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STATUTORY INSTRUMENTS

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**1996 No. 1919**

**The Employment Rights (Northern Ireland) Order 1996**

**PART XII**

**REDUNDANCY PAYMENTS ETC.**

**CHAPTER VI**

**PAYMENTS BY DEPARTMENT**

**Applications for payments**

**201.**—(1) Where an employee claims that his employer is liable to pay to him an employer's payment and either—

- (a) that the employee has taken all reasonable steps, other than legal proceedings, to recover the payment from the employer and the employer has refused or failed to pay it, or has paid part of it and has refused or failed to pay the balance, or
- (b) that the employer is insolvent and the whole or part of the payment remains unpaid,

the employee may apply to the Department for a payment under this Article.

(2) In this Part “employer's payment”, in relation to an employee, means—

- (a) a redundancy payment which his employer is liable to pay to him under this Part,<sup>F1</sup> . . .
- [<sup>F1</sup>(aa) a payment which his employer is liable to make to him under an agreement to refrain from instituting or continuing proceedings for a contravention or alleged contravention of Article 170 which has effect by virtue of Article 245(2)(e) or (f), or]
- (b) a payment which his employer is, under an agreement in respect of which an order is in force under Article 192, liable to make to him on the termination of his contract of employment.

(3) In relation to any case where (in accordance with any provision of this Part) an industrial tribunal determines that an employer is liable to pay part (but not the whole) of a redundancy payment the reference in paragraph (2)(a) to a redundancy payment is to the part of the redundancy payment.

(4) In paragraph (1)(a) “legal proceedings”

- (a) does not include any proceedings before an industrial tribunal, but
- (b) includes any proceedings to enforce a decision or award of an industrial tribunal.

(5) An employer is insolvent for the purposes of paragraph (1)(b)—

- (a) where the employer is an individual, if (but only if) paragraph [<sup>F2</sup>(6), (8ZA) or (8A)] is satisfied,<sup>F3</sup> . . .
- (b) where the employer is a company, if (but only if) paragraph [<sup>F4</sup>(7), (8ZA) or (8A)] is satisfied[<sup>F3</sup>, <sup>F5</sup>...]
- [<sup>F3</sup>(c) where the employer is a limited liability partnership, if (but only if) paragraph [<sup>F6</sup>(8), (8ZA) or (8A)] is satisfied][<sup>F7</sup>, and

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- (d) where the employer is not any of the above, if (but only if) paragraph [<sup>F8</sup>(8ZA) or (8A)] is satisfied.]
- (6) 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.
- (7) This paragraph is satisfied in the case of an employer which is a company—
- (a) if a winding up order<sup>F9</sup> . . . has been made, or a resolution for voluntary winding up has been passed, with respect to the company,
- [<sup>F10</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>F3</sup>(8) 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.]

[<sup>F11</sup>(8ZA) This paragraph is satisfied in the case of an employer if—

    - (a) the employer is a legal person,
    - (b) a request has been made for the first opening of collective proceedings—
      - (i) based on the insolvency of the employer, as provided for under the law of any part of the United Kingdom, and
      - (ii) involving the partial or total divestment of the employer's assets and the appointment of a liquidator or a person performing a similar task, and
    - (c) any of the following has decided to open the proceedings—
      - (i) a court,
      - (ii) a meeting of creditors, or
      - (iii) the creditors by a decision procedure.]

[<sup>F12</sup>(8A) This paragraph is satisfied in the case of an employer if—

      - (a) a request has been made for the first opening of collective proceedings—
        - (i) based on the insolvency of the employer, as provided for under the laws, regulations and administrative provisions of a member State, and

- (ii) involving the partial or total divestment of the employer’s assets and the appointment of a liquidator or a person performing a similar task, and
- (b) the competent authority has—
  - (i) decided to open the proceedings, or
  - (ii) established that the employer’s undertaking or business has been definitively closed down and the available assets of the employer are insufficient to warrant the opening of the proceedings.
- (8B) For the purposes of [<sup>F13</sup>this Article] —
  - (a) “liquidator or a person performing a similar task” includes the official receiver or an administrator, trustee in bankruptcy, judicial factor, supervisor of a voluntary arrangement, or a person performing a similar task;
  - (b) “competent authority” includes—
    - (i) a court,
    - (ii) a meeting of creditors,
    - (iii) a creditors’ committee,
    - (iv) the creditors by a decision procedure, and
    - (v) an authority of a member State empowered to open insolvency proceedings, to confirm the opening of such proceedings or to take decisions in the course of such proceedings.
- (8C) An employee may apply under this Article only if the employee worked or habitually worked in Northern Ireland in that employment to which the application relates.]

<b>F1</b>	1998 NI 8
<b>F2</b>	Words in art. 201(5)(a) substituted (31.12.2020) by <a href="#">The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146)</a> , reg. 1(3), <b>Sch. para. 257(2)(a)(i)</b> (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
<b>F3</b>	SR 2004/307
<b>F4</b>	Words in art. 201(5)(b) substituted (31.12.2020) by <a href="#">The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146)</a> , reg. 1(3), <b>Sch. para. 257(2)(a)(ii)</b> (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
<b>F5</b>	Word in art. 201(5)(b) omitted (31.1.2019) by virtue of <a href="#">The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146)</a> , reg. 1(2), <b>Sch. para. 255(2)(a)(ii)</b> (with regs. 4, 5)
<b>F6</b>	Words in art. 201(5)(c) substituted (31.12.2020) by <a href="#">The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146)</a> , reg. 1(3), <b>Sch. para. 257(2)(a)(iii)</b> (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
<b>F7</b>	Art. 201(5)(d) and word inserted (31.1.2019) by <a href="#">The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146)</a> , reg. 1(2), <b>Sch. para. 255(2)(a)(iv)</b> (with regs. 4, 5)
<b>F8</b>	Words in art. 201(5)(d) substituted (31.12.2020) by <a href="#">The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146)</a> , reg. 1(3), <b>Sch. para. 257(2)(a)(iv)</b> (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
<b>F9</b>	Words in art. 201(7)(a) repealed (27.3.2006) by <a href="#">Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10))</a> , arts. 1(3), 3(3), 31, Sch. 2 para. 54(2)(a), Sch. 9; S.R. 2006/21, <b>art. 2</b> (with S.R. 2006/22, <b>arts. 2-7</b> )
<b>F10</b>	Art. 201(7)(aa) inserted (27.3.2006) by <a href="#">Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10))</a> , arts. 1(3), 3(3), Sch. 2 para. 54(2)(b); S.R. 2006/21, <b>art. 2</b> (with S.R. 2006/22, <b>arts. 2-7</b> )
<b>F11</b>	Art. 201(8ZA) inserted (31.12.2020) by <a href="#">The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146)</a> , reg. 1(3), <b>Sch. para. 257(2)(b)</b> (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

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- F12** Art. 201(8A)-(8C) inserted (31.1.2019) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(2), **Sch. para. 255(2)(b)** (with regs. 4, 5)
- F13** Words in art. 201(8B) substituted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 257(2)(c)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

- [Act applied with modifications by S.R. 2023/156 reg. 15](#)

**Whole provisions yet to be inserted into this Order (including any effects on those provisions):**

- [Pt. 7A inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 1](#)
- [Ch. 5 inserted by 2022 c. 27 \(N.I.\) s. 1\(1\)](#)
- [art. 21\(4B\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 2](#)
- [art. 23\(1\)\(zza\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 3](#)
- [art. 70F inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 4](#)
- [art. 70G inserted by 2020 c. 7 Sch. 7 para. 20](#)
- [art. 71\(1C\) inserted by 2020 c. 7 Sch. 7 para. 21\(a\)](#)
- [art. 72\(8\) inserted by 2020 c. 7 Sch. 7 para. 22\(b\)](#)
- [art. 85ZS\(3\)\(a\)-\(c\) substituted for words by 2022 c. 18 \(N.I.\) Sch. 3 para. 47\(4\)](#)
- [art. 95F\(5A\) inserted by 2016 c. 15 \(N.I.\) Sch. 2 para. 32](#)
- [art. 135E inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 6](#)
- [art. 135G inserted by 2020 c. 7 Sch. 7 para. 25](#)
- [art. 137\(6D\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 7](#)
- [art. 137\(7N\) inserted by 2020 c. 7 Sch. 7 para. 26\(b\)](#)
- [art. 140\(3\)\(fj\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 8](#)
- [art. 140\(3\)\(fl\) inserted by 2020 c. 7 Sch. 7 para. 27](#)
- [art. 143\(2\)\(ddd\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 9](#)
- [art. 144\(2\)\(ddd\) inserted by 2011 c. 13 \(N.I.\) Sch. 3 Pt. 2 para. 10](#)