

Important: This English translation has been prepared solely for the purpose of improving accessibility to the draft decree as published for internet consultation. The Dutch text is the authoritative version.

Draft decree of Besluit van

containing additional rules relating to recovery on the grounds of the BES Accident Insurance Act (*Wet ongevallenverzekering BES*) and the BES Sickness Insurance Act (*Wet ziekteverzekering BES*) (Decree on the recovery of employee insurance payments in the Caribbean Netherlands (*Besluit terugvordering werknemersverzekeringen BES*))

[KetenID WGK026934]

On the recommendation of the State Secretary of Social Affairs and Employment of datum openlaten , no. 2024-0000658269;

Having regard to Article 12e, paragraph 3 of the BES Accident Insurance Act and Article 12e, paragraph 3 of the BES Sickness Insurance Act;

Having heard the Advisory Division of the Council of State (recommendation of datum, nr.);

In view of the further report by the State Secretary of Social Affairs and Employment of datum openlaten , no. nr. invullen,

WE HAVE APPROVED AND DECREED:

Article 1. Definitions

In this decree the following terms have the meanings referred to:

Our Minister: The Minister of Social Affairs and Employment.

Benefit: A benefit as referred to in Article 3 of the BES Accident Insurance Act and Article 3 of the BES Sickness Insurance Act.

Article 2. Decision to recover

1. A decision to recover is to be communicated in writing, stating the reason for recovery, the amount to be recovered, the deadline(s) by which payment has to be made and the manner in which the decision is to be enforced in the event of late payment.

2. The party from whom the amount is being recovered is obliged, on request, to provide Our Minister with information that may be relevant to recovery.

Article 3. Waiving recovery

1. Our Minister may waive full or partial recovery if there are compelling reasons for doing so.
2. Our Minister may waive recovery if the amount to be recovered is less than USD 50.

Article 4. Setting off

If the party from whom the amount is being recovered is receiving a benefit, Our Minister can implement the decision to recover by setting off the amount to be recovered against the benefit yet to be paid.

Article 5. Increase in the amount to be recovered

In the event of late payment, the amount to be recovered can be increased to include statutory interest and costs related to the recovery.

Article 6. Entry into force

This decree will enter into force on 1 January 2026.

Article 7. Official title

This decree is to be referred to as the: Decree on the recovery of employee insurance payments in the Caribbean Netherlands.

We order and command that this decree and the corresponding explanatory memorandum are published in the Bulletin of Acts Orders and Decrees.

The State Secretary of Social Affairs
and Employment,

J.N.J. Nobel

EXPLANATORY MEMORANDUM

I. GENERAL

1. Introduction

The 2024 Act amending the social affairs and employment legislation in the Caribbean Netherlands (*Wijzigingswet SZW-wetten BES 2024*) came into force as from (PM). The legislation in question includes provisions for being able to recover unduly paid benefit (so-called 'lost pay') under the BES Accident Insurance Act (hereinafter referred to as: BES AI) and the BES Sickness Insurance Act (hereinafter referred to as: BES SI). Both Acts, which are applicable in the public entities of Bonaire, St. Eustatius and Saba, provide income protection for employees who have become temporarily or permanently incapacitated for work due to illness or an industrial accident. The Minister of Social Affairs and Employment is responsible for administering the legislation in question and the RCN Social Affairs and Employment unit is responsible for implementing the legislation on the minister's behalf.

This decree sets out more detailed rules on recovering undue payments under the BES AI and BES SI, so that action can be taken consistently and appropriately in the event of undue payments. To promote consistency in the social security system, a choice was made to align as much as possible with the regulations in the Caribbean Netherlands that the RCN Social Affairs and Employment unit is already working with including, in particular, the BES Child Benefit Implementation Decree (*Uitvoeringsbesluit kinderbijslagvoorziening BES*).

2. Decision to recover

The provisions relating to recovery, as included in the BES AI and BES SI, were drafted as a discretionary power (a 'can' provision). This means that, in the event of an undue payment of lost pay, the minister has the authority to recover it from the party concerned. This authority makes it possible to offer a tailor-made solution in the event of an adverse impact in the individual case. When set against the background of the objective of providing legitimate benefits, the basic principle is that any unduly paid benefit will be recovered, but that a different choice can be made, based on the circumstances to be considered.

The lost pay benefit under the BES AI and the BES SI is generally paid out to the employer. If the employment relationship between the employer and employee is terminated, the lost pay is paid directly to the employee (in their own name). In practice, however, this only applies to a limited group and is legally limited to the BES AI. Consequently, a recovery decision, as well as the resulting decision, is generally addressed to the employer.

There may be various reasons for recovering all or part of an undue payment under the BES AI and BES SI. The grounds for recovery are laid down in Article 12e of the BES AI and Article 12e of the BES SI.

The minister can waive recovery if there are compelling reasons for doing so. An individual assessment is made which takes account of all the relevant circumstances. When assessing whether a compelling reason exists, consideration can be given to the

consequences of recovery for the party concerned, as well as the cause of the wrongful payment. The contributions by the minister and the party concerned (culpability) to the situation that has arisen will both be taken into consideration.

A decision can also be taken to waive recovery in the case of amounts of less than USD 50. This is discussed in more detail in the article-by-article clarification to Article 3, paragraph 2.

Whenever a decision is made to recover, the party concerned will receive written notification of the decision, stating the reason for the recovery, the amount to be recovered and the deadline(s) by which payment must be made. The written decision will also state what action is going to be taken in the event of late payment. If the party concerned believes that payment is impossible for whatever reason, a request can be made by the set deadlines to postpone the payment, or to agree payment in instalments. If the party concerned has not applied for payment to be postponed and fails to pay on time, the minister can increase the amount by adding statutory interest and costs related to the recovery.

The minister can decide to offset the undue payment in the event of an ongoing entitlement to sick pay or incapacity benefit. In that case the amount will be recovered by setting off the unduly paid amount against the lost pay yet to be paid out by the minister. This option helps to keep the process efficient and straightforward.

Where necessary, policy rules will be used to add more substance to the existing administrative authority. In some situations the administrative body will be given room to determine itself how it uses the authority in question. The same applies to policy rules relating to the recovery process. While the recovery relates to the imposition of an obligation to repay an amount, collection relates to how the amount is to be repaid.

3. Regulatory burden

This decree is not expected to result in any additional administrative burden for rights holders.

4. Advice and Consultation

This decree came about in close collaboration with the RCN Social Affairs and Employment unit. The consultations conducted led to the conclusion that the present decree is ready to be implemented in practice. However, the RCN Social Affairs and Employment unit did note that the recovery and collection details need to be developed into policy (rules) in order to make the implementation process for recovery as comprehensive as possible. The core ministry and the RCN Social Affairs and Employment unit will jointly take responsibility for this.

[PM Internet consultation]

II. ARTICLE-BY-ARTICLE CLARIFICATION

Article 1 (Definitions)

This article contains a number of definitions.

Article 2 (Decision to recover)

The first paragraph regulates the conditions which a recovery decision must fulfil. This concerns the reason for recovery, the amount to be recovered, the deadline(s) by which payment has to be made and the manner in which the decision is to be enforced in the event of late payment. This must be communicated in writing.

On the grounds of the second paragraph, the party from whom the benefit is being recovered is obliged to provide information which is relevant for the purposes of recovery. This information requirement is particularly important so that the minister can - if such is deemed necessary - set any deadlines for repayment. At the request of the party concerned, the recovery can take account of their capacity to pay when setting the deadlines by which payment must be made.

Article 3 (Waiving recovery)

First paragraph

The basic principle is that the minister can invoke the authority to recover in situations laid down in Article 12e of the BES AI and Article 12e of the BES SI. The minister can decide to waive recovery if one of the situations described in this article occurs. This is a discretionary power on the part of the minister. On the grounds of the first paragraph the minister may decide to waive recovery wholly or partially if there are compelling reasons for doing so. This explicitly does not mean a general or categorical deviation, but instead presupposes an individual consideration of all the relevant circumstances. A deliberate decision was made not to specify the term 'compelling reasons' in more detail because this paragraph was included precisely for cases that cannot be anticipated.

Second paragraph

On the grounds of the second paragraph the minister has the power to waive recovery if the amount to be recovered is less than USD 50. However, the point of departure is always to recover. The minister may decide to waive recovery if doing so turns out to be impossible or pointless. The minister decides when to invoke the authority to waive recovery.

Article 4 (Setting off)

In order to simplify and reduce payments as much as possible, it may be desirable to offset an undue payment against a subsequent payment on the grounds of the BES AI or BES SI. The minister first gives the party from whom the amount is being recovered the opportunity to pay voluntarily. On the grounds of this article recovery can take place, if possible, by offsetting the amount to be recovered against future claims for the same, ongoing, benefit. This is at the minister's discretion. If so desired, the amount set off can take account of the payment capacity of the party concerned.

Article 5 (Increase in the amount to be recovered)

This article makes it possible to increase the amount to be recovered to include statutory interest and the costs related to the recovery, such as the costs related to starting a

collection process. This step will be taken if the repayment obligations imposed by the minister are not fulfilled, or are not fulfilled on time.

Article 6 (Entry into force)

The decree is entering into force on 1 January 2026 so as to comply with the government policy on fixed dates for introducing new legislation and the minimum introduction period for regulations, as laid down in instruction 4.17 of the Legislative Drafting Instructions. That policy means that an order in council must enter into force on 1 January or 1 July and that it is published at least two months prior to that.

The State Secretary of Social Affairs
and Employment,

J.N.J. Nobel