



# 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))

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## **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 <sup>M1</sup>Employment Rights Act 1996 (protection of wages), or
  - (b) in relation to Northern Ireland, Part IV of the <sup>M2</sup>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 <sup>M3</sup>Employment Rights Act 1996, or
  - (b) Part IV of the <sup>M4</sup>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.
- (3) The same 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.

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- (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 incorrect;
- 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 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.

**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 <sup>M5</sup>Employment Rights Act 1996 (deductions from worker's wages in contravention of section 13 of that

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- 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 <sup>M6</sup>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))
- 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—
- the amount of the financial penalty;
  - 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);
  - the period to which the financial penalty relates;
  - the respects in which the officer is of the opinion that the enforcement notice has not been complied with; and
  - 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.

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- (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—
- (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—

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- (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
  - (b) that the penalty notice is incorrect in some of the particulars which affect the amount of the financial penalty; or
  - (c) that the calculation of the amount of the financial penalty 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.
  - (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.

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**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))

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