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.

(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—