



TRIBUNALS
JUDICIARY

JUDGE BRIAN DOYLE
PRESIDENT
EMPLOYMENT TRIBUNALS
(ENGLAND & WALES)



EMPLOYMENT TRIBUNALS
(SCOTLAND)
Judge Shona Simon
President

**PRESIDENTIAL GUIDANCE:
MAKING A STATUTORY APPEAL
FALLING WITHIN THE JURISDICTION
OF THE EMPLOYMENT TRIBUNAL**

This guidance is issued in accordance with Rule 7 of the Employment Tribunals Rules of Procedure (“the Rules”). The Rules are set out in Schedule 1 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013.

Employment Judges and Employment Tribunals are expected to have regard to this guidance but are not bound by it.

Both Presidents issued separate, identical guidance on this topic which had effect from 23rd June 2014, but we have concluded it is appropriate to issue this amended Guidance in a single document on a joint basis. Our original Guidance is now amended to remove references to Employment Tribunal Fees following the decision of the Supreme Court in *R (on the application of UNISON) v Lord Chancellor* (2017) UKSC 51 and to include guidance on making a statutory appeal under section 37G of the Employment Tribunals Act 1996 (financial penalties for failure to pay sums ordered to be paid or settlement sums).

1. The jurisdiction of Employment Tribunals to hear appeals

Employment Tribunals have jurisdiction to hear appeals against:-

- An assessment to levy imposed under section 11 of the Industrial Training Act 1982;
- An Improvement Notice issued under section 21 of the Health and Safety at Work etc Act 1974 and a Prohibition Notice issued under section 22 of the same Act;

- An unlawful act notice issued by the Commission for Equality and Human Rights under section 21 of the Equality Act 2006;
- A notice of underpayment issued under section 19 of the National Minimum Wage Act 1998; and
- A financial penalty notice issued by an enforcement officer under section 37F of the Employment Tribunals Act 1996.

2. The position regarding how an appeal may be submitted

2.1 Regulation 12 of the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 makes it clear that it is not necessary to use a prescribed claim form (ET1) in connection with proceedings in which the tribunal will be exercising its appellate jurisdiction.

2.2 There are no other legal provisions which make it necessary, when making any of the appeals listed at paragraph 1 above, to submit the appeal on any particular type of form.

3. The provision of information to assist the tribunal

3.1 To enable the tribunal to deal with an appeal expeditiously and fairly certain information needs to be provided by the appellant. We have concluded that it would be of assistance to the tribunal and appellants if a form is made available, for completion by the appellant, in respect of each type of appeal identified at paragraph 1.

3.2 Accordingly, forms have been prepared by the Employment Tribunals for use by appellants if they so wish, when submitting appeals. These forms are attached as Appendices 1, 2, 3, 4 and 5.

3.3 The forms have been drafted to ensure that an appellant, who properly completes the form, will normally have provided all of the relevant information needed at the outset of an appeal to assist the tribunal in dealing with it expeditiously and fairly.

3.4 A form may be subject to minor amendments from time to time without the need to issue fresh Presidential Guidance. The latest version of any such amended form will be that available on the internet at the relevant time. Appellants and their advisers or representatives should always check that they are using the latest version of any particular form appended to the Presidential Guidance.

4. Guidance to appellants

While an appellant is not legally required to use the relevant form, we commend the forms for use as a helpful tool which, by their nature, will guide an appellant in connection with the information which an Employment Judge will need to know when considering the basis of the appeal, and which the administration will need in order to serve the appeal on the respondent.



Judge Brian Doyle
President (England & Wales)



Judge Shona Simon
President (Scotland)

11 September 2017

Appendices

[Notice of appeal on health and safety matters](#)

[Notice of appeal against an unlawful act notice](#)

[Notice of appeal against NMW enforcement notice](#)

[Notice of appeal against training levy assessment](#)

[Notice of appeal against a financial penalty](#)

For official use only	
Tribunal Office	
Case number	
Date received	

APPEAL TO AN EMPLOYMENT TRIBUNAL AGAINST AN IMPROVEMENT OR PROHIBITION NOTICE ISSUED UNDER THE HEALTH AND SAFETY AT WORK etc ACT 1974

You must complete all questions marked with an ‘*’

1.1 Please give the name of the appellant*

Name	
------	--

1.2 Address*

Number or Name	
Street	
Town/City	
County	
Post Code	

Telephone Number	
Fax Number	
Email address	

2.1 If a representative is acting for you please give their details below:

(Note that all correspondence will be sent to your representative)

Name	
------	--

2.2 Address

Number or Name	
Street	
Town/City	
County	
Post Code	

Telephone No		Fax No	
--------------	--	--------	--

Email address	
---------------	--

3. Information about the notice under appeal

3.1 What type of Notice is it?

Prohibition		Improvement	
-------------	--	-------------	--

3.2 Please give the address of the premises or place to which the Notice applies (if applicable)

Number or Name	
Street	
Town/City	
County	
Post Code	

Telephone No	
--------------	--

Date of the Notice		Serial Number of Notice	
--------------------	--	-------------------------	--

4.1 Please give the name of the Inspector who served the Notice*

Name	
------	--

4.2 Address*

Number or Name	
Street	
Town/City	
County	
Post Code	

5. Which requirement(s) or direction(s) in the Notice do you want to appeal against?*

--

6. Please give full details of your grounds for this appeal

--

Signature		Name	
-----------	--	------	--

Date		Telephone No	
------	--	--------------	--

Position (if in company organisation)	
---------------------------------------	--

Once the form has been signed it should be sent to the appropriate Central Office where claims are first processed. The addresses of the Central Offices are:

Employment Tribunals Central Office (England and Wales)/Employment Appeal Tribunal (EAT)
PO Box 10218
Leicester LE1 8EG

Or

Employment Tribunals Central Office Scotland/Employment Appeal Tribunal (EAT)
PO Box 27105
Glasgow G2 9JR

For official use only	
Tribunal Office	
Case number	
Date received	

APPEAL TO AN EMPLOYMENT TRIBUNAL AGAINST AN UNLAWFUL ACT NOTICE ISSUED BY THE COMMISSION FOR EQUALITY AND HUMAN RIGHTS

You must complete all questions marked with an ‘*’

1.1 Please give the name of the appellant*

Name	
------	--

1.2 Address*

Number or Name	
Street	
Town/City	
County	
Post Code	

Telephone Number	
Fax Number	
Email address	

2.1 If a representative is acting for you please give their details below:

(Note that all correspondence will be sent to your representative)

Name	
------	--

2.2 Address

Number or Name	
Street	
Town/City	
County	
Post Code	

Telephone No		Fax No	
--------------	--	--------	--

Email address	
---------------	--

3. Information about the notice

3.1 Date of issue

--

3.2 What unlawful act does the notice specify has been committed?

--

3.3 What provisions of the Equality Act do EHRC say make that act unlawful?

--

3.4 Does the notice require the preparation of an action plan for the purpose of avoiding the repetition or continuation of the unlawful act?

Yes		No	
-----	--	----	--

3.5 Does the notice recommend action to be taken for the purpose of avoiding the repetition or continuation of the unlawful act?

Yes		No	
-----	--	----	--

4. What are the grounds of appeal?

That the unlawful act specified in the notice has not been committed	
That the requirement to prepare an action plan is unreasonable	

5. What remedy is being sought?

To annul the notice	
To vary the notice	
To annul the requirement	
To vary the requirement	

6. Please give full details of your grounds for this appeal. If you are seeking a variation of the notice or requirements please explain what variation is being asked for.

--

Signature		Name	
-----------	--	------	--

Date	
------	--

Position (if in company organisation)	
---------------------------------------	--

Once the form has been signed it should be sent to the appropriate Central Office where claims are first processed. The addresses of the Central Offices are:

Employment Tribunals Central Office (England and Wales)/Employment Appeal Tribunal (EAT)
PO Box 10218
Leicester LE1 8EG

Or

Employment Tribunals Central Office Scotland/Employment Appeal Tribunal (EAT)
PO Box 27105
Glasgow G2 9JR

For official use only	
Tribunal Office	
Case number	
Date received	

APPEAL TO AN EMPLOYMENT TRIBUNAL AGAINST A NOTICE OF UNDERPAYMENT ISSUED UNDER THE NATIONAL MINIMUM WAGE ACT (INCLUDING UNDERPAYMENT OF AGRICULTURAL WAGES FIXED BY ORDER OF THE SCOTTISH AGRICULTURAL WAGES BOARD OR THE WELSH GOVERNMENT)

You must complete all questions marked with an ‘*’

1.1 Please give the name of the appellant *

Trading Name	
--------------	--

1.2 Address*

Number or Name	
Street	
Town/City	
County	
Post Code	

Telephone Number	
Fax Number	
Email address	

2.1 If a representative is acting for you please give their details below:

(Note that all correspondence will be sent to your representative)

Name	
------	--

2.2 Address

Number or Name	
Street	
Town/City	
County	
Post Code	

Telephone No		Fax No	
--------------	--	--------	--

Email address	
---------------	--

3. Information about the notice

3.1 Please give the names and/or descriptions of the workers to whom the notice relates (continue on a separate sheet of paper if necessary)

Name	Description

Date of the Notice		Serial Number of Notice	
--------------------	--	-------------------------	--

4. Respondent details (please see note below)*

Name	
------	--

4.1 Address*

Number or Name	
Street	
Town/City	
County	
Post Code	

5. Reason(s) for your appeal

Please tick one or more boxes to indicate the grounds upon which you are appealing the issue of the Notice of Underpayment (the “Notice”), including a Notice which has replaced one which was withdrawn.

1. The decision to serve the Notice was incorrect because no arrears were owed to any worker named in the Notice	
2. The requirement imposed by the Notice to pay arrears to a specific worker (or workers) was incorrect because (tick one or both bullet points): <ul style="list-style-type: none">• the amount specified in the Notice as the sum due to the worker (or workers) is incorrect• no arrears were owed to the worker (or workers) in respect of any pay reference period specified in the Notice	
3. The requirement imposed by the Notice to pay a penalty was incorrect because (tick one or both boxes): <ul style="list-style-type: none">• directions made by the Secretary of State prevent the imposition of a penalty• the amount of the penalty has been incorrectly calculated	
4. The requirement imposed by the Notice relates to a worker who was not included in the original Notice	

See note 2 below in connection with appeals against Notices issued in connection with the payment of agricultural wages fixed by Order of the Scottish Agricultural Wages Board or the Welsh Government.

6. Please give full details of your grounds for this appeal*

--

6. Signature of Appellant

Signature		Name	
-----------	--	------	--

Date		Telephone No	
------	--	--------------	--

Position (if in company organisation)	
---------------------------------------	--

Note 1:

For employers based in England the respondent should be named as:

Commissioners for Revenue & Customs
HMRC Solicitors Office Commercial & Employment Team (NMW)
Bush House South
West Wing
London WC2B 4RD

For employers based in Wales (except in agricultural wages cases) the respondent should be named as:

Commissioners for Revenue & Customs
HMRC Solicitors Office Commercial & Employment Team (NMW)
Bush House South
West Wing
London WC2B 4RD

For employers based in Scotland (except in agricultural wages cases) the respondent should be named as:

Commissioners for Revenue & Customs

HMRC Division Office of the Solicitor to the Advocate General
Area G
Victoria Quay
Edinburgh EH6 6QQ

For employers based in Scotland where the appeal relates to a notice issued in connection with agricultural wages fixed by Order of the Scottish Agricultural Wages Board the respondent should be named as:

The Scottish Ministers
Scottish Government Legal Directorate
Victoria Quay
Edinburgh EH6 6QQ

For employers based in Wales where the appeal relates to a notice issued in connection with agricultural wages fixed by Order of the Welsh Government the respondent should be named as:

The Welsh Ministers
c/o Agricultural Division
Government Buildings
Spa Road East
Llandrindod Wells
Powys LD1 5HA

Once the form has been signed it should be sent to the appropriate Central Office where claims are first processed. The addresses of the Central Offices are:

Employment Tribunals Central Office (England and Wales)
PO Box 10218
Leicester
LE1 8EG

Or

Employment Tribunals Central Office (Scotland)
PO Box 27105
Glasgow
G2 9JR

Note 2

Note on Appeals Concerning Agricultural Wages in Scotland and Wales

The Scottish Agricultural Wages Board (the Board) is given power, under the Agricultural Wages (Scotland) Act 1949, to set minimum wage rates, holiday entitlement and certain other minimum conditions for agricultural workers who work in Scotland. Scottish Ministers are the enforcement authority when an employer has not complied with a term or condition fixed by an Order of the Board. Enforcement of the minimum wage set by Order of the Board is through the provisions of the National Minimum Wage Act 1998 (NMWA) with certain modifications. The enforcement provisions which apply to agricultural wages in Scotland are those found in the NMWA prior to its amendment by the Employment Act 2008. This means that some of the grounds upon which an enforcement or penalty notice can be appealed are worded slightly differently when the appeal relates to agricultural wages in Scotland to those which apply in other wage notice appeal cases, although there is a good deal of overlap.

The Welsh Government sets minimum wage rates, holiday entitlement and certain other minimum conditions for agricultural workers who work in Wales, based upon proposals received from the Agricultural Advisory Panel for Wales. The Welsh Ministers are the enforcement authority. The Agricultural Sector (Wales) Act 2014 (ASWA) and the Agricultural Sector (Wales) Act 2014 (Continuation of Effect) Order 2018 apply the NMWA to the Welsh agricultural wages regime. Section 5 of the ASWA provides that agricultural workers in Wales can enforce their rights through the NMWA. Unlike in Scotland, the enforcement provisions which apply to agricultural wages in Wales are those found in the NMWA as amended and are identical to those which apply in other wage notice appeal cases.

Enforcement Notice Appeals (Scotland)

Appeals against enforcement notices issued in connection with wages falling within the remit of the Scottish Agricultural Wages Board can be made on the basis that: -

1. The facts are such that an officer who was aware of them would have had no reason to serve an enforcement notice in the case of the worker or workers to whom the notice relates – *if this is a reason for the appeal then it is suggested you state this below the boxed area in section 5 of the form and provide further details in box 6.*
2. The enforcement notice relates to 2 or more workers and the facts are such that an officer who was aware of them would have had no reason to include some of the workers in the enforcement notice – *if this is a reason for the appeal then it is suggested that you state this below the boxed area in section 5 of the form and provide further details in box 6.*
3. A requirement imposed by an enforcement notice to pay arrears to a specific worker (or workers) was incorrect because: -

- i. No arrears were owed to the worker (or workers) for any pay reference period stated in the notice – *if this is a reason for the appeal then it is suggested that you tick box 2 in section 5 of the form*
- ii. The amount specified in the notice as a sum due to the worker (or workers) is incorrect – *if this is a reason for the appeal then it is suggested that you tick box 2 in section 5 of the form.*

Penalty Notice Appeals (Scotland)

Appeals against penalty notices issued in connection with wages falling within the remit of the Scottish Agricultural Wages Board can be made on the basis that: -

1. In the case of each of the allegations of failure to comply with an 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 – *if this is a reason for the appeal then it is suggested you state this below the boxed area in section 5 of the form and provide further details in box 6.*
2. The penalty notice is incorrect in some of the particulars which affect the amount of the financial penalty – *if this is a reason for the appeal then it is suggested you tick box 3 in section 5 of the form.*
3. The calculation of the amount of the financial penalty is incorrect – *if this is a reason for the appeal then it is suggested that you tick box 3 in section 5 of the form.*

In box 6, as well as providing details of the grounds of your appeal, you should make it clear that your appeal is about a notice issued by an officer acting in connection with agricultural wages in Scotland.

For official use only	
Tribunal Office	
Case number	
Date received	

INDUSTRIAL TRAINING ACT 1982

NOTICE OF APPEAL AGAINST AN ASSESSMENT TO A LEVY

Before completing this form you should note that the power of the Employment Tribunal in appeals against levy assessments is limited to considering whether the levy has been properly calculated and whether the appellant business falls within the scope of the Levy Order. The tribunal has no power to grant an extension of time for payment of the levy and the financial implications for the appellant of the assessment to levy are not a valid ground of appeal.

You must complete all questions marked with an ‘*’

1.1 Appellant Details*

Name of Appellant	
-------------------	--

1.2 Address*

Number or Name	
Street	
Town/City	
County	
Post Code	

Telephone Number	
Fax Number	
Email address	

2.1 If a representative is acting for you please give their details below:

(Note that all correspondence will be sent to your representative)

Name	
------	--

2.2 Address

Number or Name	
Street	
Town/City	

County	
Post Code	

Telephone No		Fax No	
--------------	--	--------	--

Email address	
---------------	--

3.1 Details of Training Board which made the assessment to a levy*

Name of Training Board	
------------------------	--

3.2 Address*

Number or Name	
Street	
Town/City	
County	
Post Code	

4. Information about the assessment

Date of Issue		Assessment Number	
---------------	--	-------------------	--

5. Grounds of Appeal*

The grounds of appeal are as follows:

--

Signature	
**Capacity/Authority	
Date	

**Note: If the notice is signed on behalf of the appellant, the signatory must state in what capacity or what authority he/she signs.

Once the form has been signed it should be sent to the appropriate Central Office where claims are first processed. The addresses of the Central Offices are:

Employment Tribunals Central Office (England and Wales)/Employment Appeal Tribunal (EAT)
PO Box 10218
Leicester LE1 8EG

Or

Employment Tribunals Central Office Scotland/Employment Appeal Tribunal (EAT)
PO Box 27105
Glasgow G2 9JR

For official use only	
Tribunal Office	
Case number	
Date received	

APPEAL TO AN EMPLOYMENT TRIBUNAL AGAINST A FINANCIAL PENALTY NOTICE ISSUED UNDER SECTION 37F OF THE EMPLOYMENT TRIBUNALS ACT 1996

You must complete all questions marked with an asterisk (*)

1.1 Please give the name of the appellant*

Name	
------	--

1.2 Address*

Number or name	
Street	
Town/City	
County	
Post Code	

Telephone Number	
Fax Number	
Email address	

2.1 If a representative is acting for you please give their details below:
(Note that all correspondence will be sent to your representative)

Name	
------	--

2.2 Address of representative

Number or name	
Street	
Town/City	
County	
Post Code	

Telephone Number	
Fax Number	
Email address	

3. Information about the penalty notice being appealed against

Note that it is helpful to provide to the Tribunal now a copy of:

- the penalty notice
- any previous warning notice
- any relevant Employment Tribunal judgment to which the notice relates
- any relevant settlement document to which the notice relates

3.1 Is a copy of the penalty notice attached to this appeal?*

Yes	No
-----	----

3.2 If not, please provide the following details of the penalty notice*

Name of enforcement officer who issued the penalty notice	
Address of enforcement officer	
Date of issue of penalty notice	
Date of issue of any previous warning notice	
The amount of the financial penalty required to be paid to the Secretary of State	
The period within which the penalty must be paid	
Any other relevant information:	

4. Grounds of appeal

4.1 What are you appealing against?*

The penalty notice	Yes / No
The amount of the penalty	Yes / No

4.2 An appeal may be made on one or more of the following grounds. Identify the ground(s) relied upon:*

The grounds stated in the penalty notice were incorrect	Yes / No
---	----------

It was unreasonable for the enforcement officer to have given the notice	Yes / No
The calculation of an amount stated in the penalty notice was incorrect	Yes / No

4.3 Please give full details of your grounds of appeal:

--

4.4 If the appeal is allowed, what outcome do you seek?

Cancel the penalty notice	Yes / No
Substitute the correct amount for the amount stated in the penalty notice	Yes / No

Signature	
Name	
Date	
Telephone number	
Position (if in company or organisation)	

Once the form has been signed it should be sent to the appropriate Central Office where claims are first processed. The addresses of the Central Offices are:

Employment Tribunals Central Office (England & Wales)
 PO Box 10218
 Leicester
 LE1 8EG

OR

Employment Tribunals Central Office (Scotland)
 PO Box 27105
 Glasgow
 G2 9JR