
STATUTORY RULES OF NORTHERN IRELAND

1996 No. 459

SOCIAL SECURITY

**The Employment Protection (Recoupment
of Jobseeker's Allowance and Income
Support) Regulations (Northern Ireland) 1996**

Made - - - - *30th September 1996*

Coming into operation *7th October 1996*

The Department of Health and Social Services for Northern Ireland and the Department of Economic Development, acting jointly in exercise of the powers conferred on them by Articles 18 and 25(5) of the Industrial Tribunals (Northern Ireland) Order 1996(1) in relation to regulations 3 to 9 and 11, and the Department of Health and Social Services for Northern Ireland in exercise of the powers conferred on it by section 56(1) of the Social Security Administration (Northern Ireland) Act 1992(2) in relation to regulations 10 and 11, and of all other powers enabling them in that behalf, hereby makes the following Regulations:

Part I

Introductory

Citation and commencement

1. These Regulations may be cited as the Employment Protection (Recoupment of Jobseeker's Allowance and Income Support) Regulations (Northern Ireland) 1996 and shall come into operation on 7th October 1996.

Interpretation

2.—(1) In these Regulations—

“the Administration Act” means the Social Security Administration (Northern Ireland) Act 1992;

(1) S.I.1996/1921 (N.I. 18)

(2) 1992 c. 8; section 56(1) was amended by paragraph 27(a) of Schedule 2 to the Jobseekers (Northern Ireland) Order 1995 (S.I. 1995/2705 (N.I. 15))

“the 1995 Order” means the Trade Union and Labour Relations (Northern Ireland) Order 1995(3);

“the 1996 Order” means the Employment Rights (Northern Ireland) Order 1996(4);

“the Department” means the Department of Health and Social Services;

“monetary award” has the same meaning as in Article 19(3) of the Industrial Tribunals (Northern Ireland) Order 1996;

“prescribed element” has the meaning given to it in regulation 3 and the Schedule;

“protected period” has the same meaning as in Article 217(4);

“protective award” has the same meaning as in Article 217(3);

“recoupable benefit” means any jobseeker’s allowance or income support, as the case may be, which is recoupable under these Regulations;

“recoupment notice” means a notice under these Regulations;

“the Secretary of the Tribunals” means the person for the time being acting as the Secretary of the Office of Industrial Tribunals and the Fair Employment Tribunal.

(2) In the Schedule, references in column 3 of the table to the conclusion of the tribunal proceedings are references to the conclusion of the proceedings mentioned in the corresponding entry in column 2.

(3) For the purposes of these Regulations (and in particular for the purposes of any calculations to be made by an industrial tribunal as respects the prescribed element) the conclusion of the tribunal proceedings shall be taken to occur—

- (a) where the industrial tribunal at the hearing announces the effect of its decision to the parties, on the date on which that announcement is made;
- (b) in any other case, on the date on which the decision of the tribunal is sent to the parties.

(4) Reference to parties in relevant industrial tribunal proceedings shall be taken to include references to persons appearing on behalf of parties in a representative capacity.

(5) References to anything done, or to be done, in, or in consequence of, any tribunal proceedings include references to anything done, or to be done, in, or in consequence of any such proceedings as are in the nature of a review, or re-hearing or a further hearing consequent on an appeal.

(6) Unless the context otherwise requires, any reference in these Regulations to a numbered Article is a reference to the Article of the 1996 Order bearing that number.

(7) The Interpretation Act (Northern Ireland) 1954(5) shall apply to these Regulations as it applies to a Measure of the Northern Ireland Assembly.

Part II

Industrial Tribunal Proceedings

Application to payments and proceedings

3.—(1) Subject to paragraph (2) and regulation 4 these Regulations apply—

- (a) to the payments described in column 1 of the table contained in the Schedule, being, in each case, payments which are the subject of industrial tribunal proceedings of the kind

(3) S.I. 1995/1980 (N.I. 12)

(4) S.I. 1996/1919 (N.I. 16)

(5) 1954 c. 33 (N.I.)

described in the corresponding entry in column 2 and the prescribed element in relation to each such payment is so much of the relevant monetary award as is attributable to the matter described in the corresponding entry in column 3, and

(b) to payments of remuneration in pursuance of a protective award.

(2) The payments to which these Regulations apply by virtue of paragraph (1)(a) include payments in proceedings under Article 220 and, accordingly, where an order is made on an employee's complaint under that Article, the relevant protective award shall, as respects that employee and to the appropriate extent, be taken to be subsumed in the order made under Article 220 so that the provisions of these Regulations relating to monetary awards shall apply to payments under that order to the exclusion of the provisions relating to protective awards, but without prejudice to anything done under the latter in connection with the relevant protective award before the making of the order under that Article.

Duties of the industrial tribunals and of the Secretary of the Tribunals in respect of monetary awards

4.—(1) Where these Regulations apply, no regard shall be had, in assessing the amount of a monetary award, to the amount of any jobseeker's allowance or any income support which may have been paid to or claimed by the employee for a period which coincides with any part of a period to which the prescribed element is attributable.

(2) Where the industrial tribunal in arriving at a monetary award makes a reduction on account of the employee's contributory fault or on account of any limit imposed by or under the 1995 Order or the 1996 Order, a proportionate reduction shall be made in arriving at the amount of the prescribed element.

(3) Subject to the following provisions of this regulation it shall be the duty of the industrial tribunal to set out in any decision which includes a monetary award the following particulars—

- (a) the monetary award;
- (b) the amount of the prescribed element, if any;
- (c) the dates of the period to which the prescribed element is attributable;
- (d) the amount, if any, by which the monetary award exceeds the prescribed element.

(4) Where the industrial tribunal at the hearing announces to the parties the effect of a decision which includes a monetary award it shall inform those parties at the same time of the amount of any prescribed element included in the monetary award and shall explain the effect of regulations 7 and 8 in relation to the prescribed element.

(5) Where the industrial tribunal has made such an announcement as is described in paragraph (4) the Secretary of the Tribunals shall forthwith notify the Department that the tribunal has decided to make a monetary award including a prescribed element and shall notify it of the particulars set out in paragraph (3).

(6) As soon as reasonably practicable after the Secretary of the Tribunals has sent a copy of a decision containing the particulars set out in paragraph (3) to the parties he shall send a copy of that decision to the Department.

(7) In addition to containing the particulars required under paragraph (3), any such decision as is mentioned in that paragraph shall contain a statement explaining the effect of regulations 7 and 8 in relation to the prescribed element.

(8) The requirements of paragraphs (3) to (7) do not apply where the industrial tribunal is satisfied that in respect of each day falling within the period to which the prescribed element relates the employee has neither received nor claimed jobseeker's allowance or income support.

Duties of the industrial tribunals and of the Secretary of the Tribunals in respect of protective awards

- 5.—(1) Where, on a complaint under Article 217, an industrial tribunal—
- (a) at the hearing announces to the parties the effect of a decision to make a protective award, or
 - (b) (where it has made no such announcement) sends a decision to make such an award to the parties,

the Secretary of the Tribunals shall forthwith notify the Department of the following particulars relating to the award—

- (i) where the industrial tribunal has made such an announcement as is described in paragraph (1) (a), the date of the hearing or where it has made no such announcement, the date on which the decision was sent to the parties;
 - (ii) the location of the tribunal;
 - (iii) the name and address of the employer;
 - (iv) the description of the employees to whom the award relates, and
 - (v) the dates of the protected period.
- (a) (2) (a) Where an industrial tribunal makes such an announcement as is described in paragraph (1)(a) in the presence of the employer or his representative it shall advise him of his duties under regulation 6 and shall explain the effect of regulations 7 and 8 in relation to remuneration under the protective award;
- (b) Without prejudice to sub-paragraph (a) any decision of an industrial tribunal to make a protective award under Article 217 shall contain a statement advising the employer of his duties under regulation 6 and an explanation of the effect of regulations 7 and 8 in relation to remuneration under the protective award.

Duties of the employer to give information about protective awards

6.—(1) Where an industrial tribunal makes a protective award under Article 217 against an employer, the employer shall give to the Department the following information in writing—

- (a) the name, address and national insurance number of every employee to whom the award relates, and
- (b) the date of termination (or proposed termination) of the employment of each such employee.

(2) Subject to paragraph (3), the employer shall comply with paragraph (1) within the period of 10 days commencing on the day on which the industrial tribunal at the hearing announces to the parties the effect of a decision to make a protective award or (in the case where no such announcement is made) on the day on which the relevant decision is sent to the parties.

(3) Where, in any case, it is not reasonably practicable for the employer to comply with paragraph (1) within the period applicable under paragraph (2) he shall comply as soon as reasonably practicable after the expiration of that period.

Part III

Recoupment of Benefit

Postponement of awards

7.—(1) This regulation shall have effect for the purpose of postponing relevant awards in order to enable the Department to initiate recoupment under regulation 8.

(2) Accordingly—

- (a) so much of the monetary award as consists of the prescribed element;
- (b) payment of any remuneration to which an employee would otherwise be entitled under a protective award,

shall be treated as stayed as respects the relevant employee until—

- (i) the Department has served a recoupment notice on the employer, or
- (ii) the Department has notified the employer in writing that it does not intend to serve a recoupment notice.

(3) The stay under paragraph (2) is without prejudice to the right of an employee under Article 220 to present a complaint to an industrial tribunal of his employer's failure to pay remuneration under a protective award and regulation 3(2) has effect as respects any such complaint and as respects any order made under paragraph (3) of that Article.

Recoupment of benefit

8.—(1) Recoupment shall be initiated by the Department serving on the employer a recoupment notice claiming by way of total or partial recoupment of jobseeker's allowance or income support the appropriate amount, computed, as the case may require, under paragraph (2) or (3).

(2) In the case of monetary awards the appropriate amount shall be whichever is the less of the following two sums—

- (a) the amount of the prescribed element (less any tax or social security contributions which fall to be deducted therefrom by the employer), or
- (b) the amount paid by way of or paid as on account of jobseeker's allowance or income support to the employee for any period which coincides with any part of the period to which the prescribed element is attributable.

(3) In the case of remuneration under a protective award the appropriate amount shall be whichever is the less of the following two sums—

- (a) the amount (less any tax or social security contributions which fall to be deducted therefrom by the employer) accrued due to the employee in respect of so much of the protected period as falls before the date on which the Department receives from the employer the information required under regulation 6, or
- (b) the amount paid by way of or paid as on account of jobseeker's allowance or income support to the employee for any period which coincides with any part of the protected period falling before the date described in sub-paragraph (a).

(4) A recoupment notice shall be served on the employer by post or otherwise and copies shall likewise be sent to the employee and, if requested, to the Secretary of the Tribunals.

(5) The Department shall serve a recoupment notice on the employer, or notify the employer that it does not intend to serve such a notice, within the period applicable, as the case may require, under paragraph (6) or (7), or as soon as practicable thereafter.

(6) In the case of a monetary award the period shall be—

- (a) in any case in which the industrial tribunal at the hearing announces to the parties the effect of its decision as described in regulation 4(4), the period ending 21 days after the conclusion of the hearing or the period ending 9 days after the decision has been sent to the parties, whichever is the later, or
 - (b) in any other case, the period ending 21 days after the decision has been sent to the parties.
- (7) In the case of a protective award the period shall be the period ending 21 days after the Department has received from the employer the information required under regulation 6.
- (8) A recoupment notice served on an employer shall operate as an instruction to the employer to pay, by way of deduction out of the sum due under the award, the recoupable amount to the Department and it shall be the duty of the employer to comply with the notice. The employer's duty under this paragraph shall not affect his obligation to pay any balance that may be due to the employee under the relevant award.
- (9) The duty imposed on the employer by service of the recoupment notice shall not be discharged by payment of the recoupable amount to the employee during the postponement period or thereafter if a recoupment notice is served on the employer during the said period.
- (10) Payment by the employer to the Department under this regulation shall be a complete discharge in favour of the employer as against the employee in respect of any sum so paid but without prejudice to any rights of the employee under regulation 10.
- (11) The recoupable amount shall be recoverable by the Department from the employer as a debt.

Order made in secondary proceedings

- 9.—(1) In the application of any of the above provisions in the case of—
- (a) proceedings for an award under Article 220, or
 - (b) proceedings in the nature of a review, a re-hearing or a further hearing consequent on an appeal,

it shall be the duty of the industrial tribunal or, as the case may require, the Department, to take the appropriate account of anything done under or in consequence of these Regulations in relation to any award made in the original proceedings.

- (2) For the purposes of this regulation the original proceedings are—
- (a) where paragraph (1)(a) applies, the proceedings under Article 217, or
 - (b) where paragraph (1)(b) applies, the proceedings in respect of which the re-hearing, the review or the further hearing consequent on an appeal takes place.

Part IV

Determination and Review of Benefit Recouped

Provisions relating to determination of amount paid by way of or paid as on account of benefit

10.—(1) Without prejudice to the right of the Department to recover from an employer the recoupable benefit, an employee to whom a copy of a recoupment notice has been served in accordance with regulation 8 may, within 21 days of the date on which such notice was served on him or within such further time as the Department may for special reasons allow, give notice in writing to the Department that he does not accept that the amount specified in the recoupment notice in respect of jobseeker's allowance or income support is correct.

(2) Where an employee has given notice in writing to the Department under paragraph (1) that he does not accept that an amount specified in the recoupment notice is correct, the Department shall forthwith submit to an adjudication officer the question as to the amount of jobseeker's allowance or income support, as the case may be, paid in respect of the period to which the prescribed element is attributable or, as appropriate, in respect of so much of the protected period as falls before the date on which the employer complies with regulation 6 and any question so submitted shall be for determination by an adjudication officer, a social security appeal tribunal and a Commissioner, in accordance with sections 19 to 23(6) and section 34 of the Administration Act.

(3) Where—

- (a) on the determination of a question submitted to an adjudication officer under paragraph (2), or
- (b) on the review under section 23 of the Administration Act of a decision in pursuance of which a sum was paid by way of or paid as on account of jobseeker's allowance or income support,

the amount recovered by the Department from the employer under these Regulations exceeds the total amount paid by way of jobseeker's allowance or income support to the employee which would not have been paid if a decision on review under section 23 of the Administration Act had been made in the first instance, the Department shall pay to the employee an amount equal to such excess.

(4) In any case where, after the Department has recovered from an employer any amount by way of recoupment of benefit, the decision given by the industrial tribunal in consequence of which such recoupment took place is set aside or varied on appeal or on a re-hearing by the industrial tribunal, the Department shall make such repayment to the employer or payment to the employee of the whole or part of the amount recovered as it is satisfied should properly be made having regard to the decision given on appeal or re-hearing.

Revocations and transitional provision

11.—(1) The following Regulations are hereby revoked—

- (a) the Industrial Relations (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations (Northern Ireland) 1977(7);
- (b) the Industrial Relations (Recoupment of Unemployment Benefit and Supplementary Benefit) (Amendment) Regulations (Northern Ireland) 1980(8);
- (c) regulation 9 of the Social Security (Adjudication) (Consequential Amendments) Regulations (Northern Ireland) 1984(9);
- (d) the Industrial Relations (Recoupment of Unemployment Benefit and Supplementary Benefit) (Amendment) Regulations (Northern Ireland) 1988(10);
- (e) the Industrial Relations (Recoupment of Unemployment Benefit and Income Support) (Amendment) Regulations (Northern Ireland) 1989(11).

(2) Paragraph (1) shall not have effect in relation to awards or parts of awards made by an industrial tribunal after the date these Regulations come into operation where the award or part of the award is in respect of a period before that date.

(6) Section 23 was amended by paragraph 46 of Schedule 1 to the Social Security (Incapacity for Work) (Northern Ireland) Order 1994 (S.I. 1994/1898 (N.I. 12))

(7) S.R. 1977 No. 123

(8) S.R. 1980 No. 426

(9) S.R. 1984 No. 174

(10) S.R. 1988 No. 147

(11) S.R. 1989 No. 464

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Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 30th September 1996.

L.S.

John O'Neill
Assistant Secretary

Sealed with the Official Seal of the Department of Economic Development on 30th September 1996.

L.S.

W. D. A. Haire
Assistant Secretary

SCHEDULE

Regulation 3

Table relating to monetary awards

Column 1	Column 2	Column 3
Payment	Proceedings	Matter to which prescribed element is attributable
1. Guarantee payments under Article 60.	1. Complaint under Article 66.	1. Any amount found to be due to the employee and ordered to be paid under Article 66(3) for a period before the conclusion of the tribunal proceedings.
2. Payments under any collective agreement having regard to which the appropriate Department has made an exemption order under Article 67.	2. Complaint under Article 67(4).	2. Any amount found to be due to the employee and ordered to be paid under Article 66(3), as applied by Article 67(4), for a period before the conclusion of the tribunal proceedings.
3. Payments of remuneration in respect of a period of suspension on medical grounds under Articles 96 and 140(2).	3. Complaint under Article 102.	3. Any amount found to be due to the employee and ordered to be paid under Article 102(3) for a period before the conclusion of the tribunal proceedings.
4. Payments of remuneration in respect of a period of suspension on maternity grounds under Article 100.	4. Complaint under Article 102.	4. Any amount found to be due to the employee and ordered to be paid under Article 102(3) for a period before the conclusion of the tribunal proceedings.
5. Payments under an order for reinstatement under Article 148(1).	5. Complaint of unfair dismissal under Article 145(1).	5. Any amount ordered to be paid under Article 148(2)(a) in respect of arrears of pay for a period before the conclusion of the tribunal proceedings.
6. Payments under an order for re-engagement under Article 151(8).	6. Complaint of unfair dismissal under Article 145(1).	6. Any amount ordered to be paid under Article 149(2)(d) in respect of arrears of pay for a period before the conclusion of the tribunal proceedings.
7. Payments under an award of compensation for unfair dismissal in cases falling under Article 146(4) (cases where no order for reinstatement or re-engagement has been made).	7. Complaint of unfair dismissal under Article 145(1).	7. Any amount ordered to be paid and calculated under Article 157 in respect of compensation for loss of wages for a period before

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| | | the conclusion of the tribunal proceedings. |
| 8. Payments under an award of compensation for unfair dismissal under Article 151(3) where reinstatement order not complied with. | 8. Proceedings in respect of non-compliance with order. | 8. Any amount ordered to be paid and calculated under Article 157 in respect of compensation for loss of wages for a period before the conclusion of the tribunal proceedings. |
| 9. Payments under an award of compensation for unfair dismissal under Article 151(3) where re-engagement order not complied with. | 9. Proceedings in respect of non-compliance with order. | 9. Any amount ordered to be paid and calculated under Article 157 in respect of compensation for loss of wages for a period before the conclusion of the tribunal proceedings. |
| 10. Payments under an interim order for reinstatement under Article 164(5). | 10. Proceedings on an application for an order for interim relief under Article 163(1). | 10. Any amount found to be due to the complainant and ordered to be paid in respect of arrears of pay for the period between the date of termination of employment and the conclusion of the tribunal proceedings. |
| 11. Payments under an interim order for re-engagement under Article 164(6) and (7). | 11. Proceedings on an application for an order for interim relief under Article 163(1). | 11. Any amount found to be due to the complainant and ordered to be paid in respect of arrears of pay for the period between the date of termination of employment and the conclusion of the tribunal proceedings. |
| 12. Payments under an order for the continuation of a contract of employment under Article 164(6) and (8) where employee reasonably refuses re-engagement. | 12. Proceedings on an application for an order for interim relief under Article 163(1). | 12. Any amount found to be due to the complainant and ordered to be paid in respect of arrears of pay for the period between the date of termination of employment and the conclusion of the tribunal proceedings. |
| 13. Payments under an order for the continuation of a contract of employment under Article 164(9) where employer fails to attend or is unwilling to reinstate or re-engage. | 13. Proceedings on an application for an order for interim relief under Article 163(1). | 13. Any amount found to be due to the complainant and ordered to be paid in respect of arrears of pay for the period between the date of termination of employment and the conclusion of the tribunal proceedings. |

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14. Payments under an order for the continuation of a contract of employment under Article 167(1) to (3) where reinstatement or re-engagement order not complied with.	14. Proceedings in respect of non-compliance with order.	14. Any amount ordered to be paid to the employee by way of compensation under Article 167(1)(b) and (2) for loss of wages for the period between the date of termination of employment and the conclusion of the tribunal proceedings.
15. Payments under an order for compensation under Article 167(4) to (6) where order for the continuation of contract of employment not complied with.	15. Proceedings in respect of non-compliance with order.	15. Any amount ordered to be paid to the employee by way of compensation under Article 167(4) and (5) for loss of wages for the period between the date of termination of employment and the conclusion of the tribunal proceedings.
16. Payments under an order under Article 220(3) on employer's default in respect of remuneration due to employee under protective award.	16. Complaint under Article 220(1).	16. Any amount ordered to be paid to the employee in respect of so much of the relevant protected period as falls before the date of the conclusion of the tribunal proceedings.

EXPLANATORY NOTE

(This note is not part of the Regulations.)

These Regulations, which come into operation on 7th October 1996, replace the Industrial Relations (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations (Northern Ireland) 1977. The Regulations make provision for the recovery by the Department of Health and Social Services from an employer of sums on account of jobseeker's allowance and income support out of a prescribed part of an amount awarded by an industrial tribunal in certain proceedings brought by an employee against an employer. These proceedings are listed in the Schedule to these Regulations.

These Regulations are in part consequential upon the introduction of jobseeker's allowance on 7th October 1996 but also update the provisions dealing with the determination of any questions as to the amount of benefit which is recoverable and for review of that determination.

The Regulations correspond to provision contained in Regulations made by the Secretary of State in relation to Great Britain and accordingly, by virtue of section 149(3) of, and paragraph 10 of Schedule 5 to, the Social Security Administration (Northern Ireland) Act 1992 (c. 8), are not subject to the requirement of section 149(2) of that Act for prior reference to the Social Security Advisory Committee.