Procedure) Regulations 1990* (S.I. No. 121 of 1990)
- *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 1990* (S.I. No. 17 of 1990)
- *Redundancy Payments (Variation of Employers' Redundancy Contribution) Regulations 1989* (S.I. No. 68 of 1989)
- *Protection of Employees (Employers' Insolvency) Act 1984 (Amendment Order) Order 1988* (S.I. No. 48 of 1988)
- *Protection of Employees (Employers' Insolvency) (Specification of Date) Regulations 1986* (S.I. No. 50 of 1986)
- *Protection of Employees (Employers' Insolvency) (Specification of Date) Regulations 1985* (S.I. No. 232 of 1985)
- *Protection of Employees (Employers' Insolvency) (Occupational Pension Scheme) (Forms and Procedure) Regulations 1985* (S.I. No. 123 of 1985)
- *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 1984* (S.I. No. 356 of 1984)

All statutory instruments up to and including *Civil Law (Miscellaneous Provisions) Act 2011 (Commencement) Order 2011* (S.I. No. 508 of 2011), made 4 October 2011, were considered in the preparation of this revision.



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ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Redundancy and Employers' Insolvency Fund.
3. Application of Act.
4. Insolvency for the purposes of Act.
5. Appointment in certain circumstances of persons to perform functions assigned by Act to relevant officers.
6. Employees' rights on insolvency of employer.
7. Payment of unpaid contributions to occupational pension scheme.
8. Minister may require certain information and documents.
9. Complaints to Tribunal.
10. Transfer to Minister of certain rights and remedies.
11. Power to amend Act.
12. Amendment of section 4 of Act of 1967.
13. Amendment of section 3 of and First Schedule to Act of 1973.
14. Institution of proceedings for offence.
15. Offences.
16. Regulations.
17. Expenses, etc.
18. Short title and collective citations.

ACTS REFERRED TO

Deeds of Arrangement Act, 1887	1887, c. 57
Preferential Payments in Bankruptcy (Ireland) Act, 1889	1889, c. 60
Industrial Relations Act, 1946	1946, No. 26
Companies Act, 1963	1963, No. 33

[No. 21.] *Protection of Employees (Employers Insolvency) Act 1984'* [1984.]

Redundancy Payments Act, 1967	1967, No. 21
Minimum Notice and Terms of Employment Act, 1973	1973, No. 4
Holidays (Employees) Act, 1973	1973, No. 25
Anti-Discrimination (Pay) Act, 1974	1974, No. 15
Unfair Dismissals Act, 1977	1977, No. 10
Employment Equality Act, 1977	1977, No. 16
Redundancy Payments Act, 1979	1979, No. 7
Social Welfare (Consolidation) Act, 1981	1981, No. 1
Social Welfare Acts, 1981 to 1984	



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AN ACT TO CONFER, ON THE INSOLVENCY OF EMPLOYERS, CERTAIN RIGHTS ON EMPLOYEES, TO AMEND CERTAIN ENACTMENTS RELATING TO THE RIGHTS OF EMPLOYEES AND TO PROVIDE FOR OTHER MATTERS (INCLUDING OFFENCES) CONNECTED WITH THE MATTERS AFORESAID. [30th November, 1984]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

Annotations

Modifications (not altering text):

- C1** Act included in collective citation and construction (6.04.2004) by *Industrial Relations (Miscellaneous Provisions) Act 2004* (4/2004), s. 17(3), S.I. No. 138 of 2004.

Short title, collective citation, construction and commencement.

17.— ...

(3) In so far as it relates to the Protection of Employees (Employers' Insolvency) Acts 1984 to 2001, section 15, this subsection and those Acts shall be construed together as one and may be cited together as the Protection of Employees (Employers' Insolvency) Acts 1984 to 2004.

...

Act also included in collective citation and construction:

- (20.12.2001) by *Protection of Employees (Part-Time Work) Act 2001* (45/2001), s. 1(3), S.I. No. 636 of 2001.
- (6.04.1991 and 17.06.1991) by *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991), s. 8(8), S.I. Nos. 75 and 144 of 1991 (repealed).
- (1.05.1990) by *Social Welfare Act 1990* (5/1990), s. 1(5), commenced in relation to s. 28 as per s. 31.

- C2** Application of Act extended (25.03.1988) by *Protection of Employees (Employers' Insolvency) Act 1984 (Amendment Order) Order 1988* (S.I. No. 48 of 1988), art. 2.

2. The application of the Protection of Employees (Employers' Insolvency) Act, 1984 is hereby extended to employees who have attained the age of 66 years and who are in employment which, but for the age of the employees, would be insurable for all benefits under the Social Welfare Acts, 1981 to 1987.

Editorial Notes:

- E1** Funding for expenses in giving effect to collectively cited *Protection of Employees (Employers' Insolvency) Act 1984 to 2004* provided for (1.12.2005) by *Social Welfare Consolidation Act 2005* (26/2005), ss. 5(6) and 6(1), S.I. No. 923 of 2005.
- E2** Power to amend a decision (by whatever name called) of a relevant authority under collectively cited *Protection of Employees (Employers' Insolvency) Act 1984 to 1991* that does not state correctly the name of the employer concerned or any other material particular is accorded to rights commissioner, Employment Appeals Tribunal or Labour Court (30.09.1997) by *Organisation of Working Time Act 1997* (20/1997), s. 39, S.I. No. 392 of 1997.

Interpretation.

1.—(1) In this Act—

“the Act of 1967” means the Redundancy Payments Act, 1967;

F1[‘the Act of 1969’ means the Industrial Relations Act 1969;]

“the Act of 1973” means the Minimum Notice and Terms of Employment Act, 1973;

“the Act of 1974” means the Anti-Discrimination (Pay) Act, 1974;

“the Act of 1977” means the Unfair Dismissals Act, 1977;

“the Act of 1981” means the Social Welfare (Consolidation) Act, 1981;

F2[‘the Act of 1990’ means the Industrial Relations Act 1990;

‘the Act of 1991’ means the Payment of Wages Act 1991;

‘the Act of 1994’ means the Terms of Employment (Information) Act 1994;

‘the Act of 1996’ means the Protection of Young Persons (Employment) Act 1996;

‘the Act of 1997’ means the Organisation of Working Time Act 1997;

‘the Act of 1998’ means the Protections for Persons Reporting Child Abuse Act 1998;

‘the Act of 2001’ means the Protection of Employees (Part-Time Work) Act 2001;

‘the Act of 2002’ means the Competition Act 2002;

‘the Act of 2003’ means the Protection of Employees (Fixed-Time Work) Act 2003;

‘the Act of 2004’ means the Industrial Relations (Miscellaneous Provisions) Act 2004;]

F3[‘the Act of 2006’ means the Employment Permits Act 2006;]

F4[‘Act of 2011’ means the Criminal Justice Act 2011;]

“company” means, except when the context otherwise requires, a company within the meaning of section 2 of the Companies Act, 1963, or any other body corporate whether incorporated within or outside the State;

F2[‘competent authority’ means the authority referred to in Article 2(1) of Council Directive 80/987/EEC of 20 October 1980² as amended by Article 1(2) of Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002¹;

“employee” means a person who has entered into or works under (or, in the case of a contract which has been terminated, worked under) a contract with an employer, whether the contract is for manual labour, clerical work or otherwise, is express or implied, oral or in writing, and whether it is a contract of service or apprenticeship

² OJ No. L283, 28.10.1980, p. 23

¹ OJ No. L270, 8.10.2002, p. 10

or otherwise, and “employer” and any reference to employment shall be construed accordingly;

“holiday pay” means—

- (a) pay in respect of a holiday actually taken; or
- (b) any holiday pay which had accrued at the date of the termination of the employee’s employment and which, had his employment with the employer continued until he became entitled to a holiday, would under the employee’s contract of employment in the ordinary course have become payable to him on becoming so entitled;

F2[‘Member State’ means a Member State of the European Union]

“the Minister” means the Minister for Labour;

“occupational pension scheme” means any scheme or arrangement which, forming part of a contract of employment, 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;

“prescribed” means prescribed by regulations under this Act;

“relevant officer” means an executor, an administrator, the official assignee or a trustee in bankruptcy, a liquidator, a receiver or manager, F5[...]a trustee under an arrangement between an employer and his creditors or under a trust deed for his creditors executed by an employerF6[, or, where the employer is an undertaking which is insolvent under the laws, regulations and administrative procedures of another Member State in accordance with Article 2(1) of Council Directive 80/987/EEC of 20 October 1980 as amended by Article 1(2) of Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 and the employees concerned are employed or habitually employed in the State, the person appointed by the appropriate competent authority to perform the functions of a relevant officer.]

F7[‘the Social Insurance Fund’ means the Social Insurance Fund established under section 39 of the Social Welfare Act, 1952, and continued in being under section 122 of the Social Welfare (Consolidation) Act, 1981;]

“the Tribunal” means the Employment Appeals Tribunal.

(2) Any reference in this Act to the assets of an occupational pensions scheme is a reference to the funds or other property out of which the benefits provided by the scheme are payable from time to time, including the proceeds of any policy of insurance taken out, or contract entered into, for the purposes of the scheme.

(3) For the purposes of this Act, an employer shall be taken to be or, as may be appropriate, to have become insolvent if, but only if,

- (a) he has been adjudicated bankrupt or has filed a petition for or has executed a deed of, arrangement (within the meaning of section 4 of the Deeds of Arrangement Act, 1887); or
- (b) he has died and his estate, being insolvent, is being administered in accordance with the rules set out in Part I of the First Schedule to the Succession Act, 1965; or
- (c) where the employer is a company, a winding up order is made or a resolution for voluntary winding up is passed with respect to it, or a receiver or manager of its undertaking is duly appointed, or possession is taken, by or on behalf of the holders of any debentures secured by any floating charge, of any property of the company F8[comprised in or subject to the charge; or]

(d) he is an employer of a class or description specified in regulations under *section 4 (2)* of this Act which are for the time being in force and the circumstances specified in the regulations as regards employers of such class or description obtain F8[in relation to him; or]

F9[(e) the employer is an undertaking which is insolvent under the laws, regulations and administrative procedures of another Member State in accordance with Article 2(1) of Council Directive 80/987/EEC of 20 October 1980 as amended by Article 1(2) of Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 and the employees concerned are employed or habitually employed in the State.]

Annotations

Amendments:

- F1** Inserted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 3(a)(i).
- F2** Inserted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 3(a)(ii) - (iv).
- F3** Inserted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 26(4) and sch. 2 art. 6(1), S.I. No. 682 of 2006.
- F4** Inserted (9.08.2011) by *Criminal Justice Act 2011* (22/2011), s. 20(2) and sch. 2 art. 6(1), S.I. No. 411 of 2011.
- F5** Deleted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 3(a)(v).
- F6** Inserted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 3(a)(v).
- F7** Inserted (1.05.1990) by *Social Welfare Act 1990* (5/1990), s. 28(a), commenced as per s. 31.
- F8** Substituted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 3(b)(i) and (ii).
- F9** Substituted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 3(b)(iii).

Redundancy and
Employers' Insol-
vency Fund.

2.—F10[...]

Annotations

Amendments:

- F10** Repealed (6.04.1991) by *Social Welfare Act 1991* (7/1991), s. 39(2), commenced as per s. 39(3).

Application of
Act.

F11[3.— Subject to section 11 of this Act, this Act applies to employees employed in employment which is insurable for all benefits under the Social Welfare (Consolidation) Act 1993 or would be so insurable but for the fact that-

- (a) the employment concerned is an excepted employment by virtue of paragraph 2, 4 or 5 of Part II of the First Schedule to the Social Welfare (Consolidation) Act 1993, or

(b) the employees concerned have attained the age of 66 years.]

Annotations

Amendments:

F11 Substituted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 4.

Editorial Notes:

E3 Previous affecting provision: section defined as excluding provision in so far as it had the effect of excluding employees from the application of *Worker Protection (Regular Part-Time Employees) Act 1991* by virtue of the *Social Welfare (Subsidiary Employments) Regulations 1979*, the *Social Welfare (Employment of Inconsiderable Extent) Regulations 1991*, or any other regulations for the time being prescribed by the Minister under *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991), s. 1(3)(a) (6.04.1991 and 17.06.1991) by *Worker Protection (Regular Part-Time Employees) Act 1991* (5/1991), s. 1(1)(g), S.I. Nos. 75 of 1991 and 144 of 1991; 1991 Act repealed (20.12.2001) by *Protection of Employees (Part-Time Work) Act 2001* (45/2001), s. 5, S.I. No. 636 of 2001.

Insolvency for the purposes of Act. **4.—(1)** An employer who is for the purposes of this Act insolvent shall for such purposes be regarded as having become insolvent on—

(a) where the employer has been adjudicated bankrupt, the date of such adjudication,

(b) where the employer petitioned for arrangement, the date on which the petition is filed,

(c) where the employer executed a deed referred to in *section 1(3) (a)* of this Act, the date of such execution,

(d) where the employer has died, the date of his death,

(e) where the employer is a company within the meaning of *section 2* of the *Companies Act, 1963*—

(i) in case either a receiver is appointed on behalf of the holder of any debenture secured by a floating charge, or possession is taken by or on behalf of such a debenture holder of any property of the company comprised in or subject to the charge, the date of the appointment of the receiver or possession being taken as aforesaid, as may be appropriate, or

(ii) in any other case the date which, in relation to the company, is the relevant date within the meaning of *section 285* of the *Companies Act, 1963*, F12[...]

(f) where the employer is an employer of a class or description specified in regulations under *subsection (3)* of this section which are for the time being in force, the day on which under the regulations such an employer is for such purposes to be regarded as F13[**having become insolvent, and**]

F14[(g) where the employer is an undertaking which is insolvent under the laws, regulations and administrative procedures of another Member State in accordance with Article 2(1) of Council Directive 80/987/EEC of 20 October 1980 as amended by Article 1(2) of Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 and the employees concerned are employed or habitually employed in the State, the date on which the insolvency was established under the laws, regulations and administrative procedures of that other Member State.]

(2) The Minister may by regulations specify the circumstances in which employers who are of a class or description specified in the regulations are, for the purposes of this Act, to be taken to be, or to have become, insolvent.

(3) The Minister may by regulations specify the day on which any employer who is of a class or description specified in the regulations and who is also an employer who for the purposes of this Act is insolvent, is to be regarded as having become so insolvent.

Annotations

Amendments:

- F12** Deleted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 5(a).
- F13** Substituted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 5(b).
- F14** Inserted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 5(c).

Editorial Notes:

- E4** Power pursuant to section exercised (26.02.1986) by *Protection of Employees (Employers' Insolvency) (Specification of Date) Regulations 1986* (S.I. No. 50 of 1986).
- E5** Power pursuant to section exercised (11.07.1985) by *Protection of Employees (Employers' Insolvency) (Specification of Date) Regulations 1985* (S.I. No. 232 of 1985).

Appointment in certain circumstances of persons to perform functions assigned by Act to relevant officers.

5.—(1) Where—

- (a) by virtue of *section 1 (3) (d)* of this Act, an employer becomes insolvent for the purposes of this Act, or
- (b) an employer otherwise becomes insolvent for such purposes and there is not for the time being in relation to the insolvency a relevant officer,

the Minister may appoint as regards such insolvency a person under this subsection.

(2) Where the Minister makes an appointment under this section the following provisions shall apply:

- (a) the functions assigned by this Act to a relevant officer shall, as regards the employer concerned, be performed by, and only by, the person to whom the appointment relates, or, if through illness or because his appointment is revoked or for any other reason the person so appointed is unable to perform such functions, another person so appointed, and
- (b) for so long as the appointment remains in force, each of the references to a relevant officer in *sections 6, 7 and 8* of this Act shall be construed as including a reference to the person to whom the appointment relates.

Employees' rights on insolvency of employer.

6.—(1) If, on an application made to him in the prescribed form by or on behalf of an individual, the Minister is satisfied that—

- (a) the person by or on whose behalf the application is made (which person is in this section subsequently referred to as "the applicant") is a person to whom this Act applies, and that he was employed by an employer who has become insolvent, and

(b) the date on which the employer became insolvent is a day not earlier than the 22nd day of October, 1983, and

(c) on the relevant date the applicant was entitled to be paid the whole or part of any debt to which this section applies,

the Minister shall, subject to this section, pay to or in respect of the applicant out of F15[the Social Insurance Fund] the amount which, in the opinion of the Minister, is or was due to the applicant in respect of that debt.

(2)(a) Subject to *paragraph (b)* of this subsection, the following are debts to which this section applies—

(i) any arrears of normal weekly remuneration in respect of a period, or of periods in the aggregate, not exceeding eight weeks, and to which the applicant became entitled during the relevant period,

(ii) any arrears due, in respect of a period or periods not exceeding eight weeks in all under a scheme or arrangement which, forming part of an employee's contract of employment, provides or is capable of providing in relation to employees in any description of employment, payments payable to any such employees in respect of periods during which they are unable to fulfil their contract of employment due to ill health and to which the applicant became entitled during the relevant period,

F16[(iii) at the election of the employee, either—

(I) any amount which an employer is required to pay, by virtue of an award under section 12 of the Act of 1973 made not earlier than the commencement of the relevant period, either for the period of notice required by section 4 of the Act of 1973 or by reason of a failure by that employer to give the notice required by the said section 4, or

(II) any unpaid normal weekly remuneration certified by the relevant officer as being the amount of normal weekly remuneration due to the employee in lieu of the statutory notice prescribed in section 4 of the Act of 1973,]

(iv) any holiday pay in respect of a period or periods of holiday not exceeding eight weeks in all, and to which the applicant became entitled during the relevant period,

F17[(v) any amount which an employer is required to pay by virtue of—

(I) a determination under section 8 (1) or 9 (1) or an order under section 10 (2) of the 1977 Act, or

F18[(II) a decision, determination or order under Part V of the Maternity Protection Act, 1994, Part IV of the Parental Leave Act, 1998, or Part 4 of the Carer's Leave Act, 2001,]]

(vi) any amount to which a recommendation under section 8 (1) of the Act of 1977 relates, being a recommendation which was made not earlier than the commencement of the relevant period,

(vii) any amount which an employer is required to pay by virtue of an employment regulation order within the meaning of Part IV of the Industrial Relations Act, 1946, being an amount by reference to which proceedings have been instituted against the employer for an offence under section 45 (1) of that Act,

(viii) any amount—

- (I) specified in a recommendation issued under section 7 (3) of the Act of 1974, or section 19 (3) of the Employment Equality Act, 1977,
- (II) which an employer is required to pay by virtue of a decision or determination of an appeal by the Labour Court under subsection (1) of section 8 of the Act of 1974 or subsection (2) of section 21 of the Employment Equality Act, 1977 or, where appropriate, a decision of the High Court given by virtue of either subsection (3) of the said section 8 or subsection (4) of the said section 21, F19[or
- (III) which an employer is required to pay by virtue of a decision, determination or order of a court falling within *section 103(3) of the Employment Equality Act, 1998,*]
- (ix) damages awarded under section 24 (3) (a) of the Employment Equality Act, 1977,
- (x) a fine imposed under section 8 (4) (c) (i) or paragraph (a) (inserted by section 30 of the Employment Equality Act, 1977) of section 9 (3) of the Act of 1974 or under section 25 (3) (a) (iii) or 26 (3) (a) (iii) of the Employment Equality Act, 1977, F20[...]
- (xi) compensation directed to be paid under section 10 (1) (d) (inserted by section 31 of the Employment Equality Act, 1977) or section 10 (3) (a) (inserted by the said section 31) of the Act of 1974 or under section 26 (1) (d) (iii) of the F21[*Employment Equality Act, 1977,*]
- F22[(xii) any amount which an employer is required to pay by virtue of the *National Minimum Wage Act, 2000*, being an amount by reference to which proceedings have been instituted against the employer for an offence under *section 35 of the National Minimum Wage Act, 2000*, and]
- F22[(xiii) any amount which an employer is required to pay by virtue of—
 - (I) a decision of a rights commissioner under *section 26 of the National Minimum Wage Act, 2000*, or
 - (II) a determination of the Labour Court under *section 29 of the National Minimum Wage Act, 2000*,
 and made, in any case, not earlier than the commencement F23[*of the relevant period,*]]
- F24[(xiv) any amount which an employer is required to pay by virtue of a decision by way of order by a rights commissioner under section 6(2) of the Act of 1991 or a determination by the Employment Appeals Tribunal under section 7(1) of the Act of 1991 and made, in any case, not earlier than the commencement of the relevant period, provided that a claim in respect of the amount to which the decision or determination refers has not been made under another provision of this section,
- (xv) any amount which an employer is required to pay by virtue of a recommendation by way of order by a rights commissioner under section 7(2)(d) of the Act of 1994 or a determination by the Employment Appeals Tribunal under section 8(1) or section 8(6)(a) of the Act of 1994 and made, in any case, not earlier than the commencement of the relevant period,
- (xvi) any amount which an employer is required to pay by virtue of a recommendation by a rights commissioner under section 18(2) of the Act of 1996 or a determination by the Employment Appeals Tribunal under subsection (1) or (6) of section 19 of the Act of 1996 and made, in any case, not earlier than the commencement of the relevant period,

- (xvii) any amount which an employer is required to pay by virtue of a decision by a rights commissioner under section 27(2) of the Act of 1997 or a determination by the Labour Court under subsection (1) or (8) of section 28 of the Act of 1997 and made, in any case, not earlier than the commencement of the relevant period,
- (xviii) any amount which an employer is required to pay by virtue of a decision by a rights commissioner under section 4(4) of the Act of 1998 or a determination by the Employment Appeals Tribunal under subsection (1) or (6)(a) of section 8 of the Act of 1994 as amended and extended by section 4(6)(b) of the Act of 1998 and made, in any case, not earlier than the commencement of the relevant period,
- (xix) any amount which an employer is required to pay by virtue of a decision by a rights commissioner under section 16(1) of the Act of 2001 or a determination by the Labour Court under subsection (1) or (8) of section 17 of the Act of 2001 and made, in any case, not earlier than the commencement of the relevant period,
- (xx) any amount which an employer is required to pay by virtue of a decision by a rights commissioner under section 14(1)(b) of the Act of 2003 or a determination by the Labour Court under subsection (1)(b) or (8) of section 15 of the Act of 2003 and made, in any case, not earlier than the commencement of the relevant period,
- (xxi) any amount which an employer is required to pay by virtue of a decision by a rights commissioner under Regulation 6(1) of the European Communities (Protection of Employment) Regulations 2000 (S.I. No. 488 of 2000) or a determination by the Employment Appeals Tribunal under subsection (1) or (6)(a) of section 8 of the Act of 1994 as amended and extended by the same Regulations and made, in any case, not earlier than the commencement of the relevant period,
- (xxii) any amount which an employer is required to pay by virtue of a decision by a rights commissioner under Regulation 10(4)(b) of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) or a determination by the Employment Appeals Tribunal under regulation 11(1)(b) of the same regulations and made, in any case, not earlier than the commencement of the relevant period,
- (xxiii) any amount which an employer is required to pay by virtue of a decision by a rights commissioner under paragraph 4 of the Third Schedule to the Act of 2002 or a determination by the Employment Appeals Tribunal under subsection (1) or (6)(a) of section 8 of the Act of 1994 as amended and extended by paragraph 6(b) of the Third Schedule to the Act of 2002 and made, in any case, not earlier than the commencement of the relevant period,
- (xxiv) any amount which an employer is required to pay to an employee in respect of remuneration by virtue of a registered employment agreement within the meaning of Part III of the Industrial Relations Act 1946, being an amount by reference to which an order of the Labour Court has been made under section 32(1)(b) of that Act or section 10(1)(b) of the Act of 1969, or proceedings have been instituted under section 54(1) of the Act of 1990, F25[...]
- (xxv) any amount which an employer is required to pay to an employee in respect of remuneration by virtue of a decision of a rights commissioner under subsection (4)(b) of section 9 of the Act of 2004 or a determination by the Labour Court under subsection (1)(b) of section 10 of the F26[Act of 2004, F27[...]]]

F28[(xxvi) any amount which an employer is required to pay by virtue of a decision of a rights commissioner under paragraph 1(2)(b) of *Schedule 2* to the Act of 2006 or a determination by the Labour Court under paragraph 2(1) of F29[that Schedule, and]

F30[(xxvii) any amount which an employer is required to pay by virtue of a decision of a rights commissioner under *paragraph 1(2)(b) of Schedule 2* to the *Act of 2011* or a determination by the Labour Court under *paragraph 2(1)(b) of that Schedule.*]]

(b) Any amount, damages, fine or compensation referred to in *subparagraph (viii), (ix), (x) F31[(xi), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv) F32[, (xxv) or F29[, (xxvi) or (xxvii)]]]* of *paragraph (a)* of this subsection shall be regarded as being a debt to which this section applies if, and only if, the relevant recommendation, decision, determination, award or order was made during, or after the expiration of, the relevant period.

F33[(c) A payment shall not be made under this section in respect of a debt referred to in *subparagraph (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxiii) F34[, (xxv) F29[, (xxvi) or (xxvii)]]* of *paragraph (a)* of this subsection until the period for making an appeal against—

- (i) the decision or recommendation, as appropriate, of the rights commissioner,
- (ii) the determination of the Employment Appeals Tribunal or the Labour Court, as appropriate,

has expired, or any such appeal made has been withdrawn or determined.]

(3) Where—

(a) legal proceedings are instituted by or on behalf of an employee and on foot of all or any of the following—

- (i) a claim for arrears described in *subparagraph (i) or (ii) of subsection (2)* of this section,
 - (ii) a claim for holiday pay described in *subparagraph (iv) of the said subsection (2)*,
 - (iii) a claim for damages at common law for wrongful dismissal,
- an award is made by the court in favour of the employee, and

(b) had the employee made an application under *subsection (1)* of this section in respect of any of the matters referred to in *subparagraph (i), (ii) or (iii) of paragraph (a)* of this subsection he would have satisfied the requirements of *paragraphs (a), (b) and (c) of the said subsection (1)*,

subject to *subsection (4) (a)* of this section, there shall be paid out of F35[the Social Insurance Fund], to or in respect of the employee, an amount equal to—

- (i) the amount of the award, or
- (ii) the maximum which would have been payable out of the said Fund by virtue of this Act had the employee successfully sought redress under section 8 (1) or 9 (1) of the Act of 1977.

(4) (a) The amount payable to an employee in respect of any debt mentioned in *subsection (2)* or award mentioned in *subsection (3)* of this section shall, where the amount of that debt is or may be calculated by reference to the employee's remuneration, not exceed F36[€600] in respect of any one week or, in respect of any period of less than a week, an amount bearing the same proportion to F36[€600] as that period bears to the normal weekly working hours of the employee at the relevant date.

- (b) An amount payable under this section in respect of a debt mentioned in *subsection (2) (a) (ii)* of this section as regards a particular period, shall not exceed the difference between the amount of any disability benefit or injury benefit payable under the Act of 1981 to the employee concerned as regards the period (together with, in either case, the amount of any pay-related benefit payable to such employee under the Act of 1981 as regards the period) and the amount of his normal weekly remuneration as regards the period.
- (c) (i) A payment shall not be made under this section in respect of an amount which an employer is required to pay by virtue of a determination having been made under section 8 (1) or 9 (1) of the Act of 1977, unless—
- (I) if proceedings are instituted under section 10 of the Act of 1977, the proceedings are withdrawn, or
 - (II) in case an appeal is brought under section 10 (4) of the Act of 1977 from the determination, the appeal has been either withdrawn or determined, or
 - (III) in case there is no such appeal, the time for bringing such an appeal has expired.
- (ii) A payment shall not be made under this section in respect of an amount to which a recommendation under section 8 (1) of the Act of 1977 relates unless—
- (I) in case an appeal from the recommendation is brought under section 9 (1) of the Act of 1977, the appeal is withdrawn, or
 - (II) in case there is no such appeal, the time for bringing such an appeal has expired.
- (iii) A payment shall not be made under this section as regards a recommendation referred to in *subsection (2) (a) (viii) (I)* of this section unless—
- (I) in case an appeal is brought under section 8 (1) (a) of the Anti-Discrimination (Pay) Act, 1974, or section 21(1) of the Employment Equality Act, 1977, against the recommendation, the appeal is withdrawn, or
 - (II) in case there is no such appeal, the time for bringing such an appeal has expired.
- F37[F38[(iv) a payment shall not be made under this section in respect of an amount to which a decision under Part V of the Maternity Protection Act, 1994, Part IV of the Parental Leave Act, 1998, or Part 4 of the *Carer's Leave Act, 2001*, relates unless—]
- (I) in case an appeal from the decision to the Tribunal is brought under the Part in question, the appeal is withdrawn, or
 - (II) in case there is no such appeal, the time for bringing such an appeal has expired.
- F39[F40[(v) a payment shall not be made under this section in respect of an amount to which a determination under Part V of the Maternity Protection Act, 1994, Part IV of the Parental Leave Act, 1998, or Part 4 of the *Carer's Leave Act, 2001*, relates unless—]
- (I) in case an appeal from the decision or determination is brought under that Part, the appeal is withdrawn, or

(II) in case there is no such appeal, the time for bringing such an appeal has expired.]]

F41[(vi) A payment shall not be made under this section in respect of an amount to which a decision or determination under any provision of the *Employment Equality Act, 1998*, applies unless—

(I) in case an appeal from the decision or determination is brought under that Part, the appeal is withdrawn, or

(II) in case there is no such appeal, the time for bringing such an appeal has expired.

F42[(vii) A payment shall not be made under this section in respect of an amount to which a decision of a rights commissioner under *section 26* of the *National Minimum Wage Act, 2000*, relates unless—

(I) in case an appeal from the decision to the Labour Court is brought under *section 27* of that Act, the appeal is withdrawn, or

(II) in case there is no such appeal, the time for bringing such an appeal has expired.

(viii) A payment shall not be made under this section in respect of an amount to which a determination under *section 29* of the *National Minimum Wage Act, 2000*, relates unless—

(I) in case an appeal from the determination is brought to the High Court under *section 30* of that Act, the appeal is withdrawn, or

(II) in case there is no appeal, the time for bringing an appeal has expired.]]

(5) The provisions of *subsections (6) and (7)* of this section shall apply in a case where a relevant officer is either appointed or required to be appointed.

(6) Subject to *subsection (7)* of this section, the Minister shall not in a case which is a case referred to in *subsection (5)* of this section make any payment under this section in respect of any debt until he has received a statement in the prescribed form from the relevant officer of the amount of that debt which appears to have been owed to the employee on the relevant date and to remain unpaid; and the relevant officer shall, on a request being made in that behalf, by the Minister, provide him, as soon as is reasonably practicable, with such a statement.

(7) Where—

(a) a period of six months has elapsed since the application for a payment under this section was received by the Minister, but no such payment has been made,

(b) the Minister is satisfied that a payment under this section should be made, and

(c) it appears to the Minister that there is likely to be further delay before he receives a statement referred to in *subsection (6)* of this section regarding the debt in question,

then, the Minister may, if the applicant so requests, or if the Minister thinks fit, without such a request, make a payment under this section notwithstanding the fact that no such statement has been received.

(8) Where an application is made to the Minister under this section and in relation to any or each of the debts to which the application relates, the Minister is satisfied that—

(a) there was an agreement between the applicant and the employer concerned that the whole or any part of the debt would be the subject of an application under this section, and

(b) when the agreement was made such employer had the means to pay such debt or the part thereof,

the Minister may either refuse the application or disallow it in so far as it relates to such debt or part.

(9) In this section—

“normal weekly remuneration” has the meaning assigned to it by Schedule 3 to the Act of 1967 for the purposes of that Schedule save that any reference in that Schedule to the date on which an employee was declared redundant may, where appropriate, be construed as including a reference to the relevant date;

“the relevant date” means—

(a) in relation to a debt which is an amount, damages, fine or compensation referred to in F43[subparagraph (iii)(I),] (v), (vi), (viii), (ix), F44[(x), (xi), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv) F45[(xxv) F29[, (xxvi) or (xxvii)]]] of subsection (2) (a) of this section, the date on which the relevant employer became insolvent or the date on which the relevant recommendation, decision, determination, award or order is made, whichever is the later,

F46[(aa) in relation to a debt referred to in subparagraph (iii)(II), the date of termination of employment,]

(b) in relation to any other debt to which this section applies—

(i) in case the relevant applicant's employment is terminated as a result of the relevant employer's insolvency, the date on which such employer became insolvent, or the date of such termination, whichever such applicant shall as regards the debt nominate, or

(ii) in any other case, the date on which such employer became insolvent;

“the relevant period” means in relation to a debt to which this section applies, the period of eighteen months immediately preceding the relevant date.

(10) No reference in subsection (3) of this section to an award shall be construed as including a reference to any amount allowed as regards costs.

Annotations

Amendments:

- F15** Substituted (1.05.1990) by *Social Welfare Act 1990* (5/1990), s. 28(b), commenced as per s. 31.
- F16** Substituted (25.05.2003) by *Redundancy Payments Act 2003* (14/2003) s. 15(a), S.I. No. 194 of 2003. Note reg. 3(2)(b) of commencement order: s. 15 applies only to those circumstances where the relevant date defined by s. 6(9) occurs on or after 25.05.2003.
- F17** Substituted (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 41(1) and (2), S.I. No. 16 of 1995.
- F18** Substituted (2.07.2001) by *Carer's Leave Act 2001* (19/2001), s. 30(a), commenced on enactment.
- F19** Inserted (18.10.1999) by *Employment Equality Act 1998* (21/1998), s. 103(4) and (5), S.I. No. 320 of 1999.
- F20** Deleted (1.04.2000) by *National Minimum Wage Act 2000* (5/2000), s. 47(a)(i), S.I. No. 96 of 2000.

- F21** Substituted (1.04.2000) by *National Minimum Wage Act 2000* (5/2000), s. 47(a)(ii), S.I. No. 96 of 2000.
- F22** Inserted (1.04.2000) by *National Minimum Wage Act 2000* (5/2000), s. 47(a)(iii), S.I. No. 96 of 2000.
- F23** Substituted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 6(a)(i).
- F24** Inserted by (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 6(a)(ii) .
- F25** Deleted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 26(3), (4) and sch. 2, art. 6(2)(a)(i), S.I. No. 682 of 2006.
- F26** Substituted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 26(3), (4) and sch. 2, art. 6(2)(a)(ii), S.I. No. 682 of 2006.
- F27** Deleted (9.08.2011) by *Criminal Justice Act 2011* (22/2011), s. 20(2) and sch. 2 art. 6, S.I. No. 411 of 2011.
- F28** Inserted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 26(3), (4) and sch. 2, art. 6(2)(a)(iii), S.I. No. 682 of 2006.
- F29** Substituted (9.08.2011) by *Criminal Justice Act 2011* (22/2011), s. 20(2) and sch. 2 art. 6(2)(a)(ii), (b), (c) and (d), S.I. No. 411 of 2011.
- F30** Inserted (9.08.2011) by *Criminal Justice Act 2011* (22/2011), s. 20(2) and sch. 2 art. 6(2)(a)(iii), S.I. No. 411 of 2011.
- F31** Substituted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 6(b).
- F32** Substituted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 26(3), (4) and sch. 2, art. 6(2)(b), S.I. No. 682 of 2006.
- F33** Inserted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 6(c).
- F34** Substituted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 26(3), (4) and sch. 2, art. 6(2)(c), S.I. No. 682 of 2006.
- F35** Substituted (1.05.1990) by *Social Welfare Act 1990* (5/1990), s. 28(b), commenced as per s. 31.
- F36** Substituted (1.01.2005) by *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 2004* (S.I. No. 696 of 2004), reg. 3, in respect of debts to which the Act applies and where the relevant date is not earlier than 1.01.2005.
- F37** Inserted (30.01.1995) by *Maternity Protection Act 1994* (34/1994), s. 41(3), S.I. No. 16 of 1995.
- F38** Substituted (2.07.2001) by *Carer's Leave Act 2001* (19/2001), s. 30(b)(i), commenced on enactment.
- F39** Inserted (18.10.1999) by *Employment Equality Act 1998* (21/1998), s. 103(4) and (6), S.I. No. 320 of 1999.
- F40** Substituted (2.07.2001) by *Carers' Leave Act 2001* (19/2001), s. 30(b)(ii), commenced on enactment.
- F41** Inserted (18.10.1999) by *Employment Equality Act 1998* (21/1998), s. 103(4) and (6), S.I. No. 320 of 1999.
- F42** Inserted (1.04.2000) by *National Minimum Wage Act 2000* (5/2000) s. 47(b), S.I. No. 96 of 2000.
- F43** Substituted (25.05.2003) by *Redundancy Payments Act 2003* (14/2003) s. 15(b), S.I. No. 194 of 2003.
- F44** Substituted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 6(d).

- F45** Substituted (1.01.2007) by *Employment Permits Act 2006* (16/2006), s. 26(3), (4) and sch. 2, art. 6(2)(d), S.I. No. 682 of 2006.
- F46** Substituted (25.05.2003) by *Redundancy Payments Act 2003* (14/2003), s. 15(c), S.I. No. 194 of 2003. Note: in accordance with the commencement order, s. 15 of the Act applies only to those circumstances where the relevant date defined by *Protection of Employees (Employers' Insolvency) Act 1984*, s. 6(9) occurs on or after 25.05.2003.

Modifications (not altering text):

- C3** Payments under subs. (2)(a)(i) not excluded (1.04.2000) by *National Minimum Wage Act 2000* (5/2000), s. 41(14), S.I. No. 96 of 2000.

41.— ...

Employer in financial difficulty.

(14) A payment from the Social Insurance Fund in accordance with section 6(2)(a)(i) of the *Protection of Employees (Employers' Insolvency) Acts, 1984 to 1991*, shall not have regard to any exemption under this section and any such payment shall be made to the employee as if the employee had been paid the national minimum hourly rate of pay to which he or she was otherwise entitled under this Act, for the period of the exemption.

- C4** Application of subs. (4)(c)(i) extended (20.03.1995) by *Adoptive Leave Act 1995* (2/1995) s. 40(b), S.I. No. 64 of 1995.

Extension of Protection of Employees (Employers' Insolvency) Act, 1984.

40.—In section 6 of the *Protection of Employees (Employers' Insolvency) Act, 1984* —

- (a) the references in subparagraph (v) of subsection (2) (a) to a determination or order shall be construed as including references to a decision, determination or order under Part V, and
- (b) the references in subparagraph (i) of subsection (4) (c) to a determination shall be construed as including references to a decision or determination under Part V and the reference in clause (II) of the said subparagraph, to section 10 (4) of the Act of 1977 shall be construed as including a reference to section 35 or 36, as may be appropriate.

Editorial Notes:

- E6** Power pursuant to section exercised (30.09.2011) by *Protection of Employees (Employers' Insolvency) Procedures Regulations 2011* (S.I. No. 504 of 2011).
- E7** Previous affecting provision: power pursuant to section exercised (2.11.2005) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 2005* (S.I. No. 682 of 2005); revoked (30.09.2011) by *Protection of Employees (Employers' Insolvency) Procedures Regulations 2011* (S.I. No. 504 of 2011), reg. 4.
- E8** Previous affecting provision: power pursuant to section exercised (25.05.2003) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) (Amendment) Regulations 2003* (S.I. No. 197 of 2003). These regulations are not revoked but amend S.I. No. 356 of 1984 which is revoked.
- E9** Previous affecting provision: power pursuant to section exercised (1.01.2002) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) (Amendment) Regulations 2001* (S.I. No. 581 of 2001). These regulations are not revoked but amend S.I. No. 356 of 1984 which is revoked.
- E10** Previous affecting provision: words in subs. (9) substituted (1.04.2000) by *National Minimum Wage Act 2000* (5/2000), s. 47(c), S.I. No. 96 of 2000; subsequently substituted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 6(d); in turn substituted as per F-note above.
- E11** Previous affecting provision: subs. (2)(a)(v)(II) substituted (3.12.1998) by *Parental Leave Act 1998* (30/199), s. 26(1), commenced as per s. 1(2); subsequently substituted as per F-note above.

- E12** Previous affecting provisions: subs. (4)(c)(iv) and (v) substituted in part (3.12.1998) by *Parental Leave Act 1998* (30/1998), s. 26(1) and (3), commenced as per s. 1(2); subsequently superseded as per F-note above.
- E13** Previous affecting provision: power pursuant to section exercised (30.12.1991) by *Protection of Employees (Employers' Insolvency) (Occupational Pension Scheme) (Forms and Procedure) Regulations 1990* (S.I. No. 349 of 1991). These regulations are not revoked but amend S.I. No. 356 of 1984 which is revoked.
- E14** Previous affecting provisions: amount in subs. (4)(a) substituted (1.02.1990) by *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 1990* (S.I. No. 17 of 1990), reg. 2(1); substituted (1.05.1994) by *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 1994* (S.I. No. 62 of 1994), reg. 3; substituted (1.04.2001) by *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations, 2001* (S.I. No. 42 of 2001), reg. 3; in turn substituted as per F-note above.
- E15** Previous affecting provision: power pursuant to section exercised (20.12.1984) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 1984* (S.I. No. 356 of 1984); revoked (2.11.2005) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 2005* (S.I. No. 682 of 2005), reg. 6.

Payment of unpaid contributions to occupational pension scheme.

7.—(1) If, on an application made to him in the prescribed form by an employee or by the persons competent to act in respect of an occupational pension scheme F47[or **Personal Retirement Savings Account (within the meaning of the Pensions Act, 1990)**], the Minister is satisfied that—

- (a) an employer (being in case the application is made by a person otherwise than in his capacity as the person competent so to act the employer of the applicant) has become insolvent,
- (b) the date on which for the purposes of this Act the employer became insolvent is a day not earlier than the 22nd day of October, 1983, and
- (c) on that day there remained unpaid relevant contributions remaining to be paid by the employer to the scheme F47[or **Personal Retirement Savings Account (within the meaning of the Pensions Act, 1990)**],

on the date on which the employer became insolvent, being a date not earlier than the said 22nd day of October the Minister shall, subject to this section, pay into the assets of the scheme F47[or **Personal Retirement Savings Account (within the meaning of the Pensions Act, 1990)**] out of the F48[**the Social Insurance Fund**] the sum which in his opinion is payable in respect of the unpaid relevant contributions.

(2) In this section “relevant contributions” means contributions falling to be paid by an employer in accordance with an occupational pension scheme F47[or **Personal Retirement Savings Account (within the meaning of the Pensions Act, 1990)**], either on his own account or on behalf of an employee; provided that for the purposes of this section a contribution of any amount shall not be treated as falling to be paid on behalf of an employee unless a sum equal to that amount has been deducted from the pay of the employee by way of a contribution from him.

(3) The sum payable under this section in respect of unpaid contributions of an employer on his own account to an occupational pension scheme F47[or **Personal Retirement Savings Account (within the meaning of the Pensions Act, 1990)**] shall be the lesser of the following amounts—

- (a) the balance of relevant contributions remaining unpaid on the date on which he became insolvent and payable by the employer on his own account to the scheme F47[or **Personal Retirement Savings Account (within the meaning of the Pensions Act, 1990)**] in respect of the period of twelve months ending on the day immediately preceding that date,

(b) the amount certified by an actuary F49[(or, where the employer is an undertaking which is insolvent under the laws, regulations and administrative procedures of another Member State in accordance with Article 2(1) of Council Directive 80/987/EEC of 20 October 1980 as amended by Article 1(2) of Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002 and the employees concerned are employed or habitually employed in the State, an actuary or person performing a similar task)] to be necessary for the purpose of meeting the liability of the scheme on dissolution to pay the benefits provided by the scheme F47[or Personal Retirement Savings Account (within the meaning of the Pensions Act, 1990)] to or in respect of the employees of the employer.

(4) Any sum payable under this section in respect of unpaid contributions on behalf of an employee shall not exceed the amount deducted from the pay of the employee in respect of the employee's contributions to the occupational pension scheme F47[or Personal Retirement Savings Account (within the meaning of the Pensions Act, 1990)] during the period of twelve months ending on the day immediately preceding the date on which the employer became insolvent.

(5) The provisions of *subsections (6), (7) and (8)* of this section shall apply in a case where a relevant officer is either appointed or required to be appointed.

(6) Subject to *subsection (8)* of this section, the Minister shall not in a case which is a case referred to in *subsection (5)* of this section make any payment under this section in respect of unpaid relevant contributions until he has received a statement in the prescribed form from the relevant officer of the amount of relevant contributions which appear to have been unpaid on the date on which the employer became insolvent and to remain unpaid; and the relevant officer shall, on request made by the Minister provide him, as soon as reasonably practicable, with such a statement.

(7) Subject to *subsection (8)* of this section, an amount shall be taken to be payable under *subsection (3)* or to have been deducted in the manner referred to in *subsection (4)* of this section, only if it is certified by the relevant officer as being so payable, or to have been so deducted.

(8) Where—

(a) a period of six months has elapsed since the application for a payment under this section was received by the Minister, but no such payment has been made,

(b) the Minister is satisfied that a payment under this section should be made, and

(c) it appears to the Minister that there is likely to be further delay before he receives a statement or certificate about the contributions in question,

then, the Minister may, if the applicant so requests or, if the Minister thinks fit, without such a request, make a payment under this section, notwithstanding the fact that no statement or certificate referred to in *subsection (6)* or *(7)* of this section has been received.

Annotations

Amendments:

F47 Inserted by *Pensions Act 1990* (25/1990), s. 121(9) as inserted (15.09.2003) by *Pensions (Amendment) Act 2002* (18/2002), s. 3, S.I. No. 389 of 2003.

F48 Substituted (1.05.1990) by *Social Welfare Act 1990* (5/1990), s. 28(b), commenced as per s. 31.

F49 Inserted (8.10.2005) by *European Communities (Protection of Employees (Employers' Insolvency) Regulations 2005* (S.I. No. 630 of 2005), reg. 7.

Editorial Notes:

E16 Power pursuant to section exercised (30.09.2011) by *Protection of Employees (Employers' Insolvency) Procedures Regulations 2011* (S.I. No. 504 of 2011).

E17 Previous affecting provision: power pursuant to section exercised (2.11.2005) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 2005* (S.I. No. 682 of 2005); revoked (30.09.2011) by *Protection of Employees (Employers' Insolvency) Procedures Regulations 2011* (S.I. No. 504 of 2011), reg. 4.

E18 Previous affecting provision: power pursuant to section exercised (23.05.1990) by *Protection of Employees (Employers' Insolvency) (Occupational Pension Scheme) (Forms and Procedure) Regulations 1990* (S.I. No. 121 of 1990); revoked (2.11.2005) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 2005* (S.I. No. 682 of 2005), reg. 6.

E19 Previous affecting provision: power pursuant to section exercised (1.05.1985) by *Protection of Employees (Employers' Insolvency) (Occupational Pension Scheme) (Forms and Procedure) Regulations 1985* (S.I. No. 123 of 1985). These regulations are not revoked but amend S.I. No. 356 of 1984 which is revoked.

Minister may require certain information and documents.

8.—(1) Where an application is made to the Minister under *section 6* or *7* of this Act in respect of a debt owed or unpaid contributions to an occupational pensions scheme, the Minister may require—

- (a) the employer concerned, or, in case a relevant officer is or is required to be appointed, that officer, to provide him with such information as the Minister 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 record kept and retained pursuant to *section 10* of the Holidays (Employees) Act, 1973, or any register, card, wages sheet, record of wages or other document which an officer of the Minister may reasonably consider to be relevant to the application to produce to such officer such document for examination by him.

(2) A requirement under this section shall be made by notice in writing given to the person on whom the requirement is imposed and may be varied or revoked by a subsequent notice so given.

Complaints to Tribunal.

9.—(1) A person who has applied for a payment under *section 6* of this Act of a debt described in *subparagraph (i), (ii) or (iv) of subsection (2) (a)* of that section may within the period of six weeks beginning on the day on which the decision of the Minister on the application was communicated to him or, if that is not reasonably practicable, within such further period as the Tribunal considers reasonable, present a complaint to the Tribunal that—

(a) the Minister has failed to make any such payment;

or

(b) any such payment made by the Minister is less than the amount which should have been paid.

(2) Any person who has applied for a payment to be made under *section 7* of this Act into the resources of a pension scheme may, within the period of six weeks beginning on the day on which the decision of the Minister on that application was communicated to him, or, if that is not reasonably practicable, within such further

period as the Tribunal considers reasonable, present a complaint to the Tribunal that—

(a) the Minister has failed to make any such payment;

or

(b) any such payment made by him is less than the amount which should have been paid.

(3) Where a claim for payment is made under *section 6* or *7* of this Act and it appears to the Minister that a doubt exists as to whether or not such claim is allowable, either in whole or in part, he may refer any matter arising in connection with the claim to the Tribunal for a decision by it as regards the matter.

(4) Where on the hearing of a complaint presented under this section the Tribunal finds that the Minister is liable to make a payment under *section 6* or *7* of this Act, it shall make a declaration to that effect and shall specify in the declaration the amount of such payment.

(5) Subsection (14) of section 39 of the Act of 1967 shall apply to a decision of the Tribunal on any matter referred to it under this section as it applies to a decision of the Tribunal on a question referred to it under that section.

Transfer to Minister of certain rights and remedies.

10.—(1) Where, in pursuance of *section 6* of this Act, the Minister makes any payment to an employee in respect of any debt to which that section applies, any rights and remedies of the employee in respect of that debt (or, if the Minister has paid only part of it, in respect of that part) shall, on the making of the payment, become rights and remedies of the Minister.

(2) Without prejudice to the generality of *subsection (1)* of this section, where rights and remedies become, by virtue of *subsection (1)* of this section, rights and remedies of the Minister, there shall be included amongst them any right to be paid in priority to all other debts under—

(a) section 4 of the Preferential Payments in Bankruptcy (Ireland) Act, 1889; or

(b) section 285, as amended by section 10 of the Companies (Amendment) Act, 1982, of the Companies Act, 1963,

and the Minister shall be entitled to be so paid in priority to any other unsatisfied claim of the employee concerned being a claim which, but for this subsection, would be payable to the employee in such priority; and in computing for the purposes of any of the provisions of the said section 4 or the said section 285, as so amended, any limit on the amount of sums to be paid, any sums paid to the Minister shall be treated as if they had been paid to the employee.

F50[(2A) Where the Minister makes a payment to an employee under section 6(2)(a)(iii)(II) (inserted by section 15 of the Redundancy Payments Act 2003) of this Act, that payment shall be recoverable by the Minister as a debt to be paid in priority to all other debts under—

(a) section 81 of the Bankruptcy Act 1988, or

(b) section 285 (as amended by section 10 of the Companies (Amendment) Act 1982 and section 134 of the Companies Act 1990) of the Companies Act 1963,

and any amount of that payment which would, but for the limit set by section 6(4)(a) (as may be varied by regulations under section 11(5)), be payable to an employee, shall be treated for all purposes as if it were a payment required to be paid by virtue of an award under section 12(1) of the Act of 1973.]

(3) Where in pursuance of *section 7* of this Act the Minister makes any payment into the resources of an occupational pension scheme in respect of any contributions

to the scheme, any rights and remedies in respect of those contributions belonging to the persons competent to act in respect of the scheme shall, on the making of the payment, become rights and remedies of the Minister.

(4) Any sum recovered by the Minister in exercising any right or pursuing any remedy which is his by virtue of this section shall be paid into the F51[the Social Insurance Fund].

Annotations

Amendments:

F50 Inserted (6.04.2004) by *Industrial Relations (Miscellaneous Provisions) Act 2004* (4/2004), s. 15, S.I. No. 138 of 2004.

F51 Substituted (1.05.1990) by *Social Welfare Act 1990* (5/1990), s. 28(b), commenced as per s. 31.

Power to amend Act.

11.—(1) The Minister may from time to time by order amend *section 3* of this Act so as to—

- (a) extend the application of this Act to employees who are of a class or description specified in the order,
- (b) exclude from such application employees who are of a class or description so specified.

(2) The Minister may from time to time by order amend *section 6* of this Act so as to effect either or both of the following—

- (a) substitute for the number of weeks specified in all or any of the following subsections, namely, *subsection (2) (a) (i)*, *(2) (a) (ii)* or *(2) (a) (iv)* a different number of weeks,
- (b) substitute for the number of months specified in the definition of “the relevant period” contained in *subsection (9)* thereof a different number of months.

(3) The Minister may from time to time by order amend *section 4 (2)*, as amended by *section 17* of the *Redundancy Payments Act, 1979*, and by *section 12* of this Act, of the Act of 1967, so as to vary the number of hours specified therein.

(4) The Minister may from time to time by order amend—

- (a) paragraph (a) of *section 3 (1)*, as amended by *section 13* of this Act, of the Act of 1973,
- (b) paragraph 8, as amended by the said *section 13*, of the First Schedule to the Act of 1973,

so as to vary the number of hours specified in that paragraph.

(5) The Minister may by regulation amend *section 6* of this Act so as to vary the limit specified in *subsection (4) (a)*.

(6) The reference in *section 2 (4)* of the Act of 1977 to the First Schedule to the Act of 1973 shall be construed as being a reference—

- (a) in case an order under this section amending that Schedule is for the time being in force, that Schedule as amended by *section 20* of the Act of 1977, by *section 13* of this Act and by the order,
- (b) in case no such order is so in force, that Schedule as amended both by the said *section 20* and the said *section 13*.

(7) Where an order under this section is proposed to be made, the Minister shall cause a draft of the order to be laid before each House of the Oireachtas and the order shall not be made until a resolution approving of the draft has been passed by each such House.

Annotations

Editorial Notes:

- E20** Power pursuant to section exercised (1.01.2005) by *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 2004* (S.I. No. 696 of 2004).
- E21** Power pursuant to section exercised (1.04.2001) *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 2001* (S.I. No. 42 of 2001).
- E22** Power pursuant to section exercised (1.05.1994) by *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 1994* (S.I. No. 62 of 1994).
- E23** Power pursuant to section exercised (1.02.1990) by *Protection of Employees (Employers' Insolvency) (Variation of Limit) Regulations 1990* (S.I. No. 17 of 1990).
- E24** Power pursuant to section exercised (25.03.1988) by *Protection of Employees (Employers' Insolvency) Act, 1984 (Amendment Order) Order 1988* (S.I. No. 48 of 1988).

Amendment of section 4 of Act of 1967.

12.—Subsection (2) of section 4, as amended by section 17 of the Redundancy Payments Act, 1979, of the Act of 1967 is hereby amended by the substitution of “18 hours” for “20 hours”, and the said subsection (2), as so amended, is set out in the Table to this section.

TABLE

(2) This Act shall not apply to a person who is normally expected to work for the same employer for less than 18 hours in a week.

Amendment of section 3 of and First Schedule to Act of 1973.

13.—The Act of 1973 is hereby amended by—

- (a) the substitution in paragraph (a) of section 3(1) of “eighteen hours” for “twenty-one hours”, and
- (b) the substitution of “eighteen hours” for “twenty-one hours” in paragraph 8 of the First Schedule;

and the said paragraphs (a) and 8, as so amended, are set out in paragraphs 1 and 2, respectively, of the Table to this section.

TABLE

1. (a) employment of an employee who is normally expected to work for the same employer for less than eighteen hours in a week.
2. 8. Any week in which an employee is not normally expected to work for at least eighteen hours or more will not count in computing a period of service.

Institution of proceedings for offence.

14.—Proceedings for an offence under *section 15* of this Act shall not be instituted except by or with the consent of the Minister.

Offences.

15.—(1) If any person, in relation to an application under *section 6* or *7* of this Act, whether for himself or for some other person,

(a) knowingly makes any false statement or false representation or knowingly conceals a material fact, or

(b) produces or furnishes, or causes or knowingly allows to be produced or furnished, any document or information which he knows to be false in a material particular,

he shall be guilty of an offence.

(2) If a person refuses or wilfully neglects to provide any information or produce any document which he has been required to provide or produce by a notice under *section 8* of this Act he shall be guilty of an offence.

(3) If a person, in purporting to comply with a requirement of a notice under *section 8* of this Act, knowingly or recklessly makes any false statement he shall be guilty of an offence.

(4) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £500.

(5) Subsections (8) and (9) of *section 266* of the Act of 1981 shall apply in relation to an offence under this section which is committed by a body corporate as they apply to offences under Part V of the Act of 1981 which are so committed.

(6) Subsection (10) of *section 266* of the Act of 1981 shall be construed and have effect as if the reference therein to proceedings under Part V of the Act of 1981 contained a reference to proceedings under this section.

Regulations.

16.—(1) The Minister may make regulations for giving effect to this Act.

(2) Without prejudice to the generality of *subsection (1)* of this section, regulations under this section may make provision requiring an applicant under *section 6* or *7* of this Act to make the application within the prescribed time.

(3) The Minister may make regulations for prescribing any matter referred to in this Act as prescribed.

(4) Regulations under this section may apply to applications under this Act generally or to such applications which are of a prescribed class or description.

(5) Every regulation made under this Act by the Minister shall be laid before both Houses of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next twenty-one days on which that House has sat after the regulation is laid before it, the regulation shall be annulled accordingly but without prejudice to the validity of anything previously done thereunder.

Annotations

Editorial Notes:

E25 Power pursuant to section exercised (30.09.2011) by *Protection of Employees (Employers' Insolvency) Procedures Regulations 2011* (S.I. No. 504 of 2011).

E26 Previous affecting provision: power pursuant to section exercised (2.11.2005) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 2005* (S.I. No. 682 of 2005); revoked (30.09.2011) by *Protection of Employees (Employers' Insolvency) Procedures Regulations 2011* (S.I. No. 504 of 2011), reg. 4.

E27 Previous affecting provision: power pursuant to section exercised (25.05.2003) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) (Amendment) Regulations 2003* (S.I. No. 197 of 2003). These regulations are not revoked but amend S.I. No. 356 of 1984 which is revoked.

- E28** Previous affecting provision: power pursuant to section exercised (1.01.2002) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) (Amendment) Regulations 2001* (S.I. No. 581 of 2001). These regulations are not revoked but amend S.I. No. 356 of 1984 which is revoked.
- E29** Previous affecting provision: power pursuant to section exercised (30.12.1991) by *Protection of Employees (Employers' Insolvency) (Occupational Pension Scheme) (Forms and Procedure) Regulations, 1990* (S.I. No. 349 of 1991). These regulations are not revoked but amend S.I. No. 356 of 1984 which is revoked.
- E30** Previous affecting provision: power pursuant to section exercised (23.05.1990) by *Protection of Employees (Employers' Insolvency) (Occupational Pension Scheme) (Forms and Procedure) Regulations 1990* (S.I. No. 121 of 1990); revoked (2.11.2005) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 2005* (S.I. No. 682 of 2005), reg. 6.
- E31** Previous affecting provision: power pursuant to section exercised (1.05.1985) by *Protection of Employees (Employers' Insolvency) (Occupational Pension Scheme) (Forms and Procedure) Regulations 1985* (S.I. No. 123 of 1985). These regulations are not revoked but amend S.I. No. 356 of 1984 which is revoked.
- E32** Previous affecting provision: power pursuant to section exercised (20.12.1984) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 1984* (S.I. No. 356 of 1984); revoked (2.11.2005) by *Protection of Employees (Employers' Insolvency) (Forms and Procedure) Regulations 2005* (S.I. No. 682 of 2005), reg. 6.

Expenses, etc.

17.—(1) The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

(2) The Minister may pay out of the F52[the Social Insurance Fund] to a relevant officer or a person to whom an appointment under section 5 of this Act relates, in respect of the functions performed by him under this Act, such fees as the Minister shall, with the concurrence of the Minister for Finance, determine.

Annotations

Amendments:

- F52** Substituted (1.05.1990) by *Social Welfare Act 1990* (5/1990), s. 28(b), commenced as per s. 31.

Short title and collective citations.

18.—(1) This Act may be cited as the Protection of Employees (Employers' Insolvency) Act, 1984.

(2) Section 12 of this Act and the Redundancy Payments Acts, 1967 to 1979, may be cited together as the Redundancy Payments Acts, 1967 to 1984.

(3) Section 13 of this Act and the Act of 1973 may be cited together as the Minimum Notice and Terms of Employment Acts, 1973 and 1984.