

**NATIONAL MINIMUM WAGE:
EMPLOYED STUDENTS AND THE
ACCOMMODATION OFFSET**

A consultation

JANUARY 2011

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Employed students and the accommodation offset

This consultation seeks views on possible changes to the national minimum wage (NMW) rules on employer-provided accommodation in relation to students who work part-time for their educational institution.

Issued: **18 January 2011**

Respond by: **12 April 2011**

Enquiries to:

Anna Stacey
Employment Relations Directorate
3rd floor Abbey 2
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

Tel: 0207 215 1409

Fax: 0207 215 6414

Email: NMWstudentaccommodation@bis.gsi.gov.uk

This consultation is relevant to: Higher Education Institutions, Further Education Colleges and students whom they employ.

1. Executive summary

The national minimum wage (NMW) rules allow employers who provide accommodation for workers to count it as a benefit in kind towards payment of the NMW, up to a specified limit.

This consultation document seeks input on the extent to which Higher Education Institutions (HEIs) provide accommodation to students and also employ them part-time. It asks whether, and if so how and in what circumstances, HEIs should be excluded from the accommodation offset rules. It also seeks input relating to Further Education Colleges and asks whether they should be included in any change to the law.

2. How to respond

When responding please state whether you are responding as an individual or representing the views of an organisation. If you are responding on behalf of an organisation, please make it clear who the organisation represents by selecting the appropriate interest group on the consultation response form and, where applicable, how the views of members were assembled.

For your ease, you can reply to this consultation online at <http://tinyurl.com/3xqrpqe>

A copy of the consultation response form is enclosed, or is available electronically at: [response form](#). If you decide to respond in this way, the form can be submitted by letter, fax or email to:

National minimum wage consultation
3rd floor Abbey 2
Employment Relations Directorate
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

Fax: 0207 215 6414

Email: NMWstudentaccommodation@bis.gsi.gov.uk

A list of individuals/organisations consulted is available in Annex B. We welcome suggestions of others who may wish to be involved in this consultation process.

3. Additional copies

You may make copies of this document without seeking permission. Further printed copies of the consultation document can be obtained from:

BIS Publications Orderline
ADMAIL 528
London SW1W 8YT

Tel: 0845 015 0010

Fax: 0845 015 0020

Minicom: 0845 015 0030

www.bis.gov.uk/publications

An electronic version can be found at www.bis.gov.uk/consultations

Other versions of the document in Braille, other languages or audio-cassette are available on request.

4. Confidentiality & data protection

Information provided in response to this consultation, including personal information, may be subject to publication or release to other parties or to disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004). If you want information, including personal data that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

5. Help with queries

Questions about the policy issues raised in the document can be addressed to:

Anna Stacey
Employment Relations Directorate
3rd floor Abbey 2
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

Tel: 0207 215 1409
Fax: 0207 215 6414
Email: Anna.Stacey@bis.gsi.gov.uk

6. The proposals

Introduction

6.1 Since the national minimum wage (NMW) came into force in 1999, one of its general principles has been that workers should be remunerated in money, not in benefits in kind. The only exception is accommodation. In its first report, the Low Pay Commission (LPC) recommended: 'With the exception of accommodation, benefits should be excluded from the calculation of the National Minimum Wage. An offset should be allowed where accommodation is provided as a benefit-in-kind. In order to protect workers from unreasonable charges, however, a maximum figure of £20 per week should be set for any deduction for the cost of the accommodation.'¹

6.2 The Government accepted this recommendation. Initially set at £2.85 per day, the accommodation offset has since been updated annually and now stands at £4.61 per day or £32.27 per week (from 1 October 2010).

6.3 The LPC noted in a later report that in deciding on the level for the accommodation offset it had not tried to reflect the actual value of accommodation to the worker, or its cost to the employer. Allowing a market rate would not have recognised the benefits to the employer of providing accommodation. Moreover, the standard and type of accommodation provided, and consequently its market value, could vary considerably.² In its latest report the LPC commented that it did not believe substantial change to the offset rules was necessary.³ Accordingly, this consultation seeks views only on the issues outlined in paras 6.5-6.11 rather than on the accommodation offset more widely, e.g. its level or the circumstances in which it applies.

How the accommodation offset works

6.4 As the NMW guidance at www.businesslink.gov.uk explains:

'Living accommodation provided by the employer to the worker is the only benefit in kind that can count towards a worker's NMW pay.'

'Where you charge the worker for the accommodation, either by making a deduction from the worker's pay or by accepting a payment from the worker, the worker's NMW pay will only be affected if you charge more than the accommodation offset. The amount of the

¹ *The National Minimum Wage – First Report of the Low Pay Commission* (1998).

² *The National Minimum Wage Accommodation Offset – a Review by the Low Pay Commission* (1999).

³ *National Minimum Wage – Low Pay Commission Report 2010*.

charge over and above the level of the offset will reduce the worker's pay for NMW pay purposes.⁴

The accommodation rules apply even where the provision of the accommodation by the employer and the worker's employment are not dependent upon one another.

Example of the accommodation offset not being complied with

A 22 year old worker is paid £5.93 per hour for a 40 hour week (exactly the current NMW rate) – a total of £237.20 per week. Accommodation is provided 7 days a week, for which the employer charges rent of £75 per week.

The accommodation offset in this case is £32.27 (£4.61 x 7). The rent charged by the employer is £42.73 more than the offset (£75 minus £32.27), so £42.73 must be deducted from the worker's total pay to find how much counts towards the worker's NMW pay: £237.20-£42.73 = £194.47. Dividing this figure by the 40 hours worked produces an hourly rate of only £4.86, which is less than the worker's legal entitlement. Even though the initial pay was based on the current NMW rate, the fact that the employer charges more rent than the worker's accommodation offset allows results in the worker not receiving the NMW. The worker is owed arrears of £42.73 per week.

As this example shows, the accommodation offset acts as a cap on the amount of rent employers can charge if they propose to pay the minimum wage.

Higher Education Institutions (HEIs) and the accommodation offset

6.5 The Government has recently become aware of potential problems where some HEIs provide accommodation to students and also employ them, for instance as student mentors or in some other capacity. The accommodation offset rules cover these circumstances, although they were not specifically intended to, and may result in an underpayment of the NMW – which is, in effect, an unintended advantage for students. Without a change, there is potential for significant cost to HEIs.

Consultation Question

- 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.**

⁴ The rules are different when accommodation is provided free of charge or at a rent below or equal to the accommodation offset rate. For further information see the Business Link guidance.

6.6 If issues relating to HEIs and the accommodation offset are widespread, the Government believes it has two options:

- Option A: take no action
- Option B: amend the law

Option A

6.7 We do not believe that doing nothing is acceptable. If the Government had been aware of a potential problem when the legislation was first put in place, it is likely that HEIs providing accommodation for students and employing them on a part-time basis would have been exempted from the offset rules. The relationship between an HEI and its students is primarily educational. Where an HEI employs students on a part-time basis the relationship is also that of employer and worker, but it is not akin to the circumstances which the offset rules were designed to cover: the protection of vulnerable workers whose employers might have sought to avoid paying their workers the NMW by levying excessive rent for their accommodation.

Consultation Question

2 Do you consider that the Government should take no action? – Yes/No – if yes, please explain why.

Option B

6.8 We believe that amending the law would be the better approach, given its unintended effect in this context. Although this consultation seeks further information about the issue, our current evidence suggests that HEIs are generally unaware of the accommodation offset rules. If that is the case, amending the law so that it does not apply to HEIs would result in no financial loss to students they accommodate and employ. The change would be from an unintended advantage which they are currently not receiving to not having that advantage.

6.9 There is already an analogous exemption for employees of social housing providers, where their accommodation does not relate to the job. In the present case the amendment might be achieved by disapplying the offset rules where an employer is a provider of higher education courses and the student is provided with accommodation because they are undertaking one of these courses. Higher Education Courses are already defined in the NMW regulations, for other purposes, as:

- (a) in England and Wales, a course of a description referred to in Schedule 6 to the Education Reform Act 1988;
- (b) in Scotland, a course of a description falling within the definition of "fundable higher education" as defined in section 5(3), (4) and (5) of the Further and Higher Education (Scotland) Act 2005;
- (c) in Northern Ireland, a course of a description referred to in Schedule 1 to the Further Education (Northern Ireland) Order 1997.⁵

The amendment would not extend to cases in which students live in student accommodation provided by a third party and are employed by the same third party.

Consultation Question	
3	Do you consider that the Government should amend the law? – Yes/No – if yes, would the existing definition of higher education courses cover all the providers who need to be exempted, or do you have alternative suggestions?

6.10 We believe that the amendment would best be restricted to cases in which the student is provided with the accommodation because they are a student. However, there might be other ways to restrict this amendment to cases where the relationship between the student and the HEI is one of receiving/providing education, as opposed to one of employee/employer. For example, the exemption could be limited to full time students, or there could be a maximum cap on the hours worked.

Consultation Question	
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?

6.11 Providers of further education courses also need to be considered. Such courses are also already defined, for other purposes, in the NMW regulations:

- (a) in England, a full-time or part-time course of education that is suitable to the requirements of persons who are over compulsory school age and that-
 - (i) is funded by the Young People’s Learning Agency for England;
 - (ia) is funded by the Chief Executive of Skills Funding;
 - (ii) is funded by a local authority,

⁵ National Minimum Wage Regulations 1999 (as amended), Regulation 12(9).

- (iii) leads to a qualification to which part 7 of the Apprenticeship, Skills, Children and Learning Act 2009 applies which is awarded or authenticated by a body which is recognised by the Office of Qualifications and Examinations Regulation under section 132 of that Act in respect of the qualification, or
- (iv) leads to a qualification that is approved pursuant to section 98 of the Learning and Skills Act 2000, except that it does not include a higher education course;
- (b) in Wales, a full-time or part-time course of education that is suitable to the requirements of persons who are over compulsory school age and that -
 - (i) is funded by the Welsh Ministers,
 - (ii) is funded by a local authority,
 - (iii) leads to a qualification that is accredited by the Welsh Ministers pursuant to section 30 of the Education Act 1997, or
 - (iv) leads to a qualification that is approved pursuant to section 99 of the Learning and Skills Act 2000, except that it does not include a higher education course;
- (c) in Scotland, a course of "fundable further education" as defined in section 5(1) and 5(2) of the Further and Higher Education (Scotland) Act 2005;
- (d) in Northern Ireland, a full-time or part-time course of education or training as defined in article 3(1) and 3(2) of the Further Education (Northern Ireland) Order 1997.⁶

Consultation Question	
5	Are you aware of grounds for including providers of further education courses in this measure? – Yes/No – if yes, can you provide information about the extent of institutions and learners who would be affected, with any details of the current arrangements and likely impact?
Consultation Question	
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?
Consultation Question	
7	If you believe that providers of further education courses should be included, do you agree with the specific proposals for

⁶ National Minimum Wage Regulations 1999 (as amended), Regulation 12(9B).

	exemption (see para 6.9)? – Yes/No – if no, please explain why not
Consultation Question	
8	Do you have any other comments on the issue set out in this consultation?

7. What happens next?

This consultation will close on 12 April 2011. The Government expects to publish a response in May 2011. If the Government concludes that the law should be changed, the necessary amendments to the NMW Regulations would be expected to come into force on 1 October 2011.

Annex A The Consultation Code of Practice Criteria

1. Formal consultation should take place at a stage when there is scope to influence policy outcome.
2. Consultation should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. Consultation exercise should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Comments or complaints

If you wish to comment on the conduct of this consultation or make a complaint about the way this consultation has been conducted, please write to:

Tunde Idowu
Department for Business, Innovation and Skills Consultation Co-ordinator
1 Victoria Street
London
SW1H 0ET
Telephone: 020 7215 0412 Babatunde.Idowu@bis.gsi.gov.uk

Annex B List of individuals/organisations consulted

Advisory, Conciliation and Arbitration Service (Acas)
Association of Colleges
Association of Labour Providers (ALP)
British Chambers of Commerce (BCC)
British Hospitality Association
British Retail Consortium
Chartered Institute of Personnel and Development
Citizens Advice Bureau (CAB) inc Citizens Advice Northern Ireland
Confederation of British Industry (CBI)
EEF
Employment Lawyers Association
Employment Tribunals Service (ETS)
Federation of Small Businesses
Forum of Private Business
Gangmaster Licensing Authority
GMB – Britain’s General Union
GuildHE
HM Revenue and Customs
Institute of Directors (IoD)
Low Pay Commission (LPC)
National Union of Students
Northern Ireland Assembly
Recruitment and Employment Federation
Scottish Government
Scottish Trades Union Congress
Trades Union Congress (TUC)
Union of Shop, Distributive and Allied Workers (USDAW)
Unison
Unite
Universities and Colleges Employers Association
Universities UK
Welsh Assembly
Work Foundation

Annex C Response form and consultation questions

The closing date for this consultation is 12 April 2011.

You can complete this response form online through Survey Monkey: <http://tinyurl.com/3xgrpge>

Alternatively, you can email, post or fax completed response forms to the Department for Business, Innovation and Skills (BIS):

Email: NMWstudentaccommodation@bis.gsi.gov.uk

Postal address:

National minimum wage consultation
3rd floor Abbey 2
Employment Relations Directorate
Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET

Fax: 0207 215 6414

The Department may, in accordance with the Code of Practice on Access to Government Information, make available, on public request, individual responses.

Name:

Organisation (if applicable):

Address:

Please state whether you are responding as an individual or representing the views of an organisation, by selecting the appropriate group. If responding on behalf of a company or an organisation, please make it clear who the organisation represents and, where applicable, how the views of the members were assembled. Please tick the box below that best describes you as a respondent to this consultation:

	Business representative organisation/trade body
	Central government
	Charity or social enterprise
	Individual
	Large business (over 250 staff)
	Legal representative
	Local government
	Medium business (50 to 250 staff)
	Micro business (up to 9 staff)
	Small business (10 to 49 staff)
	Trade union or staff association
	Other (please describe):

Consultation questions

Q 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.

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

Yes [] No []

If yes, please explain why:

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

Yes [] No []

If yes, would the existing definition of higher education courses cover all the providers who need to be exempted or do you have alternative suggestions?

Q 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?

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

Yes [] No []

If yes, can you provide information about the extent of institutions and learners who would be affected, with any details of the current arrangements and likely impact?

Q 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?

Q 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)?

Yes [] No []

If no, please explain why not:

Q 8 Do you have any other comments on the issue set out in this consultation?

Annex D Impact Assessment

<p>Title: Amendment of National Minimum Wage regulations to cover changes in accommodation offset rules</p> <p>Lead department or agency: Department for Business Innovation and Skills</p> <p>Other departments or agencies:</p>	Impact Assessment (IA)
	IA No: BIS0143
	Date: 26/10/2010
	Stage: Consultation
	Source of intervention: Domestic
	Type of measure: Secondary legislation
<p>Contact for enquiries: Charmaine Phillips</p>	

Summary: Intervention and Options

What is the problem under consideration? Why is government intervention necessary?

The National Minimum Wage (NMW) accommodation offset was introduced with the intended purpose of protecting vulnerable workers whose employers might have sought to avoid paying their workers the NMW by levying excessive rent for their accommodation. However, the Government has become aware of situations in which Higher Education Institutions rent accommodation to students and employ them on a part time basis which could result in underpayment of the NMW. The offset regulations were not intended to cover these circumstances and hence Government intervention is necessary to amend this regulation oversight.

What are the policy objectives and the intended effects?

To ensure that the accommodation offset rules do not apply in specified circumstances where Higher Education Institutions provide students with accommodation and employ them on a part time basis.

What policy options have been considered? Please justify preferred option (further details in Evidence Base)


Beyond taking no action, the option considered is to amend the law so that Higher Education Institutions are taken out of scope from the accommodation offset rules in specified circumstances.

When will the policy be reviewed to establish its impact and the extent to which the policy objectives have been achieved? It will be reviewed 10/2013

Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review? Yes

Ministerial Sign-off For consultation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.

Signed by the responsible Minister:  Date: 18 January 2011

Summary: Analysis and Evidence

Policy Option 1

Description:

Remove HEI from scope of accommodation offset rules

Price Base Year	PV Base Year 2010	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: Optional	High: Optional	Best Estimate: 0

COSTS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	1	£13.5m	£116.5m
High		£20.3m	£174.8m
Best Estimate		£16.9m	£145.7m

Description and scale of key monetised costs by 'main affected groups'

Students working part time on low pay for Higher Education Institutions and renting accommodation from them- they will no longer be able to claim back the amount their rent exceeds the maximum accommodation offset. The cost per student is £67.73 per week. With approximately 40 - 60 students affected in each of the 166 Higher Education Institutes; the aggregated cost to all students will be between £14m-£20m.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price) Year	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	1	£13.5m	£116.5m
High		£20.3m	£174.8m
Best Estimate		£16.9m	£145.7m

Description and scale of key monetised benefits by 'main affected groups'

Higher Education Institutes (HEI) - reduction in employment costs. Will not have to pay the gap between weekly rent charged and National Minimum Wage offset when they employ part time students who also rent accommodation from them. The saving per HEI is £67.73 per student. Assuming there are approximately 40 - 60 students affected per HEI total benefit to each HEI is £82,000 - £122,000. Aggregating to all HEI gives a total benefit per year as between £14m-£20m.

Other key non-monetised benefits by 'main affected groups'

Key assumptions/sensitivities/risks

Discount rate (%) 3.5%

Main assumptions can be found in the impact assesment. During the impact assesment we have assumed full compliance.

The best estimate has been calculated by using the midpoint assumption that 50% of non academic 'atypical' workers including part-time and temporary workers will be students. During the Impact Assesment the upper rate of 60% and lower rate of 40% were used to estimate the range of costs and benefits.

The costs and benefits in this IA represent transfer payments from students to HEIs.

Impact on admin burden (AB) (£m): New AB: £0	AB savings: £0	Net: £0	Impact on policy cost savings (£m): Policy cost savings:	In scope Yes/No
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Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?		United Kingdom			
From what date will the policy be implemented?		01/10/2011			
Which organisation(s) will enforce the policy?		HMRC			
What is the annual change in enforcement cost (£m)?		0			
Does enforcement comply with Hampton principles?		Yes			
Does implementation go beyond minimum EU requirements?		N/A			
What is the CO ₂ equivalent change in greenhouse gas emissions? (Million tonnes CO ₂ equivalent)		Traded: N/A		Non-traded: N/A	
Does the proposal have an impact on competition?		No			
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?		Costs: 0		Benefits: 0	
Annual cost (£m) per organisation (excl. Transition) (Constant Price)	Micro n/a	< 20 n/a	Small n/a	Medium n/a	Large n/a
Are any of these organisations exempt?	Yes/No	Yes/No	Yes/No	Yes/No	Yes/No

Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties ⁷ Statutory Equality Duties Impact Test guidance	No	36
Economic impacts		
Competition Competition Assessment Impact Test guidance	No	36
Small firms Small Firms Impact Test guidance	No	36
Environmental impacts		
Greenhouse gas assessment Greenhouse Gas Assessment Impact Test guidance	No	
Wider environmental issues Wider Environmental Issues Impact Test guidance	No	
Social impacts		
Health and well-being Health and Well-being Impact Test guidance	No	
Human rights Human Rights Impact Test guidance	No	
Justice system Justice Impact Test guidance	No	
Rural proofing Rural Proofing Impact Test guidance	No	
Sustainable development Sustainable Development Impact Test guidance	No	

⁷ Race, disability and gender Impact assessments are statutory requirements for relevant policies. Equality statutory requirements will be expanded 2011, once the Equality Bill comes into force. Statutory equality duties part of the Equality Bill apply to GB only. The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in **References** section.

References

Include the links to relevant legislation and publications, such as public impact assessment of earlier stages (e.g. Consultation, Final, Enactment).

No. Legislation or publication

- 1 Higher Education Statistics Authority
http://www.hesa.ac.uk/index.php/component/option,com_datatables/Itemid,121/
- 2 Accommodation Costs Survey 2009/10 conducted by Unipol and National Union of Students.
http://resource.nusonline.co.uk/media/resource/WEB_SW_NUS_UNIPOL_Microsoft%20Word%20-%20Accommodation_Costs_Survey_2010_FINAL.pdf

3

4

+ Add another row

Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete the **Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

Annual profile of monetised costs and benefits* - (£m) constant prices

	Y ₀	Y ₁	Y ₂	Y ₃	Y ₄	Y ₅	Y ₆	Y ₇	Y ₈	Y ₉
Transition costs										
Annual recurring cost										
Total annual costs										
Transition benefits										
Annual recurring benefits										
Total annual benefits										

* For non-monetised benefits please see summary pages and main evidence base section

The annual profile of monetised cost and benefits can be found on Table 1 pg 12.

Evidence Base (for summary sheets)

A: Strategic overview

Existing Government initiatives

Since the National Minimum Wage (NMW) came into force in 1999, one of its general principles has been that workers should be remunerated in money, not in benefits in kind. The only exception is accommodation. In its first (1998) report, the Low Pay Commission (LPC) recommended: 'With the exception of accommodation, benefits should be excluded from the calculation of the National Minimum Wage. An offset should be allowed where accommodation is provided as a benefit-in-kind. In order to protect workers from unreasonable charges, however, a maximum figure of £20 per week should be set for any deduction for the cost of the accommodation.'

The Government accepted this recommendation. Initially set at £2.85 per day, the accommodation offset has since been updated annually and now stands at £4.61 per day (from 1 October 2010).

The LPC noted in a later report, 'when deciding on the level for the accommodation component, we did not seek to reflect the actual value of accommodation to the worker, or the cost to the employer. We believe that it would be inappropriate and impracticable to do so. Allowing a market rate would not have recognised the benefits to the employer of providing accommodation. Furthermore, the standard and type of accommodation provided, and consequently its market value, can vary considerably.' In its latest (2010) report, the LPC commented: 'Last year, we requested more detailed evidence on the operation of the accommodation offset but received little. On the basis of information available to us, we have concluded substantial change is not necessary. We will continue to review the operation of the offset each year'.

B: The issue

What is the problem under consideration? Why is government intervention necessary?

The national minimum wage (NMW) accommodation offset was introduced with the intended purpose of protecting vulnerable workers from unreasonable charges. Employers may seek to avoid paying their workers NMW by levying excessive rent for their accommodation.

However, the Government has become aware of potential problems where some Higher Education Institutions (HEIs) rent accommodation to students and also employ them for a limited number of hours a week, for instance as student mentors or in some other capacity. Although the accommodation offset rules were not specifically intended to cover these circumstances, they may result in an underpayment of the NMW.

Box 1: Illustrative examples of how the accommodation offset works

Example 1

Adam is a 19 year old student who works in his university bar for 14 hours per week. He gets paid £4.92 per hour – earning a total of £68.88 per week. University accommodation is provided 7 days per week, for which the university charges rent of £70.38 including bills.

The accommodation offset in this case is £32.27 ($£4.61 \times 7$). The rent charged by the university exceeds this by £38.11 ($£70.38 - £32.27$), which must be deducted from the worker's total pay to find how much of it counts towards the NMW: $£68.88 - £38.11 = £30.77$. Dividing this by total number of hours worked produces an hourly rate of only £2.20 ($£30.77/14$), £2.72 per hour less than the worker's legal entitlement. Even though initial pay meets the current NMW rate, the fact that the employer charges more rent than the accommodation offset allows for means that the student is not receiving the NMW.

Example 2

Claire is an 18 year old student who works in her university restaurant for 14 hours per week. She gets paid £4.92 per hour – earning a total of £68.88 per week. University accommodation is provided 7 days per week, for which the university charges rent of £90.00 including bills.

The accommodation offset in this case is £32.27 ($£4.61 \times 7$). The rent charged by the university exceeds this by £57.73 ($£90 - £32.27$), which must be deducted from the worker's total pay to find how much of it counts towards the NMW: $£68.88 - £57.73 = £11.15$. Dividing this by total number of hours worked produces an hourly rate of only £0.80 ($£11.15/14$), £4.12 per hour less than the worker's legal entitlement. Even though initial pay meets the current NMW rate, the fact that the employer charges more rent than the accommodation offset allows for means that the student is not receiving the NMW.

The Government has recently become aware of potential problems where some HEIs provide accommodation to students and also employ them. In light of this we believe HEIs will wish to bring themselves in line with the law. The cost to the HEIs of doing this is estimated later on in the Impact Assessment. Therefore, government intervention is necessary to amend this oversight in the regulation of the accommodation offset.

C: Objectives

To ensure that the accommodation offset rules operate fairly in the HEI sector.

D: Options identification

Option A): do nothing.

We do not believe that doing nothing is acceptable. If the Government had been aware of a potential problem when the legislation was first put in place, it is likely that HEI providing accommodation for students and employing them on a part-time basis would have been exempted from the offset rules. The relationship between a HEI and its students is primarily educational. Where an HEI employs students on a part time basis the relationship is also that of employer and worker but, it is not akin to the circumstances which the offset rules were designed to cover: the protection of vulnerable workers whose employers might have sought to avoid paying their workers the NMW by levying excessive rent for their accommodation.

Option B:) amend the law so that Higher Education Institutions are taken out of scope from the accommodation offset rules.

We believe that amending the law would be the better approach, given its unintended effect in this context. There is already an analogous exemption for employees of social housing providers, where their accommodation does not relate to their job.

The amendment might be achieved by disapplying the offset rules where an employer is a provider of higher or further education courses, as they already defined, for other purposes, in the NMW regulations and the student receives accommodation because they are undertaking one of these courses.

E: Analysis of option

Costs and benefits

The consequence of amending the law so that HEIs are in some circumstances taken out of scope from the accommodation offset rules is that HEIs will no longer in these circumstances have to adjust pay to account for the accommodation offset. This will lead to a redistribution of wealth as the money is no longer transferred from the HEI to the student; hence the gain to the HEI in these circumstances is equal to the student loss. However, our current evidence suggests that HEIs are generally unaware of the accommodation offset rules. If that is the case, amending that law so that it does not apply to HEIs would result in no financial loss to students they accommodate and employ. The change would be from an unintended advantage which they are currently not receiving to not having that advantage.

To measure this redistribution of wealth there are two key elements that are needed: The number of students affected by the policy change and the extent to which the accommodation offset is used.

Estimated Student population affected by proposal

Total student population

The Higher Education Statistics Authority (HESA) estimates that in 2008/09 the total number of higher education enrolments at UK Higher Education Institutions was 2,396,055⁸.

Student population in low paid employment

Depending upon the interpretation of possible misreporting of wages within the Labour Force Survey, roughly 20% to 40% of those who answer questions on their income earn around the NMW. The most reliable assumption is that 30% of students, which is the midpoint, are earning around the NMW.

Although the Labour Force Survey estimates that approximately 30% of students in employment earn around the NMW a higher estimate of 50% is needed. This higher estimate accounts for the fact that students in employment earning slightly above the NMW could also be affected. It may be that a higher fraction is affected, however, the higher the wage the lower the adjustment for a given rent level, so this estimate balances the two factors.

⁸ http://www.hesa.ac.uk/index.php/component/option,com_datatables/Itemid,121/

Students in low paid employment average weekly hours worked

The Labour Force Survey shows that students employed around the minimum wage work on average 14 basic actual hours per week. It is difficult to calculate the number of weeks worked in a year but one basic assumption is to take three 10 week terms, totalling 30 weeks.

Students living in university accommodation

According to the Accommodation Costs Survey⁹ 2009/10 conducted by Unipol and National Union of Students (NUS), **22%** of the student population live in student accommodation.

The survey estimates that **78%** of purpose-built provision was institutionally owned and managed housing.

The average rent in institutional accommodation in 2009/10 was £98.34.

It is important to note the severe regional difference of average weekly rent. The Accommodation Costs Survey found that the lowest average weekly rent for accommodation owned by the institution was **£80.38** in the North West. The highest average weekly rent was **£129.65** in London. Therefore it may be advantageous when calculating the costs and benefits of this policy to use a weighted average of the average weekly rent weighted by the proportion of students living in institution maintained property by region.

Number of Higher Education Institutions affected

The Higher Education Statistics Authority (HESA) data shows that there are **166** Higher Education Institutions in the UK with approximately 120 of these being universities. The legislation would seem to logically apply to the former group as the residency employer relationship would still apply.

If the policy decision is to include Further Education Institutions (FEIs) there may also be some cases in which FEIs are affected by the policy amendment. However, we anticipate that the total cost for the policy for FEIs will be covered by the sum estimated for HEIs, as we assume that the number of FEIs renting accommodation to and employing their students will be comparatively small. We will use the consultation to assess if this is a reasonable assumption to make.

Number of non-academic 'atypical' staff per Higher Education Institutions who are students

The Higher Education Statistics Authority (HESA) staff data suggest there were a total of 400,000 non-academic employees in UK universities in 2008/09. Just under half of these (**190,000**) are categorised as 'atypical' staff including part-time and temporary positions. Therefore on average each UK University has approximately **1200** atypical staff.

This can reasonably be taken as an upper bound of student employment within the HEIs themselves (although some could be categorised in other ways it is hard to identify). A conservative assumption may be that half of these employees are students employed for increase in the HEIs term-time activity. However, to calculate a far superior estimate of the total monetary benefit it will be advantageous to calculate the number of 'atypical' workers that are students by using a range. The lower bound will be 40% of 'atypical' workers are students and

⁹ http://resource.nusonline.co.uk/media/resource/WEB_SW_NUS_UNIPOL_Microsoft%20Word%20-%20Accommodation_Costs_Survey_2010_FINAL.pdf

the upper limit will be 60% of 'atypical' workers are students. This results in approximately 40 – 60 students employed per HEI.

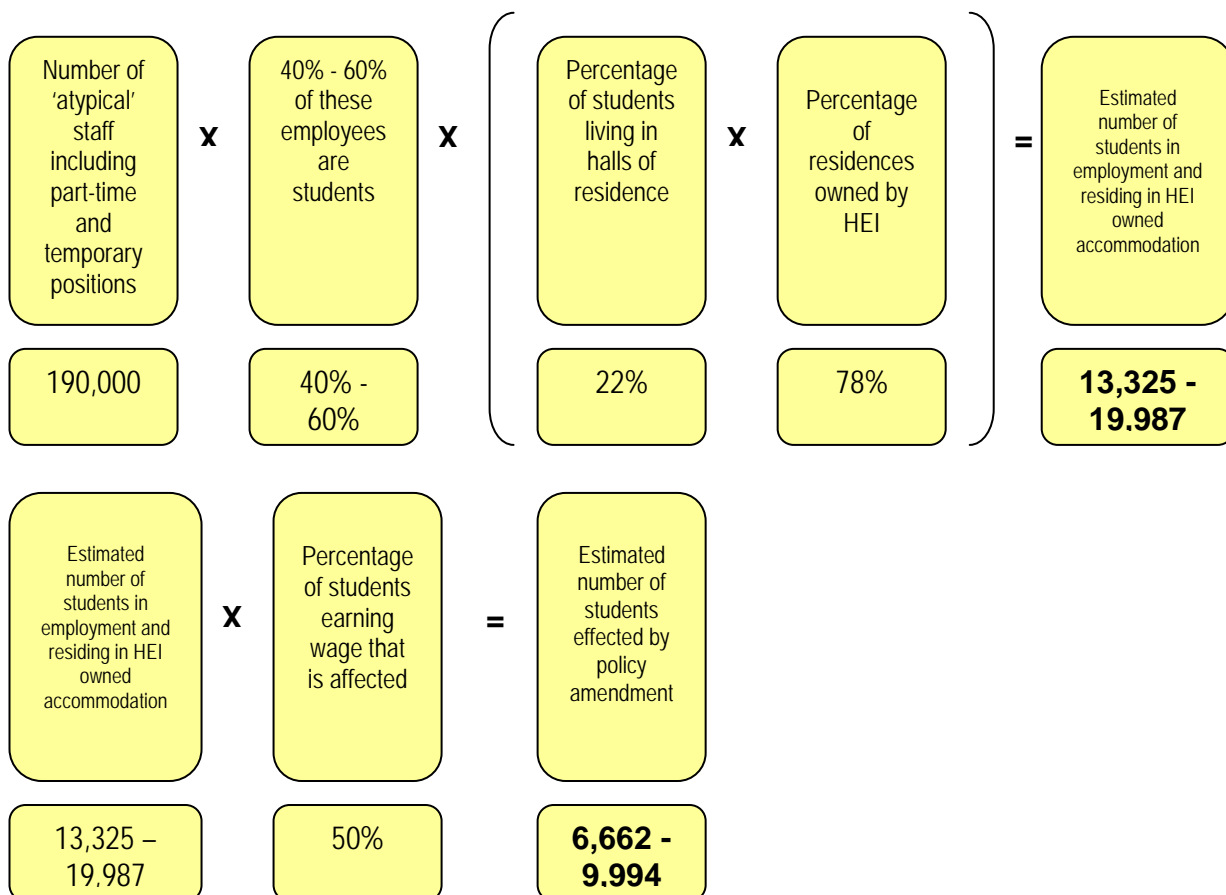
We have taken a proportion of atypical workers as all atypical jobs will not be student based. Atypical jobs could also include such jobs as cleaners and maintenance etc. Due to the assumption being arbitrary and not based on evidence the consultation will be used to assess if it is an effective range to capture the true amount.

Estimated number of students in low paid employment and live in Higher Education Institution owned accommodation

To estimate the number of students who will be affected by the legislation it is required to calculate those who both work in low paid part time employment for the Higher Education Institution and live in accommodation owned by the institution. BIS estimate this figure at **6,662 – 9,994**.

Figure 1. illustrates how to calculate how many students are potentially affected by the policy.

Figure 1. Estimated number of students affected



Source: BIS estimates. Some figures have been rounded.

Box 2: Methodology used to estimate number of students affected

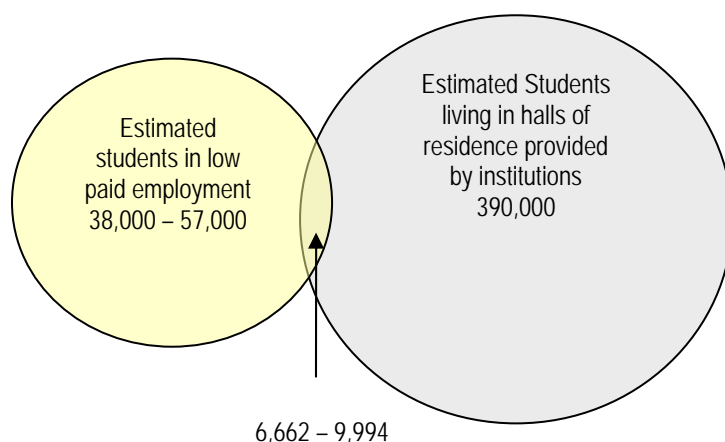
Step one: Take the estimated number of 'atypical' staff including part-time and temporary positions and multiply by the assumption that 40% -60% of these employees are students.

Step two: To find out the percentage of the student employees that live in accommodation which are owned by the Institution firstly multiply the 22% of students living in accommodation by 78% the percentage of accommodation that are Institutionally owned. Then apply the resulting percentage to the number of student employees.

Step three: Apply the assumption that approximately 50% of the student employees that live in HEI owned accommodation earn a wage affected.

Result: This calculation estimates the total number of students in low paid employment and residing in institutionally owned accommodation is approximately 6,662 -9,994. Dividing this result by the number of HEIs (166) gives 40 - 60 students affected per HEI.

Figure 2. Proportion of students in low paid employment and residing in institution owned accommodation



Source: BIS estimates. Figures have been rounded.

Total estimated monetary impact

Using the above assumptions in a given week a student aged 18-20 employed at the NMW rate by their HEI earns £68.88 (£4.92*14) at rates applicable from 1st October 2010.

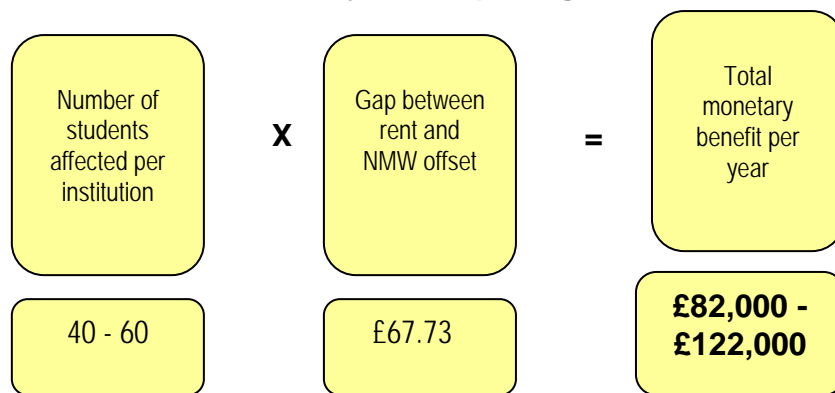
To estimate the total monetary benefit the gap between the NMW offset and the rent needs to be calculated. To calculate a far superior estimate of the total monetary benefit it will be advantageous to calculate the weighted average weekly rent. The regional average weekly rent was weighted by proportion of students in institution maintained property by region. This will incorporate the significant differences in the average rent which is seen across the country.

The weekly offset allowable under the NMW is £32.37 (£4.61*7).

Using the average weekly rent in institutional owned accommodation of £100 based on the weighted average; the rent charged by HEIs exceeds the accommodation offset by £67.73 (£100.00-£32.27). Deducting this from the student’s total weekly pays gives £1.15 (68.88-67.73). Dividing this by the hours worked produces an hourly rate of just £0.08 per hour, £4.84 per hour less than the student’s legal entitlement.

With approximately 40 -60 students per institution working 30 weeks per year being owed £67.73 per week worked, the total savings would be roughly £81,550 - £122,325 per year for an average sized institution. Aggregating this result to all HEIs gives the total saved per year as between £14m -£20m. This can be interpreted as the ongoing cost if the legislation is not changed assuming that HEIs do not change their policies to exclude students living in institution owned accommodation.

Figure 3. Total estimated monetary benefit per Higher Education Institution



Source: BIS estimates. Figures have been rounded.

Box 3: Methodology used to calculate benefit to HEIs

Step one: Calculate the number of students affected for the whole of the UK.

Step two: Calculate the gap between the rent paid by students and the accommodation offset.

Step three: Multiply the total number of students affected by the gap to provide the total monetary impact of the policy per HEI.

Total monetary benefit

Assuming the HEIs are compliant with the law the implementation of the policy change so that HEIs are in some circumstances taken out of scope from accommodation offset will reduce HEIs discounted costs over the next ten years approximately by £117m - £175m. This estimates a discounted benefit of around £702,000 - £1,053,000 per institution over the next ten years. See table 1, divided by the number of institutions (166).

Table 1. Summary of benefit from policy change

Year	Nominal Benefit		Discounted benefit	
	Lower Bound	Upper Bound	Lower bound	Upper Bound
0	£13,500,000	£20,300,000	£13,500,000	£20,300,000
1	£13,500,000	£20,300,000	£13,100,000	£19,600,000
2	£13,500,000	£20,300,000	£12,600,000	£19,000,000
3	£13,500,000	£20,300,000	£12,200,000	£18,300,000
4	£13,500,000	£20,300,000	£11,800,000	£17,700,000
5	£13,500,000	£20,300,000	£11,400,000	£17,100,000
6	£13,500,000	£20,300,000	£11,000,000	£16,500,000
7	£13,500,000	£20,300,000	£10,600,000	£16,000,000
8	£13,500,000	£20,300,000	£10,300,000	£15,400,000
9	£13,500,000	£20,300,000	£9,900,000	£14,900,000
Total	£135,000,000	£203,000,000	£117,000,000	£175,000,000

Source: BIS Estimates. Total may not sum to individuals parts due to rounding. Figures have been rounded to nearest 100,000. Totals have been rounded to nearest 1,000,000.

Total cost

The total cost of this recommended change in the regulation of the accommodation offset represents a transfer payment from the student to the HEI. A redistribution of wealth occurs in which the money which would have been allocated to the student under no change is retained by the HEI. Consequently, the net effect of amending the law so that in some circumstances HEIs are taken out of scope from the accommodation offset rules is zero.

Administrative Burdens

Although no quantifiable measures of administrative burdens are available it is likely that there will be no additional administrative burden to HEIs, with a high probability of some administrative savings.

With the amendment in the law HEIs who employ students may find it easier to calculate pay needed to abide by the NMW rules, thereby potentially reducing their administrative burden.

F: Risks

This impact assessment is based on the best evidence base available and a set of assumptions.

During the calculation we have used the number of HEIs anticipating that the total cost of the policy for HEIs will be covered by the sum estimated for HEIs, as we assume that the number of FEIs renting accommodation to and employing their students will be comparatively small. However, if the number of FEIs offering accommodation to its students and also employing them is more significant then we expect this assumption may be wrong. If a significant number of affected FEIs are not included it could lead to an underestimate of costs and benefits.

The Accommodation Costs Survey¹⁰ 2009/10 conducted by Unipol and National Union of Students (NUS), from which we took estimates of the student population which live in student accommodation, the proportion of accommodation institutionally owned and the average weekly rent may be considered not particularly robust. This is because it was sponsored by a

¹⁰ http://resource.nusonline.co.uk/media/resource/WEB_SW_NUS_UNIPOL_Microsoft%20Word%20-%20Accommodation_Costs_Survey_2010_FINAL.pdf

private sector student accommodation provider; however, it is in line with other anecdotal evidence

There are three key assumptions that have been made which have a significant impact on the cost benefit analysis.

First, we have assumed that 40% -60% of non academic 'atypical' staff including part-time and temporary positions are students. This is an arbitrary assumption range not based on any evidence hence, it is a high risk. To try and limit the uncertainty surrounding the number of non academic 'atypical' staff we have used the range of 40%-60% in order to ensure we have a reasonably accurate best estimate. However, we shall be using the consultation to assess if the assumption range is reasonable. This could lead to an under or overestimate of the benefits experienced by the HEIs.

Second, we assume that half of the student employees are earning a wage which will be affected by the National Minimum Wage offset. Again this could lead to an under or over estimate of the benefits.

Thirdly, we assume the students work three ten week terms, totalling 30 weeks. If students work for more weeks than this, the benefit could be larger than estimated. In some cases a student may continue to work during the vacation period. In this IA we have not taken this into account as we believe this will be very rare because many of the students return home during the vacation period. If this proportion is greater than expected it could lead to an underestimate of benefits.

During the impact assessment we have also assumed full compliance by HEIs from October 2011 onwards. However, the evidence we have suggests that this is not the case. Consequently the calculated benefits will be overestimated.

G: Enforcement

If HEIs were exempt from the offset rules in the circumstances described, the need for HM Revenue and Customs (which enforces the NMW) to investigate complaints of possible non-compliance could be reduced.

H: Recommendation and summary table of costs and benefits

Table 2 presents a summary of estimated quantifiable costs and benefits of policy proposal.

	Annual Benefits		Annual costs	
	Lower Bound	Upper Bound	Lower bound	Upper Bound
Policy option B	£13,500,000	£20,300,000	£13,500,000	£20,300,000

Source: BIS Estimates. Policy option B: amend the law so that Higher Education Institutions are in some circumstances taken out of scope from accommodation offset rules. Figures are rounded to nearest 100,000. Figures are not discounted.

I: Implementation

If Option B (amend the law) were selected, the changes to the NMW regulations would be made by secondary legislation and would be expected to come into force on 1 October 2011.

J: “one in, one out” Rule

57. Measures that affect the public sector are, for the present, excluded from the ‘one-in-one-out’ rule whereby no new regulation can be brought in without other regulation being removed. Therefore, regulatory savings to compensate for the additional transition cost will not be sought.

Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

Basis of the review: [The basis of the review could be statutory (forming part of the legislation), it could be to review existing policy or there could be a political commitment to review];

Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]

Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]

Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]

Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]

Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection of monitoring information for future policy review]

Reasons for not planning a PIR: [If there is no plan to do a PIR please provide reasons here]

BIS will not be planning a PIR for the amendments to the NMW regulations as the LPC extensively monitors and evaluates the NMW each year. The Government's remit to the LPC includes monitoring, evaluating and reviewing the NMW and its impact, with particular reference to the effect on pay, employment and competitiveness in the low paying sectors and small firms; the effect on different groups of workers, including different age groups, ethnic minorities, women and people with disabilities and migrant workers and the effect on pay structures.

Annex 2: Specific impact tests

Competition Assessment

We have fully considered the questions posed in The Office of Fair Trading competition assessment test and concluded that none of the proposals outlined in this impact assessment are likely to hinder the number or range of suppliers or the ability and incentive for businesses to compete.

Table A1. Competition assessment.

Question: <i>In any affected market, would the proposal..</i>	Answer
..directly limit the number or range of suppliers?	No
..indirectly limit the number or range of suppliers?	No
..limit the ability of suppliers to compete?	No
..reduce suppliers' incentives to compete vigorously?	No

Source: BIS

Small Firms Impact Test

Small firms will not be affected by the policy. Only HEIs will be affected.

Equality Impact Assessment

In line with better regulation best practice and the Equalities Duties we have considered the impact of the amending the regulations of the NMW accommodation offset on minority groups.

Due to the low quality of Labour Force Survey data on pay owing to the fact that there is around two-thirds non response rate the equality test has been conducted on all student employees regardless on the amount of hours they work per week. These student employees are not filtered for where they reside or for their place of work e.g. university.

Although there are limits to this equality impact assessment we believe by using all student employees we can gain a broad overview of the minority groups affected.

Who will be affected?

The Labour Force Survey (LFS) indicates that approximately 58% of student employees that will be affected by the policy amendment will be female. However, when considered on an individual basis there is no evidence to suggest females pay more average weekly rent to university than males. Hence, the accommodation offset which individual females lose will be identical to males. However, our current evidence suggests that HEIs are generally unaware of the accommodation offset rules. If that is the case, amending that law so that it does not apply to HEIs would result in no financial loss to students they accommodate and employ. The change

would be from an unintended advantage which they are currently not receiving to not having that advantage.

Table A2. Distribution of student employees by sex

	All in employment	Student employees
Male	50.5%	42.0%
Female	49.5%	58.0%

Source: BIS analysis of Labour Force Survey, 2010 Q1.

Once again although the data may show there are slight concentrations in groups classified by ethnicity of those affected by the policy change when considered on an individual level it will not have a disproportionate effect.

Table A3. Distribution of student employees by ethnicity

	All in employment	Student employees
White	90.6%	80.9%
Mixed	0.7%	1.9%
Asian or Asian British	4.5%	7.9%
Black or Black British	2.4%	5.2%
Chinese	0.4%	0.3%
Other ethnic group	1.3%	3.8%
Total	100.0%	100.0%

Source: BIS analysis of Labour Force Survey, 2010 Q1.

The data shows that an employee with a disability would not be disproportionately affected by policy change.

Table A4. Distribution of student employees by disability

	All in employment	Student employees
Disabled	4.0%	2.5%
Not disabled	96.0%	97.5%
Total	100.0%	100.0%

Source: BIS analysis of Labour Force Survey, 2010 Q1. Disabled consists of DDA disabled plus work-limiting disabled only.

The proposed changes reflect a broad policy and are designed to have an impact on all employees regardless of their gender, race or disability. Therefore, the proposed changes are unlikely to create any barriers to equality in terms of gender, race and disability. As there is no evidence to suggest that average weekly rent differs between gender, race or disability; all students affected will lose the same monetary value. However, our current evidence suggests that HEIs are generally unaware of the accommodation offset rules. If that is the case, amending that law so that it does not apply to HEIs would result in no financial loss to students they accommodate and employ. The change would be from an unintended advantage which they are currently not receiving to not having that advantage.

Annex 3: National Minimum Wage rates

There are different levels of National Minimum Wage, and the rates from 1st October 2010 are:

- £5.93 – the main rate for workers aged 21 and over
- £4.92 – the 18 – 20 rate
- £3.64 – the 16 -17 rate for workers above school leaving age but under 18
- £2.50 – the apprentice rate, for apprentices under 19 or 19 or over and in the first year of their apprenticeship.

For the estimation of the costs and benefits of the policy amendment we have assumed that all relevant students are aged 18 -20 and hence are receiving the national minimum wage of £4.92.

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