
STATUTORY INSTRUMENTS

1988 No. 796

The Wages (Northern Ireland) Order 1988

PART III

WAGES COUNCILS

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 homemaker) 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 sub-paragraph 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).