

## STATUTORY INSTRUMENTS

# 1996 No. 1919

## The Employment Rights (Northern Ireland) Order 1996

### PART XII

#### REDUNDANCY PAYMENTS ETC.

##### CHAPTER VI

##### PAYMENTS BY DEPARTMENT

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

- C1** Pt. XII Ch. VI (arts. 201-205) modified (6.4.2006) by [Transfer of Undertakings \(Protection of Employment\) Regulations 2006 \(S.I. 2006/246\)](#), regs. 2(3), 8(4), **Sch. 1 para. 5** (with reg. 21(1), Sch. 1 para. 3)

#### 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)—

---

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

---

- (a) where the employer is an individual, if (but only if) paragraph [F<sup>2</sup>(6), (8ZA) or (8A)] is satisfied,<sup>F3</sup> . . .
  - (b) where the employer is a company, if (but only if) paragraph [F<sup>4</sup>(7), (8ZA) or (8A)] is satisfied[F<sup>3</sup>, F<sup>5</sup>...]
  - [F<sup>3</sup>(c) where the employer is a limited liability partnership, if (but only if) paragraph [F<sup>6</sup>(8), (8ZA) or (8A)] is satisfied][F<sup>7</sup>, and
  - (d) where the employer is not any of the above, if (but only if) paragraph [F<sup>8</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,
  - [F<sup>10</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.
- [F<sup>3</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.]
- [F<sup>11</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.]

- F1** 1998 NI 8
- F2** Words in art. 201(5)(a) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 257\(2\)\(a\)\(i\)](#) (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F3** SR 2004/307
- F4** Words in art. 201(5)(b) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 257\(2\)\(a\)\(ii\)](#) (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F5** Word in art. 201(5)(b) omitted (31.1.2019) by virtue of [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(2), [Sch. para. 255\(2\)\(a\)\(ii\)](#) (with regs. 4, 5)
- F6** Words in art. 201(5)(c) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 257\(2\)\(a\)\(iii\)](#) (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- F7** Art. 201(5)(d) and word inserted (31.1.2019) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(2), [Sch. para. 255\(2\)\(a\)\(iv\)](#) (with regs. 4, 5)
- F8** Words in art. 201(5)(d) substituted (31.12.2020) by [The Insolvency \(Amendment\) \(EU Exit\) Regulations 2019 \(S.I. 2019/146\)](#), reg. 1(3), [Sch. para. 257\(2\)\(a\)\(iv\)](#) (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)

**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- F9** Words in art. 201(7)(a) repealed (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), 31, Sch. 2 para. 54(2)(a), Sch. 9; S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)
- F10** Art. 201(7)(aa) inserted (27.3.2006) by Insolvency (Northern Ireland) Order 2005 (S.I. 2005/1455 (N.I. 10)), arts. 1(3), 3(3), Sch. 2 para. 54(2)(b); S.R. 2006/21, **art. 2** (with S.R. 2006/22, **arts. 2-7**)
- F11** Art. 201(8ZA) inserted (31.12.2020) by The Insolvency (Amendment) (EU Exit) Regulations 2019 (S.I. 2019/146), reg. 1(3), **Sch. para. 257(2)(b)** (with regs. 4, 5); 2020 c. 1, Sch. 5 para. 1(1)
- 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)

### Making of payments

**202.**—(1) Where, on an application under Article 201 by an employee in relation to an employer's payment, the Department is satisfied that the requirements specified in paragraph (2) are met, it shall pay to the employee out of the Northern Ireland National Insurance Fund a sum calculated in accordance with Article 203 but reduced by so much (if any) of the employer's payment as has already been paid.

(2) The requirements referred to in paragraph (1) are—

- (a) that the employee is entitled to the employer's payment, and
- (b) that one of the conditions specified in sub-paragraphs (a) and (b) of paragraph (1) of Article 201 is fulfilled,

and, in a case where the employer's payment is a payment such as is mentioned in paragraph (2)(b) of that section, that the employee's right to the payment arises by virtue of a period of continuous employment (computed in accordance with the provisions of the agreement in question) which is not less than two years.

(3) Where under this Article the Department pays a sum to an employee in respect of an employer's payment—

- (a) all rights and remedies of the employee with respect to the employer's payment, or (if the Department has paid only part of it) all the rights and remedies of the employee with respect to that part of the employer's payment, are transferred to and vest in the Department, and
- (b) any decision of an industrial tribunal requiring the employer's payment to be paid to the employee has effect as if it required that payment, or that part of it which the Department has paid, to be paid to the Department.

(4) Any money recovered by the Department by virtue of paragraph (3) shall be paid into the Northern Ireland National Insurance Fund.

### Amount of payments

**203.**—(1) The sum payable to an employee by the Department under Article 202—

- (a) where the employer's payment to which the employee's application under Article 201 relates is a redundancy payment or a part of a redundancy payment, is a sum equal to the amount of the redundancy payment or part,<sup>F14</sup> . . .

[<sup>F14</sup>(aa) where the employer's payment to which the employee's application under Article 201 relates is a payment which his employer is liable to make to him under an agreement having effect by virtue of Article 245(2)(e) or (f), is a sum equal to the amount of the employer's

payment or of any redundancy payment which the employer would have been liable to pay to the employee but for the agreement, whichever is less, and]

- (b) where the employer's payment to which the employee's application under Article 201 relates is a payment which the employer is liable to make under an agreement in respect of which an order is in force under Article 192, is a sum equal to the amount of the employer's payment or of the relevant redundancy payment, whichever is less.

(2) The reference in paragraph (1)(b) to the amount of the relevant redundancy payment is to the amount of the redundancy payment which the employer would have been liable to pay to the employee on the assumptions specified in paragraph (3).

(3) The assumptions referred to in paragraph (2) are that—

- (a) the order in force in respect of the agreement had not been made,
- (b) the circumstances in which the employer's payment is payable had been such that the employer was liable to pay a redundancy payment to the employee in those circumstances,
- (c) the relevant date, in relation to any such redundancy payment, had been the date on which the termination of the employee's contract of employment is treated as having taken effect for the purposes of the agreement, and
- (d) in so far as the provisions of the agreement relating to the circumstances in which the continuity of an employee's period of employment is to be treated as broken, and the weeks which are to count in computing a period of employment, are inconsistent with the provisions of Chapter III of Part I, the provisions of the agreement were substituted for those provisions.

F14 1998 NI 8

### Information relating to applications for payments

**204.**—(1) Where an employee makes an application to the Department under Article 201, the Department may, by notice in writing given to the employer, require the employer—

- (a) to provide the Department with such information, and
- (b) to produce for examination on behalf of the Department documents in his custody or under his control of such description,

as the Department may reasonably require for the purpose of determining whether the application is well-founded.

(2) Where a person on whom a notice is served under paragraph (1) fails without reasonable excuse to comply with a requirement imposed by the notice, he is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person is guilty of an offence if—

- (a) in providing any information required by a notice under paragraph (1), he makes a statement which he knows to be false in a material particular or recklessly makes a statement which is false in a material particular, or
- (b) he produces for examination in accordance with a notice under paragraph (1) a document which to his knowledge has been wilfully falsified.

(4) A person guilty of an offence under paragraph (3) is liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum or to imprisonment for a term not exceeding three months, or to both, or
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years, or to both.

---

**Changes to legislation:** There are outstanding changes not yet made by the [legislation.gov.uk](https://www.legislation.gov.uk) editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

---

## References to industrial tribunals

**205.**—(1) Where on an application made to the Department for a payment under Article 201 it is claimed that an employer is liable to pay an employer's payment, there shall be referred to an industrial tribunal—

- (a) any question as to the liability of the employer to pay the employer's payment, and
- (b) any question as to the amount of the sum payable in accordance with Article 203.

(2) For the purposes of any reference under this Article an employee who has been dismissed by his employer shall, unless the contrary is proved, be presumed to have been so dismissed by reason of redundancy.

**Changes to legislation:**

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Employment Rights (Northern Ireland) Order 1996. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

**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](#)