1977 No. 123

SOCIAL SECURITY

The Industrial Relations (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations (Northern Ireland) 1977

Made . . . . . *6th May* 1977

Coming into operation . . . . *9th May* 1977

The Department of Health and Social Services for Northern Ireland and the Department of Manpower Services for Northern Ireland, acting jointly in exercise of the powers conferred on them by Article 72(1) of the Industrial Relations (Northern Ireland) Order 1976(**a**), as amended by Article 12 of the Social Security (Miscellaneous Provisions) (Northern Ireland) Order 1977(**b**), and the Department of Health and Social Services for Northern Ireland in exercise of the powers conferred on it by section 114(1) of the Social Security (Northern Ireland) Act 1975(**c**), and of all other powers enabling them in that behalf, hereby make the following regulations:

PART I

INTRODUCTORY

Citation and commencement

1. These regulations may be cited as the Industrial Relations (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations (Northern Ireland) 1977 and shall come into operation on 9th May 1977.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(**d**) shall apply to the interpretation of these regulations.

(2) In these regulations—

"the No. 1 Order" means the Industrial Relations (Northern Ireland) Order 1976;

"the No. 2 Order" means the Industrial Relations (No. 2) (Northern Ireland) Order 1976(**e**);

"the Department" means the Department of Health and Social Services;

"employer" and "employee" have the same meanings as in the No. 1 Order and references to an employer and an employee are respectively references to those persons as parties to relevant proceedings before an industrial tribunal;

"monetary award" has the same meaning as in Article 72(7) of the No. 1 Order;

"prescribed element" has the meaning assigned to it in regulation 3 and the Schedule;

"protected period" has the meaning assigned to it in Article 51(5) of the No. 1 Order;

(a) S.I. 1976/1043 (N.I. 16)
(b) S.I. 1977/610 (N.I. 11)
(c) 1975 c. 15
(d) 1954 c. 33 (N.I.)
(e) S.I. 1976/2147 (N.I. 28)

"protective award" means an award made by an industrial tribunal on a complaint presented by an appropriate trade union under Article 51 of the No. 1 Order;

"recoupable benefit" means any unemployment benefit or supplementary benefit, 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 Central Office of the Industrial Tribunals;

"supplementary benefit" and "unemployment benefit" mean respectively such benefit under the Supplementary Benefits &c. Act (Northern Ireland) 1966(f) and under the Social Security (Northern Ireland) Act 1975;

and any other expression used in regulation 11 or 12 to which a meaning is assigned by or under the Supplementary Benefits &c. Act (Northern Ireland) 1966 or the Social Security (Northern Ireland) Act 1975 has that meaning.

(3) In the Schedule, unless the context otherwise requires, references to Articles are references to Articles of the No. 1 Order and references in column 3 of the table contained in the Schedule to the conclusion of the tribunal proceedings are references to the conclusion of the proceedings mentioned in the corresponding entry in column 2 of the said table.

(4) 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.

(5) 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.

(6) 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.

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 described in the corresponding entry in column 2 of the said table 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 of that table; and

(f) 1966 c. 28 (N.I.)

(*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 53 of the No. 1 Order 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 the said Article 53 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.

Transitional provisions

4.—(1) In the case of payments described in items 4 to 14 of the table contained in the Schedule, these regulations shall apply only where the effective date of termination (construed in accordance with Article 21 of the No. 1 Order) occurs on or after the date of the coming into operation of these regulations.

(2) In the case of payments described in items 1 to 3 of the said table, these regulations shall apply only to the extent that the relevant payment is attributable to a period falling on or after the date of the coming into operation of these regulations.

(3) In the case of payments of remuneration in pursuance of a protective award these regulations shall apply only where the complaint under Article 51(1) of the No. 1 Order is made to the industrial tribunal after the coming into operation of these regulations.

(4) In accordance with paragraph (3), these regulations shall not apply to remuneration ordered to be paid on an employee's complaint under Article 53 of the No. 1 Order unless the condition specified in that paragraph is satisfied as respects that remuneration.

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

5.—(1) Where these regulations apply, no regard shall be had, in assessing the amount of a monetary award, to the amount of any supplementary benefit or any unemployment benefit 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 No. 1 Order or the No. 2 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 8 and 9 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 8 and 9 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 unemployment benefit or supplementary benefit.

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

6.—(1) Where, on a complaint by an appropriate trade union under Article 51 of the No. 1 Order, 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 7 and shall explain the effect of regulations 8 and 9 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 51 of the No. 1 Order shall contain a statement advising the employer of his duties under regulation 7 and an explanation of the effect of regulations 8 and 9 in relation to remuneration under the protective award.

Duties of the employer to give information about protective awards

7.—(1) Where an industrial tribunal makes a protective award under Article 51 of the No. 1 Order 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 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 a 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.

(4) In this regulation "national insurance number" means the national insurance number allocated within the meaning of regulation 38 of the Social Security (Contributions) Regulations (Northern Ireland) 1975(**g**).

PART III

RECOUPMENT OF BENEFIT

Postponement of awards

8.—(1) This regulation shall have effect for the purpose of postponing relevant awards in order to enable the Department to initiate recoupment under regulation 9.

(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 53 of the No. 1 Order 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

9.—(1) Recoupment shall be initiated by the Department serving on the employer a recoupment notice claiming by way of total or partial recoupment of unemployment benefit or supplementary benefit 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—

(**g**) S.R. 1975 No. 319 (II, p. 1492)