

EMPLOYMENT RELATIONS ACT 2004

EXPLANATORY NOTES

COMMENTARY

Part Four: Enforcement of Minimum Wage Legislation

New section 22B (replacement of enforcement notices)

316. Subsection (2) provides that officers may – at the same time as withdrawing an enforcement notice – issue a new notice, which covers some, or all of the workers covered by the withdrawn notice. Subsection (3) makes it clear that the replacement notice cannot cover any new workers, although these could of course be covered by a separate enforcement notice.
317. Subsection (4) has the effect that if a replacement enforcement notice is served on an employer that, incorrectly, covers any new workers that were not covered by the first notice, then it is treated as a replacement notice that attracts the automatic consequences set out in new section 22A(3) (see above). In particular, it will not be possible to issue any penalty notice following on from the first enforcement notice, and any penalty notice already served in respect of the first notice will cease to have effect.
318. Subsection (5) states that the replacement notice must cover all pay periods where arrears are due up to the service of the new notice; the effect is that the new notice is required to cover not only all underpayments during the period covered by the first notice but also all underpayments in the period between the service of the old and new notices except the most recent. *Subsection (6)* makes it clear that when a replacement notice is issued in respect of a first notice that covers all or nearly all of the 6 year limitation period – the maximum period for which arrears may be recovered – the replacement notice runs back from the date when the first enforcement notice was issued and not the date of issue of the replacement notice. The amendment avoids the unsatisfactory position that would result if the maximum period to which a replacement notice could apply did not extend back to the time of an underpayment covered by the first notice.
319. Subsection (7) states that the new notice must set out any differences between it and the withdrawn notice, and explain the position, under the new sections 22C and 22D described below, in relation to any penalty notices issued in relation to the withdrawn notice and any appeal against the withdrawn notice or civil proceedings brought in reliance on it.
320. Subsection (8) has the effect that if the new notice fails to contain the information required by subsection (5) it takes effect as if it were a notice to which the new section 22A(3) had been applied; this means that any penalty notices issued in relation to the old notice or appeal against it will cease to have effect. Subsection (9) provides that an officer may only issue a replacement notice once.