



Pensions Act 2004

2004 CHAPTER 35

PART 2

THE BOARD OF THE PENSION PROTECTION FUND

CHAPTER 2

INFORMATION RELATING TO EMPLOYER'S INSOLVENCY ETC

Insolvency events

121 Insolvency event, insolvency date and insolvency practitioner

- (1) In this Part each of the following expressions has the meaning given to it by this section—
- “insolvency event”
 - “insolvency date”
 - “insolvency practitioner”.
- (2) An insolvency event occurs in relation to an individual where—
- (a) he is adjudged bankrupt or sequestration of his estate has been awarded;
 - (b) the nominee in relation to a proposal for a voluntary arrangement under Part 8 of the Insolvency Act 1986 (c. 45) submits a report to the court under section 256(1) or 256A(3) of that Act which states that in his opinion a meeting of the individual's creditors should be summoned to consider the debtor's proposal;
 - (c) a deed of arrangement made by or in respect of the affairs of the individual is registered in accordance with the Deeds of Arrangement Act 1914 (c. 47);
 - (d) he executes a trust deed for his creditors or enters into a composition contract;
 - (e) he has died and—

Status: This is the original version (as it was originally enacted).

- (i) an insolvency administration order is made in respect of his estate in accordance with an order under section 421 of the Insolvency Act 1986, or
 - (ii) a judicial factor appointed under section 11A of the Judicial Factors (Scotland) Act 1889 (c. 39) is required by that section to divide the individual’s estate among his creditors.
- (3) An insolvency event occurs in relation to a company where—
- (a) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986 submits a report to the court under section 2 of that Act (procedure where nominee is not the liquidator or administrator) which states that in his opinion meetings of the company and its creditors should be summoned to consider the proposal;
 - (b) the directors of the company file (or in Scotland lodge) with the court documents and statements in accordance with paragraph 7(1) of Schedule A1 to that Act (moratorium where directors propose voluntary arrangement);
 - (c) an administrative receiver within the meaning of section 251 of that Act is appointed in relation to the company;
 - (d) the company enters administration within the meaning of paragraph 1(2)(b) of Schedule B1 to that Act;
 - (e) a resolution is passed for a voluntary winding up of the company without a declaration of solvency under section 89 of that Act;
 - (f) a meeting of creditors is held in relation to the company under section 95 of that Act (creditors' meeting which has the effect of converting a members' voluntary winding up into a creditors' voluntary winding up);
 - (g) an order for the winding up of the company is made by the court under Part 4 or 5 of that Act.
- (4) An insolvency event occurs in relation to a partnership where—
- (a) an order for the winding up of the partnership is made by the court under any provision of the Insolvency Act 1986 (c. 45) (as applied by an order under section 420 of that Act (insolvent partnerships));
 - (b) sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 (c. 66) or the partnership grants a trust deed for its creditors;
 - (c) the nominee in relation to a proposal for a voluntary arrangement under Part 1 of the Insolvency Act 1986 (as applied by an order under section 420 of that Act) submits a report to the court under section 2 of that Act (procedure where nominee is not the liquidator or administrator) which states that in his opinion meetings of the members of the partnership and the partnership’s creditors should be summoned to consider the proposal;
 - (d) the members of the partnership file with the court documents and statements in accordance with paragraph 7(1) of Schedule A1 to that Act (moratorium where directors propose voluntary arrangement) (as applied by an order under section 420 of that Act);
 - (e) an administration order under Part 2 of that Act (as applied by section 420 of that Act) is made in relation to the partnership.
- (5) An insolvency event also occurs in relation to a person where an event occurs which is a prescribed event in relation to such a person.

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- (6) Except as provided by subsections (2) to (5), for the purposes of this Part an event is not to be regarded as an insolvency event in relation to a person.
- (7) The Secretary of State may by order amend subsection (4)(e) to make provision consequential upon any order under section 420 of the Insolvency Act 1986 (insolvent partnerships) applying the provisions of Part 2 of that Act (administration) as amended by the Enterprise Act 2002 (c. 40).
- (8) “Insolvency date”, in relation to an insolvency event, means the date on which the event occurs.
- (9) “Insolvency practitioner”, in relation to a person, means—
 - (a) a person acting as an insolvency practitioner, in relation to that person, in accordance with section 388 of the Insolvency Act 1986;
 - (b) in such circumstances as may be prescribed, a person of a prescribed description.
- (10) In this section—
 - “company” means a company within the meaning given by section 735(1) of the Companies Act 1985 (c. 6) or a company which may be wound up under Part 5 of the Insolvency Act 1986 (c. 45) (unregistered companies);
 - “person acting as an insolvency practitioner”, in relation to a person, includes the official receiver acting as receiver or manager of any property of that person.
- (11) In applying section 388 of the Insolvency Act 1986 under subsection (9) above—
 - (a) the reference in section 388(2)(a) to a permanent or interim trustee in sequestration must be taken to include a reference to a trustee in sequestration, and
 - (b) section 388(5) (which includes provision that nothing in the section applies to anything done by the official receiver or the Accountant in Bankruptcy) must be ignored.