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INFORMATION NOTE NO.7

REVISED SEPTEMBER 2007

DEDUCTIONS FROM WAGES BY EMPLOYERS

The Wages (Northern Ireland) Order 1988 repealed various Truck Acts 1831 to 1940 and the Payment of Wages Act (Northern Ireland) 1970 and made changes to the law governing the way in which wages were paid. It also introduced statutory conditions which govern the making of deductions from wages and the receipt of payments from workers.

Those provisions have been repealed and are now included in The Employment Rights (Northern Ireland) Order 1996. This Information Note is intended to give a brief general guidance on these provisions.

1. WAGE DEDUCTIONS BY AND PAYMENTS TO EMPLOYERS

- 1.1 The 1996 Order contains statutory conditions which must be observed to enable an employer to make a lawful deduction or receive a lawful payment from a worker. As well as **general conditions** applying to **all workers** there are **additional conditions** which apply to **workers in retail employment**.

General Conditions - All Workers

- 1.2 Before an employer can make a lawful deduction or receive a lawful payment the deduction/ payment must be either:

- required or authorised by statute (e.g. income tax, national insurance); or
- required or authorised by a relevant provision of the worker's contract of employment provided that a **copy** of the relevant provision or a **written** explanation of the terms of this has been **issued to the worker** prior to the deduction/payment being made/received; or

- agreed to by the worker **in writing** before it is made/received.

There is no statutory **general** condition that the amount of a deduction should be 'fair and reasonable' although there are certain limitations for workers in retail employment (see below). **The authority for making a deduction must not be retrospective**, i.e. the authority to make a deduction must be current at the time of the event/conduct which caused the deduction to be made.

- 1.3 An employer does not have to satisfy the **general** conditions as described in paragraph 1.2 where he is making a deduction to recover an earlier overpayment of wages or expenses or because the worker has taken part in a strike or other industrial action. These are two of a number of situations, specified in the Order, in which the **general** conditions do **not** apply. Whilst recovery of an overpayment of wages is not covered by the conditions in the Order a worker may in these circumstances take an action in a civil court, e.g. if the worker feels that the employer is in breach of contract in making a deduction. Recovery of overpayments of wages can be a complex subject which the Agency would be willing to discuss with any enquirer.
- 1.4 The conditions are not applicable where an employer is receiving payments from a worker other than in his or her capacity as the worker's employer.

Persons Covered

- 1.5 With some exceptions, the provisions apply to people who have entered into or work under a contract of employment, a contract of service or apprenticeship or any other type of contract under which the person agrees to do or perform personally any work or services for another party. Among the exceptions are those who only work for someone else as part of their own business.

Wages

- 1.6 Wages are defined as **any sums payable to a worker by an employer in connection with the worker's job**. The Order provides clarification on various items coming within the definition of wages which can include "benefits in kind" (but only where these take the form of a voucher of a fixed monetary value which can be exchanged for money, goods or services). If a deduction is made from a payment which does not come within the definition of wages, then the conditions of the Order do not apply. Such payments as loans or advances of wages, expenses incurred in employment, redundancy payments, pensions, allowances or gratuities in connection with retirement or compensation for loss of office and any payments to a worker otherwise than in the capacity of a worker are specifically **excluded** from the definition of wages.

Deduction

- 1.7 The purpose of the appropriate provisions of the Order is to provide a statutory remedy, through the industrial tribunal system, where an employer makes an **unlawful deduction** from wages and not in a situation where gross wages might be calculated

incorrectly. Any dispute about an error of **computation** of gross wages which can not be resolved directly between the parties is a matter for determination by the civil courts. Where the employer has taken a **deliberate decision** to make a deduction for some reason, and this action does not comply with the provisions of the Order, then the matter can be referred to an industrial tribunal.

Additional Conditions - Retail Workers - Cash Shortages or Stock Deficiencies

- 1.8 **In addition** to the general conditions the Order gives further protection to workers in retail employment, but **only** in situations where deductions/payments are due to **cash shortages** or **stock deficiencies** which are connected with retail transactions.
- 1.9 If **deductions** are involved, these must not exceed 10% of the **gross** amount of wages payable on the pay day. Where the amount owed by the worker is greater than 10% of **gross** wages, deductions may be made by instalments subject to the 10% limit on gross wages payable on each pay day. This limit does not apply to deductions from any final payment of wages, so that a worker **might** receive no final payment on termination of employment.
- 1.10 **Deductions** must be made within 12 months of the date when the employer established, or ought reasonably to have established, the cash shortage or stock deficiency unless the deduction is one of a number of instalments (relating to the **same** cash shortage or stock deficiency), of which the first was made less than 12 months after the shortage was (or ought reasonably to have been) established.
- 1.11 If, as a result of a cash shortage or stock deficiency, an employer decides to recoup an amount of money by means of **payments from the worker** instead of by deduction from wages, similar and yet further additional requirements must be observed by the employer if the payments are to be lawful. A 10% total maximum also applies where an employer is simultaneously making deductions **and** demanding payments from a retail worker; this same maximum applies to any court order issued due to the failure of a worker to make lawful payments.
- 1.12 The Order provides that **failure** by an employer to pay any amount of wages (such as a bonus) which is to be paid to a worker for avoiding cash shortages or stock deficiencies, will be treated as a deduction and is therefore covered by the additional conditions for retail employees. The additional conditions also apply to deductions made or payments demanded because of a misconduct which led to a cash shortage or stock deficiency.

Retail Employment

- 1.13 'Retail employment' is defined in the Order as employment that involves "(a) the carrying out by the worker of retail transactions directly with members of the public or with fellow workers or with other individuals in their personal capacities or (b) the collection by the worker of amounts payable in connection with retail transactions which are carried out by other persons directly with members of the public or with fellow workers or other individuals in their personal capacities". Workers who are

involved in retail transactions, i.e. transactions involving the sale or supply of goods or services, on an intermittent basis are also covered.

- 1.14 Workers who are involved only in wholesale transactions are not covered by the additional conditions of the Order.

2. **REMEDY**

- 2.1 If a worker feels that the employer has not observed the provisions of the Order in making a wage deduction or receiving a payment, the worker can complain to an industrial tribunal **within a certain time limit**. In more straightforward situations the time limit is 3 months (a) from the payment of wages from which the deduction was made, or from receipt of the payment by the employer, or (b) from the last in a series where the complaint relates to a series of deductions or payments. If the Tribunal considers that the complaint is well founded it must order the employer to repay the amount of any unlawful deduction made or payment received. A tribunal will not order repayment where the worker has already been reimbursed by the employer prior to the hearing.

For additional information on deductions from wages contact the Labour Relations Agency enquiry service at either of the addresses given below.

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