

## STATUTORY INSTRUMENTS

# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART XIV

#### INSOLVENCY OF EMPLOYERS

##### **Modifications etc. (not altering text)**

- C1** Pt. XIV (arts. 227-235) modified (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 8(4), **Sch. 1 para. 5** (with reg. 21(1), Sch. 1 para. 3)
- C2** Pt. XIV (arts. 227-235) applied (6.4.2006) by [Service Provision Change \(Protection of Employment\) Regulations \(Northern Ireland\) 2006 \(S.R. 2006/177\)](#), **reg. 8(3)(4)**

##### **Employee's rights on insolvency of employer**

**227.** If, on an application made to the Department in writing by an employee, the Department is satisfied that—

- (a) the employee's employer has become insolvent,
- (b) the employee's employment has been terminated, and
- (c) on the appropriate date the employee was entitled to be paid the whole or part of any debt to which this Part applies,

the Department shall, subject to Article 231, pay the employee out of the Northern Ireland National Insurance Fund the amount to which, in the opinion of the Department, the employee is entitled in respect of the debt.

##### **Insolvency**

**228.—**(1) An employer has become insolvent for the purposes of this Part—

- (a) where the employer is an individual, if (but only if) paragraph (2) is satisfied,<sup>F1</sup> . . .
- (b) where the employer is a company, if (but only if) paragraph (3) is satisfied<sup>[F1]</sup>, and<sup>[F1]</sup>
- <sup>[F1]</sup>(c) where the employer is a limited liability partnership, if (but only if) paragraph (4) is satisfied.]

(2) This paragraph is satisfied in the case of an employer who is an individual if—

- (a) he has been adjudged bankrupt or has made a composition or arrangement with his creditors, or
- (b) he has died and his estate falls to be administered in accordance with an order under Article 365 of the Insolvency (Northern Ireland) Order 1989.

(3) This paragraph is satisfied in a case of an employer which is a company—

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- (a) if a winding up order<sup>F2</sup> . . . has been made, or a resolution for voluntary winding up has been passed, with respect to the company,
  - [<sup>F3</sup>(aa) if the company is in administration for the purposes of the Insolvency (Northern Ireland) Order 1989,]
  - (b) if a receiver or a manager of the company's undertaking has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the company comprised in or subject to the charge, or
  - (c) if a voluntary arrangement proposed in the case of the company for the purposes of Part II of the Insolvency (Northern Ireland) Order 1989 has been approved under that Part.
- [<sup>F1</sup>(4) This paragraph is satisfied in the case of an employer which is a limited liability partnership—
- (a) if a winding-up order, an administration order or a determination for a voluntary winding-up has been made with respect to the limited liability partnership,
  - (b) if a receiver or a manager of the undertaking of the limited liability partnership has been duly appointed, or possession has been taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property of the limited liability partnership comprised in or subject to the charge, or
  - (c) if a voluntary arrangement proposed in the case of the limited liability partnership for the purposes of Part II of the Insolvency (Northern Ireland) Order 1989 has been approved under that Part.]

**F1** SR 2004/307

**F2** Words in art. 228(3)(a) repealed (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), 31, Sch. 2 para. 54(3)(a), Sch. 9; S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)

**F3** Art. 228(3)(aa) inserted (27.3.2006) by [Insolvency \(Northern Ireland\) Order 2005 \(S.I. 2005/1455 \(N.I. 10\)\)](#), arts. 1(3), 3(3), Sch. 2 para. 54(3)(b); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)

## Debts to which Part applies

- 229.**—(1) This Part applies to the following debts—
- (a) any arrears of pay in respect of one or more (but not more than eight) weeks,
  - (b) any amount which the employer is liable to pay the employee for the period of notice required by Article 118(1) or (2) or for any failure of the employer to give the period of notice required by Article 118(1),
  - (c) any holiday pay—
    - (i) in respect of a period or periods of holiday not exceeding six weeks in all, and
    - (ii) to which the employee became entitled during the twelve months ending with the appropriate date,
  - (d) any basic award of compensation for unfair dismissal<sup>F4</sup> or so much of an award under a designated dismissal procedures agreement as does not exceed any basic award of compensation for unfair dismissal to which the employee would be entitled but for the agreement], and
  - (e) any reasonable sum by way of reimbursement of the whole or part of any fee or premium paid by an apprentice or articed clerk.
- (2) For the purposes of paragraph (1)(a) the following amounts shall be treated as arrears of pay—

- (a) a guarantee payment,
  - (b) any payment for time off under Part VII;
  - (c) remuneration on suspension on medical grounds under Article 96 and remuneration on suspension on maternity grounds under Article 100, and
  - (d) remuneration under a protective award made under Article 217.
- (3) In paragraph (1)(c) “holiday pay”, in relation to an employee, means—
- (a) pay in respect of a holiday actually taken by the employee, or
  - (b) any accrued holiday pay which, under the employee's contract of employment, would in the ordinary course have become payable to him in respect of the period of a holiday if his employment with the employer had continued until he became entitled to a holiday.

(4) A sum shall be taken to be reasonable for the purposes of paragraph (1)(e) in a case where a trustee in bankruptcy or liquidator has been or is required to be appointed if it is admitted to be reasonable by the trustee in bankruptcy or liquidator under Article 319 of the Insolvency (Northern Ireland) Order 1989 (effect of bankruptcy on apprenticeships etc.), whether as originally enacted or as applied to the winding up of a company by rules under Article 359 of that Order.

F4 1998 NI 8

### The appropriate date

**230.** In this Part “the appropriate date”

- (a) in relation to arrears of pay (not being remuneration under a protective award made under Article 217) and to holiday pay, means the date on which the employer became insolvent,
- (b) in relation to a basic award of compensation for unfair dismissal and to remuneration under a protective award so made, means whichever is the latest of—
  - (i) the date on which the employer became insolvent,
  - (ii) the date of the termination of the employee's employment, and
  - (iii) the date on which the award was made, and
- (c) in relation to any other debt to which this Part applies, means whichever is the later of—
  - (i) the date on which the employer became insolvent, and
  - (ii) the date of the termination of the employee's employment.

### Limit on amount payable under Article 227

**231.—(1)** The total amount payable to an employee in respect of any debt to which this Part applies, where the amount of the debt is referable to a period of time, shall not exceed—

- (a) [F5£330] in respect of any one week, or
- (b) in respect of a shorter period, an amount bearing the same proportion to [F5£330] as that shorter period bears to a week.

*Para. (2) rep. by 1999 NI 9*

F5 Words in art. 231(1) substituted (2.3.2008) by Employment Rights (Increase of Limits) Order (Northern Ireland) 2008 (S.R. 2008/47), art. 3, Sch. (with art. 4(1))

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#### Modifications etc. (not altering text)

- C3** Art. 231(1)(a)(b): power to amend conferred (1.10.2006) by [Work and Families \(Northern Ireland\) Order 2006 \(S.I. 2006/1947 \(N.I. 16\)\)](#), arts. 1(3), **16(1)(b)**; S.R. 2006/344, **art. 3(d)**

#### Role of relevant officer

**232.**—(1) Where a relevant officer has been, or is required to be, appointed in connection with an employer's insolvency, the Department shall not make a payment under Article 227 in respect of a debt until it has received a statement from the relevant officer of the amount of that debt which appears to have been owed to the employee on the appropriate date and to remain unpaid.

(2) If the Department is satisfied that it does not require a statement under paragraph (1) in order to determine the amount of a debt which was owed to the employee on the appropriate date and remains unpaid, it may make a payment under Article 227 in respect of the debt without having received such a statement.

(3) A relevant officer shall, on request by the Department, provide it with a statement for the purposes of paragraph (1) as soon as is reasonably practicable.

(4) The following are relevant officers for the purposes of this Article—

- (a) a trustee in bankruptcy,
- (b) a liquidator,
- (c) an administrator,
- (d) a receiver or manager,
- (e) a trustee under a composition or arrangement between employer and his creditors, and
- (f) a trustee under a trust deed for his creditors executed by employer.

(5) In paragraph (4)(e) “trustee” includes the supervisor of a voluntary arrangement proposed for the purposes of, and approved under, Part II or VIII of the Insolvency (Northern Ireland) Order 1989.

#### Complaints to industrial tribunals

**233.**—(1) A person who has applied for a payment under Article 227 may present a complaint to an industrial tribunal—

- (a) that the Department has failed to make any such payment, or
- (b) that any such payment made by the Department is less than the amount which should have been paid.

(2) An industrial tribunal shall not consider a complaint under paragraph (1) unless it is presented—

- (a) before the end of the period of three months beginning with the date on which the decision of the Department on the application was communicated to the applicant, or
- (b) within such further period as the tribunal considers reasonable in a case where it is not reasonably practicable for the complaint to be presented before the end of that period of three months.

(3) Where an industrial tribunal finds that the Department ought to make a payment under Article 227, the tribunal shall—

- (a) make a declaration to that effect, and
- (b) declare the amount of any such payment which it finds the Department ought to make.

### Transfer to Department of rights and remedies

**234.**—(1) Where, in pursuance of Article 227, the Department makes a payment to an employee in respect of a debt to which this Part applies—

- (a) on the making of the payment any rights and remedies of the employee in respect of the debt (or, if the Department has paid only part of it, in respect of that part) become rights and remedies of the Department, and
- (b) any decision of an industrial tribunal requiring an employer to pay that debt to the employee has the effect that the debt (or the part of it which the Department has paid) is to be paid to the Department.

(2) Where a debt (or any part of a debt) in respect of which the Department has made a payment in pursuance of Article 227 constitutes a preferential debt within the meaning of the Insolvency (Northern Ireland) Order 1989 for the purposes of any provision of that Order (including any such provision as applied by any order made under that Order)<sup>F6</sup> . . . . ., the rights which become rights of the Department in accordance with paragraph (1) include any right arising under any such provision by reason of the status of the debt (or that part of it) as a preferential debt.

(3) In computing for the purposes of any provision mentioned in paragraph (2) the aggregate amount payable in priority to other creditors of the employer in respect of—

- (a) any claim of the Department to be paid in priority to other creditors of the employer by virtue of paragraph (2), and
- (b) any claim by the employee to be so paid made in his own right,

any claim of the Department to be so paid by virtue of paragraph (2) shall be treated as if it were a claim of the employee.

(4) <sup>F7</sup> . . . . .

(5) Any sum recovered by the Department in exercising any right, or pursuing any remedy, which is the Department's by virtue of this Article shall be paid into the Northern Ireland National Insurance Fund.

<p><b>F6</b> Words in art. 234(2) omitted (6.4.2008) by virtue of Companies Act 2006 (Consequential Amendments etc) Order 2008 (S.I. 2008/948), arts. 2(2), 3(1)(b), <b>Sch. 1 para. 204</b> (with arts. 6, 11, 12)</p> <p><b>F7</b> Art. 234(4) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, <b>Sch. 2 para. 54(4)</b>, <b>Sch. 9</b>; S.R. 2006/21, <b>art. 2</b> (with S.R. 2006/22, <b>arts. 2-7</b>)</p>
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### Power to obtain information

**235.**—(1) Where an application is made to the Department under Article 227 in respect of a debt owed by an employer, the Department may require—

- (a) the employer to provide the Department with such information as it may reasonably require for the purpose of determining whether the application is well-founded, and
- (b) any person having the custody or control of any relevant records or other documents to produce for examination on behalf of the Department any such document in that person's custody or under his control which is of such a description as the Department may require.

(2) Any such requirement—

- (a) shall be made by notice in writing given to the person on whom the requirement is imposed, and
- (b) may be varied or revoked by a subsequent notice so given.

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(3) If a person refuses or wilfully neglects to furnish any information or produce any document which he has been required to furnish or produce by a notice under this Article he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(4) If a person, in purporting to comply with a requirement of a notice under this Article, knowingly or recklessly makes any false statement he is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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