

PARLIAMENTARY DEBATES

HOUSE OF COMMONS
OFFICIAL REPORT

Sixth Delegated Legislation Committee

DRAFT NATIONAL MINIMUM WAGE
(AMENDMENT) REGULATIONS 2020

DRAFT NATIONAL MINIMUM WAGE
(AMENDMENT) (NO. 2) REGULATIONS 2020

Tuesday 17 March 2020

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The Committee consisted of the following Members:

Chair: IAN PAISLEY

Ali, Tahir (*Birmingham, Hall Green*) (Lab)
 † Bradley, Ben (*Mansfield*) (Con)
 † Fell, Simon (*Barrow and Furness*) (Con)
 † Hayes, Helen (*Dulwich and West Norwood*) (Lab)
 † Henry, Darren (*Broxtowe*) (Con)
 † Holmes, Paul (*Eastleigh*) (Con)
 † Kearns, Alicia (*Rutland and Melton*) (Con)
 McGovern, Alison (*Wirral South*) (Lab)
 † Mangnall, Anthony (*Totnes*) (Con)
 Madders, Justin (*Ellesmere Port and Neston*) (Lab)
 † Miller, Mrs Maria (*Basingstoke*) (Con)

† Nici, Lia (*Great Grimsby*) (Con)
 Perkins, Mr Toby (*Chesterfield*) (Lab)
 † Scully, Paul (*Parliamentary Under-Secretary of State
 for Business, Energy and Industrial Strategy*)
 † Stephens, Chris (*Glasgow South West*) (SNP)
 † Stewart, Iain (*Lord Commissioner of Her Majesty's
 Treasury*)
 † Thomas, Gareth (*Harrow West*) (Lab/Co-op)
 Mike Winter, Zoë Backhouse, *Committee Clerks*
 † **attended the Committee**

Sixth Delegated Legislation Committee

Tuesday 17 March 2020

[IAN PAISLEY *in the Chair*]

Draft National Minimum Wage (Amendment) Regulations 2020

2.30 pm

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): I beg to move,

That the Committee has considered the draft National Minimum Wage (Amendment) Regulations 2020.

The Chair: With this it will be convenient to consider the draft National Minimum Wage (Amendment) (No. 2) Regulations 2020.

The Minister will speak to both instruments. At the end of the debate, I will ask him to move the second motion formally.

Paul Scully: It is a pleasure to serve under your chairmanship, Mr Paisley. One of the Government's proudest achievements is creating millions more jobs since 2010. We are determined to make the UK the best place in the world to work. As announced in the Queen's Speech, we will bring forward an employment Bill to deliver the greatest reform of workers' rights in more than 20 years. Our approach is to balance the needs of workers and employers. These regulations, concerning the national minimum wage and the national living wage, are crucial to that approach.

We are helping to protect low-paid workers while supporting employers to comply with the legislation. We have a labour market to be proud of. Our employment rate is at 76.5%, a record high, and unemployment is 3.8%, which is lower than this time last year. Since 2010, the national minimum wage has increased faster than average wages and inflation, meaning more money for the lowest paid workers. The regulations will increase the rates of the national minimum wage and the national living wage from 1 April, which we estimate will lead to a pay rise for about 2.4 million workers.

I am delighted to say that we have accepted all the recommendations made by the Low Pay Commission. That independent expert body brings together the views of businesses and workers and, informed by research and analysis, reaches a consensus on that advice. I place on record my gratitude for its work.

The regulations will increase the national living wage for those aged 25 and over by 51p to £8.72 an hour. That increase of 6.2% means that the national living wage is projected to meet the Government's target of reaching 60% of median earnings in 2020. A full-time worker on that rate will be more than £930 better off over the course of the year.

The regulations also increase the rates for younger workers and apprentices. Those aged between 21 and 24 will be entitled to a minimum hourly rate of £8.20, a 50p increase. Workers aged between 18 and 20 will receive an extra 30p an hour, taking their rate to £6.45. Under-18s will earn at least £4.55 an hour—a 20p increase.

Apprentices aged under 19 or in the first year of their apprenticeship will receive an increase of 6.5%, meaning an hourly rate of £4.15.

The regulations also change the amount that employers can charge workers for accommodation without it affecting their pay for national minimum wage purposes. From April, that will increase to £8.20 a day.

Looking ahead, the Government have pledged to raise minimum wages further. In our manifesto, we set a new target for the national living wage of two thirds of median earnings by 2024. The Low Pay Commission will continue to have a central role in taking economic conditions into account and advising the Government on this ambitious target, ensuring that the lowest paid benefit from the increases. To improve fairness for younger workers, we will apply the national living wage to workers aged 23 and over by 2021, and to those aged 21 and over by 2024.

The first step was changing the law. We need to ensure that all workers know they are entitled to the minimum wage and that all employers know that they must pay it. The Government run an annual campaign to increase awareness. Last year, we spent £1.1 million reaching workers and employers through posters and billboards, as well as digital and online channels.

We know that most businesses pay at least the statutory minimum wage, but we take tough action against the minority of employers who underpay their workers. Since 2015, we have more than doubled our investment in minimum wage compliance and enforcement activities to £27.4 million. Such an increase in the budget allows Her Majesty's Revenue and Customs to focus on tackling the most serious cases of non-compliance while educating employers to comply. HMRC follows up every worker complaint it receives, even those that are anonymous. It conducts proactive enforcement in sectors or areas where there is a higher risk of workers not being paid the legal minimum wage. In 2018-19, HMRC identified a record £24.4 million in pay arrears for more than 220,000 workers, and issued more than £17 million in penalties for non-compliant employers.

In February, we announced the recommencement of the national minimum wage naming scheme. Publicly naming employers who do not adhere to the rules remains an important part of our enforcement and compliance toolkit for the minimum wage. From now on, any firm that owes minimum wage arrears of more than £500 to its workforce can be named. To help educate employers, future naming rounds will be supported by a quarterly educational bulletin to highlight details of common compliance issues.

We are also acutely aware of the burden that regulations, including the minimum wage, place on business. As the level of the national living wage enters new territory, we want to make sure that the rules are as straightforward as possible. So long as workers are getting the wages they are entitled to, we want to make it easier for businesses to comply with the law. That is why I am also presenting regulations that will aid business compliance.

We have worked closely with stakeholders to identify areas of the national minimum wage rules that add complexity for employers, without providing clear protections or benefits to workers. Employers, particularly in the retail sector, told us that some aspects of the rules can be particularly and unnecessarily difficult to comply

with. We have listened to those views. Following a review of evidence from the consultation on salaried workers and salary sacrifice schemes, the changes to the regulations will support businesses who employ salaried hours workers. Changes have been considered only where they maintain or enhance protections or benefits to workers.

Currently, low-paid salaried workers cannot be paid in fortnightly or four-weekly cycles without their employer risking a breach of regulations. Similarly, if companies were to pay such salaried staff extra for working a bank holiday shift, there is a risk of breaching regulations. The amended regulations widen the range of pay arrangements that are compatible with workers being treated as salaried hours workers from 6 April 2020. That will help preserve certain pay arrangements that are valued by many workers.

The regulations also make a small change to the rules on workers making purchases from their employer—for example, where a clothing retail worker buys a uniform from their employer. The change ensures that employers get credit for reimbursing the worker as they currently do when the purchase is from a third party.

As well as making changes to the regulations, the Government have announced further support for businesses to comply with the minimum wage rules. For instance, we are offering tailored support to new, small businesses. HMRC is proactively visiting selected employers to educate them on the national minimum wage and to help them get their practices right from the start.

To further improve understanding of the rules, we will soon be publishing an improved guidance offer through gov.uk. Our new offer will include thematic guides on topics where breaches are common, such as pay deductions, apprentices and unpaid work. We have convened a guidance readership panel of employer groups, unions and relevant experts, to make sure that we get these products right.

The regulations ensure that the lowest paid workers are fairly rewarded for their valuable contribution to the economy. They also provide greater flexibility to employers to help them comply with the rules, while maintaining our world-leading employment rights. Our commitment to raising the national living wage to two thirds of median earnings makes the UK the first major economy to set such an ambition. I commend the regulations to the House.

2.38 pm

Chris Stephens (Glasgow South West) (SNP): I apologise for being slightly late for the Committee, Mr Paisley. I was in the advertised room, where they were discussing Buckinghamshire, but I managed to avoid that—

The Chair: Today is your lucky day.

Chris Stephens: Indeed, Mr Paisley.

I have a couple of questions for the Minister. I am looking at the percentages that the Low Pay Commission has recommended. It is welcome that an increase of 6.5% is going to 21 to 24-year-olds. Is there an explanation as to why there is a lower increase for the development rate and the youth rate, for example, which are going up by only 4.9% and 4.6%? I am sure I am not the only

Member of the House who has some issues with the age rates. Should people who are 21 really be getting the same rate as someone who is 25?

Secondly, the Government may describe this as the national living wage, but it is not the real living wage as far as we are concerned. The real living wage is £9.30 an hour. When does the Minister envisage the Government's living wage being equal to the living wage applied and calculated by other organisations?

The Minister mentioned compliance. Do the Government have any plans to increase the number of employees employed by the national minimum wage compliance unit? It is important that there is strict compliance and regulation.

Another question relates to the current covid-19 pandemic. The Minister will be aware that the Government are discouraging citizens from going to pubs, nightclubs and so on. A lot of employees in the sector will be paid the national minimum wage. Are the Government encouraging the payment of the national living wage for people employed in pubs and nightclubs, which might very well close?

On Government contractors, are the Government encouraging the living wage to be paid, and are they ensuring that, when they issue contracts, the living wage applies? Can the Minister also tell us how he will make sure that employers do not use tips to qualify for the national minimum wage? That is still an issue in the hospitality sector, and it needs to be tackled.

2.41 pm

Justin Madders: It is a pleasure to see you in the Chair again today, Mr Paisley. I am grateful to the Minister for his introduction. There was a glaring omission from his speech: he failed to mention that it was a Labour Government who introduced the national minimum wage. I am sure the next time he speaks he will acknowledge that it was the Labour party that introduced that groundbreaking policy.

That said, we will not oppose these statutory instruments; we recognise that any increase in people's income is welcome, especially at this most uncertain time. However, there are areas where we would like more progress to be made. Millions of people are in work and struggling to make ends meet. Having a job is no longer a guarantor of a decent standard of living; indeed, work and poverty often go hand in hand. The current crisis has put a spotlight on certain parts of the economy, and the extremely precarious nature of many working people's lives is coming to the fore. Millions of people are trapped in low pay or insecure employment, and the above-inflation increase presented still falls short of the promise made by former Chancellor George Osborne that it would reach £9 an hour by 2020. If the Minister wishes to clarify that there will be a further increase later this year to take us up to that level and honour that promise, that would be most welcome, although that would still fall short of Labour's own plans.

An increase in the minimum wage will provide some help to the lowest paid, but it will not be the transformative change that we need. It will not end the growing levels of in-work poverty faced by millions. As we have discussed in recent weeks, it does not cover everyone in work. With the growing gig economy forcing more and more workers into sham self-employment, it is more important than ever that every worker is paid a decent living wage.

[Justin Madders]

The minimum wage does not cover self-employment. According to the TUC, almost half of self-employed people do not earn the minimum wage. That means that around 2 million self-employed workers are now stuck on poverty pay. Does the Minister think that is acceptable? What is being done to address poverty pay among the self-employed? It may be that later announcements offer some temporary respite for people in this category, but I suspect they will not tackle the chronic low pay many in the gig economy or in self-employment face.

As the hon. Member for Glasgow South West mentioned, there is a huge discrepancy in the minimum wage for people over 21 and those aged 18 to 20, which is exacerbated by the differential percentage increases presented today. Will the Minister set out why the Government believe that workers aged 18 to 20 should be paid a far lower rate than those aged 21 for exactly the same work, and even less than those under 25?

I declare an interest: I have two sons in the lower age bracket. They previously both worked in the same establishment, and would regularly complain to me that they worked just as hard as their colleagues over 25, did all the same duties and performed just as well, but those colleagues got a much higher pay rate. I have never been able to provide them with a satisfactory answer as to why that is the case. Hopefully, the Minister can make my home life a little easier by giving me a good answer for them. It goes without saying that not everyone under the age of 25 can benefit from staying with their parents. For them, the daily cost of living is no different than it is for those over the age of 25, in terms of rent, council tax, utility bills or whatever.

In representations to the Low Pay Commission, the TUC highlighted some of the areas where it is apparent that further Government action is required. In its submissions, the TUC said that there should be greater use of labour market enforcement orders and undertakings, recognising that those tools form an important bridge between informal action and official prosecutions. It would be good to know how many enforcement orders have been issued so far and how many undertakings have been given by employers. Of the undertakings that have been given, how many have gone on to be breached? Of those occasions where undertakings and orders have not worked, how many prosecutions have followed?

We agree with the TUC that the current fines imposed following prosecutions, which are typically only a few thousand pounds, do not act as a sufficient deterrent, particularly when the employer has been found to have engaged in what would be considered aggravating activities, such as falsifying records. The fines need to be substantially increased. As the TUC suggests, £75,000 would be reasonable. The fact that there have been relatively few prosecutions suggests that the resources, and possibly the appetite, for enforcement are not there.

The TUC submission also raised the routine evasion of the national minimum wage regulations by such devices as false self-employment, work trials and unpaid internships. I touched on false self-employment and the gig economy, but will the Minister enlighten us on how many of the 50-plus recommendations made in the good work plan have been implemented? Although it only scratches the surface of the multiple problems of exploitation and insecurity in the gig economy, the

last time I checked, I could count on the fingers of one hand the number of recommendations that had been implemented, so I would be grateful for an update on any progress.

Wearing my hat as the chair of the all-party parliamentary group on social mobility, we called some time ago for a ban on unpaid internships, recognising that to access certain professions they had become an almost compulsory rite of passage, including for jobs in the media, fashion and drama. Sadly, they are quite often used in politics, even in this place. Some people are expected to work for up to a year free of charge. In some places, of course, there is no guarantee of a job at the end.

I am aware that several private Members' Bills are floating around that seek to put an end to that shameful practice. If the Minister were to indicate whether the Government intend to support any of those Bills, that would also be welcome. One further minor point from the TUC submission was the difficulty that third parties have in reporting national minimum wage infringements. Such people are often trade union officials who have in-depth knowledge and expertise in certain sectors. It seems sensible to make the most of that knowledge and experience with a workable protocol for referrals.

The Committee will be relieved to hear that I do not propose to go through every TUC recommendation, but one final important point that I wish to draw to the Committee's attention is the proposal for public sector bodies to make it a requirement of any tendering or work outsourced that those providing the service ensure that all workers are paid at least the minimum wage. That does not require a change in legislation by the Government; it requires leadership. I would be grateful if the Minister advised on what efforts have been undertaken to encourage all those who contract with Government to pay the minimum wage and, for those who work in London, the London living wage?

The second instrument deals mainly with responses to a Government consultation on salaried hours and salary sacrifice. As the Minister explained, they are broadly technical changes to the rules around how minimum wage rates are calculated. The changes broadly afford the employer a greater degree of flexibility when determining the payments to be included within the regulations and the reference periods from which they are to be calculated.

We recognise that the regulations have been introduced as a result of responses made to the consultation by employers, but it is far from clear how significant and widespread the practices are. As the TUC said in its consultation response, there appears to be little evidence of that issue being raised regularly. We will therefore not oppose the regulations, but we urge the Minister to keep a close eye on how they work in practice because we would not want them to be used as a convenient way to game the system. One can envisage payments and reference periods being manipulated to create a certain outcome, which might well be within the letter, but not necessarily the spirit of the regulations.

I would say the same about the reimbursement rules: on the face of it, they could be used as a Trojan horse to find even more matters to undermine the intended effect of the minimum wage. Care also needs to be taken to ensure that reimbursement takes place in a timely fashion. Although it is far from apparent that

these changes will have any dramatic impact in one way or another, it is important that there are regular reviews of their implementation.

In conclusion, the Opposition believe it is important that the state sets minimum rates, but they are just part of the solution to low pay. We strongly believe that trade unions, as the collective voice of workers, are in the best place to negotiate with workers and employers about getting good pay and good terms and conditions for every sector in the country. We hope that one day we will see a Government that deliver that.

2.51 pm

Paul Scully: I thank hon. Members for their valuable contributions to the debate. The national minimum wage and the national living wage make a real difference to the lives of millions of workers in the country. I am glad that there is agreement—notwithstanding some questions, which I will try to answer to the best of my ability—that the lowest paid workers deserve an inflation-busting pay rise, which the regulations will provide.

The regulations mean that, from 1 April, workers on the national living wage will be over £3,700 better off over the year compared with 2015, when the policy was announced. That marks a 21% increase in the national living wage since 2015. Younger workers will also get more money through the increases to the national minimum wage rates. We know that most businesses support increases to the minimum wage rates. Through the regulations, we are reducing burdens on employers in meeting minimum wage obligations while maintaining worker protections.

The hon. Member for Ellesmere Port and Neston mentioned the technical changes to the second set of regulations. He is right to say that we will continue to review the situation. Part of the reason for the changes to the regulations is that there were some unintended consequences when the national minimum wage and national living wage were introduced—for example, the four-weekly cycles and the fortnightly cycles. Regardless of how extensive they are, smoothing out those problems is a sensible measure. Of course, we will continue to see how that works in practice, as we will with all those sorts of things.

In no particular order—I have papers strewn absolutely everywhere—I will try to cover some of the points raised. The hon. Member for Glasgow South West talked about Government contractors paying a real living wage. The national minimum wage is a minimum wage, as is the national living wage. Good employers should always seek to go beyond that. The Department ensures that all contractor staff receive a minimum wage equivalent to the annual survey of hours and earnings median rate for their occupation or to the Living Wage Foundation rate, whichever is higher. It means that from April 2020 contractor staff will receive no less than £10.75 in London, or £9.30 outside London.

The hon. Member for Glasgow South West also asked why the national living wage is not higher. Right from the conception of the national living wage and the national minimum wage, we have been trying to work with businesses to ensure that employers and workers get the right balance. That goes to the question from the hon. Members for Glasgow South West and for Ellesmere Port and Neston about younger people. Again, we hope to rectify the situation so that, by 2024, 21-year-olds

will be able to benefit from the higher amount. The Government took the decision to ensure that we get the right balance for younger people in the employment market. Our 16 to 21-year-olds' unemployment rate is four times higher than that of people aged 25 and over. It is about having a balance between ensuring that they are paid a fair wage and that there are jobs and opportunities for them in the first place.

We are at the forefront on enforcement, and are significantly increasing the amount of money paid to HMRC for that purpose. HMRC will enforce in a proactive way, through education and visits to employers in the sectors that are most at risk. HMRC will have the financial resources to put where it considers best to tackle non-compliance. We have closed 770 investigations into employers between 2016-17 and 2018-19 that were opened with a potential apprenticeship risk. More than half those cases were closed with arrears found for the worker.

Several projects over the last few years have targeted apprentices and the sectors in which non-compliance is most prevalent, such as hairdressing and childcare. HMRC has undertaken many communication campaigns, including webinars and targeted projects, communicating rights and responsibilities to apprentices and their employers, to ensure that people know their rights, so that they can call out non-compliance, and that employers adhere to the rules.

HMRC also send text messages to nearly 350,000 apprentices when the annual rate increase comes into effect. We ensure that we have that communications campaign as soon as the increase is approved because it is so important that those who are the most vulnerable and the lowest paid understand their rights and how to complain. As I said in my opening remarks, HMRC also investigates anonymous complaints.

Clearly, unpaid internships are a concern, in terms of their being a barrier to social mobility. The hon. Member for Ellesmere Port and Neston is right to identify that they are often used in this place. In terms of tax and worker rights, the term “internship” does not mean anything. If someone is on work experience, just looking and learning, they are not working day to day and adding value to the company. If they are adding value to the company, and doing what could be seen as a worker's job, the national minimum wage and national living wage legislation applies to them. Employers should look at that, and we will come down heavily on those who fail to adhere to it.

HMRC has contacted more than 2,000 employers found to be advertising unpaid internships online to ensure that they are compliant with the law. We have sent 35,690 letters to employers in those sectors that tend to use interns: publishing, media, the arts, marketing and fashion, as the hon. Gentleman said.

Justin Madders: I appreciate what the Minister says about how the nature of the work determines whether someone should be paid the minimum wage, but is it not a slightly artificial situation to expect someone at the very bottom of the ladder, in a very precarious situation in an internship, to report their employer to the national minimum wage helpline?

Paul Scully: By contacting 2,000 employers, we are reminding them of their legal responsibilities. I understand the hon. Gentleman's concern about vulnerability and

[Paul Scully]

whistleblowing in those situations, but that is why it is important that we give HMRC the resource that it needs to have proactive oversight, and to go to those companies that are most likely to offer and advertise unpaid internships, so that we can nip it in the bud. To build our understanding, so that HMRC can follow the matter up properly, we have incorporated a question into the Department for Education's employer skills survey, asking 90,000 UK employers whether they have used unpaid interns. Results are expected in late spring 2020, and we will follow up on that.

On the protection of the low-paid self-employed, we will introduce the Employment Bill, which covers a couple of the questions that were raised. That is a result of the good work plan published by Matthew Taylor and his colleagues. We hope to tackle a number of the issues raised in that report and will publish the Bill as soon as we can to ensure that it gets scrutiny from, and involvement of, all parties in its development. I look forward to introducing the Bill and having debates on it so that we continue to lead on workers' rights.

Gareth Thomas (Harrow West) (Lab/Co-op): I apologise for missing the Minister's opening remarks. He will understand the particular concern among the low-paid and self-employed about their situation during the coronavirus crisis, as my hon. Friend the Member for Ellesmere Port and Neston mentioned. Can the Minister give us a hint about Government announcements in that area, as part of the process of reassuring constituents who are in that employment bracket?

Paul Scully: Unfortunately, I am not the Chancellor, but I look forward to the statement this evening. At this time, it is important that we continue to speak out daily for businesses and, as the hon. Gentleman rightly points out, for the self-employed, for workers and for people who are worried not just about their jobs and the viability of the business, but about shifts in those areas. Make no mistake, we have all seen in our inboxes the amount of concern out there, so it is so important that we continue to address the concerns of self-employed workers, employees and businesses. The Chancellor introduced a timely and targeted package last week in his Budget, but things are clearly moving at pace, and we will see what he says during his statement at 7 o'clock.

On the future of the national living wage, although we are increasing it and getting through the technicalities now, it is really important to reiterate the point about younger workers. We are planning to extend the reach of the national living wage to workers aged 23 and over from April 2021, and to workers aged 21 and over by 2024. Unfortunately, I suspect that the children of the hon. Member for Ellesmere Port and Neston will have already reached that higher level by that time.

A UK-wide minimum wage, recommended by the independent expert Low Pay Commission, ensures that the pay of the lowest paid in society is protected, and means that businesses compete on a level playing field. In 2016, the Government committed to raising the national living wage to 60% of median earnings, and we have stayed true to that commitment. We have the highest employment rate since comparable records began. The strength of our labour market shows that a higher minimum wage can go hand in hand with strong employment growth.

Chris Stephens: Before the Minister continues, he did not answer my question about employers using tips to reach the national living wage. That is a form of cheating that happens in the hospitality sector in particular. Will he respond to that specific point?

Paul Scully: Forgive me, I missed that one. The current rules are clear that tips do not count towards pay for national living wage purposes. That is part of the education that we need to ensure that the hospitality sector adheres to and does not fall foul of those rules, whether or not employers know about them. That is an area of possible exploitation and can be an area of ignorance, which is no excuse. We will shortly introduce legislation to ensure that 100% of tips go to workers, which I am sure will be welcomed in the hospitality industry.

Our pledge to raise the national living wage to two thirds of median earnings by 2024, taking economic conditions into account, makes the UK the first major economy in the world to set such an ambition. We will soon publish the remit for the Low Pay Commission, which will include recommending the national living wage rate to apply from April 2021—that is the first step on the path to two thirds of median earnings. We will continue to come down hard on employers who fail to pay the minimum wage.

The regulations and accompanying non-legislative measures show that we are committed to helping employers get the rules right at the first time of asking and without the need for enforcement. I commend the regulations to the Committee.

Question put and agreed to.

Resolved,

That the Committee has considered the draft National Minimum Wage (Amendment) Regulations 2020.

DRAFT NATIONAL MINIMUM WAGE (AMENDMENT) (NO. 2) REGULATIONS 2020

Resolved,

That the Committee has considered the draft National Minimum Wage (Amendment) (No. 2) Regulations 2020.—(*Paul Scully.*)

3.5 pm

Committee rose.