

1990 No. 479

**INDUSTRIAL TRIBUNALS**

**The Industrial Tribunals (Interest) Order 1990**

<i>Made</i> - - - -	<i>6th March 1990</i>
<i>Laid before Parliament</i>	<i>9th March 1990</i>
<i>Coming into force</i>	<i>1st April 1990</i>

The Secretary of State, in exercise of the powers conferred on him by paragraphs 1 and 6A of Schedule 9 to the Employment Protection (Consolidation) Act 1978(a) and with the consent of the Treasury and after consultation with the Council on Tribunals, hereby makes the following Order:—

**Citation, commencement and transitional provisions**

1.—(1) This Order may be cited as the Industrial Tribunals (Interest) Order 1990 and shall come into force on 1st April 1990.

(2) Where a relevant decision day or a day to be treated as if it were a relevant decision day would, but for this paragraph of this Article, fall on a day before 1st April 1990, the relevant decision day or day to be treated as if it were that day shall be 1st April 1990.

**Interpretation**

2.—(1) In this Order, except in so far as the context otherwise requires —

‘appellate court’ means the Employment Appeal Tribunal, the High Court, the Court of Appeal, the Court of Session or the House of Lords as the case may be;

‘the calculation day’ in relation to a relevant decision means the day immediately following the expiry of the period of 42 days beginning with the relevant decision day;

‘interest’ means simple interest which accrues from day to day;

‘relevant decision’ in relation to a tribunal means any award or other determination of the tribunal by virtue of which one party to proceedings before the tribunal is required to pay a sum of money, excluding a sum representing costs or expenses, to another party to those proceedings;

‘Rules of Procedure’ means rules having effect in relation to proceedings before a tribunal by virtue of any regulations or order made pursuant to an enactment;

‘the stipulated rate of interest’ has the meaning assigned to it in Article 4 below;

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(a) 1978 c.44; paragraph 1 of Schedule 9 was amended by paragraph 26 of Schedule 1 to the Employment Act 1980(c.42) and regulation 3 of the Equal Pay (Amendment) Regulations 1983 (S.I. 1983/1794); paragraph 6A of Schedule 9 was inserted by paragraph 7 of Schedule 3 to the Employment Act 1982 (c.46).

'tribunal' means in England and Wales an industrial tribunal (England and Wales) established in pursuance of the Industrial Tribunals (England and Wales) Regulations 1965(a) and in Scotland an industrial tribunal (Scotland) established in pursuance of the Industrial Tribunals (Scotland) Regulations 1965(b).

(2) For the purposes of this Order a sum of money is required to be paid by one party to proceedings to another such party if, and only if, an amount of money required to be so paid is:-

- (a) specified in an award or other determination of a tribunal or, as the case may be, in an order or decision of an appellate court; or
- (b) otherwise ascertainable solely by reference to the terms of such an award or determination or, as the case may be, solely by reference to the terms of such an order or decision,

but where a tribunal or, as the case may be, appellate court has made a declaration as to entitlement under a contract nothing in this Order shall be taken to provide for interest to be payable on any payment under that contract in respect of which no obligation to make the payment has arisen under that contract before the declaration was made.

(3) In this Order, except in so far as the context otherwise requires, "decision day" means the day signified by the date recording the sending of the document which is sent to the parties recording an award or other determination of a tribunal and "relevant decision day", subject to Article 5, 6 and 7 below, means the day so signified in relation to a relevant decision.

(4) In this Order "party" includes the Secretary of State where he has elected to appear as if he were a party in accordance with a Rule of Procedure entitling him so to elect.

#### **Computation of interest**

3.—(1) Subject to paragraphs (2) and (3) of this Article and to Article 11 below, where the whole or any part of a sum of money payable by virtue of a relevant decision of a tribunal remains unpaid on the calculation day the sum of money remaining unpaid on the calculation day shall carry interest at the stipulated rate of interest from the calculation day (including that day).

(2) Where, after the calculation day, a party pays to another party some but not all of such a sum of money remaining unpaid on the calculation day, then beginning with the day on which the payment is made interest shall continue to accrue only on that part of the sum of money which then remains unpaid.

(3) For the purposes of the computation of interest under this Order, there shall be disregarded -

- (a) any part of a sum of money which pursuant to the Employment Protection (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations 1977(c) has been claimed by the Secretary of State in a recoupment notice; and
- (b) any part of a sum of money which the party required to pay the sum of money is required, by virtue of any provision contained in or having effect under any enactment, to deduct and pay over to a public authority in respect of income tax or contributions under Part I of the Social Security Act 1975(d).

#### **Rate of interest**

4. The stipulated rate of interest shall be the rate of interest specified in section 17 of the Judgments Act 1838(e) on the relevant decision day.

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(a) S.I. 1965/1101, amended by S.I. 1967/301, 1970/941 and 1977/1473. (b) S.I. 1965/1157, amended by S.I. 1967/302, 1972/638 and 1977/1474. (c) S.I. 1977/674, amended by S.I. 1980/1608 and 1988/419. (d) 1975 c.14 to which there are amendments not material to the operation of this Order. (e) 1838 c.110; the relevant amending instrument is S.I. 1985/437.

## **Reviews**

5. Where a tribunal reviews its decision pursuant to the Rules of Procedure and the effect of the review, or of any re-hearing which takes place as a result of the review, is that a sum of money payable by one party to another party is confirmed or varied the relevant decision day shall be the decision day of the decision which is the subject of the review.

## **Decisions on remission to a tribunal**

6. Where an appellate court remits a matter to a tribunal for re-assessment of the sum of money which would have been payable by virtue of a previous relevant decision or by virtue of an order of another appellate court, the relevant decision day shall be the decision day of that previous relevant decision or the day on which the other appellate court promulgated its order, as the case may be.

## **Appeals from relevant decisions**

7. Where, on an appeal from a relevant decision, or on a further appeal arising from a relevant decision an appellate court makes an order which confirms or varies the sum of money which would have been payable by virtue of that relevant decision if there had been no appeal, the relevant decision day shall be the decision day of that relevant decision.

## **Other appeals**

8.—(1) This Article applies in relation to any order made by an appellate court on an appeal from a determination of any issue by a tribunal which is not a relevant decision, or on any further appeal arising from such a determination, where the effect of the order is that for the first time in relation to that issue one party to the proceedings is required to pay a sum of money, other than a sum representing costs or expenses, to another party to the proceedings.

(2) Where this Article applies in relation to an order, Articles 3 and 4 above shall apply to the sum of money payable by virtue of the order as if it was a sum of money payable by virtue of a relevant decision and as if the day on which the appellate court promulgated the order was the relevant decision day.

9. Where, on an appeal from an order in relation to which Article 8 applies or on a further appeal arising from such an order, an appellate court makes an order which confirms or varies the sum of money which would have been payable by virtue of the order in relation to which Article 8 applies if there had been no appeal, the day to be treated as the relevant decision day shall be the day on which the order in relation to which Article 8 applies was promulgated.

## **Reviews by the Employment Appeal Tribunal**

10. Where the Employment Appeal Tribunal reviews an order to which Article 8 above applies, the day to be treated as the relevant decision day shall be the day on which the order reviewed was promulgated.

## **Variations of the sum of money on appeal etc.**

11. Where a sum of money payable by virtue of a relevant decision is varied under one of the procedures referred to in Articles 5, 6 and 7 above, or a sum of money treated as being so payable by virtue of Article 8 above is varied under one of the procedures referred to in Articles 6, 9 and 10 above, the reference in paragraph (1) of Article 3 above, to a sum of money payable by virtue of a relevant decision shall be treated as if it were a reference to that sum as so varied.

## Notices

12.—(1) Where a decision of a tribunal is a relevant decision and a copy of a document recording that decision is sent to all parties entitled to receive that decision, it shall be the duty of the Secretary of the Central Office of the Industrial Tribunals (England and Wales) or the Secretary of the Central Office of the Industrial Tribunals (Scotland), as the case may be, to cause a notice containing the matters detailed in paragraph (2) below to accompany that document.

(2) The notice referred to in paragraph (1) above shall specify the decision day, the stipulated rate of interest and the calculation day in respect of the decision concerned.

(3) The failure to discharge the duty under paragraph (1) above correctly or at all shall have no effect on the liability of one party to pay to another party any sum of money which is payable by virtue of this Order.

Signed by order of the Secretary of State  
6th March 1990

*Patrick Nicholls*  
Parliamentary Under Secretary of State,  
Department of Employment

We consent  
6th March 1990

*John M Taylor*  
*Stephen Dorrell*  
Two of the Lords  
Commissioners of Her  
Majesty's Treasury

## EXPLANATORY NOTE

*(This Note is not part of the Order)*

This Order, which comes into force on 1st April 1990, provides that sums of money payable as a result of a decision of an Industrial Tribunal shall carry interest at the rate specified for the time being by section 17 of the Judgments Act 1838 when all or part of a sum payable remains unpaid 42 days after the document containing the tribunal's decision is recorded as having been sent to the parties. Separate provisions relating to appeals and reviews have the effect, in general, that interest still accrues on money remaining unpaid 42 days after the document containing the tribunal's decision is recorded as having been sent to the parties, but accrues on the amount as varied if the appeal or review results in a variation. Transitional arrangements provide that for the purposes of the Order, decisions of the kind to which the Order refers, made before 1st April 1990 are deemed to have been made on that day.

The Order provides that where part of a sum of money payable is either subject to recoupment pursuant to the Employment Protection (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations 1977 or required to be paid in respect of income tax or national insurance contributions that part is to be disregarded in computing interest.

The Order places a duty on the Secretary of the Tribunals to inform the parties to proceedings of the effect of this Order when an Industrial Tribunal makes a decision to which this Order attaches.