

SCHEDULE

PART 12

Amendments to the Employment Rights (Northern Ireland) Order 1996 and the Pension Schemes (Northern Ireland) Act 1993

Amendments to the Employment Rights (Northern Ireland) Order 1996

255.—(1) The Employment Rights (Northern Ireland) Order 1996⁽¹⁾ is amended as follows.

(2) In Article 201 (applications for payments)⁽²⁾—

(a) in paragraph (5)—

- (i) in sub-paragraph (a) after “(6)” insert “or (8A)”;
- (ii) in sub-paragraph (b) after “(7)” insert “or (8A)” and at the end of that sub-paragraph omit “and”;
- (iii) in sub-paragraph (c) after “(8)” insert “or (8A)”;
- (iv) at the end of sub-paragraph (c) insert—
“, and

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

(b) after paragraph (8) insert—

“(8A) This paragraph 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 paragraph (8A)—

- (a) “liquidator or a person performing a similar task” includes the official receiver or an administrator, trustee in bankruptcy, judicial factor, supervisor of a voluntary arrangement, or a 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

⁽¹⁾ [S.I. 1996/1919 \(N.I. 16\)](#).

⁽²⁾ Article 201 was amended by regulation 9 of, and Schedule 4 to S.R. [\(NI\) 2004 No. 307](#); there are other amendments not relevant to these Regulations.

- (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 Article only if the employee worked or habitually worked in Northern Ireland in that employment to which the application relates.”.

(3) In Article 228(3)—

(a) in paragraph (1)—

- (i) in sub-paragraph (a) after “(2)” insert “or (4A)”;
- (ii) in sub-paragraph (b) after “(3)” insert “or (4A)” and at the end of that sub-paragraph omit “and”;
- (iii) in sub-paragraph (c) after “(4)” insert “or (4A)”;
- (iv) at the end of sub-paragraph (c) insert—

“, and

- (d) where the employer is not any of the above, if (but only if) paragraph (4A) is satisfied.”;

(b) after paragraph (4) insert—

“(4A) This paragraph 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.

(4B) For the purposes of paragraph (4A)—

- (a) “liquidator or a person performing a similar task” includes the official receiver or an administrator, trustee in bankruptcy, judicial factor, supervisor of a voluntary arrangement, or a 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.

(3) Article 228 was amended by regulation 9 of, and the Schedule 4 to S.R. (NI) 2004 No. 307; there are other amendments not relevant to these Regulations.

(4C) An employee may apply under Article 227 (employee’s rights on insolvency of employer) only if the employee worked or habitually worked in Northern Ireland in that employment to which the application relates.”.

Amendments to the Pension Schemes (Northern Ireland) Act 1993

256.—(1) The Pension Schemes (Northern Ireland) Act 1993⁽⁴⁾ is amended as follows.

(2) In section 119⁽⁵⁾—

(a) in subsection (1)—

(i) in paragraph (b) after “Insolvency (Northern Ireland) Order 1989;” omit “or”; and

(ii) at the end of paragraph (c) insert—

“; or

(d) subsection (1A) is satisfied.”;

(b) after subsection (1) insert—

“(1A) This subsection is satisfied 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.

(1B) For the purposes of subsection (1A)—

(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.

(1C) An application under section 120 may only be made in respect of a worker who worked or habitually worked in Northern Ireland in that employment to which the application relates.”.

⁽⁴⁾ 1993 c. 49.

⁽⁵⁾ Section 119 was amended by paragraph 15 of Schedule 10 and Schedule 11 to the Pensions (Northern Ireland) Order 2005 (S.I. 2005/255 (N.I. 1)), paragraph 53 of Schedule 2 and Schedule 9 to the Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)) and section 41(2) of the Pensions Act (Northern Ireland) 2015 (c. 5 (N.I.)).

Draft Legislation: *This is a draft item of legislation. This draft has since been made as a
UK Statutory Instrument: The Insolvency (Amendment) (EU Exit) Regulations 2019 No. 146*