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STATUTORY INSTRUMENTS

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**1988 No. 796**

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

**PART I**

**INTRODUCTORY**

**Title and commencement**

1.—(1) This Order may be cited as the Wages (Northern Ireland) Order 1988.

(2) Except as provided by paragraph (3), this Order shall come into operation on the expiration of two months from the day on which it is made.

(3) The following provisions of this Order shall come into operation on such day as the Department may by order appoint—

Part II; Article 26 so far as relating to Part II;

Schedule 1; Paragraphs 1, 2, 4 and 6 of Schedule 4 and Article 27(1) so far as relating thereto; and Part II of Schedule 5 and Article 27(2) so far as relating thereto.

(4) An order under paragraph (3) may contain such transitional and supplementary provisions as appear to the Department to be necessary or expedient.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland)

(2) In this Order “the Department” means the Department of Economic Development.

**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) or (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.

## **PART III**

### **WAGES COUNCILS**

#### *Scope of operation of wages councils*

### **Continued existence of wages councils after repeal of Wages Councils (Northern Ireland) Order 1982**

**13.**—(1) The Wages Councils (Northern Ireland) Order 1982 shall cease to have effect, but, subject to the following provisions of this part—

- (a) any council in existence immediately before the coming into operation of this part by virtue of an order made or having effect as if made under Article 3 of that Order (establishment of wages councils) shall continue in existence; and
- (b) any order made or having effect as if made under that Article or under Article 6 of that Order (variation of field of operation of wages councils) and then in force in relation to

that council shall continue in force; and in this part “wages council” means such a council as is mentioned in sub-paragraph (a).

(2) Subject to the following provisions of this part, there shall be exercisable by such a council, in relation to the workers and employers within its scope of operation by virtue of paragraph (1), the functions conferred on wages councils by this part.

(3) A wages council shall not, however, exercise any functions under this part in relation to workers under the age of 21.

(4) Schedule 2 shall have effect with respect to the constitution, proceedings and officers of a wages council.

### **Abolition, or variation of scope of operation, of wages councils**

**14.**—(1) The Department may at any time by order abolish, or vary the scope of operation of, any wages council.

(2) Before making an order under this Article the Department shall have regard to—

- (a) the current levels of remuneration among any workers in relation to whom the wages council concerned would cease to operate, or (as the case may be) begin to operate, as a result of the order, and
- (b) such other matters as appear to it to be appropriate, and shall consult such persons or organisations as appear to it to be appropriate.

(3) An order under this Article may vary the scope of operation of a wages council by reference to any matters or circumstances whatever, and in particular may do so by excluding from its scope of operation employers who are either—

- (a) specified in the order, or
- (b) members of an organisation so specified, or
- (c) represented on an organisation so specified.

(4) Where an order of the Department under this Article abolishes, or varies the scope of operation of, one wages council and directs that any workers previously within the scope of operation of that council shall be brought within the scope of operation of another, the order may—

- (a) provide that anything done by, or to give effect to proposals made by, the first of those councils shall have effect in relation to those workers as if it had been done by, or to give effect to proposals made by, the second of those councils; and
- (b) make such further provisions as appear to the Department to be expedient in connection with the order, including provision for renaming any council to which the order relates.

(5) Where an order of the Department under this Article abolishes a wages council or directs that a wages council shall cease to operate in relation to any workers, then, except as is otherwise provided by the order, anything done by, or to give effect to proposals made by, that wages council shall cease to have effect or (as the case may be) cease to have effect in relation to the workers in relation to whom the council ceases to operate.

(6) Nothing in paragraph (5) shall be construed as affecting any rights or liabilities which have accrued to any person in consequence of anything done or omitted to be done before the coming into operation of the order.

### *Wages orders*

#### **Wages orders**

**15.**—(1) A wages council may make an order—

- (a) fixing a single minimum hourly rate of remuneration in respect of all the time worked by a worker in any week;
  - (b) fixing—
    - (i) a single minimum hourly rate of remuneration in respect of time worked by a worker in any week up to a total amount not exceeding such number of hours as may be fixed by the order (“the basic hours”), and
    - (ii) a single minimum hourly overtime rate of remuneration in respect of time worked by a worker in any week in excess of the basic hours;
  - (c) fixing, for the purposes of Article 18(2)(b) and (3)(b), a limit applying to amounts which are deducted from a worker’s remuneration by his employer, or paid by a worker to his employer, in respect of the provision of living accommodation for him by his employer, being a limit framed by reference to the amount recovered by the employer by means of any such deductions or payments in respect of any period of 24 hours for the whole or part of which any such accommodation is so provided.
- (2) Any such order may—
- (a) make different provision under paragraph (1) in relation to periods of time beginning with different dates;
  - (b) provide for any matter fixed by the order in pursuance of that paragraph to have effect only as from a date later than that on which the order comes into force; but no such order shall provide for a limit fixed in pursuance of sub-paragraph (c) of that paragraph to have effect at a time when no rate or rates fixed in pursuance of sub-paragraph (a) or (b) of that paragraph will have effect under the order.
- (3) Any order made by a wages council under this Article shall apply—
- (a) to all time workers in relation to whom the council operates, and
  - (b) in accordance with the provisions of this part relating to the remuneration of piece workers, to all piece workers in relation to whom the council operates; and shall so apply whether any such workers work on a full-time or part-time basis.
- (4) References in this part to the statutory minimum remuneration provided for a worker by an order under this Article shall, in the case of a time worker to whom such an order applies, be construed as references to the remuneration due under the order in respect of any time worked by him in a week, as determined by the application, in relation to any time so worked—
- (a) of the rate for the time being fixed by the order in pursuance of paragraph (1)(a) or (b)(i); or
  - (b) where a rate is so fixed in pursuance of paragraph (1)(b)(i) and the time so worked exceeds the basic hours, of a combination of that rate (as respects the basic hours) and the rate for the time being fixed by the order in pursuance of paragraph (1)(b)(ii) (as respects any time worked in excess of those hours).
- (5) In this part any reference, in relation to a time worker, to time worked by that worker shall be construed as including a reference to time during which he is required (whether in accordance with his contract or otherwise) to be available for work and is so available at his place of work.
- (6) Before making an order under this Article fixing any such rate as is mentioned in sub-paragraph (a) or (b)(i) or (ii) of paragraph (1) a wages council shall have regard to—
- (a) the effect that that rate will have on the level of employment among the workers to whom it will apply, and in particular in those areas where the remuneration received by such workers is generally less than the national average for such workers; and
  - (b) such other matters as appear to it to be appropriate.
- (7) An order under this Article may amend or revoke a previous order under this Article, and any such order may, in particular, amend any rate or limit fixed in pursuance of paragraph (1)(b)

(ii) or (c) without also amending the rate for the time being fixed in pursuance of paragraph (1)(a) or (b)(i), as the case may be.

(8) An order under this Article shall not prejudice any rights conferred on any worker by or under any other statutory provision.

(9) Schedule 3 (supplementary provisions relating to wages orders) shall have effect.

### **Application of wages orders to piece workers**

16.—(1) Subject to paragraph (4), references in this part to the statutory minimum remuneration provided for a worker by an order under Article 15 shall, in the case of a piece worker to whom such an order applies, be construed as references to remuneration, in respect of work executed by him, at such one or more piece rates as are appropriate to secure the result mentioned in paragraph (2).

(2) That result is that an ordinary worker executing the work in question would be able to earn, in any given time worked by him in any week, not less than the amount of remuneration due under the order in respect of the time so worked, as determined by the application, in relation to that time, of any such rate or combination of rates as is mentioned in Article 15(4)(a) or (b).

(3) In paragraph (2) the reference to an ordinary worker in relation to any work is a reference to a worker of ordinary competence to execute the work who has no disability affecting the speed at which he is able to execute it.

(4) In relation to any time during which—

- (a) a piece worker (other than a homeworker) is required, whether in accordance with his contract or otherwise, to be available for work and is so available at his place of work, but
- (b) no work is available to be executed by the worker, references in this part to the statutory minimum remuneration provided for him by an order under Article 15 shall be construed as references to remuneration in respect of any such time at the rate for the time being fixed by the order in pursuance of Article 15(1)(a) or (b)(i).

(5) In the application of paragraph (4) to a piece worker whose remuneration is calculated by reference to items of work executed by a number of workers of whom he is one (“the group”), the reference to the worker in sub-paragraph (b) shall be construed as a reference to the group.

### **Effect and enforcement of wages orders**

17.—(1) If, in the case of any worker to whom an order under Article 15 applies, the amount of remuneration paid to the worker by his employer in respect of any week is less than the statutory minimum remuneration provided for him by the order in respect of that week, the worker shall be taken to be entitled under his contract to be paid the difference between those two amounts as additional remuneration in respect of that week.

(2) Any employer who, in respect of any week, fails to pay any worker to whom an order under Article 15 applies an amount of remuneration equal to, or exceeding, the statutory minimum remuneration provided for him by the order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) Where proceedings are brought in respect of any offence under paragraph (2) 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, the court may (subject to paragraph (5)) order the employer to pay to the worker the appropriate sum in respect of the week in relation to which the offence was committed, and (subject to paragraphs (5) and (6))—

- (a) evidence may be given of any other failure on the part of the employer such as is mentioned in paragraph (2) which occurred, in relation to any week falling within the period of two

years ending with the date of the offence, in the case of the worker in relation to whom the offence was committed or in the case of any other worker employed by the employer; and

- (b) on proof of any such failure the court may order the employer to pay to the worker or (as the case may be) to each of the workers in question the appropriate sum in respect of the week in relation to which the failure occurred.

(4) In paragraph (3) “the appropriate sum”, in relation to any worker, means such sum as is found by the court to represent the difference between the following amounts, namely—

- (a) the statutory minimum remuneration provided for the worker in respect of the week in question by the relevant order under Article 15; and
- (b) the amount of remuneration paid to the worker in respect of that week.

(5) A court shall not make an order in the case of any time worker under paragraph (3) in respect of any such offence or failure as is mentioned in that paragraph if—

- (a) the offence was committed or the failure occurred in relation to a week forming part of a cycle of weeks (not exceeding four) during which the time worked by that worker in a week was different in different weeks; and
- (b) the total remuneration paid to that worker in respect of the total time worked by him during the cycle was not less than the aggregate of the statutory minimum remuneration provided for him by the relevant order under Article 15 in respect of the time worked in the constituent weeks of the cycle.

(6) Evidence of any such failure as is mentioned in paragraph (3) may be given under that paragraph only if notice of intention to adduce such evidence has been served with the summons or warrant.

(7) The powers given by this Article 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.

(8) Any reference in this Article, in relation to a worker, to remuneration or statutory minimum remuneration in respect of a week shall be construed as a reference to remuneration or statutory minimum remuneration in respect of the following, namely—

- (a) in the case of a time worker, time worked by the worker in that week; and
- (b) in the case of a piece worker—
  - (i) work executed by the worker in that week, and
  - (ii) any such time as is mentioned in Article 16(4) occurring during that week.

### **Computation of remuneration**

**18.**—(1) For the purpose of determining, for the purposes of this part, the amount of remuneration paid to a time worker by his employer in respect of time worked by the worker in any week there shall be added together—

- (a) the total amount of any money payments made by the employer to the worker, on or before the relevant pay day, by way of remuneration in respect of time worked by him in that week, and
- (b) the total amount of any deductions made by the employer (whether in accordance with part II or not) when making the payment of wages which consisted of or included those money payments, apart from deductions falling to be left out of account under this subparagraph by virtue of paragraph (2),

and then, from the aggregate of those amounts, there shall be subtracted the aggregate of—

- (i) the worker’s necessary expenditure in connection with his employment to the extent that such expenditure consists of payments to persons other than the

employer, is attributable to that week and is not met, or designed to be met, by an allowance paid to him by the employer, and

- (ii) the total amount of any payments received from the worker by the employer (whether in accordance with part II or not) and falling to be taken into account under this sub-paragraph by virtue of paragraph (3).

(2) The following deductions shall be left out of account under paragraph (1)(b), namely—

- (a) any deduction in respect of the worker's necessary expenditure in connection with his employment to the extent that the deduction is attributable to the week in question;
- (b) any deduction in respect of the provision of living accommodation for the worker by the employer to the extent that the deduction exceeds any limit for the time being in force in relation to the worker by virtue of Article 15(1)(c), and
- (c) subject to paragraph (4), any other deduction made by the employer for his own use and benefit (and accordingly not attributable to any amount paid or payable by him to any other person, or to any authority, on behalf of the worker).

(3) The following payments by the worker shall be taken into account under paragraph (1)(ii), namely—

- (a) any payment in respect of the worker's necessary expenditure in connection with his employment to the extent that the payment is attributable to the week in question;
- (b) any payment due from the worker in that week in respect of the provision of living accommodation for him by the employer to the extent that the payment exceeds any limit for the time being in force in relation to the worker by virtue of Article 15(1)(c), and
- (c) subject to paragraph (4), any other payment due from the worker in that week and retained by the employer for his own use and benefit (and accordingly not attributable to any amount paid or payable by him to any other person, or to any authority, on behalf of the worker).

(4) Paragraphs (2)(c) and (3)(c) do not apply—

- (a) to deductions made or payments received by the employer on account of any of the following matters, namely—
  - (i) any conduct of the worker or any other event in respect of which he (whether together with any other workers or not) has any contractual liability,
  - (ii) any advance under an agreement for a loan or any advance of wages, or
  - (iii) the purchase by the worker of any shares or other securities or of any share in a partnership; or
- (b) to deductions made or payments received by the employer on account of any goods or services supplied by the employer with the worker's prior agreement or consent to the extent that any such deductions or payments do not result in the employer recovering from the worker an amount exceeding the cost to the employer of supplying the goods or services in question; and accordingly any such deductions shall not be left out of account under paragraph (1)(b) and any such payments shall not be taken into account under paragraph (1)(ii).

(5) For the purposes of paragraph (4)(b) the cost to an employer of supplying any goods or services shall—

- (a) where he supplies goods or services of the kind in question in the course of his business, be taken to be the amount which he would have obtained for the goods or services if they had been supplied in the course of that business; and
- (b) in any other case, be taken to be the amount of expenditure incurred by the employer in connection with the supply by him of the goods or services.

(6) The preceding provisions of this Article shall apply to a piece worker as they apply to a time worker but as if, in paragraph (1), any reference to remuneration in respect of time worked by the worker in any week were a reference to remuneration in respect of—

- (a) work executed by him in any week, and
- (b) any such time as is mentioned in Article 16(4) that occurs during the week.

(7) In this Article—

“deduction” does not include any such deficiency in the payment of wages as is mentioned in Article 10(3);

“money payment” means—

- (a) a payment in cash,
- (b) a payment by cheque or by a money or postal order issued by the Post Office, or
- (c) a payment (however effected) into any account kept with a bank or other institution;

“relevant pay day”, in relation to any week of a worker’s employment, means the day on which his remuneration in respect of that week is payable;

“wages” has the same meaning as in part II.

### **Apportionment of remuneration**

**19.—**(1) This Article applies where—

- (a) in respect of part of the time worked by a time worker in any week (“the relevant period”) the worker is entitled to the statutory minimum remuneration provided for him by an order under Article 15, and
- (b) in respect of the remainder of the time worked by him in the week (“the remaining period”) the worker is not entitled to any such remuneration or is entitled to any such remuneration by virtue of another such order; and in this Article any reference to the worker’s computed remuneration is a reference to the amount of the remuneration paid to the worker in respect of the time worked by him in the week in question as determined in accordance with Article 18.

(2) Subject to paragraphs (3) to (5), the amount of the worker’s computed remuneration that is to be attributed to either the relevant period or the remaining period for the purposes of this part shall, if not apparent from the terms of the worker’s contract, be the amount which bears to the total amount of the worker’s computed remuneration the same proportion as the relevant period, or (as the case may be) the remaining period, bears to the total time worked by the worker in the week in question.

(3) Where any particular amount falling to be added or subtracted under Article 18(1), as it applies to any week, is exclusively referable to the relevant period, the amount of the worker’s computed remuneration to be attributed to that period for the purposes of this part shall be determined by either—

- (a) adding the unattributed balance of that particular amount to the amount to be attributed to that period in accordance with paragraph (2), or
- (b) subtracting the unattributed balance of that particular amount from the amount to be attributed to that period in accordance with that paragraph, according to whether that particular amount falls to be added or subtracted under Article 18(1); and a corresponding adjustment shall be made in the amount of the worker’s computed remuneration to be attributed for the purposes of this part to the remaining period.

(4) In paragraph (3) “the unattributed balance”, in relation to the particular amount in question, means so much of that amount as is not taken into account for the purpose of determining the amount to be attributed to the relevant period in accordance with paragraph (2).

(5) Where any particular amount falling to be added or subtracted under Article 18(1), as it applies to any week, is exclusively referable to the remaining period, paragraphs (3) and (4) shall apply to any such particular amount as if—

- (a) any reference to the relevant period were a reference to the remaining period; and
- (b) the reference in paragraph (3) to the remaining period were a reference to the relevant period.

(6) The preceding provisions of this Article shall apply to a piece worker as they apply to a time worker but as if—

- (a) any reference to time worked by the worker in any week were a reference to work executed by him in any week; and
- (b) the word “work” were substituted for the word “period” wherever occurring; and for the purposes of those provisions as they apply to a piece worker in accordance with this paragraph the worker shall be treated as executing work during any such time as is mentioned in Article 16(4).

### *Enforcement*

#### **Obligation to keep records, etc.**

**20.**—(1) The employer of any workers to whom an order under Article 15 applies shall keep such records as are necessary to show—

- (a) whether or not the provisions of this part are being complied with in relation to the payment of remuneration to those workers, and
- (b) the amount of any deductions or payments made in the case of those workers in respect of the provision of living accommodation by the employer; and the records shall be retained by the employer for a period of 3 years beginning with the date of the payments or deductions in question.

(2) The employer of any such workers shall post in the prescribed manner such notices as may be prescribed for the purpose of informing the workers—

- (a) of any order under Article 15, or proposal under paragraph 1 of Schedule 3, that affects them; or
- (b) of such other matters (if any) as may be prescribed.

(3) Where any such workers are homeworkers, the employer shall notify them in the prescribed manner of the matters mentioned in paragraph (2).

(4) An employer who fails to comply with any of the requirements of this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

#### **Officers**

**21.**—(1) The Department, with the approval of the Department of Finance and Personnel as to numbers and salaries, may appoint officers to act for the purposes of this part.

(2) When acting for the purposes of this part any such officer shall, if so required, produce some duly authenticated document showing his authority so to act; and if it appears to any such officer that any person with whom he is dealing while so acting does not know that he is an officer acting for the purposes of this part he shall identify himself as such to that person.

(3) An officer acting for the purposes of this part shall have power for the performance of his duties—

- (a) to require the production of—



- (i) wages sheets or other records of remuneration kept by an employer, or
  - (ii) records of payments made to homeworkers by persons giving out work, or
  - (iii) any other records such as are required by this part to be kept by employers, and to inspect and examine those sheets or records and to copy any material part of them;
- (b) to require any person giving out work and any homeworker to give any information which it is in his power to give with respect to the names and addresses of the persons to whom the work is given out or (as the case may be) of the persons from whom work is received by the homeworker, and with respect to the payments made or to be made for the work;
- (c) where the officer has reasonable cause to believe that an order under Article 15 applies to any employer, at all reasonable times to enter any premises at which that employer carries on his business (including any place used, in connection with that business, for giving out work to homeworkers, and any premises which the officer has reasonable cause to believe to be used by, or by arrangement with, the employer to provide living accommodation for workers);
- (d) to inspect and copy any material part of any list of homeworkers kept by an employer or person giving out work to homeworkers;
- (e) to examine (either alone or in the presence of any other person, as he thinks fit) with respect to any matters under this part any person whom he has reasonable cause to believe to be or to have been—
- (i) a worker to whom an order under Article 15 applies or applied, or
  - (ii) the employer of any such person, or
  - (iii) a servant or agent of any such employer employed in the employer's business, and to require every such person to be so examined, and to sign a declaration of the truth of the matters in respect of which he is so examined; but no person shall be required under sub-paragraph (e) to give any information tending to incriminate that person or, if married, that person's spouse.
- (4) Where an officer acting for the purposes of this part has reasonable cause to believe that an order under Article 15 applies to an employer, he may, for the purpose of, or in connection with, the enforcement of that order, by notice in writing require the employer to furnish him with such information as may be specified or described in the notice; and any such notice—
- (a) may specify the way in which, and the time within which, it is to be complied with; and
  - (b) may be varied or revoked by a subsequent notice under this paragraph.
- (5) An officer acting for the purposes of this part may institute proceedings for any offence under this part and may, although not a barrister or solicitor, conduct any such proceedings.
- (6) An officer acting for the purposes of this part and being authorised in that behalf by general or special directions of the Department may, if it appears to him that a sum is due from an employer to a worker on account of the payment to the worker of an amount of remuneration less than the statutory minimum remuneration provided for him by an order under Article 15, institute on behalf of and in the name of the worker civil proceedings for the recovery of that sum; and in any such proceedings the court may make an order for costs to be paid by the officer as if he were a party to the proceedings.
- (7) The power conferred by paragraph (6) for the recovery of sums due from an employer to a worker shall not be in derogation of any right of the worker to recover such sums by civil proceedings.

### **Offences in connection with enforcement of part III**

22.—(1) Any person who—

- (a) makes, or knowingly either causes or allows to be made, in a record required by this part to be kept by employers any entry which he knows to be false in a material particular, or
  - (b) for purposes connected with the preceding provisions of this part produces or furnishes, or knowingly either causes or allows to be produced or furnished, any wages sheet, record, list or information which he knows to be false in a material particular, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.
- (2) Any person who—
- (a) intentionally obstructs an officer acting for the purposes of this part in the exercise of any power conferred by Article 21, or
  - (b) fails to comply with any requirement of such an officer made in the exercise of any such power, shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale; but it shall be a defence for a person charged under this paragraph with failing to comply with a requirement to prove that it was not reasonably practicable to do so.
- (3) Any person who, in purported compliance with a requirement of a notice under Article 21(4), knowingly or recklessly makes any statement which is false in a material particular shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

*Miscellaneous and supplemental*

**Application of part III to superior employers: liability of employers and others in respect of offences**

**23.—(1) Where—**

- (a) the immediate employer of a worker is himself in the employment of some other person; and
- (b) the worker is employed on the premises of that other person, that other person shall be deemed for the purposes of this part to be the employer of the worker jointly with the immediate employer.

(2) Where the commission by any person of an offence under Article 17(2) or 20(4) is due to the act or default of some other person, that other person shall be guilty of the offence; and a person may be charged with and convicted of the offence by virtue of this paragraph whether or not proceedings are taken against the first-mentioned person.

(3) In any proceedings for an offence under Article 17(2) or 20(4) it shall be a defence for the person charged to prove that he exercised all due diligence and took all reasonable precautions to secure that the provisions of this part, and of any relevant regulations or order made under it, were complied with by himself and by any person under his control.

**Regulations and orders made by Department under part III**

**24.—(1)** The Department may make regulations for prescribing anything which by this part is authorised or required to be prescribed.

(2) Any regulations made by the Department under this part and any order made by the Department under Article 14 (other than an order to which paragraph (3) applies) shall be subject to negative resolution.

- (3) An order under Article 14 which—
  - (a) abolishes a wages council, and

- (b) does not direct that all or any of the workers previously within the scope of operation of that wages council shall be brought within the scope of operation of another wages council, shall not be made by the Department unless a draft of the order has been laid before and approved by a resolution of the Assembly.

(4) Any power conferred by this part to prescribe the manner in which anything is to be published shall include power to prescribe the date which is to be taken for the purposes of this part as the date of publication.

### **Interpretation of part III**

**25.—(1)** In this part—

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

“employers' association” means any organisation representing employers and any association of such organisations or of employers and such organisations;

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

“homeworker” means an individual who—

- (a) contracts with a person, for the purposes of that person’s business, for the execution of work to be done in a place not under the control or management of the person with whom he contracts, and
- (b) does not normally make use of the services of more than two individuals in the carrying out of contracts for the execution of work in relation to which statutory minimum remuneration is provided by any order under Article 15;

“organisation”, in relation to workers, means a trade union and, in relation to employers, means an employers' association;

“piece rate” means a rate where the amount of a worker’s remuneration is to be calculated by reference to the number of items of work executed either by him alone or by a number of workers of whom he is one, and “piece worker” means a worker whose contract provides for the remuneration payable to him in respect of work executed by him to be calculated only by reference to one or more such rates;

“prescribed” means prescribed by regulations made by the Department;

“time worker” means a worker other than a piece worker (whether the worker’s remuneration is determined by reference to the actual number of hours worked by him or not);

“wages council” means such a wages council as is mentioned in Article 13(1)(a);

“week” means—

- (a) in relation to a worker whose remuneration is calculated weekly by a week ending with a day other than Saturday, a week ending with that other day; and
- (b) in relation to any other worker, a week ending with Saturday;

“worker” means (subject to paragraph (2)) an individual who—

- (a) has entered into or works under (or, where the employment has ceased, worked under) one of the contracts referred to in Article 10(2), or
- (b) whether or not he falls within sub-paragraph (a) is a homeworker, and any reference to a worker’s contract shall be construed as a reference to any such contract as is referred to in sub-paragraph (a) or, in the case of a homeworker, to the contract by virtue of which he is a homeworker.

(2) In this part “worker” does not include an individual who is wholly employed otherwise than for the purposes of the business of the person employing him.

(3) Notwithstanding Article 15(3)—

(a) where a worker is employed partly for the purposes of his employer’s business and partly not, nothing in any order under Article 15 shall apply to the worker in his employment otherwise than for the purposes of that business, and

(b) where a worker is employed for the purposes of his employer’s business both in an employment to which an order under Article 15 applies and in one to which that order does not apply, nothing in that order shall apply to the worker in the second of those employments.

(4) References in this part to the statutory minimum remuneration provided for a worker by an order under Article 15 shall—

(a) in relation to a time worker, be construed in accordance with paragraph (4) of that Article, and

(b) in relation to a piece worker, be construed in accordance with Article 16.

## PART IV

### GENERAL

#### **Excluded employments**

**26.**—(1) Parts II and III do not apply to employment where under his contract the person employed ordinarily works outside Northern Ireland.

(2) For the purposes of paragraph (1) a person employed to work on board a ship registered in the United Kingdom (not being a ship registered at a port outside Northern Ireland) shall, unless—

(a) the employment is wholly outside Northern Ireland, or

(b) he is not ordinarily resident in Northern Ireland, be regarded as a person who under his contract ordinarily works in Northern Ireland.

(3) parts II and III do not, however, apply to a person employed under a crew agreement within the meaning of the Merchant Shipping Act 1970.

#### **Amendments, repeals, transitional provisions and savings**

**27.**—(1) The statutory provisions set out in Schedule 4 shall have effect subject to the minor and consequential amendments there specified.

(2) The statutory provisions set out in Schedule 5 are hereby repealed to the extent specified in the third column of that Schedule.

(3) The transitional provisions and savings contained in Schedule 6 shall have effect; but nothing in that Schedule shall be taken as prejudicing the operation of sections 28 and 29 of the Interpretation Act (Northern Ireland) 1954 (which relate to repeals).

*G. I. de Deney*  
Clerk of the Privy Council.