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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

##### *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—

(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.

*Status: Point in time view as at 15/01/2006.*

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### **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 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

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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.

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