

*These notes refer to the Insolvency (Amendment) Act (Northern Ireland) 2016 (c.2) which received Royal Assent on 29 January 2016*

# Insolvency (Amendment) Act (Northern Ireland) 2016

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## EXPLANATORY NOTES

### COMMENTARY ON SECTIONS

#### *Section 10: Treatment of liabilities relating to contracts of employment*

Section 10 repeals one element of the priority given to employees' wages in certain insolvency proceedings, because the type of employment contract to which it relates no longer exists.

In administration and administrative receiverships a company can continue to trade under the direction of the administrator or the administrative receiver, usually pending a sale of the business or assets. All debts incurred by the company after entry into such insolvency proceedings are classified as an expense of the insolvency proceedings and are payable ahead of the fees of the insolvency practitioner. For an employee to become entitled to have their wages paid as an expense, the insolvency practitioner would have to adopt their contract. As well as including salary for actual days worked, the definition of wages extends to cover payment for holiday entitlement, absence and payment in lieu of holiday. Certain employment contracts (year-in-hand schemes) earned an employee holiday entitlement for the year ahead. Social security legislation provides that this holiday is counted as being accrued in the year it was earned.

In order not to discriminate against employees on these schemes, Articles 31(10) (for pre-Schedule B1 administration which continues in operation for some purposes) and 54(2D) (for administrative receiverships) of the Insolvency Order, and paragraphs 100(6)(d) of Schedule B1 (administration) and 15 of Schedule 4 (categories of preferential debts) to that Order, provide that "wages or salary" includes, in respect of a period, a sum which would be treated as earnings for that period for the purposes of an enactment about social security. This enables a claim for this earned holiday entitlement to be made after entry into insolvency proceedings. However, such provision is now redundant as 'year in hand' schemes are no longer legally possible since the coming into operation of the [Working Time Regulations \(Northern Ireland\) 1998 \(SR 1998 No. 386\)](#).

Subsection (2) of section 10 repeals paragraph (10) of Article 31 of the Insolvency Order, subsection (3) repeals paragraph (2D) of Article 54 of that

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Order, subsection (4) repeals paragraph 100(6)(d) of Schedule B1 to that Order and subsection (5) repeals paragraph 15(b) of Schedule 4 to that Order.