



**BRIEFING PAPER**

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# Unpaid Trial Work Periods (Prohibition) Bill 2017-19

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# 1. Introduction

The [\*Unpaid Trial Work Periods \(Prohibition\) Bill 2017-19\*](#) was introduced to Parliament on 19 July 2017 through the ballot procedure and is due to have its second reading debate on 16 March 2018. It is sponsored by Stewart Malcolm McDonald MP. The Bill is available on the [Parliament website](#), where one can follow its progress.

The Bill would apply to England and Wales, Scotland and Northern Ireland.

The Bill would, among other things, require employers to pay job applicants, undertaking trial work periods, at least the National Minimum Wage (NMW). It is a response to anecdotal evidence that some employers request that job applicants undertake unpaid trial shifts to prove their ability to perform the work. This has given rise to concerns that the practice is being used to exploit job applicants through extracting free labour with no guarantee of work.

For example, in an [article](#) in the *Times* Mr McDonald cited anecdotal evidence that a company in Glasgow asked applicants to undertake 40 hours of unpaid work before they would be considered for employment.<sup>1</sup>

## 1.1 Relevant law

The *National Minimum Wage Act 1998* requires that a worker is paid for any work that they do under contract.

Section 1(2) of the *National Minimum Wage Act 1998* provides that a person qualifies for the NMW if he:

- is a worker;
- is working, or ordinarily works, in the United Kingdom under his contract; and
- has ceased to be of compulsory school age

The existence of a contractual relationship, whether written, oral or implied through conduct, is an essential prerequisite for NMW entitlement. Therefore, to determine entitlement to the NMW, one needs to determine whether a contract could be implied between the parties, based on their words or conduct.

While it is arguable that, in some cases, a contract could be implied between an employer and a person undertaking trial work (particularly if that work lasted more than a few hours) the legal position is unclear. It does not appear that the issue has been tested in court. The Bill is an attempt to clarify the law without the issue having to be tested in court, while imposing additional responsibilities on employers who seek to make use of trial work periods.

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<sup>1</sup> [Unpaid trial shifts are exploiting workers](#), *Times*, 10 October 2017

## 2. The Bill

**Clause 1** of the Bill would define “trial work period” as follows:

A person (“P”) participates in a “trial work period” if P performs personally any work or service as part of an arrangement with another (“E”) to determine whether P has the qualities necessary to be offered a contract of employment by E, subject to the exception in subsection (2).

Clause 1(2) would exclude from this definition:

participants in a scheme which, by virtue of regulations made under the National Minimum Wage Act 1998, do not qualify for the national minimum wage

This would exclude those who participate in government employment schemes (see [Part 6](#) of the *National Minimum Wage Regulations 2015*).

**Clause 2** would set out employer requirements in relation to trial work periods, which would include obligations to:

- inform the participant (P) of how long the trial will last
- provide P with a job description outlining the qualities being assessed
- inform P of how many relevant jobs are available
- agree to provide P with feedback from the trial
- inform P about the arrangements for notifying them of the outcome of the trial

**Clause 3** would amend [section 54](#) of the *National Minimum Wage Act 1998* to require the NMW to be paid to those who participate in trial work periods.

Under **Clause 4** an employer would be guilty of an offence if it:

- fails to meet the requirements of clause 2; and
- refuses or wilfully neglects to remunerate P in accordance with clause 3

The offence would be created by amending [section 31](#) of the *National Minimum Wage Act 1998*. Under section 31(9), offences under that section are liable on summary conviction (i.e. in a magistrates’ court) to an unlimited fine.

Clause 5 and 6 deal with interpretation, extent and commencement. The Bill would extend to England and Wales, Scotland and Northern Ireland.

## 3. Comment

This issue has attracted some media comment. As noted above, Mr McDonald, the Bill's sponsor, wrote an article in the *Times* in which he cited an example of a job applicant undertaking 40 hours of unpaid work as part of an application process, without being guaranteed work at the end of it.<sup>2</sup> This may refer to a report on the Glasgow Evening Times [website](#), citing allegations that a small refreshments outlet in Glasgow, Mooboo Bubble Tea stores, had asked applicants to undertake 40 hours unpaid training prior to being considered for work.<sup>3</sup> Similarly, another local media outlet – Barrhead News – reported allegations that an 18-year-old job applicant had been asked to undertake a five-hour unpaid trial shift as part of an application to work at a patisserie.<sup>4</sup>

### 3.1 Comment in Parliament

Mr McDonald asked the Prime Minister about the issue during Prime Minister's Questions in December 2017:

**Stewart Malcolm McDonald (Glasgow South) (SNP)**

Q13. In the run-up to Christmas, some people will be taking on extra seasonal work to try to earn themselves some extra cash at this time of year, but many employers will be offering unpaid trial work, often where an actual job does not exist, and this is affecting tens of thousands of people up and down the UK. But I have a Bill coming to the House in March next year to end unpaid trial shifts, so will the Prime Minister ensure that this is the last Christmas of this exploitation, and give Government backing for it? [902925]

**The Prime Minister**

As the hon. Gentleman knows, this country already has a legal position in relation to the payment of the national minimum wage and ensuring that people are paid for the work that they do.<sup>5</sup>

There are no official data on the prevalence of the practice. Former SNP Member Phil Boswell [asked the Government](#) about it in October 2016, which elicited a response from the UK Statistics Authority confirming that it does not hold data on unpaid trial shifts.<sup>6</sup>

Similarly, in response to a Parliamentary Question about trial shifts, Damian Hinds MP, then Minister for the Department for Work and Pensions, confirmed that the Department:

does not make any assessment of employers using unpaid trial shifts for any sectors including hospitality<sup>7</sup>

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<sup>2</sup> [Unpaid trial shifts are exploiting workers](#), *Times*, 10 October 2017

<sup>3</sup> 'Mooboo Bubble Tea faces outrage after asking workers to do unpaid work before being considered for job', *Evening Times*, 24 February 2017

<sup>4</sup> '[Teen hits out over five-hour 'free labour' shift at café](#)', *Barrhead News*, 4 August 2018

<sup>5</sup> [13 December 2017 c397](#)

<sup>6</sup> [Unpaid Work: Written question – 47058](#), 18 October 2016

<sup>7</sup> [Unpaid Work: Written question – 47236](#), 17 October 2019

More recently, Drew Hendry MP asked the Parliamentary Under Secretary of State for Business, Energy and Industrial Strategy (Andrew Griffiths MP) about unpaid work trials during January 2018:

**Drew Hendry (Inverness, Nairn, Badenoch and Strathspey) (SNP)**

Low pay stifles investment and holds back productivity. We in the Scottish National party believe that the economy is stronger when a real living wage is paid. The Minister's own Department has rightly named and shamed 350 companies for failing to pay even the minimum wage. Does he therefore agree that the practice of companies paying no wages at all through unpaid work trials is morally repugnant? Will his Department support the ending of that shameful practice?

**Andrew Griffiths**

I should point out to the hon. Gentleman that more than 160,000 people in Scotland benefit directly from the national living wage. The Government are looking closely at employment practices. We engaged Matthew Taylor to look into employment practices and to come up with new ways to support people, particularly those in the gig economy. We very much value that work and will be coming forward with recommendations in the very near future.<sup>8</sup>

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<sup>8</sup> [HC Deb 30 January 2018 c659](#)

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