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STATUTORY INSTRUMENTS

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**1988 No. 796**

**The Wages (Northern Ireland) Order 1988**

**PART II**

**PROTECTION OF WORKERS IN RELATION TO THE PAYMENT OF WAGES**

**General restrictions on deductions made, or payments received, by employers**

**3.—**(1) An employer shall not make any deduction from any wages of any worker employed by him unless the deduction satisfies one of the following conditions, namely—

- (a) it is required or authorised to be made by virtue of any statutory provision or any relevant provision of the worker's contract; or
- (b) the worker has previously signified in writing his agreement or consent to the making of it.

(2) An employer shall not receive any payment from any worker employed by him unless the payment satisfies one of the conditions set out in sub-paragraphs (a) and (b) of paragraph (1).

(3) In this Article "relevant provision", in relation to a worker's contract, means any provision of the contract comprised—

- (a) in one or more written terms of the contract of which the employer has given the worker a copy on any occasion prior to the employer making the deduction in question, or (where paragraph (1)(a) applies for the purposes of paragraph (2)) prior to his receiving the payment in question, or
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) whose existence and effect, or (as the case may be) combined effect, in relation to the worker the employer has notified to the worker in writing on any such occasion.

(4) For the purposes of this Article—

- (a) any relevant provision of a worker's contract having effect by virtue of any variation of the contract, or
- (b) any agreement or consent signified by a worker as mentioned in paragraph (1)(b), shall not operate to authorise the making of any deduction, or the receipt of any payment, on account of any conduct of the worker, or any other event occurring, before the variation took effect or (as the case may be) the agreement or consent was signified.

(5) Nothing in this Article applies—

- (a) to any deduction from a worker's wages made by his employer, or any payment received from a worker by his employer, where the purpose of the deduction or payment is the reimbursement of the employer in respect of—
  - (i) any overpayment of wages, or
  - (ii) any overpayment in respect of expenses incurred by the worker in carrying out his employment, made (for any reason) by the employer to the worker;

- (b) to any deduction from a worker's wages made by his employer, or any payment received from a worker by his employer, in consequence of any disciplinary proceedings if those proceedings were held by virtue of any statutory provision;
  - (c) to any deduction from a worker's wages made by his employer in pursuance of any requirement imposed on the employer by any statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker, if the deduction is made in accordance with the relevant determination of that authority;
  - (d) to any deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—
    - (i) in accordance with any relevant provision of his contract to whose inclusion in the contract the worker has signified his agreement or consent in writing, or
    - (ii) otherwise with the prior agreement or consent of the worker signified in writing, and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person;
  - (e) to any deduction from a worker's wages made by his employer, or any payment received from a worker by his employer, where the worker has taken part in a strike or other industrial action and the deduction is made, or the payment has been required, by the employer on account of the worker's having taken part in that strike or other action; or
  - (f) to any deduction from a worker's wages made by his employer with his prior agreement or consent signified in writing, or any payment received from a worker by his employer, where the purpose of the deduction or payment is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of any amount by the worker to the employer.
- (6) This Article is without prejudice to any other statutory provision by virtue of which any sum payable to a worker by his employer but not falling within the definition of "wages" in Article 9 is not to be subject to any deduction at the instance of the employer.

#### **Deductions from wages of workers in retail employment on account of cash shortages, etc.**

4.—(1) Where (in accordance with Article 3(1)) the employer of a worker in retail employment makes, on account of one or more cash shortages or stock deficiencies, any deduction or deductions from any wages payable to the worker on a pay day, the amount or aggregate amount of the deduction or deductions shall not exceed one-tenth of the gross amount of the wages payable to the worker on that day.

(2) In this part—

"cash shortage" means a deficit arising in relation to amounts received in connection with retail transactions;

"pay day", in relation to a worker, means a day on which wages are payable to the worker;

"retail employment", in relation to a worker, means employment involving (whether on a regular basis or not)—

- (a) the carrying out by the worker of retail transactions directly with members of the public or with fellow workers or other individuals in their personal capacities, or
- (b) the collection by the worker of amounts payable in connection with retail transactions carried out by other persons directly with members of the public or with fellow workers or other individuals in their personal capacities;

"retail transaction" means the sale or supply of goods, or the supply of services (including financial services); and

“stock deficiency” means a stock deficiency arising in the course of retail transactions.

(3) Where the employer of a worker in retail employment makes a deduction from the worker’s wages on account of a cash shortage or stock deficiency, the employer shall not be treated as making the deduction in accordance with Article 3(1) unless (in addition to the requirements of that provision being satisfied with respect to the deduction)—

- (a) the deduction is made, or
- (b) in the case of a deduction which is one of a series of deductions relating to the shortage or deficiency, the first deduction in the series was made, not later than the end of the period of 12 months beginning with the date when the employer established the existence of the shortage or deficiency or (if earlier) the date when he ought reasonably to have done so.

(4) This paragraph applies where—

- (a) by virtue of any agreement between a worker in retail employment and his employer, the amount of the worker’s wages or any part of them is or may be determined by reference to the incidence of cash shortages or stock deficiencies, and
- (b) the gross amount of the wages payable to the worker on any pay day is, on account of any such shortages or deficiencies, less than the gross amount of the wages that would have been payable to him on that day if there had been no such shortages or deficiencies.

(5) In a case where paragraph (4) applies—

- (a) the amount representing the difference between the two amounts referred to in subparagraph (b) of that paragraph (“the relevant amount”) shall be treated for the purposes of this part as a deduction from the wages payable to the worker on that day made by the employer on account of the cash shortages or stock deficiencies in question, and
- (b) the second of the amounts so referred to shall be treated for the purposes of this part (except paragraph (4)) as the gross amount of the wages payable to him on that day; and Article 3(1) and (if the requirements of that provision and paragraph (3) are satisfied) paragraph (1) shall have effect in relation to the relevant amount accordingly.

#### **Payments by workers in retail employment on account of cash shortages, etc.**

5.—(1) Where the employer of a worker in retail employment receives from the worker any payment on account of a cash shortage or stock deficiency the employer shall not be treated as receiving the payment in accordance with Article 3(2) unless (in addition to the requirements of that provision being satisfied with respect to the payment) he has previously—

- (a) notified the worker in writing of the worker’s total liability to him in respect of that shortage or deficiency; and
- (b) required the worker to make the payment by means of a demand for payment made in accordance with this Article.

(2) Any demand for payment made by the employer of a worker in retail employment in respect of a cash shortage or stock deficiency—

- (a) shall be made in writing, and
- (b) shall be made on one of the worker’s pay days.

(3) A demand for payment in respect of a particular cash shortage or stock deficiency, or (in the case of a series of such demands) the first such demand, shall not be made—

- (a) earlier than the first pay day of the worker following the date when he is notified of his total liability in respect of the shortage or deficiency in pursuance of paragraph (1)(a) or, where he is so notified on a pay day, earlier than that day, or

- (b) later than the end of the period of 12 months beginning with the date when the employer established the existence of the shortage or deficiency or (if earlier) the date when he ought reasonably to have done so.
- (4) Where the employer of a worker in retail employment makes on any pay day one or more demands for payment in accordance with this Article, the amount or aggregate amount required to be paid by the worker in pursuance of the demand or demands shall not exceed—
  - (a) one-tenth of the gross amount of the wages payable to the worker on that day, or
  - (b) where one or more deductions falling within Article 4(1) are made by the employer from those wages, such amount as represents the balance of that one-tenth after subtracting the amount or aggregate amount of the deduction or deductions.
- (5) Once any amount has been required to be paid by means of a demand for payment made in accordance with this Article on any pay day, that amount shall not be taken into account under paragraph (4) as it applies to any subsequent pay day, notwithstanding that the employer is obliged to make further requests for it to be paid.
- (6) For the purposes of this part a demand for payment shall be treated as made by the employer on one of the worker's pay days if it is given to the worker, or posted to, or left at, his last known address—
  - (a) on that pay day, or
  - (b) in the case of a pay day which is not a working day of the employer's business, on the first such working day following that pay day.

#### **Provisions supplementary to Articles 4 and 5**

- 6.—(1) In this Article “final instalment of wages”, in relation to a worker, means—
  - (a) the amount of wages payable to the worker which consists of or includes an amount payable by way of contractual remuneration in respect of the last of the periods for which he is employed under his contract prior to its termination for any reason (but excluding any wages referable to any earlier such period), or
  - (b) where an amount in lieu of notice is paid to the worker later than the amount referred to in sub-paragraph (a), the amount so paid, in each case whether the amount in question is paid before or after the termination of the worker's contract.
- (2) Article 4(1) shall not operate to restrict the amount of any deductions that may (in accordance with Article 3(1)) be made by the employer of a worker in retail employment from the worker's final instalment of wages.
- (3) Nothing in Article 5 shall apply to any payment falling within paragraph (1) of that Article that is made on or after the day on which any such worker's final instalment of wages is paid, but (notwithstanding that the requirements of Article 3(2) would otherwise be satisfied with respect to it) his employer shall not be treated as receiving any such payment in accordance with Article 3(2) if the payment was first required to be made after the end of the period referred to in Article 5(3)(b).
- (4) Legal proceedings by the employer of a worker in retail employment for the recovery from the worker of any amount in respect of a cash shortage or stock deficiency shall not be instituted by the employer after the end of the period referred to in Article 5(3)(b) unless the employer has within that period made a demand for payment in respect of that amount in accordance with Article 5.
- (5) Where in any legal proceedings the court finds that the employer of a worker in retail employment is (in accordance with Article 3(2), as it applies apart from Article 5(1)) entitled to recover an amount from the worker in respect of a cash shortage or stock deficiency, the court shall, in ordering the payment by the worker to the employer of that amount, make such provision as appears to the court to be necessary to ensure that it is paid by the worker at a rate not exceeding that at which it could be recovered from him by the employer in accordance with Article 5.

This paragraph does not apply to any amount which is to be paid by a worker on or after the day on which his final instalment of wages is paid.

(6) References in this part to a deduction made from any wages of a worker in retail employment, or to a payment received from such a worker by his employer, on account of a cash shortage or stock deficiency include references to a deduction or payment so made or received on account of—

- (a) any dishonesty or other conduct on the part of the worker which resulted in any such shortage or deficiency, or
- (b) any other event in respect of which he (whether together with any other workers or not) has any contractual liability and which so resulted, in each case whether the amount of the deduction or payment is designed to reflect the exact amount of the shortage or deficiency or not; and references in this part to the recovery from a worker of an amount in respect of a cash shortage or stock deficiency accordingly include references to the recovery from him of an amount in respect of any such conduct or event as is mentioned in sub-paragraph (a) or (b).

### **Complaints to industrial tribunals in respect of unauthorised deductions, etc.**

7.—(1) A worker may present a complaint to an industrial tribunal—

- (a) that his employer has made a deduction from his wages in contravention of Article 3(1) (including a deduction made in contravention of that provision as it applies by virtue of Article 4(3)), or
- (b) that his employer has received from him a payment in contravention of Article 3(2) (including a payment received in contravention of that provision as it applies by virtue of Article 5(1)), or
- (c) that his employer has recovered from his wages by means of one or more deductions falling within Article 4(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or
- (d) that his employer has received from him in pursuance of one or more demands for payment made (in accordance with Article 5) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under Article 5(4).

(2) An industrial tribunal shall not entertain a complaint under this Article unless it is presented within the period of three months beginning with—

- (a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or
- (b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received, or within such further period as the tribunal considers reasonable in a case where it is satisfied that it was not reasonably practicable for the complaint to be presented within the relevant period of three months.

(3) Where a complaint is brought in respect of—

- (a) a series of deductions or payments, or
- (b) a number of payments falling within paragraph (1)(d) and made in pursuance of demands for payment subject to the same limit under Article 5(4) but received by the employer on different dates, paragraph (2) shall be read as referring to the last deduction or payment in the series or to the last of the payments so received (as the case may require).

(4) Where a tribunal finds that a complaint under this Article is well-founded, it shall make a declaration to that effect; and (subject to paragraphs (5) and (6))—

- (a) in the case of a complaint under paragraph (1)(a) or (b), the tribunal shall order the employer to pay to the worker the amount of any deduction, or to repay to him the amount of any payment, made or received in contravention of Article 3; and
  - (b) in the case of a complaint under paragraph (1)(c) or (d), the tribunal shall order the employer to pay or (as the case may be) repay to the worker any amount recovered or received from him in excess of any such limit as is mentioned in that provision.
- (5) Where, in the case of any complaint under paragraph (1)(a) or (b), a tribunal finds that, although neither of the conditions set out in Article 3(1)(a) and (b) was satisfied with respect to the whole amount of a deduction or payment, one of those conditions was satisfied with respect to any lesser amount, the amount of the deduction or payment shall for the purposes of paragraph (4)(a) be treated as reduced by the amount with respect to which that condition was satisfied.
- (6) An employer shall not under paragraph (4)(a) or (b) be ordered by a tribunal to pay or repay to a worker any amount in respect of a deduction or payment, or (as the case may be) in respect of any combination of deductions or payments, in so far as it appears to the tribunal that he has already paid or repaid any such amount to the worker.
- (7) Where a tribunal has under paragraph (4)(a) or (b) ordered an employer to pay or repay to a worker any amount in respect of a particular deduction or payment falling within paragraph (1)(a) to (d) (“the relevant amount”) the amount which the employer shall be entitled to recover (by whatever means) in respect of the matter in respect of which the deduction or payment was originally made or received shall be treated as reduced by the relevant amount.
- (8) Where a tribunal has under paragraph (4)(b) ordered an employer to pay or repay to a worker any amount in respect of any combination of deductions or payments falling within paragraph (1)(c) or (d) (“the relevant amount”) the aggregate amount which the employer shall be entitled to recover (by whatever means) in respect of the cash shortages or stock deficiencies in respect of which the deductions or payments were originally made or required to be made shall be treated as reduced by the relevant amount.

### **Supplementary provisions relating to complaints**

8.—(1) The remedy of a worker in respect of any contravention of Article 3(1) or (2) or Article 4(1) or 5(4) shall be by way of a complaint under Article 7 and not otherwise.

(2) Article 7 shall not affect the jurisdiction of an industrial tribunal to entertain a reference under Article 47 of the Industrial Relations (No. 2) (Northern Ireland) Order, and all other powers enabling Her Majesty, and by and with the advice of Her Majesty’s Privy Council, do on Her Majesty’s behalf order, and it is hereby ordered, as follows:—1976 in relation to any deduction from the wages of a worker, but the aggregate of any amounts ordered by an industrial tribunal to be paid under Article 47(5)(b) of that Order and under Article 7(4) of this Order (whether on the same or different occasions) in respect of a particular deduction shall not exceed the amount of the deduction.

(3) Any provision in an agreement shall be void in so far as it purports to exclude or limit the operation of any provision of this part, or to preclude any person from presenting a complaint under Article 7; but this paragraph shall not apply to an agreement to refrain from presenting or continuing with a complaint where the Labour Relations Agency has taken action in accordance with Article 62(2) or (5) of the Industrial Relations (Northern Ireland) Order 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly. 1976.

### **Meaning of “wages”**

9.—(1) In this part “wages”, in relation to a worker, means any sums payable to the worker by his employer in connection with his employment, including—

- (a) any fee, bonus, commission, holiday pay or other emolument referable to his employment, whether payable under his contract or otherwise;
- (b) any sum payable in pursuance of an order for reinstatement or re-engagement under Article 31 of the Industrial Relations (Northern Ireland) Order 1976;
- (c) any sum payable by way of pay in pursuance of an order under Article 39 of that Order for the continuation of a contract of employment;
- (d) any of the payments referred to in sub-paragraphs (a) to (d) of Article 42(4) of that Order (guarantee payments and other statutory payments in lieu of wages);
- (e) statutory sick pay under part II of the Social Security (Northern Ireland) Order 1982; and
- (f) in the case of a female worker, statutory maternity pay under part VI of the Social Security (Northern Ireland) Order 1986,

but excluding any payments falling within paragraph (2).

(2) Those payments are—

- (a) any payment by way of an advance under an agreement for a loan or by way of an advance of wages (but without prejudice to the application of Article 3(1) to any deduction made from the worker's wages in respect of any such advance);
- (b) any payment in respect of expenses incurred by the worker in carrying out his employment;
- (c) any payment by way of a pension, allowance or gratuity in connection with the worker's retirement or as compensation for loss of office;
- (d) any payment referable to the worker's redundancy;
- (e) any payment to the worker otherwise than in his capacity as a worker.

(3) Where any payment in the nature of a non-contractual bonus is (for any reason) made to a worker by his employer, then, for the purposes of this part, the amount of the payment shall—

- (a) be treated as wages of the worker, and
- (b) be treated as payable to him as such on the day on which the payment is made.

(4) For the purposes of this part any monetary value attaching to any payment or benefit in kind furnished to a worker by his employer shall not be treated as wages of the worker except in the case of any voucher, stamp or similar document which is—

- (a) of a fixed value expressed in monetary terms, and
- (b) capable of being exchanged (whether on its own or together with other vouchers, stamps or documents, and whether immediately or only after a time) for money, goods or services (or for any combination of two or more of those things).

## **General interpretation of part II**

**10.—**(1) In this part—

“cash shortage” has the meaning given by Article 4(2);

“employer”, in relation to a worker, means the person by whom the worker is (or, where the employment has ceased, was) employed;

“employment”, in relation to a worker, means employment under his contract and “employed”, in relation to a worker, accordingly means employed under his contract;

“gross amount”, in relation to any wages payable to a worker, means the total amount of those wages before deductions of whatever nature;

“pay day”, “retail employment” and “retail transaction” have the meaning given by Article 4(2);

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“stock deficiency” has the meaning given by Article 4(2);

“wages” shall be construed in accordance with Article 9;

“worker” means an individual who has entered into or works under (or, where the employment has ceased, worked under) one of the contracts referred to in paragraph (2), and any reference to a worker’s contract shall be construed accordingly.

(2) Those contracts are—

- (a) a contract of service;
- (b) a contract of apprenticeship; and
- (c) any other contract whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual, in each case whether such a contract is express or implied and, if express, whether it is oral or in writing.

(3) Where the total amount of any wages that are paid on any occasion by an employer to any worker employed by him is less than the total amount of the wages that are properly payable by him to the worker on that occasion (after deductions) then, except in so far as the deficiency is attributable to an error of computation, the amount of the deficiency shall be treated for the purposes of this part as a deduction made by the employer from the worker’s wages on that occasion.

(4) In paragraph (3) the reference to an error of computation is a reference to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages that are properly payable by him to the worker on that occasion.

(5) Any reference in this part to an employer receiving a payment from a worker employed by him is a reference to his receiving such a payment in his capacity as the worker’s employer.

### **Crown employment**

**11.**—(1) Subject to paragraph (3), this part shall apply to Crown employment.

(2) In this Article “Crown employment” means employment under or for the purposes of a Northern Ireland department or a department of the Government of the United Kingdom.

(3) This part does not apply to service as a member of the naval, military or air forces of the Crown, but does apply to employment by any association established for the purposes of part VI of the Reserve Forces Act 1980.

(4) For the purposes of the application of this part to Crown employment in accordance with paragraph (1)—

- (a) any reference to a worker shall be construed as a reference to a person in Crown employment;
- (b) any reference to a worker’s contract shall be construed as a reference to the terms of employment of a person in Crown employment;
- (c) any reference to the termination of a worker’s contract shall be construed as a reference to the termination of his Crown employment; and
- (d) any reference to redundancy shall be construed as a reference to the existence of such circumstances as, in accordance with any arrangements for the time being in force as mentioned in section 48(3) of the Contracts of Employment and Redundancy Payments Act (Northern Ireland) 1965 (payments equivalent to redundancy payments in respect



of civil servants etc.), are treated as equivalent to redundancy in relation to Crown employment.

**Repeal of Truck Acts (Northern Ireland) 1831 to 1940, etc.**

**12.** The statutory provisions listed in Schedule 1 (which impose restrictions in relation to the payment of wages to manual and other workers and make other provision in connection with the payment of wages to such persons) shall cease to have effect.