

DEREGULATION ACT 2015

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Schedule 6: Insolvency and company law

Part 7: Liabilities of administrators and administrative receivers of companies and preferential debts of companies and individuals

Treatment of liabilities relating to contracts of employment

598. *Paragraphs 24 to 28* repeal 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.
599. 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.
600. In order not to discriminate against employees on these schemes, sections 19(10) (for pre-Schedule B1 administration which continues in force for some purposes) and 44(2D) (for administrative receiverships) of the Insolvency Act 1986, and paragraphs 99(6)(d) of Schedule B1 (administration) and 15 of Schedule 6 (categories of preferential debts) to that Act, 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 force of the Working Time Regulations 1998. Removing unnecessary provision from the statute book reduces a burden.
601. *Paragraphs 24 to 28* form part of the law of England and Wales and Scotland, in line with the provisions that they amend. However, the change made by paragraph 25 applies only to administrative receivers appointed in England and Wales, as does the provision it amends. These paragraphs will come into force at the end of the period of 2 months beginning with the day on which the Bill becomes an Act.