



# Wages Councils Act 1979

## 1979 CHAPTER 12

### PART III

#### ORDERS REGULATING TERMS AND CONDITIONS OF EMPLOYMENT

#### **14 Power to fix terms and conditions of employment**

- (1) A wages council or a statutory joint industrial council may make an order, subject to and in accordance with the provisions of this section,—
  - (a) fixing the remuneration,
  - (b) requiring holidays to be allowed,
  - (c) fixing any other terms and conditions,for all or any of the workers in relation to whom the council operates.
- (2) An order under this section requiring a holiday to be allowed for a worker—
  - (a) shall not be made unless both holiday remuneration in respect of the period of the holiday and remuneration other than holiday remuneration have been or are being fixed under this Part of this Act for that worker ;
  - (b) shall provide for the duration of the holiday being related to the duration of the period for which the worker has been employed or engaged to be employed by the employer who is to allow the holiday ; and
  - (c) subject as aforesaid, may make provision as to the times at which or the periods within which, and the circumstances in which, the holiday shall be allowed.
- (3) Any order under this section fixing holiday remuneration may contain provisions—
  - (a) as to the times at which, and the conditions subject to which, that remuneration shall accrue and shall become payable, and
  - (b) for securing that any such remuneration which has accrued due to a worker during his employment by any employer shall, in the event of his ceasing to be employed by that employer before he becomes entitled to be allowed a holiday by him, nevertheless become payable by the employer to the worker.

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- (4) Before making an order under this section the council shall make such investigations as it thinks fit and shall—
- (a) publish in the prescribed manner notice of the council's proposals with respect to any new terms and conditions of employment (that is to say, any terms and conditions of employment differing from any then in force by virtue of an order made under this section); and
  - (b) give the prescribed notice for the purpose of informing, so far as practicable, all persons affected by the proposals, stating the place where copies of the proposals may be obtained and the period (which shall not be less than fourteen days from the date of publication of the notice) within which written representations with respect to the proposals may be sent to the council.
- (5) After considering any written representations made with respect to any such proposals within the said period and making such further inquiries as the council considers necessary, or if no such representations are made within that period, after the expiration of that period, the council may make an order—
- (a) giving effect to the proposals ; or
  - (b) giving effect to them with such modifications as the council thinks fit having regard to any such representations ;
- but if it appears to the council that, having regard to the nature of any proposed modifications, an opportunity should be given to persons concerned to consider the modifications, the council shall again publish the proposals and give notice under subsection (4) above, and that subsection and this subsection shall apply accordingly.
- (6) Subsections (4) and (5) above have effect subject to the provisions of subsection (1A) of section 4 of the Equal Pay Act 1970.
- (7) An order under this section shall have effect as regards any terms as to remuneration as from a date specified in the order, which may be a date earlier than the date of the order but not earlier than the date on which the council agreed on those terms prior to publishing the original proposals to which effect is given, with or without modifications, by the order; but where any such order fixing workers' remuneration applies to any worker who is paid wages at intervals not exceeding seven days and the date so specified does not correspond with the beginning of the period for which the wages are paid (hereafter in this section referred to as a wages period), the order shall, as respects that worker, have effect as from the beginning of the next wages period following the date specified in the order.
- (8) Any increase in remuneration payable by virtue of an order under this section in respect of any time before the date of the order shall be paid by the employer within a period specified in the order, being—
- (a) in the case of a worker who is in the employment of the employer on the date of the order, a period beginning with that date;
  - (b) in the case of a worker who is no longer in the employment of the employer on that date, a period beginning with the date on which the employer receives from the worker or a person acting on his behalf a request in writing for the remuneration ;
- but if, in the case of a worker falling within paragraph (a) of this subsection who is paid wages at intervals not exceeding seven days, pay day (the day on which wages are normally paid to him) for any wages period falling wholly or partly within the period so specified occurs within seven days from the end of that specified period, any such remuneration shall be paid not later than pay day.

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- (9) As soon as a council has made an order under this section it shall give the prescribed notice of the making and contents of the order and shall then and subsequently give such notice of other prescribed matters affecting its operation for the purpose of informing, so far as practicable, all persons who will be affected by it.
- (10) An order under this section may make different provision for different cases and may amend or revoke previous orders under this section.
- (11) A document purporting to be a copy of an order made by a council under this section and to be signed by the secretary of the council shall be taken to be a true copy of the order unless the contrary is proved.
- (12) An order under this section shall not prejudice any rights conferred on any worker by or under any other enactment.

## **15 Effect and enforcement of orders under section 14**

- (1) If a contract between a worker to whom an order under section 14 above applies and his employer provides for the payment of less remuneration than the statutory minimum remuneration, it shall have effect as if the statutory minimum remuneration were substituted for the remuneration provided for in the contract, and if any such contract provides for the payment of any holiday remuneration at times or subject to conditions other than those specified in the order, it shall have effect as if the times or conditions specified in the order were substituted for those provided for in the contract.
- (2) If any such contract fixes terms and conditions other than those relating to remuneration or wages which are less favourable than the corresponding terms and conditions specified in an order under section 14 above it shall have effect as if the corresponding terms and conditions were substituted for those fixed by the contract.
- (3) If an employer fails—
  - (a) to pay a worker to whom an order under section 14 above applies remuneration not less than the statutory minimum remuneration; or
  - (b) to pay him arrears of remuneration before the expiration of the period specified in the order ; or
  - (c) to pay him holiday remuneration at the times and subject to the conditions specified in the order ; or
  - (d) to allow to any such worker the holidays fixed by the order;he shall for each offence be liable on summary conviction to a fine not exceeding £100.
- (4) Where proceedings are brought under subsection (3) above in respect of an offence consisting of a failure to pay remuneration not less than the statutory minimum remuneration, or to pay arrears of remuneration, and the employer or any other person charged as a person to whose act or default the offence was due is found guilty of the offence, then, subject to subsection (5) below,—
  - (a) evidence may be given of any failure on the part of the employer to pay any such remuneration or arrears during the two years ending with the date of the offence to any worker employed by him ; and
  - (b) on proof of the failure, the court may order the employer to pay such sum as is found by the court to represent the difference between the amount of any such remuneration or arrears which ought to have been paid during that period to any such worker, if the provisions of this Part of this Act had been complied with, and the amount actually so paid.

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- (5) Evidence of any failure to pay any such remuneration or arrears may be given under subsection (4) above only if—
- (a) the employer or any other person charged as aforesaid has been convicted of the offence consisting of the failure; and
  - (b) notice of intention to adduce such evidence has been served with the summons or warrant.
- (6) The powers given by this section for the recovery of sums due from an employer to a worker shall not be in derogation of any right to recover such sums by civil proceedings.
- (7) In the application of this section to Scotland—
- (a) in subsection (4), the words " or any other person charged as a person to whose act or default the offence was due " shall be omitted; and
  - (b) in subsection (5), in paragraph (a) the words " or any other person charged as aforesaid " shall be omitted, and in paragraph (b) for the words " summons or warrant " there shall be substituted the word " complaint ".

## **16 Permits to infirm and incapacitated persons**

- (1) If, as respects any worker employed or desiring to be employed in such circumstances that an order under section 14 above applies or will apply to him, the council which made the order is satisfied, on application being made to it for a permit under this section either by the worker or the employer or a prospective employer, that the worker is affected by infirmity or physical incapacity which renders him incapable of earning the statutory minimum remuneration or makes it inappropriate for other terms and conditions fixed by the order to apply to him, it may, if it thinks fit, grant, subject to any conditions it may determine, a permit authorising his employment at less than the statutory minimum remuneration or dispensing with a term or condition specified in the permit; and while the permit is in force the remuneration authorised by the permit shall, if the conditions specified in the permit are complied with, be deemed to be the statutory minimum remuneration or, as the case may be, the terms and conditions fixed by the order shall be deemed to be observed.
- (2) Where an employer employs any worker in reliance on any document purporting to be a permit granted under subsection (1) above authorising the employment of that worker at less than the statutory minimum remuneration, or dispensing with a term or condition specified in the permit, then, if the employer has notified the council in question that, relying on that document, he is employing or proposing to employ that worker at a specified remuneration or without compliance with any such term or condition, the document shall, notwithstanding that it is not or is no longer a valid permit relating to that worker, be deemed, subject to the terms thereof and as respects only any period after the notification, to be such a permit until notice to the contrary is received by the employer from the council.

## **17 Computation of remuneration**

- (1) Subject to the provisions of this Part of this Act, any reference therein to remuneration shall be construed as a reference to the amount obtained or to be obtained in cash by the worker from his employer after allowing for the worker's necessary expenditure, if any, in connection with his employment, and clear of all deductions in respect of any matter whatsoever, except any reduction lawfully made—

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- (a) under the Income Tax Acts, the enactments relating to social security or any enactment requiring or authorising deductions to be made for the purposes of a superannuation scheme ;
  - (b) at the request in writing of the worker, either for the purposes of a superannuation scheme or a thrift scheme or for any purpose in the carrying out of which the employer has no beneficial financial interest, whether directly or indirectly ; or
  - (c) in pursuance of, or in accordance with, such a contract in that behalf as is mentioned in section 1, 2 or 3 of the Truck Act 1896 and in accordance with the provisions of that section.
- (2) Notwithstanding subsection (1) above, orders under section 14 above may contain provisions authorising specified benefits or advantages, being benefits or advantages provided, in pursuance of the terms and conditions of the employment of workers, by the employer or by some other person under arrangements with the employer and not being benefits or advantages the provision of which is illegal by virtue of the Truck Acts 1831 to 1940, or of any other enactment, to be reckoned as payment of wages by the employer in lieu of payment in cash, and defining the value at which any such benefits or advantages are to be reckoned.
- (3) If any payment is made by a worker in respect of any benefit or advantage provided as mentioned in the foregoing subsection, then,—
- (a) if the benefit or advantage is authorised by virtue of that subsection to be reckoned as therein mentioned, the amount of the payment shall be deducted from the defined value for the purposes of the reckoning;
  - (b) if the benefit or advantage is authorised by virtue of that subsection to be reckoned as therein mentioned, any excess of the amount of the payment over the defined value shall be treated for the purposes of subsection (1) above as if it had been a deduction not being one of the excepted deductions therein mentioned;
  - (c) if the benefit or advantage is specified in an order under section 14 above as one which has been taken into account in fixing the statutory minimum remuneration, the whole of the payment shall be treated for the purposes of subsection (1) above as if it had been a deduction not being one of the excepted deductions therein mentioned.
- (4) Nothing in this section shall be construed as authorising the making of any deduction, or the giving of remuneration in any manner, which is illegal by virtue of the Truck Acts 1831 to 1940, or of any other enactment.

## **18 Apportionment of remuneration**

Where for any period a worker receives remuneration for work for part of which he is entitled to statutory minimum remuneration at one or more time rates and for the remainder of which no statutory minimum remuneration is fixed, the amount of the remuneration which is to be attributed to the work for which he is entitled to statutory minimum remuneration shall, if not apparent from the terms of the contract between the employer and the worker, be deemed for the purposes of this Part of this Act to be the amount which bears to the total amount of the remuneration the same proportion as the time spent on the part of the work for which he is entitled to statutory minimum remuneration bears to the time spent on the whole of the work.

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## **19 Employers not to receive premiums**

- (1) Where a worker to whom an order under section 14 above applies is an apprentice or learner, it shall not be lawful for his employer to receive directly or indirectly from him, or on his behalf or on his account, any payment by way of premium:

Provided that nothing in this section shall apply to any such payment duly made in pursuance of any instrument of apprenticeship not later than four weeks after the commencement of the apprenticeship or to any such payment made at any time if duly made in pursuance of any instrument of apprenticeship approved for the purposes of this proviso by a wages council or by a statutory joint industrial council.

- (2) If any employer acts in contravention of this section, he shall be liable on summary conviction in respect of each offence to a fine not exceeding £100, and the court may, in addition to imposing a fine, order him to repay to the worker or other person by whom the payment was made the sum improperly received by way of premium.

## **20 Records and notices**

- (1) The employer of any workers to whom an order under section 14 above applies shall keep such records as are necessary to show whether or not the provisions of this Part and Part IV of this Act are being complied with as respects them, and the records shall be retained by the employer for three years.
- (2) The employer of any workers shall post in the prescribed manner such notices as may be prescribed for the purpose of informing them of any proposal or order under section 14 above affecting them, and, if it is so prescribed, shall give notice in any other prescribed manner to the said workers of the said matters and of such other matters, if any, as may be prescribed.
- (3) If an employer fails to comply with any of the requirements of this section he shall be liable on summary conviction to a fine not exceeding £100.