PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Second Delegated Legislation Committee

# DRAFT NATIONAL MINIMUM WAGE (AMENDMENT) REGULATIONS 2016

*Monday 11 January 2016*

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**The Committee consisted of the following Members:**

*Chair:* Valerie Vaz

† Allen, Heidi *(South Cambridgeshire)* (Con)
† Barclay, Stephen *(North East Cambridgeshire)* (Con)
† Berry, James *(Kingston and Surbiton)* (Con)
† Boles, Nick *(Minister for Skills)*
† Brennan, Kevin *(Cardiff West)* (Lab)
† Hayes, Helen *(Dulwich and West Norwood)* (Lab)
† Jarvis, Dan *(Barnsley Central)* (Lab)
† Jones, Mr David *(Clwyd West)* (Con)
† Kinnock, Stephen *(Aberavon)* (Lab)
† Lammy, Mr David *(Tottenham)* (Lab)
† Mackintosh, David *(Northampton South)* (Con)
† Monaghan, Dr Paul *(Caithness, Sutherland and Easter Ross)* (SNP)
† Morden, Jessica *(Newport East)* (Lab)
† Morris, Anne Marie *(Newton Abbot)* (Con)
† Tolhurst, Kelly *(Rochester and Strood)* (Con)
† Tomlinson, Michael *(Mid Dorset and North Poole)* (Con)
† Wheeler, Heather *(South Derbyshire)* (Con)

Katya Cassidy, Gavin O'Leary, *Committee Clerks*

**† attended the Committee**

# Second Delegated Legislation Committee

*Monday 11 January 2016*

[Valerie Vaz *in the Chair*]

## Draft National Minimum Wage (Amendment) Regulations 2016

4.30 pm

**The Minister for Skills (Nick Boles):** I beg to move,

That the Committee has considered the draft Minimum Wage (Amendment) Regulations 2016.

It is a pleasure to serve under your chairmanship, Ms Vaz. The proceedings of Delegated Legislation Committees are not always diverting or a cause for celebration on all sides, but I hope that for once we might all agree that this is a very good day and a very good set of measures, because the purpose of the draft regulations is to implement the new national living wage and to secure greater compliance by increasing the penalty for the underpayment of minimum rates of pay.

I am going to do a dangerous thing, which is to try and anticipate what will be said by my opponent in this discussion, the hon. Member for Cardiff West, who is a friend—

**Kevin Brennan** (Cardiff West) (Lab): Don't ruin my career!

**Nick Boles:** If it needed any ruining.

I know that the hon. Gentleman will stand up and say, "Well, you opposed the minimum wage, which is a Labour invention, so this is a shockingly hypocritical act by the Government." I have made it plain in a number of previous discussions that the Conservative party did indeed oppose the minimum wage, perhaps for reasons that were understandable at the time—if we look at the debate in Germany, which has only just concluded, there has been consistent opposition to the introduction of a minimum wage for similar reasons—but we were wrong. We were wrong to oppose it; we have said that we were wrong to oppose it; and, with the zeal of converts, we are now among its most passionate advocates. It is therefore entirely appropriate for a majority Conservative Government, the first for a long time, to be introducing not only an increase to the national minimum wage, but a whole new level through a national living wage to benefit people aged 25 and over.

Since the introduction in 1999 of the national minimum wage, it has been a clear and unqualified success in supporting the lowest-paid British workers. It has increased faster than both average wages and inflation without any adverse effect on employment, even during recession. The UK labour market and economy are now experiencing a number of unique highs: employment rates are at a record 73.9%, the highest since records began in 1971; real wages have grown by 2.4% over the past year, a rate not seen since before the most recent recession; we have the joint highest GDP growth among the G7 countries; more than 2 million jobs have been created since 2010; and 1.1 million more jobs are forecast by the Office for Budget Responsibility to be created by 2020.

That is why the Government believe that now is exactly the right time to go further and to build on the achievement of the national minimum wage, to move to a higher-wage, lower-tax and lower-welfare society, and to introduce the new national living wage to ensure that low-wage workers receive a greater share of the gains from economic prosperity.

The Government intend to set the initial national living wage at £7.20 an hour, with the aspiration for the rate to reach over £9 by 2020. The Government are setting the first rate so that we may make progress towards that ambition. We are also undertaking an internal review to assess the case for aligning the national minimum wage cycle with the national living wage and tax year. The initial national living wage rate is an increase of 50p per hour—

**Kevin Brennan:** Will that review involve a public consultation or will it be entirely internal, with no opportunity for people to contribute to it?

**Nick Boles:** The hon. Gentleman asks a very good question to which I do not know the answer immediately. However, before we conclude, I am sure I will have time to give him the full answer that he properly demands.

The initial national living wage rate is an increase of 50p per hour on top of the current adult national minimum wage for all workers aged 25 and over. That is an increase of 7.5% on the current adult rate and 10.5% since the start of this Government. This means that a full-time worker will receive £910 more a year. Although ambitious, it is worth noting, for those who retain any concerns about economic impact, that that increase is not without precedent. In 2001, the national minimum wage increased by 10.8% in a single year and by more than 30% in the following four years without any significant adverse effects on employment.

Our ambition is for the national living wage to reach 60% of median earnings by 2020, subject to sustained economic growth. According to the forecast produced by the Office for Budget Responsibility, a full-time national minimum wage worker will earn more than £4,700 more from the national living wage in cash terms by 2020. Some 2.75 million low-wage workers are expected to benefit directly and up to 6 million in total could see their pay rise as a result.

The Government have asked the Low Pay Commission to recommend increases to the national living wage towards 60% of median earnings by 2020. However, we recognise that the national living wage needs to be affordable for businesses, which is why we have chosen a proportion of median earnings that is the same as leading experts recommend.

In making its recommendations for the national living and minimum wage rates, the Low Pay Commission will continue to provide independent advice. That will include consideration of the pace of increases and will account for potential blockages to higher rate increases or constraints to specific areas in relation to low pay. The Government's stated ambition will not require a change to the Low Pay Commission's terms of reference or to the National Minimum Wage Act 1998.

The Government are absolutely clear that anyone entitled to be paid the minimum wage should receive it. To ensure that people receive the pay that they are entitled to, we are announcing a package of measures that will build on Government action to date and strengthen the enforcement of the national minimum and national living wages. That includes increasing the calculation of penalties from 100% to 200% of the arrears an employer owes, which these regulations will bring into force from 1 April. By increasing the penalties for underpayment, it is intended that employers who would otherwise be tempted to underpay comply with the law and that working people receive the money that they are legally due. As with the current penalty regime, it is our intention that the penalty would be reduced by half if employers pay within 14 days, but we are ensuring that non-compliant employers always face a penalty at least equivalent to the arrears that they owe.

We can only afford the national living wage because our long-term economic plan is working. We want everyone to benefit from the economic recovery that has been secured by long and hard work by the British people. That is why we believe that the national living wage is the appropriate step up for the hard-working people of this country. I recommend the regulations to the Committee.

4.39 pm

**Kevin Brennan:** Thank you, Ms Vaz. It is a great pleasure to serve under your chairpersonship for, I think, the first time, and I look forward to many more such occasions in future, hopefully.

The Minister started by saying it is a good day, but it is rather a sad day for some of us who are David Bowie fans, because of the announcement we heard today. Nevertheless, I understand the spirit in which the Minister made that comment, as he did so in relation to the measures that he is announcing. We welcome any attempt to enforce the national minimum wage more effectively, which is part of the purpose of the regulations, and any measures that result in better wages for some of the lowest paid in our economy. All those things are very welcome.

The Minister is wrong; I am not going to go over the fact that the Conservative party kept us up all night back in the days when we were trying to get the national minimum wage put into legislation. I will not mention at all that we were kept up night after night, because we all welcome conversion to a righteous cause, and the Government have now accepted that the national minimum wage is a good thing. The Minister gave a mea culpa with regard to the decisions taken and the fears expressed back then about the national minimum wage, which resulted in the bitter and difficult parliamentary battle to get the legislation through that I will not mention today.

We welcome any such attempt, and it is not our intention to divide the Committee on the regulations, so the Government Whip can safely send away all the troops he has assembled without any fear—I give him my word—that we will spring a surprise vote on Government Members at the end. They are, however, welcome to stay if they want to.

I have a number of questions, as the Minister might have anticipated, one of which I have already asked and on which he might have received some in-flight refuelling. I will allow him to come back on that after I have finished my remarks, although he is free to intervene if he wants to.

The point I raised in my intervention is that there is some concern that the review will simply be an internal one, setting a single date for increasing all the rates; the word is that it might be April 2017. It would be better to have a short public consultation, rather than the Government simply changing the rules by fiat and having an internal—I will not use the word "secret", because I do not think it is meant to be—and private review. Will the Minister reflect on that, if he has had advice from his officials to the contrary?

**Nick Boles:** It might be more efficient to answer that question directly. We are not proposing a formal public consultation. We are currently consulting both trade unions and employer associations on the changes to the cycle, and we are obviously talking with the Low Pay Commission about its view of the proposed alignment.

**Kevin Brennan:** On the surface, that sounds welcome, but others may want to ask further questions and we reserve the right to pursue that in future. If dates are to be tidied up, proper care needs to be taken in order to ensure that no group of workers has its minimum wage increase delayed by any process of realignment. There are real issues that need consultation, and I hope the Minister has taken that observation on board.

I have a number of other questions. As the Minister rightly said, the penalty for employers that fail to pay the national minimum wage will increase under the regulations from 100% of the total underpayment to 200%, while a reduction if there is prompt payment by the errant employer will be maintained. I note that the maximum penalty of £20,000 per worker is not being changed. The reason given in the Government's impact assessment is that the maximum penalty can only be changed through legislation—presumably primary legislation, rather than secondary legislation such as the regulations before us. Will the Minister clarify whether that £20,000 maximum penalty remains adequate, given that the legislation is now nearly 18 years old? In that time, the national minimum wage has been uprated, as the Minister rightly pointed out, on a significant number of occasions. Do the Government have any plans to uprate the maximum penalty in future through legislation or some other legislative vehicle that might become available along the way? I would be grateful for any thoughts he has on that.

Will the Minister clarify whether the reduction for prompt payment within the 14 days, which he proposes to retain under the regulations, is proving effective? How many employers actually pay up quickly as a result of that provision? Any information on that would be helpful for the Committee. Will he also clarify whether particular sectors of the economy are serial offenders in failing to pay the national minimum wage? It would obviously be useful to the Committee, if we are doubling the rate from 100% to 200%, to know which sectors are most likely to be affected. If it proves to be the deterrent the Minister hopes, it may bring those sectors more into line in paying the national minimum wage properly in

*[Kevin Brennan]*

the first place. Clearly, it would be useful to the Committee to know which sectors are the most likely offenders and, therefore, most likely to be impacted by the Government's proposed change.

On the impact of the national living wage, which also forms part of the regulations, the Government's impact assessment suggests that the cost to employers of introducing the national living wage will be in excess of £1 billion—perhaps the Minister can confirm that. It also suggests that there will be benefits of £137.5 million, split between employees, who will receive greater pension contributions as a result of their minimum wage payments being increased, and the Exchequer, which will receive higher national insurance contributions as a result of the increase in the minimum wage through the Government's national living wage proposal. There is a similar split in the impact assessment of a £46.2 million benefit estimated to accrue to employees and the Exchequer as a result of the so-called ripple effect.

I am at a loss as to why the Government put those two together. There is no breakdown of the £137.5 million benefit to workers and the Exchequer that the Government say that there will be and no breakdown of the £46.2 million benefit to employees and the Exchequer that they say there will be from the ripple effect. Surely that is something we need to know. Is it the case that of the £137.5 million, £135 million will be a benefit to the workers and £2.5 million a benefit to the Exchequer? Is it the other way round, or half and half, or 60:40, or 70:30? Why have the Government chosen to put together in the impact assessment the £137.5 million benefit to employees and the Exchequer without telling us how much will go to the workers and, perhaps significantly, how much will go to the Chancellor?

I think we are entitled to know that figure and I hope the Minister will be able to provide the breakdown. If it is not readily available, I hope he will give a commitment to provide it as soon as possible after our deliberations to every member of the Committee. Perhaps he could also tell us why the figures were presented in such a way instead of being broken down between workers and the Chancellor.

Will the Minister tell us the Government's assessment of the possible impact of the introduction of the national living wage on migrant labour entering the United Kingdom from Europe, as I could not find it in the impact assessment? Obviously, the debate about the free movement of labour across the European Union is a significant and live issue in the House of Commons, in Parliament and across the country at the moment. The Government propose to increase the minimum wage in a significant way, calling it the national living wage for over-25s. Surely they have made an impact assessment of the likely draw factor for workers from the European Union who want to exercise their right to free movement of labour and to work in the United Kingdom.

Some commentators believe that the impact of the increase in the national living wage will be far greater than any impact of restricting the availability of non-contributory benefits to European Union workers seeking to come to work in the United Kingdom. Can the Minister tell us his estimate, or whether the Government have attempted an estimate—I will find it rather shocking if they have not—of the impact of the national living wage on the movement of labour from European Union countries into the United Kingdom?

Of course, the national living wage is a confusing term, because it is not a living wage at all. The Chancellor stole the term for a piece of political theatre in the House of Commons, but of course the living wage was a pre-existing construct, determined independently and based on what it actually costs to live—whether in London, where it is currently set at £9.15 per hour, or in other parts of the country, where it is set at £7.85 per hour.

It is welcome that the national minimum wage for the over-25s will rise to £7.20 in April as a result of the regulations before the Committee, but that is well short of the estimated living wage for places outside London, leaving aside the living wage for London. However, I appreciate that the national minimum wage is set for the whole country and that there is no separate rate for London. We might note in passing that as the term "living wage" has been adopted by the Chancellor, it might, some might say deliberately—I would not say so, but it is possible—cause significant confusion when it is introduced, as people confuse the national living wage and the living wage. I wonder whether Ministers have any plans to try to help the public to understand the difference between the two ideas and the two things.

The age limit for the national living wage has been set at 25, and it is understandable that the Government have chosen that age. It is specified in the original legislation, but it is a relatively high figure in comparison with other countries. In fact, many countries with minimum wages have youth rates, but it is almost unprecedented to wait until workers reach the age of 25 before paying them the full rate. It is, I believe, only Greece in the European Union that makes people wait so long before getting access to the maximum minimum wage, to coin a phrase, so the only available comparator in this context for our treatment of younger workers is, apparently, Greece.

It is important that the messages about the new national living wage do not leave younger workers behind. I would like the Minister to explain the Government's position, in the light of the creation of the so-called national living wage, on the growth of the minimum wage for under-25s. Do they intend, through the creation of the so-called national living wage, to create a larger differential between the minimum wage paid to under-25s and that paid to over-25s, in the longer term? If that is part of the policy intention of the change, there will be a significant impact on younger workers—and on older workers—and it would only be fair for the Minister to explain that to us.

4.54 pm

**Nick Boles:** I shall try to answer as many of the questions as I can with the information available to me.

First, the hon. Gentleman asked about the maximum penalty per worker of £20,000. It is important to point out that that was increased in May 2015 through the Small Business, Enterprise and Employment Act 2015, so it is not the same as it always has been. There are very few cases that would go over £20,000 per worker but that is something that will be kept under review. If it becomes completely outdated, it can be further amended in future legislation.

The hon. Gentleman asked which sectors would most likely be affected by the enhanced enforcement measures being introduced in the regulations. Without singling out any sector absolutely, we know that low-paid work is most prevalent and that, in certain instances, there have been problems with a failure to implement minimum wage legislation in the care sector, retail and some other service sectors. I do not want to suggest or imply that there is not a majority in all those sectors of responsible employers who always abide by minimum wage legislation.

The hon. Gentleman will have seen that we do a regular naming and shaming exercise of employers who have failed to abide by minimum wage legislation. We intend to continue that. Sometimes we single out particular sectors for a spotlight and for investigation by Her Majesty's Revenue and Customs' resources because we know that they have a greater tendency of being close to the minimum wage for many of their workers. Care, retail and other service sectors would be first in that.

The hon. Gentleman asked about the estimate of some of the benefits from the national living wage and identified a figure. I think the total figure for the two elements is £183.7 million, by which the employees and the Exchequer will benefit from employer pension and national insurance contributions. Those are not stripped out because, in a sense, employees ultimately benefit from increased employer pension contributions as they then receive the pension, and from national insurance contributions because that is how we support employees' rights to state pensions.

The benefits that employees receive directly through the wage impact are captured elsewhere. That figure—the total increase of wages of £932 million—and the other payments do not immediately go to employees. They go to private pensions or to national insurance contributions, but they ultimately benefit employees. It does not make sense to try to strip out how much the Exchequer benefits and how much employees benefit because, ultimately, employees benefit from all of it through the pensions that national insurance contributions support.

**Kevin Brennan:** I accept that that is the Minister's answer for now but I will probably want to press him further on another occasion because I am interested—and it is in the public interest—to know what is coming into the Exchequer as a result of the changes so that we can scrutinise them effectively. Obviously, I could pursue that through written parliamentary questions but if the Minister wants to reflect further on it, I am happy to let him do so.

**Nick Boles:** If there is any information about the breakdown, or if that can be arrived at, I will certainly write to the hon. Gentleman. I will copy other members of the Committee into any letter I write.

The hon. Gentleman made the point about 25 being a relatively high age for the transition to the maximum rate for a minimum wage. He is right about that but he will be aware that, as well as not wanting to leave younger workers behind on wages, we do not want to leave them behind in employment. Unemployment rates are significantly higher for people under 25 than for those who are over 25. Given that this is a relatively substantial jump in the minimum wage payable, we thought it was right to set the transition age at 25. By that age, most people who will have been affected by minimum wage legislation will have amassed a sufficient level of experience to start commanding that level of wage. As we introduced the national living wage, we absolutely did not want to see employers refusing to employ young people because they have relatively less experience, and favouring older workers.

The hon. Gentleman asked about the differential between the national living wage and the national minimum wage, and whether there was any intention for the differential to grow. First, there is no intention that the differential should not be relatively stable. Ultimately, on all these questions, as indeed on the rate of increase for the national living wage, we will take advice from the Low Pay Commission. It is important, although we have set a level for the starting point of the national living wage, that the level for the point at the end of this Parliament should be a very clear aspiration to move on to 60% of median wages, but the path by which we get there is one on which we want the Low Pay Commission's advice to be critical. The same is true for the commission's judgments on the national minimum wage.

Ultimately, it is not inconceivable that the Low Pay Commission might at some point make different recommendations for increases in the national living wage and the national minimum wage that would apply to under 25-year-olds. Obviously, if the commission ever did that, we would want to understand why it thought it appropriate. The hon. Gentleman will be aware that, on occasion, we disagree with the commission's recommendations, as we did on the apprentice minimum wage. Such disagreements are quite rare, and we would rather not disagree—we think that the commission does excellent work, and we generally want to be guided by it—but if it were to recommend an increase in differentials, we would want to test why it thought that was necessary and appropriate to ensure that the minimum wages supported the economy as well as the low pay of working people.

Finally, the hon. Gentleman asked about the effect on the incentives for migrant workers to come from other European Union countries. He will want to take into account the Prime Minister's ongoing negotiation with the European Union on access to working benefits, particularly tax credits. Obviously, in isolation, the national living wage may be a pull factor in one direction but, when combined with a reduction in access to tax credits, which is a core objective in the Prime Minister's negotiation, it might play in the other direction. Given that there is not long to wait, we should probably wait to see the outcome of that negotiation before estimating any relative effects on migrant flows from other European Union countries.

**Kevin Brennan:** I do not want to labour the point, but the Government should have some sort of view on what they expect the net impact of those two changes to be and on whether the pull and push factors will be equal or whether one will be greater than the other. The Government should be doing some work on that and should have something public to say. I will press further on that when I have an appropriate opportunity.

**Nick Boles:** The hon. Gentleman is anticipating the conclusion of the negotiation. Although I am confident that the negotiation will be an absolute triumph, I would not want to put a figure on it, let alone start

*[Nick Boles]*

commissioning research on the impact. He will have to wait a little longer. His general point is that an increase in wages for all workers in a certain age group will, needless to say, increase the attractiveness of employment in this country, but the improvement in the state of the economies of many continental European countries relative to two, three or four years ago also has an extremely positive impact on people's desire to get into secure employment in their own country. It is a complex picture, and it would be a mistake to think that any one factor is determinative in an individual's decision to come and work in the UK.

*Question put and agreed to.*

*Resolved,*

That the Committee has considered the draft Minimum Wage (Amendment) Regulations 2016.

5.4 pm

*Committee rose.*