

UNPAID WORK EXPERIENCE (PROHIBITION) (NO. 2) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Unpaid Work Experience (Prohibition) (No. 2) Bill as introduced in the House of Commons on 5 February 2020 (Bill 23).

- These Explanatory Notes have been prepared by the Public Bill Office on behalf of Alex Cunningham MP in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice, provide background information on the development of policy and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 This Bill would amend the National Minimum Wage Act 1998 to prohibit work experience being unpaid if it exceeds four weeks in duration.

Policy and legal background

- 2 Since 1 April 1999 all relevant workers in the United Kingdom have had a right to receive the National Minimum Wage (NMW). The NMW was introduced by the National Minimum Wage Act 1998 ("the 1998 Act"). The NMWA contains the basic structure of the statutory scheme, but is supplemented by regulations which establish matters such as rates of the NMW and details of eligibility.
- 3 Section 1(2) of the 1998 Act provides that a worker is entitled to the NMW if he or she is working or ordinarily works in the United Kingdom and has ceased to be of compulsory school age. Section 54(3) defines "worker" in the same way as in section 230(3) of the Employment Rights Act 1996. However, sections 34-45 of the 1998 Act make provision for specific groups to be included in, or excluded from, qualifying for the NMW. Section 41 gives power to the Secretary of State to make regulations to apply the NMW to other groups of people as if they were workers.
- 4 Section 3 of the 1998 Act allows the Secretary of State, by regulations, to make certain groups of people eligible for a lower minimum hourly rate or exclude them from the NMW entirely. Those groups include anyone who has not yet reached the age of 26.
- 5 Since 1 April 2016, the main rate of the NMW, under regulation 4 of the National Minimum Wage Regulations 2015 (S.I. 2015/621), has applied to workers aged 25 and over and been known as the "National Living Wage". Regulation 4A sets lower rates of minimum wage for people who are aged 21-24, 18-20 and under 18 and for certain apprentices.
- 6 Terms such as "internship", "work placement" and "work experience" currently have no distinct legal status. An individual undertaking such a scheme may be entitled to the NMW if they are encompassed by the definition of "worker" – for example by being contractually obliged to perform work in return for regular remuneration - or qualify for one of the groups specifically included.
- 7 The [Unpaid Work Experience \(Prohibition\) Bill \[HL\] 2017-19](#), which had identical effective contents to this Bill, was introduced to the House of Lords by Lord Holmes of Richmond on 27 June 2017 and passed all its stages in that House. It was taken up by Alec Shelbrooke MP in the House of Commons, but was not debated. Lord Holmes has introduced an [identical Bill](#) to the House of Lords in this Session.

Territorial extent and application

- 8 Clause 2 states that the Bill would, like the 1998 Act, extend and apply to England and Wales, Scotland and Northern Ireland.

Commentary on provisions of Bill

Clause 1

- 9 Clause 1(2) exempts certain people undertaking work experience from the provision in section 3(2)(a) of the 1998 Act which enables the Secretary of State, by regulations, to exclude persons

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aged under 26 (together with other groups such as participants in schemes designed to provide training or to assist in seeking work) from the NMW entirely. A person qualifies for this exemption if they are in a scheme to provide work experience for a continuous or non-continuous period which exceeds four weeks.

- 10 Clause 1(3) inserts a new section 41A into the 1998 Act requiring the Secretary of State to use powers under section 41 of that Act to apply the NMW to certain people undertaking work experience, even if they are not otherwise classified as “workers”.
- 11 Subsection (1) of that new section defines those people as persons undertaking work experience with the same employer for a continuous or non-continuous period which exceeds four weeks.
- 12 Subsection (2) requires the Secretary of State to make those regulations within a period of six months beginning on the day the Bill is passed.
- 13 Subsection (3) requires the regulations to require people undertaking such work experience to be paid the NMW rate specified for their age group.
- 14 Subsection (4) extends, for the purposes of the section, the definition of “employer” used elsewhere in the 1998 Act to include “any organisation which provides an individual with work experience”. It also defines “work experience” to mean “observing, replicating, assisting with and carrying out any task with the aim of gaining experience of a particular workplace, organisation, industry or work-related activity”.

Commencement

- 15 Clause 2 states that the Bill will come into force on the day on which it is passed.

Financial implications of the Bill

- 16 The Bill does not require a Money Resolution. The 1998 Act already grants the Secretary of State powers to make regulations to include or exclude certain groups from the NMW. The Bill would require any publicly-funded body which currently provides work experience on an unpaid basis for periods exceeding four weeks to instead pay the relevant rate of the NMW. It does not, however, affect the publicly-funded body any differently to the general law.
- 17 The Bill does not require a Ways and Means Resolution because it does not authorise new taxation or similar charges on the people.

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