

S.I. No. 630 of 2005

REGULATIONS

entitled

**European Communities (Protection of Employees (Employers' Insolvency))
Regulations 2005**

(PRN. A5/1661)

I, Micheál Martin, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972), for the purpose of giving effect to Directive 2002/74/EC of the European Parliament and of the Council of 23 September 2002¹, hereby make the following regulations:

Citation, Commencement and Interpretation.

1. (1) These Regulations may be cited as the European Communities (Protection of Employees (Employers' Insolvency)) Regulations 2005.

(2) These Regulations come into operation on 8 October, 2005.

2. In these Regulations "Act of 1984" means the Protection of Employees (Employers' Insolvency) Act 1984 (No. 21 of 1984).

Amendment of Protection of Employees (Employers' Insolvency) Act 1984.

3. Section 1 of the Act of 1984 is amended –

(a) in subsection (1)–

(i) by inserting after the definition of "the Act of 1967" the following:

“ ‘the Act of 1969’ means the Industrial Relations Act 1969;”

(ii) by inserting after the definition of "the Act of 1981" the following:

“ ‘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;

¹ OJ No. L270, 8.10.2002, p. 10

‘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;”,

(iii) by inserting after the definition of “company” the following:

“ ‘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;”,

(iv) by inserting after the definition of “holiday pay” the following:

“ ‘Member State’ means a Member State of the European Union”,
and

(v) in the definition of “relevant officer”, by deleting “or” after “a receiver or manager,” and by inserting after “by an employer” the following:

“, 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”,

and

² OJ No. L283, 28.10.1980, p. 23

¹ OJ No. L270, 8.10.2002, p. 10

- (b) in subsection (3) -
 - (i) in paragraph (c), by substituting for “comprised in or subject to the charge, or” the following: “comprised in or subject to the charge; or”,
 - (ii) in paragraph (d), by substituting for “in relation to him.” the following: “in relation to him; or”, and
 - (iii) by inserting after paragraph (d) the following:

“(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.”.

4. The Act of 1984 is amended by substituting the following for section 3:

“Application of Act.

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.”.

5. Section 4(1) of the Act of 1984 is amended -

- (a) in paragraph (e), by deleting “and”,
- (b) in paragraph (f), by substituting for “having become insolvent.” the following: “having become insolvent, and”, and
- (c) by inserting after subsection (f) the following:

“(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.”.

6. Section 6 of the Act of 1984 is amended -

(a) in subsection 2(a) -

(i) in subparagraph (xiii) (inserted by section 47 of the National Minimum Wage Act 2000) by substituting for “of the relevant period.” the following: “of the relevant period”, and

(ii) by inserting after the said subparagraph (xiii) the following subparagraphs:

“(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, and

(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 Act of 2004.”,

(b) in subsection (2)(b), by substituting “, (xi), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv) or (xxv)” for “or (xi)”,

(c) by inserting after subsection (2)(b) the following paragraph:

“(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) or (xxv) 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,

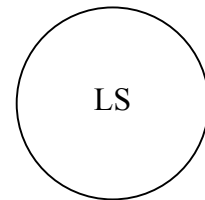
- (ii) the determination of the Employment Appeals Tribunal or the Labour Court, as appropriate,

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

and

- (d) in the definition of “the relevant date” in subsection (9) (as amended by section 47(c) of the National Minimum Wage Act 2000) by substituting “(x), (xi), (xiii), (xiv), (xv), (xvi), (xvii), (xviii), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv) or (xxv)” for “(x), (xi) or (xiii)”.

7. Section 7(3)(b) of the Act of 1984 is amended by inserting “(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)” after “actuary”.



GIVEN under my Official Seal,

4th October, 2005.

MICHEÁL MARTIN
Minister for Enterprise,
Trade & Employment

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations transpose into Irish law Directive 2002/74/EU of 23 September 2002 amending Council Directive 80/987/EEC concerning the protection of employees in the event of insolvency of their employer. The Regulations amend the Protection of Employees (Employers' Insolvency) Act 1984 by including a provision to cover employees who are employed in Ireland by an employer who has become insolvent under the laws, regulations and administrative procedures of another Member State. The Regulations also extend the coverage of the Act to include additional entitlements that may be owed to employees by an insolvent employer.

Copies of these Regulations may be purchased from the Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2, or through any bookseller.

Price €2.54