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National Minimum Wage

A National Minimum Wage (NMW) of £3.60 an hour is to be introduced throughout the United Kingdom on 1 April 1999. The *National Minimum Wage Act 1998* provides the legislative framework for the NMW, but details of its calculation and application are contained in the *National Minimum Wage Regulations 1999*, laid before Parliament in draft on 16 February 1999. They are to be debated shortly. Library Research Paper 97/133 described the background to the *National Minimum Wage Bill 1997/98* and the arguments of principle surrounding its adoption. This paper traces developments since the Bill was introduced and gives an overview of the contents of the Regulations. The Government is committed to publishing detailed guidance before 1 April 1999.

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Summary of main points

The *National Minimum Wage Act 1998* provided for the introduction of a single National Minimum Wage (NMW) throughout the United Kingdom. Details such as the rate, method of calculation and possible exclusions or modifications were left to Regulations based on advice from the Low Pay Commission (LPC). The LPC reported in June 1998 and the Government accepted most of its recommendations. Draft Regulations were published for consultation in September 1998 and the final version - the *National Minimum Wage Regulations 1999* - were laid before Parliament in draft on 16 February 1999. They have to be approved by both Houses of Parliament before coming into effect.

The main features of the NMW are:

- It will come into force on 1 April 1999
- The rate for adults aged 22 and over will be £3.60 an hour
- The rate for 18-21 year olds will be £3.00 an hour
- There will be a "trainee" rate of £3.20 an hour for workers aged 22 and over who are in the first six months of a new job and receiving accredited training
- 16 and 17 year olds will be exempt
- Apprentices under 26 in the first 12 months of their apprenticeship will be exempt
- It will apply to all workers, including homeworkers, agency workers, pieceworkers and commission workers
- It will not apply to the genuinely self-employed
- Certain family workers and those employed to live as members of the family will be exempt, as will certain participants on Government training schemes, work experience, and schemes for the homeless
- Pay for NMW purposes will be gross pay, including tax and national insurance contributions, performance pay and service charges distributed through the payroll. The maximum offset for living accommodation will be £19.95 a week.
- Hours worked for NMW purposes will, essentially, be contracted hours, actual hours or agreed estimated hours depending on circumstances and whether one is performing time-work, salaried hours work, output work or unmeasured hours work
- The NMW will be enforced by the Inland Revenue or by individual application to an employment tribunal or court

A Regulatory Impact Assessment published on 16 February 1999 estimates that the NMW will increase total UK labour costs by about £2.4 billion a year. Nearly 2 million workers should receive higher pay as a result. The impact will be felt particularly among part-time workers, young workers, workers in the North East and Merseyside, and workers in the hotel and restaurant sector.

The DTI will publish detailed guidance on the Regulations before they come into force. People can ring a hotline (0845 845 0360 or 0845 600 0678) to register their interest in receiving a copy or for advice.

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¹ Provided by Eshan Karunatileka

² Provided by Janice Davies

I Introduction

A National Minimum Wage (NMW) of £3.60 an hour is due to be introduced in the UK on 1 April 1999. The *National Minimum Wage Act 1998*, which received the Royal Assent on 31 July 1998, provides the legislative framework for the NMW. It makes it clear that there will be a single, national rate which will apply to all regions, sectors and sizes of firm, although it allows for a lower rate or exclusion for young people aged under 26. It ensures that all workers, except the genuinely self-employed, are covered. It provides for the establishment of a Low Pay Commission (LPC) on a statutory basis; and it contains a battery of enforcement mechanisms. However, the Act left important details, such as the rate of the NMW and the definition of pay and hours for the purpose of determining whether it had been paid, to Regulations.

The LPC published its recommendations on the content of these Regulations on 18 June 1998.¹ The Government accepted most of these, although it reduced the "development rate" for young people from a recommended £3.20 an hour to £3 an hour and raised the age limit on this lower rate so that it will now apply to 18-21 year olds rather than to 18-20 year olds. It also rejected the recommendation that the NMW should be increased to £3.70 an hour (and the development rate to £3.30 an hour) in June 2000, preferring to consider any future uprating in the light of the LPC's advice and the economic circumstances of the time.

On 11 September 1998, the DTI published *Draft National Minimum Wage Regulations* for consultation. At the same time it was announced that the Inland Revenue and the Contributions Agency (which are to be combined into a single body in April 1999) would have overall responsibility for enforcing the NMW.² The consultation document contained a Regulatory Impact Assessment which estimated that about 2 million workers (1.4 million of whom would be women) would benefit from higher pay as a result of the NMW and that the additional annual costs for employers would amount to £2.5 billion. Responses to the consultation document were requested by 6 November 1998. The Government laid the final version of the Regulations before Parliament on 16 February 1999.³ They will have to be approved by resolution of both Houses of Parliament. They are, therefore, draft Regulations at present, but, to distinguish them from the Draft Regulations issued for consultation in September 1998, they will be referred to as the Regulations throughout this paper. The consultation process has resulted in several significant changes from the Draft Regulations, including the exemption of people working and living as part of a family (such as au pairs and nannies) and the removal of an obligation on employers to keep detailed records and provide written statements of entitlement.

¹ *The National Minimum Wage: First Report of the Low Pay Commission*, Cm 3976

² DTI press release, *Ian McCartney launches consultation on minimum wage*, 11 September 1998

³ *The National Minimum Wage Regulations 1999*, laid before Parliament in draft on 16 February 1999

Guidance notes for employers and workers will be available by the time the Regulations come into force.⁴ In the meantime, a telephone hotline has been opened to deal with enquiries.⁵ A revised Regulatory Impact Assessment (RIA) published with the Regulations still estimates that nearly 2 million workers (around 8% of all employees), will benefit from higher pay as a result of the NMW.⁶ Of these, approximately 1.3 million will be women and 1.2 million part-timers. The RIA estimates that, as a result of the changes made following consultation, the annual extra costs to UK business will be £2.4 billion rather than £2.5 billion.⁷ A *Report by the Secretary of State*, published on 16 February 1999, explains where and why the Regulations differ from the LPC's recommendations.⁸

Another draft statutory instrument - the *National Minimum Wage Act 1998 (Amendment) Regulations 1999* - was laid before Parliament on 16 February 1999. This amends section 3 of the 1998 Act to allow further groups of people (such as those within the first six months of a new job) to be excluded from the NMW. These Regulations will have to be brought into force before the main Regulations.

Library Research Paper 97/133, dated 4 December 1997, was prepared for the Second Reading of the *National Minimum Wage Bill 1997/98* and describes the background to the legislation. This paper summarises developments since that paper was written.

II The Bill in Parliament

The *National Minimum Wage Bill 1997/98* was given a second reading in the Commons by 387 votes to 145 on 16 December 1997.⁹ Conservative Members voted against, while Liberal Democrats supported the Government. It was debated in Standing Committee D for nearly 70 hours over nineteen sittings from 22 January to 17 February 1998. This included a record 26½-hour sitting.¹⁰ Few amendments were made. Most of those that were made were technical in nature and many were consequential on the passage of the *Employment Rights (Dispute Resolution) Act 1998* which, amongst other things, renamed "industrial tribunals", "employment tribunals". The most significant amendment was that:

⁴ DTI Consultation Document on *Draft National Minimum Wage Regulations*, September 1998, para 11

⁵ 0845 845 0360 or 0845 600 0678

⁶ *National Minimum Wage Regulations: Regulatory Impact Assessment*, 16 February 1999, para 11

⁷ *Ibid*, para 5

⁸ *Regulations implementing the National Minimum Wage: a Report by the Secretary of State for Trade and Industry*, laid before Parliament on 16 February 1999 as required by section 5(4) of the *National Minimum Wage Act 1998*

⁹ HC Deb, cc 162-240

¹⁰ The eighth sitting started at 4.30 pm on Tuesday 27 January and ended at 1 pm on Wednesday 28 January. There had been a morning sitting, starting at 10.30 am, on 27 January too. SC Deb (D) 27 January 1998, cc 255-514. DTI press release, 'Another nail in the coffin of poverty pay' - Ian McCartney. *Commons complete Committee stage of National Minimum Wage Bill*, 17 February 1998

- Serving members of the armed forces and reservists while serving were, after all, excluded from the NMW. Ian McCartney, the DTI Minister, argued that they would be covered by the Armed Forces Pay Review Body:

The Government's aim has always been that the national minimum wage should apply to all workers. Our decision to exempt the armed forces from the Bill, which is the subject of new clause 9, does not undermine that. Nor will the armed forces be disadvantaged by comparison with civilians (...)

We have gone out of our way to include diverse groups in the Bill and have built into it flexible provisions to accommodate the particular circumstances of certain groups, such as homeworkers, agency workers, agricultural workers and, in clause 34, the armed forces.

The flexibility that we have provided for the armed forces is centred on the need not to disturb their operational effectiveness and on the unique position of service personnel. The Government have considered carefully the practicalities of applying the national minimum wage in the unique and diverse contexts within which the armed forces are operating. We have concluded that the Armed Forces Pay Review Body offers an effective mechanism to ensure that the minimum wage will feed through to services pay. We have concluded, therefore, that the reference to clause 34 is no longer necessary and have tabled new clause 9 to reflect that.

Before turning to the review body, I shall briefly explain the content and effect of new clause 9 (...)

New clause 9(1) would exclude from the Bill serving members of the armed forces and reservists while they were serving--for example, at weekends. To avoid doubt, subsection (2) makes it clear that civilians such as administrators or clerical staff who work in association with reservists are to be treated as Crown employees. They are, therefore, not excluded from the Bill. Other civilian employees of the Ministry of Defence remain entitled to the national minimum wage under clause 1(1) and clause 2. That maintains universality.¹¹

- The pay arrangements of service personnel and reservists who are excluded from the Bill will be covered by the Armed Forces Pay Review Body. The review body is well established and enjoys the widespread confidence of individuals in the services, who have no collective or individual bargaining rights. It is seen as fair.

The Bill's Report Stage and Third Reading were concluded after another all night sitting on 9 March 1998.¹² The most significant amendments were:

¹¹ SC Deb (D) 5 February 1998, cc 776-779

¹² HC Deb 9 March 1998, cc 21-276

- The clause excluding voluntary workers from the NMW was rewritten to "broaden slightly the definition of 'voluntary worker' to reflect the reality of volunteering". Ian McCartney explained:

Government amendment No. 20 and new clause 1 would replace clause 42 on voluntary workers. I am pleased to say that the entire approach to the clause has been marked by a consensus both on our aims and on the means of achieving them. We want to ensure, first, that genuine volunteers--who give their time to good causes--are not caught up in the Bill's provisions. We want to ensure also that voluntary organisation staff members--all 485,000 of them--are entitled to the national minimum wage. I believe that there is a consensus on those aims, both within voluntary organisations and on both sides of the House (...)

Before explaining the main differences between new clause 1 and the original clause 42, I should emphasise how the new clause is designed to work and how the Bill relates to volunteers, thereby clearing up any lingering confusion on the matter. The main point is that the Bill will apply only to workers, and that none of its clauses will apply to volunteers. Our judgment is that the vast majority who do volunteering work of one sort or another will not be affected in any way by the Bill, because they are not workers. That is what we want to achieve.¹³

- Obstacles to the exchange of information between officers enforcing the agricultural minimum wage and those enforcing the NMW were removed.¹⁴
- The provisions protecting workers from detrimental action were extended to those not presently eligible for the NMW but who might become eligible in the future. The Government argued that, if younger workers were exempted from the NMW, unscrupulous employers might sack them just before they became eligible.¹⁵

The Bill received its second reading in the Lords on 23 March 1998.¹⁶ It was debated in Committee on 11, 15 and 22 June 1998.¹⁷ Only a few minor and technical amendments were made. It was debated on Report in the Lords on 20 July 1998.¹⁸ Here the Government were defeated when the Lords voted by 161 votes to 103 to accept a Conservative amendment which would have given the Secretary of State the power, by order made by statutory instrument, to:

Provide for the total or partial exemption from the provisions of this Act of -

- (a) any area, sector of employment, trade or industry;

¹³ HC Deb 9 March 1998, cc 22- 36; Ian McCartney cc 23-24

¹⁴ HC Deb 9 March 1998, cc 56-83

¹⁵ HC Deb 9 March 1998, cc 226-230

¹⁶ HL Deb 23 March 1998, cc 1026-1084

¹⁷ HL Deb, 11 June 1998, cc 1197-1221, 1237-1280; 15 June 1998, cc 1378-1387, 1394-1440; 22 June 1998, cc 48-87

¹⁸ HL Deb, 20 July 1998, cc 584-604, 633-653, 672-706

- (b) undertakings of different sizes;
- (c) persons of different ages; or
- (d) occupations or categories of persons.

This amendment was overturned in the Commons.¹⁹ Some further, largely technical and uncontroversial Government amendments were made in the Lords on Report and Third Reading. The need for some of the amendments only became apparent after the Low Pay Commission's detailed proposals had been published on 18 June 1998.²⁰ The Third Reading Stage was on 27 July 1998.²¹ The Lords amendments were debated in the Commons on 28 July 1998.²² The Lords debated the Commons reasons for disagreeing to their amendment on 29 July 1998.²³ The Bill received the Royal Assent on 31 July 1998.²⁴

III The Low Pay Commission's Recommendations and the Government Response

The Low Pay Commission's report was finally published on 18 June 1998,²⁵ although it had been extensively leaked beforehand.²⁶ Its main recommendations were:

- The NMW should be £3.70 an hour in June 2000 although an initial rate of £3.60 an hour should be introduced in April 1999.
- A Development Rate of £3.20 an hour should be introduced in April 1999, rising to £3.30 an hour in June 2000. This should apply to 18-20 year olds and to those aged 21 or over during the first six months of a new job, provided they receive accredited training.
- All those aged 16 and 17 and all those on apprenticeships should be exempt from the NMW.
- Employers should display details of the NMW on pay slips.
- An existing Government agency should take on responsibility for verifying employers' compliance with the NMW.

¹⁹ HC Deb, 28 July 1998, cc 212-227

²⁰ See, eg, HL Deb 20 July 1998, cc 597-598 on an amendment needed to accommodate the Low Pay Commission's recommendations on piece workers and home workers.

²¹ HL Deb, 27 July 1998, cc 1197-1227

²² HC Deb 28 July 1998, cc 212-279

²³ HL Deb 29 July 1998, cc 1533-1539

²⁴ Cap 39

²⁵ *The National Minimum Wage: First Report of the Low Pay Commission*, Cm 3976, June 1998

²⁶ In, for example, *Financial Times*, 29 May 1998

- The NMW should be reviewed within two years of its introduction "to examine its initial impact and to assess its future level, definition and possible exceptions".
- The NMW should apply to the gross amount of those earnings which are within its scope.
- Incentive payments should be included in earnings that count towards the NMW. All pieceworkers and others paid by output rather than by time should be paid at least the NMW on average for the pay reference period.
- Service charges and tips and gratuities which are received through the payroll, such as the *tronc*, should be included in the NMW but cash tips paid directly by the customer to staff should not.
- Premium payments for overtime and shifts and allowances and supplements should be excluded from the NMW.
- All benefits in kind except accommodation should be excluded from the NMW. The maximum offset for accommodation should be £20 per week.
- Any period during which the worker is working, at the employer's disposal and carrying out his activity or duties should count as working time for the purposes of the NMW.
- The pay reference period over which earnings may be averaged for the NMW should be the normal pay period, subject to a maximum of one calendar month.

The Government accepted most of the Commission's recommendations, subject to consultation, but with a number of modifications concerning the rate, the date of introduction and young people. The main modifications were:

- There will be no automatic increase to £3.70 in June 2000. "Any future increase will be considered in the light of the LPC's advice... and the economic circumstances of the time."²⁷
- The Development Rate will apply to 18-21 year olds rather than 18-20 year olds. For this age group it will be £3.00 an hour in April 1999, rather than £3.20. It will increase to £3.20 in June 2000, rather than to £3.30. The LPC will be asked to review the position of 21 year olds in 1999 to see whether they might move to the adult rate in June 2000.

²⁷ DTI, *Summary of Low Pay Commission's Recommendations and Government Response*, 18 June 1998

- The Development Rate for those starting a new job will, therefore, apply to people aged 22 and over rather than 21 and over. For this group, it will be introduced at £3.20 an hour, but there is no commitment to increase it to £3.30 an hour in June 2000. Rather than a single "development rate" for young people and trainees, there will now be two rates, one (£3.00) for 18-21 year olds and one (£3.20) for newly employed trainees aged 22 and over.

The full list of recommendations and Government responses is contained in a *Summary of the Low Pay Commission's Recommendations and the Government's Response* issued by the DTI on 18 June 1998. This is reproduced as an Annex to this paper.

Margaret Beckett, then President of the Board of Trade, made a statement on the Report to the House, in which she said:

The Government welcome the report, and support all the commission's key recommendations, subject to consultation on some of the practical details. In particular, we accept a main rate of £3.60 per hour before deductions, with effect from April 1999. When combined with the working families tax credit and other benefits, for a one-earner couple with two children, that means an effective wage of more than £7 per hour. We accept that all those aged 16 and 17, or on formal apprenticeships should be exempt, and we also accept the proposal to institute a development rate.

The commission proposes that that minimum rate should apply at £3.20 to all 18 to 20-year-olds, and to all workers starting a new job with a new employer and receiving accredited training. We are, however, at a critical point in the economic cycle. The Government are determined to proceed with all due caution with the introduction of that rate, especially for the crucial group of those aged 18 to 21.

We have therefore decided, for this group, to phase in the rate in two stages, with an initial transitional rate of £3 from April 1999, which will increase to £3.20 in June 2000. However, we are asking the commission to review the position of 21-year-olds again in 1999, following the implementation of the £3 transitional rate, and then to provide a further report on whether, in the light of experience to that date, the commission reconfirms its advice that 21-year-olds should be covered by the main adult rate.

I am pleased also to announce that we shall be asking the commission to continue its work monitoring and evaluating the introduction and impact of the minimum wage.

Introducing the minimum wage at the levels that I have announced today will help some 2 million workers escape from poverty pay, without adverse effects on jobs or inflation. That will include 1.4 million women; more than 1.3 million part-time workers; some 200,000 young people; about 110,000 homeworkers; approximately 175,000 lone parents who work; and some 130,000 ethnic minority workers.

The remaining Low Pay Commission recommendations deal with such technical matters as the composition and reference period for calculating the minimum wage, the handling of benefits in kind and its application to homeworkers and pieceworkers.

We fully and carefully considered those recommendations and accept them in principle, subject to consultation on the practicalities and detail of their implementation when formulating the regulations implementing the national minimum wage.²⁸

John Redwood, the Opposition spokesman responded:

This week, we have seen prices up, mortgages up, wage inflation up--and now the Government wish to throw more petrol on those inflationary fires. If one employee gets a pay rise, others, including well-paid ones, will want one, too.

No wonder the Chancellor of the Exchequer has been out to sabotage this wages policy, because he at least knows that inflationary pay awards make no one better off. They are fool's gold. As the Government take us back to the strikes and the inflation of the 1960s, they give us a mods and rockers Government. The mods, led by the Prime Minister, believe that you can do it all with soundbites. It is as effective as putting go-faster stripes on a scooter. The rockers, led by the Chancellor, spend their time trying to break up the manifesto promises. For this statement is an act of betrayal by the Government... In the election campaign, Labour promised a decent minimum wage for all. Today, the Labour Government tell us that no one under 18 will benefit from these proposals. They tell us that 18 to 21-year-olds will receive only a lower rate. They tell us that their idea of a decent rate is as little as £3 an hour. They even tell us that the tips put on to credit card payments will be included in the calculation. Perhaps they intend to give yet more encouragement to the black economy, outside the clutches of both the taxman and the soon-to-arrive minimum wage inspector.

We have warned the Government throughout that a minimum wage policy will not work. We have consistently argued for a minimum income rather than a minimum wage--with benefit top-ups for families that need the extra. Will the President now confirm, as I think she implied, that she agrees with our approach? Does she agree that benefits will still be needed for many people to top up these minimum wages, and will she confirm to all those people that their benefits will still be paid? Is not the beneficiary of this proposal the Government, not the person on a low income?²⁹

Press reports suggest that Mrs Beckett had wanted to implement the Low Pay Commission's recommendations in full but that the Chancellor, Gordon Brown, had overruled her because of fears about the impact of the youth rate on the Government's

²⁸ HC Deb 18 June 1998, cc 508-509

²⁹ Ibid, cc 509-510

New Deal programme for the young unemployed.³⁰ Many trade union leaders were disappointed at the watering down of the Low Pay Commission's recommendations. John Edmonds, general secretary of the GMB, called the decision a "slap in the face" for Britain's youngsters.³¹ While Rodney Bickerstaffe, general secretary of Unison, welcomed the minimum wage as a "historic victory" for the low paid, he was "sad and disappointed that this long awaited law has been marred by a rate set too low".³² However, George Bain, chairman of the LPC, was said to regard the modifications made to the report by the government as "marginal and of little consequence" and to be proud of the fact that the report was unanimous. The Commissioners had been shocked at what they had found in some places, and were saying to some employers "you cannot compete by treating your employees as cheap labour in competition with the third world".³³ Employers' organisations were, on the whole, relieved that the rate had not been set higher and that there was a lower rate for younger workers. Adair Turner, director general of the CBI, said that while the £3.60 figure was "at the top end of what is acceptable to business, overall it should not place too much pressure on inflation or lead to major job losses".³⁴

IV The Act's Provisions

Although the Act leaves much of the detail to regulations, it does contain important provisions on coverage, enforcement and the Low Pay Commission.

A. Coverage

A useful summary of the coverage of the Act is contained in Annex 4 of the Consultation Document on the Draft Regulations.³⁵ Briefly, the following people are entitled to the NMW:

- "Workers", as defined by section 54 (3) of the Act. This defines a "worker" as:

an individual who has entered into or works under (or, where the employment has ceased, worked under) -

(a) a contract of employment, or

(b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or

³⁰ See, eg, "PM's fears on minimum wage effects are revealed", *Financial Times*, 19 June 1998 and "Left bitterly disappointed by £3.60 minimum wage", *Times*, 19 June 1998

³¹ "Ministers' cautious approach brings angry response", *Financial Times*, 19 June 1998

³² Ibid

³³ "Interview: George Bain, Low Pay Commission Chairman, 'A prudent floor on which to build the future'", *Financial Times*, 19 June 1998

³⁴ "PM's fears on minimum wage effects are revealed", *Financial Times*, 19 June 1998

³⁵ DTI, *Draft National Minimum Wage Regulations: Public Consultation*, September 1998

perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual.

The Consultation Document explains that:

This definition is intended to exclude only those who are genuinely in business on their own account. It might include, for example, those working under certain agency arrangements, or individuals who, while not having a contract of employment with an employer, work exclusively for that employer over a period of time without the freedom to select another "customer" for their services - as they would be able to do if they were genuinely self-employed.³⁶

- Agency workers who do not otherwise fall within the definition of a "worker" (for example where it is not clear whether the worker is working for the agent or the client to whom he has been supplied).³⁷ The Consultation Document explains that the genuinely self-employed would still not be covered:

The Act does not extend the definition of an agency worker to all individuals who are supplied by a person to do work for another under a contract or other arrangement, because some individuals working under such arrangements are genuinely in work on their own account. For example, the Act would not cover self-employed plumbers or mini-cab drivers who have contractual arrangements with an introductory agency which charges a fee for putting potential customers in touch with them.³⁸

- Homeworkers who might otherwise fall outside the definition of a "worker" because they do not undertake work personally but are assisted by others, for example, family members.³⁹
- Foreign workers working in the UK.
- UK workers who ordinarily work in the UK, while temporarily working abroad.
- Mariners working on UK-registered ships unless they work entirely outside the UK or are not ordinarily resident in the UK.⁴⁰
- Offshore workers.⁴¹ The Government will make an Order in Council extending the NMW to offshore workers before April 1999.

³⁶ Annex 4, para 3

³⁷ Section 34, *National Minimum Wage Act 1998*

³⁸ Annex 4, para 6

³⁹ Section 35, *National Minimum Wage Act 1998*

⁴⁰ Section 40, *National Minimum Wage Act 1998*

⁴¹ Section 42, *National Minimum Wage Act 1998*

- Agricultural workers.⁴² Agricultural workers are entitled to agricultural minimum wages set by the Agricultural Wages Boards under *Agricultural Wages Orders*. Where the agricultural minimum wage is higher than the NMW, the agricultural worker will be entitled to that higher rate. Any agricultural rate which would have fallen below the NMW will have to be raised to the NMW.
- House of Commons and House of Lords staff.⁴³

The following people are not entitled to the NMW:

- The genuinely self-employed, as they are not covered by the definition of a "worker".
- Children under school leaving age. (The Regulations extend this exemption to all young people under the age of 18 and to apprentices under 26 who are in the first year of their apprenticeship.)
- Serving members of the Armed Forces.⁴⁴
- Share fishermen.⁴⁵
- Prisoners.⁴⁶
- Office holders (eg directors of companies and members of the clergy) if they do not additionally have contracts which make them "workers".
- Voluntary workers.⁴⁷ In general, voluntary workers are not covered by the definition of a "worker" so they would not be eligible for the NMW. However, some volunteers might receive expenses which might bring them within the definition of a "worker". To exclude such volunteers, the Act contains special provisions, described in the Consultation Document:

16. Most volunteers will automatically be excluded from the Act because they are not covered by the definition of "worker", due to the absence of any intention to enter into legal relations and the resulting absence of any contract.

17. However, some volunteers who receive expenses, benefits in kind, and/or subsistence payments might in certain circumstances be regarded as workers

⁴² Sections 46-47, *National Minimum Wage Act 1998*

⁴³ Sections 38 and 39, *National Minimum Wage Act 1998*

⁴⁴ Section 37, *National Minimum Wage Act 1998*

⁴⁵ Section 43, *National Minimum Wage Act 1998*

⁴⁶ Section 45, *National Minimum Wage Act 1998*

⁴⁷ Section 44, *National Minimum Wage Act 1998*

under a contract making them "workers". Section 44 of the Act provides an exit for such "voluntary workers" so that if they receive a very limited range of expenses, benefits in kind, and/or subsistence payments they will be excluded from the NMW, provided that certain conditions are met. Workers who are working on a voluntary basis for a charity, a voluntary organisation, an associated fund-raising body (e.g. a charity shop) or a statutory body (e.g. a school or hospital) do not qualify for the NMW if they do not receive:

- any payment other than a payment in respect of expenses actually incurred in their voluntary work, or expenses reasonably estimated as likely to be incurred or to have been incurred; and
- any benefits in kind other than the provision of reasonable subsistence or accommodation (this would cover, for example, food and accommodation provided for those voluntary workers helping at youth hostels); and
- a monetary payment of subsistence, except where the voluntary worker has been placed with the host employer by a charity, and the host is itself a charity, voluntary organisation, associated fund-raising body or statutory body. (This would cover e.g. voluntary workers placed by a central volunteering organisation with schools, hospitals and voluntary organisations, often away from home.)⁴⁸

During the consultation period on the draft Regulations a number of organisations (particularly those operating in the "grey" area between work and charitable, voluntary or educational activity) campaigned for exclusion from the coverage of the NMW. Although the Act prohibits the use of Regulations to exclude different areas, sectors of employment, occupations, ages over 26 or undertakings of different sizes, it does allow for the exclusion of other "descriptions of persons".⁴⁹ Such people can already be excluded by Regulation if they are under 26 (under section 3), but the Act itself has to be amended by Regulation to exclude such people if they are 26 or over (under section 4). The *National Minimum Wage Act 1998 (Amendment) Regulations 1999* were laid before Parliament on 16 February 1999 in draft and will amend section 3 of the 1998 Act to permit the exclusion of people aged 26 or over who are:

- (a) within the first six months after the commencement of their employment with an employer by whom they have not previously been employed;
- (b) participating in a scheme under which shelter is provided in return for work;
- (c) participating in a scheme designed to provide training, work experience or temporary work;
- (d) participating in a scheme to assist in the seeking or obtaining of work; or

⁴⁸ Annex 4, paras 16 and 17

⁴⁹ Sections 4 and 3

(e) attending a course of higher education requiring attendance for a period of work experience.⁵⁰

The *National Minimum Wage Regulations 1999*, themselves, will make use of these new powers to exempt further groups including:

- participants in Government training, work experience or temporary work schemes who are not employed [regulation 12 (5)-(7)];
- students on sandwich courses and teacher trainees [regulation 12 (8)-(9)]; and
- homeless workers taking part in a scheme whereby they do some work in return for shelter [regulation 12 (10)-(12)]

The *National Minimum Wage Regulations 1999* also effectively exclude:

- family workers who reside in the family home and do household tasks or work in the family business; and
- others, such as au pairs, nannies and companions, who live as a member of a family and do work relating to the family household.

This is achieved by Regulation 2 which provides that such work does not count as work for the purposes of the NMW. Section 2 (3) (c) of the Act allows Regulations to prescribe “circumstances in which, times at which, or the time for which, a person is to be treated as, or as not, working, and the extent to which a person is to be so treated”.

B. Enforcement

The *National Minimum Wage Act 1998* contains a large number of provisions designed to ensure that the NMW is enforced. Mrs Beckett, then Secretary of State for Trade and Industry, said in her speech on second reading of the Bill:

There is no point in having a national minimum wage that cannot be enforced, but an efficient regime needs to balance the potential burdens on business of the structure of regulation itself against the need to ensure that individuals receive their rights and are adequately protected; and that the economic as well as the social benefits we envisage flowing from a national minimum wage do indeed ensue. The Bill provides for a flexible approach to enforcement. It allows us to appoint officers to enforce the minimum wage or, if it is thought more sensible, to engage the services of officers of an existing Government Department or agency. In this respect, we are building on existing practices and procedures, given that

⁵⁰ Regulation 2 which inserts a new section 3 (1A) into the *National Minimum Wage Act 1998*

individual workers already have the right to go to an industrial tribunal to recover wages that have been unlawfully deducted, or to a court for breach of contract.

The Bill provides powers to enable officers to levy financial penalties on employers who fail to comply with an enforcement notice. That should ensure that there is no delay in workers receiving the wages to which they are entitled. We will not tolerate those who refuse or wilfully neglect to pay a worker the minimum wage, or those who fail to keep adequate records or who keep false records. Those employers who deliberately flout the law may be guilty of a criminal offence. However we hope and believe that there will be few employers who would ever face criminal action under this legislation. Responsible companies--the vast majority, who want the cowboys who give them a bad name to be strictly dealt with--have nothing to fear and a great deal to gain.⁵¹

The main elements of enforcement are set out below. As can be seen, in several cases, the enforcement powers will not, perhaps, be used as fully as initially expected.

Record keeping

Section 9 of the Act allows the Secretary of State to make Regulations requiring employers to keep records from which it will be possible to ascertain whether the NMW has been paid. The *Draft National Minimum Wage Regulations*, issued for consultation in September 1998, gave a long list of the records which had to be kept. They included details of all money paid (including performance or incentive pay, piecework payments, tips, bonuses, overtime payments, shift premia, allowances and expenses) and deductions made (for example, for accommodation, loans, expenses) to the worker in the "pay reference period" (which is usually the actual pay period) and details of hours worked. Where workers were paid more than £12,000 a year, in monthly instalments of at least £1,000, the *Draft Regulations* provided that records need not be so detailed, as these workers were unlikely to be earning under the NMW.⁵² However, the Secretary of State bowed to pressure from employers, concerned about the administrative burdens involved in so much record keeping, and the final Regulations only require an employer to keep "records sufficient to establish that he is remunerating the worker at a rate at least equal to the national minimum wage".⁵³

Section 10 gives the worker a right of access to these records if he has reason to believe he has not been paid the NMW. If the employer refuses to comply with a request to see these records, the worker can complain to an employment tribunal. If the tribunal finds such a complaint justified, it must make a declaration to that effect and order the employer to pay the worker an amount equal to 80 times the hourly amount of the NMW.⁵⁴ At the proposed rate of £3.60 an hour, this would be £288.

⁵¹ HC Deb 16 December 1997, c 170

⁵² Draft Regulation 28

⁵³ Regulation 38

⁵⁴ section 11

Written statement of NMW

Section 12 of the Act allows the Secretary of State to make Regulations requiring employers to give their workers a written statement of their entitlement to the NMW. The *Draft Regulations* contained details of what the employer had to include in this statement. A Schedule to the *Draft Regulations* specified that the following information had to be included:

National Minimum Wage Statement

The Rate of the National Minimum Wage

The hourly rate of the national minimum wage is £3.60, but:

- (a) it is £3.00 if you are 18 or over, but under 22;
- (b) it is £3.20 if you are 22 or over, within the first six months of the commencement of your employment with an employer (or an associated employer of that employer) by whom you have not previously been employed and you have entered into an agreement with the employer which requires you to take part in accredited training on at least 26 days between the commencement of your employment (or, if later, the day upon which you entered into the agreement) and the end of the six month period.

You do not qualify for the national minimum wage if you are under 18.

Nor do you qualify for the national minimum wage if you work under (or are treated as working under) a contract of apprenticeship, are 22 or over but under 26, and it is less than 12 months since the contract began.

If you believe on reasonable grounds that you may be being or have been paid at a rate below the national minimum wage you have a right of access to the records your employer keeps about you in relation to the national minimum wage. Details of this right and the conditions which apply to it are to be found in section 11 of the National Minimum Wage Act 1998.

However, following complaints from employers about the administrative burdens which such a statement would impose, the Secretary of State decided to defer making use of this power.⁵⁵ The Regulations do not, therefore, contain any provisions on a written statement.

⁵⁵ *Regulations implementing the National Minimum Wage: a Report by the Secretary of State for Trade and Industry*, laid before Parliament on 16 February 1999 as required by section 5(4) of the *National Minimum Wage Act 1998*, para 16

Under the Act, if any statement were to be required, it could be included in the written itemised pay statement which all employers are required to give to their employees under section 8 of the *Employment Rights Act 1996*. If an employer failed to provide a prescribed statement, the worker could complain to an employment tribunal which would, effectively, provide one.

Enforcement officers

Section 13 of the Act gives the Secretary of State the power to appoint enforcement officers for the purpose of enforcing the Act. On 11 September 1998, Ian McCartney announced that the Inland Revenue and the Contributions Agency (which are to merge in April 1999) would have overall responsibility for enforcing the NMW:

Inland Revenue and Contributions Agency - with their expertise in checking pay records - will be ideally placed to take on this new and important work, when they are combined into a single body next year.

We will of course ensure that enforcement is fair to worker and employer alike and is delivered in a way that minimises burdens on business and provides maximum value for the tax payers' money.⁵⁶

These officers will have the right to inspect the records kept under the Act, to demand additional information which is necessary for establishing whether the NMW is being paid, and to enter premises at reasonable times.

Enforcement by workers

Workers will be taken to be entitled to the NMW under their contracts of employment, so any failure to pay the NMW will be both a breach of contract and an unauthorised deduction from wages under section 13 of the *Employment Rights Act 1996*. Workers will have a right to recover underpayments either by suing for breach of contract in the county court or by taking an unauthorised deduction case to an employment tribunal. In proceedings before a tribunal or a court, the burden of proof will be on the employer to show that he has paid the NMW, rather than on the worker to show that he has not.⁵⁷

Enforcement by enforcement officers

Section 19 of the NMW Act gives the enforcement officers the power to issue enforcement notices requiring employers to pay their workers the NMW and to make up any arrears. The employer has a right of appeal to an employment tribunal against such notices. If the employer fails to comply with an enforcement notice, the enforcement

⁵⁶ DTI press release, *Ian McCartney launches consultation on minimum wage: Inland Revenue/Contributions Agency to enforce minimum wage*, 11 September 1998

⁵⁷ Section 28

officer can complain to an employment tribunal on behalf of an underpaid worker or group of workers, or take their claim for recovery to a county court. He can also issue a penalty notice requiring the defaulting employer to pay a financial penalty to the Secretary of State. There is a right of appeal to an employment tribunal against a penalty notice. This financial penalty is calculated at a rate equal to twice the hourly amount of the NMW in force at the time in respect of each worker to whom the failure to comply relates, for each day during which the failure to comply continues. So if an employer failed to pay ten workers the NMW for twenty days after the issue of an enforcement notice he would be liable to a fine of £1,440.

Right not to suffer unfair dismissal or detriment

Sections 23-26 of the NMW Act protect workers against dismissal or detriment for trying to enforce their right to the NMW. Complaints may be taken to an employment tribunal. Dismissal will be automatically unfair and compensated in the same way as other unfair dismissals. There will be no qualifying period or upper age limit for such claims. Action short of dismissal will be compensated with an award which the tribunal considers "just and equitable in all the circumstances" taking into account the infringement complained of and the actual loss suffered.

Criminal offences

Under section 31 of the Act it will be a criminal offence for an employer to refuse or wilfully neglect to pay the NMW. It will also be a criminal offence not to keep the required records, or to keep false records. These offences will be punishable by a fine not exceeding level 5 on the standard scale (£5,000).

C. The Low Pay Commission

The *National Minimum Wage Act 1998* empowered the non-statutory Low Pay Commission to make recommendations to the Secretary of State about the first set of Regulations to be made under the Act. Section 8 (9) gave the Secretary of State the power "at any time" to appoint a statutory Low Pay Commission to discharge the functions conferred or imposed under the Act. The *National Minimum Wage Act 1998 (Commencement No. 1 and Transitional Provisions) Order 1998* brought section 8 into force on 1 November 1998.⁵⁸ On 11 November 1998, the Low Pay Commission was placed on a statutory basis and given the following terms of reference:

⁵⁸ SI 1998/2574

The Commission is asked to:

(i) monitor and evaluate the introduction and impact of the national minimum wage, with particular reference to the effect on:

- pay, employment and competitiveness in low paying sectors and small firms;
- particular groups of workers, such as young people, women, ethnic minorities, homeworkers, people with disabilities and voluntary sector workers:
- pay structures, including the effect on differentials and different pay systems; and
- training.

(ii) review the position of 21 year olds following the introduction of the development rate for young people and in particular whether they should be covered by the adult rate. In making its recommendations, the Commission should have regard to the wider economic and social implications; the likely effect on employment and inflation; the impact on the costs and competitiveness of business, particularly the small firms sector, and the potential costs to industry and the Exchequer.

The Commission is asked to report to the Prime Minister and the Secretary of State for Trade and Industry by December 1999.⁵⁹

Schedule 1 of the Act prescribes the constitution and proceedings of the statutory LPC. In appointing members, the Secretary of State must "have regard to the desirability of securing" an appropriate balance between -

- (a) members with knowledge or experience of, or interest in, trade unions or matters relating to workers generally;
- (b) members with knowledge or experience of, or interest in, employers' associations or matters relating to employers generally;
- (c) members with other relevant knowledge or experience.

For the moment, the membership of the statutory LPC is the same as that of the non-statutory Commission:

Professor George Bain (Chairman), President and Vice-Chancellor, The Queen's University of Belfast;

Professor William Brown, Professor of Industrial Relations, University of Cambridge;

⁵⁹ DTI press release, *Low Pay Commission given statutory base*, 11 November 1998,

Bill Callaghan, Chief Economist, Trades Union Congress;

John Cridland, Director of Human Resources Policy, Confederation of British Industry;

Lawrie Dewar, MBE, Chief Executive, Scottish Grocers' Federation;

Rita Donaghy, OBE, Permanent Secretary, Students' Union, University of London Institute of Education, and member, UNISON Executive Council;

Paul Gates, General Secretary, National Union of Knitwear, Footwear and Apparel Trades;

Professor David Metcalf, Professor of Industrial Relations, London School of Economics;

Stephanie Monk, Director of Human Resources, Granada Group plc.

The Secretary of State can refer any matter relating to the Act to the Low Pay Commission at any time.⁶⁰ The Act required him to refer the initial rate of the NMW and the detailed questions about how it would be calculated. He has the power to make future changes without referral to the LPC, although it is likely that major changes (such as any changes to the rate) would be based on recommendations from the Commission.

V The Draft Regulations

On 11 September 1998, the DTI published *Draft National Minimum Wage Regulations* for consultation.⁶¹ The Draft Regulations were designed to implement the Low Pay Commission recommendations as modified by the Government. Although the final Regulations published in February 1999 are organised quite differently from the Draft Regulations, and although their content differs in some important respects, most of the provisions are essentially the same. The following account of the main provisions of the Draft Regulations, therefore, gives references to both the draft and the final Regulations and draws attention to areas where there have been major changes:

A. Rate

- The standard rate of the NMW will be £3.60 an hour [draft regulation 8; regulation 11]

⁶⁰ Section 6

⁶¹ DTI press release, *Ian McCartney launches consultation on minimum wage*, 11 September 1998

- Workers aged 16 and 17 will be exempt from the NMW [draft regulation 9(1); regulation 12(1)]
- Apprentices aged under 26 will be exempt from the NMW in the first 12 months of their apprenticeship [draft regulation 9(2); regulation 12(2)(c) - the Regulations also exclude 18 year old apprentices]. People on the Government's Modern Apprenticeship scheme will be treated as working under a contract of apprenticeship [draft regulation 9(3); regulation 12(3)]. The LPC had recommended that all apprentices should be exempt from the NMW, but the Consultation Document argued:

The Regulation thus limits the exemption for apprentices to the first year of the apprenticeship and to apprentices below the age of 26. This reflects the finding of the Low Pay Commission that, "...by the second or third year of an apprenticeship, wages are often well above the level we are recommending for the National Minimum Wage." (Report of the Low Pay Commission, para 5.16.) It makes it easier for young people to see the exemptions as a trade-off against the acquisition of skills, not unlike the position of accredited trainees. It also reflects the fact that by far the majority of apprenticeships are taken up by young people below the age of 26. The Government has also considered how potential apprentices might react to the prospect of not being entitled to the NMW for the whole length of the apprenticeship (as the LPC recommended). There is a danger that this might discourage young people from taking up apprenticeships in the first place.⁶²

- Workers aged 18 - 21 (inclusive) will be entitled to a lower rate of £3.00 an hour [draft regulation 9(4); regulation 13(1)]
- Workers aged 22 and over who are within the first six months of starting a job with a new employer will be entitled to a lower trainee rate of £3.20 an hour if they have entered an agreement to take part in accredited training on at least 26 days in that period [draft regulation 9(5); regulation 13(2)]. Accredited training was initially defined as training under a course specified in Schedule 2(a) of the *Further and Higher Education Act 1992* in England and Wales and equivalent training in Scotland and Northern Ireland [draft regulation 6(1)]. This has been expanded to include verified in-house training provided by the employer and a wide range of training courses for those on the New Deal for the Young Unemployed [regulation 13(3)].

B. Pay reference period

The pay reference period will be the actual pay period or one calendar month, whichever is shorter [draft regulation 10; regulation 10]. In other words, if someone is paid weekly, their total pay in one week is divided by the number of hours they work to give an hourly pay figure. The consultation document recognised that employers who use annualised

⁶² Consultation Document, para 39

hours systems might need to restructure to ensure that workers are paid the NMW throughout the year:

51. The purpose of a pay reference period is to allow flexibility in the calculation for workers whose pay may vary at different times. Without a pay reference period, each worker would have to be paid at least the NMW for each individual hour worked. The pay reference period allows variations in pay to be averaged - but only within a maximum one-month period.

52. The shorter the pay reference period, the greater the protection for workers who may be at risk of low pay; the longer the period, the greater the flexibility to take into account variable pay elements and variable hours worked. A maximum pay reference period of a month provides a fair balance between providing protection for workers and sufficient flexibility for employers.

53. Employers will have to ensure that their workers are paid at least the NMW on average for the hours they work in the pay reference period and for which the NMW must be paid. As the attached Regulatory Impact Assessment indicates, this may require some restructuring of hours for employers whose workers are covered by annualised hours arrangements. For example, during the busy season or period, the number of hours such a worker works is high, but his pay is the same regular instalment as in other periods. This means his average pay for the busy period will be lower than in other periods and may fall below the NMW rate. Where the worker's average pay for the pay reference period would fall below the NMW rate, the employer and worker will have to restructure the pay system once the NMW comes into force to ensure this does not happen, for example by linking pay more closely to actual working time.⁶³

The final version of the Regulations has overcome the need for annualised hours systems to be restructured by introducing the concept of "salaried hours work" and making changes to the way in which the hours worked in a pay reference period are calculated [regulations 21-23]

C. Determining the hours worked for NMW purposes

The Draft Regulations identified three types of work: time work, output work and non-hours work. The Regulations add a fourth ("salaried hours work") and re-name "non-hours work", "unmeasured work".

Time work is work paid for by reference to a period of time. The consultation document said that the majority of the working population is employed on this basis. "Time work" also covers cases where people are employed partly on a time basis (with a basic hourly rate or fee) and partly on a piecework/commission basis [draft regulation 2(1); regulation

⁶³ Consultation Document, paras 51-53

3]. The final version of the Regulations introduced the concept of "salaried hours work" which would cover many of those originally described as "time workers". It covers workers who have basic hours under an annual contract and are paid equal amounts (with some variations) throughout the year. It would cover, for example, monthly paid workers who receive an annual salary for working 9am-5pm, Monday to Friday; or annualised hours workers who receive equal monthly payments for working 2,000 hours a year; or term-time only workers who receive equal monthly payments but only work during term time [regulation 4].

Time spent "on-call" and "on standby" and "downtime" (eg when machinery is not working) count as time for which the NMW must be paid if the worker is at the place of work and required to be there [draft regulation 3(1); regulations 15(1) and 16(1)]. During hours when a worker is allowed to sleep at the employer's premises, only the time when he is actually working attracts the NMW [draft regulation 3(1); regulations 15(1) and 16(1)]. Travel time on business (but not to and from work) counts for NMW purposes as does training time [draft regulations 3(2) and 5; regulations 15(2), 16(2), 16(5), 19]. But rest breaks (eg tea and lunch breaks) do not count for time-workers [draft regulation 3(4); regulation 15(7)]. Nor does time when the worker is absent from work, for example on leave or on account of sickness [draft regulation 3(3); regulations 15(5) and 21 (3)]. For "salaried hours workers", absences count as time when the NMW is payable if they are paid for at the same rate as time spent working.⁶⁴ Time spent on taking industrial action is also excluded [draft regulation 2(2); regulations 15(6) and 21(4)].

Output work is work for which workers are paid wholly on a piecework or commission basis, eg according to the number of products they make or the number or value of sales they make [draft regulation 2(1); regulation 5].

Where the employer effectively controls the number of hours worked by an output worker (as is possible where the worker works on the employer's premises, for example, pieceworkers in a factory), then the hours actually worked in the pay reference period count for NMW purposes [draft regulation 13(1); regulation 24]. These workers are treated as time workers. If the worker did not earn the NMW through piecework or commission rates, the employer would have to make up the difference.

Where no working hours are set, as in the case of home workers and most commission workers, employers will have to draw up a prior written agreement with their workers setting a fair estimate of the number of hours they are likely to work in an average day. The estimate will be "fair" if the employer can show that the hours are at least four-fifths of the number of hours an average worker would take to do the same work. These hours will be "guaranteed NMW" hours or "ascertained hours". Workers will have to keep records of the number of hours they actually do work. Employers will still pay by output, but if the worker has worked the guaranteed hours but failed to make enough pieces to

⁶⁴ *Memorandum by the DTI for the Joint Committee on Statutory Instruments*, 16 February 1999, para 29

reach the NMW for those hours, the employer will have to make up the difference [draft regulations 13(2), 14 and 15; regulations 25 and 26].

Travel time on business counts as time eligible for the NMW for output workers as well [draft regulation 4; regulation 17].

Non-hours work is work which is not time work, salaried hours work, or output work and for which there are no specified hours. It would cover, for example, care workers or wardens who live on the premises and need to be available 24 hours a day [draft regulation 2(1); regulation 6]. The final version of the Regulations renamed this type of work "unmeasured work" [regulation 6]. These workers may have set tasks to accomplish but the "doing of them varies according to circumstances".⁶⁵

There are two options for determining how many hours a "non-hours worker" ("unmeasured hours worker") has worked for NMW purposes. The default is the actual number of hours spent by the worker in carrying out his contractual duties during the pay reference period [draft regulation 16; regulation 27]. The alternative is for employer and worker to enter into a written agreement stating the average number of non-hours (unmeasured hours) work the worker is likely to do on a normal working day. This daily average must be "realistic". Where the worker takes a holiday, the hours are reduced proportionately. These agreed hours are the hours for which the NMW must be paid [draft regulations 17 and 18; regulations 28 and 29].

D. Determining pay for NMW purposes

Pay, for NMW purposes will be gross pay. It will include:

- tax and national insurance contributions
- performance or incentive pay
- productivity bonuses
- service charges, tips etc which are collected and redistributed by the employer through the payroll
- profit related pay
- payments made in the following pay reference period, which relate to the previous reference period, count towards NMW in the previous period (eg where a bonus cannot be calculated in time to be paid in the month to which it relates)
- certain deductions from pay (including any made on account of the worker's misconduct, any made to recover loans or advances of wages and any made on account of the purchase of shares or other securities by the worker). Payments made by the worker for the same purpose are also included in pay.

⁶⁵ Consultation Document, para 20

- living accommodation provided by the employer but only up to 50p an hour/£2.85 a day [£19.95 a week maximum]

[draft regulations 19, 22, 24, 25; regulations 30, 33, 35, 36]

Pay for NMW purposes will exclude:

- benefits in kind and vouchers
- money payments for work done in the previous pay reference period
- money payments when absent from work (eg on holiday or off sick)
- overtime or shift premia
- any “allowance” (eg for dangerous work, special duties, on-call payments, unsocial hours payments, London weighting)
- service charge, tips etc which are not paid through the payroll
- reimbursement of expenses (eg business travel)
- deductions made by the employer where the worker has had to purchase equipment needed for his work (eg tools; materials which become part of output such as thread or buttons; laundering of uniform; travel expenses; protective clothing). Payments which the worker has had to make to his employer for these items are also excluded (ie they must be deducted).
- deductions for living accommodation in excess of 50p an hour/£2.85 a day [£19.95 a week].

[draft regulations 6, 20, 21, 23, 25; regulations 9, 31, 32, 34, 36]

E. Written statement of the NMW

Draft Regulation 26 provided that all workers were to be given the right to receive a written statement setting out details of the rate of the NMW and explaining their right of access to records if they suspected they were being underpaid. This right has been dropped in the final version of the Regulations.

F. Record keeping

Draft Regulations 27 and 28 required employers to keep detailed records from which it would be possible to determine whether the NMW had been paid. These were to have covered all money paid and deductions made under the inclusion and exclusion lists above; details of hours worked, absence due to sickness or holiday; agreements with output workers and non-hours workers; and accredited training agreements. However, these details were not required for workers earning more than £12,000 a year in monthly instalments of at least £1,000, as they were unlikely to be earning below the NMW. The final version of the Regulations only requires employers to keep "sufficient" records to establish that the NMW is being paid [regulation 38]

VI Responses to the consultation

The Regulatory Impact Assessment published in February 1999 reported that about 300 individuals and organisations replied to the consultation document. Some 103 respondents completed the accompanying questionnaire including: organisations representing employers (25% of the total), trade unions (8%), individual employers (56%), voluntary organisations and other groups (11%). An illustration of the main points to arise during the consultation, taken from a small selection of responses, is given below:

A. Rate

The Consultation Document on the Draft Regulations made it clear that they reflected "firm Government decisions that have already been taken on the level of the NMW and modified rates for those aged 18-21 and for workers starting a new job with a new employer". The consultation was not, therefore, intended to reopen those decisions. Trade unions, nevertheless, continued to campaign against the level of the NMW, and, in particular, the lower rates for young people.⁶⁶ The Institute of Personnel and Development (IPD) has suggested that "a development rate for all aged between 18-21 will be unsustainable in the longer term, as employers will not want to distinguish between employees in this way for relatively little financial gain".

B. Pay reference period

Employers' organisations responding to the consultation argued that it should be possible to average pay over a longer period than a month. Both the CBI and the Engineering Employers' Federation (EEF) feared that the proposed pay reference periods would undermine annualised hours arrangements, an increasingly common form of work organisation. The British Chamber of Commerce (BCC) pointed out that people employed on commission might earn very little one month but a great deal the next. They argued that the reference period should be 17 weeks, in line with the reference period for the 48 hour week limit in the *Working Time Regulations*. Organisations representing workers generally supported the proposals, though the Welsh TUC recognised that there could be problems for term-time workers who did no work and were not paid at all in some months. They suggested a "saving scheme" under which they would be paid in 12 equal instalments.

The introduction of "salaried hours work" in the final Regulations is designed to meet some of these concerns.

⁶⁶ See, eg, "Unions set to fight for £4.61 an hour", *Guardian*, 16 September 1998; "Union bosses despair at minimum wage 'betrayal'", *People Management*, 1 October 1998; "Short changing young workers", *Labour Research*, December 1998

C. Determining the hours worked for NMW purposes

There was a good deal of concern about how easy it would be to operate the rules, particularly on "non hours" work and output work where no hours are set. The Welsh TUC said that enforcement would be crucial. The CBI gave general support to the approach but reported that the knitting industry feared the rules on homeworking would be unduly burdensome. The BCC summed up a frequently voiced criticism:

There is a fundamental problem in trying to set an hourly rate for work which is not defined in terms of hours worked but by output or non-hours. A system which pays employees regardless of output fails to provide an incentive to produce. Firms which currently pay workers dependent on output will now need to pay them a set level regardless of what they produce. This could have a considerable impact on the competitiveness of some firms.⁶⁷

The BCC also reported concern that the requirement to include travel time on business could prove expensive. Apparently nurses on home visits only charge for time spent in the home. Domiciliary care, especially in rural areas, might be affected.

D. Determining pay for NMW purposes

There was general support for most of the proposals, such as the treatment of tips, performance payments and so on. But the relatively low level of the allowance for accommodation (£19.95 a week) and the absence of any allowance for other benefits in kind were widely criticised. This is a particular problem for employers where the board and lodging element is one of the main attractions of the job. The British Activity Holidays Association put the value of board and lodging for young people who take summer jobs looking after children on activity holidays at about £75 a week.⁶⁸ The International Au Pair Association argued that au pairs should not be regarded as "workers" and so excluded from the Act's coverage.⁶⁹ Changes to the Regulations mean most au pairs will, in fact, be excluded on this basis.

E. Written statement of NMW

Both employer and employee organisations thought the proposed statement was too complicated. The CBI and the Welsh TUC preferred the statement suggested by the Low Pay Commission: "The National Minimum Wage, which your employer must pay you by law, is £3.60 an hour. You should seek advice if you are unsure that you are receiving this rate".⁷⁰ The EEF, CBI, and the Welsh TUC thought it unnecessary for this statement

⁶⁷ BCC response to the Consultation Document, reply to question 29

⁶⁸ "Wage reform threatens activity holidays", *Times Educational Supplement*, 27 November 1998

⁶⁹ "Minimum pay threatens end of the au pair", *Times*, 21 January 1999

⁷⁰ *The National Minimum Wage: First Report of the Low Pay Commission*, Cm 3976, June 1998, Appendix 12 and para 8.14

to be included in the wage packets of those earning more than £1,000 a month (the cut-off point for detailed record keeping).

The Government responded to these concerns by deferring any requirement for a written statement.

F. Record keeping

Employers' organisations were concerned to reduce the record keeping burden placed on employers. The EEF argued that the cut-off level, below which employers had to maintain detailed records, should be reduced from £12,000 to £10,000. Both the CBI and the BCC thought it essential that the threshold should be applied on a pro rata basis to part time employees and linked to hours worked. (If you pay someone £12,000 a year for - say- 20 hours work a week, you would be paying £11.50 an hour, well above the NMW.)

Again, the Government responded to these concerns, this time by greatly reducing the record-keeping requirements.

G. Training

There was a good deal of criticism of the restricted definition of accredited training for the purpose of the lower trainee rate. The CBI and the BCC pointed out that many employers provide in-house training which is at least as good as that provided under schedule 2(a) of the *Further and Higher Education Act 1992*. The BCC and EEF argued that time spent travelling to training courses away from the place of work should not count as time for which the NMW must be paid, and the CBI urged that payment should not be required where training is undertaken on a voluntary basis outside work hours. A number of respondents argued that apprentices should be exempt throughout their apprenticeships, as recommended by the Low Pay Commission. According to the CBI, some sectors, such as hairdressing, fear that the one year limit on the exemption will lead to a loss of employment. The IPD did not support the principle of a separate trainee rate, arguing that it would weaken the incentive to take jobs with training.

The final Regulations do expand the definition of accredited training to include in-house training of a verified standard.

H. Guidance

One clear message from the responses was the need for clear, comprehensive and practical guidance to be available well in advance of 1 April 1999. The IPD proposed separate guidance for employers and employees with a free telephone hotline and the BCC recommended separate guidance for different types of worker with the use of worked examples showing how the NMW should be calculated.

The detailed Guidance is not yet available. However, a telephone hotline has been established which can issue preliminary guidance, deal with enquiries and register names and addresses of those wishing to receive the final guidance as soon as it is published.⁷¹

VII The Regulations

The final version of the *National Minimum Wage Regulations 1999* was laid before Parliament on 16 February 1999. Their content is described in Part V of this paper which summarises the provisions of the *Draft Regulations*, as revised by the final Regulations. As will already be clear, a number of significant changes were made in response to points made during the consultation, but they are collected here for convenience. Stephen Byers, the Secretary of State for Trade and Industry, commenting on the Regulations, said:

These Regulations will make the national minimum wage a reality. They are the outcome of a lengthy and detailed process of consultation. We have carefully considered the responses to the consultation and I believe the Regulations represent a reasonable balance between providing necessary protection for workers and avoiding unnecessary burdens on businesses and individuals.

We are also committed to telling people about the minimum wage and how the rules work. It is essential for as many workers and employers as possible to know their rights and obligations. My Department is already issuing preliminary guidance and preparing detailed guidance for release in the near future. We will be backing this up with other publicity measures over the next few weeks.⁷²

The main changes are:

- Employers are no longer to be required to display on pay slips both the minimum wage and details to enable workers readily to confirm whether they have received the statutory minimum. The Secretary of State's Report on the Regulations explains:

The Government has decided to defer action on this recommendation in the light of responses to the consultation and pending further consideration. Ministers have always made clear that the minimum wage will be introduced in a proportionate way that places as few burdens on businesses as possible. It is not considered necessary at this stage to require employers to display on or with each payslip, either "individualised" details of minimum wage pay (calculated according to the method described in the regulations) or more general information about the minimum wage. My Department will in any event be producing publicity and guidance aimed at ensuring that as many workers and employers as possible are aware of the minimum wage rates that apply to them. The guidance will include a "model" poster which I hope employers will wish to

⁷¹ 0845 845 0360 or 0845 600 0678

⁷² DTI press release, *National Minimum Wage imminent* - Byers, 16 February 1999

display in the workplace and which gives some basic information about the minimum wage.⁷³

- Regulation 2 makes it clear that work done by a member of the family, either in the form of domestic chores in the family household, or as a contribution to the family business, does not count for the purposes of the NMW. This exemption is extended to people (such as au pairs) who are not family members but, nevertheless, live as part of the family. The Secretary of State's Report explains:

The LPC did not make any recommendation on the position of workers who live with a family and are treated as one of the family (such as nannies, au pairs and companions). On further consideration, the Government has decided that this group of workers deserves different treatment because of the degree of integration within the family context. Regulation 2 provides that work done on such a basis will not count for the purposes of the national minimum wage.⁷⁴

- There has been some clarification of the position of trainees participating in Government training schemes and sandwich students:

The regulations make it clear, in general terms, that trainees on Government schemes will qualify for the minimum wage if they are paid and employed by the employer, but will otherwise be exempt.⁷⁵

- Employers of low paid workers covered by annualised hours arrangements who are paid the same amount per week or per month regardless of whether they are working (eg term-time workers such as school cleaners and seasonal workers) will no longer need to restructure their pay systems to ensure that such workers are paid the NMW at peak times:

The consultation exercise on the draft regulations revealed that the problem is more widespread than initially considered, because the hourly pay of salaried hours workers may also vary according to whether the period in question is a short month (February) or a long month (July). Moreover, "term-time" working is not confined to schools - large organisations such as banks also allow staff to work only during term time but pay them evenly throughout the year.

The regulations therefore contain particular provisions for the calculation of minimum wage pay in the case of "salaried hours" workers. Their general effect is to treat annual working hours as if they were evened out across the year, reflecting the evening out of pay received. The result is that such workers and employers should not need to restructure their existing pay arrangements.

⁷³ *Regulations implementing the National Minimum Wage: a Report by the Secretary of State for Trade and Industry*, laid before Parliament on 16 February 1999 as required by section 5(4) of the *National Minimum Wage Act 1998*, para 16

⁷⁴ *Ibid*, para 21

⁷⁵ *Ibid*, para 23

Workers are protected by provisions that require them to be paid at least the national minimum wage for hours worked in excess of their basic contractual hours.⁷⁶

- Employers will no longer have to keep detailed records of pay and hours of low paid workers for minimum wage purposes. Regulation 38 only requires them to keep “sufficient” records for three years:

Such records may be in a format and with a content of the employer’s own choosing; and must be capable of being produced as a single document when requested, for example by the worker or by the enforcement agency. My Department will be explaining, in guidance, the nature of records that could be regarded as being sufficient.⁷⁷

These various changes have been welcomed by business leaders as “a victory for common sense”.⁷⁸ The TUC, on the other hand, is disappointed, fearing that low-paid workers will not be aware of their rights without a compulsory written statement.⁷⁹ Au pair agencies are naturally delighted that au pairs will no longer be covered.⁸⁰

⁷⁶ Ibid, paras 25-26

⁷⁷ Ibid, para 26

⁷⁸ “Employers escape minimum wage rate disclosures”, *Financial Times*, 17 February 1999

⁷⁹ Ibid

⁸⁰ “Au pair minimum wage rules dropped”, *Times*, 17 February 1999

VIII Statistical tables: employees likely to be affected by the minimum wage¹

The tables show the Office for National Statistics' best estimates of the likely impact of the minimum wage, based on surveys conducted in spring 1998. The distribution of earnings changes over time; in general, there is real earnings growth. For these purposes, it has been assumed that low pay will grow about as fast as inflation. Application of an annual inflation forecast of 2.5% up to April 1999 implies equivalent minimum wage rates, for spring 1998 when these data were collected, would have been £3.50 and £2.90.

A. Summary

Table 1

Employees Likely to be Affected by the Minimum Wage: Summary *adjusted central estimates, spring 1998*

| | Percentage Affected by Minimum Wage (%) (a) | Estimated Number Affected by Minimum Wage (000s) (b) |
|---------------------------------|---|--|
| Those aged 18 years to 21 years | 14.0% | 221 |
| Those aged over 21 years | 7.8% | 1,683 |
| All aged 18 years and over | 8.3% | 1,903 |

Notes: (a) Data for those aged 18 to 21 and earning less than £2.90 per hour in spring 1998, plus those aged over 21 earning less than £3.50 per hour
(b) The central estimates combine data from two sources, the Labour Force Survey and the New Earnings Survey, both adjusted for known biases

Source: Office for National Statistics

¹ Provided by Eshan Karunatileka

B. By sex and status

Table 2

Employees Likely to be Affected by the Minimum Wage: Sex & Status
adjusted central estimates, spring 1998

| | | Percentage Affected by Minimum Wage (%) | Estimated Number Affected by Minimum Wage (000s) (a) |
|----------------------|-----|--|--|
| Males | | | |
| Full-time | | | |
| those aged 18 to 21 | (b) | 11.3% | 63 |
| those aged over 21 | (c) | 2.8% | 294 |
| all aged 18 and over | | 3.2% | 357 |
| Part-time | | | |
| those aged 18 to 21 | | 16.8% | 39 |
| those aged over 21 | | 21.5% | 172 |
| all aged 18 and over | | 20.5% | 211 |
| Females | | | |
| Full-time | | | |
| those aged 18 to 21 | | 11.6% | 47 |
| those aged over 21 | | 5.2% | 287 |
| all aged 18 and over | | 5.6% | 335 |
| Part-time | | | |
| those aged 18 to 21 | | 19.0% | 72 |
| those aged over 21 | | 19.8% | 929 |
| all aged 18 and over | | 19.7% | 1,001 |

Notes: (a) The central estimates combine data from two sources, the Labour Force Survey and the New Earnings Survey, both adjusted for known biases
(b) Those aged 18 to 21 and earning less than £2.90 per hour in spring 1998
(c) Those aged over 21 and earning less than £3.50 per hour in spring 1998

Source: Office for National Statistics

C. By region

Table 3
Employees Likely to be Affected by the Minimum Wage: Region
central estimate, spring 1998

| | Percentage Affected by Minimum Wage (%) (a) | Estimated Number Affected by Minimum Wage (000s) (b) |
|------------------------|---|--|
| North East | 11.6% | 111 |
| North West | 9.2% | 197 |
| Merseyside | 12.0% | 55 |
| Yorkshire & the Humber | 9.4% | 183 |
| East Midlands | 9.1% | 155 |
| West Midlands | 9.1% | 193 |
| Eastern | 6.9% | 161 |
| London | 4.3% | 116 |
| South East | 6.8% | 217 |
| South West | 9.8% | 192 |
| England | 8.1% | 1,579 |
| Wales | 10.8% | 109 |
| Scotland | 7.9% | 157 |
| Great Britain | 8.2% | 1,846 |
| Northern Ireland | 10.5% | 57 |
| United Kingdom | 8.3% | 1,903 |

Notes: (a) Data for those aged 18 to 21 and earning less than £2.90 per hour in spring 1998, plus those aged over 21 earning less than £3.50 per hour
 (b) The central estimates combine data from two sources, the Labour Force Survey and the New Earnings Survey, both adjusted for known biases

Source: Office for National Statistics

D. By industry

Table 4

Employees Likely to be Affected by the Minimum Wage: Industry
adjusted central estimates, spring 1998

| | Percentage Affected by Minimum Wage (%) (a) | Estimated Number Affected by Minimum Wage (000s) (b) |
|---|---|--|
| Agriculture, Hunting & Forestry | 13.8% | 27 |
| Fishing (c) | | |
| Mining & Quarrying | | |
| Manufacturing | 4.5% | 204 |
| Electricity, Gas & Water Supply | | |
| Construction | 3.4% | 40 |
| Wholesale & Retail Trade | 12.7% | 436 |
| Hotels & Restaurants | 28.8% | 295 |
| Transport, Storage & Communication | 4.6% | 70 |
| Financial Intermediation | | |
| Real Estate, Renting & Business Activity | 8.2% | 183 |
| Public Administration & Defence | 2.0% | 29 |
| Education | 5.8% | 120 |
| Health & Social Work | 10.7% | 300 |
| Other Community & Social Service Activities | 15.1% | 179 |
| All Industries | 8.3% | 1,903 |

Notes: (a) Data for those aged 18 to 21 and earning less than £2.90 per hour in spring 1998, plus those aged over 21 earning less than £3.50 per hour
 (b) The central estimates combine data from two sources, the Labour Force Survey and the New Earnings Survey, both adjusted for known biases
 (c) The symbol ".. .." indicates too small a sample size to permit an accurate estimate

Source: Office for National Statistics

IX Bibliography²

The underlined references should act as links to external websites if you view this document via an Internet browser

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The National Minimum Wage Regulations 1999, laid before Parliament in draft on 16 February 1999 *

The National Minimum Wage Act 1998 (Amendment) Regulations 1999, laid before Parliament in draft on 16 February 1999 *

² Provided by Janice Davies

* These Regulations should be available on the HMSO website (www.hmso.gov.uk) in due course

Publications

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[The National Minimum Wage: First Report of the Low Pay Commission](#), Low Pay Commission, June 1998 [Cm 3976]

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X Annex: Summary of Low Pay Commission's Recommendations and Government Response, DTI, 18 June 1998

| LPC RECOMMENDATION | RESPONSE |
|---|---|
| DEFINING THE WAGE | |
| 1. The NMW should apply to the gross amount of those earnings that are defined as included in its scope, The amount should be calculated before tax, National Insurance and other appropriate authorised deductions are made. | <u>Accept</u> |
| 2. Incentive Payments should be included in the earnings that count towards the NMW. All pieceworkers must, whatever the piece rate set and output achieved, be paid no less than the NMW on average for the pay reference period. | <u>Accept</u> , subject to consultation on the detailed regulations and their acceptance by Parliament. |
| 3. Homeworkers and others paid by output, rather than by time, must be paid at least the NMW on average for the pay reference period, with employers being able to demonstrate that they have evaluated rates paid to homeworkers to confirm compliance with the NMW. | <u>Accept</u> , subject to consultation on the detailed regulations and their acceptance by Parliament. |
| 4. Incentive payments should only count in the pay period in which they are received, which may not necessarily be the period in which they are earned. | <u>Accept</u> , subject to consultation on the detailed regulations and their acceptance by Parliament. |
| 5. Any service charge or centrally organised system of distributing tips and gratuities whereby employees receive their share through the payroll, such as the 'tronc', should be included in the NMW. | <u>Accept</u> , subject to consultation on the detailed regulations and their acceptance by Parliament. |
| 6. Cash tips paid directly by customers to staff should be excluded from calculation of the NMW. | <u>Accept</u> , subject to consultation on the detailed regulations and their acceptance by Parliament. |
| 7. Premium for overtime and shifts should be excluded from the definition of earnings for the NMW. When calculating compliance, only standard pay for overtime and shift hours should be counted. | <u>Accept</u> , subject to consultation on the detailed regulations and their acceptance by Parliament |
| 8. Allowances and supplements should be excluded from the calculation of the NMW. | <u>Accept</u> , subject to consultation on the detailed regulations and their acceptance by Parliament. |
| 9. With the exception of accommodation, benefits should be excluded from the calculation of the NMW. | <u>Accept</u> , subject to consultation on the detailed regulations and their acceptance by Parliament. |

| | |
|---|---|
| <p>10. An offset should be allowed where accommodation is provided as a benefit-in-kind. In order to protect workers from unreasonable charges, however, a maximum figure of £20 per week should be set for any deduction for the cost of the accommodation. The operation of this offset should be monitored and consideration given to phasing it out in the longer term.</p> | <p><u>Accept</u>, subject to consultation on the detailed regulations and their acceptance by Parliament.</p> |
| <p>11. The actual working time definition should define what constitutes working time for the purposes of the NMW. The NMW should also apply to all working time when a worker is required by the employer to be at the place of work and available for work, even if no work is available for certain periods.</p> | <p><u>Accept</u>, subject to consultation on the detailed regulations and their acceptance by Parliament.</p> |
| <p>12. For hours when workers are paid to sleep on the work premises, workers and employers should agree their allowance, as they do now. But workers should be entitled to the NMW for all times when they are awake and required to be available for work.</p> | <p><u>Accept</u>, subject to consultation on the detailed regulations and their acceptance by Parliament.</p> |
| <p>13. The pay reference period over which eligible earnings may be averaged for the NMW should be the normal pay period, as agreed between worker and employer, up to a maximum of one calendar month.</p> | <p><u>Accept</u>, subject to consultation on the detailed regulations and their acceptance by Parliament.</p> |
| <p>TRAINING AND DEVELOPMENT</p> | |
| <p>14. All those aged 16 and 17 should be exempt from the NMW.</p> | <p><u>Accept</u></p> |
| <p>15. All those on apprenticeships should be exempt from the NMW.</p> | <p><u>Accept</u>, subject to consultation on the detailed regulations and their acceptance by Parliament.</p> |
| <p>16. A minimum Development Rate should be available for 18-20 year olds.</p> | <p><u>Accept</u>, The Government has decided that a minimum Development Rate should be available initially for 18-21 year olds. The LPC will be asked to review the position of 21 year olds in 1999 following implementation of the £3.00 rate, and provide further advice on whether from June 2000 they might move to the full adult rate.</p> |
| <p>17. A Development Rate for those aged 21 or over should be available for up to a maximum of six months for workers beginning a new job with a new employer and who are receiving accredited training.</p> | <p><u>Accept</u>, subject to response to recommendation 16 above.</p> |

| CHOOSING THE RATE | |
|--|--|
| 18.The initial rate of £3.60 per hour should be introduced in April 1999. Advise that the appropriate rate for the NMW should be £3.70 per hour in June 2000. | <u>Accept</u> rate of £3.60 per hour in April 1999. Any future uprating will be considered in the light of LPC's advice in this report and the economic circumstances of the time. |
| 19.Recommend that an initial Development Rate of £3.20 per hour should be introduced in April 1999. Advise that the appropriate Development Rate in June 2000 should be £3.30 per hour. | <u>Accept.</u> The Government has decided to set an initial Development Rate for 18-21 year olds at £3.00 per hour, and move to £3.20 per hour in June 2000. The Development Rate for those aged 22 and over beginning a new job with a new employer and who are receiving accredited training will be introduced at £3.20 per hour. |
| IMPLEMENTING AND ENFORCING | |
| 20.The NMW should commence in April 1999. | <u>Accept</u> , subject to Parliamentary approval of the regulations. |
| 21.Employers should be obliged to display on pay slips both the NMW and details to enable workers to confirm readily whether they have received the statutory minimum. | <u>Accept</u> , subject to consultation on the detailed regulations and their acceptance by Parliament. Clause 12 of the NMW Bill provides necessary powers in conjunction with Employment Rights Act 1996. |
| 22.An existing government agency should be asked to take on the responsibility of verifying employers' compliance with the NMW. | <u>Accept.</u> |
| 23.Employers should be encouraged to display details of NMW prominently in the workplace. | This will need to be considered as part of the overall publicity and enforcement strategy for implementing the NMW. |
| 24.There should be a review of the NMW, in the first instance, within two years of its introduction, to examine its initial impact and to assess its future level, definition and possible exceptions. | The Government will be convening the LPC to develop proposals for and take forward work on monitoring and evaluating the introduction of the NMW over the next year. Clause 6 of the NMW Bill enables the Secretary of State to refer matters to the LPC at any future time. |

Section 5(4) of the *National Minimum Wage Act 1998* requires the Secretary of State to lay a report before both Houses of Parliament if he deviates from the Low Pay Commission's proposals, explaining his reasons for so doing. This report, laid on 16 February 1999, states that, of the 24 LPC recommendations, the Regulations fully implement recommendations 1-3, 5-14, 20 and 22-24. It explains why the other recommendations have been modified.