



EMPLOYMENT
LAWYERS
ASSOCIATION

P.O. BOX 353
UXBRIDGE UB10 0UN
TELEPHONE/FAX 01895 256972
E-MAIL ela@elaweb.org.uk
WEBSITE www.elaweb.org.uk

**National Minimum Wage:
Employed Students and the Accommodation Offset**

Response of the Employment Lawyers Association

12 April 2011

ELA Response

National Minimum Wage: Employed Students and the Accommodation Offset

April 2011

The Employment Lawyers Association (“ELA”) is a non-political group of specialist solicitors and barristers practising in the field of employment law. We include those who represent both claimants and respondents in the courts and Employment Tribunals.

A Sub-Committee was set up by the Legislative and Policy Committee of the ELA under the Chairmanship of Bronwyn McKenna of UNISON Legal Department to consider and comment on The National Minimum Wage, Employed Students and Accommodation Offset Consultation. The Government seeks replies to seven questions set out below. Our comments are confined to those matters of immediate relevance to ELA members. The members of the Sub-Committee are Bronwyn McKenna, Sean McHugh and Michael Reed.

1. We would welcome further evidence of the extent to which HEIs employ students to whom they are providing accommodation and any related NMW issues.

ELA does not hold information of this kind.

2. Do you consider that the Government should take no action?

No. We agree that it is necessary to clarify the law for the reasons outlined on page 8 of the consultation document.

3. Do you consider that the Government should amend the law?

Yes. We consider that there is a lacuna in the law and that amendment would avoid unnecessary legal disputes.

ELA is not able to comment on the policy decision in relation to the scope of the definition of higher education. From a legal perspective, however, we believe that maintaining a single definition of higher education in relation to the National Minimum Wage is desirable in order to avoid over complexity and confusion. We would accept that this advantage might be outweighed by compelling policy reasons requiring a different definition.

4. Do you consider that the restriction to students who are provided with accommodation because they are undertaking a course with the HEI is appropriate, or should there be a different test?

This raises a question of policy on which ELA is not able to comment. From a legal perspective, however, a single definition of further education in relation to the National Minimum Wage has the same advantages as a single definition of higher education.

5. Are you aware of grounds for including providers of further education courses in this measure?

ELA does not hold information of this kind.

6. If you believe that providers of further education courses should be included, does the existing definition of these courses cover all the providers who would need to be exempted, or do you have alternative suggestions?

Not applicable

7. If you believe that providers of further education courses should be included, do you agree with the specific proposals for exemption (see para 6.9)?

Not applicable

ELA Working Party:

Bronwyn McKenna – UNISON - Chair

Sean McHugh – Brighton CAB

Michael Reed – Free Representation Unit