

CONSULTATION NOTE
ON PROPOSALS TO AMEND
THE NATIONAL MINIMUM WAGE
ACT 1998

Issued: 12 August 2003

Respond by: 31 October 2003

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**N.B. Your comments may be quoted unless you advise us
to treat your response as confidential**

Introduction

1. The National Minimum Wage Act 1998 ("the Act") introduced a national minimum wage in the United Kingdom for the first time. The national minimum wage has now been in operation for four years and the forthcoming Employment Relations Bill, scheduled for the 2003-4 Parliamentary session, presents the DTI with an opportunity to make some minor amendments to the Act. These proposals have arisen after careful consultations with the Inland Revenue, who have been responsible for enforcement of the national minimum wage since 1999, and with the Department of the Environment, Food and Rural Affairs ("Defra"), who enforce the agricultural minimum wage in England and Wales.

Background

2. Before discussing the proposed amendments, it may be helpful briefly to summarise relevant aspects of the way that the Act works.

3. Section 13 allows the Secretary of State to appoint enforcement officers to pursue national minimum wage cases on behalf of workers. We have appointed the Inland Revenue to act as the enforcement body for the national minimum wage, and Defra enforce the agricultural minimum wage in England and Wales. The enforcement of the agricultural minimum wage is a devolved matter in Scotland and Northern Ireland.

4. Section 14 sets out the powers of enforcement officers to obtain information and section 15 sets out the ways in which the information gathered by officers may be used.

5. If an officer believes that workers have not been paid the national minimum wage and the employer in question has failed to pay those arrears to the workers, then an enforcement notice can be issued under

section 19 of the Act. This will set out the arrears due to the workers and give the employer four weeks to appeal.

6. If the employer fails to comply with the enforcement notice, officers have the power to take further action. They can bring a case against the employer through the courts or tribunals under section 20 of the Act and/or they can issue a penalty notice under section 21. A penalty notice imposes a financial penalty on the employer – which penalty, in addition to the arrears of the national minimum wage, the employer is obliged to pay. The amount of the penalty is twice the hourly rate of the national minimum wage per worker per day for the period in which the employer has failed to comply with the enforcement notice.

Proposals

7. In recent months officials have discussed a number of potential amendments to the Act with the Inland Revenue and Defra. We have agreed on six proposed amendments. These are described in greater detail below.

8. Section 13 gives the Secretary of State power to arrange that officers from other Departments or bodies are to enforce the national minimum wage, and we have appointed officers from the Inland Revenue to do so on our behalf. It is proposed that a similar power should be given to the Secretary of State for the Environment, Food and Rural Affairs in respect of the enforcement of the agricultural minimum wage.

9. Section 15 There is a concern that, because of the restrictions regarding the disclosure of information obtained by enforcement officers in this section, officers may not be able to disclose information obtained from the employer to the worker, or information obtained from the worker to the employer. Consequently enforcement officers may be unable effectively to cross-check a worker's version of events with the employer and vice versa – making it more difficult to obtain the factual information needed to

determine whether the employer is complying with the legislation. We believe that this uncertainty is not conducive to effective enforcement. We therefore propose to amend this section to make it clear that this disclosure is allowed. Officers will, of course, continue to protect workers' anonymity as far as possible.

10. Sections 17 and 19 We propose two minor amendments here. The amendment to section 17 is designed to ensure that no-one can run the argument that the Act does not cover former workers, i.e. that once a worker has left the employment of his employer he or she is barred from claiming national minimum wage arrears from his former employer. This point was also the subject of the recent National Minimum Wage (Enforcement Notices) Act 2003. The technical amendment to section 19 is to put completely beyond doubt the fact that a single enforcement notice may relate to more than one worker irrespective of whether the employer's failure to pay the minimum wage is a previous or ongoing failure.

11. Section 19 Under the Act as presently drafted, officers are unable to amend or withdraw enforcement notices, even if they realise they have made an error or new evidence has come to light. This is inefficient because some employers are (understandably) not willing to comply with an incorrect notice, and tribunal hearings are the only way to rectify notices which both sides know to be incorrect. We propose to allow officers to withdraw enforcement notices where appropriate, and to amend notices either to correct errors made in the original notice or to add additional pay periods to the notice. However, if information about additional workers comes to light then a new enforcement notice would still be needed to cover them. Employers would of course have the same right of appeal against any amended or new notice, for four weeks as now, and we propose to allow employers to appeal against the whole notice, not just the amended part. We also propose that Employment Tribunals should be given the right to rectify notices even where this would increase the amount, which the enforcement notice specifies is owed.

12. Section 21 As with section 19, officers are presently unable to amend or withdraw penalty notices even if they realise they have made an error or new evidence has come to light. We propose to allow officers to withdraw penalty notices where it is clear that these should not have been issued, and to amend penalty notices where errors have occurred. However, we propose that any amended penalty notice may only be issued for the same or a lower amount than the original. As with enforcement notices, we propose that employers should have four weeks to appeal against any amended notice. We also propose to make it clear beyond doubt that officers may issue successive penalty notices where an employer has continued to fail to comply with an enforcement notice.

Plans for making the results public

13. We will publish our decisions on these amendments on our website in Autumn 2003 and may summarise views expressed in response to this paper. Replies will not be treated as confidential unless requested.

Further information

14. A summary of this publication can be made available in Braille, Welsh, several ethnic minority languages, in English in large print and on audio cassette/CD upon request.

Deadline for responses

15. All responses to this paper must be sent to Chenab Mangat at the address above by 31 October 2003.

A downloadable version of this consultation document along with the Regulatory Impact Assessment is available by following the links at

<http://www.dti.gov.uk/er/nmw>

National Minimum Wage Acts and Regulations are available at

<http://www.dti.gov.uk/er/nmw/nmwlaw.htm>

16. Questions about this document or the minimum wage should be addressed to Chenab Mangat. If there any questions about consultation processes in general then please contact the DTI's Consultation Co-ordinator, Philip Martin, on 020 7215 6206, or email - philip.martin@dti.gsi.gov.uk

Code of Practice on written consultation

All UK national public consultations are required to conform to the following standards:

Timing of consultation should be built into the planning process for a policy (including legislation) or service from the start, so that it has the best prospect of improving the proposals concerned, and so that sufficient time is left at each stage.

It should be clear who is being consulted, about what questions, in what timescale and for what purpose.

A consultation document should be as simple and concise as possible. It should include a summary, in two pages at most, of the main questions it seeks views on. It should make it as easy as possible for readers to respond, make contact or complain.

Documents should be made widely available, with the fullest use of electronic means (though not to the exclusion of others), and effectively drawn to the attention of all interested groups and individuals.

Sufficient time should be allowed for considered responses from all groups with an interest. Twelve weeks should be the standard minimum period for a consultation.

Responses should be carefully and open-mindedly analysed, and the results made widely available, with an account of the views expressed, and the reasons for decisions finally taken.

Departments should monitor and evaluate consultations, designating a consultation co-ordinator who will ensure the lessons are disseminated.