



EMPLOYMENT ACT 2006

EMPLOYMENT (RECOUPMENT OF JOBSEEKER'S ALLOWANCE AND INCOME SUPPORT) REGULATIONS 2010

Approved by Tynwald

14th July 2010

Coming into operation in accordance with article 2

The Department of Social Care makes these Regulations under sections 158 and 174(3) of the Employment Act 2006¹.

PART 1

INTRODUCTORY

1 Title

These Regulations are the Employment (Recoupment of Jobseeker's Allowance and Income Support) Regulations 2010.

2 Commencement

If approved by Tynwald², these Regulations come into operation on 1 August 2010.

3 Interpretation

(1) In these Regulations, unless the context otherwise requires –

“the Department” means the Department of Social Care;

¹ 2006 c. 21.

² As required by section 175(1) of the Employment Act 2006.

“the Employment Act” means the Employment Act 2006;

“prescribed element” has the meaning assigned to it in regulation 4 and the Schedule to these Regulations;

“recoupable amount” means the amount of recoupable benefit;

“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; and

“the Tribunal” has the meaning given in section 173(1) of the Employment Act and “Clerk to the Tribunal” shall be construed accordingly.

- (2) In the Schedule to these Regulations –
 - (a) references to sections are references to sections of the Employment Act; and
 - (b) 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 the Tribunal as respects the prescribed element) the conclusion of the Tribunal proceedings shall be taken to occur –
 - (a) where the Tribunal at the hearing announces the effect of its decision to the parties, on the date on which that announcement is made; and
 - (b) in any other case, on the date on which the decision of the Tribunal is sent to the parties.
- (4) References to parties in relevant Tribunal proceedings shall be taken to include references to persons appearing on behalf of parties in a representative capacity.
- (5) 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.

PART 2

TRIBUNAL PROCEEDINGS

4 Application to payments and proceedings

These Regulations apply 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 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.

5 Duties of the Tribunal and the Clerk to the Tribunal in respect of monetary awards

- (1) Where these Regulations apply, no regard shall be had in assessing the amount of a monetary award (see section 158(6) of the Employment Act) 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 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 Employment 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 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; and
 - (d) the amount (if any) by which the monetary award exceeds the prescribed element.
- (4) Where the 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 6 and 7 in relation to the prescribed element.

- (5) Where the Tribunal has made such an announcement as is described in paragraph (4) the Clerk to the Tribunal shall forthwith notify the Department that the Tribunal has decided to make a monetary award including a prescribed element and shall notify the Department of the particulars set out in paragraph (3).
- (6) As soon as reasonably practicable after the Clerk to the Tribunal 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 6 and 7 in relation to the prescribed element.
- (8) The requirements of paragraphs (3) to (7) 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 jobseeker's allowance or income support.

PART 3

RECOUPMENT OF BENEFIT

6 Postponement of Awards

- (1) This regulation shall have effect for the purpose of postponing monetary awards in order to enable the Department to initiate recoupment under regulation 7.
- (2) Accordingly, so much of the monetary award as consists of the prescribed element shall be treated as stayed as respects the relevant employee until—
 - (a) the Department has served a recoupment notice on the employer; or
 - (b) the Department has notified the employer in writing that it does not intend to serve a recoupment notice.

7 Recoupment of Benefit

- (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 under paragraph (2).
- (2) The appropriate amount shall be the smaller 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) 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 Clerk to the Tribunal.
- (4) The Department shall –
 - (a) serve a recoupment notice on the employer; or
 - (b) notify the employer that it does not intend to serve such a notice,

within the period applicable (as the case may require) under paragraph (5) or as soon as practicable thereafter.
- (5) The period applicable 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) –
 - (i) the period ending 21 days after the conclusion of the hearing, or
 - (ii) 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.
- (6) 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.
- (7) 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 postponement period.

- (8) 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 regulation 9.
- (9) The recoupable amount shall be recoverable by the Department from the employer as a debt.

8 Order made in secondary proceedings

- (1) In the application of any of the above provisions in the case of 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 Tribunal or (as the case may require) the Department to take the 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 the proceedings in respect of which the review, the re-hearing or the further hearing consequent on an appeal takes place.

PART 4

DETERMINATION OF BENEFIT RECOUPED

9 Provisions relating to determination of amount paid by way of or paid as on account of benefit

- (1) Without prejudice to the right of the Department 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 7 may, within 21 days of the date on which such notice was served on 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 jobseeker's allowance or income support 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, an adjudication officer shall make a decision as to the amount of jobseeker's allowance or (as the case may be) income support paid in respect of the period to which the prescribed element is attributable.
- (3) An adjudication officer may revise either upon application made for the purpose or on his own initiative a decision under paragraph (2).

- (4) The employee shall have a right of appeal to an appeal tribunal constituted under Chapter I of Part I of the 1998 Act against a decision of an adjudication officer whether as originally made under paragraph (2) or as revised under paragraph (3).
- (5) The Social Security and Child Support (Decisions and Appeals) Regulations 1999 (as they have effect in the Isle of Man)³ shall apply for the purposes of paragraphs (3) and (4) as though a decision of an adjudication officer under paragraph (3) were made under section 9 of the 1998 Act (revision of decisions) and any appeal from such a decision were made under section 12 of that Act (appeal to appeal tribunal).
- (6) In this regulation “the 1998 Act” means the Social Security Act 1998 (as it has effect in the Isle of Man)⁴.
- (7) Where the Department recovers too much money from an employer under these Regulations the Department shall pay to the employee an amount equal to the excess.
- (8) 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 Tribunal in consequence of which such recoupment took place is set aside or varied on appeal or on a re-hearing by the 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.

PART 5

REVOCATION AND TRANSITIONAL PROVISION

10 Revocation

Subject to regulation 11, the Employment (Recoupment of Benefit) Regulations 2000⁵ are hereby revoked.

11 Transitional Provision

Regulation 10 shall not have effect in relation to awards or parts of awards made by the Tribunal after the date these Regulations come into force where the award or part of the award is in respect of a period before that date.

³ S.I. 1999/991 (see S.D. 602/00).

⁴ 1998 c.14 (see S.D. 92/00).

⁵ S.D. 206/00.

TABLE RELATING TO MONETARY AWARDS

Column 1	Column 2	Column 3
<i>Payment</i>	<i>Proceedings</i>	<i>Matter to which prescribed element is attributable</i>
1. Payments of remuneration in respect of a period of suspension on maternity grounds under section 76.	1. Complaint under section 78.	1. Any amount found to be due to the employee and ordered to be paid under section 78(3) for a period before the conclusion of the Tribunal proceedings.
2. Payments under an order for reinstatement under section 136(1).	2. Complaint of unfair dismissal under section 133(1).	2. Any amount ordered to be paid under section 136(2)(a) in respect of arrears of pay for a period before the conclusion of the Tribunal proceedings.
3. Payments under an order for re-engagement under section 137(1).	3. Complaint of unfair dismissal under section 133(1).	3. Any amount ordered to be paid under section 137(2)(d) in respect of arrears of pay for a period before the conclusion of the Tribunal proceedings.
4. Payments under an award of compensation for unfair dismissal in cases falling under section 134(4) (cases where no order for reinstatement or re-engagement has been made).	4. Complaint of unfair dismissal under section 133(1).	4. Any amount ordered to be paid and calculated under section 143 in respect of compensation for loss of wages for a period before the conclusion of the Tribunal proceedings.
5. Payments under an award of compensation for unfair dismissal under section 139(3) where reinstatement order not complied with.	5. Proceedings in respect of non-compliance with order.	5. Any amount ordered to be paid and calculated under section 143 in respect of compensation for loss of wages for a period before the conclusion of the Tribunal proceedings.
6. Payments under an award of compensation for unfair dismissal under section 139(3) where re-engagement order not complied with.	6. Proceedings in respect of non-compliance with order.	6. Any amount ordered to be paid and calculated under section 143 in respect of compensation for loss of wages for a period before the conclusion of the Tribunal proceedings.

G Martyn Quayle MHK
Minister for Social Care

EXPLANATORY NOTE

(This note is not part of the Regulations)

1. These Regulations (“the Recoupment Regulations”) are made following the enactment of the Employment Act 2006 (of Tynwald) and come into operation on 1st August 2010. They revoke and replace the Employment (Recoupment of Benefit) Regulations 2000, made under the Employment Act 1991 (of Tynwald). They do not introduce any change in policy.
- 2.1 *Introduction*
 - 2.1.1 Normally, part of an Employment Tribunal award for unfair dismissal etc. (see paragraph 2.2 et seq. below) compensates a person for the loss of their earnings up to the date of the tribunal hearing. However, some persons may have already received jobseeker’s allowance or income support during this period. To avoid such double payment the Department of Social Care (“the DSC”) (formerly the Department of Health and Social Security) recovers the amount of benefit paid to the person during this period (or the appropriate amount of the award, if it is less) by recoupment from the employer before the relevant part of the award is paid to the individual.
 - 2.1.2 Where the employer fails to pay the recoupable amount to the DSC, the amount is recoverable from them as a debt.
- 2.2 *Cases where the Recoupment Regulations apply*
 - 2.2.1 The Recoupment Regulations apply when the Employment Tribunal makes a “monetary award” for –

- unfair dismissal; or
- failure to pay wages during a period of maternity suspension.

A monetary award is the amount which is awarded, or ordered or adjudged to be paid, to the employee by the Tribunal.

2.3 *Monetary awards and the prescribed element of a monetary award*

2.3.1 A person who has brought a complaint against their employer might well have claimed and received jobseeker's allowance or income support while they are waiting for their complaint to be heard. If the Employment Tribunal makes a monetary award in such a case, it must identify how much of the award represents arrears of pay or compensation for loss of earnings due to the person and the period to which it relates. This amount is called the "prescribed element" and it is that part of the monetary award which is subject to recoupment.

2.3.2 Where the amount of the monetary award is greater than the prescribed element, the employer may pay that excess straightaway to the employee, but must not pay the "prescribed element" of the monetary award until they have either received a recoupment notice from the DSC advising them of the amount of benefit paid to the employee during the prescribed period which is recoupable from them or they are told that no recoupment notice is to be served.

2.3.3 However, if the employer pays the prescribed element to the employee before they receive a recoupment notice or they are told that recoupment is not necessary, the employer must still pay the DSC the amount specified on the notice. The employer can then try to recover this amount from the employee.

2.4 *Recoupment of benefit procedure*

2.4.1 The DSC will send the recoupment notice or notify the employer that no recoupment is required within the following timeframes–

- *where a decision is announced at the tribunal hearing* - within the following 21 days or within 9 days of the decision being sent to the parties (whichever is the later) or as soon as practicable after this period; or
- *where no such announcement is made* - within 21 days of the decision being sent to the parties or as soon as practicable after this period.

2.4.2 The recoupment notice instructs the employer to pay to the DSC out of the monetary award the lesser of–

- the prescribed element less any income tax and national insurance contributions due, or

- the total amount of jobseeker's allowance or income support received by the individual for any part of the period covered by the prescribed element.
- 2.4.3 If the prescribed element is greater than the amount specified in the recoupment notice, then the excess is immediately payable to the employee.
- 2.4.4 The recoupment notice is copied to the individual, so that they may check that the amount of benefit stated as having been paid to them is correct. If they do not agree with the amount stated they must contact the DSC within 21 days (or such further period as the DSC may for special reasons allow).
3. *The Regulations in detail*
- 3.1 Regulation 1 gives the Regulations their title.
- 3.2 Regulation 2 provides for their commencement.
- 3.3 Regulation 3 provides for their interpretation.
- 3.4 Regulation 4 and the Schedule to the Regulations prescribe the types of monetary awards which are subject to these Regulations (and the Employment Tribunal proceedings giving rise to such awards) and the corresponding prescribed element in relation to such payments.
- 3.5 Regulation 5 sets out the duties of the Employment Tribunal and the Clerk to the Tribunal in respect of monetary awards, including assessing the amount of any monetary award and in arriving at the amount of the prescribed element. It also specifies what information is to be set out in any decision which includes a monetary award and how that decision is to be communicated.
- 3.6 Regulation 6 provides that any monetary award shall be postponed, so that the DSC can recoup any jobseeker's allowance or income support under these Regulations. That part of the monetary award consisting of the prescribed element shall be stayed until the DSC has served a recoupment notice on the employer or told the employer that no recoupment notice is to be served.
- 3.7 Regulation 7 sets out how the DSC is to recoup jobseeker's allowance or income support under the Regulations.
- 3.8 Regulation 8 requires the Employment Tribunal or the DSC (as the case requires) to take into account anything done under or in consequence of the Regulations in relation to any related proceedings.

- 3.9.1 Regulation 9 provides a procedure for resolving disputes where an employee who has been served with a copy of a recoupment notice disagrees that the amount of jobseeker's allowance or income support specified in the notice as having been paid to them is correct.
- 3.9.2 Where the DSC recovers too much money from an employer under these Regulations it shall pay to the employee an amount equal to the excess.
- 3.9.3 Where, after the DSC has recovered from an employer any amount by way of recoupment of benefit, the decision given by the Tribunal in respect of such recoupment is set aside or varied on appeal or on a re-hearing by the Tribunal, it shall repay to the employer or the employee the whole or part of the amount recovered as it feels should properly be made having regard to the new decision.
- 3.10 Regulation 10 revokes the previous Employment (Recoupment of Benefit) Regulations 2000 made under the Employment Act 1991.
- 3.11 However, regulation 11 provides that those 2000 Regulations shall continue to have effect in relation to any monetary award made after these Regulations come into force (on 1st August 2010) where the award (or any part of it) is in respect of a period before these Regulations came into force.