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## STATUTORY INSTRUMENTS

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# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART IV

#### PROTECTION OF WAGES

##### *Deductions by employer*

##### **Right not to suffer unauthorised deductions**

**45.**—(1) An employer shall not make a deduction from wages of a worker employed by him unless—

- (a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this Article “relevant provision”, in relation to a worker's contract, means a 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 an occasion prior to the employer making the deduction in question, or
- (b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), 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) Paragraph (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this Article a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this Article an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(7) This Article does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting “wages” within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

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## Excepted deductions

46.—(1) Article 45 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—

- (a) an overpayment of wages, or
- (b) an overpayment in respect of expenses incurred by the worker in carrying out his employment,

made (for any reason) by the employer to the worker.

(2) Article 45 does not apply to a deduction from a worker's wages made by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.

(3) Article 45 does not apply to a deduction from a worker's wages made by his employer in pursuance of a requirement imposed on the employer by a 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.

(4) Article 45 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—

- (a) in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or
- (b) 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.

(5) Article 45 does not apply to a deduction from a worker's wages made by his employer where the worker has taken part in a strike or other industrial action and the deduction is made by the employer on account of the worker's having taken part in that strike or other action.

(6) Article 45 does not apply to a deduction from a worker's wages made by his employer with his prior agreement or consent signified in writing where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer:

## *Payments to employer*

### Right not to have to make payments to employer

47.—(1) An employer shall not receive a payment from a worker employed by him unless—

- (a) the payment is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or
- (b) the worker has previously signified in writing his agreement or consent to the making of the payment.

(2) In this Article “relevant provision”, in relation to a worker's contract, means a 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 an occasion prior to the employer 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) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) For the purposes of this Article a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the receipt of a payment on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(4) For the purposes of this Article an agreement or consent signified by a worker does not operate to authorise the receipt of a payment on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

(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.

### **Excepted payments**

**48.**—(1) Article 47 does not apply to a payment received from a worker by his employer where the purpose of the payment is the reimbursement of the employer in respect of—

- (a) an overpayment of wages, or
- (b) an overpayment in respect of expenses incurred by the worker in carrying out his employment,

made (for any reason) by the employer to the worker.

(2) Article 47 does not apply to a payment received from a worker by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.

(3) Article 47 does not apply to a payment received from a worker by his employer where the worker has taken part in a strike or other industrial action and the payment has been required by the employer on account of the worker's having taken part in that strike or other action.

(4) Article 47 does not apply to a payment received from a worker by his employer where the purpose of the payment is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer.

### *Cash shortages and stock deficiencies in retail employment*

### **Introductory**

**49.**—(1) In the following provisions of this Part—

“cash shortage” means a deficit arising in relation to amounts received in connection with retail transactions, and

“stock deficiency” means a stock deficiency arising in the course of retail transactions.

(2) In the following provisions of this Part “retail employment”, in relation to a worker, means employment involving (whether or not on a regular basis)—

- (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.

(3) References in this Article to a “retail transaction” are to the sale or supply of goods or the supply of services (including financial services).

(4) References in the following provisions of this Part to a deduction made from 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—

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- (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 or not together with any other workers) has any contractual liability and which so resulted,

in each case whether or not the amount of the deduction or payment is designed to reflect the exact amount of the shortage or deficiency.

(5) References in the following provisions of 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 paragraph (4)(a) or (b).

(6) In the following provisions of this Part “pay day”, in relation to a worker, means a day on which wages are payable to the worker.

### **Limits on amount and time of deductions**

**50.**—(1) Where (in accordance with Article 45) the employer of a worker in retail employment makes, on account of one or more cash shortages or stock deficiencies, a deduction or deductions from 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) 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 45 unless (in addition to the requirements of that Article 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 relevant period.

(3) In paragraph (2) “the relevant period” means the period of twelve 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.

### **Wages determined by reference to shortages etc.**

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

- (a) by virtue of an 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.

(2) The amount representing the difference between the two amounts referred to in paragraph (1)(b) 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.

(3) The second of the amounts referred to in paragraph (1)(b) shall be treated for the purposes of this Part (except paragraph (1)) as the gross amount of the wages payable to him on that day.

(4) Accordingly—

- (a) Article 45, and

(b) if the requirements of Article 45 and paragraph (2) of Article 50 are satisfied, paragraph (1) of Article 50,  
have effect in relation to the amount referred to in paragraph (2) of this Article.

### **Limits on method and timing of payments**

**52.**—(1) Where the employer of a worker in retail employment receives from the worker a payment on account of a cash shortage or stock deficiency, the employer shall not be treated as receiving the payment in accordance with Article 47 unless (in addition to the requirements of that Article 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 the following provisions of this Article.

(2) A 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 twelve 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) For the purposes of this Part a demand for payment shall be treated as made by the employer on one of a 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.

(5) Legal proceedings by the employer of a worker in retail employment for the recovery from the worker of an 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 paragraph (3)(b) unless the employer has within that period made a demand for payment in respect of that amount in accordance with this Article.

### **Limit on amount of payments**

**53.**—(1) Where the employer of a worker in retail employment makes on any pay day one or more demands for payment in accordance with Article 52, 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 50(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.

(2) Once an amount has been required to be paid by means of a demand for payment made in accordance with Article 52 on any pay day, that amount shall not be taken into account under

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paragraph (1) as it applies to any subsequent pay day, even though the employer is obliged to make further requests for it to be paid.

(3) Where in any legal proceedings the court finds that the employer of a worker in retail employment is (in accordance with Article 47 as it applies apart from Article 52(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 this Article.

### **Final instalments of wages**

**54.**—(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 50(1) does not operate to restrict the amount of any deductions which may (in accordance with Article 45(1)) be made by the employer of a worker in retail employment from the worker's final instalment of wages.

(3) Nothing in Article 52 or 53 applies to a payment falling within Article 52(1) which is made on or after the day on which any such worker's final instalment of wages is paid; but (even if the requirements of Article 47 would otherwise be satisfied with respect to it) his employer shall not be treated as receiving any such payment in accordance with that Article if the payment was first required to be made after the end of the period referred to in Article 52(3)(b).

(4) Article 53(3) does not apply to an amount which is to be paid by a worker on or after the day on which his final instalment of wages is paid.

### *Enforcement*

### **Complaints to industrial tribunals**

**55.**—(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 45 (including a deduction made in contravention of that Article as it applies by virtue of Article 50(2)),
- (b) that his employer has received from him a payment in contravention of Article 47 (including a payment received in contravention of that Article as it applies by virtue of Article 52(1)),
- (c) that his employer has recovered from his wages by means of one or more deductions falling within Article 50(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 52) 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 53(1).

(2) Subject to paragraph (4), an industrial tribunal shall not consider a complaint under this Article unless it is presented before the end of 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.
- (3) Where a complaint is brought under this Article 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 53(1) but received by the employer on different dates,

the references in paragraph (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

(4) Where the industrial tribunal is satisfied that it was not reasonably practicable for a complaint under this Article to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

[<sup>F1</sup>(5) No complaint shall be presented under this Article in respect of any deduction made in contravention of Article 60 of the Trade Union and Labour Relations Order (wrongful deduction of political fund contribution).]

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### Determination of complaints

**56.** Where a tribunal finds a complaint under Article 55 well-founded, it shall make a declaration to that effect and shall order the employer—

- (a) in the case of a complaint under Article 55(1)(a), to pay to the worker the amount of any deduction made in contravention of Article 45,
- (b) in the case of a complaint under Article 55(1)(b), to repay to the worker the amount of any payment received in contravention of Article 47,
- (c) in the case of a complaint under Article 55(1)(c), to pay to the worker any amount recovered from him in excess of the limit mentioned in that provision, and
- (d) in the case of a complaint under Article 55(1)(d), to repay to the worker any amount received from him in excess of the limit mentioned in that provision.

### Determinations: supplementary

**57.—**(1) Where, in the case of any complaint under Article 55(1)(a), a tribunal finds that, although neither of the conditions set out in Article 45(1)(a) and (b) was satisfied with respect to the whole amount of the deduction, one of those conditions was satisfied with respect to any lesser amount, the amount of the deduction shall for the purposes of Article 56(a) be treated as reduced by the amount with respect to which that condition was satisfied.

(2) Where, in the case of any complaint under Article 55(1)(b), a tribunal finds that, although neither of the conditions set out in Article 47(1)(a) and (b) was satisfied with respect to the whole amount of the payment, one of those conditions was satisfied with respect to any lesser amount, the amount of the payment shall for the purposes of Article 56(b) be treated as reduced by the amount with respect to which that condition was satisfied.

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(3) An employer shall not under Article 56 be ordered by a tribunal to pay or repay to a worker any amount in respect of a deduction or payment, or 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.

(4) Where a tribunal has under Article 56 ordered an employer to pay or repay to a worker any amount in respect of a particular deduction or payment falling within Article 55(1)(a) to (d), the amount which the employer is entitled to recover (by whatever means) in respect of the matter in relation to which the deduction or payment was originally made or received shall be treated as reduced by that amount.

(5) Where a tribunal has under Article 56 ordered an employer to pay or repay to a worker any amount in respect of any combination of deductions or payments falling within Article 55(1)(c) or (d), the aggregate amount which the employer is entitled to recover (by whatever means) in respect of the cash shortages or stock deficiencies in relation to which the deductions or payments were originally made or required to be made shall be treated as reduced by that amount.

### **Complaints and other remedies**

**58.** Article 55 does not affect the jurisdiction of an industrial tribunal to consider a reference under Article 43 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 44(4) and under Article 56 (whether on the same or different occasions) in respect of a particular deduction shall not exceed the amount of the deduction.

### *Supplementary*

#### **Meaning of “wages” etc.**

**59.—**(1) In this Part “wages”, in relation to a worker, means any sums payable to the worker 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) statutory sick pay under Part XI of the Social Security Contributions and Benefits (Northern Ireland) Act 1992,
- (c) statutory maternity pay under Part XII of that Act,
- [<sup>F2</sup>(ca) statutory paternity pay under Part XIIZA of that Act,
- (cb) statutory adoption pay under Part XIIZB of that Act,]
- (d) a guarantee payment under Article 60,
- (e) any payment for time off under Part VII,
- (f) remuneration on suspension on medical grounds under Article 96 and remuneration on suspension on maternity grounds under Article 100,
- (g) any sum payable in pursuance of an order for reinstatement or re-engagement under Article 147,
- (h) any sum payable in pursuance of an order for the continuation of a contract of employment under Article 165, and
- (j) remuneration under a protective award made under Article 217,

but excluding any payments 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 45 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, and
  - (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, the amount of the payment shall for the purposes of this Part—
- (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) In this Part “gross amount”, in relation to any wages payable to a worker, means the total amount of those wages before deductions of whatever nature.
- (5) 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).

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