



Unpaid Work Experience (Prohibition) Bill [HL] (HL Bill 8 of 2017–19)

Summary

The [Unpaid Work Experience \(Prohibition\) Bill \[HL\] 2017–19](#) is a private member's bill introduced by Lord Holmes of Richmond (Conservative). It had its first reading on 27 June 2017,¹ and is due to have its second reading on 27 October 2017. The Bill contains two clauses, and would prohibit unpaid work experience lasting for longer than four weeks, by making it compulsory for employers to pay the national minimum wage to individuals undertaking such work experience. This would apply across the United Kingdom.

Key Provisions

The Bill would amend the National Minimum Wage Act 1998, so that the Act applies to individuals “participating in a scheme designed to provide work experience for a continuous or non-continuous period which exceeds four weeks”.² Individuals undertaking work experience with the same employer for more than four weeks, who are above compulsory school age but under the age of 26, would receive the rate of the national minimum wage in accordance with their age.³ The Bill would clarify the definition of ‘employer’ in the Act to include “any organisation which provides an individual with work experience”.⁴ The Bill defines ‘work experience’ to mean “observing, replicating, assisting with and carrying out any task with the aim of gaining experience of a particular workplace, organisation, industry or work-related activity”.⁵

Background Information

Terms such as ‘internship’, ‘work placement’ and ‘work experience’ currently have no legal status on their own. The rights of an individual who undertakes one of these schemes depends on their employment status; if they are classified as a ‘worker’, they are entitled to the national minimum wage under the 1998 Act.⁶ An individual is classified as a worker under certain circumstances; those of relevance to internships are when:

- They have a contract or other arrangement to do work or services personally for a reward.
- Their reward is for money or a benefit in kind, for example the promise of a contract or future work.
- They have to turn up for work even if they do not want to.
- Their employer has to have work for them to do as long as the contract or arrangement lasts.⁷

Interns are currently not due the national minimum wage under the following circumstances:

- Student internships for less than one year as part of a UK-based further or higher education course.

- School work experience placements for students of compulsory school age (ie under 16).
- Voluntary workers: if they are working for a charity voluntary organisation, associated fund raising body or statutory body, and do not get paid, except for limited benefits (eg reasonable travel).
- Work shadowing: The employer does not have to pay the minimum wage if an internship only involves shadowing an employee (ie no work is carried out by the intern and they are only observing).⁸

An employer or organisation offering an ‘internship’ or similar workplace scheme must ensure that any individuals as part of that scheme are not subject to any obligation to perform work or provide services, and no regular remuneration is made to those individuals. If an organisation or employer treats an intern like a worker, then a complaint can be made, and the matter resolved in an employment tribunal to determine the actual working relationship. For example, in 2011, it was found in the case of *Hudson v TPG Web Publishing Ltd & Ors* (ET/2200565/11) that the ‘intern’, Keri Hudson, had edited and uploaded content for online review website My Village for six weeks from 10:00–18:00 for free, ultimately supervising a team of six other individuals, and as such was judged a worker and entitled to back-pay at the national minimum wage.⁹

The topic of unpaid internships has been considered by a number of recent government-commissioned reviews and reports of governmental commissions. In its spring 2016 report on the national minimum wage, the Low Pay Commission (LPC) stated that it had received a “substantial volume of evidence” that suggested a growth in examples of “where the terms ‘internship’, ‘work experience’ or ‘volunteer’ were applied to unpaid activities that looked like work”, and as such should be subject to the national minimum wage.¹⁰ The LPC argued that the minimum wage should “be enforced for all workers” and it does not “favour a separate rate for those undertaking work experience, internships or volunteering, however defined”.¹¹ Previously in 2015, the LPC stated that there should be implementation of a formal system of intern remuneration:

The need is for a system in relation to pay for interns that is: simple; that protects workers’ rights to the NMW [national minimum wage] from day one; and that does not inhibit genuine volunteering and work experience. We are also concerned about abuse of internships both in terms of the harm to the individual who goes unpaid, and the harm to the individual denied the opportunity of getting experience because they are unable to take a low-paid or unpaid job.¹²

In 2016, the Social Mobility Commission (SMC) addressed the issue of internships in its annual *State of the Nation* report, and argued that “work experience and internships have become the new ‘must have’ in the graduate labour market”.¹³ The SMC stated that “the vast majority of internships are located in London where the cost of living is the highest in the UK”, meaning “an internship can easily cost more than £1,000 a month to fund”.¹⁴ It further stated that the “damaging impact of unpaid internships on social mobility cannot be understated” as “young people without financial support from their parents are effectively excluded due to means not merit and potentially locked out from sought-after careers entirely”.¹⁵ The fourth recommendation of the SMC’s report was that the Government should support legislation to ban unpaid internships. It stated that:

It is time to treat internships as part of the formal, not informal, labour market [...] Any work placements that last more than four weeks should be classified as internships and those doing them should receive at least the minimum wage. Polling by YouGov for Intern Aware suggests that such a move would not decrease the number of internships overall, with 62 percent of employers saying it would not affect the number of interns they would hire, while 10 percent say they would hire more.

Only 10 percent say they would hire less. The poll also showed that 65 percent of employers would support a four-week limit, while only 12 percent would oppose it.¹⁶

The Taylor Review of Modern Working Practices, published in July 2017, stated the following with regard to the practice of unpaid internships:

It is clear to us that unpaid internships are an abuse of power by employers and extremely damaging to social mobility [...] The Government should ensure that exploitative unpaid internships, which damage social mobility in the UK, are stamped out. The Government should do this by clarifying the interpretation of the law and encouraging enforcement action taken by HMRC in this area.¹⁷

The Taylor Review also addressed the issue of what legally constitutes an ‘intern’ and a ‘worker’, as it argued “a separate ‘intern’ status in employment law” was “unnecessary” as “we believe that the law is clear as it currently stands. If a person is obtaining something of value from an internship, they are most likely to be a worker and entitled to the national minimum or living wage”.¹⁸ In her speech to mark the launch of the published report of the Taylor Review, the Prime Minister, Theresa May, stated that “employing unpaid interns as workers to avoid paying the national minimum wage is illegal, but we need to make sure that employers and interns alike are clear on the rules”.¹⁹

Margot James, then Under Secretary of State for Business, Energy and Industrial Strategy in the previous Government, argued that “there is no universally agreed or accepted definition of the term ‘intern’”.²⁰ She stated the previous Government’s position was that legislation could pose problems for interns who work for free but were gaining valuable experience and/or training from their internship.²¹ She further stated that both current employment law and tribunal proceedings offered sufficient protection for interns, and as such if they were genuinely treated as a ‘worker’, they would receive the minimum wage regardless:

We have heard observations about the difficulty of defining the term “intern” in relation to various categories of unpaid work experience. The term is loosely used to apply to a wide range of formal and informal arrangements where there is an expectation of an individual receiving some kind of practical experience. A worker is someone who has a contract with their employer under which they personally perform work. For such a contract to be valid, both parties must be getting something of value from the arrangement. That could pose a problem for interns working for free if they are not getting paid but are getting something of value from the arrangement. Whether they are is not always clear cut. In most cases, however, the answer is likely to be yes. The value may be in the form of training, experience or a job in the company or organisation to which they are lending their labour. For that reason, we feel that interns are afforded sufficient protections by existing employment laws and that a tribunal would find that an intern who was genuinely a worker would qualify for the national minimum wage.²²

Previous Parliamentary Bills and Debates

Alec Shelbrooke (Conservative MP for Elmet and Rothwell) introduced a [National Minimum Wage \(Workplace Internships\) Bill](#) to the House of Commons as a private member’s bill on 29 June 2016.²³ This Bill contained four clauses, and specified any individual in a workplace internship would receive the national minimum wage in accordance with the rules of the National Minimum Wage Act.²⁴ The Bill defined a ‘workplace internship’ as an employment practice in which an individual performs the following:

- a) undertakes regular work or provides regular services in the United Kingdom for: (i) another person; (ii) a company; (iii) a limited liability partnership; or (iv) a public authority; and

- b) the purpose of the employment practice is: (i) that the intern meets learning objectives or gains experience of working for the employer listed in section 1(a); and (ii) to provide practical experience in an occupation or profession.²⁵

The Bill would have made exemptions from the rules on internships, including for those of compulsory school age, those undertaking an English apprenticeship, and for students required to undertake a work placement as part of their course.²⁶ Speaking to the Bill during its second reading, Mr Shelbrooke argued that:

Unpaid internships are the acceptable face of unpaid labour in modern Britain today and should have no place in a meritocratic country that aims to work for the many, not the privileged few. This is a Bill to stop young people being exploited by those who gain from their unpaid endeavours. It sets about bringing an end to a new rise in the class society that means only those from a wealthy background can gain a privileged leg-up with an unpaid internship in their chosen profession.²⁷

Responding for the Government, Margot James argued that the Bill was:

[...] extremely well intentioned, but I am concerned that it could have unintended consequences that might even undermine existing employment laws and protections. Legally, the Bill is unnecessary because [...] interns are already eligible for the national minimum wage if they meet the definition of “worker”. It does not matter what the employer calls the arrangement or whether the individual has agreed not to be paid. Only the reality of the employment arrangement matters, and if an intern is a worker, they are entitled to be paid.²⁸

The Bill did not progress beyond second reading, and so fell at the dissolution of the 2015–17 Parliament.

Further Information

- House of Commons Library, [The National Minimum Wage: Volunteers and Interns](#), 21 December 2015
- [Westminster Hall Debate on ‘Unpaid Internships’](#): HC Hansard, 18 June 2013, cols 162–87WH

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- ¹ [HL Hansard, 27 June 2017, col 296.](#)
- ² [Unpaid Work Experience \(Prohibition\) Bill \[HL\]](#), clauses 1(1) and 1(2).
- ³ *ibid*, clause 1(3).
- ⁴ *ibid*, clause 1(4).
- ⁵ *ibid*.
- ⁶ HM Government, '[Employment Rights and Pay for Interns](#)', accessed 14 July 2017.
- ⁷ HM Government, '[Employment Status: Worker](#)', accessed 14 July 2017.
- ⁸ HM Government, '[Employment Rights and Pay for Interns](#)', accessed 14 July 2017.
- ⁹ *Guardian*, '[Unpaid Website Intern Celebrates Court Victory](#)', 23 May 2011.
- ¹⁰ Low Pay Commission, [National Minimum Wage: Low Pay Commission Report Spring 2016](#), 26 July 2016, p 285.
- ¹¹ *ibid*, p 286.
- ¹² Low Pay Commission, [National Minimum Wage: Low Pay Commission Report 2015](#), 17 March 2015, p 224.
- ¹³ Social Mobility Commission, [State of the Nation 2016: Social Mobility in Great Britain](#), 16 November 2016, p 143.
- ¹⁴ *ibid*, p 152.
- ¹⁵ *ibid*.
- ¹⁶ *ibid*, pp 155–6.
- ¹⁷ Department for Business, Energy and Industrial Strategy, [Good Work: The Taylor Review of Modern Working Practices](#), 11 July 2017, p 91.
- ¹⁸ *ibid*.
- ¹⁹ Prime Minister's Office, '["We Have to Invest in Good Work"—Theresa May's Speech at Taylor Review Launch](#)', 11 July 2017.
- ²⁰ [HC Hansard, 4 November 2016, col 1223.](#)
- ²¹ *ibid*, col 1224.
- ²² *ibid*.
- ²³ [HC Hansard, 29 June 2016, col 341.](#)
- ²⁴ [National Minimum Wage \(Workplace Internships\) Bill](#), clause 2(2).
- ²⁵ *ibid*, clause 1.
- ²⁶ *ibid*, clause 3.
- ²⁷ [HC Hansard, 4 November 2016, col 1156.](#)
- ²⁸ *ibid*, col 1224.

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