
STATUTORY INSTRUMENTS

1996 No. 2349

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

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.