

*These notes refer to the National Minimum Wage (Enforcement Notices) Act 2003 (c.8) which received Royal Assent on 8th May 2003*

# **NATIONAL MINIMUM WAGE (ENFORCEMENT NOTICES) ACT 2003**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

1. These explanatory notes relate to the National Minimum Wage (Enforcement Notices) Act 2003 which received Royal Assent on 8th May 2003. They have been prepared by the Department of Trade and Industry in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

### **SUMMARY AND BACKGROUND**

3. Section 1 of the [National Minimum Wage Act 1998 \(c.39\)](#) (“the 1998 Act”) has the effect that all qualifying workers are entitled to be paid at least the rate of the national minimum wage, as set by the Secretary of State from time to time.
4. The Secretary of State has appointed the Inland Revenue to act as the enforcement body for the purposes of the 1998 Act, as provided for in section 13 of the 1998 Act.
5. Sections 17 to 22 of the 1998 Act relate to enforcement. The effect of section 17 is that where a worker has been paid less than the minimum wage, he is entitled under his contract of employment to be paid the difference between the amount he was in fact paid and the amount he would have been paid had he received the minimum wage. Section 19(1) contains provisions enabling an enforcement officer to serve an enforcement notice requiring an employer to pay a worker or workers the minimum wage for a current pay period and in future. By subsection (2), the notice may also require the employer to pay arrears due to the worker or workers because the minimum wage was not paid in the past.
6. Schedule 2 to the 1998 Act amended the existing legislation on agricultural wages to secure that the minimum hourly rates for agricultural wages cannot be less than the national minimum wage. That Schedule also provides for the enforcement regime for the national minimum wage, which includes sections 17 and 19, to be the enforcement regime for the agricultural national minimum wage. The Secretary of State has appointed the Department for Environment Food and Rural Affairs, the Scotland Office and the Northern Ireland Office to enforce the agricultural minimum wage in England and Wales, Scotland and Northern Ireland respectively, as provided for in section 13 of the 1998 Act.
7. On 16 August 2002 (in the case of *Inland Revenue v Bebb Travel plc*) the Employment Appeal Tribunal held, interpreting sections 19(1) and (2), that an enforcement officer acting for the purposes of the Act could only issue an enforcement notice requiring an employer to pay the minimum wage to a worker in respect of:

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- a) the worker's current and future pay periods, or
  - b) the worker's current and future pay periods and past pay periods.
8. It follows from this ruling that an enforcement officer has no power to issue a notice in respect of past periods only and, therefore, no power to issue a notice at all in relation to workers whose employment with the employer has already ended.
  9. Until this decision, enforcement officers had been issuing enforcement notices that related to past periods only, particularly in cases where workers were no longer working for the employer in question.
  10. Section 20 of the 1998 Act provides that, where an enforcement notice is not complied with, an enforcement officer may take proceedings on behalf of the worker to recover the underpayments of the minimum wage covered by the notice, whether by complaining to an employment tribunal under the Employment Rights Act 1996 or suing for breach of contract. The section expressly provides that these enforcement powers do not affect the ability of workers to recover underpayments of the minimum wage by taking such proceedings on their own account. However it is the view of the Government that some workers will not be capable or will not be prepared to take such proceedings on their own account.
  11. The National Minimum Wage (Enforcement Notices) Act 2003 amends the 1998 Act so that enforcement officers do have the power to issue enforcement notices which relate to past pay periods in the case of some or all of the past or present workers concerned.

## **COMMENTARY ON SECTIONS**

### ***Section 1: Enforcement Notices***

12. *Section 1* of the Act deals with the power of enforcement officers to serve enforcement notices on employers for the recovery of the national minimum wage. The section inserts new subsections (2A) and (2B) after section 19(2) of the 1998 Act.
13. Subsection (2A) will allow an enforcement officer to serve an enforcement notice on an employer imposing a requirement on him to pay to a worker who has at any time qualified for the minimum wage any arrears of pay in respect of one or more past pay reference periods. He will be able to serve such a notice whether or not he imposes, or could impose, a requirement on the employer to pay the worker the minimum wage for the future. So it will not matter if the worker no longer qualifies to be paid the minimum wage by that employer because, for example, he is no longer employed by that employer. The notice can relate to that worker only or, by virtue of section 19(3) of the 1998 Act, to a number of workers. The same notice can therefore deal with any combination of past or future periods and past or current employees.
14. Enforcement officers will be able to issue notices by virtue of subsection (2A) for pay reference periods that ended before the passing of the Act. But workers themselves are already entitled under the 1998 Act to bring claims in respect of such periods. So the Act will not give workers any new entitlement to minimum wage arrears that they did not previously have.
15. Subsection (2B) limits the arrears that may be the subject of an enforcement notice to arrears in respect of pay reference periods ending no more than 6 years before the date of service of the notice. Currently there is no limit on how far back an enforcement notice can go.
16. The amendments made by the Act to the 1998 Act will also have effect in the application of the 1998 Act to the enforcement of the agricultural national minimum wage (except in relation to Scotland, as explained below).

**Section 2: Short title, commencement and extent**

17. *Section 2* provides for the Act to have the same extent as the 1998 Act, that is to say the whole of the United Kingdom. Subject to one point, it will apply to England, Wales, Scotland and Northern Ireland. The exception concerns the agricultural minimum wage in Scotland. Section 2(4) provides that the amendment made to the 1998 Act by section 1 is not to have effect in the application of section 19 of the 1998 Act in relation to the agricultural minimum wage in Scotland. Agriculture is a devolved matter and it is expected that the Scottish Parliament will introduce parallel legislation to deal with the Scottish agricultural minimum wage.

**COMMENCEMENT**

18. The National Minimum Wage (Enforcement Notices) Act 2003 comes into force two months after Royal Assent.

**Hansard References**

The following table sets out the dates and Hansard references for each stage of this Act’s passage through Parliament.

<i>Stage</i>	<i>Date</i>	<i>Hansard reference</i>
<b>House of Lords</b>		
Introduction	21 November 2002	Vol 641 Col 469
Second Reading	10 December 2002	Vol 642 Cols 151-156
Committee	9 January 2003	Vol 642 Cols 1101-1106
Report	23 January 2003	Vol 643 Cols 839-846
Third Reading	30 January 2003	Vol 643 Cols 1247 -1249
<b>House of Commons</b>		
Second Reading	11 February 2003	Vol 399 Cols 784-810
Committee	27 February 2003	Hansard Standing Committee G
Report & Third Reading	28 April 2003	Vol 404 Cols 105-117
<b>Royal Assent – 8 May 2003</b>		House of Lords Hansard Vol 647 Col 1187
		House of Commons Hansard Vol 404 Col 855