

ANNEX E

To Jo Swinson & David Willetts
From [REDACTED] (Labour Markets x [REDACTED])
Date 17 January 2013

INTERNSHIPS (ADVERTISING AND REGULATION) PRIVATE MEMBERS BILL

Purpose

Should the Government oppose or support Hazel Blears MP's Private Member's Bill (PMB), which proposes to prohibit the advertising of unpaid internships.

Recommendation

[REDACTED]

- approve the draft handling letter for the Parliamentary Business and Legislation Committee at **Annex A**.

Timing

Urgent. We need to secure cross-Government agreement to the Government's position on this Bill before the second reading debate on 1 February.

Summary

1. Hazel Blears has proposed a Bill "to prohibit the advertising of long-term unpaid internships; to regulate conditions of employment for paid internships; and for connected purposes". The Bill has not yet been published.

[REDACTED] The second reading of the PMB is scheduled for Friday 1st February, [REDACTED]
[REDACTED]

3. There is no definition of an internship in minimum wage legislation. The key issue is whether or not interns are workers as defined by minimum wage legislation. If they are, then they are eligible for the minimum wage unless a specific exemption applies. Volunteers are not workers and are not necessarily eligible for the minimum wage. Further details about the position under minimum wage law can be found at **Annex B**.

[REDACTED]

[REDACTED]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

9. [Redacted]

10. [Redacted]

[Redacted]

Copy list:

Secretary of State, Permanent Secretary, Bernadette Kelly, Ceri Smith, Bill Wells, Gaynor Ithell, [REDACTED], Cable SPAD, Willetts SPAD

Finance	SpAds	Press / Comms	Legal	Analysts
N/A	N/A	N/A	[REDACTED]	N/A

Annex A

DRAFT LETTER TO PBL COMMITTEE

The Rt. Hon. Andrew Lansley CBE MP
Leader of the House of Commons
26 Whitehall
London
SW1A 2WH

January 2013

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Annex B

Internships– position under minimum wage law

There is no definition of an internship in minimum wage legislation. Interns are considered in the same way as everyone else with regards to whether the minimum wage is due.

The key issue is whether or not they are a worker as defined by minimum wage legislation. If they are, then they are eligible for the minimum wage unless a specific exemption applies. Volunteers are not workers and are not eligible for the minimum wage.

Whether or not an intern is a worker depends on the contract or arrangement they have with the employer. A worker is someone who works under a contract of employment or any other kind of contract (express or implied) whereby they undertake to do work personally for someone else (and they are not genuinely self-employed).

A contract does not have to be written and can be oral or implied. Key elements in establishing whether someone has a worker's contract include:

- whether there is an obligation on the individual to perform the work and an obligation on the employer to provide the work, and
- whether the individual is rewarded, or entitled to be rewarded, for the work by money or benefits.

Each case has to be considered on its individual facts.

It is legitimate for employers to offer unpaid or 'expenses-only' opportunities where the individual is acting as a volunteer. The term "volunteer" is not defined in legislation because it is sufficient that an individual is not a worker. There is extensive case law considering the statutory definition of "worker" in the context of specific factual scenarios, including where the individual is found to be a volunteer.

In general, a volunteer is someone who gives their services free of charge. They are not paid or given benefits in kind and only given training to do their job. Volunteers have no employment contract relationship with the employer; they are not required to provide their services and the employer has not committed to provide work. Volunteers can be reimbursed out-of-pocket expenses, provided training to undertake their role and can be given small unexpected gifts to thank them for volunteering.