General Scheme

Protection of Employees (Employers' Insolvency) Amendment Bill 2024

Department of Enterprise, Trade and Employment
April 2024

Contents

Part 1 – Preliminary and General

Head 1 – Short title and commencement

Provide that

(1) This Act may be cited as the Protection of Employees (Employers' Insolvency) (Amendment) Act 2024.

(2) The Protection of Employees (Employers' Insolvency) Acts 1984 to 2020 and this Act may be cited together as the Protection of Employees (Employers' Insolvency) Acts 1984 to 2024 and shall be construed together as one Act.

(3) This Act shall come into operation on such day or days as the Minister may appoint by order or orders either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

Purpose / Explanatory Note

This is a standard provision dealing with short title and commencement.

Head 2 – Definitions

Provide that

"Minister" means the Minister for Enterprise, Trade and Employment;

"Principal Act" means the Protection of Employees (Employers' Insolvency) Act 1984.

Purpose / Explanatory Note

This is a standard provision dealing with definitions.

Part 2 – Amendments to Principal Act

Purpose of Heads:

These Heads amend the Principal Act in a way that have general application. This includes amendments that apply to the proposed Employer Deemed Insolvent Application, Historical Employer Deemed Insolvent Application and where an employer is insolvent because they enter into an insolvency arrangement within the meaning of the *Personal Insolvency Act 2012* (all described below in Head 3).

Head 3 – Amendment of section 1 (Interpretation)

Provide that

(1) The Principal Act is amended in section 1(1) by the insertion or substitution, as appropriate, of the following definitions:

"contract of employment" means -

(a) a contract of service or apprenticeship, or

(b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency (within the meaning of the Protection of Employees (Temporary Agency Work) Act 2012), and is acting in the course of that business, to do or perform personally any work or service for another person (whether or not that other person is a party to the contract),

whether the contract is express or implied and, if express, whether it is oral or in writing;

"employee" means a person who has entered into or works under (or, where the employment has ceased, entered into or worked under) a contract of employment and references, in relation to an employer, to an employee, shall be construed as references to an employee employed by that employer;

"employer" means, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment subject to the qualification that the person who, under a contract of employment referred to in paragraph (b) of the definition of "contract of employment", is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual's employer and includes, where appropriate, the successor of the employer or an associated employer of the employer;

'General Data Protection Regulation' means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;

'personal data' has the same meaning as it has in Article 4 of the General Data Protection Regulation;

'special categories of personal data' means personal data referred to in Article 9(1) of the General Data Protection Regulation.

(2) The Principal Act is amended in section 1(3) by the insertion of the following after paragraph (f):

> "(g) The employer has been deemed insolvent within the meaning of Head 13 for the purpose of this Act; or
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> (h) The employer has been deemed insolvent within the meaning of Head 20 for the purpose of this Act; or
>
> (i) The employer has entered into an insolvency arrangement, within the meaning of the Personal Insolvency Act 2012, on or after the commencement of the Protection of Employees (Employers' Insolvency) (Amendment) Act 2024."

Purpose of Head

This Head amends certain definitions used in the Act and updates the circumstances where an employer has been deemed insolvent or is insolvent for the purpose of this Act. This is required because an employer must be insolvent for the purpose of the Act in order for employees to be able to make a claim to the State for their outstanding pay-related entitlements.

Explanatory Note

Subsection (1) updates the definitions of contract of employment, employee and employer used in the Act. This reflects the changes used in more recent employment legislation and is based on the definitions used in the *Sick Leave Act 2022.* The Principal Act did not previously include a definition for "employer", which was simply to be construed in relation to "employee". However, given that the amendments proposed in this General Scheme will specifically require contact with the person or entity who is an applicant's employer, it is considered prudent now to include a specific definition of "employer".

It also inserts several GDPR-related definitions, which previously existed as standalone definitions under section 8A of the Principal Act. This is required as these definitions are also used in Head 25.

Subsection (2) outlines the three new circumstances where an employer is or may be deemed insolvent for the purpose of this Act.

The first circumstance is outlined in Head 13. This applies where an employer owes their employees pay-related entitlements and has ceased trading but has not been formally wound-up (if they are a company) or ceased to act as an employer (if they are a natural person). This will ensure the State has correctly transposed Article 2(1)(b) of Directive 2008/94/EC "on the protection of employees in the event of the insolvency of their employer" by providing for a mechanism for employees to seek to claim their entitlements where the employer ceases trading but does not formally wind-up. This reflects the Supreme Court's findings in the *Glegola* case [Glegola -v- Minister for Social Protection [2018] IESC 65]. This circumstance is referred to throughout this General Scheme as the "Employer Deemed Insolvent Application**".**

The second circumstance is outlined in Head 20. This usually applies where an employer may have owed their employees pay-related entitlements, ceased trading but did not formally wind-up, where this occurred after 22 October 1983 (the original Directive transposition date), but before the commencement of this Bill. Providing for this circumstance will ensure that employees of such

employers are not disadvantaged by the State's failure to correctly transpose Article 2(1)(b) of Directive 2008/94/EC. This is referred to throughout this General Scheme as the "Historical Employer Deemed Insolvent Application**".**

In both of the above circumstances, the employer is deemed insolvent solely for the purposes of enabling their employees' Directive-based entitlements to be vindicated. No court of competent jurisdiction will have made a relevant order finding the employer to be insolvent, so it is critical that these provisions do not give rise to any wider finding that the employer is insolvent. Furthermore, where the employer is a natural person, a key consideration is that Government policy encourages people to remain in economic activity where possible. Hence, and by contrast with the more usual position outlined above in relation to companies, it is not intended that a natural person should have entirely ceased trading.

The third circumstance is where an employer enters into an insolvency arrangement within the meaning of the Personal Insolvency Act 2012. This means a Debt Relief Notice, Debt Settlement Arrangement or a Personal Insolvency Arrangement. The policy intention is that this will only apply for insolvency arrangements approved after the commencement of this Act, and will not apply retrospectively. This ensures that the 1984 Act takes appropriate account of the introduction of the Personal Insolvency Act 2012. It is very rare that people entering these arrangements have employee creditors, but this should be included for completeness.

Head 4 – Amendment of section 4 (Insolvency for the purposes of the Act)

Provide that:

The Principal Act is amended in section 4(1) by the insertion of the following after paragraph (h):

> "(i) where the employer is deemed insolvent within the meaning of section 1(3)(g) as inserted by Head 3, the date on which the applicant serves written notice on the employer referred to in Head 9; or
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> (j) where the employer is deemed insolvent within the meaning of section 1(3)(h) as inserted by Head 3, the date on which the Minister deems the employer to be insolvent in Head 20(3); or
>
> (k) where the employer is insolvent within the meaning of section 1(3)(i) as inserted by Head 3, the date on which the insolvency arrangement, within the meaning of the Personal Insolvency Act 2012, is approved or, as the case may be, deemed to be approved, in accordance with the *Personal Insolvency Act 2012*.".

Purpose of Head

This Head specifies the date on which the employer is insolvent or deemed insolvent for each of the three new circumstances.

Explanatory Note

Paragraph (i) specifies the date of insolvency for an application made under the Employer Deemed Insolvent Application. The date of deemed insolvency is the date the applicant serves written notice on the employer requesting payment of the debts due to them.

Paragraph (j) specifies the date of insolvency for an application made under the Historical Employer Deemed Insolvent Application. The date of deemed insolvency is a date the Minister stipulates when deeming the employer to be insolvent under Head 20(3).

Paragraph (k) specifies the date of insolvency for an application made where the employer is insolvent where they enter into an insolvency arrangement under the *Personal Insolvency Act 2012*. The date of insolvency is the date the employer's Debt Relief Notice, Debt Settlement Arrangement or a Personal Insolvency Arrangement is approved. The approval method is as defined in the *Personal Insolvency Act 2012*.

Head 5 – Amendment of section 6 (Employees' rights on insolvency of employer.)

Provide that:

(1) The Principal Act is amended at Section 6(4)(a) by deleting ",where the amount of that debt is or may be calculated by reference to the employee's remuneration,".

(2) The Principal Act is amended by the insertion of the following subsection after subsection 6(4):

"(4A) For the purpose of calculating the amount payable where section 6(4)(a) applies, the debt mentioned in section 6(2) or awards mentioned in section 6(3) shall be divided by the employee's normal weekly remuneration. The computed amount shall then be multiplied by the amount specified in section 6(4)(a)."

Purpose of Head

The purpose of this Head is to provide a legislative basis for the long-standing policy approach to applying a salary ceiling to all types of debts paid under the Principal Act.

Explanatory Note

The policy intention is that all debts mentioned in section 6(2) or awards mentioned in section 6(3) are subject to a salary cap, which is currently €600 per week.

This Heads provides a statutory basis for the longstanding policy of how financial limits were applied to debts related to employment rights awards from the Workplace Relations Commission, Labour Court and other employment tribunals under the Act. This policy was found to be *ultra vires* by the Court of Appeal in 2019 (*Brady & Anor -v- Minister for Social Protection & Anor* [2019] IECA 178).

Subsection (1) deletes a part of the existing section 6(4)(a). The purpose of this is to ensure that all debts awarded by the WRC, Labour Court or similar bodies is subject to the statutory salary cap, including in cases where the amount awarded is not linked to the employee's remuneration.

Subsection (2) of this Head explicitly sets out the proposed policy approach is that the following formula will be applied to any debt, where the employee's remuneration exceeds €600 in respect of any one week:

- The amounts awarded by the relevant employment rights body, tribunal or court is divided by the employee's remuneration;
- This amount is then multiplied by the statutory salary cap (currently €600 per week);
- This is the amount that is properly payable under section 6(4)(a).

This new subsection also makes an explicit reference to the employee's "normal weekly remuneration" rather than just referring to "remuneration". This is already defined in section 6(9) of the Principal Act as being the method of calculation prescribed in Schedule 3 of the Redundancy Payments Act 1967. This will ensure consistency in the remuneration used to calculate any arrears of wages and limits applied under this Head.

This approach will provide certainty in setting out how the statutory salary cap is applied to all types of debts, especially debts related to employment rights awards.

Where the employee's remuneration is calculated by reference to a pay period other than weekly (for example, fortnightly or monthly), the same formula will apply by reference to the equivalent of the €600 weekly statutory salary cap (e.g. fortnightly salary cap is €1,200 or the monthly salary cap is €2,600).

Head 6 – Amendment of section 8 (Minister may require certain information and documents)

Provide that:

The Principal Act is amended in section 8(1) by the insertion of the following paragraph after paragraph (b):

> "(c) where the application is made by an employee, the employee to provide the Minister with such information as the Minister may reasonably require for the purpose of determining whether the application is well-founded.".

Purpose of Head

The purpose of this Head is to ensure the Minister can request information from an employee to ensure an application for payment under section 6 or 7 of the Principal Act is well-founded. This is required where the employee (or their representative) is making a claim directly, instead of the claim being made by a relevant officer (e.g. liquidator or receiver).

Explanatory Note

Section 8 allows the Minister to request relevant information from certain individuals to assist in determining if an application for payment under section 6 or 7 of the Principal Act is well-founded.

Where an employer is in liquidation or receivership, a liquidator or receiver is appointed who acts as a "relevant officer" who will make the application to the Minister on the employees' behalf.

However, there is no "relevant officer" who will submit the claim on the employee's behalf under the Employer Deemed Insolvent Application, the Historical Employer Deemed Insolvent Application or where the employer is insolvent by entering an insolvency arrangement under the *Personal Insolvency Act 2012*. Instead, an employee (or their representative) will make an application for payment under section 6 or section 7 directly to the Minister.

This Head will ensure that the Minister can request further information to verify such claims are well-founded.

Without prejudice to the generality of paragraph (c), the policy intention is that the types of information that may be sought as part of an application includes the contract of employment / offer letter (if available), payslips (if available) or other evidence of payment from the employer.

The fact that certain types of documentation are "if available" reflects the fact that an employee should not be disadvantaged should their employer fail to provide them with a contract or payslips.

Head 7 – Amendment of section 8A (Transfer of personal data in relation to employers insolvent in United Kingdom)

Provide that:

The Principal Act is amended by the deletion of section 8A(3).

Purpose / Explanatory Note

This is a technical amendment. Section 8A(3) contains GDPR-related definitions used in the section. Head 3 has moved these definitions to section 1 of the Principal Act, therefore section 8A(3) is redundant.

Part 3 – Employer Deemed Insolvent Application

Purpose of Part:

This Part, consisting of Heads 8 – 17, is to be inserted after Head 7.

This Part provides for a mechanism for the Minister to deem an employer insolvent for the purpose of this Act. It is envisioned this application will be used where an employer ceases trading without going through a formal windup. The test used to deem an employer insolvent differs, depending on whether the employer is a body corporate or a natural person (e.g. sole trader).

This Part is required to ensure the State has properly transposed Article 2(1)(b) of Directive 2008/94/EC. This will help ensure employees of such employers are able to apply to have the State cover their pay-related entitlements.

This Part does not apply for historical cases, which precede the commencement of this Part. Such cases are dealt with in Part 4 below.

Head 8 – Definitions (Part)

Provide that:

"In this Part,

"applicant" means the person by or on whose behalf an application is made under Head 10;

"relevant evidence" means:

(a) Where the employer is a body corporate, information relating to the employer's taxpayer information (within the meaning of section 851A of the Taxes Consolidation Act 1997),

(b) Where the employer is a natural person, information relating their taxpayer information (within the meaning of section 851A of the Taxes Consolidation Act 1997), where such taxpayer information relates only to their role as an employer,

(c) Where the employer is a body corporate, information provided to the Registrar of Companies under the *Companies Act 2014*, and

(d) Any other evidence the Minister deems to be relevant to the application;"

Purpose of Head

The purpose of this Head is to provide certain definitions that are used in this Part.

Explanatory Note

The definition of "applicant" is the employee or any other person making an application on the employee's behalf. This ensures an employee may request another person to apply on their behalf, such as a family member, adviser or legal representative.

The definition of "relevant evidence" relates to what the Minister will have regard to in making a decision under Head 13. This evidence includes data held by public bodies. This includes, for example, Revenue data including reports of PRSI or PAYE returns made by the employer in respect of any employees they may have, employer PRSI returns, VAT returns. This also includes, for example, Companies Registration Office (CRO) data including company status (e.g. struck off, dissolved etc.) and the last date a return was made.

Head 9 – Employee's obligation to serve prior notice on employer

Provide that:

" (1) An applicant shall only be entitled to make an application to the Minister under Head 10, where:

(a) The applicant has served on the employer a demand in writing using the prescribed form requiring the employer to pay the sum so due, and

(b) the employer has, for eight weeks after the date of the service of that demand, neglected to pay all or part of the sum.

(2) The Minister may by order vary the number of weeks mentioned in the subsection (1)(b), provided that it shall not be less than four weeks and shall not exceed eight weeks."

Purpose of Head

The purpose of this Head is to set out the process the employee must follow to seek payment from their employer before they may make an application to the Minister under this Part to deem their employer insolvent.

Explanatory Note

Subsection (1) requires the employee to serve a written demand for payment on the employer. This demand must use a form prescribed by the Minister for this purpose. Section 16(3) of the Principal Act gives the power to the Minister to prescribe any matter referred to in the Act as prescribed.

This subsection is adapted from section 570 of the *Companies Act 2014*, which relates to serving a statutory demand under that Act. That section allows 21 days for a company to pay its debt.

This Head provides for an 8-week time for the employer to pay the debt. This is considered an appropriate length of time, as it is envisioned that the Employer Deemed Insolvent Application will only be used where an employer ceases trading but does not wind-up (e.g. through liquidation). Given there can be delays between an employer ceasing trading and the appointment of a liquidator, a longer length of time for payment than set out in the Companies Act is considered advisable to ensure this process doesn't overtake any steps to appoint a formal liquidator.

Subsection (2) that the Minister may vary the length of time an employer has to pay following the employee's service of a demand for payment. The length of time specified cannot be shorter than four weeks and cannot exceed eight weeks, however.

Head 10 – Application to the Minister to deem employer insolvent

Provide that:

" (1) An applicant may make an application to the Minister in the prescribed form under this Head for a determination of whether the Minister deems the employer is insolvent (within the meaning of Head 13.

(2) As part of the application to the Minister, an applicant shall supply a copy of the notice served on the employer under Head 9.

(3) An applicant may provide such evidence or information that they may wish the Minister to consider as part of the application.

(4) An applicant shall not be entitled to make an application under this Head if the employer is insolvent under section 1(3) paragraphs (a) to (f), paragraph (g) or paragraph (i) (as inserted by Head 3)."

Purpose of Head

The purpose of this Head is to permit an applicant to make an application to the Minister to deem an employer is insolvent under this Part.

Explanatory Note

Subsection (1) of this Head permits an employee to make an application to the Minister to determine whether an employer is deemed insolvent under this Part. This application must use a form prescribed by the Minister for this purpose. Section 16(3) of the Principal Act gives the power to the Minister to prescribe any matter referred to in the Act as prescribed.

This differs from the application for payment of the employee's debts. Where the debt relates to pay (such as arrears of wages, minimum notice, WRC or Labour Court awards), the application for payment is made under section 6, as modified by Head 14. Where the debt relates to unpaid pension contributions, the application for payment is made under section 7 of the Principal Act.

While legally these are considered two separate applications, the intention is that the employee will only be required to submit one form to cover both applications. This reflects a more customer-centric design by streamlining the paperwork required of an employee.

Subsection (2) requires an applicant to supply a copy of the notice they served on their employer as part of their application. This is to verify that the applicant has complied with this requirement and that the amounts being claimed for payment match the amounts sought from the employer at the start of the process.

Subsection (3) permits the applicant to submit evidence or information they may wish the Minister to consider as part of their application. This could include information the employee may have gained in trying to establish whether the employer is continuing to trade or not. For example, correspondence from the employer confirming they have ceased trading.

Subsection (4) states an applicant cannot seek to have the employer deemed insolvent under this Head if they are already insolvent as defined elsewhere in section 1(3). This includes being deemed insolvent under Head 20; a company entering into liquidation or receivership; a sole trader being declared bankrupt or entering into a personal insolvency arrangement; the employer has died and

their estate is insolvent; or the employer being deemed insolvent in another EU Member State or the UK.

Head 11 – Obligation of Minister to notify employer

Provide that:

" (1) Where an application is submitted to the Minister under Head 10, the Minister shall notify the employer in writing and shall give the employer an opportunity to respond.

(2) The Minister shall specify the date by which the employer shall respond, being a date not less than four weeks from the date the notice is sent."

Purpose of Head

The purpose of this Head is to require the Minister to notify the employer of the claim and to ensure the employer is given the opportunity to respond.

Explanatory Note

Subsection (1) requires the Minister to notify the employer in writing when an application is submitted under Head 10. The method by which such a notice is given is set out in Head 16.

Subsection (2) requires the Minister to specify when a response from the employer must be submitted. A four-week period is given for response, at a minimum. This is considered an appropriate duration, reflecting the fact that there may be delays in an employer accessing their post if they have ceased trading and are not regularly attending the office.

Head 12 – Right of reply for employer

Provide that:

" (1) In response to a notice from the Minister under Head 11, the employer may provide such evidence or information that they may wish the Minister to consider as part of the application, relating to:

(a) Where the employer is a body corporate, whether they are continuing to trade,

(b) Where the employer is a natural person, whether they are continuing to act as an employer,

(c) Where the application concerns an amount referred to in section 6(2)(a)(i), 6(2)(a)(ii), 6(2)(a)(iii)(II) or 6(2)(a)(iv), whether they dispute the amounts being claimed by the employee,

(d) Whether they have already paid the debts being claimed in the application or any part of them.

(2) An employer shall also be entitled to request copies of relevant information provided by the employee as part of their application.

(3) On request from an employer under subsection (2), the Minister shall make copies of relevant information available to the employer."

Purpose of Head

The purpose of this Head is to set out the matters on which an employer can make submissions to the Minister as part of the process. This includes their trading status and the debts being claimed by the employee. It also provides for the sharing of certain information related to the application with the employer.

Explanatory Note

Subsection (1) permits an employer to make a submission to the Minister on certain matters.

Paragraphs (a) and (b) relate to an employer's submission that they are continuing to trade (if they are a company) or that they are continuing to act as an employer (if they are a sole trader).

Paragraph (c) provides that the employer may dispute a debt relating to arrears of wages [S.6(2)(a)(i)], sick pay [S.6(2)(a)(ii)], minimum notice [S.6(2)(a)(iii)(II)] or holiday pay [S.6(2)(a)(iv)]. These are debts that the employee may certify as being owed by way of a statutory declaration. Where a debt is disputed by the employer, Head 15 applies.

Paragraph (d) provides that an employer can provide evidence that they have already paid the debt, or part thereof, being claimed by the employee.

Subsections (2)-(3) permit an employer to request copies of relevant information provided as part of the application, and for the Minister to make copies of such information available to the employer.

Head 13 – Employer Deemed Insolvent for purpose of Part

Provide that:

" The Minister may deem an employer to be insolvent under this section, where:

(1) The applicant has served notice on the employer in accordance with Head 9,

(2) The applicant has made an application to the Minister under Head 10,

(3)

(i) The employer has provided a response under Head 12, or
(ii) The date specified by the Minister under Head 11(2) has been reached and no reply has been provided by the employer;

and

(4) The Minister, having examined relevant evidence as part of the application, is satisfied:

(i) in the case of an employer who is a body corporate, there is no evidence the employer is continuing to trade, or
(ii) in the case of an employer who is a natural person, there is no evidence the employer is continuing to act as an employer.

Purpose of Head

The purpose of this Head is to set out the process by which the Minister may determine an employer is insolvent under this Part.

Explanatory Note

Before the Minister may deem an employer is insolvent, four criteria must be satisfied.

Subsection (1) outlines the first criteria, that the employee must have first served a written demand for payment on the employer. The process for serving written demand is described in Head 9.

Subsection (2) outlines the second criteria, that the employee must have made an application to the Minister for payment. The process of making an application is described in Head 10.

Subsection (3) outlines the third criteria, that the employer has been given an opportunity to participate in the process.

Subsection (4) outlines the fourth criteria, that the Minister has examined relevant evidence and is satisfied that the relevant test has been satisfied. Relevant evidence is defined in Head 8.

The test in subsection (4) differs depending whether the employer is a company or an individual (e.g. sole trader). In the case of a company employer, the test is that there is "no evidence the employer is continuing to trade". For an individual (e.g. sole trader), the test is that there is "no evidence the employer is continuing to act as an employer".

The modified test used for individual (e.g. sole traders) employers is to reflect Government policy on personal insolvency, which is that individuals should be encouraged to remain in or return to economic activity. The tests used exceed the minimum requirements of the Directive and Article 2(1)(b), which requires that a competent authority determine that "an employer's undertaking or business has been definitively closed down and that the available assets are insufficient to warrant the opening of the proceedings".

Head 14 – Modifications to *section 6* for the purpose of this Part

Provide that:

The Principal Act is amended by the insertion of the following section:

" (1) Where an employer is deemed insolvent under Head 13, *section 6* applies, subject to the modifications outlined in this section.

(2) The Minister may prescribe the form to be used in making an application under section 6 as modified by this Head. The form prescribed shall include a statutory declaration as may be prescribed by the Minster to the effect that the applicant believes the particulars contained therein are true. The reference to "the prescribed form" in subsection 6(1) shall be read accordingly.

(3) Subsection 6(2)(a)(iii)(II) shall be read as though it did not include the term "certified by the relevant officer" .

(4) In subsection 6(9), the definition of "the relevant date" shall be read as the following

"in relation to any debt to which this section applies, the date of insolvency as defined in Head 4."

Purpose of Head

The purpose of this Head is to make certain modifications to section 6 of the Principal Act, which relates to the payment of certain pay-related debts, to better suit the Employer Deemed Insolvent Application.

Explanatory Note

Subsection (1) specifies that section 6 applies, subject to the modifications outlined in this Head, where the employer is deemed insolvent under Head 13. While certain modifications are required for an application where the employer is deemed insolvent under Head 13, the vast majority of section 6 applies.

Subsection (2) allows the Minister to prescribe the form to be used for an application under section 6 as modified by this Head. The form used also requires the applicant to complete a statutory declaration that the particulars of the application are true. This is because certain debts operate on the basis of an employee's self-declaration (supported by relevant evidence such as a contract of employment or payslips). A statutory declaration is required to ensure any claim made is fully accurate and truthful, and to provide certain penalties for false statements. This requirement is adapted from section 4 of the *Children Act 1997*.

Subsection (3) amends how claims for Minimum Notice entitlements will be managed. There is no relevant officer appointed or required to be appointed where the employer is deemed insolvent under Head 13. Therefore, this subsection removes the requirement for the minimum notice entitlement to be certified by the relevant officer. This obligation should be read in conjunction with the requirement to complete a statutory declaration as part of the application.

Subsection (4) defines the “relevant date” for applications under section 6 as modified by this Head. The relevant date is the date of insolvency, which is defined as the date on which the employee serves notice on the employer. The policy intention is that there is a standard relevant date for all types of debts for this type of application.

The policy intention is that debts paid out from an application under section 6 as modified by this Head should be treated in the same way as other debts paid under the Act (e.g. where the employer is in liquidation, receivership etc.). Should an employer subsequently enter liquidation or another formal insolvency process, the Minister’s right to recoup certain amounts should be protected. It is not considered necessary to amend section 10 of the Principal Act (which governs how the Minister how the Minister is treated as a creditor). This is because any payment made under this Head is deemed to be made under section 6 of the Principal Act (as modified by this Head). Therefore, section 10 applies, and the Minister’s creditor status is protected.

Head 15 – Disallowance of certain debts where the employer has disputed their validity

Provide that:

" Where the application made under *section 6* (as modified by Head 14) includes an amount referred to in section 6(2)(a)(i), 6(2)(a)(ii), 6(2)(a)(iii)(II) or 6(2)(a)(iv), and the employer has disputed the amounts being claimed by the employee or whether such a debt exists, the Minister shall determine the part of the application to pay that particular debt is not well-founded.".

Purpose of Head

The purpose of this Head is to set out what happens where an employer has written to the Minister and disputes the validity of certain debts. In such cases, the Minister must disallow the disputed debts (but still may consider the rest of the application as usual).

Explanatory Note

This Head states that the Minister shall not pay an amount where it relates to certain types of debts if they are disputed by the employer. These types of debts are:

- arrears of wages (S.6(2)(a)(i)),
- sick pay (S.6(2)(a)(ii)),
- minimum notice self-declared by the employee (S.6(2)(a)(iii)(II)), or
- holiday pay (S.6(2)(a)(iv).

These are debts that the employee may certify as being owed by way of a statutory declaration.

This Head is required as the Minister is not competent to adjudicate on whether a debt exists, where there is a dispute between employee and employer. This is a function vested in the WRC or Labour Court in the context of various employment rights legislation, and also the courts more generally. Where there is any dispute as to the validity of the debt, the matter needs to be adjudicated on in one of these arenas.

This Head does not apply where the debt arises from an award from the Workplace Relations Commission (WRC), Labour Court or the courts. In such cases, the appropriate authority has already made a ruling that such a debt exists, and neither the Minister nor the employer may challenge the validity of that ruling under this process.

This Head represents a balancing of the employee and employer's rights by setting out the policy intention of what happens where there is a dispute between employee and their former employer. The proposed approach reflects wider Government policy that disputes under employment rights legislation should be dealt with by the WRC or the Labour Court.

To ensure employees are not deprived of their rights, the intention is to provide clear communications to the public on how to make a complaint to the WRC as part of the application guidelines under this process. This includes highlighting the importance of the statutory 6-month deadline in which employees must lodge complaints to the WRC under employment legislation. If a debt is disputed under this process and consequently refused by the Minister, an employee will still be entitled to make a later application for payment under this process should they subsequently receive a favourable WRC or Labour Court award.

Head 16 – Notices

Provide that:

" For the purpose of serving a notice on an employer by the employee or the Minister under this Part, it may be given—

(a) where the employer is a natural person, by sending it by prepaid post in a letter addressed to the person at the person's usual or last known place of residence or business,

(b) where the employer is a body corporate, by sending it by prepaid post in a letter addressed to the body at that registered office, or

(c) by any other such methods the Minister may prescribe.

Purpose of Head

The purpose of this Head is to govern how notices to the employer by the employee or the Minister under this Part may be sent.

Explanatory Note

This Head is adapted from section 134 of the *Personal Insolvency Act 2012*. As the date on which the employee serves notice is important in deeming the date of insolvency, the Head provides that notices should be sent by prepaid post, as this will ensure there is evidence of the date of postage.

Head 17 – Finding under this Part has no bearing on other Acts

Provide that:

" For the avoidance of doubt, where an employer is deemed to be insolvent under Head 13, that shall not be construed as meaning that the employer is insolvent within the meaning of any other Act or for any other purpose."

Purpose of Head

The purpose of this Head is to confirm that a finding of insolvency under Head 13 does not have any application to any other Act, most notably the *Companies Act 2014* or the *Bankruptcy Act 1988*.

Explanatory Note

The Employer Deemed Insolvent Application is being put in place in order to properly transpose Directive 2008/94/EC. However, it is not the policy intention that a decision by the Minister under this Part would mean that an employer is insolvent for the purpose of the *Companies Act 2014* or the *Bankruptcy Act 1988*, in the case of a sole trader. A decision under Head 13 does not have any implications for other creditors of the employer.

This Head reflects the findings of the Company Law Review Group (CLRG) that, in the context of addressing the issue of companies ceasing trading without formally winding up, "a change to the definition of insolvency in the *Companies Act 2014* could have much broader and unintended repercussions". This was included in the CLRG's 2017 Report on the Protection of Employees and Unsecured Creditors (published here).

Part 4 – Historical Employer Deemed Insolvent Application

Purpose of Part:

This Part, consisting of Heads 18 – 23, is to be inserted after Part 3.

This Part provides for a mechanism for the Minister to deem an employer insolvent under the Historical Employer Deemed Insolvent Application for the purpose of this Act.

It is envisioned this application will be used for historical cases, where an employer ceased trading without going through a formal windup. The test used to deem an employer insolvent differs, depending on whether the employer is a body corporate or a natural person (e.g. sole trader). This Part covers cases where the employer is deemed insolvent from 22 October 1983 (the original Directive transposition date) up to the commencement of this Part.

This Part only applies for historical cases. Future "deemed insolvent" applications are dealt with under Part 3.

Head 18 – Definitions

Provide that

" In this Part,

"applicant" means the person by or on whose behalf an application is made under Head 19;

"relevant evidence" means:

(a) Where the employer is a body corporate, information relating to the employer's taxpayer information (within the meaning of section 851A of the *Taxes Consolidation Act 1997*) [or any previous enactments],

(b) Where the employer is a natural person, information relating their taxpayer information (within the meaning of section 851A of the *Taxes Consolidation Act 1997*), where such taxpayer information relates only to their role as an employer [or any previous enactments],

(c) Where the employer is a body corporate, information provided to the Registrar of Companies under the *Companies Act 2014* [or any previous enactments],

(d) Any other evidence the Minister deems to be relevant to the application."

Purpose of Head

The purpose of this Head is to provide certain definitions that are used in this Part.

Explanatory Note

The definitions used in this Head are identical to those in Head 8.

The references in this Head to the *Taxes Consolidation Act 1997* and the *Companies Act 2014* should also include any Acts that preceded these Acts, such as the *Companies Act 1963*. This may be required as applications will relate to any period following 22 October 1983 (the original Directive transposition date) but which preceded the enactment of these Acts.

Head 19 – Application to the Minister to deem employer insolvent

Provide that:

" (1) An applicant may make an application under this Head to the Minister in the prescribed form for a determination as to whether the Minister deems the employer is insolvent within the meaning of Head 20.

(2) An applicant may provide such evidence or information that they may wish the Minister to consider as part of the application.

(3) An applicant shall not be entitled to make an application under this Head if the employer is insolvent under section 1(3) paragraphs (a) to (g), or paragraph (i) (as inserted by Head 3)."

Purpose of Head

The purpose of this Head is to permit an applicant to make an application to the Minister to deem an employer is insolvent under this Part.

Explanatory Note

Subsection (1) of this Head mirrors Head 10. This Head permits an employee to make an application to the Minister to determine whether an employer is deemed insolvent under this Part. The applicant must use a form prescribed by the Minister for this purpose. Section 16(3) of the Principal Act gives the power to the Minister to prescribe any matter referred to in the Act as prescribed.

This differs from the application for payment of the employee's debts. Where the debt relates to pay (such as arrears of wages, minimum notice, WRC or Labour Court awards), the application for payment is made under section 6, as modified by Head 21. Where the debt relates to unpaid pension contributions, the application for payment is made under section 7 of the Principal Act.

While legally these are considered two separate applications, the intention is that the employee will only be required to submit one form to cover both applications. This reflects a more customer-centric design by streamlining the paperwork required of an employee.

Subsection (2) permits the applicant to submit evidence or information they may wish the Minister to consider as part of their application. This could include information the employee may have gained in trying to establish whether the employer is continuing to trade or not. For example, correspondence from the employer confirming they have ceased trading.

Subsection (3) states an applicant cannot seek to have the employer deemed insolvent under this Head if they are already insolvent as defined elsewhere in section 1(3). This includes being deemed insolvent under Head 13; a company entering into liquidation or receivership; a sole trader being declared bankrupt or entering into a personal insolvency arrangement; the employer has died and their estate is insolvent; or the employer being deemed insolvent in another EU Member State or the UK.

Head 20 – Employer Deemed Insolvent for purpose of Part

Provide that:

" (1) The Minister may deem an employer to be insolvent under this section, where:

(a) the applicant has made an application to the Minister under Head 19,

(b) the Minister, having examined relevant evidence as part of the application, is satisfied to deem the employer insolvent within the meaning of subsection (2), and

(c) the date on which the employer is deemed insolvent is a day not earlier than the 22nd day of October, 1983 and a day not later than the day before the commencement of this Part.

(2) For the purpose of this Head, the Minister may deem an employer insolvent where:

(a) in the case of an employer who is a body corporate, the employer has ceased to trade, or

(b) in the case of an employer who is a natural person, the employer has ceased to act as an employer.

(3) For the purpose of this Head, the date of insolvency is the date the Minister is satisfied that

(a) in the case of an employer who is a body corporate, the date on which the employer ceased to trade, or

(b) in the case of an employer who is a natural person, the date on which the employer ceased to act as an employer."

Purpose of Head

This Head sets out how the Minister can deem an employer insolvent under this Part.

Explanatory Note

Subsection (1) outlines how the Minister can deem the employer to be insolvent. Before the Minister may deem an employer is insolvent, three criteria must be satisfied.

Paragraph (a) outlines the first criteria, that the employee must have made an application to the Minister to determine the employer is deemed insolvent. The process of making an application is described in Head 19.

Paragraph (b) outlines the second criteria, that the Minister has examined relevant evidence and is satisfied that the employer is insolvent within the meaning of this Head.

Paragraph (c) outlines the third criteria, that the date of deemed insolvency is a date between 22 October 1983 (the original Directive transposition date) and the day before the date of commencement of this Part.

This Head differs from the equivalent Head under Part 3. There is no obligation to put the employer on notice, nor for the Minster to notify the employer under this process. This is a cost being borne by the State and not recouped from the employer because, as established by the Supreme Court in *Glegola*, the State failed to properly transpose Article 2(1) of the Directive.

Furthermore, given how far into the past some of these debts are, there is little likelihood of recovery . This also reflects the fact that there is normally a six-month time limit to pursue employment rights breaches to the WRC (extendable to 12 months with reasonable cause), and a 6-year limitation period for pursuing breaches of contract such as non-payment of wages.

Subsection (2) defines in what circumstance the Minister may deem an employer to be insolvent for the purpose of this Head. The same rationale for having different tests for companies and sole trader employers is as outlined in the Employer Deemed Insolvent Application Part. The relevant data used to make a determination under this Head are the State data sources described in Head 18.

Subsection (3) defines the date of insolvency. This is the date the Minister is satisfied that the employer ceased to trade, or ceased to act as an employer.

Head 21 – Modifications to section 6 for the purpose of this Part

Provide that:

“

(1) Where an employer is deemed insolvent under Head 20, *section 6* applies, subject to the modifications outlined in this section.

(2) The Minister may prescribe the form to be used in making an application under section 6 as modified by this Head. The form prescribed shall include a statutory declaration as may be prescribed by the Minster to the effect that the particulars contained therein are true. The reference to “the prescribed form” in subsection 6(1) shall be read accordingly.

(3) Subsection 6(2)(a)(iii)(II) shall be read as though it did not include the term “certified by the relevant officer” .

(4) For the purpose of this Head and determining whether an application relating to debt specified in section 6(2) or an award mentioned in section 6(3) is well-founded, section 6 shall be construed as it stood on the date on which the employer is deemed insolvent under Head 20.

(5) In subsection 6(9), the definition of “the relevant date” shall be read as the following:

> “in relation to any debt to which this section applies, the date of insolvency as defined in Head 4.”

(6) In subsection 6(9), in the definition of “the relevant period”, “eighteen months” shall be read as “thirty months”.

Purpose of Head

The purpose of this Head is to make certain modifications to section 6 of the Principal Act, which relates to the payment of certain pay-related debts, to better suit the Historical Employer Deemed Insolvent Application.

Explanatory Note

Subsection (1) is identical to the equivalent Head in the Employer Deemed Insolvent Application Part. It specifies that section 6 applies, subject to the modifications outlined in this Head, where the employer is deemed insolvent under Head 20. While certain modifications are required for an application where the employer is deemed insolvent under Head 20, the vast majority of section 6 applies.

Subsection (2) is identical to the equivalent Head in the Employer Deemed Insolvent Application Part. It allows the Minister to prescribe the form to be used for an application under section 6 as modified by this Head. The form also requires the applicant to complete a statutory declaration that the particulars of the application are true. This is because certain debts operate on the basis of an employee’s self-declaration (supported by relevant evidence such as a contract of employment or

payslips). A statutory declaration is required to ensure any claim made is fully accurate and truthful, and to provide certain penalties for false statements. This requirement is adapted from section 4 of the *Children Act 1997*.

Subsection (3) is identical to the equivalent Head in the Employer Deemed Insolvent Application Part. It amends how claims for Minimum Notice entitlements will be managed. There is no relevant officer appointed or required to be appointed where the employer is deemed insolvent under Head 20. Therefore, this subsection removes the requirement for the minimum notice entitlement to be certified by a relevant officer. This obligation should be read in conjunction with the requirement to complete a statutory declaration as part of the application. This only applies where the date of insolvency is on or after 25 May 2003, which was when section 6(2)(a)(iii)(II) of the Principal Act was commenced.

Subsection (4) reflects the fact that section 6 of the Principal Act has been amended numerous times to incorporate different types of debts relating to employment rights awards from the WRC, Labour Court and previous employment rights tribunals. The policy intention is that an application under section 6 as modified by this Head should be treated as if it were made on the date of insolvency. This means, where a particular type of debt was included within section 6 after the date of insolvency, it would not be allowed as part of an application under this Part.

For example, an application under this Part may include an award dated January 2001 covering the Unfair Dismissals Act 1977 and Payment of Wages Act 1991. The date of insolvency established under this Part is December 2001. The Unfair Dismissals award would be covered, as this is a debt under section 6(2)(a)(v)(I) which was in force at the date of insolvency. The Payment of Wages award would not be covered, as a decision under the Payment of Wages Act 1991 only became a debt under section 6(2)(a)(xiv) for insolvencies on or after 8 October 2005, which is later than the date of insolvency in this example.

Subsection (5) defines the "relevant date" for applications under this Part. The relevant date is the date of insolvency, which is defined in Head 20(3). The policy intention is that there is a standard relevant date for all types of debts for this type of application.

Furthermore, the policy intention is that, for an application under the Historical Employer Deemed Insolvency Application, debts relating to unpaid WRC, Labour Court or other employment tribunals which were awarded during or following the expiration of the relevant period are covered. This means that, where this type of award is made after the date of deemed insolvency, they are still in scope for payment. This is not explicitly provided for in the General Scheme, as it is already included in section 6(2)(b) of the Principal Act.

Subsection (6) amends the relevant period from 18 months to 30 months for applications made under section 6 as modified by this Head. The relevant period is the number of months preceding the relevant date in which debts are deemed valid under the Act. This is to ensure longstanding debts not related to the insolvency are not covered, for example an unpaid debt that arose five years before the date of insolvency.

A 12-month extension of the existing relevant period is considered appropriate for claims under the Historical Employer Deemed Insolvent Application. This is because, for historical claims, there may be some delays between when an employer may have ceased trading (and when debts arose) and when the Minister may deem the employer is insolvent under this Part. This is, in part, due to the types of relevant evidence that the Minister may need to assess, for example CRO returns which may operate at a time delay. If the relevant period was not amended, this could risk employees not being able to fully vindicate their rights.

Head 22 – Time limit for applications made under Historical Employer Deemed Insolvent Application

Provide that:

" The Minister shall not consider an application submitted under Head 19 if it is submitted to him or her after the expiration of the period of 2 years beginning on the date of the commencement of this Part."

Purpose of Head

The purpose of this Head is to set a two-year window in which claims under this Part must be submitted.

Explanatory Note

This Head requires an employee to submit an application to have their employer deemed insolvent within two years of the commencement of this Part.

The two-year window applies for applications to have their employer "deemed insolvent" under Head 19. However, any debts must fall within the 30-month "relevant period" preceding the date of deemed insolvency to be within scope for payment.

It is considered appropriate to include a fixed application window for this Part to avoid a long-term, open-ended liability for the State.

A two-year window is considered appropriate to ensure potential applicants have sufficient time to become aware of their rights to make a claim and to collect any relevant documentation to support an application.

It should be noted that a different approach is used for the Employer Deemed Insolvent Application. In that process, there is no specific statutory timeframe for making an application under the process. However, only debts made within the relevant period (18 months) of the relevant date (the date on which the employee serves a demand for payment on the employer) are considered for payment. As such, there is an implicit 18-month window where an application can be made under the Employer Deemed Insolvent Application.

This Head is adapted from section 41(6) of the *Workplace Relations Act 2015*.

Head 23 – Finding under this Part has no bearing on other Acts

Provide that:

" For the avoidance of doubt, where an employer is deemed to be insolvent within the meaning of Head 20 that shall not be construed as meaning that the employer is insolvent within the meaning of any other Act or for any other purpose."

Purpose of Head

The purpose of this Head is to confirm that a finding of insolvency under this Part does not have any application to any other Act, most notably the *Companies Act 2014* or the *Bankruptcy Act 1988*.

Explanatory Note

This Head contains identical provisions to Head 17.

Part 5 – Applications where employer enters insolvency arrangement within the meaning of the *Personal Insolvency Act 2012*

Head 24 – Modifications to section 6 and section 7 for the purpose of application where employer enters insolvency arrangement within the meaning of the *Personal Insolvency Act 2012*

The Principal Act is amended by the insertion of the following section after Part 4:

"

(1) Where an employer is insolvent within the meaning of section 1(3)(i) (as inserted by Head 3), section 6 and section 7 apply, subject to the modifications outlined in this section.

(2) The Minister may prescribe the form to be used in making an application under section 6 as modified by this Head. The reference to "the prescribed form" in subsection 6(1) shall be read accordingly.

(3) When making an application under section 6 as modified by this Head or under section 7, the applicant shall supply a copy of the insolvency arrangement and court order to which the debt relates.

(4) For the purpose of this Head, a debt specified in section 6(2) or an award mentioned in section 6(3) or an amount owing under section 7 shall be payable to the applicant by the Minister only where the debt is specified in the insolvency arrangement to which the application relates.

(5) Where an applicant has received or is due to receive any or part of a sum determined as payable to them from the insolvency arrangement, the Minister shall be entitled to deduct such an amount from the amount the Minister shall pay.

(6) In subsection 6(9), the definition of "the relevant date" shall be read as the following:

"in relation to any debt to which this section applies, the date of insolvency as defined in Head 4 or the date of termination of employment, where this occurs within one year before the date of insolvency, whichever the applicant shall as regards the debt nominate.".

Purpose of Head

The purpose of this Head is to make certain modifications to section 6 of the Principal Act, which relates to the payment of certain pay-related debts, to better suit applications where the employer is insolvent by entering an insolvency arrangement within the meaning of the *Personal Insolvency Act 2012.*

Explanatory Note

Subsection (1) specifies that section 6 applies, subject to the modifications outlined in this Head, where the employer is insolvent because they have entered into an insolvency arrangement within the meaning of the *Personal Insolvency Act 2012*. While certain modifications are required for an

application where the employer is insolvent because they have entered into a personal insolvency application, the vast majority of section 6 applies.

Subsection (2) allows the Minister to prescribe the form to be used for an application under this section. Unlike the Employer Deemed Insolvent Application and the Historical Employer Deemed Insolvent Application, there is no need for an applicant to complete a statutory declaration under this Process, as the debts have been determined via an existing statutory process.

Subsection (3) requires the applicant to provide a copy of the employer's insolvency arrangement and the relevant court order as part of the application. The purpose of this requirement is to ensure the Minister has sufficient evidence to determine the claim is well-founded. These documents are provided to the employee as a creditor under the process so they will have access to them for the purpose of complying with this Head.

Subsection (4) provides that only debts that are provided for in the insolvency arrangement are covered. Any debt provided for in the insolvency arrangement must also be deemed to be debts as defined in section 6 or a pension-related payment owing under section 7. For example, while the insolvency arrangement may specify an employee creditor is owed arrears of wages, minimum notice and expenses that were not reimbursed, only the debts relating to arrears of wages and minimum notice would be payable by the Minister under the Act. Expenses are not a debt for the purpose of the Principal Act.

Subsection (5) provides that, where the employee has received monies as part of the insolvency arrangement, the Minister will reduce this amount from the payment. This is to ensure the employee does not receive a double benefit from the same debt. This subsection also provides that the Minister is not required to pay any amount the employee is due to receive under the insolvency arrangement. This is to ensure the terms of the insolvency arrangement continue to operate as approved.

For example, an employee as a creditor is owed €1,000 by their former employer and will receive €50 for this debt under the terms of an insolvency arrangement over the lifetime of the arrangement. The employee would then be entitled to apply to have the balance (€950) paid through the IPS.

Subsection (6) defines the "relevant date" for applications made where the employer is insolvent by entering into an insolvency arrangement under *Personal Insolvency Act 2012*. The applicant may choose one of the following options to be the relevant date:

- The date of insolvency, meaning the date on which the insolvency arrangement is approved, within the meaning of the *Personal Insolvency Act 2012*; or
- The date of termination of employment, where this occurs within one year of the date of insolvency.

This approach is required as the date of insolvency under this process occurs at the end of the process (unlike liquidation or receivership where the date of insolvency occurs at the commencement of the winding up process). The proposed approach will avoid such employees being disadvantaged by ensuring the period of time when the insolvency arrangement is being proposed and voted on does not impact on the relevant period for determining whether a debt is within scope for the purpose of this Act.

The approach limits the date of termination of employment to those occurring within one year of the date of insolvency. This is to help avoid unintended more favourable reference periods for debts. This is required as a debt under an insolvency arrangement under the 2012 Act is only limited by the application of the relevant Statute of Limitations.

For example, the insolvency arrangement may specify an employee creditor is owed two debts – one dated 12 months before the relevant date and one dated 4 years before the relevant date. In this example, the applicant chooses the date of insolvency as the relevant date. Only the debt dated 12 months before the relevant date would be payable by the Minister under the Act. The other debt is outside the relevant period (18 months) so is not payable.

Part 6 – Miscellaneous

Head 25 – Disclosure of information to the Minister

Provide that:

The Principal Act is amended by the insertion of the following section after section 8A:

"

(1) For the purpose of determining whether an employer may be deemed insolvent under Head 13 or Head 20, and where the employer is a natural person, the Minister may by regulations provide for the transfer of personal data (including special categories of personal data) of such employers, and documentation relevant to such personal data, to and from the Office of the Revenue Commissioners to the extent that such personal data or documentation, as the case may be, are necessary to the performance of the functions of the Minister, or otherwise for the performance of functions under this Act.

(2) For the purpose of determining whether an employer may be deemed insolvent under Head 13 or Head 20, and where the employer is a body corporate, the Minister may by regulations provide for the transfer of information of such employers, and documentation relevant to such information, to and from the Office of the Revenue Commissioners to the extent that such information or documentation, as the case may be, are necessary to the performance of the functions of the Minister, or otherwise for the performance of functions under this Act.

(3) In making regulations under subsection (1) or subsection (2), the Minister shall have regard to the important public interest of –

(a) the protection of employees in the event of the insolvency of their employer,
(b) ensuring a minimum degree of protection, in particular in order to guarantee payment of employees' outstanding claims, and
(c) the need for balanced economic and social development.

(4) An officer of the Revenue Commissioners shall, notwithstanding any other law, be permitted to give or produce evidence to the Minister relating to taxpayer information (within the meaning of section 851A of the Taxes Consolidation Act 1997) for the purpose of determining whether an employer may be deemed insolvent under Head 13 or Head 20.

Purpose of Head

The purpose of this Head is to ensure the Minister is legally permitted to receive Revenue information related to the employer's finances. This is required to ensure the Minister can determine whether an employer is deemed insolvent under Employer Deemed Insolvent Application or the Historical Employer Deemed Insolvent Application and, specifically, whether there is evidence the employer is continuing to trade (in the case of a body corporate) or continuing to act as an

employer (in the case of a natural person). If such evidence is available from Revenue information, the employer will not be deemed insolvent.

Explanatory Note

It is intended that the types of information that Revenue will share with the Minister include:

- Pay-Related Social Insurance (PRSI) returns, for both employer and employee,
- Pay As You Earn (PAYE) returns relating to the employer,
- VAT returns (where the employer is a company).

Subsections (1)-(3) are adapted from section 8A of the Principal Act. Subsection (2) relates to a body corporate, so the transfer of personal data within the meaning of the GDPR does not arise.

Subsection (4) is adapted from section 944Q of the *Companies Act 2014*.

Head 26 – Amendment of section 9 (Complaints to Tribunal.)

The Principal Act is amended at section 9 by the insertion of the following subsection after subsection (6):

" (7) This section shall not apply where –

(a) on an application under section 6 as modified by Head 14, the Minister deems a part of the application is not well-founded in accordance with Head 15, or

(b) an application is made under section 6 as modified by Head 24."

Purpose of Head

The purpose of this Head is to specify that certain decisions taken by the Minister are not appealable to the Workplace Relations Commission (WRC).

Explanatory Note

Section 9 of the Principal Act provides for an appeal to the WRC for certain limited decisions of the Minister. These are that the Minister has failed to make a payment, or paid less than the amount properly payable, in respect of:

- A debt relating to arrears of wages, holiday pay or sick pay, or
- A payment related to unpaid pension contributions.

This Head specifies that an appeal to the WRC is not permitted under the following circumstances.

Paragraph (a) relates to the decision of the Minister not to make a payment under the Employer Deemed Insolvent Application where the employer has disputed the employee's entitlement to certain debts, specifically arrears of wages, holiday pay, sick pay or minimum notice.

This decision is not appropriate for appeal to the WRC because the Minister is obliged under Head 15 to decide such an application is not well-founded. This is because, where there is a dispute between employer and employee as to the debt's validity, the Minister is not competent to adjudicate on whether a debt exists or not. This is a function vested in the WRC, Labour Court or the courts.

Where there is a dispute between employer and employee as to a debt's validity, the proper procedure is for the employee to make a complaint to the WRC against the employer. The WRC (or the Labour Court on appeal) will arrange a hearing where both parties can be heard and then a decision will be made. An appeal to the WRC of the Minister's decision in this circumstance would not change this position.

Paragraph (b) relates to an application made where the employer is insolvent having entered into an insolvency arrangement (Personal Insolvency Arrangement, Debt Settlement Arrangement, Debt Relief Notice). The debts included in an insolvency arrangement have already been determined under a court-supervised, statutory process as outlined in the *Personal Insolvency Act 2012*. Therefore it is not necessary to provide for a further appeal to the WRC in this circumstance (as is the case for existing processes where the debt has already been established by an employment rights tribunal or the Courts).

Head 27 – Amendment of Act of 1998

Provide that:

(1) Section 103(3) of the Act of 1998 is amended by the insertion of a new paragraph:

"(a) an order of the Circuit Court on a reference under section 77 (3),".

(2) In this section, "Act of 1998" means the *Employment Equality Act 1998*.

Purpose of Head

The purpose of this Head is to amend the *Employment Equality Act 1998* to ensure awards made by Circuit Court in relation to gender discrimination are debts for the purpose of the Principal Act.

Explanatory Note

The *Employment Equality Act 1998*, as amended, ("EEA") protects employees from discrimination under various protected grounds.

The Workplace Relations Commission ("WRC") acts as the single body for all first-instance employment rights complaints, including most EEA complaints. The WRC was established on 1 October 2015, under the Workplace Relations Act 2015.

However, gender discrimination and equal pay claims may be brought to the Circuit Court instead of the WRC, as per section 77(3) of the EEA. Section 82(3) of the EEA sets out the compensation that may be awarded by the Circuit Court for such claims.

Section 6(2)(a) of the Principal Act defines the types of debts covered by the Insolvency Payments Scheme. These include arrears of wages, holiday pay, payment in lieu of minimum notice and certain pension contributions. Various other statutory awards are protected by the scheme, including WRC and Labour Court awards.

Section 6(2)(a)(viii)(III) of the Principal Act covers any amount: "which an employer is required to pay by virtue of a decision, determination or order of a court falling within section 103(3) of the Employment Equality Act, 1998".

Section 103 of the EEA outlines provisions in relation to insolvency. Section 103(3) defines "relevant compensation". The section was amended by section 83 of the Workplace Relations Act 2015.

Following its amendment, this section only refers to decisions and awards made by the WRC (s.103(3)(b)) and the Labour Court (s.103(3)(c)). The reference to orders of the Circuit Court in gender discrimination claims was deleted from the section by the Workplace Relations Act 2015.

As a result of this amendment, Circuit Court awards made under the EEA are not relevant compensation under section 103(3). This means such awards are not deemed to be debts for the purpose of the Insolvency Payments Scheme. As such, employees with valid Circuit Court awards under the EEA are unable to claim these debts from the SIF in the event of their employer's insolvency.

This Head addresses this lacuna by reinserting the original text into section 103(3)(a) (“an order of the Circuit Court on a reference under section 77 (3)”). The reference to section 77(3) of the EEA, as amended, remains accurate.

It is not necessary to reinsert the original text of section 103(3)(d), as this relates to orders made following an appeal from the Labour Court to the Circuit Court. Since the commencement of the Workplace Relations Act 2015, such an appeal is no longer possible.

ENDS