



Employment Tribunals Act 1996

1996 CHAPTER 17

[^{F1}PART 2A

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

Annotations:

Amendments (Textual)

- F1** Pt. 2A inserted (6.4.2016) by [Small Business, Enterprise and Employment Act 2015 \(c. 26\)](#), ss. **150(2)**, **164(1)** (with s. **150(8)**); S.I. 2016/321, reg. 3(d)

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—

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- (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
 - (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—
- (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—

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- (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—
- (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

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- (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));
 - (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

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- (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;
 - (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 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).

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- (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.
- (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 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—

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- (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;

“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.

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- (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).]

Changes to legislation:

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