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STATUTORY INSTRUMENTS

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**1996 No. 2349**

**TERMS AND CONDITIONS OF EMPLOYMENT**  
**INDUSTRIAL TRIBUNALS**

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

<i>Made</i>	- - - -	<i>10th September 1996</i>
<i>Laid before Parliament</i>		<i>11th September 1996</i>
<i>Coming into force</i>	- -	<i>7th October 1996</i>

The Secretary of State in exercise of the powers conferred on him by section 16 and section 41(4) of the Industrial Tribunals Act 1996(1), section 58(1) of the Social Security Administration Act 1992(2), and of all other powers enabling him in that behalf, and after reference to the Social Security Advisory Committee in so far as is required by section 172 of the Social Security Administration Act 1992, and after consultation with the Council on Tribunals, in so far as is required by section 8 of the Tribunals and Inquiries Act 1992(3), 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 1996 and shall come into force on 7th October 1996.

**Interpretation**

**2.—(1)** In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

“the 1992 Act” means the Trade Union and Labour Relations (Consolidation) Act 1992(4);

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(1) 1996 c. 17.  
(2) 1992 c. 5; subsection 58(1) was amended by paragraph 44 of Schedule 2 to the Jobseekers Act 1995 (c. 18).  
(3) 1992 c. 53.  
(4) 1992 c. 52.

“the 1996 Act” means the Employment Rights Act 1996(5);

“prescribed element” has the meaning assigned to it in Regulation 3 below and the Schedule to these Regulations;

“protected period” has the same meaning as in section 189(5) of the 1992 Act;

“protective award” has the same meaning as in section 189(3) of the 1992 Act;

“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;

“Secretary of the Tribunals” means the Secretary of the Central Office of the Industrial Tribunals (England and Wales) or, as the case may require, the Secretary of the Central Office of the Industrial Tribunals (Scotland) for the time being;

(2) In the Schedule to these Regulations references to sections are references to sections of the 1996 Act unless otherwise indicated and 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) References 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 in these Regulations 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.

## PART II

### INDUSTRIAL TRIBUNAL PROCEEDINGS

#### Application to payments and proceedings

3.—(1) Subject to paragraph (2) below these Regulations apply—

(a) to the payments described in column 1 of the table contained in the Schedule to these Regulations, being, in each case, payments which are the subject of industrial tribunal proceedings of the kind 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) above include payments in proceedings under section 192 of the 1992 Act and, accordingly, where an order is made on an employee’s complaint under that section, the relevant protective award shall, as respects that employee and to the appropriate extent, be taken to be subsumed in the order made under section 192

(5) 1996 c. 18.

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 section 192.

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

(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 1992 Act or 1996 Act, 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 below in relation to the prescribed element.

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

(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) above to the parties he shall send a copy of that decision to the Secretary of State.

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

(8) The requirements of paragraphs (3) to (7) above do not apply where the 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.

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

(1) Where, on a complaint under section 189 of the 1992 Act, 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 Secretary of State 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) above, 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) above in the presence of the employer or his representative it shall advise him of his duties under Regulation 6 below and shall explain the effect of Regulations 7 and 8 below in relation to remuneration under the protective award.
- (b) Without prejudice to (a) above any decision of an industrial tribunal to make a protective award under section 189 of the 1992 Act shall contain a statement advising the employer of his duties under Regulation 6 below and an explanation of the effect of Regulations 7 and 8 below in relation to remuneration under the protective award.

**6. Duties of the employer to give information about protective awards**

(1) Where an industrial tribunal makes a protective award under section 189 of the 1992 Act against an employer, the employer shall give to the Secretary of State 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) below the employer shall comply with paragraph (1) above within the period of ten 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) above within the period applicable under paragraph (2) above 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 Secretary of State to initiate recoupment under Regulation 8 below.

(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 (in Scotland, sisted) as respects the relevant employee until—
  - (i) the Secretary of State has served a recoupment notice on the employer; or

(ii) the Secretary of State has notified the employer in writing that he does not intend to serve a recoupment notice.

(3) The stay or sist under paragraph (2) above is without prejudice to the right of an employee under section 192 of the 1992 Act to present a complaint to an industrial tribunal of his employer's failure to pay remuneration under a protective award and Regulation 3(2) above has effect as respects any such complaint and as respects any order made under section 192(3) of that Act.

### **Recoupment of Benefit**

8.—(1) Recoupment shall be initiated by the Secretary of State 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) below.

(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 Secretary of State receives from the employer the information required under Regulation 6 above; 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 (a) above.

(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 Secretary of State shall serve a recoupment notice on the employer, or notify the employer that he does not intend to serve such a notice, within the period applicable, as the case may require, under paragraph (6) or (7) below, 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 tribunal at the hearing announces to the parties the effect of its decision as described in Regulation 4(4) above, 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 Secretary of State has received from the employer the information required under Regulation 6 above.

(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 Secretary of State 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 Secretary of State 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 below.

(11) The recoupable amount shall be recoverable by the Secretary of State 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 section 192 of the 1992 Act; 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 Secretary of State, 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) above applies the proceedings under section 189 of the 1992 Act; or
- (b) where paragraph (1)(b) above 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 Secretary of State to recover from an employer the recoupable benefit, an employee on whom a copy of a recoupment notice has been served in accordance with Regulation 8 above may, within 21 days of the date on which such notice was served on him or within such further time as the Secretary of State may for special reasons allow, give notice in writing to the Secretary of State 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 Secretary of State under paragraph (1) above that he does not accept that an amount specified in the recoupment notice is correct, the Secretary of State 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 above 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 21 to 25 and section 36 of the Social Security Administration Act 1992.

(3) Where—

- (a) on the determination of a question submitted to an adjudication officer under paragraph (2) above; or

- (b) on the review under section 25 of the Social Security Administration Act 1992 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 Secretary of State 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 25 of the Social Security Administration Act 1992 had been made in the first instance, the Secretary of State shall pay to the employee an amount equal to such excess.

(4) In any case where, after the Secretary of State 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 Secretary of State shall make such repayment to the employer or payment to the employee of the whole or part of the amount recovered as he is satisfied should properly be made having regard to the decision given on appeal or re-hearing.

### **Revocation and Transition Provision**

**11.—(1)** The Employment Protection (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations 1977(6) are hereby revoked.

(2) Regulation 11(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 force where the award or part of the award is in respect of a period before that date.

10th September 1996

*John M Taylor,*  
Parliamentary Under Secretary of State for  
Corporate and Consumer Affairs,  
Department of Trade and Industry

*Status: This is the original version (as it was originally made).*

## SCHEDULE

Regulation 3

## TABLE RELATING TO MONETARY AWARDS

Column 1 Payment	Column 2 Proceedings	Column 3 Matter to which prescribed element is attributable
1. Guarantee payments under section 28.	1. Complaint under section 34.	1. Any amount found to be due to the employee and ordered to be paid under section 34(3) for a period before the conclusion of the tribunal proceedings.
2. Payments under any collective agreement having regard to which the appropriate Minister has made an exemption order under section 35.	2. Complaint under section 35(4).	2. Any amount found to be due to the employee and ordered to be paid under section 34(3), as applied by section 35(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 section 64 and section 108(2).	3. Complaint under section 70.	3. Any amount found to be due to the employee and ordered to be paid under section 70(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 section 68.	4. Complaint under section 70.	4. Any amount found to be due to the employee and ordered to be paid under section 70(3) for a period before the conclusion of the tribunal proceedings.
5. Payments under an order for reinstatement under section 114(1).	5. Complaint of unfair dismissal under section 111(1).	5. Any amount ordered to be paid under section 114(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 section 117(8).	6. Complaint of unfair dismissal under section 111(1).	6. Any amount ordered to be paid under section 115(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 section 112(4) (cases where no order for reinstatement or re-engagement has been made).	7. Complaint of unfair dismissal under section 111(1).	7. Any amount ordered to be paid and calculated under section 123 in respect of compensation for loss of wages for a period before the conclusion of the tribunal proceedings.
8. Payments under an award of compensation for unfair dismissal under section 117(3)	8. Proceedings in respect of non-compliance with order.	8. Any amount ordered to be paid and calculated under section 123 in respect of compensation for loss of



Column 1 Payment	Column 2 Proceedings	Column 3 Matter to which prescribed element is attributable
where reinstatement order not complied with.		wages for a period before the conclusion of the tribunal proceedings.
9. Payments under an award of compensation for unfair dismissal under section 117(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 section 123 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 section 163(4) of the 1992 Act.	10. Proceedings on an application for an order for interim relief under section 161(1) of the 1992 Act.	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 section 163(5)(a) of the 1992 Act.	11. Proceedings on an application for an order for interim relief under section 161(1) of the 1992 Act.	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 section 163(5)(b) of the 1992 Act where employee reasonably refuses re-engagement.	12. Proceedings on an application for an order for interim relief under section 161(1) of the 1992 Act.	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 section 163(6) of the 1992 Act 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 section 161(1) of the 1992 Act.	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.
14. Payments under an order for the continuation of a contract of employment under sections 166(1) and (2) of the 1992 Act where reinstatement	14. Proceedings in respect of non-compliance with order.	14. Any amount ordered to be paid to the employee by way of compensation under section 166(1)(b) of the 1992 Act for loss of wages for the

*Status: This is the original version (as it was originally made).*

Column 1 Payment	Column 2 Proceedings	Column 3 Matter to which prescribed element is attributable
or re-engagement order not complied with.		period between the date of termination of employment and the conclusion of the tribunal proceedings.
15. Payments under an order for compensation under sections 166(3)–(5) of the 1992 Act 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 section 166(3)–(4) of the 1992 Act 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 section 192(3) of the 1992 Act on employer’s default in respect of remuneration due to employee under protective award.	16. Complaint under section 192(1) of the 1992 Act.	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 force on 7th October 1996, replace the Employment Protection (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations 1977 as amended. The Regulations make provision for the recovery by the Secretary of State 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 (i.e. those proceedings listed in the Schedule to the Regulations).

The new 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 question as to the amount of benefit which is recoverable and for the review of that determination.