

# PARLIAMENTARY DEBATES

HOUSE OF COMMONS  
OFFICIAL REPORT

Fourth Delegated Legislation Committee

DRAFT NATIONAL MINIMUM WAGE  
(AMENDMENT) (NO. 2) REGULATIONS 2023

*Tuesday 9 January 2024*

No proofs can be supplied. Corrections that Members suggest for the final version of the report should be clearly marked in a copy of the report—not telephoned—and must be received in the Editor’s Room, House of Commons,

**not later than**

**Saturday 13 January 2024**

© Parliamentary Copyright House of Commons 2024

*This publication may be reproduced under the terms of the Open Parliament licence, which is published at [www.parliament.uk/site-information/copyright/](http://www.parliament.uk/site-information/copyright/).*

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

*Chair:* CAROLYN HARRIS

- |  |   |
|--|---|
| † Dixon, Samantha ( <i>City of Chester</i> ) (Lab)   | † Randall, Tom ( <i>Gedling</i> ) (Con)                             |
| † Double, Steve ( <i>St Austell and Newquay</i> ) (Con)                                      | † Rimmer, Ms Marie ( <i>St Helens South and Whiston</i> ) (Lab)     |
| Duffield, Rosie ( <i>Canterbury</i> ) (Lab)  | † Sobel, Alex ( <i>Leeds North West</i> ) (Lab/Co-op)               |
| † Dunne, Philip ( <i>Ludlow</i> ) (Con)  | † Stevenson, Jane ( <i>Wolverhampton North East</i> ) (Con)         |
| † Fletcher, Katherine ( <i>South Ribble</i> ) (Con)  | † Thomson, Richard ( <i>Gordon</i> ) (SNP)                          |
| Hamilton, Mrs Paulette ( <i>Birmingham, Erdington</i> ) (Lab)                                | † Vara, Shailesh ( <i>North West Cambridgeshire</i> ) (Con)         |
| † Hollinrake, Kevin ( <i>Parliamentary Under-Secretary of State for Business and Trade</i> ) | † Wood, Mike ( <i>Lord Commissioner of His Majesty's Treasury</i> ) |
| † Hughes, Eddie ( <i>Walsall North</i> ) (Con)   | Stella-Maria Gabriel, <i>Committee Clerk</i>                        |
| † Madders, Justin ( <i>Ellesmere Port and Neston</i> ) (Lab)                                 |   |
| † Penrose, John ( <i>Weston-super-Mare</i> ) (Con)   | † <b>attended the Committee</b>                                     |

## Fourth Delegated Legislation Committee

Tuesday 9 January 2024

[CAROLYN HARRIS *in the Chair*]

### Draft National Minimum Wage (Amendment) (No. 2) Regulations 2023

2.30 pm

**The Parliamentary Under-Secretary of State for Business and Trade (Kevin Hollinrake):** I beg to move,

That the Committee has considered the draft National Minimum Wage (Amendment) (No. 2) Regulations 2023.

It is a pleasure to serve with you in the Chair, Ms Harris. This statutory instrument will help to ensure that so-called live-in domestic workers will be paid at least the national minimum wage for the time that they are working.

The live-in domestic worker exemption was created as part of the National Minimum Wage Regulations 2015 and provides that work done by a worker residing in the employer's family home and treated as a member of the family is not "work" for the purposes of the national minimum wage, and therefore the individual does not have to be paid the national minimum wage. The exemption was originally created mainly for au pairs so that they could gain experience of cultural exchange through living—and being part of a family—in the UK, although the legislation covers other types of domestic workers as well.

Currently, the National Minimum Wage Regulations state that workers do not need to be paid the minimum wage if they live with their employer and are genuinely treated as part of the family. Such treatment is particularly expressed in the provision of living accommodation and meals, and the sharing of tasks and leisure activities. The exemption is not compatible with most jobs, and it is hard to prove whether someone is or is not being treated as a family member.

The removal of the exemption will remove the inequality facing these workers, who are more likely to be migrant workers and women. In 2016, an employment tribunal judgment considered whether the exemption indirectly discriminated against women. The tribunal found that the exemption had given rise to unjustified indirect discrimination, and thus the exemption was disapplied in this case.

After the employment tribunal judgment on live-in domestic workers was published, the Government asked the Low Pay Commission to conduct research on low-paid live-in domestic workers. In 2021, the commission published its report into the live-in domestic worker exemption and, during the gathering of that research, it concluded that the exemption should be removed.

The Low Pay Commission heard evidence of employers using the exemption to exploit domestic workers, often non-British nationals, who were required to work long hours and not being truly treated as members of the family. The commission found that the exemption has rarely been used for its intended main purpose, as, in

practice, there are now few au pairs in the UK, and it provided a clear recommendation to Government that the exemption should be removed.

The Government accepted the recommendations and announced in March 2022 that the live-in worker domestic exemption would be removed. During that period, the employment tribunal decision was appealed, and the Employment Appeal Tribunal agreed in 2023 that the exemption should be disapplied. Those decisions established the removal of the exemption as a matter of case law.

Taking into account the existing case law, and under the more general legislation, live-in domestic workers have reasonable arguments that they are entitled to be paid the national minimum wage. However, that is not a matter of certainty. Therefore, with our National Minimum Wage (Amendment) Regulations, we are putting the matter beyond doubt by amending the regulations to remove the exemption, from the date that this measure comes into force.

**Shailesh Vara** (North West Cambridgeshire) (Con): I am grateful to my hon. Friend for giving way, and I welcome the measure that he is putting forward. He will appreciate that many of these people are in a vulnerable position, with a powerful employer living on the premises. Notwithstanding this legislation going through, is the Department proposing to keep a watchful eye to ensure that employers are doing what they are supposed to do and abiding by these rules, so that it is not simply a question of "business as usual"?

**Kevin Hollinrake:** My right hon. Friend makes a strong point on enforcement. Legislation without implementation is pretty much a waste of time, so he is absolutely right to identify that. I will come on in a moment to talk about what His Majesty's Revenue and Customs does to act on complaints—even anonymous complaints. It can investigate those kinds of complaints to ensure that people are following the rules.

These amendment regulations remove uncertainty and the risk of accidental national minimum wage non-compliance within this workforce. The regulations need to be put forward to ensure that the workers and families who hire these workers are able to clearly understand the national minimum wage laws for live-in domestic workers. As the workers will be entitled to the national living wage and minimum wage, I would like to remind the Committee of the achievements of the national living and minimum wage and the new 2024 rates. On 1 April 2024, the Government will increase the national living wage for workers aged 21 and over by 9.8% to £11.44 an hour. We are pleased to confirm that that record cash increase of £1.02 per hour means that in 2024 we will hit the target for the national living wage to equal two thirds of median earnings for those aged 21 and over. That will end low hourly pay for this group.

My right hon. Friend the Member for North West Cambridgeshire referred to enforcement. HMRC enforces the national minimum wage in line with the law and policy set by the Department for Business and Trade. HMRC follows up on every worker complaint it receives, even those that are anonymous. That includes complaints made to the ACAS helpline via its online complaint form and those received from other sources. The policy will ensure that all work is treated fairly, and will end

the misuse of the exemption to exploit workers, particularly migrant women. The overwhelming majority of workers covered by the exemption are employed by families, not by businesses. The impact on business will therefore be negligible.

Through the national minimum wage and national living wage, the Government protect the lowest paid in our society. Protecting workers' rights, especially those of vulnerable workers, is a priority of this Government, and we have taken action to remove this exemption. That does not remove the right to have a live-in domestic worker such as an au pair, or other domestic staff; it just means that they will have to be paid at least the national minimum wage. This is the right thing to do to help protect these vulnerable workers and make it clear that our legislation affects the case law on this issue.

2.37 pm

**Justin Madders** (Ellesmere Port and Neston) (Lab): It is a pleasure to see you in the Chair this afternoon, Ms Harris. Prynawn da, and a happy new year to the rest of the Committee. I will say from the outset that we fully support the introduction of this instrument. We are glad to see that the Government have finally come through on the commitment made, I think, about two years ago in one of these Committee Rooms, during a debate with one of the Minister's predecessors on a similar instrument.

As the Minister has already said in his helpful introduction, the regulations remove paragraph 3 from regulation 57 of the National Minimum Wage Regulations 2015. The paragraph contains provisions that exempt employers from having to pay the minimum wage to a worker who is

“not a member of that family, but is treated as such”.

As we know, such an exemption was introduced in 1999 to facilitate au pair placements, which allowed young people to spend some time in the UK learning about the culture and strengthening their language skills. Families would host an au pair and provide accommodation; in return, there would be some light housework, childcare, and typically education with the family about the au pair's own culture. Given that the arrangement was primarily about a cultural exchange, it was deemed—I believe after quite a lot of evidence given to the Low Pay Commission—not appropriate for it to be covered by the national minimum wage. Obviously, those arrangements were entirely dependent on the parties entering them in good faith. I will go on to why there has been some difficulty with that.

As the Minister said, the Low Pay Commission has investigated the issue. Its annual report in 2021 found that the traditional model of au pairs did not really exist anymore. It said that as early as since 2008 there had been a dilution of the traditional tenets of the au pair model—many tended to work quite long hours; they were certainly doing more than just light housework and childcare. What really proved to be the death knell for the traditional au pair model were the post-Brexit immigration laws, which prevent au pairs, except those from a limited list of countries, from working in the UK. The Low Pay Commission concluded in its report that there is

“no viable route for au pairs to legally enter the UK”

and stated that even if EU countries were added to the youth mobility schemes, it is unlikely that the sector could compete with some of the other traditional areas for work such as hospitality and agricultural work.

It is pretty clear from the evidence that the exemption for domestic workers had outlasted its original purpose. Although it was clearly drafted with au pairs in mind, paragraph 3 is broader than that and fails to properly define the role of an au pair. That has allowed unscrupulous employers to use it as a loophole to exploit domestic workers and fail to pay them the wages they rightfully deserve, meaning they could force the claim that a domestic worker was treated as a member of the family and therefore must be exempt from the minimum wage. That is difficult for a worker to contest, given that their work is undertaken in a private setting. I will go on to speak in more detail about the difficulties that that brings, as well as the question of enforcement, which the Minister touched on.

This is all about exploitation, and such concerns are clearly outlined in the Low Pay Commission's 2021 annual report. The chief recommendation made, and the reason we are here today, was that the exemption should be removed or at least amended to ensure that there would be no exemption for au pairs. The Government accepted that two years ago. At the time, the magic phrase “when parliamentary time allows” was used; as the Minister knows, that does not always mean that we end up with something. The Employment Bill is a good example of that. However, it is worth asking whether there is a reason why it has taken two years from making that promise to bring the regulations before us today, especially considering that there is political consensus on the matter and it is legally fairly straightforward.

I return briefly to the Low Pay Commission's investigation, which produced an important number of findings about how the exemption is used—or, more accurately, abused. The most important factor touched on already is the demographic of the worker who is typically exploited. The Low Pay Commission found that the main affected group is made up of migrant domestic workers arriving in the UK on overseas domestic work visas, which allow them to stay for up to six months in a domestic setting. Since 2015, an employer of an overseas domestic work visa applicant must sign a statement that the work will not fall under the family worker exemption and therefore the worker will be paid the minimum wage. Unfortunately, that statement has not found its way into the minimum wage regulations and so employers were still relying on the exemption at tribunal.

The Low Pay Commission found numerous cases at tribunal where the exemption, having previously not made any appearance, was suddenly relied on by the employer to get rid of any sanction—even though a statement would have presumably been signed at some point, as part of the visa application, confirming that the exemption did not apply. We can all see that that is a pretty cynical manipulation of the law. I want to emphasise, however, that to even get to tribunal stage takes a great deal of confidence from the employee, as well as having the know-how and legal knowledge to identify a breach of the law.

The Low Pay Commission report noted that it is typical for contracts in this setting not to make any reference to the exemption, or for the employer not to

[Justin Madders]

inform the employee of the exemption up front. Another important characteristic of such a group of workers is that typically most were women doing the job to send money back home. It is noted that that means they are often highly vulnerable,

“hidden in private homes without access to their own networks and with language barriers.”

That is one of the reasons why the appeal tribunal rulings were successful, saying that the exemption should be disapplied. There is now an established precedent for the removal of the exemption as a matter of case law. However, the Anti-Trafficking and Labour Exploitation Unit, which advocated for the worker whose case was successfully defended in the appeal court, still believed there was a need for further clarification. That is why we are here today.

We know what courage it takes to challenge an employer who is in the wrong in ordinary circumstances. It is a big step to take an employer to an employment tribunal, but to do so when the employer provides the roof over one's head, and when the employer may be the only person one knows in the country, takes extraordinary bravery. I am therefore concerned that, although the regulations are a positive step forward, closing the loophole will not altogether remove the exploitation. There is still a risk, and it is clear to anyone who has read the Low Pay Commission's findings that there will be continuing challenges in this area.

We all recognise that anyone employed in domestic work is inherently vulnerable. Their work is not just their job and their income; it is also their accommodation. The vulnerability is exacerbated by the fact that most people coming in on the visas were here for six months, so they often had only one employment option and would find it very difficult to find work in another household. Given that, and given the fact that, under the conditions of the visa, they are not allowed to take work other than as a domestic worker in a private household, the Low Pay Commission quite clearly stated that they might feel trapped in their employment and fearful of the consequences of raising concerns.

The combination of that fundamental vulnerability with the fact that many such workers will simply not possess the language skills, knowledge or network to enforce their legal rights is quite worrying. It is a combination that the Low Pay Commission found to have negative consequences. It found that most workers reported being underpaid, often well below the minimum wage; working additional hours for which they did not get additional pay; or simply being treated as being on call throughout the entire day. There were even instances of more serious abuse, including physical abuse and being prevented from leaving the house. Case studies have shown the levels of exploitation that some workers face. I will read a short extract from one, which is about a woman the report calls Imelda:

“She didn't know any of the rules in the UK and so was initially happy with payment of £400 per month. She worked from 6am to 12 midnight, doing the cooking, laundry and cleaning. She was not allowed to speak to another Filipino or to leave the house. Her contract says she should be paid £1400 per month, but this was not enforced; she was told to sign the contract even though she didn't understand it. She was afraid to leave the house and become undocumented.”

That encapsulates the real problems that can be faced: the lack of understanding of the law; the exploitation of the language barrier; the long, gruelling hours; the control that the employer exerts over the worker's life; and the threat of becoming undocumented.

There is no doubt that removing the exemption will help by both disincentivising employers from underpaying their staff and making it easier for domestic workers to be compensated. The change will work only if those workers are aware of their rights and have the wherewithal and confidence to report. The evidence I have quoted from migrant domestic workers strongly suggests that that is not a given; in fact, it is quite a significant challenge. Clearly, the individual in the case I quoted, Imelda, did not know her rights or her ability to raise a flag; she did not have the confidence to leave the house, let alone talk to an outside body. It stands to reason that, alongside the introduction of the regulations, there should at the very least be an information campaign to ensure that migrant domestic workers are aware of the laws and how to report any breaches that they might face. Rights without any proper enforcement are no help to people at all.

My challenge to the Minister is this: how can we expect this instrument to work if migrant domestic workers are unaware of the law or where to report? The instrument is all about enforcement, which can happen only if the individual is empowered or if the body that regulates the sector brings claims on behalf of workers. It is concerning that the explanatory memorandum says nothing, really, about how to monitor the success or otherwise of the regulations. The Minister talked about the HMRC investigations unit, but the Low Pay Commission had concerns about the capacity to do very detailed investigations into domestic working situations, which of course mean people being able to get through the door in the first place.

At the very least, we should be keeping track of the numbers of individuals reporting underpayments in such situations. We could ask the Low Pay Commission to review the effectiveness of the instrument in a few years' time; the magnitude of the problem demands at least that. I wonder whether the Minister can give us some detail in his response about what steps will be taken to monitor the effectiveness of this instrument and the ongoing abuses in the system.

Let me conclude by confirming that we support this instrument. We believe it will have some effect in closing the loophole that has been allowed to continue for too long. Employers should not be exploiting their workforce, and we should not be allowing them to use legal technicalities to do so. But the measures alone will not deal with all the issues that the Low Pay Commission has identified. The Government need to consider how they will monitor this sector and ensure that migrant domestic workers are aware of their rights and able to freely enforce them.

The missing piece here is enforcement. We know that at present enforcement is not possible unless people have their rights and have the know-how and confidence to exercise them. The Low Pay Commission found that many domestic workers do not have those. To make this instrument a success, that definitely needs to be addressed.

2.51 pm

**Richard Thomson** (Gordon) (SNP): It is a pleasure to serve under your chairship this afternoon, Ms Harris. The instrument before us repeals a measure that allowed employers of au pairs, nannies, carers and companions an exemption from the requirement to pay the national minimum wage. It immediately begs the question of why they were allowed not to. It has also had the effect of excluding some domestic workers, particularly those from overseas, from the protections that the national minimum wage is designed to offer.

On that basis, the SNP thoroughly support this instrument. The exemption in the national minimum wage legislation always carried the risk of leaving people being exploited. As the Minister has outlined, the Low Pay Commission recommended in October 2021 that it be repealed following the decision of an earlier employment tribunal. In our view, making this amendment is absolutely the right thing to do. Fundamentally, paying people a fair day's wage for a fair day's work is a cornerstone of a fair society. This instrument sets a clear requirement and expectation of what has to be done. That is very much to be welcomed.

As the shadow Minister and the right hon. Member for North West Cambridgeshire have said, many of the workers affected by this instrument are likely to be in quite vulnerable, potentially precarious situations. They may not know about what we are discussing today and the effects it has. They may not know how to assert their rights in future once it is passed. They are therefore at risk of continued exploitation. I welcome the assurances given by the Minister about how that issue can be kept in mind and monitored, but I find much merit in what the shadow Minister has called for: a public information campaign so that as many people as possible can know about what is happening today, whether it is their own rights or the rights of others, and so that employers know what their responsibilities are to their workers who are affected. With that in mind, we are very happy to support the measure.

2.53 pm

**Kevin Hollinrake**: I thank hon. Members for their valuable contributions to the debate. I think all contributions focused on enforcement, quite understandably. As I said earlier, legislation without implementation is rather a waste of time, so let me say exactly what we are doing. As the shadow Minister and the SNP spokesperson said, it is quite a daunting thing to challenge one's employer, especially in this kind of environment. As I said in my remarks to my right hon. Friend the Member for North West Cambridgeshire, these complaints can be made to Acas online or on the phone, or anonymously to HMRC, so they do not necessarily risk that relationship—although in some circumstances it would be pretty clear who had tipped off the agencies.

In terms of information campaigns, I agree, and that is what we are planning to do. We will work with Acas, which will update its guidance. The Government website

will also be updated with guidance. However, that is not necessarily the place where everybody is going to look—we are also working with the au pair and domestic worker agencies, for example, to make sure that they are fully aware of responsibilities in this area. We are also working closely with charities that support vulnerable workers in this kind of space.

**Justin Madders**: I have a suggestion that might help the Minister. Is it worth talking to the Home Office about information that goes through when visas are processed?

**Kevin Hollinrake**: That is a challenge I am very happy to take on, and advice I am very happy to take up. We work very closely with our colleagues in the Home Office. As the hon. Gentleman may have noticed, some officials are here so I am sure that is what we will do.

The hon. Gentleman also rightly mentioned capacity. He will be aware that over the last seven years we have doubled capacity on enforcement in HMRC—it is now £27.8 million. That comes in two areas: a promotion campaign, which is upstream work with employers to make sure that they are aware of their responsibilities, and enforcement, which includes very significant levels of potential fines. We have found that the most effective deterrent is the naming and shaming work we do on employers that are breaching the national minimum wage regulations. That is something we are very keen to do, and are doing, more often. Furthermore, employers are required to keep records for six years, which feeds into the point made by my right hon. Friend the Member for North West Cambridgeshire. If there is an anonymous tip-off and HMRC investigate, it is much easier for them to make sure that the rules have been followed.

The legislation will ensure that all work is treated fairly and end the misuse of the exemption to exploit workers, particularly migrant women. I would like to conclude by once again extending my thanks to the Low Pay Commission. Thanks to its independent and expert advice on this national minimum wage exemption, we can ensure that the right balance is struck between the needs of workers, affordability for business, and the wider impact on the economy. I put on the record my thanks to Bryan Sanderson, who has been the chair of the Low Pay Commission for some time. We worked very closely with him. He is now moving on to pastures new, but he has done a brilliant job leading that commission. I thank the commission for its recommendations on the 2024 rates, which will give a record cash increase to the national living wage and end hourly low pay for those aged 21 and over. I commend the regulations to the House.

*Question put and agreed to.*

2.57 pm

*Committee rose.*

