



National Minimum Wage Act 1998

1998 CHAPTER 39

Enforcement

17 Non-compliance: worker entitled to additional remuneration.

- (1) If a worker who qualifies for the national minimum wage is remunerated for any pay reference period by his employer at a rate which is less than the national minimum wage, the worker shall be taken to be entitled under his contract to be paid, as additional remuneration in respect of that period, the amount described in subsection (2) below.
- (2) That amount is the difference between—
 - (a) the relevant remuneration received by the worker for the pay reference period; and
 - (b) the relevant remuneration which the worker would have received for that period had he been remunerated by the employer at a rate equal to the national minimum wage.
- (3) In subsection (2) above, “relevant remuneration” means remuneration which falls to be brought into account for the purposes of regulations under section 2 above.

Modifications etc. (not altering text)

- C1** S. 17 modified by 1948 c. 47, s. 3A(1)-(4) (as inserted (1.4.1999) by 1998 c. 39, ss. 47(1)(a), 56(2), Sch. 2 Pt. I, para. 3 (with s. 36); S.I. 1999/685, art. 2, Sch.)
S. 17 modified by 1949 c. 30, s. 3A(1)-(3) (as inserted (1.4.1999) by 1998 c. 39, ss. 47(1)(b), 56(2), Sch. 2 Pt. II, para. 13 (with s. 36); S.I. 1999/685, art. 2, Sch.)
- C2** S. 17 extended (with modifications) by S.I. 1997/2151 (N.I. 22), art. 8A (as inserted (1.4.1999) by 1998 c. 39, ss. 47(1)(c), 56(2), Sch. 2 Pt. III, para. 26 (with s. 36); S.I. 1999/685, art. 2, Sch.)
- C3** S. 17 modified (1.4.1999) by 1948 c. 47, s. 3A(3A) (as amended (1.4.1999) by S.I. 1999/712, reg. 2(3))
- C4** S. 17 amended (1.4.1999) by 1949 c. 30, s. 3A(3A) (as inserted (1.4.1999) by S.I. 1999/750, reg. 2(3))

Status: Point in time view as at 06/04/2005.

Changes to legislation: There are currently no known outstanding effects for the National Minimum Wage Act 1998, Cross Heading: Enforcement. (See end of Document for details)

18 Enforcement in the case of special classes of worker.

- (1) If the persons who are the worker and the employer for the purposes of section 17 above would not (apart from this section) fall to be regarded as the worker and the employer for the purposes of—
- (a) Part II of the ^{M1}Employment Rights Act 1996 (protection of wages), or
 - (b) in relation to Northern Ireland, Part IV of the ^{M2}Employment Rights (Northern Ireland) Order 1996,
- they shall be so regarded for the purposes of the application of that Part in relation to the entitlement conferred by that section.
- (2) In the application by virtue of subsection (1) above of—
- (a) Part II of the ^{M3}Employment Rights Act 1996, or
 - (b) Part IV of the ^{M4}Employment Rights (Northern Ireland) Order 1996,
- in a case where there is or was, for the purposes of that Part, no worker's contract between the persons who are the worker and the employer for the purposes of section 17 above, it shall be assumed that there is or, as the case may be, was such a contract.
- (3) For the purpose of enabling the amount described as additional remuneration in subsection (1) of section 17 above to be recovered in civil proceedings on a claim in contract in a case where in fact there is or was no worker's contract between the persons who are the worker and the employer for the purposes of that section, it shall be assumed for the purpose of any civil proceedings, so far as relating to that amount, that there is or, as the case may be, was such a contract.

Marginal Citations

- M1** 1996 c. 18.
M2 S.I. 1996/1919 (N.I.16).
M3 1996 c. 18.
M4 S.I. 1996/1919 (N.I.16).

19 Power of officer to issue enforcement notice.

- (1) If an officer acting for the purposes of this Act is of the opinion that a worker who qualifies for the national minimum wage has not been remunerated for any pay reference period by his employer at a rate at least equal to the national minimum wage, the officer may serve a notice (an "enforcement notice") on the employer requiring the employer to remunerate the worker for pay reference periods ending on or after the date of the notice at a rate equal to the national minimum wage.
- (2) An enforcement notice may also require the employer to pay to the worker within such time as may be specified in the notice the sum due to the worker under section 17 above in respect of the employer's previous failure to remunerate the worker at a rate at least equal to the national minimum wage.
- [^{F1}(2A) If an officer acting for the purposes of this Act is of the opinion that a worker who has at any time qualified for the national minimum wage has not been remunerated for any pay reference period (whether ending before or after the coming into force of this subsection) by his employer at a rate at least equal to the national minimum wage, the officer may serve on the employer an enforcement notice which imposes

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a requirement under subsection (2) above in relation to the worker, whether or not a requirement under subsection (1) above is, or may be, imposed in relation to that worker (or any other worker to whom the notice relates).

(2B) An enforcement notice may not impose a requirement under subsection (2) above in respect of any pay reference period ending more than 6 years before the date on which the notice is served.]

[^{F2}(2C) Where an enforcement notice imposes a requirement under subsection (2) above, the amount specified in the notice as the sum due to the worker under section 17 above need not include any sum so due to him in respect of any very recent pay reference period (although the amount so specified may include any such sum).

(2D) In subsection (2C) above a “very recent” pay reference period means a pay reference period ending less than 3 months before the date on which the notice is served.]

(3) [^{F3}An] enforcement notice may relate to more than one worker (and, where it does so, may be so framed as to relate to workers specified in the notice or to workers of a description so specified).

(4) A person on whom an enforcement notice is served may appeal against the notice before the end of the period of four weeks following the date of service of the notice.

(5) An appeal under subsection (4) above lies to an employment tribunal.

(6) On an appeal under subsection (4) above, the employment tribunal shall dismiss the appeal unless it is established—

(a) that, in the case of the worker or workers to whom the enforcement notice relates, the facts are such that an officer who was aware of them would have had no reason to serve any enforcement notice on the appellant; or

(b) where the enforcement notice relates to two or more workers, that the facts are such that an officer who was aware of them would have had no reason to include some of the workers in any enforcement notice served on the appellant; or

(c) where the enforcement notice imposes a requirement under subsection (2) above in relation to a worker,—

(i) that no sum was due to the worker under section 17 above; or

(ii) that the amount specified in the notice as the sum due to the worker under that section is [^{F4}too great; or]

[^{F5}(iii) that the notice contravenes subsection (2B) above;]

and in this subsection any reference to a worker includes a reference to a person whom the enforcement notice purports to treat as a worker.

(7) Where an appeal is allowed by virtue of paragraph (a) of subsection (6) above, the employment tribunal shall rescind the enforcement notice.

(8) If, in a case where subsection (7) above does not apply, an appeal is allowed by virtue of paragraph (b) or (c) of subsection (6) above—

(a) the employment tribunal shall rectify the enforcement notice; and

(b) the enforcement notice shall have effect as if it had originally been served as so rectified.

(9) The powers of an employment tribunal in allowing an appeal in a case where subsection (8) above applies shall include power to rectify, as the tribunal may consider

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appropriate in consequence of its decision on the appeal, any penalty notice which has been served under section 21 below in respect of the enforcement notice.

- (10) Where a penalty notice is rectified under subsection (9) above, it shall have effect as if it had originally been served as so rectified.

Textual Amendments

- F1** S. 19(2A)(2B) inserted (8.7.2003) by [National Minimum Wage \(Enforcement Notices\) Act 2003 \(c. 8\), ss. 1, 2\(2\)](#)
- F2** S. 19(2C)(2D) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\), ss. 45\(2\), 59\(3\)](#) (with s. 44(4)); S.I. 2005/872, art. 4, Sch. (with art. 15)
- F3** Word in s. 19(3) substituted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\), ss. 45\(3\), 59\(3\)](#) (with s. 44(4)); S.I. 2005/872, art. 4, Sch. (with art. 15)
- F4** Words in s. 19(6)(c)(ii) substituted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\), ss. 46\(2\)\(a\), 59\(3\)](#) (with s. 46(4)); S.I. 2005/872, art. 4, Sch. (with art. 15)
- F5** S. 19(6)(c)(iii) inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\), ss. 46\(2\)\(b\), 59\(3\)](#) (with s. 46(4)); S.I. 2005/872, art. 4, Sch. (with art. 15)

Modifications etc. (not altering text)

- C5** S. 19 modified by [1948 c. 47, s. 3A\(1\)-\(4\)](#) (as inserted (1.4.1999) by 1998 c. 39, s. 47, Sch. 2 Pt. I para. 3 (with s. 36); S.I. 1999/685, art. 2, Sch.)
S. 19 modified by [1949 c. 30, s. 3A\(1\)-\(3\)](#) (as inserted (1.4.1999) by 1998 c. 39, s. 47, Sch. 2 Pt. II para. 13 (with s. 36); S.I. 1999/685, art. 2, Sch. (with art. 3))
- C6** S. 19 extended (with modifications) by [S.I. 1997/2151 \(N.I. 22\), art. 8A](#) (as inserted (1.4.1999) by 1998 c. 39, ss. 47(1)(c), 56(2), [Sch. 2 Pt. III](#), para. 26 (with s. 36); S.I. 1999/685, art. 2, Sch.)

20 Non-compliance: power of officer to sue on behalf of worker.

- (1) If an enforcement notice is not complied with in whole or in part, an officer acting for the purposes of this Act may, on behalf of any worker to whom the notice relates,—
- (a) present a complaint under section 23(1)(a) of the ^{M5}Employment Rights Act 1996 (deductions from worker's wages in contravention of section 13 of that Act) to an employment tribunal in respect of any sums due to the worker by virtue of section 17 above; or
 - (b) in relation to Northern Ireland, present a complaint under Article 55(1)(a) of the ^{M6}Employment Rights (Northern Ireland) Order 1996 (deductions from worker's wages in contravention of Article 45 of that Order) to an industrial tribunal in respect of any sums due to the worker by virtue of section 17 above; or
 - (c) commence other civil proceedings for the recovery, on a claim in contract, of any sums due to the worker by virtue of section 17 above.
- (2) The powers conferred by subsection (1) above for the recovery of sums due from an employer to a worker shall not be in derogation of any right which the worker may have to recover such sums by civil proceedings.

Modifications etc. (not altering text)

- C7** S. 20 modified (*prosp.*) by [1948 c. 47, s. 3A\(1\)-\(4\)](#) (as inserted by 1998 c. 39, ss. 47(1)(a), 56(2), [Sch. 2 Pt. I](#), para. 3 (with s. 36))

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- S. 20 modified (*prosp.*) by 1949 c. 30, s. 3A(1)-(3) (as inserted by 1998 c. 39, ss. 47(1)(b), 56(2), **Sch. 2 Pt. II**, para. 13 (with s. 36))
- C8** S. 20 extended (with modifications) (*prosp.*) by S.I. 1997/2151 (N.I. 22), **art. 8A** (as inserted by 1998 c. 39, ss. 47(1)(c), 56(2), **Sch. 2 Pt. III**, para. 26 (with s. 36))

Marginal Citations

- M5** 1996 c. 18.
- M6** S.I. 1996/1919 (N.I.16).

21 Financial penalty for non-compliance.

- (1) If an officer acting for the purposes of this Act is satisfied that a person on whom an enforcement notice has been served has failed, in whole or in part, to comply with the notice, the officer may serve on that person a notice (a “penalty notice”) requiring the person to pay a financial penalty to the Secretary of State.
- (2) A penalty notice must state—
 - (a) the amount of the financial penalty;
 - (b) the time within which the financial penalty is to be paid (which must not be less than four weeks from the date of service of the notice);
 - (c) the period to which the financial penalty relates;
 - (d) the respects in which the officer is of the opinion that the enforcement notice has not been complied with; and
 - (e) the calculation of the amount of the financial penalty.
- (3) The amount of the financial penalty shall be calculated at a rate equal to twice the hourly amount of the national minimum wage (as in force at the date of the penalty notice) in respect of each worker to whom the failure to comply relates for each day during which the failure to comply has continued in respect of the worker.
- (4) The Secretary of State may by regulations from time to time amend the multiplier for the time being specified in subsection (3) above in relation to the hourly amount of the national minimum wage.
- (5) A financial penalty under this section—
 - (a) in England and Wales, shall be recoverable, if a county court so orders, by execution issued from the county court or otherwise as if it were payable under an order of that court;
 - (b) in Scotland, may be enforced in the same manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland;
 - (c) in Northern Ireland, shall be recoverable, if the county court so orders, as if it were payable under an order of that court.
- (6) Where a person has appealed under subsection (4) of section 19 above against an enforcement notice and the appeal has not been withdrawn or finally determined, then, notwithstanding the appeal,—
 - (a) the enforcement notice shall have effect; and
 - (b) an officer may serve a penalty notice in respect of the enforcement notice.
- (7) If, in a case falling within subsection (6) above, an officer serves a penalty notice in respect of the enforcement notice, the penalty notice—

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- (a) shall not be enforceable until the appeal has been withdrawn or finally determined; and
 - (b) shall be of no effect if the enforcement notice is rescinded as a result of the appeal; but
 - (c) subject to paragraph (b) above and section 22(4) and (6)(a) below, as from the withdrawal or final determination of the appeal shall be enforceable as if paragraph (a) above had not had effect.
- (8) Any sums received by the Secretary of State by virtue of this section shall be paid into the Consolidated Fund.

Modifications etc. (not altering text)

- C9** S. 21 modified (*prosp.*) by 1948 c. 47, s. 3A(1)-(4) (as inserted by 1998 c. 39, ss. 47(1)(a), 56(2), **Sch. 2 Pt. I**, para. 3 (with s. 36))
- S. 21 modified (*prosp.*) by 1949 c. 30, s. 3A(1)-(3) (as inserted by 1998 c. 39, ss. 47(1)(b), 56(2), **Sch. 2 Pt. II**, para. 13 (with s. 36))
- C10** S. 21 extended (with modifications) (*prosp.*) by S.I. 1997/2151 (N.I. 22), **art. 8A** (as inserted by 1998 c. 39, ss. 47(1)(c), 56(2), **Sch. 2 Pt. III**, para. 26 (with s. 36))

Commencement Information

- II** S. 21 wholly in force at 1.4.1999; s. 21(4) in force for certain purposes at Royal Assent see s. 56(2); s. 21 in force at 1.4.1999 insofar as not already in force by S.I. 1998/2574, **art. 2(2)**, **Sch. 2**

22 Appeals against penalty notices.

- (1) A person on whom a penalty notice is served may appeal against the notice before the end of the period of four weeks following the date of service of the notice.
- (2) An appeal under subsection (1) above lies to an employment tribunal.
- (3) On an appeal under subsection (1) above, the employment tribunal shall dismiss the appeal unless it is shown—
- (a) that, in the case of each of the allegations of failure to comply with the enforcement notice, the facts are such that an officer who was aware of them would have had no reason to serve any penalty notice on the appellant; or
 - [^{F6}(b) that the amount of the financial penalty is too great because the penalty notice is incorrect in some of the particulars which affect that amount; or
 - (c) that the amount of the financial penalty is too great because its calculation is incorrect.]
- and for the purposes of any appeal relating to a penalty notice, the enforcement notice in question shall (subject to rescission or rectification on any appeal brought under section 19 above) be taken to be correct.
- (4) Where an appeal is allowed by virtue of paragraph (a) of subsection (3) above, the employment tribunal shall rescind the penalty notice.
- (5) If, in a case where subsection (4) above does not apply, an appeal is allowed by virtue of paragraph (b) or (c) of subsection (3) above—
- (a) the employment tribunal shall rectify the penalty notice; and
 - (b) the penalty notice shall have effect as if it had originally been served as so rectified.

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- (6) Where a person has appealed under subsection (1) above against a penalty notice and the appeal has not been withdrawn or finally determined, the penalty notice—
- (a) shall not be enforceable until the appeal has been withdrawn or finally determined; but
 - (b) subject to subsection (4) above and section 21(7)(a) and (b) above, as from the withdrawal or final determination of the appeal shall be enforceable as if paragraph (a) above had not had effect.

Textual Amendments

- F6** S. 22(3)(b)(c) substituted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), [ss. 46\(3\)](#), [59\(3\)](#) (with [s. 46\(4\)](#)); [S.I. 2005/872](#), [art. 4](#), [Sch.](#) (with [art. 15](#))

Modifications etc. (not altering text)

- C11** S. 22 modified (*prosp.*) by [1948 c. 47](#), [s. 3A\(1\)-\(4\)](#) (as inserted by [1998 c. 39](#), [ss. 47\(1\)\(a\)](#), [56\(2\)](#), [Sch. 2 Pt. I](#), [para. 3](#) (with [s. 36](#)))
S. 22 modified (*prosp.*) by [1949 c. 30](#), [s. 3A\(1\)-\(3\)](#) (as inserted by [1998 c. 39](#), [ss. 47\(1\)\(b\)](#), [56\(2\)](#), [Sch. 2 Pt. II](#), [para. 13](#) (with [s. 36](#)))
- C12** S. 22 extended (with modifications) (*prosp.*) by [S.I. 1997/2151 \(N.I. 22\)](#), [art. 8A](#) (as inserted by [1998 c. 39](#), [ss. 47\(1\)\(c\)](#), [56\(2\)](#), [Sch. 2 Pt. III](#), [para. 26](#) (with [s. 36](#)))

[^{F7}22A] **Withdrawal of enforcement notice**

- (1) Where an enforcement notice has been served (and has not already been withdrawn or rescinded), an officer acting for the purposes of this Act may withdraw the enforcement notice by serving notice of the withdrawal on the employer.
- (2) Subsection (3) applies if an enforcement notice is withdrawn and either—
- (a) no new enforcement notice is served in accordance with section 22B; or
 - (b) a new enforcement notice is so served, but the notice of withdrawal states that subsection (3) applies.
- (3) If an enforcement notice is withdrawn and this subsection applies,—
- (a) after the withdrawal no penalty notice may be served under section 21 in respect of any non-compliance with the enforcement notice before it was withdrawn;
 - (b) if any penalty notice was so served before the withdrawal, it ceases to have effect and any appeal against it must be dismissed;
 - (c) any sum paid or recovered in respect of any such penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered;
 - (d) any appeal against the enforcement notice must be dismissed;
 - (e) after the withdrawal no complaint may be presented or other civil proceedings commenced by virtue of section 20 in reliance on any non-compliance with the enforcement notice before it was withdrawn;
 - (f) any complaint or proceedings so presented or commenced before the withdrawal may be proceeded with despite the withdrawal.
- (4) In subsection (3)(c) “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838.

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- (5) Where subsection (3) applies the notice of withdrawal must indicate the effect of that subsection (but a failure to do so does not make the withdrawal ineffective).
- (6) Section 21(6) has effect subject to this section and sections 22B and 22C.

Textual Amendments

F7 Ss. 22A-22F inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), ss. 46(1), 59(3); S.I. 2005/872, art. 4, Sch. (with art. 15)

22B Replacement of enforcement notice

- (1) This section applies if an officer withdraws an enforcement notice.
- (2) The officer may at the same time as he serves the notice of withdrawal (and if he is of the opinion mentioned in section 19(1) or (2A)) serve on the employer a new enforcement notice under section 19 relating to some or all of the workers to whom the old enforcement notice related.
- (3) The new enforcement notice may not relate to any workers to whom the old enforcement notice did not relate (but this is without prejudice to any power that arises apart from this section to serve an enforcement notice relating to those workers).
- (4) If the new enforcement notice contravenes subsection (3)—
 - (a) the case shall be treated as falling within paragraph (b) (or, if none of the workers included in the old enforcement notice is included in the new enforcement notice, paragraph (a)) of section 19(6); and
 - (b) the new enforcement notice is not to be treated for the purposes of sections 22A(2), 22C(1) and 22D(1) as served in accordance with this section.
- (5) If the new enforcement notice includes a requirement under section 19(2) as respects a worker, it must relate to the sum due to the worker under section 17 in respect of the employer's failure previous to the new notice to remunerate the worker as mentioned in section 19(2) (regardless of whether that failure occurred to any extent before or after the service of the old notice).
- (6) Subsection (5) is subject to section 19(2B) to (2D) as they apply in relation to the new enforcement notice; but section 19(2B) applies in relation to that notice as if the reference to 6 years before the date on which the notice is served were a reference to 6 years before the date on which the old notice was served.
- (7) The new enforcement notice must—
 - (a) indicate the differences between it and the old enforcement notice that it is reasonable for the officer to consider are material; and
 - (b) unless the notice of withdrawal states that section 22A(3) applies, indicate the effect of sections 22C and 22D.
- (8) A failure to comply with subsection (7) does not make the new enforcement notice ineffective, but a notice that does not comply with that subsection is not to be treated for the purposes of sections 22A(2), 22C(1) and 22D(1) as served in accordance with this section.

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- (9) The reference in subsection (1) to an enforcement notice does not include an enforcement notice served by virtue of this section.

Textual Amendments

- F7** Ss. 22A-22F inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 46(1)**, 59(3); S.I. 2005/872, art. 4, Sch. (with art. 15)

22C Effect of replacement on penalties where section 22A(3) not applied

- (1) If an enforcement notice is withdrawn and a new enforcement notice is served in accordance with section 22B, this section applies unless the notice withdrawing the old enforcement notice states that section 22A(3) applies.
- (2) Where this section applies, subject to subsections (3) and (5) the withdrawal of the old enforcement notice does not affect—
- (a) any penalty notice that before the withdrawal was served under section 21 in respect of any non-compliance with the old enforcement notice;
 - (b) the power under section 21 to serve a penalty notice in respect of any non-compliance with the old enforcement notice before it was withdrawn.
- (3) If—
- (a) before the withdrawal of the old enforcement notice a penalty notice was served which included an amount for a day's non-compliance with the old enforcement notice as respects a worker, and
 - (b) that amount could not validly have been included in the penalty notice if the old enforcement notice had been as it should have been according to the new enforcement notice,
- the penalty notice shall be treated as withdrawn under section 22E at the same time as the old enforcement notice is withdrawn.
- (4) Where subsection (3) applies, section 22F (power to replace penalty notice) applies—
- (a) as if the cases mentioned in section 22F(1) as cases in which that section applies included the case where a penalty notice is by virtue of this section treated as withdrawn; and
 - (b) as if the references in section 22F(2) to the amount and particulars that the officer considers should have been stated in the penalty notice were to the amount and particulars that he considers should have been so stated if the old enforcement notice had been as it should have been.
- (5) A penalty notice served by virtue of subsection (2)(b) must not include an amount for a day's non-compliance with the old enforcement notice as respects a worker if, had the old enforcement notice been as it should have been according to the new enforcement notice, that amount could not validly have been included in the penalty notice.
- (6) The words after paragraph (c) in section 22(3) shall not apply for the purposes of any appeal against a penalty notice continued in effect by virtue of subsection (2)(a) above or served by virtue of subsection (2)(b) above.

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Textual Amendments

F7 Ss. 22A-22F inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 46(1)**, 59(3); [S.I. 2005/872](#), [art. 4](#), [Sch.](#) (with [art. 15](#))

22D Effect of replacement on appeals and civil proceedings where section 22A(3) not applied

- (1) If an enforcement notice is withdrawn and a new enforcement notice is served in accordance with section 22B, this section applies unless the notice withdrawing the old enforcement notice states that section 22A(3) applies.
- (2) If an appeal has been made under section 19(4) against the old enforcement notice and the appeal has not been withdrawn or finally determined before the time when that notice is withdrawn—
 - (a) that appeal (“the earlier appeal”) shall have effect after that time as if it were against the new enforcement notice; and
 - (b) the employer may exercise his right of appeal under section 19(4) against the new enforcement notice only if he withdraws the earlier appeal.
- (3) If an appeal is made under section 19(4) against the new enforcement notice (or by virtue of subsection (2) above has effect as if so made), section 19(9) and paragraphs (a) to (c) of section 21(7) apply in relation to any penalty notice—
 - (a) continued in effect by virtue of section 22C(2)(a), or
 - (b) served by virtue of section 22C(2)(b),
 as they apply in relation to penalty notices served in respect of the new enforcement notice.
- (4) Where this section applies—
 - (a) after the withdrawal of the old enforcement notice no complaint may be presented or other civil proceedings commenced by virtue of section 20 in reliance on any non-compliance with that notice before it was withdrawn;
 - (b) any complaint or proceedings so presented or commenced before the withdrawal of the old enforcement notice may be proceeded with despite the withdrawal and replacement of that notice.

Textual Amendments

F7 Ss. 22A-22F inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 46(1)**, 59(3); [S.I. 2005/872](#), [art. 4](#), [Sch.](#) (with [art. 15](#))

22E Withdrawal of penalty notice

- (1) Where a penalty notice has been served on a person (“the employer”) (and has not already been withdrawn or rescinded), an officer acting for the purposes of this Act may withdraw the penalty notice if he is of the opinion—
 - (a) that, in the case of each of the allegations of failure to comply with the enforcement notice in respect of which the penalty notice was served, the facts are such that an officer who was aware of them would have had no reason to serve any penalty notice on the employer; or

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- (b) that the amount of the financial penalty is too great because the penalty notice is incorrect in some of the particulars which affect that amount; or
 - (c) that the amount of the financial penalty is too great because its calculation is incorrect.
- (2) The withdrawal shall be effected by serving notice of the withdrawal on the employer.
- (3) If a penalty notice is withdrawn and is not replaced under section 22F—
- (a) any sum already paid or recovered in respect of the penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum was paid or recovered;
 - (b) any appeal against the notice must be dismissed.
- (4) In subsection (3)(a) “the appropriate rate” means the rate that, on the date the sum was paid or recovered, was specified in section 17 of the Judgments Act 1838.

Textual Amendments

- F7** Ss. 22A-22F inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 46(1)**, 59(3); [S.I. 2005/872](#), [art. 4](#), [Sch.](#) (with [art. 15](#))

22F Replacement of penalty notice with notice imposing lower penalty

- (1) This section applies if a penalty notice is withdrawn because the officer is of the opinion mentioned in section 22E(1)(b) or (c).
- (2) The officer may, at the same time as that notice is withdrawn, serve by way of replacement a new penalty notice under section 21 in which—
- (a) the amount of the financial penalty is the amount (which must be less than that in the old penalty notice) that the officer now considers should have been the amount stated in the old penalty notice; and
 - (b) the particulars stated under section 21(2)(c) to (e) are as he now considers they should have been in that notice.
- (3) The new penalty notice must indicate—
- (a) the differences between it and the old penalty notice that it is reasonable for the officer to consider are material, and
 - (b) the effect of subsections (4) to (7),
- but a failure to comply with this subsection does not make the new penalty notice ineffective.
- (4) If a sum was paid or recovered in respect of the old penalty notice—
- (a) an amount equal to that sum (or, if more than one, the total of those sums) shall be treated as having been paid in respect of the new penalty notice; and
 - (b) any amount by which that sum (or total) exceeds the amount payable under the new penalty notice must be repaid to the employer with interest at the appropriate rate running from the date when the sum (or, if more than one, the first of them) was paid or recovered.
- (5) In subsection (4)(b) “the appropriate rate” means the rate that, on the date mentioned in subsection (4)(b), was specified in section 17 of the Judgments Act 1838.
- (6) Subsection (7) applies where—

Status: Point in time view as at 06/04/2005.

Changes to legislation: There are currently no known outstanding effects for the National Minimum Wage Act 1998, Cross Heading: Enforcement. (See end of Document for details)

- (a) a new penalty notice is served by virtue of this section; and
 - (b) an appeal has been made under section 22(1) against the old penalty notice and has not been withdrawn or finally determined before the time when that notice is withdrawn.
- (7) In such a case—
- (a) that appeal (“the earlier appeal”) shall have effect after that time as if it were against the new penalty notice; and
 - (b) the employer may exercise his right of appeal under section 22 against the new penalty notice only if he withdraws the earlier appeal.
- (8) The reference in subsection (1) to a penalty notice does not include a penalty notice served by virtue of this section.
- (9) This section is without prejudice to any power arising apart from this section to serve two or more penalty notices in respect of the same enforcement notice.]

Textual Amendments

- F7** Ss. 22A-22F inserted (6.4.2005) by [Employment Relations Act 2004 \(c. 24\)](#), **ss. 46(1)**, 59(3); S.I. 2005/872, [art. 4](#), Sch. (with [art. 15](#))

Status:

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Changes to legislation:

There are currently no known outstanding effects for the National Minimum Wage Act 1998,
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