**Rewriting employment law for interns: A further examination**

**Introduction:**

The statutory definition of a worker is found in various pieces of legislation, including:

* [Trade Union and Labour Relations (Consolidation) Act 1992 Section 296](http://www.legislation.gov.uk/ukpga/1992/52/contents)
* [Employment Rights Act 1996 Section 230](http://www.legislation.gov.uk/ukpga/1996/18/contents)
* [The Working Time Regulations 1998 regulation 2](http://www.legislation.gov.uk/uksi/1998/1833/contents/made)
* [National Minimum Wage Act 1998 Section 54(3)](http://www.legislation.gov.uk/ukpga/1998/39/section/54)

**Definition:**

***Workers:***

Section 54(3) of the National Minimum Wage Act defines a “worker”:

In this Act “worker” (except in the phrases “agency worker” and “home worker”) means an individual who has entered into or works under (or, where the employment has ceased, worked under)— a contract of employment; or (b) any other contract, whether express or implied and (if it is express) whether oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession or business undertaking carried on by the individual; and any reference to a worker's contract shall be construed accordingly.

The definition of "worker" in clause 52 is quite wide, although no wider than the definition used for the purposes of provisions on unauthorised deductions in the Employment Rights Act 1996, which originated in the Wages Act 1986.

***Voluntary workers:***

Volunteers (who provide their time and effort completely freely) need not be paid the national minimum wage because they do not have any contractual arrangement and therefore are not classed as workers. For example they work for a charity, voluntary organisation, charity shop, school, hospital or similar body; and they receive only reasonable expenses, relevant training and/or subsistence (but not money for subsistence).

***Volunteers:***

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, and/or subsistence payments they will be excluded from the NMW, provided that certain conditions are met.

***Internships:***

“There is no standard definition of what constitutes an internship, no single internship programme even within particular industries and no one framework outlining what an internship should look like. Internships vary in length, content, intensity and quality and employers use internship programmes to meet different organisational needs.[[1]](#footnote-1)”

**Ambiguity:**

Most volunteers will automatically be excluded from the National Minimum Wage 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, and/or subsistence payments they will be excluded from the NMW, provided that certain conditions are met.

Some people who consider themselves “volunteers” could still potentially count as “workers” because they receive some sort of payment or benefit in kind. These workers need not be paid the national minimum wage if they work for a charity, voluntary organisation, charity shop, school, hospital or similar body; and they receive only reasonable expenses, relevant training and/or subsistence (but not money for subsistence). Yet regular payments are likely to give the volunteer the right to the national minimum wage.

However, a genuine honorarium - a payment made without the giver recognising themselves as having any liability or legal obligation- in the form of a gift with no obligation and of a reasonable amount is not likely to give the volunteer the right to the national minimum wage.

They are placed by a charity or similar body with another charity or similar body and they also receive money for subsistence: for example, voluntary workers who have been placed with a hospital or charitable care home by a charity which specialises in such placements, and who are provided with some money to cover living expenses.

*“It is impossible to say categorically that all interns are workers or that all interns with a particular kind of contract or arrangement within an organisation are definitely workers. The only way to know for certain is for an intern to take their case to an employment tribunal and the outcome would apply to that specific case.[[2]](#footnote-2)”*

**Argument:**

Perspective thus argues that internships should be clearly defined in law, removing the ambiguity of what an intern is and how they are classified.

* Amend section 54 of the National Minimum Wage Act to ensure the role of intern is clearly defined.
* Specify the length of time someone has to work for an employer before being classified as a paid intern.
* Thirdly, interns should be paid if they have significant professional responsibilities to fulfill, for example if they are accountable and responsible for delivering 50% of the responsibilities in the job description, with close managerial support for the remainder. A clause such as this would prevent for businesses from taking advantage of interns.

On this basis, the definition of an intern needs to be concise.

**An intern is:**

(a) A junior rank, designed for someone entering a new profession

(b) Someone working temporarily with a firm – for a minimum of a month (a salaried period)

(c) Holding responsible for delivering 50% of the responsibilities in the job description.

(d) Having signed a contractual agreement

**What makes it different from a fixed term contact?**

To be a fixed-term employee two conditions must apply:

* you must have an employment contract with the business you work for
* your employment contract must be ‘fixed-term’, meaning it must end on a particular date, after a certain event or on completion of a task

Examples of fixed-term employees are:

* ‘seasonal’ or ‘casual’  staff taken on for six months during a peak period (for example agricultural workers or seasonal shop workers)
* a specialist employee taken on for the duration of a project
* someone employed to cover during another employee's maternity leave

You are not a fixed-term employee if you:

* have a contract of employment or other contractual relationship with an agency rather than the company you are working (for example temporary or agency workers)
* are a member of the armed forces
* are an apprentice, student or other trainee on a work-experience placement or temporary work scheme

**Conclusion:**

There is no legally binding, formal definition of an intern and this should be changed, either within a new law, or in an amendment to an existing piece of legislation. A definition needs to include a reference to level of work they perform, for example entry level tasks, the length of time an intern is with a firm for, the duties they perform. It should also be a signed agreement.

1. Institute of Public Policy Research Lawton K. And Potter, D. (31 July 2010) *‘Why Interns Need a Fair Wage’* Cited online at: <http://www.ippr.org/publicationsandreports/publication.asp?id=765> (accessed 24/02/11) p. 5 [↑](#footnote-ref-1)
2. Institute of Public Policy Research Lawton K. And Potter, D. (31 July 2010) *‘Why Interns Need a Fair Wage’* Cited online at: <http://www.ippr.org/publicationsandreports/publication.asp?id=765> (accessed 24/02/11) [↑](#footnote-ref-2)