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)

(*a*) the amount of the prescribed element (less any tax or primary Class 1 contributions under the Social Security (Northern Ireland) Act 1975 which fall to be deducted therefrom by the employer); or

(*b*) the amount paid as on account of unemployment benefit or supplementary benefit 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 primary Class 1 contributions under the Social Security (Northern Ireland) Act 1975 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 7;

(*b*) the amount paid as on account of unemployment benefit or supplementary benefit 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—

(*a*) in any case in which the industrial tribunal at the hearing announces to the parties the effect of its decision as described in regulation 5(4), 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 Department has received from the employer the information required under regulation 7.

(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 Department 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, as provided for by regulation 8(2), or thereafter if a recoupment notice is served on the employer during the said period.

(10) Payment by the employer to the Department 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 regulations 11 and 12.

(11) The recoupable amount shall be recoverable by the Department from the employer as a debt.

Order made in secondary proceedings

10.—(1) In the application of any of the above provisions in the case of—

(*a*) proceedings for an award under Article 53 of the No. 1 Order; 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 Department, to take 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*) applies the proceedings under Article 51 of the No. 1 Order; or

(*b*) where paragraph (1)(*b*) applies the proceedings in respect of which the review, the re-hearing 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 on account of benefit

11.—(1) Without prejudice to the right of the Department to recover from an employer the recoupable benefit, an employee to whom a copy of a recoupment notice has been sent in accordance with regulation 9 may, within 21 days of the date on which such notice was sent to him or within such further time as the Department may for special reasons allow, give notice in writing to the Department that he does not accept that the amount specified in the recoupment notice in respect of unemployment benefit or supplementary benefit is correct.

(2) Where an employee has given notice in writing to the Department under paragraph (1) that he does not accept that an amount specified in the recoupment notice is correct, then, if and to the extent that—

(*a*) an amount is specified in respect of unemployment benefit, the Department shall forthwith submit to an insurance officer the question as to the amount of unemployment benefit 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 7 and any question so submitted shall be for determination by an insurance officer, a local tribunal and a Commissioner, in accordance with sections 99 to 104 of the Social Security (Northern Ireland) Act 1975;

(*b*) an amount is specified in respect of supplementary benefit the Department shall forthwith submit to the Commission the question as to the amount of supplementary benefit 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 7 and any question so submitted shall be determined by the Commission and, if the employee is dissatisfied with such determination, regulation 12(2) shall apply.

(3) If any question is raised as to the amount of supplementary benefit recoverable by recoupment, other than a question to which paragraph (2) applies, the Department shall refer for review under regulation 12 the determination by which that benefit was awarded.

(4) Where—

(*a*) on the determination of a question submitted to an insurance officer or to the Commission under paragraph (2); or

(*b*) on the review under section 104 of the Social Security (Northern Ireland) Act 1975 of a decision in pursuance of which a sum was paid on account of unemployment benefit; or

(*c*) on review under regulation 12 of a determination as to supplementary benefit,

the amount recovered by the Department from the employer under these regulations exceeds the total amount paid by way of unemployment benefit or supplementary benefit to the employee which would not have been paid if a decision on review under section 104 of the Social Security (Northern Ireland) Act 1975 or a decision on review under regulation 12 had been made in the first instance, the Department shall pay to the employee an amount equal to such excess.

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

Review of determination relating to supplementary benefit

12.—(1) Where under regulation 11(3) a determination as to supplementary benefit is referred for review, the Commission shall determine whether any and if so how much benefit would have been payable in respect of the period to which the recoupment notice relates, or to such part thereof as affects supplementary benefit, on the assumption that—

(*a*) before the amount of benefit had been determined, the employer had paid an amount, or had been paying amounts in aggregate, equal to the amount of the prescribed element or, as the case may be, equal to the amount of remuneration payable in pursuance of a protective award; and

(*b*) where an amount is recovered by the Department from an employer in respect of unemployment benefit paid to the employee for the relevant period, such benefit had not been payable and had not been paid.

(2) An employee shall have the same rights of appeal to the Appeal Tribunal against any determination made on review under this regulation or made under regulation 11(2) as has a person to whom section 19(1) of the Supplementary Benefits &c. Act (Northern Ireland) 1966 applies and any such appeal shall be heard and determined and any decision on the appeal shall have the same effect as if the appeal was an appeal under that subsection.

(3) Notice of a determination under this regulation shall be in writing and shall be served, by post or otherwise, on the employee and on the Department.

Sealed with the Official Seal of the Department of Health and Social Services for Northern Ireland on 6th May 1977.

(L.S.) *C. G. Oakes*
Senior Assistant Secretary

Sealed with the Official Seal of the Department of Manpower Services for Northern Ireland on 6th May 1977.

(L.S.) *D. J. Perham*
Senior Assistant Secretary

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 Article 3 of the No. 2 Order.	1. Complaint under Article 7 of the No. 2 Order.	1. Any amount found to be due to the complainant and ordered to be paid under Article 7(3) of the No. 2 Order for a period before the conclusion of the tribunal proceedings.
2. Payments under any collective agreement having regard to which the appropriate Department has made an exemption order under Article 8 of the No. 2 Order.	2. Complaint under Article 8(4) of the No. 2 Order.	2. Any amount found to be due to the complainant and ordered to be paid under Article 7(3) of the No. 2 Order, as applied by Article 8(4) of that Order, 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 Article 9 of the No. 2 Order.	3. Complaint under Article 12 of the No. 2 Order.	3. Any amount found to be due to the complainant and ordered to be paid under Article 12(3) of the No. 2 Order for a period before the conclusion of the tribunal proceedings.
4. Payments under an order for reinstatement under Article 31(3).	4. Complaint of unfair dismissal under Article 29.	4. Any amount ordered to be paid under Article 31(3)(*a*) in respect of arrears of pay for a period before the conclusion of the tribunal proceedings.
5. Payments under an order for re-engagement under Article 31(5).	5. Complaint of unfair dismissal under Article 29.	5. Any amount ordered to be paid under Article 31(5)(*d*) in respect of arrears of pay for a period before the conclusion of the tribunal proceedings.
6. Payments under an award of compensation for unfair dismissal in cases falling under Article 32(5) (cases where no order for reinstatement or re-engagement has been made).	6. Complaint of unfair dismissal under Article 29.	6. Any amount ordered to be paid and calculated under Article 36(2)(*b*) in respect of compensation for loss of wages for a period before the conclusion of the tribunal proceedings.

Column 1 *Payment*	Column 2 *Proceedings*	Column 3 *Matter to which prescribed element is attributable*
7. Payments under an award of compensation for unfair dismissal under Article 32(2) where reinstatement order not complied with.	7. Proceedings in respect of non-compliance with order.	7. —ditto—
8. Payments under an award of compensation for unfair dismissal under Article 32(2) where re-engagement order not complied with.	8. —ditto—	8. —ditto—
9. Payments under an interim order for reinstatement under Article 39(7).	9. Proceedings on an application for an order for interim relief under Article 39(1).	9. 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.
10. Payments under an interim order for re-engagement under Article 39(8)(*a*).	10. Proceedings on an application for an order for interim relief under Article 39(1).	10. —ditto—
11. Payments under an order for the continuation of a contract of employment under Article 39(8)(*b*) where employee reasonably refuses re-engagement.	11. —ditto—	11. —ditto—
12. Payments under an order for the continuation of a contract of employment under Article 39(9) where employer fails to attend or is unwilling to reinstate or re-engage.	12. Proceedings on an application for an order for interim relief under Article 39(1).	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.

Column 1 *Payment*	Column 2 *Proceedings*	Column 3 *Matter to which prescribed element is attributable*
13. Payments under an order for the continuation of a contract of employment under Article 41(2) where reinstatement or re-engagement order not complied with.	13. Proceedings in respect of non-compliance with order.	13. Any amount ordered to be paid to the employee by way of compensation under Article 41(2)(*b*) for loss of wages for the period between the date of termination of employment and the conclusion of the tribunal proceedings.
14. Payments under an order for compensation under Article 41(3)(*a*) where order for the continuation of contract of employment not complied with.	14. Proceedings in respect of non-compliance with order.	14. Any amount ordered to be paid to the employee by way of compensation under Article 41(3)(*a*) for loss of wages for the period between the date of termination of employment and the conclusion of the tribunal proceedings.
15. Payments under an order under Article 53(3) on employer's default in respect of remuneration due to employee under protective award.	15. Complaint under Article 53(1).	15. 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 but is intended to indicate their general purport.)

These regulations, which come into operation on 9th May 1977 make provision for the recovery by the Department of Health and Social Services from an employer of sums on account of unemployment and supplementary benefit out of a prescribed part of an amount awarded by an industrial tribunal in certain proceedings brought by an employee against an employer. The proceedings and payments to which the regulations apply are those in respect of unfair dismissal, failure to make guarantee payments, failure to make payments in respect of remuneration for periods of medical suspension from work and protective awards.

The amount prescribed in the regulations as the amount available for the purpose of recouping benefit is the amount due under the award in respect of the period for which benefit has been or is likely to have been paid; in no case can the amount recouped exceed the amount of benefit actually paid.

In regulations 11 and 12 provision is made for the determination of any question as to the amount of benefit which is recoverable and for the review of that determination by the relevant statutory authorities, that is to say, in the case of unemployment benefit by an insurance officer, an appeal tribunal and a Commissioner and in the case of supplementary benefit by the Supplementary Benefits Commission for Northern Ireland and an Appeal Tribunal constituted under the Supplementary Benefits &c. Act (Northern Ireland) 1966.