RESEARCH PAPER 03/10
3 FEBRUARY 2003

National Minimum Wage (Enforcement Notices) Bill [HL]

Bill 51 of 2002-03

This Bill closes a loophole in the *National Minimum Wage Act 1998* exposed by the case of *Inland Revenue v Bebb Travel plc*. The Inland Revenue had thought they had the power to issue enforcement notices in respect of workers who were no longer employed by the under-paying employer. In *Bebb*, the Employment Appeal Tribunal ruled that they did not. This two clause Bill ensures that they do.

The Bill was introduced in the Lords on 21 November 2002 and completed its passage through the Upper House on 30 January 2003. It is due to receive its second reading in the Commons on 11 February 2003.

This research paper updates and replaces research paper 02/77, prepared before the Bill's second reading in the Lords.

Julia Lourie

BUSINESS AND TRANSPORT SECTION

HOUSE OF COMMONS LIBRARY

Recent Library Research Papers include:

02/78	The *European Parliament (Representation) Bill* [Bill 7 of 2002-03]	04.12.02
02/79	The *Extradition Bill* [Bill 2 of 2002-03]	06.12.02
02/80	Reform of the *Mental Health Act 1983:* the draft Mental Health Bill	11.12.02
02/81	The *Planning and Compulsory Purchase Bill* [Bill 12 of 2002-03]	12.12.02
02/82	The *Hunting Bill* [Bill 10 of 2002-03]	13.12.02
02/83	Unemployment by Constituency, November 2002	18.12.02
03/01	The *Local Government Bill* [Bill 9 of 2002-03]	06.01.03
03/02	Current Issues in Football	07.01.03
03/03	Social Indicators	10.01.03
03/04	Unemployment by Constituency	15.01.03
03/05	NATO: The Prague Summit and Beyond	16.01.03
03/06	The *Railways and Transport Safety Bill* [Bill 40 of 2002-03]	22.01.03
03/07	The *Electricity (Miscellaneous Provisions) Bill* [Bill 39 of 2002-03]	21.01.03
03/08	The *Co-operatives and Community Benefit Societies Bill* [Bill 15 of 2002-03]	29.01.03
03/09	The *Sunday Working (Scotland) Bill* [Bill 16 of 2002-03]	03.02.03

Research Papers are available as PDF files:

- *to members of the general public on the Parliamentary web site, URL:* ***http://www.parliament.uk***
- *within Parliament to users of the Parliamentary Intranet, URL:* ***http://hcl1.hclibrary.parliament.u****k*

ISSN 1368-8456

Summary of main points

A National Minimum Wage (NMW) of £3.60 an hour for adults and £3 an hour for young workers aged 18 to 21 inclusive was introduced on 1 April 1999. It has been increased three times since then and now stands at £4.20 an hour for adults and £3.60 an hour for young workers.

The *National Minimum Wage Act 1998* lays down the method for enforcing the NMW. A worker who is paid less than the NMW can, himself, bring a claim for the money owed in either an employment tribunal or a county court. Alternatively, the enforcement agency (usually the Inland Revenue) can issue an enforcement notice requiring the employer to pay the NMW and make good any underpayment.

If the employer fails to comply with an enforcement notice, the Inland Revenue can issue a penalty notice imposing an escalating fine. It can also sue on behalf of the underpaid worker for recovery of the underpayment.

Since April 1999, over £9 million in wage arrears have been identified, over 400 enforcement notices issued, and over 60 enforcement cases heard at employment tribunals.

In August 2002, an Employment Appeal Tribunal ruling in *Inland Revenue v Bebb Travel plc* exposed a loophole in the law. Contrary to their previous understanding, it appears that Inland Revenue enforcement officers do not have the power to issue enforcement notices in respect of workers who are no longer working for the under-paying employer.

The Inland Revenue has appealed against this ruling, but, in the meantime, the Government has introduced a short Bill – the *National Minimum Wage (Enforcement) Bill [HL] 2002/03* - to close the loophole and allow enforcement officers to revert to their previous practice of pursuing cases involving workers who are no longer employed by the employer in question.

The change is due to come into effect two months after the Bill receives Royal Assent. It will then be possible for enforcement officers to take up outstanding cases, put on hold as a result of the *Bebb* ruling. There are about 250 such cases pending at present.

The Bill amends the *National Minimum Wage Act 1998*, and, like that Act, extends to the whole of the United Kingdom. However, an amendment made in the Lords, at the request of the Scottish Executive, excludes the enforcement of the agricultural minimum wage in Scotland from its provisions.

The Bill was introduced in the House of Lords, where it was debated on 10 December 2002 (Second Reading), 9 January 2003 (Committee), 23 January 2003 (Report) and 30 January 2003 (Third Reading). Two amendments were made in the Lords: that relating to Scottish agriculture, mentioned above, and one limiting the period that an enforcement notice can cover to the period of six years before the date on which it was issued.

CONTENTS

I Introduction: enforcing the National Minimum Wage

The *National Minimum Wage Act 1998* introduced a National Minimum Wage (NMW) throughout the UK. Details of the rate and method of calculation are contained in regulations made under the Act – principally the *National Minimum Wage Regulations 1999*, SI 1999/584, as amended. When the NMW first came into force on 1 April 1999, the adult rate for workers aged 22 and over was £3.60 an hour and the development rate for young workers aged 18-21 inclusive was £3 an hour. The rates have been increased three times since then and now stand at £4.20 an hour for adults and £3.60 an hour for young workers.

Effective enforcement of the NMW has been seen as vital from the outset. The Low Pay Commission, which consulted extensively before the introduction of the NMW found that:

> A recurrent theme during our consultations was that the National Minimum Wage must be implemented and enforced effectively to be successful. If businesses do not understand its implications, they cannot make sensible and positive adjustments to implement it. If the National Minimum Wage is not enforced properly, then unscrupulous employers may gain an advantage over reputable ones, and the most vulnerable workers will not be protected.[1]

The Government's first annual report on the NMW described their approach to enforcement and the role of enforcement officers. While "self-enforcement" was the ideal, it was backed up by enforcement officers, who, uniquely in employment law, could take cases to tribunals on behalf of workers:

> The Government have always recognised that the minimum wage can only be truly successful if it is "self-enforced", that is, if it is so widely known about and accepted that there is widespread voluntary compliance (…)
>
> Even with publicity and a high level of awareness of the NMW, some employers will deliberately or accidentally fail to comply. The Government therefore set up an enforcement regime that is fair and effective without introducing unnecessary burdens on business (…)
>
> The Act gives workers a contractual right to the NMW, and adds the right to receive NMW to the existing right not to suffer any unauthorised deduction. To enforce these rights, a worker can take a case to an employment tribunal or a civil court (…)
>
> However, the Government did not want workers to have to rely on taking their own action themselves against their employer, since intimidation or fear can often

---

1 First Report of the Low Pay Commission, *The National Minimum Wage*, 18 June 1998, Cm 3976, para 8.1

> act as a deterrent to making a complaint (even with the protections against unfair dismissal and detrimental action provided by the Act). Under the powers of the Act, the DTI therefore arranged with the Inland Revenue and the agricultural departments for certain of their officers to act as NMW compliance officers. Uniquely in employment law, these officers can take cases to tribunals on behalf of workers. But most cases do not get that far, as officers can issue civil notices and serve penalties on employers without recourse to a tribunal.[2]

The DTI's *Detailed guide to the national minimum wage*, describes the actions a compliance officer may take to enforce the NMW:

> 227. If an enforcement officer believes that an employer has failed to pay at least the national minimum wage to a worker:
>
> - The officer may serve an enforcement notice which requires the employer to start paying the national minimum wage and to make good previous underpayments for each named worker. The employer may appeal against the enforcement notice.
>
> - If the employer ignores the enforcement notice, the officer may serve a penalty notice. The penalty notice imposes a financial penalty on the employer of £8.20 for each day from the time the enforcement notice was issued, and for each worker named in the enforcement notice who has not been paid the money due. The penalty notice does not recalculate the amount owed to the worker but penalises the employer for non-compliance with the notice. The original enforcement notice remains in force pending the outcome of any appeal by the employer. The employer may appeal against the penalty notice.
>
> 228. If the above steps do not result in the employer complying with the enforcement notice, the enforcement officer can:
>
> - encourage the worker to take the employer to a tribunal or court to recover the money owed (if he has not already done so);
>
> - take such a case on behalf of the worker;
>
> - prosecute the employer. Deliberate refusal to pay the national minimum wage is a criminal offence...
>
> 229. Enforcement officers can act in response to complaints by workers or others that an employer is not paying the national minimum wage. They can also decide to make inspections of employers at any time.[3]

---

2 DTI, Inland Revenue, *National Minimum Wage, Annual Report 1999-2000*

3 DTI, *Detailed guide to the national minimum* wage, October 2001, http://www.dti.gov.uk/er/nmw/gtmw.pdf

Since the introduction of the NMW, over 400 enforcement notices have been issued and over £9 million of underpayments identified:

	Enforcement notices	Employment tribunal cases	Arrears identified (£)
1999/00	136	12	5,135,799
2000/01	213	26	3,034,373
2001/02	86	27	1,242,341
Total	435	65	9,412,513

Source: DTI, Inland Revenue, *National Minimum Wage Annual Reports*, 1999-2000, 2000-2001, 2001-2002

II Current legislation

Sections 17 to 22 of the *National Minimum Wage Act 1998* provide the statutory basis for enforcement by compliance officers. Section 17 gives workers who have been paid less than the NMW an entitlement to be paid the difference between what they were actually paid and what they should have been paid. Section 19 gives enforcement officers the power to issue enforcement notices and section 20 gives them the power to sue on behalf of workers. The key sections are reproduced below:

> **19 Power of officer to issue enforcement notice**
>
> (1) If an officer acting for the purposes of this Act is of the opinion that a worker who qualifies for the national minimum wage has not been remunerated for any pay reference period by his employer at a rate at least equal to the national minimum wage, the officer may serve a notice (an "enforcement notice") on the employer requiring the employer to remunerate the worker for pay reference periods ending on or after the date of the notice at a rate equal to the national minimum wage.
>
> (2) An enforcement notice may also require the employer to pay to the worker within such time as may be specified in the notice the sum due to the worker under section 17 above in respect of the employer's previous failure to remunerate the worker at a rate at least equal to the national minimum wage.
>
> (…)
>
> **20 Non-compliance: power of officer to sue on behalf of worker**
>
> (1) If an enforcement notice is not complied with in whole or in part, an officer acting for the purposes of this Act may, on behalf of any worker to whom the notice relates,—
>
> (a) present a complaint under section 23(1)(a) of the Employment Rights Act 1996 (deductions from worker's wages in contravention of

section 13 of that Act) to an employment tribunal in respect of any sums due to the worker by virtue of section 17 above; or

(b) in relation to Northern Ireland, present a complaint under Article 55(1)(a) of the Employment Rights (Northern Ireland) Order 1996 (deductions from worker's wages in contravention of Article 45 of that Order) to an industrial tribunal in respect of any sums due to the worker by virtue of section 17 above; or

(c) commence other civil proceedings for the recovery, on a claim in contract, of any sums due to the worker by virtue of section 17 above.

(2) The powers conferred by subsection (1) above for the recovery of sums due from an employer to a worker shall not be in derogation of any right which the worker may have to recover such sums by civil proceedings.

Until the decision in *Bebb Travel* (see below) Inland Revenue enforcement officers had been issuing enforcement notices under section 19 that related to past periods only, particularly in cases where the workers in question were no longer working for the underpaying employer.[4] They had also been suing employers who did not comply with these notices to recover underpayments on behalf of ex-workers who were unwilling or unable to sue on their own.

III Inland Revenue v Bebb travel plc

Bebb Travel employed stewards and stewardesses on its coaches until May 2000. During 2000, a National Minimum Wage Compliance Officer, acting for the Inland Revenue, visited Bebb Travel and inspected its wage records. As a result of these inspections, the officer decided that 25 of these workers had been paid less than the NMW on various occasions. On 6 October 2000, he issued an enforcement notice requiring Bebb Travel to pay arrears, amounting in total to £37,649.43.

Bebb Travel appealed against the enforcement notice to an employment tribunal, arguing that the enforcement notice was invalid as it related to workers who had left their employment some months previously. Section 19 (1) of the Act only allowed an enforcement notice to be issued in respect of a worker who "qualifies for the national minimum wage". Moreover, it had to require "the employer to remunerate the worker for pay reference periods ending on or after the date of the notice at a rate equal to the national minimum wage". The notice was dated 6 October 2000, but the underpaid workers had been dismissed in May 2000. Their argument succeeded and the Inland Revenue appealed to the Employment Appeal Tribunal (EAT).

---

[4] Explanatory Notes Bill 51 – EN, para 9

On 16 August 2002, the EAT delivered a judgment upholding the employment tribunal ruling and supporting Bebb Travel's interpretation of the law. Judge JR Reid, QC, said:

> 15. By section 19(1) "if an officer…is of opinion that a [qualifying] worker has not been [properly] remunerated" he may serve "a notice (an "enforcement notice") on the employer" (ie the employer of that worker) "requiring the employer to remunerate the worker for pay reference periods ending on or after the date of the notice at [the proper] rate". Thus far it is clear that the notice can only be served in respect of the current or future periods. It also seems to us to be clear that an "enforcement notice" is a notice containing a requirement as to future payment.
>
> 16. Then we come to subsection (2). "An enforcement notice may also require the employer to pay to the worker within such time as is specified in the notice the sum due under section 17 above in respect of the employer's previous [underpayment]". The words "may also" show that the notice must contain the requirement as to future payments referred to in subsection (1), whether or not it contains in addition a requirement for payment for past underpayment. If it does not contain a requirement as to future payment, it is not an "enforcement notice" as identified by subsection (1). It may or may not "also require" a payment in respect of past periods, but it cannot only make such a requirement and not contain a requirement as to future periods. The fact that section 55 requires the expression "enforcement notice" to be construed "in accordance with section 19 above" does not assist the Revenue. Indeed, it reinforces Bebb's construction is correct, because in accordance with section 19 an enforcement notice is one which, as section 19(1) says, contains a requirement as to future payment.
>
> 17. It seems to us the use of the definite article in the expressions "the employer" and "the worker" in subsection (2) are harking back to the employer on whom the notice referred to in subsection (1) was served and the worker in respect of whom it was served. If this were not so the words used would be "an employer" and "a worker". This is further support for the view we have formed as to the clear meaning of the section.
>
> 18. Another indication which supports us in our view is that in section 19(1) the draftsman has used the words "a worker who qualifies". That indicates a worker still in employment at least at the time the officer's opinion is formed. If the words were intended to include also a former worker, then the expression used would be "qualifies or qualified at any time" as in section 28(1).
>
> 19. A still further minor indication that an enforcement notice under section 19 is intended only to deal with current workers is that there is nothing in the Act which provides for the situation where the worker cannot be traced. The requirement under section 19(2) is for "the employer to pay to the worker". There is nothing, for example, which enables the employer to get a good discharge by paying the Revenue amounts demanded to be paid to a vanished worker. The possibility of not being able to trace a worker is a real one when dealing with long gone casual short term workers: for instance in the present case one of the workers to whom Bebb was required to make payment was a lady who appears to

> have worked for only two weeks in April 1999 and had left some eighteen months before the notice was served. An employer (however anxious he was to pay up) would be at risk of a continuing daily penalty for failing to pay a person whom he could not find.
>
> 20. We have taken into account an oddity to which our construction leads, namely that if there are two workers who are underpaid one of whom leaves just before the pay period to which an enforcement notice relates, the notice can require back payments to the one who has stayed on but not to the one who has left. Notwithstanding this anomaly, the considerations we have set out persuade us the construction at which the Employment Tribunal arrived was clearly the correct one. Subsection (2) provides a summary way of obtaining underpayments for existing workers. It was not intended to enable or require enforcement officers to investigate and initiate recovery proceedings for workers who had long since moved on. In those circumstances we do not regard the Parliamentary material placed before us as being admissible, but in any event we did not regard it as shedding any real light on the construction of this particular section. We also acknowledge the apparent anomaly that would permit an employer who becomes aware of the Revenue's intention to serve an enforcement notice could with impunity dismiss all the relevant employees before the notice is served. Indeed, this in effect what happened in this case. However, the circumstances which would allow an employer to dismiss his employees and still carry on his business will be very rare, and in any case Parliament has ensured that such workers have their own remedy in the Employment Tribunals and the County Courts.[5]

The Inland Revenue has appealed against this ruling to the Court of Appeal and the hearing is scheduled for March 2003. In evidence to the Low Pay Commission, the Government said that its intention had always been that enforcement notices could be issued in respect of workers who were no longer employed by the underpaying employer:

> The Government believes that Ministers clearly intended, when introducing the Act, that compliance officers should be able to pursue cases involving workers who are no longer employed by the employer in question. We are determined to help low paid workers and intend to restore the position as soon as possible, so that the Revenue and Agricultural minimum wage compliance officers can once more pursue these cases fully. We submitted an appeal to the Court of Appeal in September and the hearing is scheduled for March 2003.
>
> In the interim period, Revenue and Agricultural compliance officers cannot issue enforcement notices on behalf of former workers. In these cases they can still investigate complaints and remind the employer of their duty to pay the minimum wage, but it will be for the worker to decide whether to take their case to an employment tribunal or civil court.[6]

---

5 Appeal No EAT/1311/01, *Inland Revenue Wales and Midlands v Bebb Travel plc*, http://www.employmentappeals.gov.uk/judge_fr.htm

6 *The Government's Evidence to the Low Pay Commission*, November 2002,

IV The Bill

On 21 November 2002, the Government introduced the *National Minimum Wage (Enforcement Notices) Bill [HL] 2002/03* in the House of Lords.[7]

This two clause Bill is designed to close the loophole exposed by the *Bebb* case and put what the Inland Revenue was already doing on a legal footing. It achieves this by introducing a new subsection (2A) to section 19 of the 1998 Act:

> (2A) If an officer acting for the purposes of this Act is of the opinion that a worker who has at any time qualified for the national minimum wage has not been remunerated for any pay reference period (whether ending before or after the coming into force of this subsection) by his employer at a rate at least equal to the national minimum wage, the officer may serve on the employer an enforcement notice which imposes a requirement under subsection (2) above in relation to the worker, whether or not a requirement under subsection (1) above is, or may be, imposed in relation to that worker (or any other worker to whom the notice relates).

A. Debate in the Lords

The Bill received its second reading in the Lords on 10 December 2002.[8] Lord Sainsbury of Turville, Parliamentary Under-Secretary of State at the Department of Trade and Industry, gave two reasons for the Government's determination to restore the position to what it believed it had been before *Bebb*:

> First, former workers are entitled to the minimum wage in just the same way as current ones. If someone was not paid the minimum wage for, say, some work they did in the summer, then we believe that the employer should be required to make good the shortfall, whether the person is still in their employment or not. While it would still be possible for former workers to take action independently against their employer, this is really not as satisfactory as action by the enforcement officers. As I mentioned a moment ago, low-paid people are often unwilling or not capable of taking action against their former employer. They may perhaps need a reference from him or they may feel that their chances of success are small against the employer. That is why we believe that former workers should enjoy the protection of Revenue or DEFRA enforcement officers, in the same way as current workers. If this change were not made, we would also be creating an incentive for employers to dismiss workers as soon as they knew they were being investigated. That is clearly not desirable.
>
> The second reason why it is important to restore the position is that former workers tend to be much more ready to make complaints to the minimum wage

---

http://www.dti.gov.uk/er/nmw/evidence02.pdf

7 HL Bill 8 2002/03

8 HL Deb 10 December 2002, cc 151-156

> helplines, which then prompts action by enforcement officers. Current workers tend not to complain, for obvious reasons. When officers follow up complaints made by former workers, they often then find that the minimum wage is not being paid to current workers as well as the former ones. We do not want to accept a position in which former workers may think there is nothing we can do on their behalf, and therefore stop making complaints that benefit everyone. [9]

He said that the Inland Revenue believed that about half of all complaints came from former workers. There were 250 cases involving former workers placed on hold, awaiting the outcome of the appeal against *Bebb* or the passage of this Bill.[10]

Lord Razzall, for the Liberal Democrats, and Baroness Miller of Hendon, for the Conservatives, both supported the Bill and agreed that it had never occurred to them, when the 1998 Act was going through Parliament that former workers would be excluded from support from enforcement officers.

1. Retrospective effect of legislation

During the Second Reading debate, Lord Sainsbury made it clear that the new subsection (2A) had been deliberately drafted to enable enforcement officers to issue enforcement notices in respect of pay periods before the legislation comes into force:

> I should also make it clear that subsection (2A) has also been deliberately drafted to allow enforcement officers to issue notices in respect of pay reference periods ending before or after the Bill comes into force. I should like to explain why the Bill has been drafted in this way.
>
> As matters stand, enforcement officers have not been able to issue any notices on behalf of former workers since August 2002. Some of these workers may of course have taken action against their employers independently but, although we do not have figures, I suspect that many will not. Unless we allow officers to issue notices covering pay periods before the Bill came into force, we will not be able to recover minimum wage arrears that might have arisen in the past on behalf of former workers. The key point to stress here is that this subsection does not change anyone's entitlement to the minimum wage; that is unchanged. All this subsection would do is create a new means of enforcing existing rights, to help these former workers recover their proper entitlement.
>
> We therefore believe that this subsection is not in fact retrospective. We have approached the Attorney-General on this specific point, and he has advised us that he is content for the subsection to apply in this way.[11]

---

9 HL Deb 10 December 2002, c 152
10 Ibid
11 Ibid, c 153

In response to a proposal from Baroness Miller of Hendon, that there should be a six year limit on the degree of retrospection, Lord Sainsbury said that, in practice, there would be a three year limit as there was no requirement to keep records for more than three years:

> As regards the retrospective nature of the measure we are discussing, it can only be retrospective for three years as companies are required only to keep records for three years. Although I believe that civil debt can go back six years, the measure we are discussing could be retrospective for only three years.[12]

In Committee, Baroness Miller of Hendon moved an amendment which would have placed an explicit limit of six years on the period for which arrears could be enforced. Lord Sainsbury admitted that the three year limit on record-keeping did not amount to a three year limit on enforcement, but argued that the ordinary six year limit in the *Limitation Acts* would apply:

> I shall begin by explaining the position under the present legislation. If an employer fails to comply with an enforcement notice, enforcement officers can pursue one of two options. First, officers can take a case to the county courts, in which case the Limitation Act 1980 already applies. They could seek to recover arrears only for a period of up to six years. Almost all the cases brought so far by the Revenue have used that route and are, therefore, already subject to the six-year restriction sought by the amendment. Secondly, officers can take a case to the employment tribunals, using the powers in the Employment Rights Act 1996. In that case, officers must put their case before the tribunals within three months of the last underpayment, but the Limitation Act does not apply. In theory, officers could pursue underpayments over a period exceeding six years. However, the three-month limit for bringing a claim is extremely tight and, in practice, that route has hardly ever been used by the Revenue.[13]

Baroness Miller pursued her argument at Report stage, arguing that even if it was unlikely that officers would pursue a case over six years old, it was still possible. The legislation should still specifically prevent it. On this occasion, Lord McIntosh, for the Government, agreed with her and promised to bring forward a suitable amendment on Third Reading:

> The noble Baroness, Lady Miller, is right. There is a difference between very rarely and never. We have thought about the matter again. We believe that it would be right in practice to provide for something similar to what the noble Baroness wants. It cannot be the amendment before us because it has technical problems, but it will be one which says roughly what the noble Baroness wants. We hope to have it drafted in time for Third Reading.[14]

---

12 Ibid, c 156
13 HL Deb 9 January 2002, c 1103
14 HL Deb 23 January 2003, c 842

As promised, the Government tabled an amendment at Third Reading (adding a new subsection 2B to section 19 of the 1998 Act) which limits the period that an enforcement notice can cover to the period of six years before the date on which it was issued. Lord Sainsbury made it clear that this would not interfere with an individual's right to take cases going back more than six years to a tribunal:

> I should stress, however, that we do not propose to limit the existing rights held by individual workers. Of course, it seems very unlikely, for the reasons I have given, that more than a handful of cases will go back for more than six years. But we do not wish to rule out the possibility that individual workers might wish to take cases going back for more than six years to an employment tribunal. To do so would put workers claiming in respect of underpayments of the national minimum wage in a worse position than workers claiming in respect of other contractual underpayments. I am happy, as I said, to limit the powers held by the Government's enforcement officers. However, it seems to me that it would be wrong at the same time to limit the existing rights held by individual workers.[15]

2. Implementation date

Baroness Miller also proposed an amendment at Committee stage which would have brought the Act into force as soon as it received Royal Assent, rather than two months afterwards, as provided for by clause 2. Lord Sainsbury explained why there would be a two month delay before the Act came into force after Royal Assent:

> We have checked the position with the Cabinet Office and the established procedure is that Bills commence two months after Royal Assent, unless there are pressing reasons for bringing the Bill into force more rapidly. The idea is that both business and employees should have a reasonable opportunity to see and understand the implications of a new Act before it comes into force. Although I agree with the noble Baroness that the argument is not particularly strong in this case—where we are not changing the existing entitlement to the minimum wage—I think we can all agree that in general it is highly desirable that there is this period before a Bill comes into effect.[16]

Baroness Miller revived her amendment on Report, backing up her argument with many examples of Acts which had come into force immediately on Royal Assent. However, the Government persisted in its view that, in this case, there was no pressing need for immediate effect:

> **Lord McIntosh of Haringey**: My Lords, again, we cannot all win. Of course the noble Baroness, Lady Miller, is right. It is possible for an Act to come into force on Royal Assent—and that often happens—but the established procedure is that

---

15 HL Deb 30 January 2003, c 1248
16 Ibid, c 1105

> unless there are vital reasons for bringing a Bill into force more rapidly, we give those concerned with the Bill—in this case it is both business and employees—a reasonable opportunity to see and understand the implications of a new Act before it comes into force. That is the only reason for delaying it for two months.
>
> However, there is another reason for not worrying about this Bill being brought into force two months later—and that is that it allows enforcement officers to issue notices in respect of pay periods ending before it comes into force. There is therefore no disadvantage whatever in that two-month delay. Past money owed to workers can be recovered whether the Bill comes into force, say, in March or May of this year. Under those circumstances, and in light of the fact that it is true that this is a conservative kind of argument—the Cabinet Office advised us that this was the right thing to do and we have to go back to the Attorney-General and Legislative Programme Committee to effect a change—and particularly in view of the fact that nobody loses by this delay, I hope that the noble Baroness will not press her amendment.[17]

3. Agricultural wages in Scotland

Before the introduction of the NMW there used to be Wages Councils which set minimum rates of pay and holiday entitlement in certain low paying industries. The Conservative Government abolished these Wages Councils in 1993, but retained the Agricultural Wages Boards which set minimum wages in agriculture. There are separate Agricultural Wages Boards for England and Wales, Scotland and Northern Ireland.

Schedule 2 to the *National Minimum Wage Act 1998* amended the *Agricultural Wages Act 1948*, the *Agricultural Wages (Scotland) Act 1949* and the *Agricultural Wages (Regulation) (Northern Ireland) Order 1977* to ensure that the minimum hourly rates for agricultural wages could not be less than the NMW. The Schedule also provided for the enforcement regime for the NMW, which includes sections 17 and 19 to 22, to be the enforcement regime for the agricultural minimum wage. The Secretary of State has appointed DEFRA, the Scotland Office and the Northern Ireland Office to enforce the agricultural minimum wage in England and Wales, Scotland and Northern Ireland respectively, as provided for in section 13 of the 1998 Act.[18]

As far as Scotland is concerned, employment (including the NMW) is a reserved matter, but agriculture is devolved. Before Christmas 2002, the Scotland Office informed the DTI that the Scottish Executive intended to propose a Sewel motion in the Scottish Parliament. These motions allow the Westminster Parliament to legislate in devolved areas (such as the agricultural minimum wage). However, the Scottish Executive subsequently changed its mind and, on 15 January 2003, asked the UK Government to

---

17 HL Deb 23 January 2003, c 844

18 See the Explanatory Notes on the Bill (Bill 51-EN, para 6)

make an amendment to the Bill to exclude Scottish agriculture from its scope.[19] The Government therefore moved an amendment to achieve this end on Report Stage.

Lord McIntosh explained that the Scottish Executive would lay parallel, independent legislation covering Scottish agriculture in the Edinburgh Parliament instead. Although the Sewel motion procedure also applies in Northern Ireland, the Northern Ireland Assembly is currently suspended and the Northern Ireland Office is content for agriculture in Northern Ireland to be covered by the present Bill:

> The way the present legislation works is that Schedule 2 of the National Minimum Wage Act 1998 made a number of amendments to the Agricultural Wages Act (Scotland) 1949, to incorporate some of the provisions of the national minimum wage into the agricultural minimum wage. It is clear that the operation of the agricultural minimum wage in Scotland is a matter for the Scottish Executive.
>
> It had two options. The first was to propose a Sewel Motion, which would have allowed Westminster to legislate on this matter even though it is devolved. Before Christmas the Scottish Office informed us on behalf of the Executive that that is what it planned to do. That is why, when we presented the Bill to the House, we covered the agricultural minimum wage in Scotland as well as the rest of the United Kingdom.
>
> However, the Executive has now decided that it does not wish to propose a Sewel Motion and intends to lay parallel independent legislation covering Scottish agriculture in the Edinburgh Parliament. It has asked us to amend our Bill to exclude Scottish agriculture from its scope.
>
> It is not a pretty amendment. I do not claim it is. Anything which has to rely on disregarding matters in the Interpretation Act will never be beautiful. But, in simple terms, it ensures that the provisions in the Bill will not be carried across into the Agricultural Wages Act (Scotland) 1949. It does not affect the existing structure of the national minimum wage or agricultural wages legislation. All it means is that the Scottish Executive will need to introduce parallel legislation to tackle the difficulties we have encountered and to carry across the provisions of this Bill into Scottish agriculture.
>
> The situation is the same in Northern Ireland. But while the Stormont Assembly is temporarily suspended, the Department of Trade and Industry has confirmed with the Northern Ireland Office that it is content for the Bill to cover agriculture in Northern Ireland. I beg to move. [20]

---

19 Letter from Lord Sainsbury to Baroness Miller of Hendon, 16 January 2003

20 HL Deb 23 January 2003, c 845

Although there are similarities between the rates and terms set by the Agricultural Wages Board for England and Wales and the Scottish Agricultural Wages Board, they are by no means identical. Details of the current rules can be found in:

- Agricultural Wages Board for England and Wales, *Agricultural Wages Order 2002 (Number 2)*, 1 October 2002, http://www.defra.gov.uk/farm/agwages/awo2002/index.htm

- The *Agricultural Wages (Scotland) Order (No 50) 2002*, http://www.scotland.gov.uk/library5/agri/awso.pdf

B. The Bill in the Commons

The Bill, as amended in the Lords, was introduced in the House of Commons on 30 January 2003.[21] It is available on the Internet at:

http://pubs1.tso.parliament.uk/pa/cm200203/cmbills/051/2003051.pdf

Explanatory Notes, published by the DTI,[22] are also available at:

http://pubs1.tso.parliament.uk/pa/cm200203/cmbills/051/en/03051x--.htm

It is due to have its Second Reading on 11 February 2003.

[21] Bill 51, 2002-03
[22] Bill 51-EN, 2002-03