

EXPLANATORY MEMORANDUM TO
THE EMPLOYMENT RIGHTS ACT 1996 AND PENSION SCHEMES ACT
(AMENDMENT) REGULATIONS 2017

2017 No. 1205

1. Introduction

- 1.1 This explanatory memorandum has been prepared by The Insolvency Service and is laid before Parliament by the House of Commons by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 The Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 (“the Regulations”) make amendments to sections 166 and 183 of the Employment Rights Act 1996 (“ERA 1996”) and section 123 of the Pension Schemes Act 1993 (“PSA 1993”) (“the Acts”). The Regulations bring insolvent employers that are not defined as a company, an individual or, in the case of ERA 1996, Limited Liability Partnership, within the provisions of the Acts for the purposes of enabling their UK-based employees to make a claim for a payment by the Secretary of State (out of the National Insurance Fund) for certain redundancy and related insolvency payments.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 Directive 2008/94 EC of the European Parliament and the Council on the protection of employees in the event of the insolvency of their employer (“the Directive”) provides for payment to employees of insolvent employers located in a Member State, who work or habitually work in a Member State, of certain sums due to them arising from contracts of employment.
- 4.2 The Acts provide for payment to employees of certain insolvent employers of defined sums due to them arising from contracts of employment.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England, Wales and Scotland.
- 5.2 The territorial application of this instrument is England, Wales and Scotland.

6. European Convention on Human Rights

- 6.1 The Minister for Small Business, Consumers and Corporate Responsibility has made the following statement regarding Human Rights:

In my view the provisions of the Employment Rights Act 1996 and Pension Schemes Act 1993 (Amendment) Regulations 2017 are compatible with the Convention rights.

7. Policy background

What is being done and why

- 7.1 Sections 166 and 182 of ERA 1996 provide for payment to employees of certain sums due to them from their employer in circumstances where the employer becomes insolvent. Section 123 of the PSA 1993 provides for payment to pension schemes of relevant outstanding employee and employer contributions. All three sections define when an employer becomes insolvent for the purposes of the Acts. These definitions do not encompass all employers that become insolvent, but only those insolvent employers who are companies, limited liability partnerships (in the case of ERA 1996) or individuals; nor do they cover some types of collective insolvency proceeding in Member States (which are broadly analogous to the UK's administration procedure). Following a review conducted by the Redundancy Payments Service, which administers such payments on behalf of the National Insurance Fund to employees, it was concluded that the definition of an insolvent employer should be expanded to include all insolvent employers in the situations required to be covered under the Directive.

Consolidation

- 7.2 This instrument does not amend another statutory instrument.

8. Consultation outcome

- 8.1 No consultation has been undertaken.

9. Guidance

- 9.1 Insolvency Service publications, available on Gov.UK, will be updated to reflect the change.

10. Impact

- 10.1 There is no impact on business, charities, or voluntary bodies.
- 10.2 There is no impact on the public sector.
- 10.3 An impact assessment has not been prepared for this instrument because all employees are already protected by virtue of the direct effect of the Directive, and in practice the Redundancy Payments Service already honours such payments. Accordingly, these Regulations will have no impact other than to formalise the position.

11. Regulating small business Impact

- 11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

- 12.1 The Government will continue to monitor that the Acts and ensure protection for employees of all insolvent employers.

13. Contact

- 13.1 Jessica Bradbury, Senior Policy Advisor at The Insolvency Service (Tel: 0121 380 3477 or e-mail: Policy.Unit@insolvency.gsi.gov.uk) can answer any queries regarding these Regulations.