



The National Minimum Wage Accommodation Offset

A Review by the Low Pay Commission

Presented to Parliament by
the Secretary of State for
Trade and Industry
by Command of Her Majesty
March 1999

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Foreword

by the

Chairman of the Low Pay Commission,

Professor George Bain

Dear Stephen

On 16 February you asked the Commission to revisit our recommendation that there should be a maximum amount of £20 a week offset against the National Minimum Wage for the provision of full accommodation, and report to you by 19 March. I am pleased to enclose our findings and our unanimous recommendations.

When making recommendations on the definition of the minimum wage, the Commission believed that it should be as simple and straightforward as possible. We took the view, as have most countries with statutory minimum wages, that benefits-in-kind should in general be excluded from the minimum wage. We made an exception for the provision of full accommodation in recognition of the significance of this provision in certain sectors, and the benefit it offers to both employers and workers.

Setting a level for an accommodation offset is, like setting the overall rate, a matter of judgment. Our recommendation was based on economic and labour market analysis, consultation with relevant sectors and precedents offered by Wages Council practices. We have reviewed all of these, and have in addition taken new evidence from those most directly affected by our recommendation.

We have found no new evidence to persuade us that the level we recommended was unreasonable, and therefore suggest that we monitor the use and impact of the accommodation component on business and make further recommendations in our December report. We are concerned at the apparent complexity of the formula set out in regulations, but again consider that it would be administratively sensible to let the regulations settle in before assessing whether there are good grounds for making simplifications.

Intentional communities had not previously been considered directly by the Commission. Members of these communities have voluntarily sacrificed pay to live together with a spiritual ethos, and we therefore conclude that a commonsense approach is to recognise members of intentional communities as volunteers, not to be covered by the National Minimum Wage.

But all of these matters should be monitored carefully once the National Minimum Wage is introduced, and we shall cover them in some detail in our December report.

yours sincerely
George



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16 February 1999

Dear George,

I am delighted that the Government has been able to lay the draft National Minimum Wage regulations before Parliament today and I take pleasure in enclosing a copy of them.

The Government has asked the LPC to monitor and evaluate the introduction and impact of the minimum wage and to report by December.

However, there is one point on which I would appreciate the Commission's early consideration. During the drafting of the NMW Regulations we have received a number of submissions from employers about the amount of offset that may be allowed for accommodation.

I would be grateful if the LPC could revisit this issue as a matter of urgency and report back to me by Friday 19 March as to whether the deduction of 50 pence per hour to a maximum of £19.95 as currently defined in the Regulations represents the best way forward or whether a higher offset or a different approach is necessary.

Yours,

Stephen
STEPHEN BYERS

dti

Department of Trade and Industry

The Commissioners

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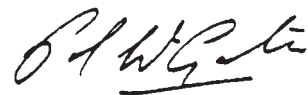
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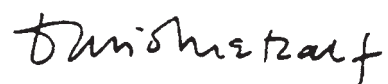
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Summary and Recommendations

- 1 Since making our recommendations some concern has been expressed over the level of offset allowed for the provision of accommodation, but there is little evidence that the majority of businesses cannot cope with the rate recommended. We believe that the most sensible approach would be for us to monitor the impact of the level and scope of the accommodation offset, and to make recommendations for its application in the longer term as part of our report in December of this year.
- 2 There may be scope for some simplification of the legislation which governs the application of the accommodation deductor. But there is insufficient evidence to support a recommendation for immediate change. We propose, therefore, that the application of the regulations should also be monitored as part of our evaluation programme and reported on in our second report.
- 3 Having had the opportunity to consider the intentional communities in detail, we appreciate that, while workers in these communities must receive at least the National Minimum Wage, members have a particular lifestyle and ethos which has not previously been recognised in relation to the National Minimum Wage. Members enter into such communities in a spirit of service, and voluntarily give up remuneration for a spiritual life-style within a charitable community. We believe that they should be regarded as voluntary workers. We suggest that the Government should review this in the light of experience, and, if necessary, amend the Act at a convenient time.

Recommendations:

- 1) There should be no immediate change to the rate of the accommodation offset in the National Minimum Wage regulations, but we should monitor the use and impact of the accommodation offset on businesses and employees.
- 2) We should monitor the administration of the accommodation offset and, in the light of practical experience, report on its future application in our second report.
- 3) Members of intentional communities should be regarded as volunteers rather than workers, and not be covered by the National Minimum Wage.

1 The Current Position

Few low-paid workers are provided with benefits-in-kind, but the provision of accommodation or lodging is a significant feature of some sectors, particularly hospitality. We recognised its importance to employers and workers and recommended that, where accommodation is provided, a maximum of £20 a week could be offset against the National Minimum Wage. The National Minimum Wage regulations include a provision which enables an amount up to a maximum of £19.95 a week to be treated as a component of the National Minimum Wage.

Low Pay Commission's Original Recommendation

- 1.1 In reaching our recommendations for the definition of the National Minimum Wage, we decided that benefits-in-kind, such as free laundry provision, meals or luncheon vouchers, should be excluded. There were three main factors which influenced this decision. First, very few low-paid workers receive benefits in addition to their pay and, second, it is difficult to estimate and monitor the value of such benefits. Finally, the exclusion of benefits was consistent with our policy of keeping the National Minimum Wage simple.
- 1.2 We made one exception, however, in the case of accommodation. The provision of free accommodation or lodging is a significant feature of certain sectors, particularly in agriculture and hospitality. It is sometimes subject to collective agreements in these industries: a notional value is attributed to the accommodation or lodging and this amount can be offset against the wage. The former Wages Councils allowed such a component and the Agricultural Wages Boards continue to do so.
- 1.3 The evidence which we received from representatives of employers and employees in the hospitality industry indicated that the provision of accommodation is a well-established practice in the sector. It is recognised and valued by employers and employees alike. For the employer, it is often advantageous to have staff living on or near the premises. For the worker it offers accommodation at very little cost, or in locations where alternative accommodation is not readily available. As a consequence, employers and unions in the

‘In certain sectors, accommodation is an integral part of the employment relationship’

GMB evidence

‘Employees ... find it a very important benefit’

British Hospitality Association evidence

- industry sought an accommodation offset within the National Minimum Wage.
- 1.4 Our recommendation, therefore, was designed to be a protective measure. By allowing an accommodation offset, we intended to discourage employers both from levying excessive accommodation charges outside of the National Minimum Wage, and from withdrawing from the provision of accommodation, which would affect the most vulnerable, particularly young, workers.
 - 1.5 When deciding on the level for the accommodation component, we did not seek to reflect the actual value of accommodation to the worker, or the cost to the employer. We believe that it would be inappropriate and impracticable to do so. Allowing a market rate would not have recognised the benefits to the employer of providing accommodation. Furthermore, the standard and type of accommodation provided, and consequently its market value, can vary considerably. Finally, a single national rate of accommodation component was consistent with a national rate of minimum wage.

International Comparisons

- 1.6 There is no clear pattern in the treatment of accommodation in the minimum wage systems of other countries. Of the ten countries with minimum wages which we examined in detail in making our recommendations, at least three – Belgium, Greece and Spain – have no accommodation offset. Where offsets for lodging do exist, there is a significant variation in their value. Japan has no fixed level, but allows ‘fair and reasonable’ payments in kind. Similarly, the USA allows ‘reasonable amounts’, with the responsibility for deciding what is reasonable lying with the Secretary of Labor. Portugal allows 12 per cent of the minimum wage as an offset and New Zealand allows 5 per cent. But the deductor in France is less than 0.1 per cent, having been fixed at 15 centimes a day since 1951.

Wages Councils

- 1.7 Few of those who gave evidence to us argued for a specific rate for an accommodation offset. Major employers’ organisations made supportive references to the way in which the former Wages Councils had operated. The Wages

Councils had set deductors in the hospitality industry until their abolition in 1993. The Agricultural Wages Boards continue to do so in agriculture.

1.8 The Wages Councils in hospitality set minimum hourly rates of pay, and daily rates of deductor for lodging (but not for meals), according to the type of establishment in which the individual was working. The Agricultural Wages Boards set minimum hourly wage rates, and deductors for benefits-in-kind, for agricultural workers. For a tied cottage, the weekly deductor is £1.50 in England, Wales and Northern Ireland and £1.00 in Scotland. Deductors for lodging are allowed in England and Wales (£10.38 a week) and Northern Ireland (£1.56 a day).

1.9 Our recommendation for the level of the accommodation offset was reached by reference to previous Wages Councils rates and current practices. This provided the following range of weekly accommodation offsets for low-paid workers:

- £1.05 Wages Council uprated to 1997:
Unlicensed Establishments
- £9.20 Committee of Registered Clubs Association
(CORCA): Other workers
- £9.80 Wages Council uprated to 1997:
Licensed Non-residential Establishments
- £10.05 Agricultural Wages Board
- £16.50 Wages Council uprated to 1997:
Licensed Residential Establishments
- £21.45 A leading hotel group
- £22.12 CORCA: Steward Category 1
- £25.26 CORCA: Steward Category 2

1.10 The level of Wages Council rate for unlicensed establishments was the clear outlier in this range. And it applied to only a tiny proportion of workers, so we considered that it should be excluded. The mean value of the remaining figures was £16.34. This was close to the uprated Wages Council figure (£16.50 a week) for licensed hotels and restaurants, the sector where a deductor for live-in accommodation was most common: up to 25,000 workers in hotels might be affected by a deductor, compared with fewer than 10,000 in agriculture.

‘CBI members would wish to see the value of accommodation ... counting towards the NMW. This approach was practised to good effect under the UK Wages Councils’

CBI

- 1.11 There appeared, however, to have been some upward drift in the level of accommodation offsets since the abolition of Wages Councils and the rates employed by the registered clubs and the hotel chain were indicative of this. We believed, therefore, that a simple mean figure, or an uprated Wages Council rate, could be too low. Consequently, we recommended that, where the employer provides accommodation or lodging free of charge to the employee, an amount of up to £20 a week may count towards the National Minimum Wage. We considered that this amount would be manageable for businesses, yet would not significantly reduce the benefit of the National Minimum Wage for lower-paid workers.

National Minimum Wage Regulations 1999

- 1.12 The Government accepted our recommendation which has been taken forward in Regulations 30(d) and 36 of the National Minimum Wage regulations. Regulation 36 sets out the formula by which an employer can calculate the offset for accommodation:

'Amount permitted to be taken into account where living accommodation is provided.

36.-(1) The amount ... is whichever is the lesser of the following –

- (a) the amount resulting from multiplying the hours of work done in the pay reference period ... by 50p, and reducing that product by the proportion which the number of days (if any) in the pay reference period for which living accommodation was not provided bears to the total number of days in the pay reference period; or
- (b) the amount resulting from multiplying the number of days in the pay reference period for which living accommodation was provided by £2.85.

(2) For the purposes of paragraph (1), living accommodation is provided for a day only if it is provided for the whole of a day from midnight to midnight.'

Conclusion

- 1.13 Our recommendation for a £20 a week limit for the accommodation component was reached after careful consideration of the evidence presented by business sectors and unions, comparisons with other countries' minimum wage systems, and the precedent of the Wages Councils.

2 What We Did

To review the accommodation offset we drew upon research, analysis and consultation. We met twice as a Commission and returned to the written submissions and oral evidence which we had received before making our initial recommendations. We then examined evidence which had been submitted, both to the Commission and to the Department of Trade and Industry, since we made our first report. We supplemented this by meeting a variety of organisations which had expressed concern about the accommodation offset.

Research Process

- 2.1 In addition to the research which we undertook or commissioned in advance of our first recommendations, we undertook further work on the labour market and reviewed details of the accommodation offset allowed under the former Wages Councils and the Agricultural Wages Boards.
- 2.2 We reviewed data from the New Earnings Survey and the Labour Force Survey (LFS), which provided information about the use of tied accommodation throughout a range of industry sectors. This enabled us to identify trends in the use of employer-supported accommodation and make a judgment about the numbers of people who might be affected by the accommodation offset. Details of this work are set out in Appendix 3.
- 2.3 We also gathered more detailed information about the use of accommodation deductors in international minimum wage systems. This information is presented in Appendix 4.

Consultation

- 2.4 For our first report we received evidence from a cross-section of nearly five hundred individuals and organisations. Of these, about 50 raised the issue of an accommodation offset. We also took formal oral evidence from groups most affected by such an offset. We drew heavily upon this evidence when we revisited the accommodation component.

- 2.5 This evidence was supplemented by written responses which the Department of Trade and Industry (DTI) had received on this issue during consultation on the draft National Minimum Wage regulations.
- 2.6 We also received fresh submissions from groups significantly affected. These included the British Hospitality Association, the British Activity Holidays Association, and a number of organisations from the ‘intentional communities’. All these are copied at Appendix 5.
- 2.7 But, importantly, we supplemented written evidence with visits and discussions with groups most affected. We are grateful to those organisations for finding the time to discuss issues with us in depth at such short notice. Meetings were held with:

L’Arche

British Hospitality Association

British Activity Holiday Association

Findhorn Foundation

GMB

Hengrave Hall Community

Lee Abbey

Scargill House (by telephone)

Society of Mary and Martha (by telephone)

Conclusion

- 2.8 Our review was based on the analysis of data and evidence received in our original report, and a review of subsequent evidence sent to DTI and the Commission. We discussed the issue with a number of organisations most affected, and reviewed international comparisons and LFS data.

3 Reviewing the Accommodation Component

Reactions to the draft regulations covered the rate of the accommodation offset, the complexity of the formulation in the regulations, and arguments for making exceptional arrangements for different sectors or type of organisation. There is evidence that businesses are already making appropriate adjustments to their pay structures. For certain sectors, particularly those which have not been covered by regulations under Wages Councils, the adjustment to the minimum wage, including the accommodation offset, will be significant, but its extent is too early to assess. It would not be prudent to revise the level of the component at this stage, but we should monitor its usage and make recommendations for its level in the context of our second report in December 1999. There may be scope for simplifying the regulations concerning the application of the component. This should also be assessed as part of our monitoring programme.

Background

- 3.1 Since the publication of our report we have received very few direct representations on our recommendation for the accommodation offset, but the Department of Trade and Industry (DTI) received a substantial correspondence from the hospitality and leisure industry, and from intentional communities. Comment focused mainly on two issues:
- That the level of the offset is too low, with several commentators arguing for a level which reflects the cost to the employer of providing the accommodation.
 - That the requirement in the regulations for the component to be calculated on both a daily and an hourly basis is too complicated and unfair.
- 3.2 Correspondence from the intentional communities raised issues beyond the use of accommodation offset and we deal with these separately in Chapter 4.

The Level

Monitoring the level

- 3.3 As part of our task to monitor and evaluate the introduction of the National Minimum Wage we had already taken steps to monitor the use of an accommodation offset. Last autumn we sent a simple questionnaire to 3,000 businesses in the hospitality industry. While the main focus of the questionnaire was how businesses would adapt to the level of the minimum wage, businesses were invited to comment on all aspects of our recommendations.
- 3.4 We received nearly 600 responses, around 20 per cent. These 600 covered 100,000 employees, and over 400 of respondents had fewer than 100 employees. Only 12 respondents raised the issue of the accommodation offset: one thought it should be abolished, 11 said they were unhappy about it, 5 of whom said that it was too low.

Written and Oral Evidence

- 3.5 Writing to the DTI on the regulations, the British Hospitality Association, on behalf of the main industry organisations, suggested that *'both the Commission and the government have underestimated the importance of live-in accommodation for this industry.'* The Association has subsequently submitted written evidence to the Commission (copied in Appendix 5) which argues that:
- the £20 maximum is too low, particularly as no offsets have been allowed for meals and utilities;
 - it would cost employees nearer £50 to rent their own accommodation; and
 - the phasing out of the deductor, as we proposed in our first report, would damage employment prospects for young people.
- 3.6 We discussed these issues in some detail with the British Hospitality Association. The Association reiterated the benefits of the provision of living accommodation both for employers and employees and was concerned that a certain amount should continue to be allowed for within the National Minimum Wage. The Association was keen that both the level and operation of the offset should be monitored and addressed in the Commission's second report in December.

- 3.7 We also held discussions with the GMB. The union argued that there had been no adverse reaction to the accommodation deductor from its members or from employers with whom it negotiated agreements. There was evidence that employers had already taken steps to adjust to the new limit. One major hotel chain, for example, had adjusted its accommodation offset to £19 a week (it had been £21 a week). Another major provider of accommodation had marginally reduced its offset for workers on minimum wage levels, but increased it for those who were better paid, thus complying with the regulations.
- 3.8 The British Activity Holiday Association (BAHA), however, argued strongly that the accommodation allowance did not recognise the needs of their particular sector, particularly as no deductions were allowed for meals and other benefits. Organisations represented by BAHA are commercial businesses which provide adventure and educational holidays. They employ mainly young people who organise and supervise activities. In return, these workers are provided with a remuneration package of full board and lodging plus an allowance of £65 to £70 a week. Although in the commercial leisure sector, activity holiday companies were not covered by Wages Councils.
- 3.9 In their evidence, the BAHA argued that the sector was facing major adjustments to comply with the minimum wage legislation. In discussion with the Commission, their assessment was that some companies might have to raise prices by around 10 per cent. In making recommendations in our first report we were clear that the introduction of the National Minimum Wage would inevitably have a greater impact on certain types and size of business. There are a number of ways in which companies can respond: some companies may have to adapt their employment, pay or marketing strategies to adjust to the National Minimum Wage. That is why we recommended a modest wage level, and why we were cautious about the level for younger workers. The majority of employees in the activity holiday industry are young people aged between 18 and 21 years, to whom a lower minimum wage applies, and this should ease the costs to the industry. Nevertheless, as part of our broad evaluation remit, we will be monitoring the impact of our recommendations on this and other industries, and suggest further adjustments if necessary.

‘The regulations should allow for a more realistic maximum level of deduction for board and lodging, [e.g.] £10 a day where provision of board is genuinely integral ... to the employment.’

British Activity Holiday Association

- 3.10 Recommending a maximum level of offset for accommodation is a matter of judgment. By basing our recommendations on current practice under collective agreements, as well as on the experience of the Wages Councils, we consider that the level for the accommodation offset is one to which most businesses can adjust. The level is marginally higher than what would have been the average offset from Wages Councils. It does not reflect the cost to the employer of providing accommodation, and is not intended to: it is an offset reflecting an employment arrangement of mutual benefit to employer and worker. While there have been requests from some sectors for the level to be reviewed, we do not consider that it would be prudent to recommend changes so close to the introduction of the National Minimum Wage. It would not make sense to disturb arrangements already made by businesses to adjust to the recommended rate.
- 3.11 By December of this year the Commission should have good quality information on the use of the accommodation offset within the National Minimum Wage. We have already commissioned research into the hospitality industry, and will monitor carefully the activity holidays sector. With the agreement of the Office for National Statistics there will be a trailer question to the 1999 New Earnings Survey (NES) enquiring whether the employee has an amount deducted from pay for accommodation and, if so, at what level.
- 3.12 **We recommend that there should be no immediate change to the rate of the accommodation offset in the National Minimum Wage regulations, but that we should monitor the use and impact of the accommodation offset on businesses and employees.**

Phasing Out

‘phasing out the offset in the longer term would damage employment prospects for young people who are the main livers-in’

British Hospitality Association

- 3.13 In its submission to us the British Hospitality Association’s main concern was that the accommodation offset should not be phased out.
- 3.14 In our first report, while acknowledging the significance of accommodation provision, we did signal that ideally the minimum wage should not be qualified with offsets for benefits-in-kind. It is clear from subsequent discussions that the provision of accommodation, although decreasing, is nevertheless of significance for a number of businesses and workers (see Appendix 3). The Highland and Islands

Enterprise, for instance, chose to stress to us the importance of the accommodation offset when discussing the impact of the minimum wage more generally on the Scottish Highlands economy. We will keep the incidence and significance of the accommodation offset under review.

The Regulations

- 3.15 In responses to the DTI consultation on the regulations, major representatives of the hospitality industry were concerned about the complexity of the formula for applying the accommodation offset. Two calculations have to be applied in order to determine the actual amount to be offset. They regarded this as an unnecessary bureaucratic burden that did not exist under the Wages Councils. The Wages Councils approach, of which we took significant account in reaching our recommendations for the deductor, was to apply a daily deductor for each day for which accommodation was provided (subject to a maximum 5 days a week). Thus its value was linked to the provision of the accommodation, rather than to the hours worked.
- 3.16 The National Minimum Wage regulations also appear to have introduced a degree of inequity. Bass plc pointed out that the provision: *'appears to charge a higher amount for those working longer hours for similar accommodation.'* The following example illustrates the type of anomaly which an hours-based approach can produce.

Two workers are employed by a hotel and have similar live-in accommodation provided for the full seven days in the week.

Worker A works 35 hours over 5 days: the deductor is 35 x 50 pence = £17.50.

Worker B works 42 hours over 6 days: the deductor is £19.95 (the lesser of the daily rate: 7x £2.85 = £19.95 or the hourly rate 42 x 50 pence = £21.00).

Worker B pays £2.45 a week more for the same accommodation.

- 3.17 We appreciate that the purpose of this provision is to protect the interests of those who work few hours, who could lose most, or all, of their earnings if a daily rate of deductor was offset for each day that accommodation was provided.

'the recommendation has been complicated by... the "lower of £2.85 a day or 50p an hour" as the... offset. This was not necessary under the Wages Council... and we do not see why it has become necessary now.'

British Hospitality Association

- 3.18 One of our guiding principles was that the definition and the administration of the National Minimum Wage should be as simple as possible. We appreciate the principle underlying the regulations governing the calculation of the deductor, but fear that it may be adding unnecessary complexity for the protection of a theoretical worker. We will monitor further in order to identify whether there are people working very few hours a week in receipt of accommodation.
- 3.19 In the absence of appropriate evidence, we cannot form a definitive view on whether the regulations should be amended. **We recommend that we should monitor the administration of the accommodation offset and, in the light of practical experience, report on its future application in our second report.**

Conclusion

- 3.20 Since making our recommendations there has been some concern expressed over the level of offset allowed for the provision of accommodation, but there is little evidence that the majority of businesses cannot cope with the rate recommended. We have a remit to monitor and evaluate implementation of the National Minimum Wage and to report in December 1999. We believe that the most sensible approach would be for us to monitor the impact of the level and scope of the accommodation offset, and to make recommendations for its application in the longer term as part of that report.
- 3.21 Having examined the legislation which governs the application of the accommodation deductor, we believe that there may be scope for some simplification. We propose, therefore, that the application of the regulations should also be monitored as part of our evaluation programme.

4 The Intentional Communities

Intentional Communities are currently covered by the provisions of the National Minimum Wage Act. They argue that their communal lifestyle and spiritual ethos is fundamentally different from the commercial enterprise and labour market within which the National Minimum Wage will operate. A higher accommodation deductor for this group would be inappropriate. Rather, it should be recognised that the members of these communities are voluntary workers and should thus not be subject to the National Minimum Wage.

Background

4.1 We fully took into consideration the position of workers in voluntary organisations when making recommendations in our first report. The status of members of ‘intentional communities’, however, was not raised with us because coverage of the National Minimum Wage was beyond our terms of reference. There have been a large number of submissions to DTI from this group on the regulations, however, including specific comments on the accommodation offset. Their concerns are quite distinct from those of commercial organisations, and we have considered them separately.

Nature of Intentional Communities

- 4.2 Our review of the written evidence and our discussions with representative communities revealed that there is no such thing as a typical intentional community. They differ considerably in their operation and aims. The factors which link them are that they are charitable or not-for-profit organisations with an ethos of communal living and service. Members forego remuneration for the work that they undertake in running the community; generally they live in and are supplied with full board and lodging plus a small amount for pocket money. Where communities employ workers to assist in the running of the organisations, these are paid at or above the National Minimum Wage.
- 4.3 The communities themselves proposed six elements which, *when taken together*, distinguished an intentional community from an organisation with an employer/worker relationship as

envisaged in the National Minimum Wage legislation. These are that:

- the community is a registered charity or not-for-profit organisation;
- community members live on site and the community is their home as well as their workplace;
- allowances are paid on a subsistence basis, related to need rather than to reward;
- any non-residential or non-vocational employees are paid a full minimum wage;
- there is a degree of ‘vertical equality’ within the organisation;
- there is a strong ‘lifestyle element’ or a vocational ethos.

4.4 They argue that they regard their members as volunteers, not workers, and that community membership is a way of life. As a consequence, they did not consider the National Minimum Wage as having any relevance to members of communities. As one organisation commented: *‘one of the problems with this issue is that we are from different cultures and speaking different languages. We talk of vocation, volunteers, community lifestyles and subsistence allowances, while the legislators talk of workers, wages and exploitation.’* (Society of Mary and Martha). As a consequence, they consider that it is inappropriate to be covered by the National Minimum Wage.

Increasing the Accommodation Offset

4.5 Because their current advice is that they are covered by the National Minimum Wage regulations, a number of communities have sought a specific accommodation deductor which would reflect the whole lifestyle provided for members of the community. It is clear in discussion and visits that these communities do provide much more than board and lodging. Community members have almost all of their physical needs catered for, from travel costs to dental charges, spectacles and toiletries. The stipends received, which average at around £30 to £35 a week, are to cover incidental expenses (L’Arche commented that it was right that members could afford a pint of beer), and these are often saved towards a time when members leave the community.

- 4.6 To be of practical use to these communities, the accommodation element of the National Minimum Wage would need to be substantially increased to around £100 or more a week and include other benefits such as meals. All communities we spoke to acknowledged that this would simply be a means of coping rather than an appropriate way of drawing a distinction between intentional communities and other organisations. Some would find it of little use. Smaller communities considered the proposal to be an unworkable and unmanageable burden.
- 4.7 Creating a specific deductor for the intentional communities is tackling a real issue with the wrong tool. All the evidence from the communities suggests that increasing the deductor will not provide a proper solution for this sector.

‘Intentional Communities need a proper exemption from the Minimum Wage, not tinkering around the edges to make us fit.’

Society of Mary and Martha

Exemption from the National Minimum Wage

- 4.8 The Commission accepts the arguments from the intentional communities that members are not ‘workers’ in the way that this term is generally understood; members voluntarily give up paid work to dedicate a period of their life to a community. We believe that a commonsense view would be that they are voluntary workers. The six indicators offered by the intentional communities themselves, set out in 4.3, distinguish this group from those who are workers who work for charities.
- 4.9 Many members of intentional communities come from abroad. These are already treated by Government as volunteers rather than workers. Under Home Office immigration provisions they can enter the UK without a work permit if they fulfil certain conditions:

In the interests of supporting charitable organisations and youth mobility, the Home Office does allow non-European Economic Area nationals to come to the United Kingdom to undertake voluntary work with certain charitable organisations in strictly defined circumstances...

A passenger seeking leave to enter to undertake voluntary work must be able to show that:

- the work is either for an organisation listed in Annex B [of these instructions] or a registered charity whose work meets the criteria set out in this instruction; and

- the work is unpaid (other than board and accommodation and pocket money of no more than £35.00 a week) and directed towards a worthy cause; and
- it is closely related to the aims of the organisation; and
- it is fieldwork involving direct assistance to those the charity has been established to help.

Volunteers who are not missionaries, ministers of religion or members of a religious order may undertake short term voluntary work if the organisation is a registered charity and provided the work is not purely of a manual, clerical and secretarial nature and their stay will not exceed 12 months.'

Immigration Directorates' Instructions (Chapter 17, Section 9)

Note: Annex B of the instructions includes organisations L'Arche and Lee Abbey

- 4.10 These instructions offer a useful reference. We believe a similar commonsense approach should allow members of intentional communities to be regarded as voluntary workers not covered by the National Minimum Wage. Membership of intentional communities would need to be clearly and tightly defined, however; we would not want inadvertently to create loopholes whereby workers are not given the protection of the National Minimum Wage.
- 4.11 The National Minimum Wage Act, as it now stands, does not recognise the position of the members of intentional communities. Receiving a payment of any amount, other than for actual expenses, puts the voluntary worker beyond the provisions of section 44 of the Act, unless the voluntary worker was placed by another charitable organisation. We suggest that the Government should review this, and if necessary amend the Act. In the meantime, **we recommend that an appropriate solution would be to regard members of intentional communities as volunteers rather than workers, and not covered by the National Minimum Wage**

Conclusion

- 4.12 Having had the opportunity to consider the intentional communities in detail, we appreciate that, while workers in these communities must – and indeed usually do – receive at least the National Minimum Wage, members have a particular lifestyle and ethos which has not previously been recognised in relation to the National Minimum Wage. Members enter into such communities in a spirit of service, and voluntarily give up remuneration for a spiritual lifestyle within a charitable community. We believe that they should be regarded as voluntary workers.

Appendix 1:

Consultation on Accommodation Offset

We are grateful to all the people and organisations that helped us by providing oral and written evidence on the accommodation offset, before and since the production of our first report. All organisations which participated and gave their consent for us to publish their names are listed below according to the nature of their contribution.

Written Evidence to the Commission for the First Report

Action with Communities in Rural England
 Association of Licensed Multiple Retailers
 Association of Recognised English Language Services
 Bakers, Food and Allied Workers' Union
 Bazen, Dr Stephen; University of Bordeaux
 British Association of Hotel Accountants
 British Holiday and Home Parks Association Ltd.
 British Hospitality Association
 British Printing Industries Federation
 British Sports and Allied Industries Federation
 Brown, Mr N. J. N.; Essex
 Business in Sport and Leisure Ltd.
 Business Services Association
 Childminders (Babysitting Service); London
 Confederation of British Industry
 Country Landowners Association
 Dorking Riding Centre Ltd.; Surrey
 Engineering Employers' Federation
 Engineering Employers' Federation, Northern Ireland Association
 Federation of Recruitment and Employment Services
 GMB
 Highlands & Islands Enterprise
 Homeless Network
 Hospitality Association, Northern Ireland
 Institute of Directors
 Leach, Mr C.; Middlesex
 Low Pay Unit Research Trust; London
 Meetings Industry Association
 Museums and Galleries Commission and the Museum Association
 National Council for Voluntary Organisations

National Farmers' Union
 National Farmers' Union of Scotland
 National Trust
 Peebles Hotel Hydro Ltd.
 Restaurateurs Association of Great Britain
 Scottish and Newcastle Retail Ltd.
 Scottish Low Pay Unit
 Smith, Ms Barbara M. D., OBE; West Midlands
 Tenant Farmers' Association
 Tourism South and West Wales
 Transport and General Workers' Union
 Trades Union Congress
 United Kingdom Home Care Association Limited
 UNISON
 Wales Tourist Board
 West Midlands Low Pay Unit
 Whitbread plc
 Working Men's Club and Institute Union Ltd.
 Youth Hostels Association (England and Wales)

Oral Evidence to the Commission for the First Report

Agricultural Wages Board for England and Wales
 Brewers and Licensed Retailers Association
 British Hospitality Association
 British Retail Consortium
 Business in Sport and Leisure Ltd.
 Business Services Association
 Cleaning and Support Services Association
 GMB
 Independent Care Organisations
 Joint Care Council
 Network
 Independent Healthcare Association
 National Association of Citizens Advice Bureaux
 National Council for Voluntary Organisations
 Retail Trade Alliance
 TGWU

Written Submissions to the Commission Since the First Report

The Association of British Travel Agents Ltd.
British Activity Holiday Association Ltd.
British Hospitality Association
Hengrave Hall Community
Hothorpe Hall
L'Arche
PGL Travel Ltd.
The Society of Mary and Martha

Oral Evidence to the Commission

L'Arche
British Activity Holiday Association Ltd.
British Hospitality Association
Findhorn Foundation
GMB
Hengrave Hall Community
The Iona Community
Lee Abbey
Quiet Waters
Scargill House
The Society of Mary and Martha

Evidence Submitted to the Department of Trade and Industry on the Regulations

Abbeyfield Society
Acorn Venture Ltd.
Action Centres UK
Action with Communities in Rural England
Association of British Riding Schools
Association of British Travel Agents Ltd.
B & N Housing
The Baptist Union of Great Britain
Bass Leisure Retail
Brathay
British Activity Holiday Association Ltd.

British Chambers of Commerce
British Horse Society
British Hospitality Association
Brewers and Licensed Retailers Association
The Churches Main Committee
Community for Reconciliation
Compass Christian Centre
Country Landowners Association
Emmaus UK
Exeter, The Rt. Rev. The Lord Bishop of
Experience UK Ltd.
Farrer & Co.
The Federation of Recruitment and Employment Services
Findhorn Foundation
Gaia House
Hampshire Care Association
Hengrave Hall Centre
Hothorpe Hall
Iona Community
John Lewis Partnership
The Kingswood Group
L'Arche Communities
Lee Abbey International Students' Club
Mencap
Monkton Wyld Court
National Caravan Council Limited
National Council for Voluntary Organisations
The Othona Community
The Outward Bound Trust
The Pilsdon Community
P. Rendle
Royle, Roger; Reverend Canon
PGL Travel Ltd.
Quiet Waters
The Society of Mary and Martha
St. Andrews and Edinburgh, The Most Reverend The Archbishop of
The Whiteley Homes Trust
Windhorse Trading Ltd.
Youth Hostels Association (England and Wales)

Appendix 2: Accommodation Deductors under the Wages Councils and under the Agricultural Wages Boards

- 1 Deductions for accommodation provided to a worker by an employer were allowed under some of the Wages Councils system which were abolished in 1993. Of the 26 statutory Wages Councils existing between 1986 and 1993 in Great Britain, three included an accommodation deduction limit within their Wages Orders – the Licensed Non-residential Establishment Wages Council, the Licensed Residential Establishment and Licensed Restaurant Wages Council, and the Unlicensed Place of Refreshment Wages Council. The three separate Agricultural Wages Boards, which continue to set pay and conditions for agricultural workers (in England and Wales; Scotland; and Northern Ireland), similarly provide for deductions. In this appendix, we summarise Wages Councils practice and also current practice in the agricultural sector.
- 2 Under the Wages Act 1986, Wages Councils were allowed to fix a limit for deductions (or payments made by a worker) for living accommodation provided by the employer. The three Councils which included such a deductor were within the hospitality sector and covered hotels, restaurants, public houses, clubs, inns, dining rooms, cafes and snack bars. While each Wages Council covered particular sectors
- of the hospitality industry and different deductors applied in each, the operation of the deductor was the same in all three sectors.
- 3 A daily limit was placed on the amount which could be deducted (or charged to the worker) from the minimum wage rate for the value of the accommodation provided. Such limits applied only to accommodation; the Wages Orders expressly excluded meals and drinks. A higher amount for living accommodation could be agreed between the employer and the worker. But the Wages Act 1986 prevented any deduction or payment higher than the limit fixed by the Wages Council resulting in the worker being paid less than the minimum rate due under the Wages Order. The effect of this requirement was that a worker's gross pay had to be at least the total of a) the minimum due at the hourly rates specified in the Wages Order and b) the extra amount agreed for the accommodation.
- 4 At the time of abolition in 1993 the deduction limits shown in Table A2.1 applied in the three hospitality sector Wages Councils. The table shows the daily deductor as an hourly figure based on 7.8 hours per day (39 hours per week). This enables a comparison to be made with the hourly minimum wage rate. The deductor is also shown expressed as a percentage of the hourly minimum wage rate.

Table A2.1

Minimum Wages and Accommodation Offsets under the Wages Councils				
Establishment	Basic Hourly Pay	Accommodation Deductor		
		<i>A day or part of a day⁽¹⁾</i>	<i>An hour⁽²⁾</i>	<i>% of Basic Hourly Pay</i>
Licensed Residential	£3.01	£2.90	37p	12.4
Licensed Non-residential/ Licensed Restaurant	£2.98	£1.72	22p	7.3
Unlicensed Place of Refreshment	£2.99	£0.20	2.5p	0.85

Notes: ⁽¹⁾ The deductor could be applied for a maximum of 5 days a week.

⁽²⁾ Low Pay Commission conversion of daily offset.

- 5 When expressed as an hourly rate, the highest deductor was 12.4 per cent of the hourly minimum wage. For comparison, the National Minimum Wage deductor of 50 pence an hour equates to 13.8 per cent of the £3.60 an hour rate.

Agricultural Wages Boards

- 6 Prior to 1999 the three Agricultural Wages Boards differed in their approach to limits on benefits-in-kind provided to workers. In the case of Scotland, there was (and continues to be) only a single deduction allowed: an employer can charge up to £1 per week for the provision of a house, flatted dwelling house, room or communal accommodation, against the minimum wage. Under previous Wages Orders in England and Wales, and in Northern

Ireland, deductions were allowed for housing, board, lodging and casual meals (see details below). But the Agricultural Wages Order for England and Wales is being amended from 1 April 1999 to exclude most benefits. Employers will only be allowed to deduct up to £1.50 per week for a house, while the maximum amount for lodging is being increased to £19.95 per week to align with the National Minimum Wage offset.

- 7 The other deductions allowed under the England and Wales Wages Board prior to this year varied according to age. These benefits-in-kind could be treated as part of the worker's minimum wage up to the maximum value stipulated in the Order. The payments and their maximum values allowed under the 1998 Wages Order are shown below:

Table A2.2

Agriculture (England and Wales) 1998						
Benefit	Unit	Age of worker				
		19 and over	18	17	16	15 and under
House	£/week	£1.50	£1.50	£1.50	£1.50	£1.50
Milk	pence/ pint	0.03	0.03	0.03	0.03	0.03
For 7 day week						
Board and lodging	£/week	£62.28	£56.24	£53.27	£50.20	£47.24
Board only	£/week	£51.90	£46.87	£44.39	£41.83	£39.37
Lodging only	£/week	£10.38	£9.37	£8.88	£8.37	£7.87
Casual meals						
Midday meal	£/meal	£2.47	£2.23	£2.11	£1.99	£1.87
Breakfast	£/meal	£1.63	£1.47	£1.40	£1.31	£1.24
Tea	£/meal	£1.63	£1.47	£1.40	£1.31	£1.24
Supper	£/meal	£1.63	£1.47	£1.40	£1.31	£1.24

8 In Northern Ireland there was a similar arrangement.

The amounts are shown below

Table A2.3

Agriculture (Northern Ireland) 1998				
Benefit	19 and over	18	17	16
Board and lodging	£8.93 per day	£8.53 per day	£8.11 per day	£7.67 per day
Breakfast	£1.69 per day	£1.61 per day	£1.53 per day	£1.46 per day
Dinner	£2.41 per day	£2.30 per day	£2.21 per day	£2.07 per day
Afternoon tea	£0.82 per day	£0.81 per day	£0.79 per day	£0.73 per day
Supper	£2.41 per day	£2.30 per day	£2.21 per day	£2.07 per day
Lodging	£1.56 per day	£1.48 per day	£1.35 per day	£1.31 per day
Cottage	£1.50 per week			

Appendix 3:

Official Data and Accommodation

Labour Force Survey (LFS)

1 The Labour Force Survey collects information on housing tenure of the respondent. The following options are allowed:

- owned outright
- being bought with mortgage or loan
- part rent, part mortgage
- rented
- rent-free
- squatting

2 For those respondents who indicate they are living rent free or in rented accommodation a supplementary question asks whether the accommodation is tied to the job. Because the

LFS collects information from *employees* rather than *employers* it is possible that there may be some confusion between rent-free and rented accommodation: an employee whose wages are reduced because he decides to live in may consider he is paying rent. In any case, an employer might both charge and make a deduction from earnings. Hence, in the following analyses rent-free and rented tied accommodation are considered together.

3 The numbers of employees living in tied accommodation, either rented or rent-free, in the last eight LFS quarters are given in Table A3.1. In addition to hospitality and agriculture, there are a number of sectors with a significant number of employees in 'tied' accommodation.

Table A3.1

Employees in Rented or Rent-free Tied Accommodation by Industry (000s)								
	Winter 96/7	Spring 97	Summer 97	Autumn 97	Winter 97/8	Spring 98	Summer 98	Autumn 98
Agriculture	50	46	47	47	42	40	37	33
Hospitality	57	57	59	51	44	38	33	24
Manufacturing	38	38	34	29	28	30	34	29
Retail	32	27	59	31	31	31	32	35
Public Admin. & Defence	89	85	80	80	75	74	75	74
Education	46	44	46	37	40	42	38	37
Health & Social Work	80	77	73	76	73	77	82	79
Other	127	130	133	126	124	114	116	120
Total	521	504	500	477	457	447	447	431

Source: LFS

Table A3.2

Percentage of Employees Living in Rented or Rent-free Tied Accommodation by Industry								
	Winter 96/7	Spring 97	Summer 97	Autumn 97	Winter 97/8	Spring 98	Summer 98	Autumn 98
Agriculture	25.7	22.7	21.9	23.6	22.3	20.2	18.3	16.7
Hospitality	6.3	6.1	5.4	5.4	4.8	4.0	3.4	2.5
Manufacturing	0.8	0.8	0.7	0.6	0.6	0.6	0.7	0.6
Retail	0.9	0.8	0.9	0.9	0.9	0.9	1.0	1.0
Public Admin. & Defence	5.7	5.5	5.1	5.2	4.9	4.8	4.8	4.7
Education	2.4	2.3	2.5	2.0	2.1	2.2	2.0	1.9
Health & social work	3.1	2.9	2.7	2.8	2.7	2.8	2.9	2.9
Other	1.8	1.8	1.8	1.7	1.7	1.5	1.5	1.6
Total	3.7	3.5	3.5	3.3	3.1	3.0	3.0	2.9

Source: LFS

- 4 But these numbers represent a relatively small proportion of employees outside hospitality and agriculture as shown in Table A3.2. The figures for Public Administration & Defence are inflated by the inclusion of some employees in the armed forces in the LFS. Employees in this sector are also unlikely to be affected by the National Minimum Wage.

Agriculture

- 5 The Agricultural Wages Orders (AWOs) allow an amount for accommodation to form part of the agricultural wage. The Ministry of Agriculture, Fisheries and Food estimated in 1998 that there were around 40,000 tied cottages in England and Wales, but it did not hold figures on the numbers of agricultural workers who were subject to an AWO deduction. There are about 10,000 seasonal workers, mainly under the Seasonal Agricultural Workers Scheme (SAWS), who may be provided with board and lodging and might be subject to an AWO deduction.
- 6 The LFS data show a decline in the provision of accommodation in the sector. We estimate that a maximum of 30,000 to 45,000 agricultural workers

now have it provided, but most workers in tied cottages are staff whose minimum agricultural wage is well above the National Minimum Wage.

Hospitality

- 7 In hospitality, a specially commissioned KPMG survey, presented by the industry during our original consultation, estimated that around 20 per cent of hotel employees and 10 per cent of employees in public houses were provided with accommodation. These figures, which we consider to be an overestimate, date from May 1997: the more recent LFS figures show steady decline in the provision of accommodation in the sector. Furthermore, the KPMG survey includes some higher-paid employees who will not be affected by a National Minimum Wage deductor. Overall, we estimate that between 10,000 and 25,000 employees in hospitality could be affected.
- 8 There are two main reasons why official data for hospitality are somewhat lower than industry estimates. First, addresses which receive 25 or more items of post a day will be excluded from the LFS sample. This means that some larger hotels (perhaps

with a number of resident guests and resident staff) may well be excluded from the LFS altogether. Second, even in those smaller hotels which do feature in the LFS sampling frame, it may be the case that some staff who live at the address are inadvertently omitted because the person responding to the survey may not perceive them as part of the household at the address.

- 9 It is possible that this undersampling may have led to an exaggeration in the declining trend shown by the data for the hospitality industry. It is also likely to contribute to the lack of a noticeable rise in the numbers in receipt of accommodation in the summer quarter. It may also account for some of the discrepancy between LFS estimates of total employment in the sector and employer survey estimates.

Intentional Communities

- 10 People living in intentional communities cannot be identified from the LFS, far less the likely effects of the minimum wage on such individuals. In any case the LFS sampling method, described above, is likely to mean that a large number are excluded. Even the last census (1991) provides little data on the prevalence of these communities.

Effects of Changing the Allowable Offset

- 11 The numbers of employees shown by the LFS to be in receipt of accommodation in hospitality and agriculture are too small to allow any meaningful examination of earnings levels, but it is of interest to note that of all LFS employees in 'tied' accommodation 60,000 (14 per cent) earned less than the (deflated) minimum wage in Spring 1998.
- 12 Hospitality industry figures put the number of employees in receipt of accommodation at between

10 and 20 per cent in total. Live-in staff may, however, be more likely to be low paid and so the proportions may be higher nearer the bottom of the earnings distribution. On the other hand, a larger proportion of low-paid employees are part-time and thus less likely to receive accommodation: the LFS estimates 90 per cent of those in tied accommodation work more than 20 hours per week – none work less than 10 hours.

- 13 Employees currently within 50 pence an hour of the minimum wage levels in Spring 1998 would not be directly affected by an increase in the allowable offset. The ONS central estimate approach suggests that around 120,000 hospitality employees are outside the '50p limit'. Thus, assuming that the proportion of live-in low-paid employees is at most 20 per cent, a maximum of 25,000 employees would be affected.

New Earnings Survey

- 14 The New Earnings Survey (NES) does not capture information on accommodation deductors or allowances. It is possible, however, that some additional questions will be asked of some respondents to the 1999 survey. We hope this will provide a clearer insight into the practice in time for our December report.

Summary

- 15 It is difficult to provide a precise estimate of the effect of a different approach to the accommodation deductor from official data. Evidence that is available suggests that the practice of providing accommodation appears to be relatively rare and in decline. It is also likely that the savings accrued as a result of offering an increased offset will be small even in those industries most affected.

Appendix 4: International Comparisons

Table A4.1

Accommodation Offsets in Other Countries	
Country	Accommodation Offset
Australia	Wages awards between workers and employers do not offset amounts for board and lodging. However, an agreement is usually reached between the parties and the figure for lodging is agreed and then deducted by the employer from the employee's wages.
Belgium	No accommodation offset. Different arrangements can be negotiated at either sectoral or company level, but in principle the minimum wage represents a basic "core minimum salary".
Canada	Only British Columbia, Newfoundland and Saskatchewan make no general provision for deductions for lodging. In the other provinces, there is a range from a maximum \$7 offset per week in Manitoba to a maximum \$20 offset in Prince Edward Island and Quebec. The federal maximum is \$0.60 per day. <i>Note: This federal maximum applies to private sector industries which are federally-incorporated and operate inter-provincially.</i>
France	The offset has remained fixed since 1951 at FFR 0.15 per day and FFR 4.50 a month.
Greece	No accommodation offset.
Japan	Includes only "fair and reasonable" payments in kind.
Netherlands	An offset is allowed for accommodation.
New Zealand	Accommodation offset up to maximum 5% of wage for lodging.
Portugal	The accommodation offset is calculated on the basis of current prices in the region, and may not exceed the following amounts or percentages of the minimum monthly wage...: 12% for lodging for the employee; Esc. 2000 per unit of accommodation provided for the employee and his or her family. <i>Note: This is updated at each review of the national minimum wage by applying the latest house rent factor.</i>
Spain	No accommodation offset.
USA	<p>Section 3(M) of the Fair Labor Standards Act states that the reasonable cost or fair value of lodging may be considered part of the wages. Exactly what is a reasonable cost is decided on a case-by-case basis.</p> <p>The deductor is used fairly widely within the hotel and entertainment industries, particularly in isolated areas such as motorway rest-stops where alternative accommodation is not available. <i>Note: Statistics are not available nationally because it is administered regionally.</i></p> <p>The two main principles are that the employer must agree in advance and that the employer cannot profit from the arrangement. Employers must submit their proposals for agreement to the appropriate regional office of the Wages & Hour Division, Department of Labor.</p> <p>For example, a restaurant/hotel in California wanted to provide room and board for employees. The restaurant surveyed 26 other similar establishments in the same geographical area and established a deduction that was an average of the surveyed employers' rate. This was submitted to the Department of Labor and accepted.</p>