



# Small Business, Enterprise and Employment Act 2015

## 2015 CHAPTER 26

### PART 11

#### EMPLOYMENT

PROSPECTIVE

#### *Equal pay*

#### **147 Equal pay: transparency**

- (1) The Secretary of State must, as soon as possible and no later than 12 months after the passing of this Act, make regulations under section 78 of the Equality Act 2010 (gender pay gap information) for the purpose of requiring the publication of information showing whether there are differences in the pay of males and females.
- (2) The Secretary of State must consult such persons as the Secretary of State thinks appropriate on the details of such regulations prior to publication.

#### *Whistleblowing*

#### **148 Protected disclosures: reporting requirements**

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) In Part 4A (protected disclosures), after section 43F insert—

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### **“43FA Prescribed persons: duty to report on disclosures of information**

- (1) The Secretary of State may make regulations requiring a person prescribed for the purposes of section 43F to produce an annual report on disclosures of information made to the person by workers.
  - (2) The regulations must set out the matters that are to be covered in a report, but must not require a report to provide detail that would enable either of the following to be identified—
    - (a) a worker who has made a disclosure;
    - (b) an employer or other person in respect of whom a disclosure has been made.
  - (3) The regulations must make provision about the publication of a report, and such provision may include (but is not limited to) any of the following requirements—
    - (a) to send the report to the Secretary of State for laying before Parliament;
    - (b) to include the report in another report or in information required to be published by the prescribed person;
    - (c) to publish the report on a website.
  - (4) The regulations may make provision about the time period within which a report must be produced and published.
  - (5) Regulations under subsections (2) to (4) may make different provision for different prescribed persons.”
- (3) In section 236 (orders and regulations)—
- (a) in subsection (3), before “43K(4)” insert “ 43FA (but see subsection (3A)), ”;
  - (b) after subsection (3) insert—
 

“(3A) Subsection (3) does not apply to regulations under section 43FA that contain only the provision mentioned in section 43FA(2), (3) or (4).”

#### **Commencement Information**

**II** S. 148 in force at 1.1.2016 by S.I. 2015/2029, reg. 2(a)

### **149 Protection for applicants for employment etc in the health service**

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) After section 49A insert—

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## “PART 5A

### PROTECTION FOR APPLICANTS FOR EMPLOYMENT ETC IN THE HEALTH SERVICE

#### **49B Regulations prohibiting discrimination because of protected disclosure**

- (1) The Secretary of State may make regulations prohibiting an NHS employer from discriminating against an applicant because it appears to the NHS employer that the applicant has made a protected disclosure.
- (2) An “applicant”, in relation to an NHS employer, means an individual who applies to the NHS employer for—
  - (a) a contract of employment,
  - (b) a contract to do work personally, or
  - (c) appointment to an office or post.
- (3) For the purposes of subsection (1), an NHS employer discriminates against an applicant if the NHS employer refuses the applicant's application or in some other way treats the applicant less favourably than it treats or would treat other applicants in relation to the same contract, office or post.
- (4) Regulations under this section may, in particular—
  - (a) make provision as to circumstances in which discrimination by a worker or agent of an NHS employer is to be treated, for the purposes of the regulations, as discrimination by the NHS employer;
  - (b) confer jurisdiction (including exclusive jurisdiction) on employment tribunals or the Employment Appeal Tribunal;
  - (c) make provision for or about the grant or enforcement of specified remedies by a court or tribunal;
  - (d) make provision for the making of awards of compensation calculated in accordance with the regulations;
  - (e) make different provision for different cases or circumstances;
  - (f) make incidental or consequential provision, including incidental or consequential provision amending—
    - (i) an Act of Parliament (including this Act),
    - (ii) an Act of the Scottish Parliament,
    - (iii) a Measure or Act of the National Assembly for Wales, or
    - (iv) an instrument made under an Act or Measure within any of sub-paragraphs (i) to (iii).
- (5) Subsection (4)(f) does not affect the application of section 236(5) to the power conferred by this section.
- (6) “NHS employer” means an NHS public body prescribed by regulations under this section.
- (7) “NHS public body” means—
  - (a) the National Health Service Commissioning Board;
  - (b) a clinical commissioning group;

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- (c) a Special Health Authority;
  - (d) an NHS trust;
  - (e) an NHS foundation trust;
  - (f) the Care Quality Commission;
  - (g) Health Education England;
  - (h) the Health Research Authority;
  - (i) the Health and Social Care Information Centre;
  - (j) the National Institute for Health and Care Excellence;
  - (k) Monitor;
  - (l) a Local Health Board established under section 11 of the National Health Service (Wales) Act 2006;
  - (m) the Common Services Agency for the Scottish Health Service;
  - (n) Healthcare Improvement Scotland;
  - (o) a Health Board constituted under section 2 of the National Health Service (Scotland) Act 1978;
  - (p) a Special Health Board constituted under that section.
- (8) The Secretary of State must consult the Welsh Ministers before making regulations prescribing any of the following NHS public bodies for the purposes of the definition of “NHS employer”—
- (a) a Special Health Authority established under section 22 of the National Health Service (Wales) Act 2006;
  - (b) an NHS trust established under section 18 of that Act;
  - (c) a Local Health Board established under section 11 of that Act.
- (9) The Secretary of State must consult the Scottish Ministers before making regulations prescribing an NHS public body within any of paragraphs (m) to (p) of subsection (7) for the purposes of the definition of “NHS employer”.
- (10) For the purposes of subsection (4)(a)—
- (a) “worker” has the extended meaning given by section 43K, and
  - (b) a person is a worker of an NHS employer if the NHS employer is an employer in relation to the person within the extended meaning given by that section.”
- (3) In section 230(6) (interpretation of references to employees, workers etc) for “and 47B(3)” substitute “, 47B(3) and 49B(10) ”.
- (4) In section 236(3) (orders and regulations subject to affirmative procedure) after “47C,” insert “ 49B, ”.

**Commencement Information**

**12** S. 149 in force at 26.5.2015 by S.I. 2015/1329, reg. 2(e)

*Employment tribunals*

**150 Financial penalty for failure to pay sums ordered by employment tribunal etc**

- (1) The Employment Tribunals Act 1996 is amended as provided in subsections (2) to (6).

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(2) After section 37ZC insert—

## “PART 2A

### FINANCIAL PENALTIES FOR FAILURE TO PAY SUMS ORDERED TO BE PAID OR SETTLEMENT SUMS

#### **37A Sums to which financial penalty can relate**

- (1) This section has effect for the purposes of this Part.
- (2) “Financial award”—
  - (a) means a sum of money (or, if more than one, the sums of money) ordered by an employment tribunal on a claim involving an employer and a worker, or on a relevant appeal, to be paid by the employer to the worker, and
  - (b) includes—
    - (i) any sum (a “costs sum”) required to be paid in accordance with an order in respect of costs or expenses which relate to proceedings on, or preparation time relating to, the claim or a relevant appeal, and
    - (ii) in a case to which section 16 applies, a sum ordered to be paid to the Secretary of State under that section.
- (3) Subsection (2)(b)(i) applies irrespective of when the order was made or the amount of the costs sum was determined.
- (4) “Settlement sum” means a sum payable by an employer to a worker under the terms of a settlement in respect of which a certificate has been issued under section 19A(1).
- (5) “Relevant sum” means—
  - (a) a financial award, or
  - (b) a settlement sum.
- (6) “Relevant appeal”, in relation to a financial award, means an appeal against—
  - (a) the decision on the claim to which it relates,
  - (b) a decision to make, or not to make, an order in respect of a financial award (including any costs sum) on the claim,
  - (c) the amount of any such award, or
  - (d) any decision made on an appeal within paragraphs (a) to (c) or this paragraph.
- (7) Sections 37B to 37D apply for the purposes of calculating the unpaid amount on any day of a relevant sum.

#### **37B Financial award: unpaid amount**

- (1) In the case of a financial award, the unpaid amount on any day means the amount outstanding immediately before that day in respect of—
  - (a) the initial amount of the financial award (see subsection (2)), and

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- (b) interest payable in respect of the financial award by virtue of section 14.
- (2) The initial amount of a financial award is—
- (a) in a case to which section 16 applies, the monetary award within the meaning of that section (see section 17(3)), together with any costs sum, and
  - (b) in any other case, the sum or sums of money ordered to be paid (including any costs sum).
- (3) An amount in respect of a financial award is not to be regarded as outstanding—
- (a) when the worker could make an application for an order for a costs sum in relation to—
    - (i) proceedings on the claim to which the financial award relates,
    - (ii) proceedings on a relevant appeal,
  - (b) when the worker has made such an application but the application has not been withdrawn or finally determined,
  - (c) when the employer or worker could appeal against—
    - (i) the decision on the claim to which it relates,
    - (ii) a decision to make, or not to make, a financial award (including any costs sum) on the claim,
    - (iii) the amount of any such award, or
    - (iv) any decision made on an appeal within sub-paragraphs (i) to (iii) or this sub-paragraph,
 but has not done so, or
  - (d) when the employer or worker has made such an appeal but the appeal has not been withdrawn or finally determined.

### **37C Settlement sum: unpaid amount**

- (1) In the case of a settlement sum, the unpaid amount on any day means the amount outstanding immediately before that day in respect of—
- (a) the settlement sum, and
  - (b) interest (if any) calculated in accordance with the settlement (within the meaning of section 19A).
- (2) Subject to section 37D(2) and (3), an amount in respect of a settlement sum is not to be regarded as outstanding if the settlement sum is not recoverable under section 19A(3).

### **37D Unpaid amount of relevant sum: further provision**

- (1) Subsections (2) and (3) apply where—
- (a) a relevant sum is to be paid by instalments,
  - (b) any instalment is not paid on or before the day on which it is due to be paid, and
  - (c) a warning notice (see section 37E) is given in consequence of the failure to pay that instalment (“the unpaid instalment”).
- (2) For the purposes of calculating the unpaid amount for—

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- (a) that warning notice, and
  - (b) any penalty notice given in respect of that warning notice,any remaining instalments (whether or not yet due) are to be treated as having been due on the same day as the unpaid instalment.
- (3) Accordingly, the amount outstanding in respect of the financial award or settlement sum is to be taken to be—
  - (a) the aggregate of—
    - (i) the unpaid instalment, and
    - (ii) any remaining instalments,including, in the case of a settlement sum, any amount which is not recoverable under section 19A(3) by reason only of not being due,
  - (b) interest on those amounts calculated in accordance with section 37B(1)(b) or 37C(1)(b) (and subsection (2)).
- (4) Subsections (2) and (3) are not to be taken to affect the time at which any remaining instalment is due to be paid by the employer.
- (5) The provisions of this Part apply where a financial award consists of two or more sums (whether or not any of them is a costs sum) which are required to be paid at different times as if—
  - (a) it were a relevant sum to be paid by instalments, and
  - (b) those sums were the instalments.
- (6) Where a payment by an employer is made, or purported to be made, in respect of a relevant sum, an enforcement officer may determine whether, and to what extent, the payment is to be treated as being—
  - (a) in respect of that relevant sum or instead in respect of some other amount owed by the employer;
  - (b) in respect of the initial amount or interest on it, in the case of a payment treated as being in respect of the relevant sum.

### **37E Warning notice**

- (1) This section applies where an enforcement officer considers that an employer who is required to pay a relevant sum has failed—
  - (a) in the case of a relevant sum which is to be paid by instalments, to pay an instalment on or before the day on which it is due to be paid, or
  - (b) in any other case, to pay the relevant sum in full on or before the day on which it is due to be paid.
- (2) The officer may give the employer a notice (a “warning notice”) stating the officer's intention to impose a financial penalty in respect of the relevant sum unless before a date specified in the warning notice (“the specified date”) the employer has paid in full the amount so specified (“the specified amount”).

This is subject to subsection (3).
- (3) Where a penalty notice has previously been given in respect of the relevant sum, the officer may not give a warning notice until—

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- (a) 3 months have elapsed since the end of the relevant period (within the meaning of section 37H) relating to the last penalty notice given in respect of the relevant sum, and
  - (b) if the relevant sum is to be paid by instalments, the last instalment has become due for payment.
- (4) The specified date must be after the end of the period of 28 days beginning with the day on which the warning notice is given.
- (5) The specified amount must be the unpaid amount of the relevant sum on the day on which the warning notice is given.
- (6) A warning notice must identify the relevant sum and state—
- (a) how the specified amount has been calculated;
  - (b) the grounds on which it is proposed to impose a penalty;
  - (c) the amount of the financial penalty that would be imposed if no payment were made in respect of the relevant sum before the specified date;
  - (d) that the employer may before the specified date make representations about the proposal to impose a penalty, including representations—
    - (i) about payments which the employer makes in respect of the relevant sum after the warning notice is given;
    - (ii) about the employer's ability to pay both a financial penalty and the relevant sum;
  - (e) how any such representations may be made.
- (7) The statement under subsection (6)(e) must include provision for allowing representations to be made by post (whether or not it also allows them to be made in any other way).
- (8) If the employer pays the specified amount before the specified date, the relevant sum is to be treated for the purposes of this Part as having been paid in full.
- (9) Subsection (8) is not to be taken to affect the liability of the employer to pay any increase in the unpaid amount between the date of the warning notice and the date of payment.

### **37F Penalty notice**

- (1) This section applies where an enforcement officer—
- (a) has given a warning notice to an employer, and
  - (b) is satisfied that the employer has failed to pay the specified amount in full before the specified date.
- (2) The officer may give the employer a notice (a “penalty notice”) requiring the employer to pay a financial penalty to the Secretary of State.
- (3) A penalty notice must identify the relevant sum and state—
- (a) the grounds on which the penalty notice is given;
  - (b) the unpaid amount of the relevant sum on the specified date and how it has been calculated;
  - (c) the amount of the financial penalty (see subsections (4) to (6));



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- (d) how the penalty must be paid;
  - (e) the period within which the penalty must be paid;
  - (f) how the employer may pay a reduced penalty instead of the financial penalty;
  - (g) the amount of the reduced penalty (see subsection (8));
  - (h) how the employer may appeal against the penalty notice;
  - (i) the consequences of non-payment.
- (4) Subject to subsections (5) and (6), the amount of the financial penalty is 50% of the unpaid amount of the relevant sum on the specified date.
- (5) If the unpaid amount on the specified date is less than £200, the amount of the penalty is £100.
- (6) If the unpaid amount on the specified date is more than £10,000, the amount of the financial penalty is £5,000.
- (7) The period specified under subsection (3)(e) must be a period of not less than 28 days beginning with the day on which the penalty notice is given.
- (8) The amount of the reduced penalty is 50% of the amount of the financial penalty.
- (9) Subsection (10) applies if, within the period of 14 days beginning with the day on which the penalty notice is given, the employer—
- (a) pays the unpaid amount of the relevant sum on the specified date (as stated in the notice under subsection (3)(b)), and
  - (b) pays the reduced penalty to the Secretary of State.
- (10) The employer is to be treated—
- (a) for the purposes of this Part, as having paid the relevant sum in full, and
  - (b) by paying the reduced penalty, as having paid the whole of the financial penalty.
- (11) Subsection (10)(a) is not to be taken to affect the liability of the employer to pay any increase in the unpaid amount of the relevant sum between the specified date and the date of payment.

### **37G Appeal against penalty notice**

- (1) An employer to whom a penalty notice is given may, before the end of the period specified under section 37F(3)(e) (period within which penalty must be paid), appeal against—
- (a) the penalty notice; or
  - (b) the amount of the financial penalty.
- (2) An appeal under subsection (1) lies to an employment tribunal.
- (3) An appeal under subsection (1) may be made on one or more of the following grounds—
- (a) that the grounds stated in the penalty notice under section 37F(3)(a) were incorrect;

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- (b) that it was unreasonable for the enforcement officer to have given the notice;
  - (c) that the calculation of an amount stated in the penalty notice was incorrect.
- (4) On an appeal under subsection (1), an employment tribunal may—
- (a) allow the appeal and cancel the penalty notice;
  - (b) in the case of an appeal made on the ground that the calculation of an amount stated in the penalty notice was incorrect, allow the appeal and substitute the correct amount for the amount stated in the penalty notice;
  - (c) dismiss the appeal.
- (5) Where an employer has made an appeal under subsection (1), the penalty notice is not enforceable until the appeal has been withdrawn or finally determined.

### **37H Interest and recovery**

- (1) This section applies if all or part of a financial penalty which an employer is required by a penalty notice to pay is unpaid at the end of the relevant period.
- (2) The relevant period is—
- (a) if no appeal is made under section 37G(1) relating to the penalty notice, the period specified in the penalty notice under section 37F(3)(e);
  - (b) if such an appeal is made, the period ending when the appeal is withdrawn or finally determined.
- (3) The outstanding amount of the financial penalty for the time being carries interest—
- (a) at the rate that, on the last day of the relevant period, was specified in section 17 of the Judgments Act 1838,
  - (b) from the end of the relevant period until the time when the amount of interest calculated under this subsection equals the amount of the financial penalty,
- (and does not also carry interest as a judgment debt under that section).
- (4) The outstanding amount of a penalty and any interest is recoverable—
- (a) in England and Wales, if the county court so orders, under section 85 of the County Courts Act 1984 or otherwise as if the sum were payable under an order of the county court;
  - (b) in Scotland, by diligence as if the penalty notice were an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.
- (5) Any amount received by the Secretary of State under this Part is to be paid into the Consolidated Fund.

### **37I Withdrawal of warning notice**

- (1) Where—

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- (a) a warning notice has been given (and not already withdrawn),
  - (b) it appears to an enforcement officer that—
    - (i) the notice incorrectly omits any statement or is incorrect in any particular, or
    - (ii) the warning notice was given in contravention of section 37E(3), and
  - (c) if a penalty notice has been given in relation to the warning notice, any appeal made under section 37G(1) has not been determined,

the officer may withdraw the warning notice by giving notice of withdrawal to the employer.
- (2) Where a warning notice is withdrawn, no penalty notice may be given in relation to it.
- (3) Where a warning notice is withdrawn after a penalty notice has been given in relation to it—
  - (a) the penalty notice ceases to have effect;
  - (b) any sum paid by or recovered from the employer by way of financial penalty payable under 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;
  - (c) any appeal under section 37G(1) relating to the penalty notice must be dismissed.
- (4) In subsection (3)(b), 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.
- (5) A notice of withdrawal under this section must indicate the effect of the withdrawal (but a failure to do so does not make the notice of withdrawal ineffective).
- (6) Withdrawal of a warning notice relating to a relevant sum does not preclude a further warning notice being given in relation to that sum (subject to section 37E(3)).

### **37J Withdrawal of penalty notice**

- (1) Where—
  - (a) a penalty notice has been given (and not already withdrawn or cancelled), and
  - (b) it appears to an enforcement officer that—
    - (i) the notice incorrectly omits any statement required by section 37F(3), or
    - (ii) any statement so required is incorrect in any particular,

the officer may withdraw it by giving notice of the withdrawal to the employer.
- (2) Where a penalty notice is withdrawn and no replacement penalty notice is given in accordance with section 37K—
  - (a) any sum paid by or recovered from the employer by way of financial penalty payable under the notice must be repaid to the employer with

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interest at the appropriate rate running from the date when the sum was paid or recovered;

- (b) any appeal under section 37G(1) relating to the penalty notice must be dismissed.
- (3) In a case where subsection (2) applies, the notice of withdrawal must indicate the effect of that subsection (but a failure to do so does not make the withdrawal ineffective).
- (4) In subsection (2)(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.

### **37K Replacement penalty notice**

- (1) Where an enforcement officer—
- (a) withdraws a penalty notice (“the original penalty notice”) under section 37J, and
  - (b) is satisfied that the employer failed to pay the specified amount in full before the specified date in accordance with the warning notice in relation to which the original penalty notice was given,
- the officer may at the same time give another penalty notice in relation to the warning notice (“the replacement penalty notice”).
- (2) The replacement penalty notice must—
- (a) indicate the differences between it and the original penalty notice that the enforcement officer reasonably considers material, and
  - (b) indicate the effect of section 37L.
- (3) Failure to comply with subsection (2) does not make the replacement penalty notice ineffective.
- (4) Where a replacement penalty notice is withdrawn under section 37J, no further replacement penalty notice may be given under subsection (1) pursuant to the withdrawal.
- (5) Nothing in this section affects any power that arises apart from this section to give a penalty notice.

### **37L Effect of replacement penalty notice**

- (1) This section applies where a penalty notice is withdrawn under section 37J and a replacement penalty notice is given in accordance with section 37K.
- (2) If an appeal relating to the original penalty notice has been made under section 37G(1) and has not been withdrawn or finally determined before the time when that notice is withdrawn—
- (a) the appeal (“the earlier appeal”) is to have effect after that time as if it were against the replacement penalty notice, and
  - (b) the employer may exercise the right under section 37G to appeal against the replacement penalty notice only after withdrawing the earlier appeal.

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- (3) If a sum was paid by or recovered from the employer by way of financial penalty under the original penalty notice—
  - (a) an amount equal to that sum (or, if more than one, the total of those sums) is to be treated as having been paid in respect of the replacement penalty notice, and
  - (b) any amount by which that sum (or total) exceeds the amount of the financial penalty payable under the replacement 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.
- (4) In subsection (3)(b) “the appropriate rate” means the rate that, on the date mentioned in that provision, was specified in section 17 of the Judgments Act 1838.

### **37M Enforcement officers**

The Secretary of State may appoint or authorise persons to act as enforcement officers for the purposes of this Part.

### **37N Power to amend Part 2A**

- (1) The Secretary of State may by regulations—
  - (a) amend subsection (5) or (6) of section 37F by substituting a different amount;
  - (b) amend subsection (4) or (8) of that section by substituting a different percentage;
  - (c) amend section 37E(4) or 37F(7) or (9) by substituting a different number of days.
- (2) Any provision that could be made by regulations under this section may instead be included in an order under section 12A(12).

### **37O Modification in particular cases**

- (1) The Secretary of State may by regulations make provision for this Part to apply with modifications in cases where—
  - (a) two or more financial awards were made against an employer on claims relating to different workers that were considered together by an employment tribunal, or
  - (b) settlement sums are payable by an employer under two or more settlements in cases dealt with together by a conciliation officer.
- (2) Regulations under subsection (1) may in particular provide for any provision of this Part to apply as if any such financial awards or settlement sums, taken together, were a single relevant sum.
- (3) The Secretary of State may by regulations make provision for this Part to apply with modifications in cases where a financial award has been made against an employer but is not regarded as outstanding by virtue only of the fact that an application for an order for a costs sum has not been finally determined (or

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any appeal within section 37B(3)(c) so far as relating to the application could still be made or has not been withdrawn or finally determined).

- (4) Regulations under subsection (3) may in particular provide—
- (a) for any provision of this Part to apply, or to apply if the enforcement officer so determines, as if the application had not been, and could not be, made;
  - (b) for any costs sum the amount of which is subsequently determined, or the order for which is subsequently made, to be treated for the purposes of this Part as a separate relevant sum.

### **37P Giving of notices**

- (1) For the purposes of section 7 of the Interpretation Act 1978 in its application to this Part, the proper address of an employer is—
- (a) if the employer has notified an enforcement officer of an address at which the employer is willing to accept notices, that address;
  - (b) otherwise—
    - (i) in the case of a body corporate, the address of the body's registered or principal office;
    - (ii) in the case of a partnership or an unincorporated body or association, the principal office of the partnership, body or association;
    - (iii) in any other case, the last known address of the person in question.
- (2) In the case of—
- (a) a body corporate registered outside the United Kingdom,
  - (b) a partnership carrying on business outside the United Kingdom, or
  - (c) an unincorporated body or association with offices outside the United Kingdom,

the references in subsection (1) to its principal office include references to its principal office within the United Kingdom (if any).

### **37Q Financial penalties for non-payment: interpretation**

- (1) In this Part, the following terms have the following meanings—
- “claim”—
- (a) means anything that is referred to in the relevant legislation as a claim, a complaint or a reference, other than a reference made by virtue of section 122(2) or 128(2) of the Equality Act 2010 (reference by court of question about a non-discrimination or equality rule etc), and
  - (b) also includes an application, under regulations made under section 45 of the Employment Act 2002, for a declaration that a person is a permanent employee;
- “costs sum” has the meaning given by section 37A;
- “employer” has the same meaning as in section 12A;
- “enforcement officer” means a person appointed or authorised to act under section 37M;

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*Status: Point in time view as at 02/05/2016. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, PART 11. (See end of Document for details)*

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“financial award” has the meaning given by section 37A;  
“penalty notice” has the meaning given by section 37F;  
“relevant appeal” has the meaning given by section 37A;  
“relevant sum” has the meaning given by section 37A;  
“settlement sum” has the meaning given by section 37A;  
“specified amount” and “specified date”, in relation to a warning notice or a penalty notice given in relation to it, have the meanings given by section 37E(2);  
“unpaid amount”—  
    (a) in relation to a financial award, has the meaning given by section 37B;  
    (b) in relation to a settlement sum, has the meaning given by section 37C;  
subject, in each case, to section 37D;  
“warning notice” has the meaning given by section 37E(2);  
“worker” has the same meaning as in section 12A.

- (2) References in this Part to an employer, in relation to a warning notice or penalty notice, are to the person to whom the notice is given (whether or not the person is an employer at the time in question).
  - (3) For the purposes of this Part a relevant sum is to be regarded as having been paid in full when the amount unpaid in respect of that sum on the date of payment has been paid.
  - (4) For the purposes of this Part, a penalty notice is given in relation to a warning notice if it is given as the result of a failure by the employer to pay the specified amount before the specified date.
  - (5) The Secretary of State may by regulations amend this section so as to alter the meaning of “claim”.
  - (6) Any provision that could be made by regulations under subsection (5) may instead be included in an order under section 12A(12).”
- (3) In section 12A (financial penalties), after subsection (12) insert—
- “(12A) Any provision that could be made by an order under subsection (12) may instead—
- (a) in the case of provision that could be made under paragraph (a) or (b) of that subsection, be included in regulations under section 37N;
  - (b) in the case of provision that could be made under paragraph (c) of that subsection, be included in regulations under section 37Q.”
- (4) In section 19A (conciliation: recovery of sums payable under settlements), after subsection (10) insert—
- “(10A) A term of any document which is a relevant document for the purposes of subsection (1) is void to the extent that it purports to prevent the disclosure of any provision of any such document to a person appointed or authorised to act under section 37M.”
- (5) In section 41 (orders, regulations and rules), in subsection (2)—

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- (a) after “38(4),” omit “and”;
  - (b) after “40,” insert “ and no regulations are to be made under section 37N, 37O or 37Q(5), ”;
  - (c) for “or order” substitute “ , order or regulations ”,  
and in subsection (3)(b) for “regulations” substitute “ any other regulations ”.
- (6) In section 42(1) (interpretation), after “In this Act” insert “ (except where otherwise expressly provided) ”.
- (7) In section 251B of the Trade Union and Labour Relations (Consolidation) Act 1992 (prohibition on disclosure of information by ACAS), in subsection (2), after paragraph (c) insert—
- “(ca) the disclosure is made for the purpose of enabling or assisting an enforcement officer within the meaning of Part 2A of the Employment Tribunals Act 1996 to carry out the officer's functions under that Part.”.
- (8) The amendments made by this section have effect only in relation to relevant sums where—
- (a) in the case of a financial award, the decision of the employment tribunal on the claim to which the financial award relates is made on or after the day on which this section comes into force;
  - (b) in the case of a settlement sum, the certificate under section 19A(1) of the Employment Tribunals Act 1996 in respect of the settlement under whose terms it is payable is issued on or after that day.

#### **Commencement Information**

**I3** S. 150 in force at 6.4.2016 by [S.I. 2016/321](#), [reg. 3\(d\)](#)

### **151 Employment tribunal procedure regulations: postponements**

- (1) The Employment Tribunals Act 1996 is amended as follows.
- (2) In section 7 (employment tribunal procedure regulations), after subsection (3ZA) insert—
- “(3ZB) Provision in employment tribunal procedure regulations about postponement of hearings may include provision for limiting the number of relevant postponements available to a party to proceedings.
- (3ZC) For the purposes of subsection (3ZB)—
- (a) “relevant postponement”, in relation to a party to proceedings, means the postponement of a hearing granted on the application of that party in—
    - (i) the proceedings, or
    - (ii) any other proceedings identified in accordance with the regulations,  
except in circumstances determined in accordance with the regulations, and
  - (b) “postponement” includes adjournment.”



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*Status: Point in time view as at 02/05/2016. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, PART 11. (See end of Document for details)*

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(3) In section 13 (costs and expenses), after subsection (2) insert—

“(3) Provision included in employment tribunal procedure regulations under subsection (1) must include provision for requiring an employment tribunal, in any proceedings in which a late postponement application has been granted, to consider whether to make an award against the party who made the application in respect of any costs or expenses connected with the postponement, except in circumstances specified in the regulations.

(4) For the purposes of subsection (3)—

- (a) a late postponement application is an application for the postponement of a hearing in the proceedings which is made after a time determined in accordance with the regulations (whether before or after the hearing has begun), and
- (b) “postponement” includes adjournment.”

(4) In section 13A (payments in respect of preparation time), after subsection (2) insert—

“(2A) Provision included in employment tribunal procedure regulations under subsection (1) must include provision for requiring an employment tribunal, in any proceedings in which a late postponement application has been granted, to consider whether to make an order of the kind mentioned in subsection (1) against the party who made the application in respect of any time spent in connection with the postponement, except in circumstances specified in the regulations.

(2B) For the purposes of subsection (2A)—

- (a) a late postponement application is an application for the postponement of a hearing in the proceedings which is made after a time determined in accordance with the regulations (whether before or after the hearing has begun), and
- (b) “postponement” includes adjournment.”

#### *National minimum wage*

### **152 Amount of financial penalty for underpayment of national minimum wage**

(1) Section 19A of the National Minimum Wage Act 1998 (notices of underpayment: financial penalty) is amended as follows.

(2) In subsection (4), for the words following “to be” substitute “ the total of the amounts for all workers to whom the notice relates calculated in accordance with subsections (5) to (5B). ”

(3) For subsection (5) substitute—

“(5) The amount for each worker to whom the notice relates is the relevant percentage of the amount specified under section 19(4)(c) in respect of each pay reference period specified under section 19(4)(b).

(5A) In subsection (5), “the relevant percentage”, in relation to any pay reference period, means 100%.

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*Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, PART 11. (See end of Document for details)*

- (5B) If the amount as calculated under subsection (5) for any worker would be more than £20,000, the amount for the worker taken into account in calculating the financial penalty is to be £20,000.”
- (4) Omit subsection (7).
- (5) In subsection (8)—
- (a) in paragraph (a), for “(4)” substitute “ (5A) ”;
  - (b) in paragraph (b), for “(6) or (7)” substitute “ (5B) or (6) ”.
- (6) The amendments made by this section have effect in relation to notices of underpayment which relate only to pay reference periods commencing on or after the day on which this section comes into force.

#### Commencement Information

**I4** [S. 152](#) in force at 26.5.2015 by [S.I. 2015/1329](#), [reg. 2\(f\)](#)

### *Exclusivity in zero hours contracts*

#### **153 Exclusivity terms unenforceable in zero hours contracts**

- (1) The Employment Rights Act 1996 is amended as follows.
- (2) After section 27 insert—

#### **“PART 2A**

#### **ZERO HOURS WORKERS**

#### **27A Exclusivity terms unenforceable in zero hours contracts**

- (1) In this section “zero hours contract” means a contract of employment or other worker's contract under which—
  - (a) the undertaking to do or perform work or services is an undertaking to do so conditionally on the employer making work or services available to the worker, and
  - (b) there is no certainty that any such work or services will be made available to the worker.
- (2) For this purpose, an employer makes work or services available to a worker if the employer requests or requires the worker to do the work or perform the services.
- (3) Any provision of a zero hours contract which—
  - (a) prohibits the worker from doing work or performing services under another contract or under any other arrangement, or
  - (b) prohibits the worker from doing so without the employer's consent, is unenforceable against the worker.

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*Status: Point in time view as at 02/05/2016. This version of this part contains provisions that are prospective.*

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- (4) Subsection (3) is to be disregarded for the purposes of determining any question whether a contract is a contract of employment or other worker's contract.

### **27B Power to make further provision in relation to zero hours workers**

- (1) The Secretary of State may by regulations make provision for the purpose of securing that zero hours workers, or any description of zero hours workers, are not restricted by any provision or purported provision of their contracts or arrangements with their employers from doing any work otherwise than under those contracts or arrangements.
- (2) In this section, “zero hours workers” means—
- (a) employees or other workers who work under zero hours contracts;
  - (b) individuals who work under non-contractual zero hours arrangements;
  - (c) individuals who work under worker's contracts of a kind specified by the regulations.
- (3) The worker's contracts which may be specified by virtue of subsection (2)(c) are those in relation to which the Secretary of State considers it appropriate for provision made by the regulations to apply, having regard, in particular, to provision made by the worker's contracts as to income, rate of pay or working hours.
- (4) In this section “non-contractual zero hours arrangement” means an arrangement other than a worker's contract under which—
- (a) an employer and an individual agree terms on which the individual will do any work where the employer makes it available to the individual and the individual agrees to do it, but
  - (b) the employer is not required to make any work available to the individual, nor the individual required to accept it,
- and in this section “employer”, in relation to a non-contractual zero hours arrangement, is to be read accordingly.
- (5) Provision that may be made by regulations under subsection (1) includes provision for—
- (a) modifying—
    - (i) zero hours contracts;
    - (ii) non-contractual zero hours arrangements;
    - (iii) other worker's contracts;
  - (b) imposing financial penalties on employers;
  - (c) requiring employers to pay compensation to zero hours workers;
  - (d) conferring jurisdiction on employment tribunals;
  - (e) conferring rights on zero hours workers.
- (6) Provision that may be made by virtue of subsection (5)(a) may, in particular, include provision for exclusivity terms in prescribed categories of worker's contracts to be unenforceable, in cases in which section 27A does not apply.

For this purpose an exclusivity term is any term by virtue of which a worker is restricted from doing any work otherwise than under the worker's contract.

*Status: Point in time view as at 02/05/2016. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, PART 11. (See end of Document for details)*

- (7) Regulations under this section may—
  - (a) make different provision for different purposes;
  - (b) make provision subject to exceptions.
- (8) For the purposes of this section—
  - (a) “zero hours contract” has the same meaning as in section 27A;
  - (b) an employer makes work available to an individual if the employer requests or requires the individual to do it;
  - (c) references to work and doing work include references to services and performing them.
- (9) Nothing in this section is to be taken to affect any worker's contract except so far as any regulations made under this section expressly apply in relation to it.”
- (3) In section 236(3) (orders and regulations subject to affirmative procedure), after “made under section” insert “ 27B, ”.

#### Commencement Information

**I5** S. 153 in force at 26.5.2015 by S.I. 2015/1329, reg. 2(g)

### *Public sector exit payments*

#### **154 Regulations in connection with public sector exit payments**

- (1) Regulations may make provision requiring the repayment of some or all of any qualifying exit payment in qualifying circumstances (see section 155).
- (2) The regulations may make such other provision in connection with the repayment mentioned in subsection (1) as the person making the regulations thinks fit.
- (3) A qualifying exit payment is a payment of a prescribed description—
  - (a) made to an employee of a prescribed public sector authority in consequence of the employee leaving employment, or
  - (b) made to a holder of a prescribed public sector office in consequence of the office holder leaving office.
- (4) The descriptions of payment which may be prescribed by virtue of subsection (3) include—
  - (a) any payment on account of dismissal by reason of redundancy (read in accordance with section 139 of the Employment Rights Act 1996),
  - (b) any payment on voluntary exit,
  - (c) any payment to reduce or eliminate an actuarial reduction to a pension on early retirement,
  - (d) any severance payment or other ex gratia payment,
  - (e) any payment in respect of an outstanding entitlement (such as to annual leave or an allowance),
  - (f) any payment of compensation under the terms of a contract,
  - (g) any payment in lieu of notice, and
  - (h) any payment in the form of shares or share options.

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*Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, PART 11. (See end of Document for details)*

- (5) If more than one qualifying exit payment is payable to an employee or office holder the provision made in the exit payments regulations is to apply in relation to the aggregated payments.
- (6) For the purposes of this section and sections 155 and 157—
- an “exit payee” is an employee or office holder to whom any qualifying exit payment is payable,
  - the “exit payments regulations” are regulations under subsection (1),
  - a “responsible authority” means an authority by which any qualifying exit payments are payable, and
  - “prescribed” means prescribed by the exit payments regulations.

#### Commencement Information

**16** S. 154 in force at 1.1.2016 by S.I. 2015/2029, reg. 2(b)

### 155 Section 154(1): further provision

- (1) For the purposes of section 154(1) circumstances are qualifying circumstances if—
- (a) an exit payee becomes—
    - (i) an employee or a contractor of a prescribed public sector authority, or
    - (ii) a holder of a prescribed public sector office,
  - (b) less than one year has elapsed between the exit payee leaving the employment or office in respect of which a qualifying exit payment is payable and the event mentioned in paragraph (a), and
  - (c) any other prescribed conditions are met.
- (2) The exit payment regulations may, in particular, make provision—
- (a) exempting an exit payee from the requirement to repay in the prescribed circumstances;
  - (b) exempting some or all of a qualifying exit payment from that requirement in the prescribed circumstances;
  - (c) for the amount required to be repaid to be tapered according to the time which has elapsed between an exit payee leaving employment or office and the event mentioned in subsection (1)(a);
  - (d) imposing duties, in connection with a qualifying exit payment, on—
    - (i) an exit payee,
    - (ii) a responsible authority, and
    - (iii) a subsequent authority;
  - (e) as to the arrangements required to be made by an exit payee to repay to a responsible authority the amount of a qualifying exit payment required to be repaid;
  - (f) for preventing an exit payee from becoming an employee or a contractor, or a holder of a public sector office, as mentioned in subsection (1)(a) until the arrangements required by virtue of paragraph (e) have been made;
  - (g) as to the consequences of an exit payee failing to repay the amount required to be repaid (including the dismissal of the exit payee).
- (3) In subsection (2)(d)(iii) a “subsequent authority” means—

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- (a) in relation to an exit payee who becomes an employee or a contractor, a public sector authority of which the exit payee becomes an employee or a contractor, or
  - (b) in relation to an exit payee who becomes a holder of a public sector office, an authority which is responsible for the appointment.
- (4) For the purposes of this section an exit payee becomes a contractor of a public sector authority if the exit payee provides services to the authority under a contract for services.

#### Commencement Information

**I7** S. 155 in force at 1.1.2016 by S.I. 2015/2029, reg. 2(b)

### 156 Power to make regulations to be exercisable by the Treasury or Scottish Ministers

- (1) The power to make regulations under section 154(1) is exercisable—
- (a) by the Scottish Ministers in relation to payments made by a relevant Scottish authority;
  - (b) by the Treasury in relation to any other payments, (but this subsection is subject to subsection (2)).
- (2) Where the relevant Scottish authority is the Scottish Administration the power to make regulations under section 154(1) is exercisable by the Treasury (instead of the Scottish Ministers) in relation to payments made to—
- (a) the holders of offices in the Scottish Administration which are not ministerial offices (read in accordance with section 126(8) of the Scotland Act 1998), and
  - (b) the members of the staff of the Scottish Administration (read in accordance with section 126(7)(b) of that Act).
- (3) In this section “relevant Scottish authority” means—
- (a) the Scottish Parliamentary Corporate Body, or
  - (b) any authority which wholly or mainly exercises functions which would be within devolved competence (within the meaning of section 54 of the Scotland Act 1998).
- (4) The first regulations under section 154(1)—
- (a) if made by the Treasury, are subject to affirmative resolution procedure;
  - (b) if made by the Scottish Ministers, are subject to the affirmative procedure.
- (5) Any other regulations under section 154(1)—
- (a) if made by the Treasury, are subject to negative resolution procedure;
  - (b) if made by the Scottish Ministers, are subject to the negative procedure.

#### Commencement Information

**I8** S. 156 in force at 1.1.2016 by S.I. 2015/2029, reg. 2(b)

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*Status: Point in time view as at 02/05/2016. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, PART 11. (See end of Document for details)*

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## **157 Power of Secretary of State to waive repayment requirement**

- (1) The Secretary of State may waive the whole or any part of any repayment required by regulations made by the Treasury under section 154(1).
- (2) The Scottish Ministers may waive the whole or any part of any repayment required by regulations made by the Scottish Ministers under section 154(1).
- (3) A waiver may be given in respect of—
  - (a) a particular exit payee, or
  - (b) a description of exit payees.
- (4) The exit payments regulations made by the Treasury may—
  - (a) make provision for the power under subsection (1) to be exercisable on behalf of the Secretary of State by a prescribed person,
  - (b) make provision for a waiver to be given only—
    - (i) with the consent of the Treasury, or
    - (ii) following compliance with any directions given by the Treasury, and
  - (c) make provision as to the publication of information about any waivers given.
- (5) The exit payments regulations made by the Scottish Ministers may—
  - (a) make provision for the power under subsection (2) to be exercisable on behalf of the Scottish Ministers by a prescribed person,
  - (b) make provision for a waiver to be given only—
    - (i) with the consent of the Scottish Ministers, or
    - (ii) following compliance with any directions given by the Scottish Ministers,

(where provision is made by virtue of paragraph (a)), and
  - (c) make provision as to the publication of information about any waivers given.
- (6) The exit payments regulations made by the Treasury may make provision for the power conferred on the Secretary of State by subsection (1) to be exercised instead—
  - (a) by the Department of Finance and Personnel in Northern Ireland, in relation to qualifying exit payments made by responsible authorities who wholly or mainly exercise functions which could be conferred by provision included in an Act of the Northern Ireland Assembly made without the consent of the Secretary of State (see sections 6 to 8 of the Northern Ireland Act 1998);
  - (b) by the Welsh Ministers, in relation to qualifying exit payments made by responsible authorities who wholly or mainly exercise functions which could be conferred by provision falling within the legislative competence of the National Assembly for Wales (as defined in section 108 of the Government of Wales Act 2006).

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### **Commencement Information**

**19** S. 157 in force at 1.1.2016 by S.I. 2015/2029, reg. 2(b)

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*Status: Point in time view as at 02/05/2016. This version of this part contains provisions that are prospective.*

*Changes to legislation: There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, PART 11. (See end of Document for details)*

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### *Concessionary coal*

#### **158 Concessionary coal**

- (1) This section applies to an entitlement to concessionary coal or payments in lieu of concessionary coal—
  - (a) arising in connection with employment by a company which on 1 January 2014 was carrying on the business of deep coal-mining in the United Kingdom, and
  - (b) which is not being met otherwise than by virtue of this section.
- (2) The Secretary of State may, out of money provided by Parliament, make such payments as the Secretary of State considers appropriate for the purpose of securing that an entitlement to which this section applies is met.
- (3) Payments under this section may be made only with the consent of the Treasury.
- (4) “Concessionary coal” means coal or other solid fuel supplied free of charge or at reduced prices.

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#### **Commencement Information**

**I10** S. 158 in force at 26.5.2015 by S.I. 2015/1329, reg. 2(h)



**Status:**

Point in time view as at 02/05/2016. This version of this part contains provisions that are prospective.

**Changes to legislation:**

There are currently no known outstanding effects for the Small Business, Enterprise and Employment Act 2015, PART 11.