STATUTORY INSTRUMENTS

1977 No. 674

TERMS AND CONDITIONS OF EMPLOYMENT INDUSTRIAL TRIBUNALS

The Employment Protection (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations 1977

Made - - -	*7th April* 1977
Laid before Parliament	*15th April* 1977
Coming into Operation	*9th May* 1977

The Secretary of State, in exercise of the powers conferred on him by section 112(2) and (4) of the Employment Protection Act 1975(**a**) as amended by section 16 of the Social Security (Miscellaneous Provisions) Act 1977(**b**), section 114(1) of the Social Security Act 1975(**c**) and of all other powers enabling him in that behalf, and after reference to the National Insurance Advisory Committee in so far as is required by section 139 of the Social Security Act 1975, and after consultation with the Council on Tribunals in so far as is required by section 10 of the Tribunals and Inquiries Act 1971(**d**), hereby makes the following Regulations:—

PART I

INTRODUCTORY

Citation and commencement

1. These Regulations may be cited as the Employment Protection (Recoupment of Unemployment Benefit and Supplementary Benefit) Regulations 1977 and shall come into operation on 9th May 1977.

Interpretation

2.—(1) The Interpretation Act 1889(**e**) shall apply to the interpretation of these Regulations as it applies to the interpretation of an Act of Parliament.

(2) In these Regulations, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say—

(*a*) " the 1975 Act " means the Employment Protection Act 1975;

(*b*) " employer " and " employee " have the same meanings as in the Trade Union and Labour Relations Act 1974(**f**) and references to an employer and an employee in these Regulations are respectively references to those persons as parties to relevant proceedings before an industrial tribunal;

(**a**) 1975 c. 71.
(**b**) 1977 c. 5.
(**c**) 1975 c. 14
(**d**) 1971 c. 62.
(**e**) 1889 c. 63.
(**f**) 1974 c. 52.

(*c*) " monetary award " has the same meaning as in section 112(8) of the 1975 Act;

(*d*) " prescribed element " has the meaning assigned to it in Regulation 3 below and in the Schedule to these Regulations;

(*e*) " protected period " has the meaning assigned to it in section 101(5) of the 1975 Act;

(*f*) " protective award " means an award made by an industrial tribunal on a complaint presented by an appropriate trade union under section 101 of the 1975 Act;

(*g*) " recoupable benefit " means any unemployment benefit or supplementary benefit as the case may be, which is recoupable under these Regulations;

(*h*) " recoupment notice " means a notice under these Regulations;

(*i*) " Secretary of the Tribunals " means the Secretary of the Central Office of the Industrial Tribunals (England and Wales) or, as the case may require, the Secretary of the Central Office of the Industrial Tribunals (Scotland), for the time being;

(*j*) " supplementary benefit " and " unemployment benefit " mean respectively such benefit under the Supplementary Benefits Act 1976(**a**) and under the Social Security Act 1975;

(*k*) any other expression used in Regulation 11 or 12 below to which a meaning is assigned by or under the Supplementary Benefits Act 1976 or the Social Security Act 1975, has that meaning.

(3) In the Schedule to these Regulations references to sections are references to sections of the 1975 Act and 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.

(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 in these Regulations 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.

(**a**) 1976 c. 71.

PART II

INDUSTRIAL TRIBUNAL PROCEEDINGS

Application to payments and proceedings

3.—(1) Subject to paragraph (2) and Regulation 4 below these Regulations apply—

(*a*) to the payments described in column 1 of the table contained in the Schedule to these Regulations, being, in each case, payments which are the subject of industrial tribunal proceedings of the kind 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*) above include payments in proceedings under section 103 of the 1975 Act and, accordingly, where an order is made on an employee's complaint under that section, the relevant protective award shall, as respects that employee and to the appropriate extent, be taken to be subsumed in the order made under section 103 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 section 103.

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 paragraph 5 of Schedule 1 to the Trade Union and Labour Relations Act 1974) 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 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 section 101(1) of the 1975 Act is made to the industrial tribunal after the coming into operation of these Regulations.

(4) In accordance with paragraph (3) above, these Regulations shall not apply to remuneration ordered to be paid on an employee's complaint under section 103 of the 1975 Act 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 Trade Union and Labour Relations Act 1974 or the 1975 Act, 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 below in relation to the prescribed element.

(5) Where the industrial tribunal has made such an announcement as is described in paragraph (4) above the Secretary of the Tribunals shall forthwith notify the Secretary of State that the tribunal has decided to make a monetary award including a prescribed element and shall notify him of the particulars set out in paragraph (3) above.

(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) above to the parties he shall send a copy of that decision to the Secretary of State.

(7) In addition to containing the particulars required under paragraph (3) above, any such decision as is mentioned in that paragraph shall contain a statement explaining the effect of Regulations 8 and 9 below in relation to the prescribed element.

(8) The requirements of paragraphs (3) to (7) above do not apply where the 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 section 101 of the 1975 Act, 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 Secretary of State 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*) above, 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*) above in the presence of the employer or his representative it shall advise him of his duties under Regulation 7 below and shall explain the effect of Regulations 8 and 9 below in relation to remuneration under the protective award.

(*b*) Without prejudice to (*a*) above any decision of an industrial tribunal to make a protective award under section 101 of the 1975 Act shall contain a statement advising the employer of his duties under Regulation 7 below and an explanation of the effect of Regulations 8 and 9 below 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 section 101 of the 1975 Act against an employer, the employer shall give to the Secretary of State 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) below the employer shall comply with paragraph (1) above 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) above within the period applicable under paragraph (2) above he shall comply as soon as reasonably practicable after the expiration of that period.

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 Secretary of State to initiate recoupment under Regulation 9 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 103 of the 1975 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 103(3) of that Act.

Recoupment of Benefit

9.—(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 unemployment benefit or supplementary benefit 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 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 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 7 above; 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 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 5(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 7 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 Regulations 11 and 12 below.

(11) The recoupable amount shall be recoverable by the Secretary of State 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 section 103 of the 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 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 101 of the 1975 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.

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 Secretary of State to recover from an employer the recoupable benefit, an employee on whom a copy of a recoupment notice has been served in accordance with Regulation 9 above may, within 21 days of the date on which such notice was served on him or within such further time as the Secretary of State may for special reasons allow, give notice in writing to the Secretary of State 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 Secretary of State under paragraph (1) above 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 Secretary of State 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 above 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 Act 1975;

(*b*) an amount is specified in respect of supplementary benefit the Secretary of State shall forthwith submit to the Supplementary Benefits 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 above and any question so submitted shall be determined by the Supplementary Benefits Commission and, if the employee is dissatisfied with such determination, Regulation 12(2) below 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) above applies, the Secretary of State shall refer for review under Regulation 12 below 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 Supplementary Benefits Commission under paragraph (2) above; or

(*b*) on the review under section 104 of the Social Security 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 below of a determination as to supplementary benefit,

the amount recovered by the Secretary of State 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 Act 1975 or a decision on review under Regulation 12 below, had been made in the first instance, the Secretary of State shall pay to the employee an amount equal to such excess.

(5) In any case where, after the Secretary of State 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 Secretary of State shall make such repayment to the employer or payment to the employee of the whole or part of the amount recovered as he 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) above a determination as to supplementary benefit is referred for review, the Supplementary Benefits 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 Secretary of State 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 Supplementary Benefits Appeal Tribunal against any determination made on review under this Regulation or made under Regulation 11(2) above as has a person to whom section 15(1) of the Supplementary Benefits Act 1976 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 Secretary of State.

Signed by order of the Secretary of State.
7th April 1977.

Harold Walker,

Minister of State,
Department of Employment.

Regulation 3

SCHEDULE

TABLE RELATING TO MONETARY AWARDS

Column 1 PAYMENT	*Column* 2 PROCEEDINGS	*Column* 3 MATTER TO WHICH PRESCRIBED ELEMENT IS ATTRIBUTABLE
1. Guarantee payments under section 22.	1. Complaint under section 27.	1. Any amount found to be due to the complainant and ordered to be paid under section 27(3) for a period before the conclusion of the tribunal proceedings.
2. Payments under any collective agreement having regard to which the appropriate Minister has made an exemption order under section 28.	2. Complaint under section 28(4).	2. Any amount found to be due to the complainant and ordered to be paid under section 27(3), as applied by section 28(4), 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 section 29.	3. Complaint under section 32.	3. Any amount found to be due to the complainant and ordered to be paid under section 32(3) for a period before the conclusion of the tribunal proceedings.
4. Payments under an order for reinstatement under section 71(3).	4. Complaint of unfair dismissal under paragraph 17 of Schedule 1 to the Trade Union and Labour Relations Act 1974.	4. Any amount ordered to be paid under section 71(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 section 71(5).	5. Complaint of unfair dismissal under paragraph 17 of Schedule 1 to the Trade Union and Labour Relations Act 1974.	5. Any amount ordered to be paid under section 71(5)(*d*) in respect of arrears of pay 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
6. Payments under an award of compensation for unfair dismissal in cases falling under section 72(5) (cases where no order for reinstatement or re-engagement has been made).	6. Complaint of unfair dismissal under paragraph 17 of Schedule 1 to the Trade Union and Labour Relations Act 1974.	6. Any amount ordered to be paid and calculated under section 76(2)(*b*) in respect of compensation for loss of wages for a period before the conclusion of the tribunal proceedings.
7. Payments under an award of compensation for unfair dismissal under section 72(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 section 72(2) where re-engagement order not complied with.	8. — ditto —	8. — ditto —
9. Payments under an interim order for reinstatement under section 78(7).	9. Proceedings on an application for an order for interim relief under section 78(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 section 78(8)(*a*).	10. Proceedings on an application for an order for interim relief under section 78(1).	10. — ditto —
11. Payments under an order for the continuation of a contract of employment under section 78(8)(*b*) where employee reasonably refuses re-engagement.	11. — ditto —	11. — ditto —

Column 1 PAYMENT	*Column* 2 PROCEEDINGS	*Column* 3 MATTER TO WHICH PRESCRIBED ELEMENT IS ATTRIBUTABLE
12. Payments under an order for the continuation of a contract of employment under section 78(9) where employer fails to attend or is unwilling to reinstate or re-engage.	12. — ditto —	12. — ditto —
13. Payments under an order for the continuation of a contract of employment under section 80(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 section 80(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 section 80(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 section 80(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 section 103(3) on employer's default in respect of remuneration due to employee under protective award.	15. Complaint under section 103(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.)

These Regulations, which come into operation on 9th May 1977, make provision for the recovery by the Secretary of State 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 and the Supplementary Benefits Appeal Tribunal.

SI 1977/674
ISBN 0-11-070674-9

