



**NATIONAL MINIMUM WAGE AND
VOLUNTARY WORKERS**

Consultation Document

JUNE 2007

CONSULTATION ON THE NATIONAL MINIMUM WAGE AND VOLUNTARY WORKERS

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FOREWORD

When the landmark national minimum wage was introduced, Parliament ensured that voluntary workers and the third sector generally would be able to continue to operate as they have always done. This was achieved by creating an exemption from the national minimum wage for certain unpaid workers – known as voluntary workers – employed by charities, voluntary organisations, associated fund-raising bodies and statutory bodies.



The national minimum wage legislation does, however, recognise that voluntary workers should not lose out as a result of their efforts. The exclusion permits them to be reimbursed for expenses they incur, provided with subsistence, and/or accommodation as is reasonable in the circumstances of the employment, and also any training necessary to carry out the work. In that way, the legislation makes a clear demarcation between workers who qualify for the national minimum wage, and voluntary workers who do not.

The third sector is flourishing, and the government is keen that it should continue to do so, alongside the success of the national minimum wage, which has benefited an estimated 1 million workers each year since its introduction. It is, however, timely to review how the provisions in the National Minimum Wage Act 1998 have operated in practice in relation to voluntary workers and the third sector generally. The growth of the third sector, the recommendations made by the Russell Commission to establish a new national framework for volunteering across the UK, and the opportunities in the third sector for those not in education, employment or training, point to the need ensure that the boundaries that establish the right to the national minimum wage and the position of voluntary workers remains clear and fair, and works in the best interests of all concerned.

The government believes that the existing boundaries are indeed clear and fair. We would welcome views about that.

To provide greater flexibility for people who participate in the national framework for youth volunteering, we are proposing the use of existing powers in the Act, subject to parliamentary approval, which enable exclusions to be made from the national minimum wage in certain specified circumstances.

I hope that all those who work in the third sector will consider this document and provide comments. This is especially important as the third sector is very diverse, and we are keen to learn more about its experience of the 1998 Act.

A handwritten signature in black ink, appearing to read 'Jim Fitzpatrick'.

JIM FITZPATRICK, Parliamentary Under Secretary of State for Employment Relations and Postal Services

EXECUTIVE SUMMARY

In January 2007, the government announced that it was carrying out a review of the provisions in the National Minimum Wage Act 1998 that relate to voluntary workers.

Those working in the third sector, and others where these proposals might be relevant, will therefore wish to consider the proposal in this consultation document (section IV below) and provide comments.

As background to this proposal, and also as a reminder, this consultation document explains the relevant provisions of the National Minimum Wage Act 1998.

Section 54 of the 1998 Act defines workers as people who work under a contract of employment or a contract personally to perform work or provide services to another party to the contract (but not the genuinely self-employed). All workers qualify for the national minimum wage unless excluded by the 1998 Act or the National Minimum Wage Regulations 1999.

Section 44 of the 1998 Act defines a voluntary worker as someone who works for a certain type of organisation (ie, charities, voluntary organisations, associated fund-raising bodies and statutory bodies) and who receives no monetary payment or benefit in kind, other than reimbursement for expenses incurred, subsistence and/or accommodation as is reasonable in the circumstances of the employment, and any training necessary to carry out the work. Voluntary workers are excluded from qualifying for the national minimum wage by section 44 of the 1998 Act.

In addition to voluntary workers and workers, a third category also needs to be understood in this context: volunteers. Volunteers are mentioned here for completeness, and to distinguish them from voluntary workers as defined in the 1998 Act (with whom they might sometimes be confused). Volunteers do not have any form of contract of employment or contract to perform work or provide services, and receive no financial remuneration or benefits in kind for providing their services; they are neither workers nor voluntary workers under the definitions set out in the 1998 Act. They do not qualify for the national minimum wage.

In all cases, determining if someone qualifies for the national minimum wage depends on whether they satisfy the definition of a worker, and if so, whether one of the exclusions applies. Misunderstanding of the definition may result in someone not being paid the national minimum wage when they should be. For example, a person who considers himself a volunteer might receive payment or a benefit in kind in return for the work they do and be under an obligation of a contractual nature personally to carry out work. In such cases, the person carrying out the work would probably satisfy the definition of a worker who qualifies for the national minimum wage, and would not be a volunteer.

The government's review of the 1998 Act aims to ensure that it is operating as intended with regard to the third sector. In general, we believe section 44 is operating as intended. For that reason, we do not propose to change it, but are open to views about that.

We are proposing to make use of existing powers in the Act, which enables exclusions to be made from the national minimum wage in certain specified circumstances. The exclusion would apply to people who participate in the national framework for youth volunteering, a framework recommended in the Russell Commission's report.

DETAILS OF THE CONSULTATION

How to respond

This consultation commenced on 12 June and will close on 4 September 2007. Responses may be submitted by letter, fax or email to:

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Responses may also be submitted online at:

www.surveymonkey.com/s.aspx?sm=Gq4qBTuoRD3wuT8il9m7gw_3d_3d

When responding please state whether you are responding as an individual or on behalf of an organisation. If responding on behalf of an organisation, please make it clear who the organisation represents and, where applicable, how the views of members were taken into account.

Additional copies and contact details

You may make copies of this document without seeking permission. Further printed copies can be obtained from:

DTI Publications Orderline
ADMAIL 528
London SW1W 8YT
Tel: 0845 015 0010
Fax: 0845 015 0020
Minicom: 0845 015 0030
Email: www.dti.gov.uk/publications

The Department will be able to arrange for other languages or copies in Braille to be provided if required. Further copies of the electronic consultation document can be obtained from the DTI website at www.dti.gov.uk/consultations

Confidentiality and data protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations

the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you want other information that you provide to be treated as confidential, please be aware that, under the Freedom of Information Act, there is a statutory Code of Practice with which public authorities must comply and which deals with, amongst other things, obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard any information that you wish to be treated as confidential should be so treated. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that your request for confidentiality would be complied with in all circumstances. An automatic confidentiality disclaimer generated by your information technology system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the Data Protection Act and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Help with queries

Questions about the **policy issues** raised in this document can be addressed to Patrick Walsh (contact details are given above).

If you have any comments or complaints about **the way this consultation has been conducted**, please address them to:

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Better Regulation Team
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET
Tel: 0207 215 0354
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A copy of the Code of Practice on Consultation is in Annex A.

I. Purpose of this consultation

1. This consultation document will be of interest primarily to those working in the third sector¹. The government is also keen to ensure that others with an interest in this matter also consider our proposals and let us have their views.

2. In January the government announced its intention of carrying out

*a review of the national minimum wage in relation to voluntary workers. The review aims to explore whether or not any changes are necessary to the National Minimum Wage Act 1998, or identify alternative non-legislative options, to clarify and/or add flexibility to it in respect of voluntary workers. The review would also address the Low Pay Commission's 2005 recommendation to consolidate relevant guidance. There is no intention of altering the original scope of the National Minimum Wage Act in terms of those who should, or should not, be paid the minimum wage.*²

3. This consultation document takes forward the review by proposing the use of existing powers under the National Minimum Wage Act 1998 ('the Act') to exclude participants in schemes that are part of the national framework for youth volunteering recommended by the Russell Commission³. This is also an opportunity to invite views on whether or not any changes are required to the Act to ensure that the original intentions of Parliament in respect of the third sector are being fulfilled. Existing powers under the Act already provide a degree of flexibility, enabling us to exclude from qualifying for the national minimum wage by Regulations certain groups of people (eg, participants in certain training schemes) or modifying the groups of people who can be excluded. That, therefore, provides a degree of future-proofing for the Act. However, if the existing degree of flexibility is considered insufficient for the third sector, we would welcome views about why that should be the case.

4. This document explains the background to the review, including the definitions of the people who are relevant, and sets out the proposals for using existing powers under the Act on which comments are invited.

¹ Throughout this consultation document reference is made to the 'third sector' which includes voluntary and community organisations, charities, social enterprises, cooperatives and mutuals.

² Parliamentary written statement of 17 January 2007 (Official Record, column 38WS).

³ The Russell Commission was established to examine the scope for increasing the participation of young people in volunteering. Its March 2005 report made a number of recommendations to establish a national framework for youth action and engagement intended to achieve a step change in the diversity, quality and quantity of young people's volunteering. See ***A National Framework for youth action and engagement***, published by The Stationery Office.

II. Introduction

5. The government welcomes the significant contribution that the third sector makes to society, and is keen to see its role expanded. A large number of third sector organisations operate in the UK through various activities designed to provide opportunities to improve the position of individuals either as recipients or as participants (eg, the elderly, those with learning disabilities, socially excluded groups). Participants will often include those not in employment, education or undertaking training⁴. Third sector organisations are also involved in activities that help to improve the natural or built environment (eg, clearing up an area of parkland, helping to remove graffiti from playground walls), or that are associated with religious, cultural or sporting objectives. They deliver these diverse activities through the effort of many conscientious, public-spirited individuals who are prepared to give their time to helping others and improving their communities and environment.
6. One part of the legislative framework within which the third sector operates includes the Act. The Act is intended to ensure that workers are paid the national minimum wage, and that voluntary workers (employed by specific organisations), who do not qualify for the minimum wage, may receive only reimbursement for reasonable expenses they incur or are provided with appropriate subsistence and/or accommodation, and any training necessary to carry out the work. Essentially, it ensures that voluntary workers do not lose out as a result of their voluntary activities.
7. Eight years on, it is now timely to review how the Act has operated in practice in respect of the third sector generally. This is necessary because the Act applies to a vast array of different organisations and activities, which are dynamic and expanding, and we need to ensure that it is working as intended by Parliament. The significant contribution made by the third sector to society makes it important that we review how well the Act is working *now*, and to ensure that it is fit for purpose in *future*. The future focus includes the intended impetus given to the third sector through the development of a national framework recommended by the Russell Commission. To date, a new organisation called “v” has been established to take forward that recommendation in England, and related initiatives are underway in Wales and Northern Ireland, adapted to local circumstances. In Scotland, a volunteering initiative known as ProjectScotland pre-dates the Russell Commission, but shares many of its objectives, and is intended to form part of the national framework.
8. There is little hard evidence of the experience of the third sector with the Act. That is not surprising in view of the diversity of the organisations and activities that make up the third sector. For that

⁴ See, for example, the work supported by the Prince’s Trust, and its Memorandum of Understanding with the Learning and Skills Council, July 2006.

reason, we would welcome comments about the Act from all of those who work in the third sector, and any others organisations or individuals with an interest.

Workers, voluntary workers and volunteers

9. An essential starting point is to understand who qualifies or does not qualify for the national minimum wage. It is therefore important to distinguish between three different categories of person, as follows:

(i) Workers. Section 54 of the Act defines workers as people who work under a contract of employment or any other contract (this could be express (oral or written) or implied) requiring them personally to carry out work or services for an employer. *Workers qualify for the national minimum wage unless excluded by the Act or the Regulations.*

(ii) Voluntary workers. Section 44 of the Act defines voluntary workers as workers who are employed by a charity, voluntary organisation, an associated fund-raising body or statutory body (these are abbreviated here as '**qualifying organisations**'). If someone works for any other type of organisation, they cannot be voluntary workers as defined by the Act. Voluntary workers receive no monetary payment, but may receive reimbursement of expenses actually incurred, or reasonably estimated to have been incurred, in carrying out their work for a qualifying organisation. They may not receive any training other than that necessary to carry out their work, nor may they receive any benefits in kind, except for the provision of some or all of their subsistence or such accommodation as is reasonable in the circumstances of their employment. Where the voluntary worker is assigned from a charity to a qualifying organisation, he may receive monetary payment solely for the purpose of subsistence (which does not include payment for accommodation), again only where that is reasonable in relation to the work actually undertaken. *Voluntary workers do not qualify for the national minimum wage because they excluded by section 44 of the Act*⁵.

(iii) Volunteers. Volunteers are not workers as defined by section 54 of the Act (they are not referred to at all). Volunteers are under no contractual obligation to perform work or provide services, though they may come to informal arrangements with those for whom they carry out tasks, eg, agreeing to undertake a task at a mutually convenient time. They offer their time and effort for free, though may receive reimbursement for expenses. They are mentioned here for completeness, and to clarify the distinction between them and voluntary workers. Volunteers are outside the scope of the Act, but are relevant here if doubts arise about whether someone is a volunteer or

⁵ There is no equivalent exclusion from the agricultural minimum wage, which is a sector specific provision subject to the Agricultural Wages Act 1948. The agricultural minimum wage, and not the national minimum wage, is therefore applicable to those who work in the agricultural sector. The agricultural minimum wage is not covered by this consultation.

in fact a worker who should be paid the national minimum wage (eg, because they receive some sort of payment or benefit in kind for the work they do). *Volunteers do not qualify for the national minimum wage.*

10. The above three categories are the most relevant for this consultation, but for completeness it should be noted that there are, in addition to voluntary workers, other specific exclusions from the national minimum wage. (Annex B provides a summary.)
11. These are important distinctions, though they may not always be fully understood in practice. They are based, fundamentally, on the nature of the relationship between two parties. Within this framework sit voluntary workers who, as a type of worker, would qualify for the national minimum wage but for the exclusion provided for in section 44 of the Act.
12. A person's status will ultimately depend on the circumstances under which they actually work; such matters of fact will decide the case in the event of a dispute about eligibility for the national minimum wage. Case law therefore plays a key part in determining whether an individual is a worker entitled to the national minimum wage in individual circumstances.
13. In summary, voluntary workers are defined in terms of the types of qualifying organisation that employ them, or arrangements made between such organisations, and the narrowly circumscribed payments or benefits in kind that they may receive under section 44. They are a type of worker excluded from entitlement to the minimum wage while they remain a voluntary worker, but they may still be eligible for other employment rights.

Voluntary workers: monetary payments and benefits in kind under section 44

14. As already noted, the arrangement whereby voluntary workers may receive monetary payments and benefits in kind ensures that – as intended by Parliament – they can continue to contribute to the various schemes and initiatives supported by the third sector. It is important to be clear about the basis of permitted monetary payments and benefits in kind for voluntary workers under the Act.
15. To comply with the requirements of section 44 of the Act, and therefore remain exempt from the requirement to pay the national minimum wage, any **monetary payments** that are made to voluntary workers may only be for expenses, either those *actually* incurred in the performance of his duties or on the basis of a *reasonable estimate* of expenses likely to be so incurred. This may take the form of payment based on, for example, receipts for actual expenses, or an estimate of reasonable expenses over a set period of time. The issues that come into play when considering what is a permitted monetary payment

under section 44 are illustrated in the following fictional examples⁶. The only additional exception to this rule is where a voluntary worker is placed by a charity with another qualifying organisation and then monetary payments may be made solely for the purpose of providing the voluntary worker with subsistence that is reasonable in the circumstances of the employment (which does not include accommodation).

Monetary payments

Example 1

Scenario: An individual agrees to work for a charity to clear up areas of public parkland, which are located some distance from his home. The individual has no expectation of reward for this work, but incurs expenses in travelling by train to the parks.

Comment: The individual's expense claims for travelling to the parks would probably be reasonable in the circumstances, and if reimbursed would not entitle the individual to the national minimum wage.

Example 2

Scenario: A new scheme launched by an environmental charity provides opportunities for individuals to contribute to a series of tree-planting projects at different locations within the UK. The charity provides accommodation, transport, equipment, all meals and refreshments, and in addition £40 per week 'pocket money'.

Comment: The £40 provided by the charity is not related to any expenses incurred by the individuals, and is unlikely to be seen as reasonable in the circumstances. Such a payment, and the possibility that mutuality of obligations exist, would indicate that the individuals in question probably qualify for the national minimum wage.

16. Only limited **benefits in kind** are permitted under section 44. These are:
- Training. Training acquired in the course of carrying out voluntary work or provided solely or mainly to improve the voluntary worker's ability to perform that work.
 - Accommodation. Any accommodation provided by a qualifying organisation would need to be reasonable in the circumstances.
 - Subsistence. The provision of meals or refreshments.
17. Further fictional examples below illustrate what may or may not be provided within the definition of benefits in kind in the Act.

⁶ In this consultation document, these examples are intended for illustrative purposes only, specifically to indicate what might fall within or outside the Act. They are indicative, rather than definitive, on the question of employment status, which is a matter dependent upon all the relevant facts of an individual's circumstances, and would need to be considered on their merits by an employment tribunal in the event of a dispute.

Training

Example 1

Scenario: An individual gives up his time, unpaid, to help out in the fund-raising office of a registered charity and receives training in the use of spreadsheets in order to record details of financial contributions. Up to that time, the individual had not used spreadsheets (the only method used by the charity to record contributions) and therefore acquired a new skill.

Comment: Training in the use of spreadsheets would be seen as falling within the scope of section 44 of the Act because it is an essential feature of the post and intended to enable the individual to perform his work, even though it is a skill transferable to other employers.

Example 2

Scenario: A voluntary organisation provides individuals with the opportunity to undertake studies for a NVQ (or its equivalent) as part of the package it offers them to take up voluntary work in the community. It does so by providing most of the costs of the studies, and, given its links to local educational bodies, provides informal advice about what courses are available.

Comment: The studies are unrelated to the community projects in which the individuals participate, and would therefore be seen as falling outside the scope of section 44, calling into question any claim that they are voluntary workers, but raising the question of whether the national minimum wage should be paid.

Accommodation

Example 1

Scenario: An individual joins a voluntary organisation to participate in a series of fund-raising events across the UK. The events consist of exhibitions in libraries aimed at raising funds for water purification facilities in developing countries, and the worker helps set up the exhibits and is available on site to respond to enquiries from visitors. Accommodation is provided in the various towns where the worker is based for each of the exhibitions, usually for a week at a time.

Comment: In this case, the accommodation is reasonable in the circumstances because the worker has to be away from home to carry out the work.

Example 2

Scenario: There is an opportunity for an individual to visit for a few hours, three times a week, new elderly residents in a charity care home to help them adjust to their unfamiliar environment and make them feel welcome. The individual drives 10 minutes from her own home to the care home, and receives reimbursement for fuel expenses. She is given accommodation in the grounds of the home.

Comment: In these circumstances, accommodation for the individual is unnecessary and would not be considered reasonable under the Act. The individual is probably a worker who qualifies for the national minimum wage.

Subsistence

Example 1

Scenario: As part of a project to carry out preparatory work to restore a building of historic importance, a group of voluntary workers employed by a charity heritage organisation are provided with all meals and refreshments on site during the five-month project.

Comment: The meals and refreshments would be reasonable subsistence in these circumstances.

Example 2

Scenario: A voluntary worker helps out at his local history museum (a charity) at weekends, and is provided with free meals and refreshments in the museum's restaurant. In addition, the museum provide him with luncheon vouchers, and discounted drinks in the museum's adjoining social club.

Comment: In these circumstances, the free luncheon vouchers are not required, nor the discounted drinks, because his meals and refreshments are already provided, and would not be reasonable in the circumstances.

18. The rationale for the limitation on monetary payments and benefits in kind is that they must be directly linked to the tasks undertaken by the worker, otherwise they could be seen as rewards that bring into question the voluntary nature of the work. Providing meal vouchers to a worker when food is already provided may not of itself alter someone's employment status, but what can be said of this is that it falls outside the boundaries of benefits in kind that are recognised under section 44 of the Act.

III. Why review the National Minimum Wage Act 1998?

Issues that have arisen

19. We now have several years' experience of the Act. That experience shows that the minimum wage has been, and continues to be, successful in addressing the problems of low wages, with around 1 million workers benefiting each year since its introduction. The October 2006 increase in the minimum wage provided a pay rise to 1.3 million workers⁷. And, overall, the specific provision related to voluntary workers has enabled them and qualifying organisations to continue to operate in much the same way as they did before the minimum wage was introduced.

⁷ The adult hourly rate (ie, for those aged 22 and over) is £5.35; for 18-21 year olds it is £4.45; and for 16-17 year olds it is £3.30. New rates will apply from 1 October 2007: £5.52, £4.60 and £3.40 respectively.

20. To help with that, DTI guidance explains the provisions of the Act generally, and there is separate guidance produced by qualifying organisations⁸. Also, HM Revenue & Customs (the enforcement authority under the Act) operate a helpline to offer advice. Trade unions, employers' organisations, employment law specialists, citizens' advice bureau and other bodies can also provide advice about the Act. In addition, some sectors of employment have found it useful to prepare their own guidance, usually to clarify the position in relation to customary practices⁹.
21. However, as noted above, the third sector is complex, diverse and expanding. Qualifying organisations, and the individuals working in the third sector, will have different experiences of the consequences of the Act. Those experiences that we are aware of indicate that the Act is working effectively overall for the third sector. There are some examples of where issues have arisen, and these are as follows:
- *ProjectScotland*. ProjectScotland was established in May 2004 as an independent charity to provide opportunities for voluntary work for 16-25 year olds in Scotland. Voluntary workers participate in projects of at least 3 months' duration (and up to 12 months), working an average of 30 hours per week, for which they receive a £55 subsistence allowance (reviewed annually), reimbursement of travel expenses, training (in some cases leading to a qualification), plus accommodation and childcare. Participants who complete over 6 months full time volunteering can apply for a discretionary personal development fund up to £1,500. In addition, participants can retain any state benefits to which they are entitled.
 - 'v'. 'v' is similar to ProjectScotland, but offers opportunities in England, an allowance of £60 and training which could contribute towards a Youth Achievement Award.
 - *Voluntary instructors*. The Ministry of Defence (MoD) sponsors 4 voluntary cadet forces (Combined, Sea, Army and Air) which use military themes to promote the personal and social development of young cadets by improving their self-confidence, sense of service etc. Voluntary adult instructors assist in running the cadet forces, and attend weekly evening training sessions, occasional weekends and annual camps. Payments may be made for attending weekend and annual camps. Adult instructors do not work for a qualifying organisation, so could not be voluntary workers.

In these examples, the provision of training, childcare and monetary payments raised questions about whether the participants are

⁸ ***National Minimum wage, guidance for the voluntary sector***, produced by the National Council for Voluntary Organisations and the National Centre for Volunteering. In its 2005 report, the Low Pay Commission recommended that guidance on the Act and the voluntary sector be updated. The government accepted that recommendation, and will be taking that work forward following the outcome of this review.

⁹ See the Central Council of Physical Recreation guidance (www.ccpr.org.uk) and guidance on the TV industry (www.dti.gov.uk).

volunteers or workers and, if workers, whether they are excluded by virtue of section 44 of the Act. In December 2006, DTI issued a policy steer to HM Revenue & Customs regarding the conducting of investigations for minimum wage compliance in respect of the schemes run by the above organisations. The government would welcome information on any similar arrangements.

The growth of the third sector

22. Recent government action plans on the delivery of public services in the third sector, and on social enterprises¹⁰, envisage an increasing role for the third sector in the delivery of such services.
23. Government support for and investment in promoting volunteering has been significant and cross-departmental. This support has been focused on increasing the number and quality of volunteering opportunities available and raising awareness and understanding of the benefits of volunteering to a diverse range of people. For example, building on the success of the Millennium Volunteers programme which since 1999 has involved over 250,000 young people, the government is investing in 'v' to build a framework for youth volunteering. 'v' is expected to deliver a step change in the quality, quantity and diversity of volunteering by young people in England, as recommended by the Russell Commission. In the case of 'v', at least 1,400 full-time volunteering opportunities have been created to date, and ProjectScotland has delivered opportunities for over 1,000 young people involving over 130 partner charities, and estimate that they will receive around 10,000 enquiries each year about future opportunities. The Russell Commission report commented that

The number of placements would increase greatly, with funding for significant increases in short-term opportunities and part-time roles, and for a high profile national programme of full-time youth volunteering, as part of which young people would receive a weekly allowance to pursue long-term commitments. With the aspiration of attracting 1 million more young volunteers across all forms of voluntary activity, more than half of all those in the 16 to 25 age group would participate. Opportunities to volunteer would not be limited to the voluntary and community sector. There will be new opportunities for young people to volunteer in the public sector (page 9).

(Annex D provides further information about the proposals of the Russell Commission.)

¹⁰ "A social enterprise is a business with primarily social objectives whose surpluses are principally reinvested for that purpose in the business or in the community, rather than being driven by the need to maximise profit for shareholders and owners" (**Social enterprise action plan: scaling new heights**, Cabinet Office (Office of the Third Sector), November 2006)

24. The definitions of worker and voluntary worker will of course be as relevant for any future growth of the third sector as they are now. In reviewing the Act now, we need to ensure that the national minimum wage is paid to those who qualify for it, while ensuring that it is operating as intended with regard to the third sector.

Achieving flexibility without creating loopholes

25. In considering the use of existing powers in the Act, or even making changes to it, we need to:
- avoid opening up any loopholes that could lead to the exploitation of people who should be paid the national minimum wage; and
 - ensure that there is as much flexibility as possible in the legislation to enable the third sector to continue to flourish and provide opportunities for individuals.

In this context, these twin objectives are given expression in the Act in the form of section 44, which achieves the necessary clarity about the meaning of ‘voluntary worker’ and narrows the scope for exploitation, and in sections 3 and 4 (discussed below), which provide a degree of flexibility to exclude some groups of people from qualifying for the national minimum wage where that is in keeping with the intentions of Parliament.

IV. Proposals

26. The diversity of the third sector makes it difficult to obtain a comprehensive picture of their experience with the national minimum wage. However, we have had eight years’ experience of the Act, which indicates that, overall, any issues that may exist in relation the third sector are specific rather than general. That view is supported by HM Revenue & Customs, who have encountered relatively few queries or enforcement problems in connection with section 44 of the Act. On the face of it, therefore, the Act has worked effectively in enabling workers to be paid the national minimum wage, and allowing the third sector to operate as it has always done. But if it is the case that there are a number of hidden issues in addition to the specific examples cited here, we would need to be made aware of them. We would therefore be interested in the views of those who work in the third sector about these matters.
27. The options for change discussed below are intended to be in addition to, not instead of, section 44 as it stands. Section 44 provides the essential basis on which the voluntary sector can continue to employ voluntary workers. It has general applicability to qualifying organisations in the third sector and is unambiguous. The options for change are intended to complement section 44 by providing the necessary flexibility to enable the Act to cater for certain voluntary schemes that employ voluntary workers who should be excluded from

the national minimum wage. The effect would be to provide greater certainty to the third sector and voluntary workers about their position in respect of the national minimum wage. This can be achieved by making use of powers that already exist in the Act, namely sections 3 and 4.

ProjectScotland and 'v'

28. At this stage, it is proposed that we seek to resolve the issues that have come to light concerning ProjectScotland and 'v', both of which count as qualifying organisations for the purposes of section 44 of the Act. However, the benefits that they offer to some participants may take them outside the scope of section 44. One way of resolving the difficulties that have arisen in those examples – and if there are any others like it – would be for the organisations concerned to bring their practices into line with section 44 of the Act. However, taking such action might affect their ability to recruit and retain voluntary workers. Alternative suggestions are: **to make use of the existing powers under section 3 (and possibly section 4) of the Act to exclude participants in the programmes and projects supported by ProjectScotland and 'v'; or to amend section 44 so that such organisations can offer a wider range of monetary payments or benefits in kind.** These are discussed further below.
29. Section 3 provides the power to exclude from qualifying for the national minimum wage any person who falls within the following categories:
- Section 3(1): those who have not attained the age of 26; and
 - Section 3(1A): those who have attained the age of 26 and are:
 - (a) within the first six months after the commencement of their employment with an employer by whom they have not been previously 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
 - (e) attending a course of higher education requiring attendance for a period of work experience

The use of such powers is subject to parliamentary approval. Any exclusion under section 3 would be included in Regulation 12 of the national Minimum Wage Regulations 1999 (see Annex C for the current wording).

30. Section 4 provides the power to add to the categories of person to which section 3 applies.

31. Any use of the powers in section 3 and 4 of the Act is subject to the proviso that they cannot be used to exclude people because they are in a particular **geographical area**, or because they work in **different sectors of employment, occupation or undertakings of different sizes** (section 3(3) and 4(2)). So, for example, a proposal to exclude construction workers in England from qualifying for the national minimum wage would fall foul on two counts – sector of employment and geographical area. This limitation on the use of sections 3 and 4 reflects Parliament’s wish to ensure the universality of the right to the national minimum wage, and permit only qualified exclusions, usually of limited duration.
32. The effect of using section 3 would be to remove participants in specific national third sector schemes from qualifying for the national minimum wage; in this case, voluntary workers employed on schemes that become part of the Russell Commission’s national framework, which would include ProjectScotland and ‘v’. This would mean that they would no longer come under section 44 of the Act, or be classified as voluntary workers. Any payments or benefits in kind offered to participants in such schemes would be a matter for third sector organisations.
33. The prohibitions that apply to the use of section 3 of the Act mean that voluntary workers employed under schemes supported by ProjectScotland and ‘v’ could not, individually, be excluded because they are limited to geographical areas (Scotland and England respectively). However, they could be covered by section 3 as part of the national framework recommended by the Russell Commission and we are exploring a general exclusion for schemes set up or operating under that framework. This has the advantage that it will cover schemes being set up in Wales and Northern Ireland under the same framework. **The government is proposing to use section 3(1) to add to Regulation 12 a new exclusion from the national minimum wage of those who participate in schemes that are supported by the national framework. That would therefore apply to ProjectScotland and ‘v’, and any other parts of the national framework that are eventually developed in Wales, and adopted in Northern Ireland. The government would explore the use of section 3(1A) if that became necessary in connection with the national framework.** That would depend on whether the existing descriptions in section 3(1A) were applicable, or required change. The national framework recommended by the Russell Commission is taking shape. Any third sector organisations that form part of the framework could be brought within the scope of this proposal. This option would therefore depend on the development of the national framework itself. It would be important to ensure that the new framework had clearly defined features for the purposes of any exclusions under the Act.
34. Those who work in the third sector will wish to consider if there are other issues of which the government needs to be aware, and for which

different solutions are required. In considering this, the third sector will wish to bear in mind the rationale for section 44 and the existing flexibility provided by sections 3 and 4 of the Act. As noted above, one option would be to include a new description to section 3(1A) of the Act if the existing exclusions are insufficient to cater for those participating in activities that do not fall under existing descriptions, but where it is considered necessary to exclude them from qualifying for the national minimum wage. Reflecting on the different types of voluntary organisation and activities they support, other descriptions might relate to: (i) activities supported by qualifying organisations (as defined by section 44); (ii) benefits in terms of, say, the community, the environment, sporting or cultural activities; (iii) activities that help develop skills or aptitudes such as team working, responsible citizenship and self-reliance. We do not propose to extend section 3(1A) in connection with exclusions based on the national framework as section 3(1) will suffice, but would consider doing so if developments in the national framework or third sector more generally required a new description.

35. Another option would be to go even further than that and introduce a new power in the Act to enable the Secretary of State to make changes to section 44. For example, that power could be used to change the types of organisation that could become a qualifying organisation, or change the boundaries that apply to permitted monetary payments or benefits in kind. These options would be worth considering *only if* a persuasive case could be made about the nature of existing difficulties faced by the third sector in respect of the national minimum wage. Any difficulties that arise out of a misunderstanding of the Act would point to the need for guidance, rather than the need for changes to the Act.

MoD's Cadet Force Adult Volunteers

36. As was made clear in the government's Parliamentary statement of 17 January 2007 (quoted in paragraph 2 above), there is no intention of altering the original scope of the Act in terms of those who should, or should not, be paid the minimum wage. The government therefore does not propose to make any amendments in terms of scope. However, since that statement was made, it has been proposed that MoD's Cadet Force Adult Volunteers (CFAVs) be excluded from qualifying for the national minimum wage, essentially as an avoidance of doubt measure. Excluding CFAVs is under consideration, and no decision has been made about it, but it would depend on a convincing case being made. The government would welcome views about this.

V Consultation questions

37. We would welcome your comments on this consultation document. We would particularly welcome your responses to the following questions:

(i) Do you have any general observations or comments to make about the way in which section 44 of the Act has operated in practice?

(ii) Do you have any comments about the proposal to use section 3 of the Act (see paragraph 29) to exclude from the national minimum wage those who participate in schemes that are supported under the national framework recommended by the Russell Commission for those in the 16-25 age group?

(iii) If the national framework were to be extended at a future stage to those who have attained the age of 26, do you consider that the descriptions in section 3(1A) (see paragraph 29) cover all relevant activities? If section 3(1A) is not broad enough, can you indicate what kind of description would cover the activities that should be included, and what those activities are? (This issue is discussed in paragraph 34.)

(iv) Are there any other circumstances where the position of volunteers or voluntary workers should be similarly clarified (ie, apart from the national framework recommended by the Russell Commission)? If so, what are they?*

(v) Do you have any views about the need for alternative action to deal with any difficulties that you consider arise for the third sector as a consequence of the Act? If so, what are the difficulties and what alternative action would you suggest?*

(vi) Do you consider that there are difficulties of such significance facing the third sector that section 44 of the Act needs to be amended to introduce a new power to enable changes to be made to the types of organisations that could become qualifying organisations and/or the boundaries of permitted monetary payments or benefits in kind? If so, please specify the difficulties, the types of organisation that should be included and where the boundaries should lie.

(vii) Do you have any comments about the position of CFAVs (see paragraph 36)?

* *To reiterate, section 3 cannot be used to exclude people because they are in a particular **geographical area**, or because they work in **different sectors of employment, occupation or undertakings of different sizes** (section 3(3) and 4(2) of the Act refers).*

VI What happens next?

38. The government will make public the responses to this consultation unless respondents specifically request that their response be treated as confidential. In replying to this consultation, please indicate whether you want us to keep your response confidential (bearing in mind the

requirements set out under the section headed **Confidentiality and Data Protection**).

39. In responding to this consultation, it would be useful if you could provide the following details:

Name:

Organisation (if applicable):

Address:

Email:

Please tick the box below that best describes you as a respondent to this consultation:

- If you are responding in an individual capacity, are you a:
- worker
 - voluntary worker (ie, you work for a charity, voluntary organisation, associated fund-raising body or statutory body (eg, school, hospital) and receive only reimbursement of expenses and certain benefits in kind)
 - volunteer
- representative of a charity, voluntary organisation, associated fund-raising body or statutory body
- representative of a social enterprise
- Other (please specify)

Thank you for taking the time to let us have your views.

We do not intend to acknowledge receipt of individual responses unless you tick this box

We will publish all the responses received in this consultation, unless you tick this box to ask that your response be treated as confidential

If you would like to receive a copy of the government's response to this consultation, please tick this box

VII Partial regulatory impact assessment

Purpose and intended effect

40. *Objectives.* As noted above, the objectives of reviewing the Act are to take this opportunity to sound out the third sector about their experience with the national minimum wage, and to ensure that in using existing powers we avoid opening up any loopholes that could lead to workers not being paid the minimum wage. Another objective is to ensure that the third sector can continue to flourish and provide

opportunities for people to participate in voluntary schemes without facing confusion over the payment of the minimum wage.

41. *Background.* There are three categories of person that need to be distinguished when considering the national minimum wage: workers, voluntary workers, both of which are defined in the Act, and volunteers, who are outside the scope of the Act (these are discussed in paragraph 9). It is important in considering any options for change to understand these distinctions, and be clear about who qualifies for the national minimum wage.
42. *Rationale for government intervention.* The Act has been in force for several years, and it has operated effectively during that time, benefiting a large number of workers. However, there is relatively little information available about the experience of the third sector with the national minimum wage. This consultation therefore provides an opportunity for comment.
43. The government does not propose any changes to section 44 of the Act, but is open to considering that if it appears to be necessary as a result of the responses made to this consultation. The government is, however, proposing to use existing powers under the Act to exclude from qualifying for the national minimum wage participants in the national framework for youth volunteering. Establishing such a national framework was recommended in the Russell Commission's report. That task is being taken forward separately in England, Scotland, Wales and Northern Ireland. To-date, the voluntary organisations known as 'v' in England and ProjectScotland form part of the national framework.

Consultations

44. The DTI has consulted several other departments including: HM Revenue and Customs, Cabinet Office (Office of the Third Sector and the Better Regulation Executive), Department of Environment, Food and Rural Affairs, HM Treasury, Ministry of Defence, Department for Work and Pensions, Department for Education and Skills, Home Office, Department for Culture, Media and Sport, Department of Transport, the Welsh Assembly, Northern Ireland's Department for Social Development, the Charity Commission and the Small Business Service.
45. All interested departments will be made aware of the outcome of the consultation, and be involved in any follow up to it.
46. The DTI has exchanged views on this review with organisations in the third sector, including: Community Service Volunteers, Volunteering England, ProjectScotland, 'v', Volunteer Development Scotland and Stewardship. Discussions have also taken place with the TUC and CBI.

Options

47. The options are:

Option 1: Take no action, apart from updating the guidance about the national minimum wage and voluntary workers.

Option 2: Use existing powers under the Act to deliver greater flexibility about the exclusion of participants in certain schemes from qualifying for the national minimum wage.

Option 3: Amend the Act to extend the powers of the Secretary of State in respect of qualifying organisations and permitted monetary payments and/or benefits in kind.

48. Option 1. Taking no action could create difficulties for the proposed national framework for youth volunteering. It is intended to develop that framework over a period of time into a well structured arrangement that will provide opportunities for young people, especially benefiting those who are not in employment, education or training. The justification for the exclusion from the national minimum wage of participants in the national framework is based on the expectation that they will benefit from the opportunities provided, that the exclusion would be time-limited and that without it the restrictions within the Act could constrain the development of the framework, and the opportunities available. The government has accepted the recommendation of the Low Pay Commission to consolidate and update existing guidance concerning voluntary workers. That will be taken forward following the outcome of this consultation.

49. Option 2. The Act already provides the power to make secondary legislation in sections 3 and 4 (See Annex C). Section 3(1) enables exclusions to apply to those who have not attained the age of 26, and section 3(1A) to those who have reached that age – the latter may only be applied to people who fall within the descriptions with that sub-section. Section 4 of the Act provides powers to amend those descriptions.

50. The effect of using section 3 would be to remove participants in specific national third sector schemes from qualifying for the national minimum wage; in this case, participants in schemes under the Russell Commission recommendations which would include ProjectScotland and 'v'. Consequently, any voluntary workers involved would no longer come under section 44 of the Act. Any payments or benefits in kind offered to participants in such schemes would be a matter for organisations that form the national framework. **The government is proposing to use section 3(1) to add to Regulation 12 a new exclusion from the national minimum wage of those who participate in schemes that are supported by the national**

framework. That would therefore apply to ProjectScotland and ‘v’, and any other parts of the national framework that are eventually developed in Wales and Northern Ireland. The government would explore the use of section 3(1A) if that became necessary in connection with the national framework. That would depend on whether the existing descriptions in section 3(1A) were applicable, or required change. The national framework recommended by the Russell Commission is taking shape. Any third sector organisations that form part of the framework could be brought within the scope of this proposal. This option would therefore depend on the development of the national framework itself. It would be important to ensure that the new framework had clearly defined features for the purposes of any exclusions under the Act.

51. Option 3. This would create a new regulation-making power in the Act. For example, the Secretary of State might be given completely new powers to extend the types of organisation that may employ voluntary workers (e.g. to include, say, a new agency), and to alter the nature of the monetary payments and benefits in kind that may be offered. This option would be worth considering *only if* a persuasive case could be made about the nature of existing difficulties faced by the third sector in respect of the national minimum wage. Its implications are nevertheless included here. Any difficulties that arise out of a misunderstanding of the Act would point to the need for guidance, rather than the need for changes to that Act.

Risks

52. Whilst any changes may be limited to national minimum wage legislation, a consequence might be an increased risk of widening the scope of participants and allowing payments that could expose "employers" to the risk that the Courts will decide that a contract of employment and other associated employment rights are conferred on 'voluntary workers' (irrespective of them being entitled to the minimum wage or not).
53. The other main risk that arises in considering changes to the Act is the possibility of creating loopholes that could increase scope for the exploitation of workers who might erroneously be treated as voluntary workers (or volunteers) and not paid the national minimum wage. Any changes would therefore need to be as clearly circumscribed as the existing exclusions from the national minimum wage.

Unintended consequences

54. In reviewing the Act, the Government needs to ensure that all those who work in the third sector are able to continue to participate in various activities at local, regional and national level that provide benefits to the recipients and participants of the programmes supported by that sector. In the case of **Option 1**, where third sector

organisations infringe the boundaries set by section 44, HM Revenue & Customs would carry out investigations, or individuals could pursue a claim for the national minimum wage in an employment tribunal, resulting in an unexpected financial impact on the third sector and its ability to support various initiatives. If third sector organisations review their own practices and decide that it is necessary for them to withdraw or curtail any monetary payments or benefits in kind for voluntary workers, that could impact on their ability to recruit and retain such workers, but would be a matter of compliance with section 44 of the Act.

55. Making use of existing powers under **Option 2** would need to ensure that if, for example, a new generic description was introduced via section 4 (although that is not proposed), it could be used in a targeted way in the accompanying Regulation 12.
56. **Option 3** presents a number of challenges. The scope of section 44 in respect of the organisations that may employ voluntary workers reflects – as intended by Parliament – those organisations that have traditionally done so, and it is not clear what new organisations should be added, or the rationale for doing so. But if new types of organisations were to be added, it would broaden the scope for employing voluntary workers. That might bring with it a greater risk of dispute about employment status in some cases, and with it claims for the national minimum wage. As far as monetary payments and benefits in kind are concerned, it would be difficult to extend these beyond the ‘reimbursement’ principle that underlines section 44, i.e. the idea that a voluntary worker should not lose out as a result of his voluntary work. Any changes to those boundaries would need to stay within that fundamental principle to avoid the risk that the employment in question involved some form of gain or reward, which would undermine the voluntary nature of the work. Also, experience with section 44 over the past eight years since the Act came into force indicates that it has, in general, operated well.
57. Another area for consideration is the interaction between the Act and other legislation (e.g. the Working Time Regulations) which uses exactly the same definition of ‘worker’. Any exemption from worker status in the Act could also lead to the excluded groups being held by the courts not to be covered by the Working Time Regulations, etc. That could have unforeseen consequences and any ‘knock-on’ effects should be carefully considered. Even if the exemptions in the Act did not have a ‘read across’ into other legislation, there could be a situation where the term ‘worker’ had the same definition but a different scope in other pieces of legislation, which could be confusing.

Costs and benefits

58. Achieving greater clarity, where necessary, or ensuring that those who were always intended to be exempt from the National Minimum Wage

– essentially the purpose of the consultation on voluntary workers – should not entail any new costs as this would be in line with the legislation as it stands. Costs might arise, however, if experience with the Act in respect of voluntary workers indicated that the Act needed to be changed, but that would depend on the nature of the change. Those who are currently employed as voluntary workers would be unaffected by options 1 and 2, but could be affected if the boundaries of permissible payments and benefits in kind were to be extended under option 3.

59. The individuals that will be mostly affected by option 2 will be those that participate in the national framework and the organisations that employ them, namely ProjectScotland and 'v', plus any other third sector organisations that participate in the framework.

Sectors and groups affected

60. Section 44 of the 1998 Act specifically applies to charities, voluntary groups, associated fund-raising bodies and statutory bodies. Were this to be extended under Option 3 it is not clear at this stage what new types of organisation might be added. The proposals do not affect businesses as section 44 is only of relevance to qualifying organisations.
61. The DTI will be responsible for any change in the legislation as well as for any secondary legislation that will need to be added depending on the option implemented, and HMRC will be involved in any enforcement of the Act which may result (or be reduced) after implementation.

Assumptions

62. There is very little information gathered systematically about the numbers of people who are voluntary workers under section 44, or, more generally, volunteers. Such activities are informal, and fall outside the remit of the Labour Force Survey. There are, however, sources of information from surveys, and this includes the National Survey of Volunteering in the UK (1997) and Home Office Citizenship Survey (2005). The Home Office Survey shows that 11.6 million people undertake formal volunteering¹¹ at least once a month, and on average for 11.9 hours. It is not known what proportion of them are volunteers as opposed to voluntary workers, but it is likely that the overwhelming majority are the former.
63. We understand that Community Service Volunteers (CSV) is the largest organisation employing voluntary workers as they are currently classified under the 1998 Act. In 2005/06 they employed 975 fulltime

¹¹ Defined as "giving unpaid help through groups, clubs and organisations to benefit other people or the environment".

volunteers. These volunteers currently receive a weekly allowance of £31 together with free food and accommodation.¹²

64. If, as a starting point, we assume that CSV voluntary workers cover the majority of voluntary workers – say 80% – of all such workers falling under section 44 of the 1998 Act, this would mean that there are currently around 1,200 voluntary workers covered by the existing legislation in 2005/06. But this is an uncertain extrapolation, given the lack of a comprehensive picture of the third sector and those employed as voluntary workers, and can be no more than a working assumption. Consultees may wish to comment on this, and provide any evidence that they consider useful in assessing the options outlined above.

Analysis of benefits

65. The options outlined in this consultation document are intended to enable qualifying organisations and voluntary workers to continue with their current activities. Achieving greater clarity would benefit those who work in the third sector if any uncertainties currently exist about the position of individuals employed as voluntary workers. That in turn should be beneficial for the future expansion of that sector, and the communities that benefit from their activities.

Reduced uncertainty

66. Qualifying organisations employing voluntary workers will also benefit from greater certainty that they are not in breach of the 1998 Act, and this will therefore reduce the possibility that there will be a curtailment of opportunities for such workers in the future. This is not only beneficial to those who in future will choose to take up these opportunities, but also those in society benefiting from these activities.

Costs savings to employing organisations

67. One of the reasons for reviewing the 1998 Act in relation to voluntary workers was to explore whether or not there exists uncertainties in some cases about the narrow definition of a 'voluntary worker' under section 44, and the scope for disputes about that. No employment tribunal cases have as yet arisen relating specifically to the national minimum wage and voluntary workers, but that is a possibility in future. Appeals under the current enforcement system are likely to be rare, however, and therefore the cost savings implied in defending appeals are also likely to be small.

Increases in permissible payments/benefits in kind

68. Under **option 3**, people that fall under the 'voluntary worker' category post implementation may be entitled to more benefits and/or monetary

¹² www.csv.org.uk/FAQs/Full+Time+Volunteering/

payments from their employing organisation. However, that would depend, as now, on the financial constraints under which such organisations operate.

Analysis of costs

69. There would be administrative costs to Government under option 1 in updating guidance, and Options 2 and 3 in making changes to regulations. Those affected by any regulatory changes under Options 2 and 3 would need to spend time familiarising themselves with the changes. However, the latter is likely to be small because of the small numbers affected.
70. Any additional costs from Option 3 would in effect be capped by the financial position of qualifying organisations, which would reduce the likelihood of imposed compliance costs. However, allowing additional payments/benefits to voluntary workers might have an impact on those 'voluntary workers' already in receipt of benefit –(such as benefit entitlement might be cut so that these changes might produce no net financial gain for these volunteers), and the ability of the third sector to sustain its level of activities.

Small firms impact test

71. As noted above, the sectors and groups affected by this consultation will be in the third sector. The most likely business interest will be those in the third sector involved in social enterprises.
72. We have consulted the Small Business Service and also the Office of the Third Sector within the Cabinet Office.

Competition assessment

73. The work undertaken by charities and voluntary organisations is unlikely to be in competition with businesses, including small businesses. In the main, charities and voluntary organisations are involved in local schemes and projects that do not compete with business. Any involvement in, for example, local authority, school or hospital projects would normally be small scale and one-off, and typically activities that would not otherwise be undertaken.

Enforcement, sanctions and monitoring

74. The proposals set out here do not entail any changes to the way in which the national minimum wage is enforced or what sanctions apply.

CONSULTATION CODE OF PRACTICE

The criteria

1. Consult widely throughout the process, allowing a minimum of 12 weeks for written consultation at least once during the development of the policy.
2. Be clear about what your proposals are, who may be affected, what questions are being asked and the timescale for responses.
3. Ensure that your consultation is clear, concise and widely accessible.
4. Give feedback regarding the responses received and how the consultation process influenced the policy.
5. Monitor your department's effectiveness at consultation, including through the use of a designated consultation co-ordinator.
6. Ensure your consultation follows better regulation best practice, including carrying out a Regulatory Impact Assessment if appropriate.

The complete code is available on the Cabinet Office's web site, address:
www.cabinetoffice.gov.uk/regulation/consultation/index.asp

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way it has been conducted, please write to:

Stephen Childerstone
Better Regulation Team
Department of Trade and Industry
1 Victoria Street
London SW1H 0ET
Tel: 0207 215 0354
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SUMMARY OF DIFFERENCES CONCERNING EMPLOYMENT STATUS AND THE NATIONAL MINIMUM WAGE

Status	Characteristics	Qualify for NMW or do any exclusions apply?	Employer
Worker	Works under contract of employment or other contract to provide personal services (section 54(3))	Qualifies for the NMW unless any of the exclusions referred to below apply	Any employer
Voluntary worker	Works under contract of employment or other contract (section 54(3))	Does not qualify for the NMW by virtue of section 44 of the Act	An employer who is a qualifying organisation
Volunteer	No employment contractual arrangements	Does not qualify for the NMW	Anyone or any organisation

In addition to these, others that may be noted include:

- Employees: who work under contracts of employment, defined in section 54(1) of the Act, and qualify for the national minimum wage. Employees falling under Regulation 12 would not qualify for the national minimum wage.
- The following who do not qualify for the national minimum wage because they are specifically excluded by the Act:
 - Members of the armed forces (excluded by section 37)
 - Share fishermen (excluded by section 43)
 - Religious and other communities (excluded by section 44A)
 - Prisoners (excluded by section 45)
 - Persons discharging fines (excluded by section 45A)
- Other specific groups who also do not qualify for the national minimum wage under Regulation 12: see Annex C for details.

EXTRACTS FROM THE NATIONAL MINIMUM WAGE ACT 1998 AND THE NATIONAL MINIMUM WAGE REGULATIONS 1999

(1) Extracts from the National Minimum Wage Act 1998

Section 3 Exclusion of, and modifications for, certain classes of person

3. - (1) This section applies to persons who have not attained the age of 26.

(1A) This also applies to persons who have attained the age of 26 who are-

- (f) within the first six months after the commencement of their employment with an employer by whom they have not been previously employed;**
- (g) participating in a scheme under which shelter is provided in return for work**
- (h) participating in a scheme designed to provide training, work experience or temporary work;**
- (i) participating in a scheme to assist in the seeking or obtaining of work; or**
- (j) attending a course of higher education requiring attendance for a period of work experience**

(2) The Secretary of State may by regulations make provision in relation to any of the persons to whom this section applies-

- (a) preventing them being persons who qualify for the national minimum wage; or
- (b) prescribing an hourly rate for the national minimum wage other than the single hourly rate for the time being prescribed under section 1(3) above.

(3) No provision shall be made under subsection (2) above which treats persons differently in relation to-

- (a) different areas;
- (b) different sectors of employment;
- (c) undertakings of different sizes; or
- (d) different occupations.

(4) If any description of persons who have attained the age of 26 is added by regulations under section 4 below to the descriptions of person to whom this section applies, no provision shall be made under subsection (2) above which treats persons of that description differently in relation to different ages over 26.

Section 4 Power to add to the persons to whom section 3 applies

4. - (1) The Secretary of State may by regulations amend section 3 above by adding descriptions of persons who have attained the age of 26 to the descriptions of person to whom that section applies.

(2) No amendment shall be made under subsection (1) above which treats persons differently in relation to-

- (a) different areas;

- (b) different sectors of employment;
- (c) undertakings of different sizes;
- (d) different ages over 26; or
- (e) different occupations.

Section 44 Voluntary workers

- (1) A worker employed by a charity, a voluntary organisation, an associated fund-raising body or a statutory body does not qualify for the national minimum wage in respect of that employment if he receives, and under the terms of his employment (apart from this Act) is entitled to,-
 - a. no monetary payments of any description, or no monetary payments except in respect of expenses-
 - i. actually incurred in the performance of his duties; or
 - ii. reasonably estimated as likely to be or to have been so incurred; and
 - b. no benefit in kind of any description, or no benefits in kind other than the provision of some or all of his subsistence or of such accommodation as is reasonable in the circumstances of the employment
- (2) A person who would satisfy the conditions in subsection (1) above but for receiving monetary payments made solely for the purpose of providing him with means of subsistence shall be taken to satisfy those if-
 - a. he is employed to do the work in question as a result of arrangements made between a charity acting in purposes of the body for which the work is done; and
 - b. the work is done for a charity, a voluntary organisation, an associated fund-raising body or a statutory body.
- (3) For the purposes of subsection (1)(b) above-
 - a. any training (other than that which a person necessarily acquires in the course of doing his work) shall be taken to be a benefit in kind; but
 - b. there shall be left out of account any training provided for the sole or main purpose of improving the worker's ability to perform the work which he has agreed to do.
- (4) In this section-

“associated fund-raising body” means a body of persons the profits of which are applied wholly for the purposes of a charity or voluntary organisation;

“charity” means a body of persons, or the trustees of a trust, established for charitable purposes only;

“receive”, in relation to a monetary payment or a benefit in kind, means receive in respect of, or otherwise in connection with, the employment in question (whether or not under the terms of the employment)

“statutory body” means a body established by or under an enactment (including an enactment comprised in Northern Ireland legislation);

“subsistence” means such subsistence as is reasonable in the circumstances of the employment in question, and does not include accommodation;

“voluntary organisation” means a body of persons, or the trustees of a trust, which is established only for charitable purposes (whether or not those purposes are charitable within the meaning of any rule of law), benevolent purposes or philanthropic purposes, but which is not a charity.

Section 54 Meaning of “workers”, “employee” etc

- (1) In this Act “employee” means an individual who has entered into or works under (or where the employment has ceased, worked under) a contract of employment.
- (2) In this Act, “contract of employment” means a contract of service or apprenticeship, whether express or implied, and (if it is express) whether oral or in writing.
- (3) In this Act “worker” (except in the phrases “agency worker” and “home worker”) means 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 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;
 and any reference to a worker’s contract shall be construed accordingly
- (4) In this Act “employer”, in relation to an employee or a worker, means the person by whom the employee or worker is (or, where the employment has ceased, was) employed.
- (5) In this Act “employment”-
 - a. in relation to an employee, means employment under a contract of employment; and
 - b. in relation to a worker, means employment under his contract; and
 “employed” shall be construed accordingly.

(2) Extracts from the National Minimum Wage Regulations 1999: Regulation 12

12.— Workers who do not qualify for the national minimum wage*

(2) A worker who—

[...] ¹

(b) is employed under a contract of apprenticeship or, in accordance with paragraph (3), is to be treated as employed under a contract of apprenticeship, and

(c) is within the first 12 months after the commencement of that employment or has not attained the age of 19,

does not qualify for the national minimum wage in respect of work done for his employer under that contract.

(3) A person is to be treated for the purposes of paragraph (2)(b) as a worker who is employed under a contract of apprenticeship if, and only if, he is—

(a) a worker within the meaning given by section 54(3) of the Act; and

(b) engaged—

(i) in England, under the Government arrangements known, at 1st October 2004, as Apprenticeships or Advanced Apprenticeships;

(ii) in Scotland, under the Government arrangements known, at 1st October 2004, as Skillseekers or Modern Apprenticeships and the

arrangements are for the purpose of gaining a Scottish Vocational Qualification at Level 2 or 3 or a National Vocational Qualification at Level 2 or 3;

(iii) in Northern Ireland, under the Government arrangements known, at 1st October 2004, as Jobskills Traineeships or Modern Apprenticeships; or

(iv) in Wales, under the Government arrangements known, at 1st October 2004, as Modern Apprenticeships or Foundation Modern Apprenticeships.

(4) For the purposes of paragraph (2)(c) a worker does not commence employment with an employer where he has previously been employed by another employer and continuity of employment is preserved between the two employments by or under any enactment.

(4A) A worker who is participating in a scheme provided to him—

(a) in England, under the Government arrangements known, at 1st October 2004, as Entry to Employment,

(b) in Scotland, under the Government arrangements known, at 1st October 2004, as Get Ready for Work,

(c) in Northern Ireland, under the Government arrangements known, at 1st October 2004, as Access,

(d) in Wales, under the Government arrangements known, at 1st October 2004, as Skillbuild,

does not qualify for the national minimum wage in respect of work done for his employer as part of the scheme.

(5) A person who is participating in a scheme, designed to provide him with training, work experience or temporary work, or to assist him in seeking or obtaining work, which is—

(a) a scheme provided to him under Government arrangements that are not specified in paragraph (3)(b), or (4A),

(b) a scheme provided to him under Government arrangements that are specified in paragraph (3)(b), unless the person is a worker within the meaning given by section 54(3) of the Act by virtue of his participation in the scheme, or

(c) a scheme, not being one provided to him under Government arrangements, funded in whole or in part under the European Social Fund,

does not qualify for the national minimum wage in respect of work done for his employer as part of that scheme except to the extent that paragraph (6) or (7) otherwise provides.

(6) Paragraph (5) does not apply to a person who is a worker within the meaning given by section 54(3) of the Act and is participating in a scheme falling within sub-paragraph (a) of paragraph (5) if he is employed by the employer for whom he works under the scheme, unless the worker is engaged, for a period not exceeding three weeks, in a trial period of work with a prospective employer under Government arrangements.

(7) Paragraph (5) does not apply to an employee who is participating in a scheme falling within sub-paragraph (c) of paragraph (5) if he is employed by the employer for whom he works under the scheme, unless the employee is engaged, for a period not exceeding three weeks, in a trial period of work with a prospective employer under Government arrangements.

(8) A worker who is attending a higher education course, and before the course ends is required, as part of that course, to attend a period of work experience not exceeding one year, does not qualify for the national minimum wage in respect of work done for his employer as part of that course.

(9) For the purposes of paragraph (8) a “ higher education course” means –

(a) in England and Wales, a course of a description referred to in Schedule 6 to the Education Reform Act 1988;

(b) in Scotland, a course of a description falling within section 38 of the Further and Higher Education (Scotland) Act 1992²;

(c) in Northern Ireland, a course of a description referred to in Schedule 1 to the Further Education (Northern Ireland) Order 1997³.

(10) A worker who satisfies the condition set out in paragraph (11) and is participating in a scheme which satisfies the conditions set out in paragraph (12), under which he is provided with shelter and other benefits (which may include money benefits) in return for performing work, does not qualify for the national minimum wage in respect of work performed for his employer under that scheme.

(11) A worker satisfies the condition referred to in paragraph (10) if, immediately before his entry into the scheme–

(a) he was either homeless or residing in a hostel for homeless persons; and

(b) he–

(i) was in receipt of, or entitled to, income support or income-based job seekers' allowance, or

(ii) was not entitled to receive either of those benefits only because he was not habitually resident in the United Kingdom.

(12) A scheme satisfies this paragraph if–

(a) the arrangements under which the scheme operates prevent the person operating the scheme or any other person from making a profit out of the provision of the scheme, other than one which may only be applied in running the scheme or other schemes satisfying the requirements of this paragraph or, where the person operating the scheme is a charity, for a purpose, being a purpose of the charity, relating to the alleviation of poverty;

(b) every person participating in the scheme satisfies the condition set out in paragraph (11), or would satisfy it if he were a worker;

(c) the accommodation available under the scheme is provided by the person operating the scheme or under arrangements made between that person and another person; and

(d) the work done under the scheme is both provided by, and performed for, the person operating the scheme.

(13) A worker who is participating in the second phase of the European Community Leonardo da Vinci programme (established pursuant to Council Decision 99/382/EC), does not qualify for the national minimum wage in respect of work done for his employer as part of that scheme.

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1. revoked by Employment Equality (Age) Regulations 2006/1031 Sch. 8(2) para. 58(2)
 2. section 38 was amended by the Education (Scotland) Act 1996 (c. 43), Schedule 5, paragraph 9.
 3. S.I. 1997/1771 (N.I. 15).

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* This is the version in force as at October 1, 2006

RUSSELL COMMISSION FRAMEWORK

A summary of the main elements of the Russell Commission's proposals for 16-25 year olds is provided below.

1. Young person's journey through the framework

i. Engagement

Raising awareness of volunteering through:

- campaigns to engage young people, especially disadvantaged groups
- network of local advisors
- promoting a volunteering ethos in educational institutions

ii. Access to information

A web-based portal to provide information and volunteering.

iii. Local advice and guidance

Youth Volunteer Advisers to provide high quality advice, support and guidance to young people. Youth Volunteer Development Managers will provide training support and capacity building service to organisations enabling them to engage with young people effectively.

iv. Menu of opportunities

Young people will get involved with whatever they are passionate about. A menu of full-time, part-time and short-term taster opportunities. A living allowance for full-time volunteers.

v. Results

The benefits of volunteering for young people and communities include: breaking down financial and social barriers which stop people getting involved e.g. benefits issues, recognising success, strengthening links between volunteering and accreditation or qualifications where young people want to this.

2. Overview of the recommendations

- increase in quality and quantity of volunteering opportunities
 - full-time, part-time, short term 'tasters'
- raising awareness
 - campaigns to engage young people, especially disadvantaged groups
 - national volunteering portal – one stop shop

- network of local advisors
- promoting a volunteering ethos
- recognition and reward
 - quality assurance
 - personal appraisal system
 - Youth Achievement Award
- removing barriers
 - benefits rulebook
 - discretionary hardship fund
 - supporting volunteers with disabilities

3. Recommendation 7 of the Russell Commission report

There should be a step change in the number of young people volunteering and the diversity of young volunteers. This will require a significant expansion in the number of available opportunities – short-term, part-time and full-time – with effective targeting to ensure that young people from disadvantaged backgrounds are more likely to volunteer.

Careful piloting and evaluation will be necessary to determine the appropriate mix of opportunities – by activity, organisation and the time committed (short-term, part-time and full-time). An assessment would need to take account of the costs, benefits and demand for different types of opportunity. After this assessment the balance of opportunities would be determined. Subject to that assessment, the Commission's view is that there should be a significant expansion of:

- **up to 300,000 short-term, group-based volunteering opportunities per annum within the first five years of the national framework.**
 - the establishment of local 'task forces' of young volunteers that come together on an ad hoc basis to address community challenges.
- **up to 80,000 part-time volunteering opportunities per annum, achieved through:**
 - the reform, re-branding and expansion of Millennium Volunteers;
- **additional opportunities** will be created:
 - by enabling the many volunteer involving organisations with existing part-time opportunities to affiliate to the framework and benefit from the promotion of opportunities, accreditation and quality frameworks, and access to funding to assist with travel and subsistence costs;
 - through a new 'virtual volunteering' scheme in which young people can provide support and help via the internet and their PC;

- with a specific focus on the creation of young people led opportunities, and new volunteer roles would help ensure that young people are able to contribute fully to the development of opportunities in their local areas.
- **up to 12,000 full-time volunteering opportunities per annum delivered within the first five years of the framework.**

The full-time programme should feature:

- a weekly living allowance of around £60 to cover travel and subsistence costs;
- contribution towards accommodation costs for all volunteers living away from home;
- an education partner for those full-time volunteers who wish to link their activity to a qualification, or towards a Youth Achievement Award;
- young volunteers who lead, develop and deliver and recruit for projects involving part-time and short-term volunteers.

LIST OF CONSULTEES

Action with Communities in Rural England
Advisory, Conciliation & Arbitration Service
Age Concern
Army Cadet Force Association
Arts Council England
Association of Charitable Foundations
Association of Chief Executives of Voluntary Organisations
Beacon Fellowship Charitable Trust
Black Minority Ethnic (BME) Standing Conference Partnership
Black Training and Enterprise Group
BME Social Enterprise Network
British Association of Friends of Museums
British Association of Settlements & Social Action Centres
British Chambers of Commerce
British Trust for Conservation Volunteers
British Youth Council
Business in the Community
Cabinet Office (Office of the Third Sector)
Capacitybuilders
Carnegie United Kingdom Trust
Charities Aid Foundation
Charities Evaluation Service
Charity Commission
Charity Trustee Networks
Christian Aid
Church Urban Fund
Citizens Advice Bureau
Citizens Advice Northern Ireland
City Parochial Foundation
Combined Cadet Force Association
Community Action Network
Community Alliance
Community Development Exchange
Community Development Foundation
Community Foundation Network
Community Matters
Community Recycling Network
Community Service Volunteers
Compact Working Group
Confederation of British Industry
Council for British Archaeology
Council for Ethnic Minority Voluntary Organisations
Department of Culture, Media and Sport
Department for Education and Skills
Department for Employment and Learning, Northern Ireland
Department of Enterprise, Trade and Investment, Northern Ireland
Department of Environment, Food and Rural Affairs
Department for Social Development, Northern Ireland
Department for Work and Pensions

Development Trusts Association
Employment Lawyers Association
Employment Tribunal Service
English Heritage
FaithAction
Federation of City Farms and Community Gardens
Female Prisoners Welfare Projects/Hibiscus
Foyer Federation
Futurebuilders Advisory Panel
Futurebuilders England
Girlguiding UK
Giving Forum
Giving Nation
Global Action Plan
Heritage Link
Heritage Lottery Fund
Historic Houses Association
Historic Royal Palaces
HM Revenue & Customs
HM Treasury
Housing Associations Charitable Trust
Infrastructure National Partnership
Institute of Field Archaeologists
Institute of Fundraising
Learning and Skills Council
LifeLine
Local Government Association
London Community Recycling Network
London Organising Committee of the Olympic Games
Low Pay Commission
Marine Society and Sea Cadet Association
Media Trust
Mentoring and Befriending Foundation
MIND
Ministry of Defence
Museums Association
Museums, Libraries & Archives Council
National Association of Decorative & Fine Arts Societies
National Children's Home
National Council on Archives
National Council of Voluntary Child Care Organisations
National Council for Voluntary Organisations
National Council for Voluntary Youth Services
National Museums Directors' Conference
National Youth Agency
Northern Ireland Council for Voluntary Action
Philanthropy UK
Pillar Consortium
ProjectScotland
Refugee Council
Reserve Force and Cadet Association
Rethink
Royal Society for the Protection of Birds
Rural Stress Information Network
Samaritans

Scarman Trust
Scottish Council of Voluntary Organisations
Sector Skills Development Agency
SkillsActive Playwork Unit
Small Business Service
Social Enterprise Coalition
South East Rural Community Council
Sport England
Stewardship
The Aldridge Foundation
The British Urban Regeneration Association
The National Trust
The Royal Parks
The Scout Association
The Tree Council
Third Sector European Network
Timebank
Trades Union Congress
'V'
Volunteer Development Agency, Northern Ireland
Volunteering England
Urban Forum
Wales Council for Voluntary Action
Welsh Assembly
Wildlife and Countryside Link
Women's Resource Centre
Women's Royal Voluntary Service
Work Foundation
Young Men's' Christian Association England
Youth Action Network
Youthnet and Beacon Fellowship UK
Youthnet UK

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