

EMPLOYMENT RELATIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY

Part Four: Enforcement of Minimum Wage Legislation

New section 22A (withdrawal of enforcement notices)

314. Subsection (1) allows officers to withdraw enforcement notices. Subsection (2)(a) provides that, if the officer does not issue a new enforcement notice, then subsection (3) takes effect. This means that no new penalty notice may be issued in connection with the withdrawn notice, that any penalty notice already issued ceases to have effect, that any fine already paid by the employer must be repaid by the Government with interest, that any appeal ongoing against the withdrawn notice ceases to have effect and that while individual workers cannot bring civil proceedings relying on a withdrawn notice after the withdrawal, they can continue with any such proceedings brought before the withdrawal
315. Subsection (2)(b) allows the officer, where he withdraws an enforcement notice and decides to issue a new enforcement notice, to decide whether to apply subsection (3); effectively this enables him to decide whether a penalty notice issued in relation to the withdrawn enforcement notice and any appeal against the notice should continue to have effect. Subsection (4) provides that the appropriate rate of interest on sums repaid shall be that specified in section 17 of the Judgments Act 1838. Subsection (5) provides that where subsection (3) is applied the notice of withdrawal must make its effect clear to the employer.