STATUTORY INSTRUMENTS

1996 No. 1919

The Employment Rights (Northern Ireland) Order 1996

PART V

GUARANTEE PAYMENTS

Right to guarantee payment

60.—(1) Where throughout a day during any part of which an employee would normally be required to work in accordance with his contract of employment the employee is not provided with work by his employer by reason of—

(a) a diminution in the requirements of the employer's business for work of the kind which the employee is employed to do, or

(b) any other occurrence affecting the normal working of the employer's business in relation to work of the kind which the employee is employed to do,

the employee is entitled to be paid by his employer an amount in respect of that day.

(2) In this Order a payment to which an employee is entitled under paragraph (1) is referred to as a guarantee payment.

(3) In this Part—

(a) a day falling within paragraph (1) is referred to as a "workless day", and

(b) "workless period" has a corresponding meaning.

(4) In this Part "day" means the period of twenty-four hours from midnight to midnight.

(5) Where a period of employment begun on any day extends, or would normally extend, over midnight into the following day—

(a) if the employment before midnight is, or would normally be, of longer duration than that after midnight, the period of employment shall be treated as falling wholly on the first day, and

(b) in any other case, the period of employment shall be treated as falling wholly on the second day.

Exclusions from right to guarantee payment

61.—(1) An employee is not entitled to a guarantee payment unless he has been continuously employed for a period of not less than one month ending with the day before that in respect of which the guarantee payment is claimed.
Para. (2) rep. by SR 2002/298

(3) An employee is not entitled to a guarantee payment in respect of a workless day if the failure to provide him with work for that day occurs in consequence of a strike, lock-out or other industrial action involving any employee of his employer or of an associated employer.

(4) An employee is not entitled to a guarantee payment in respect of a workless day if—

(a) his employer has offered to provide alternative work for that day which is suitable in all the circumstances (whether or not it is work which the employee is under his contract employed to perform), and

(b) the employee has unreasonably refused that offer.

(5) An employee is not entitled to a guarantee payment if he does not comply with reasonable requirements imposed by his employer with a view to ensuring that his services are available.

Calculation of guarantee payment

62.—(1) Subject to Article 63, the amount of a guarantee payment payable to an employee in respect of any day is the sum produced by multiplying the number of normal working hours on the day by the guaranteed hourly rate; and, accordingly, no guarantee payment is payable to an employee in whose case there are no normal working hours on the day in question.

(2) The guaranteed hourly rate, in relation to an employee, is the amount of one week's pay divided by the number of normal working hours in a week for that employee when employed under the contract of employment in force on the day in respect of which the guarantee payment is payable.

(3) But where the number of normal working hours differs from week to week or over a longer period, the amount of one week's pay shall be divided instead by—

(a) the average number of normal working hours calculated by dividing by twelve the total number of the employee's normal working hours during the period of twelve weeks ending with the last complete week before the day in respect of which the guarantee payment is payable, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of normal working hours in a week having regard to such of the considerations specified in paragraph (4) as are appropriate in the circumstances.

(4) The considerations referred to in paragraph (3)(b) are—

(a) the average number of normal working hours in a week which the employee could expect in accordance with the terms of his contract, and

(b) the average number of normal working hours of other employees engaged in relevant comparable employment with the same employer.

(5) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time working, paragraphs (2) and (3) have effect as if for the references to the day in respect of which the guarantee payment is payable there were substituted references to the last day on which the original contract was in force.

Limits on amount of and entitlement to guarantee payment

63.—(1) The amount of a guarantee payment payable to an employee in respect of any day shall not exceed **[**[F1]£25.60**]**.

(2) An employee is not entitled to guarantee payments in respect of more than the specified number of days in any period of three months.

(3) The specified number of days for the purposes of paragraph (2) is the number of days, not exceeding five, on which the employee normally works in a week under the contract of employment in force on the day in respect of which the guarantee payment is claimed.

(4) But where that number of days varies from week to week or over a longer period, the specified number of days is instead—

(a) the average number of such days, not exceeding five, calculated by dividing by twelve the total number of such days during the period of twelve weeks ending with the last complete week before the day in respect of which the guarantee payment is claimed, and rounding up the resulting figure to the next whole number, or

(b) where the employee has not been employed for a sufficient period to enable the calculation to be made under sub-paragraph (a), a number which fairly represents the number of the employee's normal working days in a week, not exceeding five, having regard to such of the considerations specified in paragraph (5) as are appropriate in the circumstances.

(5) The considerations referred to in paragraph (4)(b) are—

(a) the average number of normal working days in a week which the employee could expect in accordance with the terms of his contract, and

(b) the average number of such days of other employees engaged in relevant comparable employment with the same employer.

(6) If in any case an employee's contract has been varied, or a new contract has been entered into, in connection with a period of short-time working, paragraphs (3) and (4) have effect as if for the references to the day in respect of which the guarantee payment is claimed there were substituted references to the last day on which the original contract was in force.

[[F2](7) The Department may by order vary—

(a) the length of the period specified in paragraph (2);

(b) a limit specified in paragraph (3) or (4).**]**

F1 Sum in art. 63(1) substituted (22.3.2015) by The Employment Rights (Increase of Limits) Order (Northern Ireland) 2015 (S.R. 2015/169), art. 1(1), **Sch.**

F2 1999 NI 9

Contractual remuneration

64.—(1) A right to a guarantee payment does not affect any right of an employee in relation to remuneration under his contract of employment ("contractual remuneration").

(2) Any contractual remuneration paid to an employee in respect of a workless day goes towards discharging any liability of the employer to pay a guarantee payment in respect of that day; and, conversely, any guarantee payment paid in respect of a day goes towards discharging any liability of the employer to pay contractual remuneration in respect of that day.

(3) For the purposes of paragraph (2), contractual remuneration shall be treated as paid in respect of a workless day—

(a) where it is expressed to be calculated or payable by reference to that day or any part of that day, to the extent that it is so expressed, and

(b) in any other case, to the extent that it represents guaranteed remuneration, rather than remuneration for work actually done, and is referable to that day when apportioned rateably between that day and any other workless period falling within the period in respect of which the remuneration is paid.

Power to modify provisions about guarantee payments

65. The Department may by order provide that in relation to any description of employees the provisions of—

(a) Articles 60(4) and (5), 62, 63(3) to (5) (as originally enacted or as varied under Article 63(7)) and 64, and

(b) so far as they apply for the purposes of those provisions, Article 5 and Chapter IV of Part I,

shall have effect subject to such modifications and adaptations as may be prescribed by the order.

Complaints to industrial tribunals

66.—(1) An employee may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of a guarantee payment to which the employee is entitled.

(2) An industrial tribunal shall not consider a complaint relating to a guarantee payment in respect of any day unless the complaint is presented to the tribunal—

(a) before the end of the period of three months beginning with that day, or

(b) 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 before the end of that period of three months.

(3) Where an industrial tribunal finds a complaint under this Article well-founded, the tribunal shall order the employer to pay to the employee the amount of guarantee payment which it finds is due to him.

Exemption orders

67.—(1) Where—

(a) at any time there is in force a collective agreement, or an agricultural wages order, under which employees to whom the agreement or order relates have a right to guaranteed remuneration, and

(b) on the application of all the parties to the agreement, or of the Agricultural Wages Board for Northern Ireland, the appropriate Department (having regard to the provisions of the agreement or order) is satisfied that Article 60 should not apply to those employees,

it may make an order under this Article excluding those employees from the operation of that Article.

(2) In this Article "agricultural wages order" means an order made under Article 4 of the Agricultural Wages (Northern Ireland) Order 1977.

(3) In paragraph (1) "the appropriate Department" means—

(a) in relation to a collective agreement, the Department, and

(b) in relation to an agricultural wages order, the Department of Agriculture.

(4) The Department shall not make an order under this Article in respect of an agreement unless—

(a) the agreement provides for procedures to be followed (whether by arbitration or otherwise) in cases where an employee claims that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement and those procedures include a right to arbitration or adjudication by an independent referee or body in cases where (by reason of an equality of votes or otherwise) a decision cannot otherwise be reached, or

(b) the agreement indicates that an employee to whom the agreement relates may present a complaint to an industrial tribunal that his employer has failed to pay the whole or any part of any guaranteed remuneration to which the employee is entitled under the agreement.

(5) Where an order under this Article is in force in respect of an agreement indicating as described in sub-paragraph (b) of paragraph (4) an industrial tribunal shall have jurisdiction over a complaint such as is mentioned in that sub-paragraph as if it were a complaint falling within Article 66.

(6) An order varying or revoking an earlier order under this Article may be made in pursuance of an application by all or any of the parties to the agreement in question, or the Agricultural Wages Board for Northern Ireland, or in the absence of such an application.

Status:
Point in time view as at 22/03/2015.

Changes to legislation:
The Employment Rights (Northern Ireland) Order 1996, PART V is up to date with all changes known to be in force on or before 26 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations.