

BERR | Department for Business
Enterprise & Regulatory Reform

**NATIONAL MINIMUM WAGE
AND VOLUNTARY WORKERS**

Government response to consultation

NOVEMBER 2007

National minimum wage and voluntary workers : Government response to consultation

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INTRODUCTION

1.1 In January of this year the Government announced that it would carry out a review of, and public consultation about, **section 44** of the National Minimum Wage Act 1998 (“the 1998 Act”). Section 44 excludes from qualifying for the national minimum wage (NMW) a category of worker known as ‘voluntary workers’. Voluntary workers may only be employed by certain types of employer (specifically, charities, voluntary organisations, associated fund-raising bodies or statutory bodies – abbreviated here as ‘**qualifying organisations**’) and may receive no monetary payment except for the reimbursement of expenses incurred, or reasonably estimated to have been incurred, in carrying out their voluntary work. They are not entitled to any benefits in kind, but may be provided with subsistence and/or accommodation and any training necessary to carry out their voluntary work. Section 44 was included in the 1998 Act to enable qualifying organisations and unpaid volunteers to continue to operate as they have always done, but without leading to confusion about eligibility for the NMW. The review was undertaken because it has been eight years since the 1998 Act was introduced, and it was timely to consult the voluntary sector about their experience with section 44.

1.2 As well as inviting views about section 44 of the 1998 Act, the consultation document also invited views about exempting from the NMW participants in a **new framework for youth volunteering**. The Russell Commission, reporting to Government in March 2005, called for the creation of a “national framework for youth action and engagement to enhance the diversity, quality and quantity of volunteering opportunities for young people”. It would be possible to achieve the exemption by means of regulations to be made under powers conferred by section 3 of the 1998 Act (either as it stands or, if necessary, as amended).

1.3 The third issue on which views were invited as part of the public consultation was a proposal to exclude from qualifying for the NMW **Cadet Force Adult Volunteers** (CFAVs) who are sponsored by the Ministry of Defence (MoD). The reason for this proposal was to avoid confusion or dispute about CFAVs qualifying for the NMW.

1.4 The consultation document was published on 12 June and the deadline for responses was 4 September. A total of 40 responses were received, and the Government is very grateful to all the organisations and individuals who submitted their views. A number of the responses were from organisations in the third sector that represented their wider membership (eg, Community Service Volunteers, National Council for Voluntary Organisations, Scottish Council for Voluntary Organisations, Volunteering England) or represented specific areas of activity where voluntary workers and volunteers contribute to the work (eg, Red Cross, Cancer Research UK, Mencap, Disability Action). Responses from such organisations were generally based on their own

consultations with their membership, so the views expressed were based on input from that wider audience. Such organisations represented most of the responses made to the consultation (25 in total).

1.5 In addition to some pre-consultation discussions (eg, with Stewardship, Volunteering England, Compact), the consultation period was used as an opportunity to explain and discuss section 44 at a number of stakeholder events, as follows:

- 28 June. A seminar and separate meeting held in Belfast and organised by the Voluntary Development Agency and Citizens Advice. Attended by a number of organisations involved in voluntary work and supported employment (ie, helping people back into work for therapeutic reasons and, longer-term, to enable them to reintegrate back into society with a degree of independence), including: Cedar Foundation, Appleby Trust, Craigavon and Banbridge Volunteer Centre, Down and District Volunteer Centre, Mind Yourself, Shopmobility Belfast, Triangle Supported Employment, Armagh Volunteer Centre.
- 3 July. An event organised by the National Council for Voluntary Youth Services and attended by the chief officers of the member organisations, which are involved in voluntary activities with young people at community, regional and national level. The organisations that attended this event were: Youth Net, Worth Unlimited, Rural Youth Network, Community Matters, Royal Society for the Protection of Birds, Student Action for Refugees, Development Education Action, Youth UK, Youth for Christ, Kids Out, Fairbridge, Girls' Friendly Society Platform, Clubs for Young People, Change Makers, Boys Brigade, Church of England.
- 6 July. A meeting with the UK Volunteering Forum, which brings together the national voluntary development agencies for the four countries, which on this occasion was represented by Volunteer Development Scotland, the Wales Council for Voluntary Action and the Volunteer Development Agency of Northern Ireland.
- 18 July. A meeting with the National Council for Voluntary Organisations and the UK Workforce Hub (which advises the third sector on paid staff, volunteers and trustees).
- 15 August. Discussion with v, one of the organisations mentioned in the consultation document, and which has been established to deliver the Russell Commission recommendations in England.
- 17 August. Discussion with Community Service Volunteers, one of the largest supporters of full-time volunteers in the UK.

1.6 The following annexes are attached:

Annex A: list of those who responded to the consultation

Annex B: list of questions that were included in the consultation

The responses to the consultation (except where confidentiality was requested) are available on request from the BERR library.

1.7 The Government's response to the comments made to the public consultation is set out in this document. This is organised into responses about:

- section 44 of the 1998 Act;
- proposals concerning the Russell Commission's recommendations for a national framework for youth volunteering; and
- proposals concerning MoD's CFAVs.

1.8 Work on the output of the Russell Commission is a devolved matter and is therefore being taken forward by the Office of the Third Sector (OTS) and the devolved administrations in Scotland, Wales and Northern Ireland. The consultation document explained that it would be possible to exempt participants in the framework by using existing powers under the 1998 Act. Any regulations would be subject to the affirmative resolution procedure and therefore debated in both Houses of Parliament.

1.9 The proposals concerning MoD's CFAVs require amendment of the 1998 Act and would therefore be subject to all stages of the parliamentary scrutiny procedure for new legislation.

SECTION 44 OF THE NATIONAL MINIMUM WAGE ACT 1998: VOLUNTARY WORKERS

2.1 The consultation document posed the question:

Do you have any general observations or comments to make about the way in which section 44 of the Act has operated in practice?

Broadly speaking, responses to this open question fell into four categories, namely those who:

- considered that section 44 has worked as intended;
- found the distinctions between worker, voluntary worker and volunteer confusing, as well as the boundaries of permissible monetary payments and benefits in kind;
- considered section 44 too narrow;
- called for section 44 to be replaced.

There was some overlap between these. For example, some organisations accept that section 44 has worked as intended, but nevertheless called for guidance to help improve understanding of the distinctions. The comments made are discussed further below.

Section 44 working as intended

2.2 The first category consisted of Community Service Volunteers, the National Council for Voluntary Organisations, the British Youth Council, Surrey Community Action and the Wales Council for Voluntary Action. These are among the largest supporters of opportunities for volunteers in the UK, representing a number of member organisations. NCVO's experience led them to conclude that "the provisions of the National Minimum Wage Act 1998, and in particular the boundaries between paid and voluntary work within the sector, are understood and working well. There is an awareness of who is, and is not covered by the legislation". CSV considered that "the current arrangements and definitions under section 44 of the National Minimum Wage Act have in the main been helpful and worked well". From their experience of supporting volunteering in Wales, the WCVA thought that section 44 "has been very useful in clarifying the differences between volunteering and employment" and that overall it "appears to be working well". Cancer Research UK noted that they "had not encountered difficulties with adhering to the Act's provisions", though they support the need for updated guidance.

Confusion over definitions, monetary payments and benefits in kind

2.3 The consultation document provided an opportunity to remind individuals and organisations of the relevant distinctions that apply, ie, the distinctions under the 1998 Act between worker and voluntary worker, and the commonly understood meaning of 'volunteer' (which is not caught or covered by the 1998 Act). This issue attracted a number of comments.

2.4 Generally, the significance of the definition of, or term, 'worker' was understood in terms of entitlement to the NMW. However, some found the distinction between voluntary worker and volunteer confusing. The learning disability charity Mencap observed that there is "some confusion about the existence of these two distinct groups which has the potential to cause voluntary organisations some difficulty when attempting to work within the parameters of the legislation". They went on to suggest that it would be better to have one definition of voluntary worker and volunteer. Another national charity involved in supporting people with mental health needs, Together, commented that "Good and safe practice in relation to volunteer opportunities in involvement means that everyone should have a clear understanding and expectations of roles. A good way to do this is through the use of role descriptions".

2.5 The other subject of some confusion was the boundaries of monetary payments and benefits in kind that may be made under section 44. Examples of areas of uncertainty included:

- offering honoraria or gifts
- the practicalities of arriving at a 'reasonable estimate' of expenses
- awarding small prizes such as T-shirts, caps and other commemorative items, especially in connection with sporting events
- monetary payments for subsistence where the voluntary worker is employed as a result of arrangements made between qualifying organisations
- payment as a travel allowance
- pocket money for incidentals

2.6 Overall, the comments made about this issue show that qualifying organisations are more familiar with the commonly understood term 'volunteer' and for the most part consider that they offer opportunities to such people rather than to 'voluntary workers'. Not surprisingly, many of those who commented on this confusion called for clarification through guidance. The same point was made about the boundaries of monetary payments and benefits in kind under section 44. The Low Pay Commission have also made a recommendation that the Government "should review and draw together existing guidance into a single source to provide clear and accessible advice to the voluntary sector"¹.

Section 44 considered too narrow

2.7 There were suggestions, for instance from Community Matters, that the type of qualifying organisation recognised under section 44 should be expanded. ProjectScotland also noted the "increased number of social enterprises and community interest companies are a recent introduction to the sector".

¹ LPC report (Cm 6475), February 2005.

2.8 Some of the responses to the consultation document went further than remarking on the need for greater clarity about the boundaries of monetary payments and benefits in kind under section 44, and called for those boundaries to be expanded or 'relaxed'. The two main suggestions for expanding the boundaries concerned training and childcare. Bates, Wells & Braithwaite (a law firm that advises charities), 'v' and Citizens Advice Bureau called for childcare to be an allowable benefit in kind. Section 44 of the 1998 Act allows "training provided for the sole or main purpose of improving the worker's ability to perform work which he has agreed to do" (section 44(3)(b)). Community Matters also remarked that "Many voluntary organisations like to provide training in general skills not necessarily related to help the performance of the work and Community Matters believes that this should be allowed". The Wales Council for Voluntary Action and Citizens Advice Bureau made similar points.

2.9 Community Matters also proposed alternative provisions on monetary payments that would include payments to "make it easier for low-paid or unwaged people to do voluntary work" (ie, an incentive or reward, rather than reimbursement of actual or estimated expenses). They also called for clarification of the subsistence provisions in the 1998 Act. However, Volunteer Centre Midlothian felt that there was no need for any change in legislation, as "the whole concept of volunteering [is] as an activity undertaken out of choice with no thought of financial remuneration". They also cautioned against the creation of a "low paid second class workforce", through allowing financial remuneration at less than the minimum wage.

Calls for section 44 to be replaced

2.10 Some responses to the consultation mentioned restrictions placed on them by the way in which section 44 operated in practice, but only one called for that section to be replaced. Community Matters consider that the definition of voluntary worker is too narrow and that it leads to confusion with volunteers. They consider that "the optimum solution would be to define the term 'volunteer' and to remove s.44 altogether". Community Matters go on to offer the following definition of volunteer:

"an individual who undertakes to do or perform personally any work or services for a charity, a voluntary organisation, an associated fund-raising body or a statutory body on a voluntary basis, without obligation and without expectation of financial reward"

2.11 Although they did not call for section 44 to be replaced, the response by Stewardship², supported by Mr Richard Timm, expressed the view that "A strict application of the current NMW Regulations will frustrate and hinder charitable endeavour" and they therefore proposed alternatives, including an 'opt-out' from the NMW and a 'volunteer agreement' covering unpaid hours.

² Stewardship is a financial support services organisation for the Christian charity sector.

Government response

2.12 The Government has considered the wide range of views expressed about experience with section 44 of the 1998 Act and concluded that it is working as intended and therefore does not propose to make any changes to it.

2.13 Section 44 has been carefully designed to meet the needs of qualifying organisations while at the same time enabling voluntary workers to receive payment for expenses and certain benefits in kind, without leading to disputes about eligibility for the NMW.

2.14 In general, it is clear what constitutes the reimbursement of expenses, and the grounds on which training, accommodation and subsistence may be provided as benefits in kind. Training provision beyond the needs of the volunteering opportunity, or reimbursement of childcare expenses, represent a significant benefit in kind and as such would change the nature of the relationship between voluntary worker and qualifying organisation.

2.15 Section 44 gives clear guidelines to voluntary organisations and those who volunteer. If these guidelines are followed the volunteering process can continue in confidence that NMW entitlement will not be triggered. The Government therefore does not propose any changes or extensions to the existing parameters of section 44 as these would risk making it more, not less, problematic to resolve any disputes that might arise about employment status. That would not be in the interests of qualifying organisations or voluntary workers.

2.16 The Government does not propose to extend the types of organisation who qualify for an exemption under Section 44. The exemption removes the right to the minimum wage for voluntary workers, and as such it is important that it should be tightly restricted, at the same time minimising the risk of substitution of workers for voluntary workers.

2.17 Section 54 of the NMW Act clearly defines the meaning of “worker” for the purposes of the minimum wage. Section 44 creates a narrow subset of that category- the voluntary worker. Volunteers fall outside the scope of our legislation, and as such it is not appropriate or necessary to create further legislation to define them. However, the responses to the consultation, as well as the Low Pay Commission’s own findings and recommendation, underline the need for updated guidance. The Government will be preparing new guidance in conjunction with interested parties during 2008 and will consider coverage of the issues which have been flagged as confusing during the course of this consultation.

SECTION 3 OF THE NATIONAL MINIMUM WAGE ACT 1998: PROPOSED NEW EXEMPTION FOR PARTICIPANTS IN A FRAMEWORK FOR YOUTH VOLUNTEERING

3.1 The consultation document invited views about a proposal contained in the March 2005 Russell Commission report to create a national framework for youth volunteering. As explained in the consultation document:

The Government is proposing to use section 3(1) to add to Regulation 12 a new exclusion from the national minimum wage of those who participate in schemes that are supported by the national framework. That would therefore apply to ProjectScotland and 'v', and any other parts of the national framework that are eventually developed in Wales, and adopted in Northern Ireland. The Government would explore the use of section 3(1A) if that became necessary in connection with the national framework (paragraph 33).

3.2 Most of those who responded to the consultation commented on this particular proposal. The key points made may be summarised as follows:

- Support for the aims of the Russell Commission and the resulting proposal for a framework for youth volunteering
- Support for a stipend which would open up access to full time volunteering by marginalised groups
- Devolved administrations should develop proposals which best meet their individual needs
- The need for more clarity about the organisational form of the framework, accreditation and eligibility;
- The need for greater clarity about the benefit for voluntary workers who would be exempted (eg, in terms of skills, qualifications).
- Concern about the risk that workers might be substituted by voluntary workers.
- Whether the exemption would apply to qualifying organisations or be extended to other third sector organisations.
- Concern that other voluntary organisations might press for a similar exemption where the monetary payments and benefits they provide and activities are similar to those proposed by the Russell Commission, but which are not organisationally part of the framework.
- The creation of a 'two-tier' regime whereby some voluntary workers would be eligible for monetary payments and benefits in kind as part of the exemption, but others would not.
- Concern about limiting the exemption to a certain age group (ie, 16-25 year olds); and alternatively of an exemption which is too wide
- Smaller organisations may not be able to participate in the framework because they lack funding.

3.3 The TUC proposed that “Rather than simply exempting this group of voluntary workers it would be far more desirable to bring them under the auspices of the New Deal”.

Government response

3.4 The proposal to use section 3(1) and, if necessary, 3(1A) of the 1998 Act to exempt participants in certain full time youth volunteering schemes owes its origin to the recommendations in the Russell Commission report for delivering a step change in youth volunteering. This recommendation is being taken forward by the Office for the Third Sector (OTS) (for England) and the devolved administrations. That is because, unlike employment legislation, responsibility for policy on the third sector is a devolved matter. The Commission’s report emphasised that “decisions on the recommendations will be for each administration to take having made its own assessment of the fit with their circumstances”.

3.5 Using the Russell Commission report as their starting point, OTS and the devolved administrations are in the process of developing the recommendation for a framework which would include a package of support for full-time volunteering schemes. Without an exemption, this package of support would potentially bring the volunteering schemes within the auspices of the National Minimum Wage.

3.6 The Government supports the aims of the Russell Commission report to see an expansion in the “diversity, quality and quantity of volunteering opportunities for young people”. There may be a good case for the exemption of volunteering placements which arise as a result of the Russell Commission report. A package of support for participants in the volunteering schemes concerned could enable many more young people to participate in full time volunteering, playing an important role in meeting the clearly expressed desire of young people to find meaningful ways of contributing to their communities.

3.7 However, the Government recognises concerns expressed during the consultation. The consultation document emphasized that an exemption would “depend on the development of the national framework itself” and added that “It would be important to ensure that the new framework had clearly defined features for the purposes of any exclusions under the Act” (paragraph 33). As a devolved matter, the Office for the Third Sector and the devolved administrations are developing this policy with an awareness that any exemption from the minimum wage would have to be carefully drawn to avoid the scope for exploitation or substitution of workers for volunteers.

3.8 Development of policy includes further consideration of many of the points raised in the consultation, including: organisational clarity; a limit on the duration of any exemption; clarity about the benefit (eg, skills, qualifications) for those who participate in such schemes and the age of participants; and certainty about the criteria that would be used to qualify for the exemption in each country.

3.7 Consideration of many of these points would normally apply to the use of regulations that create new exemptions from the NMW under Regulation 12, and do not affect the devolution of policy on the third sector. Any criteria that are agreed are intended enable the schemes to operate to help achieve the Russell Commission's objectives (quoted in paragraph 1.2) whilst at the same time avoiding loopholes that might be exploited by unscrupulous employers.

3.8. It should also be noted that this response concludes that Section 44 of the NMW Act is working as intended. This will continue to be the clear standard for treatment of voluntary workers under NMW legislation, unaffected by the exemption discussed here. Any exemption would apply narrowly to the schemes that are developed to achieve the objectives of the Russell Commission's recommendations, and will be designed to achieve the best result for such volunteers whilst minimising the risks of exploitation.

3.9 The TUC's suggestion that the schemes supported under the Russell Commission initiative be brought within the New Deal, whilst innovative, would not be a practical measure. The New Deal is a programme to help young people who have been unemployed for 6 months to move off benefits and into paid employment. Though it offers work experience in the voluntary sector for some participants, its focus is clearly to move a defined unemployed group into work and is fundamentally different from the purpose of schemes designed to achieve a step change in youth volunteering, as the Commission recommended.

PROPOSED AMENDMENT TO THE NATIONAL MINIMUM WAGE ACT 1998: CADET FORCE ADULT VOLUNTEERS

4.1 The consultation document invited views on amending the 1998 Act to clarify that Cadet Force Adult Volunteers (CFAVs) do not qualify for the minimum wage. The document invited views on the principle of such an amendment, though it did not include background information about CFAVs. This was not intended to alter the scope of the 1998 Act, but as an avoidance of doubt measure.

4.2 CFAVs perform a supervisory role in respect of the four cadet forces, the Combined Cadet Force, the Sea Cadet Corps, the Army Cadet Force and the Air Training Corps. In that role, CFAVs undergo special security clearance procedures to enable them to have access to MoD facilities and equipment (including firearms and ammunition), and participate in community-based activities that use military themes based on the culture and ethos of the armed forces. The Cadet Forces are sponsored and funded by the MoD but are not members of the Armed Forces (who are exempted from qualifying for the NMW by section 37 of the 1998 Act) or Reserve Forces. The Cadet Forces are not recruiting organisations, but they do help raise awareness of career opportunities in the armed forces. In addition, some CFAVs may receive remuneration for attendance at training days and annual camps. There is no set entitlement to this remuneration.

4.3 Ten of the responses to the consultation commented on this issue. These were from: Army Cadet Force Association (ACFA), Christian Camping International (UK) Ltd, Combined Cadet Force Association (CCFA), Low Pay Commission, Marine Society & Sea Cadets (MSSC), Stewardship, Surrey Community Action, Mr Richard Timm, 'v' and Volunteer Development Agency.

4.4 The associations directly involved and familiar with the work of CFAVs (the ACFA, CCFA and MSSC) were strongly supportive of the proposal to amend the 1998 Act to clarify the position of CFAVs. The ACFA commented that CFAVs

“have a unique status, outside the definitions used in the 1998 Act, and this timely review of the Act should be used to exclude all CFAVs from qualifying for the national minimum wage in order to avoid any doubt about this in future. To do otherwise would be to continue to hold the future of the Cadet Movement in jeopardy”

4.5 The ACFA emphasized the importance of amending the 1998 Act, otherwise “we stand to lose one of the leading national youth movements in this country today, offering as it does an unrivalled opportunity for some 130,000 young people”. They also remarked on the high threshold set for CFAVs (including criminal records checks, MoD security clearance, fitness and training to the level of regular servicemen in some areas), which they consider sets CFAVs apart from other organisations.

4.6 The Low Pay Commission responded “on the basis of the evidence presented” that CFAVs appear to be workers under the current legislation. They were concerned that exempting CFAVs would undermine the rationale for the existing treatment of workers and voluntary workers. Stewardship commented that “It has the appearance of a piecemeal patch-up to address the issues of specific stakeholders rather than a coherent policy of the application of the NMW to volunteer workers”. Christian Camping International (UK) Ltd, felt that their members were carrying out activities similar to the CFAVs and should therefore also be able to make payments for attendance at camps.

Government response

4.7 The Government has considered the responses to the proposal to exempt CFAVs from the NMW and has decided to amend the 1998 Act to make it clear that CFAVs do not qualify for the NMW.

4.8 The Government accepts that CFAVs have a unique status in being linked to the armed forces and their military ethos, undergoing special training and security clearance for the purpose of enabling them to use MoD facilities and equipment (including firearms and ammunition). Any confusion that might arise about eligibility for the NMW could seriously damage the ability of the cadet forces to continue to provide their special training programme for a large group of young people. It is therefore proposed to amend the 1998 Act by means of the Employment Bill scheduled for introduction to Parliament later this year. Again, recognising concerns expressed in the consultation about destabilising the minimum wage rules for voluntary organisations (which on the whole we have concluded work well), the exemption of CFAVs will be tightly drawn and apply only to that narrow group of people.

OTHER ISSUES RAISED: INTERNSHIPS AND WORK PLACEMENTS; THE BENEFITS REGIME

5.1 Some issues related to section 44, and volunteering more generally, were included in a number of the responses. Two issues in particular were emphasized:

- work placements and internships
- concerns about entitlements to benefits

Work placements and internships

5.2 As explained in the consultation document, all workers qualify for the NMW unless one of the exclusions apply, ie, in the 1998 Act itself or under Regulation 12. One of the exclusions is for voluntary workers, as defined in section 44 of the 1998 Act. An example of an exclusion under Regulation 12 is for those on work placements as part of a course of higher education. Another group of people worth mentioning here – outside the scope of the 1998 Act and therefore not defined there – are volunteers, who are not workers and therefore do not qualify for the NMW.

5.3 The only exclusions from the NMW that apply are in the 1998 Act itself or in Regulation 12, or where someone is a volunteer. Any employer who misinterprets those exclusions, or erroneously treats someone as a volunteer, when in fact the person in question is a worker would be in breach of the 1998 Act.

5.4 The TUC, GMB, Unison, BECTU (Broadcasting, Entertainment, Cinematograph and Theatre Union) and Manchester Metropolitan University all expressed concern about the risks of exploiting opportunities for volunteering that are described as ‘work placements’ or ‘internships’ but should properly be regarded as positions for workers that should be paid the NMW. The TUC commented that “It is clear that in many cases, volunteering, work experience and internship are being used by commercial enterprises in these industries to avoid paying the Minimum wage”. BECTU offer this description of the problems they have experienced:

“Problems have arisen because of an increasing trend for individuals acting as runners to be categorised as “volunteers” working for no pay and with perhaps limited expenses. There is sometimes an alleged “training” element – but with a complete absence of any training structure or content. Such unpaid posts are sometimes advertised on internet job sites. We regard this, unequivocally, as exploitation of young people desperate to gain experience in the film/TV sector”

5.5 The Government believes that the 1998 Act and Regulation 12 are clear as to those who qualify for, and those who are exempted from, the NMW. The NMW is now a well established feature of the labour market, and there is no reason why employers – regardless of the sector – should not be

aware of the statutory obligation to pay it to their workers. Some sectors have worked with the Government to develop their own guidance to reiterate the rules on paying the NMW, and that includes guidelines for the TV sector, which is available from BERR's website³. BERR (then DTI) have also previously issued guidance on the minimum wage and therapeutic work⁴. However, as noted above (paragraph 2.14) the Government will be preparing updated guidance about the NMW for the voluntary sector that will also cover work placements and internships. Any workers who consider that they are due the NMW but who are not receiving it may make a complaint to the NMW helpline for HMRC to consider (0845 6000 678). The proposed employment Bill announced as part of the Government's legislative programme will strengthen the penalties imposed on employers who breach the 1998 Act, and enhance the payment of arrears.

NMW and the benefits regime

5.6 A number of organisations commented on the NMW in relation to the benefits regime, including Job Seekers Allowance. This included Mencap, Citizens Advice (Northern Ireland), Disability Action, 'v', British Youth Council, Together and Surrey Community Action.

5.7 Their comments were primarily about the different aspects of the benefits regime, and the interaction with the NMW, rather than about the NMW itself. The Department for Work and Pensions has been made aware of the comments, and believe that their guidance about the benefits regime will helpfully explain current entitlements. Their website contains detailed guidance to volunteering while on benefits:
<http://www.dwp.gov.uk/publications/dwp/2006/vg1-2006.pdf>

³ <http://www.berr.gov.uk/files/file37253.pdf>

⁴ <http://www.berr.gov.uk/files/file36956.pdf>

LIST OF QUESTIONS IN THE CONSULTATION DOCUMENT

- (i) Do you have any general observations or comments to make about the way in which section 44 of the Act has operated in practice?
- (ii) Do you have any comments about the proposal to use section 3 of the Act to exclude from the national minimum wage those who participate in schemes that are supported under the national framework recommended by the Russell Commission for those in the 16-25 age group?
- (iii) If the national framework were to be extended at a future stage to those who have attained the age of 26, do you consider that the descriptions in section 3(1A) cover all relevant activities? If section 3(1A) is not broad enough, can you indicate what kind of description would cover the activities that should be included, and what those activities are?
- (iv) Are there any other circumstances where the position of volunteers or voluntary workers should be similarly clarified (ie, apart from the national framework recommended by the Russell Commission)? If so, what are they?*
- (v) Do you have any views about the need for alternative action to deal with any difficulties that you consider arise for the third sector as a consequence of the Act? If so, what are the difficulties and what alternative action would you suggest?
- (vi) Do you consider that there are difficulties of such significance facing the third sector that section 44 of the Act needs to be amended to introduce a new power to enable changes to be made to the types of organisations that could become qualifying organisations and/or the boundaries of permitted monetary payments or benefits in kind? If so, please specify the difficulties, the types of organisation that should be included and where the boundaries should lie.
- (vii) Do you have any comments about the position of CFAVs?

ANNEX B

LIST OF THOSE WHO RESPONDED TO THE CONSULTATION

Action with Communities in Rural England
Addaction
Army Cadet Force Association
Association of Camphill Communities (UK and Ireland)
Bates, Wells and Braithwaite
British Youth Council
Broadcasting, Entertainment, Cinematograph and Theatre Union
Cancer Research UK
Christian Camping International (UK) Ltd
Citizens Advice (Northern Ireland)
Citizens Advice Bureau UK
Combined Cadet Force Association
Community Matters
Community Service Volunteers
Disability Action (Northern Ireland)
GMB
Heritage Link
Learning and Skills Council
London Organising Committee of the Olympic and Paralympics Games Ltd
Low Pay Commission
Manchester Metropolitan University
Marine Society and Sea Cadets
Mencap
National Council for Voluntary Organisations
ProjectScotland
Red Cross
Richard Timm
Scottish Council for Voluntary Organisations
Stewardship
Surrey Community Action
The Law Society of Scotland
Together
TUC
Union of Shop, Distributive and Allied Workers (Usdaw)
Unison
V
Volunteer Development Agency (Northern Ireland)
Volunteer Development Scotland
Volunteering England
Wales Council for Voluntary Action

