



Prime Minister

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The Rt Hon Sir Michael Havers QC MP
Law Officers Department
Attorney General's Chambers
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10 February 1982

D Michael,

I am writing to seek your advice on an issue raised in E Committee.

One of the constraints on the free working of the labour market which E Committee has been examining is the wages council system, through which statutory minimum rates of wages and other entitlements are set for about 2½m people, mainly in the retailing, catering, clothing and hairdressing trades. Repeal of the relevant legislation, the Wages Council Act 1979, is inhibited by, inter alia, International Labour Convention 26, to which we have been signatories since 1929 and which, under ILO procedures, we cannot denounce until 1985. The Act meets our obligation under this Convention to "create or maintain machinery whereby minimum rates of wages can be fixed for workers employed in certain of the trades or parts of trades in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low".

However, whilst it seems clear that we would be in breach of our obligations under the Convention were we to repeal the Act and abolish the system, members of E Committee felt that it might be possible to amend the scope of the legislation without being held in default. The specific proposal under consideration, on which I should be grateful for your opinion, is to amend the 1979 Act to remove from scope all young people under the age of 19, or under 21 or 22, (or any variants of such changes). In addition, I have been asked to consider whether part-time employees could similarly be excluded from the scope of the system. The issue is of considerable importance since it is estimated that part-timers account for more than 34% of workers covered by the wages councils, and young people under 18 about 7%.

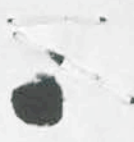


My Department's view hitherto has been that exclusion of these two groups of workers from the protection of the minimum wage machinery would appear to be incompatible with our obligations under IL Convention 26. Article 2 does allow us, after the specified consultations, to exclude certain "trades or parts of such trades" from the application of the minimum wage machinery. My Department questions whether "parts of trades" could be defined by reference to the age of the workers or the number of hours worked. It might be held that the nature of a trade or part of a trade is not altered by the fact that some employers may choose to employ young people or part-timers in it. In this respect the different wording of Article 1.2 of Convention No. 99 concerning minimum wage fixing machinery in agriculture, which leaves Members free to decide "to which undertakings, occupations and categories of persons" the machinery shall be applied, may be relevant.

- ... I enclose copies of IL Convention 26; the related Recommendation 30 concerning the application of minimum wage fixing machinery; and Convention 99 concerning minimum wage fixing machinery in agriculture. Apart from the strictly legal issue there are, of
- ... course, wider international considerations and I attach as well a background note on the wages councils. My officials can provide yours with any further information that you may need.

I am copying this letter to members of E Committee, and to Sir Robert Armstrong.

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10 FEB 1982

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Prime Minister (2)

Ms 25/r

24th February 1982

The Rt.Hon.Norman Tebbit, MP
Secretary of State for Employment
Caxton House, Tothill Street, SW1

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WAGES COUNCILS

Thank you for your letter of 10 February about Wages Councils and our obligations under International Labour Convention 26. I have also seen Geoffrey Howe's letter of 5 February and Patrick Jenkin's of 16 February and I have looked at the minutes of the 'E' Committee discussion to which you refer.

The Convention envisages that minimum wage-fixing machinery is to be applied to trades or parts of trades (where no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low). I do not consider that the wording is apt to enable complete exclusion, irrespective of the trade or part of trade, of young persons or part-time workers. I think the same is the case in relation to excluding small firms. The wording suggests application sector by sector and not that there can be exclusions within a sector by reference to particular undertakings, occupations or categories of persons. In this respect, the contrast with Convention 99 concerning minimum wage fixing machinery in agriculture, which specifically allows such choice of application, is to be noted.

I have sought to test this conclusion against the practice adopted in other comparable countries which have ratified the Convention. Your Department has kindly supplied me with certain information; the accuracy and completeness has not been checked and in the time available the picture is

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necessarily incomplete. However, on the basis of this information, the following facts appear to emerge:

Young persons

Our Western European neighbours provide for a fixed percentage of the minimum wage to be paid to young workers. I have no information suggesting any precedent for complete exclusion.

Part-time workers

Generally, part-timers are entitled to their proportion of the minimum depending on hours worked, although I notice that the Netherlands has apparently excluded altogether those who work less than one third of normal working hours (I am not aware of the circumstances in which this exclusion was adopted).

Small firms

I see, on the information supplied, no precedent for a blanket exclusion of small firms (the nearest is the position in Belgium where "family firms" usually employing only relatives of the employer are excluded).

Other means of excluding particular workers

It would appear that it is precedented to allow the Government on application either to exclude particular firms from having to pay the prescribed minimum or at least to pay reduced minima; in Luxembourg a temporary exemption appears to be possible for economic and financial reasons and in Japan an employer may apply for authorisation not to pay the minimum rate to part-time or probational workers or those under training. (I do not have the full details in either case).



It may be easier to apply broader exclusions when first making provision to comply with the Convention than it would be to change the law so as to derogate from existing observance of the Convention. I do not believe that HMG could now exclude altogether from the scope of Wages Councils Orders young persons, part-time workers, or small firms without attracting a complaint of breach of the Convention and a likely adverse report.

I am copying this letter to the Prime Minister and other members of 'E' Committee, and to Sir Robert Armstrong.

MICHAEL HAYERS

15 FEB 1983



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Prime Minister

MS 8/2

Treasury Chambers, Parliament Street, SW1P 3AG

01-233 3000

5 February 1982

The Rt. Hon. Norman Tebbit MP
Secretary of State for Employment

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Dear Norman

WAGES COUNCILS

Unemployment will inevitably be a major theme of debate at Budget time, and we must be prepared for a good deal of pressure to take yet further action of various kinds. We must take a firm line in defence of our basic economic course as the only one sensibly available, and I envisage dealing with the matter fully in my Budget speech. I believe however that it would be helpful if I could take that opportunity of announcing, as a further example of our readiness to take robust measures that are truly relevant, the changes in respect of Wages Councils which E Committee (on 28 January) was disposed to make.

I recognise that the action then remitted to you entailed further consultation with colleagues, particularly the Attorney General; but I very much hope that this could be pursued in a timescale which would maintain the possibility of an announcement on 9 March. I should be grateful if you could keep me in close touch with progress.

I am sending copies of this letter to our colleagues on E Committee, the Secretary of State for Social Services, the Attorney General, Sir Robert Armstrong and Mr Ibbs.

GEOFFREY HOWE



18 FEB 1992



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DEPARTMENT OF INDUSTRY
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Secretary of State for Industry

16 February 1982

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The Rt Hon Norman Tebbit MP
Secretary of State
Department of Employment
Caxton House
Tothill Street
LONDON
SW1N 8NA

Prime Minister

This seems a good idea.

RW
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[Handwritten initials]

Dear Norman,

Thank you for sending me a copy of your letter of 10 February to Michael Havers asking whether we could take youngsters or part-timers out of the scope of Wages Councils without breaching our international obligations.

2. I wonder if we could get over some of the legal difficulties which you foresee and still partly achieve our objectives by exempting small firms from the Councils. This possibility was mentioned briefly in our discussions in E. However a small firms exemption might fit in more happily with the wording of the Convention. There is also a strong case on merit for such an exemption.

3. While the Councils are a burden on businesses of all sizes they are, in my experience, a particular bane for small firms who are least able to cope with the associated bureaucracy. As a demonstration of the Government's concern for small businesses, exemption would have a value out of all proportion to its real economic significance.

4. Of course exemption would lay us open to the charge that we regard employees of small firms as in some way second-class citizens. However, this sort of criticism did not deter us from substantially relaxing the unfair dismissal rights for firms with 20 employees or less. We could point out that formal collective bargaining arrangements (for which Wages Councils are a proxy in their industries) are less prevalent in small firms and less necessary. Groups of, say, 5 or 20 employees can bargain on



equal terms with their proprietor who, no less than his employees, is at the mercy of the local labour market; in particular he must have regard to the prevailing rates of pay set by larger firms in the neighbourhood if he is to attract suitable staff.

5. If necessary, a small firms exemption could be made more easy to defend by varying the exemption limit according to the individual circumstances of the trade or industry concerned. And as a fallback position we might also consider limiting the exemption to employees with less than 2 years service - in line with the unfair dismissal exemption. We could then argue with conviction that the two provisions together:

- (i) help new firms to start up without being unduly hampered by formal labour legislation; and
- (ii) make unemployed people with no experience in the trade concerned more attractive to take on.

I would suggest that the latter consideration will loom larger as the numbers of long-term unemployed (adult and young people) grow.

6. Finally, even if we decide against a small firms exemption there is a strong case for your seeking the Attorney-General's advice on the legal position under the ILO Convention. It may turn out that we cannot exempt small firms under the Convention. If so, this would be a useful piece of ammunition for us to use against criticisms from small firms. In any event it would enable us to say that we had seriously considered the options.

7. I am sending copies of this letter to the other members of E Committee, to Michael Havers and to Sir Robert Armstrong.

You are

CONFIDENTIAL

Patel

17 FEB 1988

