STATUTORY INSTRUMENTS

1988 No. 796 (N.I. 7)

NORTHERN IRELAND

The Wages (Northern Ireland) Order 1988

Made - - - - 27th April 1988
Coming into operation in accordance with Article 1(2) and (3)

At the Court of Saint James, the 27th day of April 1988
Present, The Counsellors of State in Council

Whereas Her Majesty in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 28th day of March 1988, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

And whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty Queen Elizabeth, The Queen Mother and His Royal Highness The Price Charles, Prince of Wales, being authorised thereto by the the said Letters Patent, and in pursuance of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974

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 sub-paragraph (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.