

Unpaid Work Experience (Prohibition) Bill House of Lords Second reading Briefing

The Heritage Alliance

24 October 2017

The Heritage Alliance is England's largest coalition of independent heritage interests. We unite well over 100 organisations which together have over 7 million members, friends, volunteers, trustees and staff. The vast majority of England's historic environment is owned managed and cared for by Heritage Alliance members.

The Alliance welcomes the fact that the Unpaid Work Experience (Prohibition) Bill of is seeking to address concerns over businesses using interns to replace jobs for extended periods of time. However, as currently drafted, the Bill does not exclude charities and could also capture volunteering which is vital to the future of the heritage sector. It is vital the Bill is amended to remove this uncertainty.

Heritage volunteering represents 6% of all voluntary work undertaken in England¹ and the sector simply could not function without volunteers' support. The number of volunteers rose from 575,300 in 2014/15 to 615,500 in 2015/16 - more than the population of Glasgow²!

We are very grateful for the time volunteers donate. The estimated economic value of heritage volunteering, based on National Minimum Wage rates was £520.1 million in 2015/16 which rises to £909.9 million based on regional median hourly earnings.

It is important to recognise that this volunteering is not all in historic houses. Volunteers run steam railways or help fund raise for historic churches. Volunteers help heritage and other organisations function, whether by organising events or helping in the office. The reasons people volunteer in these roles will differ, some will be looking to better understand the sector to help their career but nearly all volunteers are there because they care about these causes and want them to thrive.

As a sector with many small organisations and charities, requiring payment for these roles would simply mean that many may no longer be offered (except perhaps by the biggest organisations in the sector). This would have negative impacts both on society and on the volunteers, themselves. The Heritage Alliance recently held an event looking at heritage and health which highlighted, among other things, how heritage

¹ See para 1.2 of Heritage Counts 2017 Heritage and Society:

<https://content.historicengland.org.uk/content/heritage-counts/pub/2017/heritage-and-the-economy-2017.pdf>

² Population of City of Glasgow in 2011 census was 593,245

<http://www.glasgow.gov.uk/CHttpHandler.ashx?id=16943&p=0>

volunteering can support volunteers' physical and mental health and explored the future for social prescribing of heritage volunteering. It is for these reasons that many people who volunteer do so without payment. Volunteering gives them a sense of community, belonging a hobby etc.

The Alliance does recognise that, for those who would like to volunteer to help further their careers in the sector, there is an issue to address on social mobility. However, this will not be served by removing volunteering roles completely when organisations cannot afford to pay for them.

In our [recent response](#) to the Full Time Social Action Review call for evidence we asked the Government to provide certainty for charities etc which provide opportunities for volunteering/ social action that they will not be liable for the national minimum wage. We also asked the Government to consider improving social mobility by providing funds to allow charities to offer full time social action which pays the national minimum wage for a set period of say a month to allow young people to learn skills that can help them develop.

Issues with the drafting of the Bill

[The Bill](#) would amend the National Minimum Wage Act 1998 to prohibit unpaid work experience lasting for longer than four weeks, by making it compulsory for employers to pay the national minimum wage to individuals undertaking such work experience.

The Bill sets out definitions in clause in a new S.41A(4) of the 1998 Act:

“employer” has the meaning given to it by section 54(4) of this Act, and also includes any organisation which provides an individual with work experience; and

“work experience” means observing, replicating, assisting with and carrying out any task with the aim of gaining experience of a particular workplace, organisation, industry or work-related activity.”

To avoid damaging the heritage and voluntary sectors, the definition of work experience needs to be clarified. As currently drafted it will put many heritage organisations off offering work experience completely. ‘The aim’ in the definition of work experience appears to be based solely on the intention of the person carrying out the work not the employer.

Therefore, a charity could offer a volunteering role but unbeknown to them the person carrying out the volunteering is doing it ‘with the aim of gaining experience of a particular workplace, organisation, industry or work-related activity’. That person could then request payment for outstanding national minimum wage from the charity landing them with an unexpected bill which it may be difficult to pay.

To avoid this, we suggest that the definition could be amended to something like:

“**work experience**” means replicating, assisting with and carrying out any task with the aim of gaining experience of a particular workplace, organisation, industry or work-related activity. For the avoidance of doubt, work experience for the purposes of this Act does not include work experience carried out for charities.”

The term employer in the Bill should be amended to explicitly exclude charities. Otherwise the fear of being liable for paying the national minimum wage, even with an amended definition of work experience may put organisations off offering volunteering altogether.

[S.44 of the National Minimum Wage Act](#) states that ‘A worker **employed by a charity**, a voluntary organisation, an associated fund-raising body or a statutory body does not qualify for the national minimum wage in respect of **that employment**’. [Our emphasis].

This exemption will not apply the vast majority of volunteers as they are not employed. Therefore, they would be caught by the Bill as it stands.

According to [House of Commons library briefing SN00697](#):

‘The Department of Trade and Industry (now the Department for Business, Innovation and Skills) published a consultation document on the Draft National Minimum Wage Regulations in September 1998. Annex 4 of the document [states that] Most volunteers will automatically be excluded from the Act because they are not covered by the definition of "worker", due to the absence of any intention to enter into legal relations and the resulting absence of any contract. However, some volunteers who receive expenses, benefits in kind, and/or subsistence payments might in certain circumstances be regarded as workers under a contract making them "workers". Section 44 of the Act provides an exit for such "voluntary workers" so that if they receive a very limited range of expenses, benefits in kind’.

Therefore, it seems that S.44 NMW was only designed to catch the small number of volunteers who are also workers.

Many volunteers will not be employed, or consider themselves to be employed, by the charity they are volunteering for.

As such the Bill as it stands would create uncertainty for charities. Charities should be explicitly excluded from the text in the Bill. Small organisations do not have the resources to study the law or seek professional advice and many will simply be put off by the perceived cost risk.

For more information contact the Heritage Alliance:

Joe O’Donnell
Policy & Communications Officer

The Heritage Alliance
10 Storey's Gate London
SW1P 3AY
020 7233 0500
policy@theheritagealliance.org.uk