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*The developments of minimum wage legislation in the United Kingdom*

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THE DEVELOPMENTS OF MINIMUM WAGE LEGISLATION IN THE  
UNITED KINGDOM

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A thesis submitted in partial fulfilment of the requirements of Sheffield  
Hallam University

For the degree of Master of Laws by Research

September 2017

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## Acknowledgements

I would first like to thank my supervisor, Dr James Marson, who has provided me with constant guidance, support and encouragement whilst researching and writing this thesis. Dr Marson's door was always open whenever I ran into trouble or had a question about my research or writing. I was always guided in the right direction.

I must also express my profound gratitude to my parents, David and Sharon, for providing me with unfailing support and continuous encouragement throughout my years of study and through the process of researching and writing this thesis. This accomplishment would not have been possible without them. Thank you.

I also need to thank the numerous friends that have read drafts of my work and listened to my rantings over the year. Thank you all for your constant support and encouragement.

Finally, I would like to thank my dear friend Jamie Spratley, who sadly passed on New Year's Day 2017 after a short battle with cancer. Jamie encouraged and supported me, when I began this research and he remains in my thoughts throughout.

This thesis is dedicated to his memory.

## Declaration

I, Robert James Hargreaves, hereby declare that the material contained in this thesis has not been used in any other submission for an academic award.

Director of Studies: Dr James Marson

## Abstract

This thesis presents an examination of the legal developments made in wage regulations within the United Kingdom. The period that has been chosen for examination spans from the 18<sup>th</sup> to the 21<sup>st</sup> century. This period was chosen for examination due to the huge social, political, economic and legal changes that took place within the United Kingdom during these years. These changes saw major developments made within the field of employment law and worker's rights in general. This period also saw the enactment of the first piece of legislation that regulated wages in the industrial world – the Trade Boards Act of 1909.

This thesis examines the journey that the United Kingdom took since the enactment of the 1909 Act that led to the current system of wage regulation – The National Minimum Wage Act 1998.

This thesis has also touched on various campaigns that have called for a Living Wage and has assessed what impact these have had on Government policy. It looks at the National Living Wage, that was introduced in 2016, and examines whether this is a living wage in the sense of the word.

## **Methodology**

This thesis set out to examine the legal developments that have been made in the area of wages within the United Kingdom, during the period between the 19<sup>th</sup>-21<sup>st</sup> centuries. The principle aims have been to examine and discuss, what I believe, have been the significant social, economic and legal changes that have taken place between these periods that ultimately have led to the creation of a statutory NLW.

This thesis does not contain any empirical research. Instead a considerable number of secondary sources were used when writing this thesis. These included Acts of the UK Parliament and Acts of Parliament from Australia and New Zealand. In addition to this a number of Statutory Instruments were used whilst writing this thesis. Government Reports were also used along with the Reports from a number of Select Committees. I relied on a number of newspaper articles and BBC news reports along with an extensive number of academic articles that were used to compare varying opinions on the examined subject. These proved invaluable when addressing the question that was examined in this thesis. Case law has not played a significant role in the development of wages within the UK, although I was able to use an Australian case when assessing particular elements of the thesis. The majority of the data and figures came from research published by the Office of National Statistics, the Living Wage Foundation and the Joseph Rowntree Foundation and the Low Pay Commission. I also used a number of social science text books, political parties' election manifestos and a number of social studies that looked at poverty and its relation with wages. Finally, a number of reports from Hansard were used when assessing the mood of Government and its response to public opinion. These reports were again invaluable with helping to explain the motives behind changes in legislation and, in some cases, the reluctance to legislate.

All of these sources were analysed and discussed throughout this thesis and, where appropriate, the differing opinions were compared to help better the answer to my thesis question.

My research began with general background reading on the subject of wages and poverty. I read a number of social science and historical books to gain an initial

understanding of the issue of wages in the UK. These sources directed me to a number of other sources that better highlighted the link between poverty and wages and the campaigns against sweating and ultimately the call for some form of statutory wage regulation. Other sources allowed for a comparison between various forms of wage regulation within different jurisdictions; notably the Australian and New Zealand systems. This helped when explaining early attempts in the UK at wage regulation – the TBA 1909.

I did encounter some difficulties whilst undertaking this research. This was predominantly whilst researching early legislation and finding Government Reports from the 19<sup>th</sup> Century. I had to contact the National Archives for some of these sources. Similarly, articles and legislation from other jurisdictions was not easy to access and I feel that I could have elaborated further on the early Australian and New Zealand systems had more sources been readily available. I also found that the majority of academic articles that have been written on wages mainly seem to revolve around economic and social science fields. It was quite difficult to find specific articles that were purely based on the legal developments that have been made. As such I had to read much more broadly around the subject in order to be able to answer the question set by this thesis. Not all of the information that I researched had a direct bearing on the question asked and was not included in this thesis.

Another difficulty that I encountered whilst undertaking this research was deciding what content to include and what to exclude. There were a lot of sources that were available on wages from a social, economic and political angle, but a limited number of resources solely on the legal developments that have been made on wages within the United Kingdom.

“It is a serious national evil that any class of His Majesty’s subjects should receive less than a living wage in return for their utmost exertions. It was formerly supposed that the working of the laws of supply and demand would naturally regulate or eliminate that evil...” (Winston Churchill<sup>1</sup>)

## **Introduction**

This thesis presents an examination of the developments in wage legislation in the United Kingdom, looking at the period between the nineteenth and twentieth centuries. This period has been chosen for examination due to the huge social, economic and political changes that took place within the United Kingdom during this time.

My thesis will begin with an analysis of the early attempts at regulating wages in the UK. The Trade Boards Act 1909 was the first piece of legislation that controlled the issue of low pay in Britain. Interestingly, the United Kingdom was not the first country to enact legislation aimed at tackling low pay. Australia and New Zealand had earlier passed laws governing wages in the 1890s<sup>2</sup>. My research will examine the different approaches and methods that were taken by each of these countries and their early attempts at tackling the issue of low pay.

Early attempts were made by the Independent Labour Party at introducing a National Living Wage. In 1931 James Maxton MP, proposed the Living Wage Bill in the House of Commons. He argued that a living wage would allow people to consume ‘the essential things of life... food, better illumination of those homes and better sanitation<sup>3</sup>’. The issues that Maxton identified have remained prevalent and continue to dominate the debate over fair wages, the need for statutory regulation and the cost of living. During the post-war years the welfare state gradually began to eclipse the demand for a living wage. The provisions of education, health, housing and pensions, along with the growth of collective bargaining resulted in less vocal demands for a living wage<sup>4</sup>. The thesis examines the developments made to the welfare system and

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<sup>1</sup> Trade Boards Bill, HC Deb, 28<sup>th</sup> April 1909, col 388

<sup>2</sup> Factory and Shops Act 1896 (Australia); The Industrial Conciliation and Arbitration Act 1894 (New Zealand)

<sup>3</sup> Living Wage Bill Deb 6<sup>th</sup> February 1931, col 2271

<sup>4</sup> Jane Wills, ‘The Living Wage’ available from [www.geog.qmul.ac.uk/livingwage/history.html](http://www.geog.qmul.ac.uk/livingwage/history.html), accessed 19<sup>th</sup> October 2016

analyses if and how this has impacted on wage legislation. It will delve briefly into the attitudes of Governments overtime and explore their various views of State intervention of wages.

The 1970s and 1980s were turbulent times where poverty began to raise its head and many workers started to feel its effects. In particular, this affected those workers who had not collectivised their wages, and who were left to the Wage Councils<sup>5</sup>. During the 1980s successive Conservative governments viewed the work of the Wage Councils as both unnecessary and undesirable and consequently they were abolished by 1993<sup>6</sup>. The rationale underpinning the Government's policy to abolish the Wages Councils and how, if it did, impact upon workers' wages is assessed.

Towards the latter half of the 1990s the Labour party formed a Government and began a process of initialising a number of social reforms. Amongst these was the enactment of the National Minimum Wage Act 1998. In 1997 the Low Pay Commission (LPC) was established as an independent body to '... recommend the initial level at which the National Minimum Wage might be introduced ...'<sup>7</sup> Unlike the Trade Boards Act 1909 the National Minimum Wage Act 1998 set a minimum level of pay for all workers<sup>8</sup>. My research evaluates the purpose of the National Minimum Wage and contrasts this with the Trade Boards Act 1909.

During the 1990s, in Baltimore, USA, a campaign had taken form whereby low paid workers were demanding a living wage<sup>9</sup>. Similar campaigns began to gather support in London's East End in 2001. An alliance of the community launched a campaign to ensure that their low-paid members secured hourly wages that were sufficient to provide them and their families with a basic, but acceptable, standard of living. My research concludes by analysing the campaigns for a living wage in both the United

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<sup>5</sup> Wage Councils still covered as many as 3.5 million workers by the late 1970s

<sup>6</sup> Paul Edwards, *Industrial Relations: Theory and Practice* (2<sup>nd</sup> edn, Blackwells, London, 2003), pp. 447-469

<sup>7</sup> Low Pay Commission, *The National Minimum Wage: first report on the Low Pay Commission* (Cm 3976, 1998)

<sup>8</sup> S1(2) National Minimum Wage Act 1998. The term 'worker' is defined under s54(3) and has the same meaning as that under s230(3) of the Employment Rights Act 1996

<sup>9</sup> Kayte Lawton and Matthew Pennycock, 'Beyond The Bottom Line: The Challenges and Opportunities of a Living Wage', Resolution Foundation, 2013, p.8

Kingdom and United States. It looks at the work carried out by the campaign and the subsequent legislation that followed. Finally, it addresses the fundamental nature of the National Living Wage and questions whether it satisfies the principles on which a living wage is based. In so doing I offer suggestions of what could be done further to address the pertinent issue of low pay in the United Kingdom.

## Chapter 1

### Early Wage Regulation in the United Kingdom

According to Kaufman the neoclassical theory of minimum wages in a competitive market has the potential to raise the pay of low productivity workers above a natural rate determined by marginal rates of productivity leading to job losses and wage stickiness, i.e. workers clustered around the minimum rate and preventing jobs being filled at lower rates of pay.<sup>10</sup> Conversely, according to Card and Kruger in the neo-monopolistic model, where the labour market is not competitive monopsony, where employers have the power to pay workers below their market value, and labour market segmentation, the minimum wage can raise pay above so-called market clearing/competitive levels, with no job losses or gains.<sup>11</sup>

The Ordinance of Labourers 1349 is considered by many to be the first piece of English labour law.<sup>12</sup> It was issued by King Edward III in June of that year as a response to the outbreak of the Black Death between 1348-1350.<sup>13</sup> It is estimated that 40% of the population had died as a result of the Black Death leaving a huge shortage of unskilled labourers throughout the country.<sup>14</sup> The purpose dictated that everybody - under the age of sixty - must work, that employers must not hire excess workers and that these workers must not be paid higher than pre-plague level wages and that food must be reasonably priced with no excess profit.

The English Parliament of 1351 made an attempt to reinforce the Ordinance by the enactment of the Statute of Labourers.<sup>15</sup> Its aim was to suppress the labour force by implementing restrictions on wages (the Statute imposed a maximum wage) and

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<sup>10</sup> Roger Kaufman, 'On wage stickiness in Britain's competitive sector', *British Journal of Industrial Relations* [1984] 22 (1), p 101-112

<sup>11</sup> David Cars and Alan Krueger, *Myth and Measurement: The New Economics of the Minimum Wage* (Princeton University Press, New Jersey, 1995)

<sup>12</sup> Mark Rothstein and Lance Liebman, *Employment Law: Cases and Materials* (6<sup>th</sup> edn, Foundation Press, London, 2007), p. 20

<sup>13</sup> Frederick Cartwright and Michael Biddiss, *Disease and History* (Thistle, London, 2014), pp. 32-46

<sup>14</sup> What was the Economy Like After the Black Death?

<http://web.archive.org/web/20070430031619/http://www.cf.ac.uk/hisar/teach/history/projects/plague/economy.html> Accessed 25 October 2016

<sup>15</sup> Repealed by the Law Revision Act 1863

prohibiting the movement of workers from their homes in search of improved working conditions – such as higher wages.

Statutory support for minimum wage levels in the United Kingdom began in modern times with the Fair Wages Resolution of 1891. It required employers engaged on government contracts to pay at least the wage level generally recognised for either the sector or locality concerned. It was passed in response to public concern over the system of sweated labour. At the time the Resolution was passed it was seen as a more acceptable and practicable measure than minimum wage legislation. The Resolution constituted the only element of government intervention in the wage determination process at the turn of the century.<sup>16</sup> The 1891 Resolution was superseded by a second Resolution in 1909.

The Trade Boards Act 1909 (TBA 1909) followed on from the Resolution. Its purpose was to establish Trade Boards for specific industries to fix minimum wage levels. The Trade Boards (later known as Wages Councils) were, for the most part, abolished in 1993. The final Wages Council; the Agricultural Wages Board, was abolished in 2013.<sup>17</sup>

### **The Call to Arms**

The TBA 1909 was an Act of Parliament which constituted to the Liberal Government's agenda of social reform between 1906 and 1911.<sup>18</sup> However, since the TBA 1909 established legal control of wages, it was in a category all of its own. The last vestiges of pre-industrial wage regulation had been removed in 1824 when the power of London magistrates to fix the wages of silk weavers in Spitalfields was stopped.<sup>19</sup> Until the TBA 1909 there was no direct State intervention in the determination of workers' wages. During the intervening years control over certain conditions of employment had been accepted but the use of the law to settle the price of labour was State action

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<sup>16</sup> Ernest Henry Phelps-Brown, *The Growth of British Industrial Relations* (Macmillan & Co, London, 1959), pp 197-201

<sup>17</sup> Enterprise and Regulatory Reform Act 2013, S 72

<sup>18</sup> The reforms represent the beginnings of the modern welfare state and included such Acts as; Children and Young Persons Act 1908; Old-Age Pensions Act 1908; Trade Boards Act 1909 and National Insurance Act 1911

<sup>19</sup> Frederick Bayliss, *British Wages Councils* (Blackwell, Oxford, 1962), p 1

of a different kind. It amounted to direct intervention in the arrangement of a price between a buyer and a seller, and in that sense the TBA 1909 was the most radical measure of the Liberal Government. Tawney described it as:

In reality, the silent abandonment of the doctrine, held for three generations with an almost religious intensity, that wages should be settled, as it was said, by free competition, and by free competition alone, is one of the most remarkable changes in economic opinion which has taken place in the last hundred years.<sup>20</sup>

The TBA 1909 sought to alleviate a social evil which had deeply moved a growing number of people towards the latter part of the nineteenth century. The degradation of the working population by what was popularly called sweating was always, wherever found, associated with extremely low wages. However, the decision to use the law to raise these workers' wages was, according to Bayliss, 'arrived at with a full appreciation of the breach which the Act made in the traditional relation between State and industry over wages.'<sup>21</sup>

Despite this, the decision to pass legislation was not arrived at easily. Prior to the enactment of the TBA it had to be shown that there was a perverse problem and the nature of that problem had to be demonstrated. In 1888 the House of Lords set up a Select Committee on the Sweating System. The Committee displayed genuine concern about the appalling working and living conditions in the East End of London, and its five reports and volumes of evidence drew conclusions about the nature of sweating. These conclusions were accepted by subsequent investigators. During the next twenty years this evidence led many people to conclude that only legislation could deal with the harms of sweating.

The Committee acknowledged that sweating was a national problem, although its original terms of reference referred to London's East End, the Committee found itself carrying out a national inquiry. In its fifth report, reporting in 1890, the Committee defined sweating as 'a rate of wages inadequate to the necessities of the workers or disproportionate to the work done, excessive hours of labour, and the insanitary state

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<sup>20</sup> Richard Tawney, on the Trade Boards Act 1909, Towards Industrial Peace, Report of a conference organised by the League of Nations Union, 1927, p 19

<sup>21</sup> Supra 9

of the houses in which the work is carried on.<sup>22</sup> The Committee rejected the usual reasons for sweating, such as the existence of middle-men along with immigrant workers, and claims that more general factors like 'the inefficiency of many of the lower class of workers, early marriages, and the tendency of the residuum of the population to form a helpless community, together with a low standard of life and the excessive supply of unskilled labour'<sup>23</sup> were the causes of sweating. Compared with the rigour of the Committee's investigation into the problems of sweating its recommendations were timid to say the least. Beatrice Potter, reviewing the Committee's Report, said it showed that 'the sweater is, in fact, the whole nation',<sup>24</sup> but the Committee was incapable of making the break with the doctrine of non-interference which that judgement implied. As such they asked for extensions to the Factory Acts,<sup>25</sup> more factory inspectors and the enforcement of existing legislation governing conditions of employment. However, they believed that the main remedy could not take the form of an Act of Parliament, for 'when legislation has reached the limit up to which it is effective, the real amelioration of conditions must be due to increased sense of responsibility in the employer and improved habits in the employed.'<sup>26</sup>

Despite the fact that the Committee could not bring itself to recommend proposals for legislation to fix a minimum wage, it did recommend that the work for which Parliament itself was responsible should not be done by sweated labour, and as a result the House of Commons Fair Wages Resolution 1891 was passed.<sup>27</sup> Although the Committee fell far short of recommending that legislation be enacted to govern the wages of those employed in the sweated industries. It can, perhaps, be described as a watershed and as Bayliss put it 'the first breach in the dyke'<sup>28</sup> towards State intervention in wages.

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<sup>22</sup> Select Committee on the sweating system, Fifth report (Parliamentary Papers, 1890, xvii), pp. xlii-xliii

<sup>23</sup> Supra 12, p xliii

<sup>24</sup> Beatrice Potter, 'The Lords and the Sweating System,' *The Nineteenth Century*, Vol. 27, No. 160, June 1890, P 889

<sup>25</sup> The Factory Acts were a series of laws passed to regulate the conditions of industrial employment

<sup>26</sup> Supra 12, p xlv

<sup>27</sup> Since 1891 the Fair Wage Resolution of the House of Commons, revised in 1909 and 1946, instructed Government Departments to require their contractors to comply with specified fair standards of wages and working conditions. In 1983, the Conservative Government revoked the 1946 Resolution

<sup>28</sup> Supra 9, p 3

Duncan Bythell described the work of the House of Lords Select Committee as 'lifting the lid off of something highly unpleasant'.<sup>29</sup> However, some had been writing,<sup>30</sup> thirty years before the appointment of the House of Lords Select Committee in 1888, about poor working conditions, insanitary conditions and low pay and this would suggest that the problems of sweating were already well publicised before the House of Lords Select Committee began its work.

During the next twenty years' additional evidence about sweating came from a number of different sources, but it took time and argument to confirm that legislation was foreseeable if 'certain standards were demanded by the public conscience.'<sup>31</sup> The Royal Commission on Labour in 1894 came to the decision that the source of sweating lay in the handing out of work to be done at home, and even the Minority Report, to which the three trade unionists members; Tom Mann (Amalgamated Society of Engineers), William Abraham (South Wales Miners), and James Mawdesley (Cotton-spinners) – subscribed, accepted this evaluation and saw a solution to sweating in the broadening of the Factory Acts to protect homeworkers.

The extent of the problem was uncovered by Charles Booth, which resulted in the publication, between 1889 and 1903, of the seventeen volumes on *The Life and Labour of the People of London*, and Seebohm Rowntree's *Poverty: A Study of Town Life* (1901). More popular works like R. H. Sherard's *The White Slaves of England* (1897) and Jack London's *People of the Abyss* (1902) linked together the poverty of working and of living conditions. However, the most decisive exposure about sweating was organised by the National Anti-Sweating League. On the initiative of the *Daily News*, a Sweated Industries Exhibition was held at the Royal Albert Hall in May and June 1906.<sup>32</sup> It was intended to bring home to the upper and middle classes the facts about sweating in a much more personal way. The Exhibition received almost thirty thousand visitors.<sup>33</sup> The cries that emanated from the crowds were "what can we do,

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<sup>29</sup> Duncan Bythell, *The Sweated Trades: Outwork in Nineteenth Century Britain* (HarperCollins, London, 1978), p 232

<sup>30</sup> For example; Henry Mayhew wrote about his observations of London's poor in his book, *London Labour and the London Poor* (1861)

<sup>31</sup> Committee on Industry and Trade (Balfour Committee), *Survey of Industrial Relations*, 1926, p 52

<sup>32</sup> *Spectator*, May 5, 1906; *Women's Industrial News*, June 1906, 558

<sup>33</sup> *Daily News*, June 13, 1906

what can we do?”<sup>34</sup> All of the goods exhibited were made by sweated labour, and each had attached figures showing the wages paid for making them along with the weekly amounts which workers earned.<sup>35</sup> For over sixty years, campaigners had relied on images of half-starved, sweated workers to strengthen their cause and press for social and legal reform of this exploited group in society.<sup>36</sup> The exhibition used actual workers, creating a visual spectacle. It helped, according to Blackburn, ‘to lead directly to Britain’s first piece of low pay legislation... the 1909 Trade Boards Act’.<sup>37</sup>

Amongst those to visit the Exhibition was Canon Lyttleton, the headmaster of Eton. He along with the headmasters of Uppingham and Clifton were so distraught to discover that the racquet balls used in their schools, and displayed at the Exhibition, were made by sweated labour that they agreed to pay higher prices to the middle-men to allow higher wages to be paid.<sup>38</sup> At the Headmasters’ Conference, in 1907, a Committee was established which revealed that there were forty known women homeworkers covering racquet balls and that their typical weekly earnings were 6s. at a rate of  $1\frac{1}{2}$  d. an hour.<sup>39</sup> A voluntary wages board was established, broadly along the same lines as those which would later be established by the TBA 1909. The voluntary boards lacked legal enforcement and therefore it was only successful because the schools agreed to pay higher prices whenever the Board recommended an increase in wages. However, due to the voluntary nature of the arrangement the schools could have refused to pay extra and there would have been no remedy available.

The Anti-Sweating League was born as a result of the Exhibition and triumphed with a combination of upper-class goodwill and head-strong scheming for sweating to be controlled by legislation. In October 1906 the League organised a Conference on a Minimum Wage. It was attended by 341 representatives from trade unions, co-operative societies, the Independent Labour Party and the Social Democratic

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<sup>34</sup> Alfred Gardiner, “Introduction” in Clementina Black, *Sweated Industry and the Minimum Wage* (London, 1907), xv

<sup>35</sup> *Supra* 9, p 3

<sup>36</sup> Sheila Blackburn, “‘Princesses and Sweated-Wage Slaves Go Well Together’: Images of British Sweated Workers, 1843-1914” [2002] 61 *International Labour and Working-Class History* 24-25

<sup>37</sup> *Supra* 26, p 25

<sup>38</sup> *Supra* 9, p 4

<sup>39</sup> E Lyttleton, ‘Voluntary Wages Boards,’ *The Contemporary Review*, Vol 95, February 1909

Federation.<sup>40</sup> Its purpose was made clear by the addresses given by a number of key speakers, including W. Pember Reeves,<sup>41</sup> the High Commissioner for the State of Victoria. It was 'to work towards the setting up of machinery to deal with sweating on lines of compulsory minimum wages in specified industries.'<sup>42</sup> The League was the main body that was turning the public emotion that sweating had aroused into pressure on the Government for legislation. However, other bodies soon rallied to the cause. These included The Women's Industrial Council, The Women's Trade Union League and the Fabian Society who In the mid-1890s had coined the slogan the "national minimum" to describe their political and social policy of spreading previous state intervention regulating factory conditions and public health into, for example, wage determination, the duration of compulsory schooling, the need for old-age pensions, reform of the poor laws, the extension of workers' compensation for industrial injuries and improving housing conditions.<sup>43</sup> The Fabians issued a tract, entitled *The Case for a Minimum Wage: A Detailed Proposal for the Abolition of Sweating*.<sup>44</sup>

A second indicator that the campaign for legislation was having an impact came in February 1908 with the creation of a Select Committee on Homework by the House of Commons. This Committee heard evidence from workers employed in the sweated trades. The witnesses made a huge impact upon the Committee. They provided it with factual evidence and a clear description of life as a sweated worker. The Committee, after hearing all of the witnesses, came down in favour of legislation. It said:

Unless Parliament steps in and gives (sweated workers) the protection and support which legislation alone can supply, the prospects of any real improvements in their position and condition being brought about are very remote indeed.<sup>45</sup>

Finally, it appeared to be that the conclusion reached was that the only way to protect sweated workers was through legislation.

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<sup>40</sup> Supra 9, p 4

<sup>41</sup> Other speakers included Sir Charles Dilke, Sidney Webb and Sir George Askwith

<sup>42</sup> National Anti-Sweating League, Report on a Conference on a Minimum Wage, Held at the Guildhall, London, October 24-26<sup>th</sup> 1906, p 3

<sup>43</sup> Alan McBriar, *Fabian Socialism and English Politics 1884-1918* (Cambridge 1966)

<sup>44</sup> Fabian Society Tract No.128, 1907

<sup>45</sup> Report of the Select Committee on Homework, House of Commons, No. 246, 1908, p xxxii

The Anti-Sweating League sent a commission, on the 4<sup>th</sup> December 1908, which was led by the Archbishop of Canterbury and Sir Charles Dilke to meet with the Prime Minister and other Cabinet members to put forward the case that legislation was needed. After the commission had been heard it was announced that a Bill would be presented before Parliament by the President of the Board of Trade<sup>46</sup> Winston Churchill. Prior to this point it had been the responsibility of the Home Office to deal with all aspects of work. Churchill had recently succeeded Lloyd George at the Board of Trade,<sup>47</sup> and he had argued for the delegation's proposals that legislation was needed to protect those working in the sweated industries. Having got the Cabinet to agree to the proposals he had his own Department made responsible for the Bill.

Public opinion had been steadily improving in favour of legislation since 1898, when Sir Charles Dilke had first introduced a private members Bill in the House of Commons. Dilke had introduced the Bill in each session from 1898. He had discussed the proposals for legal minimum wages in Victoria with Alfred Deakin, a minister in the Victorian Government and later Prime Minister of Australia, as early as 1887. Dilke's Bill included the main characteristics of the Victorian model. This was delegates of both workers and employers, along with an independent chairman. The Boards would make proposals that would then be legally binding on employers within that trade and would be enforced by inspectors. Aves was doubtful whether the system that was used in Victoria could be successfully exported into Britain, and was of the opinion that:

The evidence does not appear to justify the conclusion that it would be advantageous to make the recommendations of any Special Boards that may be constituted in this country (Britain) legally binding.<sup>48</sup>

In 1906, Dilke had the right to move his Bill on the first night available for private members' Bills. However, he withdrew after he failed to secure enough support in Parliament. After the General Election of 1906 Labour MPs began to add their names to the Bill, and in 1909 the main provisions of the Bill were included in the

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<sup>46</sup> Now the Department for Business Innovation and Skills

<sup>47</sup> Churchill was President of the Board of Trade from April 1908 – February 1910

<sup>48</sup> Report on the Wages Boards and Industrial Conciliation and Arbitration Acts of Australia and New Zealand, Cd. 4167, 1908, p 125

Government's own Bill. The Bill had, at this point, such widespread support that its second reading was taken without a division of the House of Commons.<sup>49</sup>

The most powerful emotions that lay behind the Bill were the same as those that underlay all social legislation of the period. The Women's Industrial Council put it as:

[T]hese people are the perplexity of our generation, and unless we are to abandon ourselves to despair and to give up all hope of genuine social progress we must call the State in to their protection and assistance.<sup>50</sup>

Those in support of the Bill argued that since legislation, such as the Factory Acts, was used to control conditions of employment then wages could be controlled in this way too. This opinion was expressed most succinctly by the Select Committee on Homework, where it is said:

It is quite as legitimate to establish by legislation a minimum standard of remuneration as it is to establish such a standard of sanitation, cleanliness, ventilation, air space and hours of work.<sup>51</sup>

Those in opposition to the Bill had to show that by using the law to require an employer to pay a higher price for labour than would be in a free market was different from requiring an employer to meet with higher costs than would otherwise be by making him observe, for example, minimum standards in ventilation.

The Trade Boards Bill was immensely different in nature to the Factory Acts by the directness of State intervention in wages. Minimum conditions of employment were part of the general nature to employment; legal minimum wages would override the free bargain reached between an employer and worker. Bayliss indicated that the nature of the Bill was never fully exposed due to the desire to deal with the issue of sweating.<sup>52</sup> One observer commented that 'for a long time many continued to deny

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<sup>49</sup> Supra 9, p 6

<sup>50</sup> Women's Industrial Council, *The Case for and Against a Legal Minimum Wage for Sweated Workers*, 1909, p 2

<sup>51</sup> Supra 35, p xiv

<sup>52</sup> Supra 9, p 7

that (the Act) was an effective breach of the tradition of non-interference with the sanctuary of private wage negotiation.<sup>53</sup>

The economic rationale against the Bill was that wages fixed by law would be self-defeating. By making employers pay more than labour was worth to them Lees-Smith put it as if: 'the cost of labour is raised... and this will increase the probability that the labour hitherto earning less than the minimum will be left with employment.'<sup>54</sup> The argument followed that any attempt to increase the price of labour above that that was determined by the market would lead to the substitution of capital for labour resulting in unemployment, and that if the United Kingdom was to raise the price of labour against that determined by the market, goods made by sweated labour in other countries would be imported resulting still in unemployment.<sup>55</sup> These issues regarding protection versus free trade were brought into the House of Commons debate. Arthur Balfour, an opponent of legislation said:

[T]hese wages are not fixed by competition, but it is a forced sale of value. It is not competition value. It is a forced sale value. It is grossly unfair of anyone to say that a forced sale represents the true value of the article sold. A forced sale never gives a true market rate of wages... Whatever your view on Protection may be, you are now interfering not with the fair value of wages but with the cost at which certain articles may be introduced... If you think that the raising of wages in this country will make the cost of production greater, you are driven, to the inevitable conclusion that you are going to hand over the trades to foreign sweated labour. You are absolutely bonnd to make provision to deal with that difficulty. Under this Bill the only provision you can make is to exclude the industry in question from the beneficent operations of this measure.<sup>56</sup>

The Bill's supporter's response to this argument was to insist that sweated trades were exceptional in their nature and that minimum wages would only be applied to those workers within these trades. They argued that the state of the labour market was such

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<sup>53</sup> Allan Fisher, *Some Problems of Wages and their Regulation in Great Britain since 1918* (P.S. King, London, 1926) p 178

<sup>54</sup> H.B Lees-Smith, 'Economic Theory and Proposals for a Legal Minimum Wage' *Economic Journal* [1907] 17 (68), p 512

<sup>55</sup> *Supra* 9, p 7

<sup>56</sup> *Supra* 1, col 384-385

that some workers were paid so little that they could not afford to pay for life and that the employers were, therefore, receiving a subsidy from the State. Workers were part of the capital stock of the nation and the payment of wages insufficient to maintain them enabled some employers to obtain labour at a price which was less than it cost the community.<sup>57</sup> This view was set out by Sidney and Beatrice Webb in their discussion of the National Minimum.<sup>58</sup> The Webb's writings turned the laissez-faire opinions upside down. Only legislation could guarantee that labour was paid what it cost to provide and in its absence the community would be living on its capital. Unemployment, it was held, was a more desirable option to sweating. This attitude made the argument more influential as it met the established hostility to State interference on its own ground. However, by justifying legislation in this way it meant that legal wages could only be legislated for where workers would otherwise be provided with less than enough to keep 'body and soul together.'<sup>59</sup> The Webb's put it as:

The minimum wage... would be determined by practical inquiry as to the cost of food, clothing and shelter physiologically necessary, according to national habit and custom, and to prevent bodily deterioration.<sup>60</sup>

Paradoxically the Bill did not define what a legal minimum wage was. The legitimacy of State intervention had been acknowledged. However, suspicion was so strong that the State itself could not be given the power to reach the actual rates that wages should be paid at. Instead, the role of the State on this matter was minimised, and the practical effects of the legislation was to be left to the representatives of the Trade Board. The only power that the State had was the power to enforce the decisions of the Boards.

It was at this stage that the experiences in Victoria were so important. Aves had shown that both workers and employers were able to help themselves in the trades where a Board had been established and that the Boards were a form of industrial self-

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<sup>57</sup> Supra 9, p 7

<sup>58</sup> Sidney Webb and Beatrice Webb, *Industrial Democracy* (Longmans, Green & Co, London, 1920) p 766-784

<sup>59</sup> Supra 9, p 8

<sup>60</sup> Supra 48, p 774-775

government.<sup>61</sup> It was already emerging that the Boards were a means of encouraging voluntary collective bargaining. Churchill said:

[T]he principles on which we are proceeding are to endeavour to foster in trades in which, by reason of the prevalence of exceptionally evil conditions, no organisation has yet taken root, and in which, in consequence, no parity of bargaining power can be said to exist.<sup>62</sup>

The limitation of the State's commitment and the implicit rejection of a national minimum wage highlighted the importance of the Boards, the appointment of a separate Board for each trade, and the limited role of the State in their operation were accepted without hesitation as the Bill passed through Parliament. The breach with the past was seen afterwards to be clear, but at the time it was the connections linking State regulation with the hands-off approach which were noticed. The privacy of the wage-bargain was at an end, but the Act did not authorise the Minister the power to set wages. It was limited at doing for wages what the Factory Acts had done for conditions – it was necessary in order to end the disease which went with the laissez-faire approach.

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<sup>61</sup> Supra 9, p 8

<sup>62</sup> Trade Boards Bill Deb, 24<sup>th</sup> March 1909, col 1791-1792

## **The Trade Boards Act 1909 – Britain’s First Statute Regulating Wages**

The TBA 1909 came into effect on the 1<sup>st</sup> January 1910. Its passing marked a milestone in the development of minimum wage regulation in both Britain and throughout the world. The powers of the Trade Boards were limited, but they had both an immediate and tangible effect at raising living standards, and over the years they became an integral part of the system of State support for collective wage determination. The Wages Councils (which the Trade Boards became known as from 1945) were eventually seen as providing only a partial solution to the problem of low pay. The Act made provisions that employers, operating in particular trades, must not pay their workers below a certain level.<sup>63</sup> In his often quoted speech during the Bill’s Second Reading, Churchill, explained that the Trade Boards were necessary to ensure that workers received “a living wage” in industries where the bargaining strength of employers greatly outweighed that of the employees:

It is a serious national evil that any class of His Majesty’s subjects should receive less than a living wage in return for their utmost exertions. It was formerly supposed that the workings of the laws of supply and demand would naturally regulate or eliminate that evil... Where in the great staple trades in the country you have a powerful organisation on both sides, where you have reasonable leaders able to bind their constituents to their decision, where that organisation is conjoint with an automatic scale of wages or arrangements for avoiding a deadlock by means of arbitration, there you have a healthy bargaining which increases the competitive power of the industry, enforces a progressive standard of life and the productive scale, and continually weaves capital and labour more closely together. But where you have what we call sweated trades, you have no organisation, no parity of bargaining, the good employer is undercut by the bad, and the bad is undercut by the worst; the worker, whose whole livelihood depends upon the industry, is undersold by the worker who only takes the trade up as a second string, his feebleness and ignorance generally renders the worker an easy prey to the tyranny of the masters and middle-men, only a step higher up the ladder than the worker, and held in the same relentless grip of forces – where those conditions prevail you have not a condition of progress, but a condition of progressive degeneration.<sup>64</sup>

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<sup>63</sup> Jenny Morris, *Women Workers and the Sweated Trades* (Gower Publishing, Aldershot 1986), p 1

<sup>64</sup> *Supra* 1

The Act initially legislated for four trades to have a minimum wage. These were based on where sweating or homework was particularly prevalent. Schedule One of the Act identified the trades that were to be initially regulated. These were:

- Ready-made and wholesale bespoke tailoring – this was a widespread national industry employing around 200,000 people.<sup>65</sup>
- Paper and cardboard box making. Work was carried in many industries as well as within specialist firms – around 25,000 people were employed in this industry.<sup>66</sup>
- Machine-made lace and net finishing, and mending or darning operations of lace curtain finishing – employing around 10,000 people,<sup>67</sup> and;
- Certain types of chain-making – employing around 3,000 people.<sup>68</sup>

Trade Boards were to be made-up of equal members of representatives of employers and workers along with a number of independent representatives appointed by the Department of the Board of Trade.<sup>69</sup>

The powers of the Trade Boards were strictly confined and they only had the authority to set minimum hourly rates of pay along with equivalent rates for piece-work within the trades that they operated.<sup>70</sup> These rates were able to be fixed so as to apply to the whole of that trade or to any special process or to any special class of workers or to any specific area where the trade was carried out. Despite the limited scope of the trade boards powers there was evidence that suggested their effectiveness in terms of improving workers' conditions within those industries.<sup>71</sup>

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<sup>65</sup> Charles Verrill, *Minimum Wage Legislation in the United States and Foreign Countries*, (ULAN Press, 1923) p 174

<sup>66</sup> Supra 65

<sup>67</sup> Supra 65

<sup>68</sup> Supra 65

<sup>69</sup> Trade Boards Act 1909, S 11

<sup>70</sup> Trade Boards Act 1909, S 4 (1)

<sup>71</sup> Richard Henry Tawney, *The Establishment of Minimum Rates in the Chain-making Industry Under the Trade Boards Act of 1909* (Bell & Sons, London, 1914)

- *The Establishment of Minimum Rates in the Tailoring Industry Under the Trade Boards Act of 1909* (Bell & Sons, London, 1915)

Where a trade, covered by a Trade Board, failed to pay the prescribed wage as established by that Board then, potentially, both a civil action to recover the loss of wages could be taken along with criminal charges.<sup>72</sup> The burden of proof was reversed in the event of any prosecution, S 6 (4) stating that:

[O]n any prosecution of an employer under this section, it shall lie on the employer to prove by the production of proper wage sheets or record of wages or otherwise that he has not paid, or agreed to pay, wages at less than the minimum rate.

The Board of Trade appointed officers for the purpose of investigating complaints and to ensure proper compliance of the Act. These administrators had the authorisation to enter factories, workshops and places used for giving out work and to require the production of wage sheets, lists of workers, and any other relevant information. A number of prosecutions were brought about under the Act.

The officers identified that cases of underpayment had resulted due to misunderstanding or carelessness when calculating the amount of wages owed to workers.<sup>73</sup> Charles Verrill, identified a number of such cases where the officers successfully instructed the trades what they needed to do under the Act. These included such things as instances where:

- Three workers were underpaid – arrears paid in all cases with an amount owed of £15 15s. 4 $\frac{1}{2}$ d.
- The officers found that time workers were receiving minimum or above wage rates, and that proportion of pieceworkers who earned less than the minimum did not appear to be excessive.
- Officers found three time workers had been underpaid – arrears were paid with a total amount owed of £2 15s. 3d. On the inspectors first visit 23% of pieceworkers earned less than the minimum. Piece rates were, in some cases, increased. On the second visit that was carried out only 10% of workers earned less than the minimum rates prescribed by the Board.

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<sup>72</sup> Trade Boards Act 1909, S 6

<sup>73</sup> Supra 65, p 178

- Officers found that six time workers had been underpaid. The rates were corrected and arrears of £20 16s. 11d were paid.

Verrill also identified that a number of proceedings had been taken against employers in a number of cases where breaches of the Act had been brought to the attention of the Board of Trade. In these cases, successful convictions were obtained.

The first prosecution was that of an employer in the chain trade. He had failed to pay wages to three workers at the minimum rate specified by the Trade Board for that trade. In this case an attempt was made by the employer to conceal the violation of the Act by creating false entries in the wages books. The court considered that the offences were serious enough that they imposed fines totalling £15, with £9 9s. costs. In addition to this the employer was ordered to pay the three workers the arrears of wages which amounted to £7 15s. 10 $\frac{3}{4}$ d.<sup>74</sup>

The second prosecution to take place under the Act was that of a Nottingham middle-woman, for failing to pay workers the minimum rates indicated by the lace-finishing Board. The defendant was fined £1, with £1 1s. costs. The magistrates intimated that any future offenses would be dealt with much more severely.<sup>75</sup>

The third prosecution was that of a box manufacturer from East London. He failed to pay a female worker the minimum rate indicted by that Board. The employer was fined £3 3s. with further costs of £5 5s. The magistrates also ordered him to pay the worker 17s.<sup>76</sup>

The Act's procedures meant that, in practice, it took at least one year from the Board's first meeting to bring about a legal minimum wage into effect. Each of the Boards had to agree, by a majority vote if necessary, minimum rates of wages and, if it wished, general minimum rates for piece-work. All workers and employers had to be advised of the Boards proposals, and during a period of three months' any concerns could be lodged against the proposals. Having considered the objections, the Board then had

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<sup>74</sup> Supra 59

<sup>75</sup> Supra 59

<sup>76</sup> Supra 59

to seek approval from the President of the Board of Trade to sanction its proposals. If the Minister did so, then the rates became mandatory at the end of six months from ratification<sup>77</sup> - in the meantime the rates became an implied term in the worker's contract. However, employers were still free to pay less if they could get their workers to agree. An employer could ask to have the wage rates made binding for his employees before the end of the six months, and an employer delivering a Government or a local authority contract was compelled to do so. The legal time limits alone, which the Board could not shorten, meant that nine months had to pass by between the Board's decision to propose wage rates and their legal enforcement throughout that specific trade.

Of the four opening trades that were specified within the Act, the slowest Trade Board that completed was that for tailoring. Here wage rates did not become legally binding until February 1912 – two years after the Act became law.<sup>78</sup> The quickest trade to finalise was the Chain Board, however, here special circumstances had taken place. The Board had made its recommendations for the hand-hammered sections of chain-making in May 1910. After the period of protests the rates were sanctioned in August 1910, and were due to be legally enforceable by February 1911. When the rates became an implied contractual term, in August, the employers asked their workers to accept a lower rate. The vast majority of workers in this trade were women and had joined a trade union after the Board was established. The unions and workers believed that it was the motive of the employers to take advantage of cheap labour during the six-month period before the wage rates become legally binding as a means to stockpile chain. As a result, they refused the request of their employers. The employers then locked the workers out, and only at the beginning of October did the lock-out end with the employers accepting the rates as mandatory without waiting for them to become the law. The time rate for women in chain-making was set by the Board at  $3\frac{1}{2}$ d. per hour – the average working week, which the Board had no control over, was 54 hours. This gave a weekly income of 15s. Rent at the time was around 3s. 9d. which meant that the legal minimum wage, for chain-making, was around 11s.

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<sup>77</sup> Trade Boards Act 1909, S 5 (2)

<sup>78</sup> Supra 9, p 10

3d. This compared well when considered against what weekly earnings were prior to the Board had been, between 5s. and 6s.<sup>79</sup>

The criteria for judging which trades were eligible for a legal minimum wage were vaguely drawn up in the Act. It stated:

That the rate of wages prevailing in any branch of the trade is exceptionally low, as compared with that in other employments, and that the other circumstances of the trade are such as to render the application of this Act to the trade expedient.<sup>80</sup>

The understanding was that conditions associated with sweating, of which low pay was one of, justified the creation of a Trade Board. The initiative to establish such a Board rested with the President of the Board of Trade. He was able to make a Provisional Order, however, any such Order needed the approval of the House of Commons. This procedure meant that although the Minister was responsible for identifying whether or not a particular trade was sweated, he had to get the Commons to agree in order for a Trade Board to be established.<sup>81</sup> There was only one occasion when this procedure was used. In 1913 five new Trade Boards were created. These were in the following trades:

- Sugar confectionary – employing around 80,000 workers.<sup>82</sup>
- Shirt-making – employing around 50,000 workers.<sup>83</sup>

These two trades were large national trades employing mainly women.

- Hallow-ware – employing around 15,000 workers. This was split between the Tin Box trade and the Hallow-ware trades.<sup>84</sup>
- The Cotton and Linen Embroidery trade – employing around 5,000 workers (this trade was limited to Ireland).<sup>85</sup>

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<sup>79</sup> Supra 9, p 10-11

<sup>80</sup> Trade Boards Act 1909, S1 (2)

<sup>81</sup> Trade Boards Act 1909, S1

<sup>82</sup> Trade Boards (Sugar Confectionery and Food Preserving) Order 1913

<sup>83</sup> Trade Boards (Shirt-making) Order 1913

<sup>84</sup> Trade Boards (Hallow-ware) Order 1913

<sup>85</sup> Trade Boards (Linen and Cotton Embroideries) Order 1913

Further evidence of the inclination of the State to regulate wages through the use of legislation came with the enactment of the Coal Mines (Minimum Wage) Act 1912. The TBA 1909 had been enacted to safeguard the most vulnerable workers in society, the Act of 1912 served to protect a group of workers who, at this stage, were amongst the most highly protected of workers. This Act, just like the TBA 1909, did not result in the State setting the minimum rates of pay. There was an absence of want on the part of the Government to influence what the applicable rates of pay should be. It was provided in the Act that nothing was to prejudice the operation of any agreement entered into, or custom existing, before the passing of the legislation, for the payment of wages at a higher rate.<sup>86</sup> The Act also specified that it was to be an implied term of every miner's contract of employment that he be paid a minimum wage fixed under it.<sup>87</sup> The minimum rates of pay for miner's was, like the wage rates established for the trades where a Trade Board operated, determined by joint boards for each mining district. An independent chairman was appointed with the agreement of both sides. If the parties could not agree then the Board of Trade would make the appointment. The rates of pay that were reached could be amended at any time by understanding between the delegates on the Board. In addition to this, either side was able to apply for a variation after one year, provided that three months' notice had been given after the year had passed.<sup>88</sup>

The 1912 Act was enacted due to a national miner's strike. The Government had intervened in an attempt to prevent the strike but was unsuccessful and subsequently the strike began in March of that year. The operation of the Act appeared to have had a positive impact on the earnings of those miners who were affected by it. Jevons, in his writings identified that in terms of increasing wages the Act was a success:

It has been found by experience that this Act, which is nominally only temporary, does secure to the hewers a substantial minimum of day wages, however un-remunerative their conditions of work; and the fixing of rates by the joint Boards has, on the whole, considerably increased the wages of the various grades of the less skilled workers.<sup>89</sup>

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<sup>86</sup> Coal Mines (Minimum Wage) Act 1912, S 2 (1)

<sup>87</sup> Coal Mines (Minimum Wage) Act 1912, S1 (1)

<sup>88</sup> Coal Mines (Minimum Wage) Act 1912, S3 (2)

<sup>89</sup> Herbert Jevons, *The British Coal Trade*, (Trubner & Co, London, 1915) p, 599

The Act also did little to damage collective bargaining within the sector. Bercusson saying that:

The machinery set up under the Act is still in existence and is still used, but the resulting minimum rates have been effective only to a limited extent owing to their having been fixed generally at a lower level than the operative rates arranged from time to time as the result of collective bargaining.<sup>90</sup>

The 1912 Act appeared not to come under the same criticism that the TBA 1909 and the Trade Boards Act 1918 (TBA 1918) would subsequently come under.

At the outbreak of the First World War, in 1914, none of the Trade Boards that had been formed in 1913 had a legal minimum wage in place. With the exception of women workers, employed in the tailoring trade, all minimum wage rates were replaced by wages established by the Tribunals that were formed under the Munitions Acts of 1916 and 1917.<sup>91</sup> Although the Government was very careful not to give the President of the Board of Trade the power to set the rate of wages under the TBA 1909, statutory powers introduced in 1916 brought the State into the business of fixing actual rates of pay.<sup>92</sup> Section 6 of the Munitions of War (Amendment) Act 1916 provided that:

Where female workers were employed on, or in connection with munitions work the Minister of Munitions should have the power by Order to give direction as to the rate of wages, or as to hours of labour, or conditions or employment of the female workers so employed.

Section 7 provided for a similar authority with regards to semi-skilled and unskilled men employed, in any controlled establishment, on munitions work being work of a class which, prior to the war, was typically carried out by skilled labour.<sup>93</sup> Any breach of an Order declared under either section 6 or section 7 was a criminal offence. Both of these measures were brought forward as a result of trade union pressure. The

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<sup>90</sup> Brian Bercusson, *Fair Wages Resolutions*, (Mansell Information Publishing, London, 1978) p, 120

<sup>91</sup> Ministry of Munitions Act 1915, Munitions of War Act 1915, Munitions of War (Amendment) Act 1916, Munitions of War Act 1917

<sup>92</sup> Munitions of War (Amendment) Act 1916

<sup>93</sup> Douglas Brodie, *A History of British Labour Law 1867-1945*, (Hart Publishing, Oregon, 2003) p 142

powers contained within section 6 were also used in response to the problems posed by women doing work which was thought to be 'men's work'. The Minister issued a Statutory Instrument (SI) to set wage rates for munitions work.<sup>94</sup> The Order quantified time and piece rates along with bonus payments. Endorsement of the Order was inspired by the:

Need to recruit women for munitions work away from their homes, and to the sense that the Government should be a model employer directly and indirectly, or should at least secure a reasonable wage to workers from whom the leaving certificate regulations removed in the public interest the power to move freely from ill-paid occupations.<sup>95</sup>

The stumbling block for Parliament was that there were no fair-wage models in the different districts because the work was never embarked upon before and, no standard existed to apply to in the situation of female workers. It was questionable whether collective bargaining would provide the standards required as it would have been unlikely to have regulated the terms and conditions of employment of occupations which were not usually carried out by men. As such, a section 6 Order was used to fill this gap. A Statutory Instrument was also issued to deal with the issue of additional payments with regards to overtime.<sup>96</sup> The regulation sought to make use of current standards where relevant standards could be invoked; such standards might, but would not necessarily, be collectively agreed. The Order provided that:

Where no custom providing for such additional payments exist in the establishment, such additional payments shall be made at the rates and on the conditions prevailing in similar establishments or trades in the district. Where there are no similar establishments or trades in the district, the rates and conditions prevailing in the nearest district in which the general industries are similar shall be adopted.<sup>97</sup>

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<sup>94</sup> SI 1916/447

<sup>95</sup> Official History of the Ministry of Munitions Volume V: Wages and Welfare, Part II, (HMSO, London) p 57

<sup>96</sup> SI 1916/618

<sup>97</sup> Supra 96

As a last resort the amounts would be set by the State:

In the absence of any custom prevailing in the establishment, or in the district, or elsewhere, such additional payments shall be made at such rates and on such conditions as the Minister of Munitions may direct.<sup>98</sup>

Orders that were made under the Munitions of War (Amendment) Act 1916 involved a radical withdrawal from what the Government's aim was with the TBA 1909. The State was now defining actual wage rates. Such a process involved:

An elaborated administrative organisation, comprising not only a central department issuing the Orders, but local agents to enquire into questions of applications, and, some judicial authority to decide on disputed cases.<sup>99</sup>

Additional law reform relating to wages came about with the enactment of the Munitions of War Act 1917. Section 1 of the Act sought to settle the issues that were caused by the position of skilled workers who, at this point during the war, may have found themselves at a financial drawback when assessed to semi-skilled workers that were paid at the piece rate. Section 1 sanctioned the Minister to give directions relating to the remuneration that was paid to time workers on munitions work where the Minister considered that it was necessary in order to preserve the productivity of munitions. As with Orders issued under Sections 6 and 7 of the 1916 Act, Section 1 of the 1917 Act involved a process whereby the Government set the actual wage rate, a major departure from the TBA 1909. Orders issued under Section 1 were seen as crucial as they enabled the Government to discourage skilled workers from leaving their employment by setting higher wage rates.

The effect of the TBA 1909 on wages before 1914 was minimal. Unquestionably, women workers affected by the first four Boards benefitted considerably, but the scope of the Act had not gone beyond the tentative stage when the Great War began. Sweated workers were many times more numerous than the half million that were shielded by the Trade Boards in 1914. However, regardless of the fact that the Act

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<sup>98</sup> Supra 96

<sup>99</sup> Supra 82, p 121

was of no great practical importance in its first years, it did embody the ideologies of statutory wage regulation on which the general system on minimum wage legislation in the United Kingdom was to be taken.

### **The Trade Boards Act 1918 – The Second Stage**

By 1918 the Government was moving towards exercising a much wider control over wage increases. It was beginning to be of the opinion that they could only exercise effective control over wages 'if they were empowered to control wages completely'.<sup>100</sup>

The experiences during the War of the national wage settlement, along with State enforcement led to an explosion of proposals for the governing of industrial relations on a national scale. The extension of collective bargaining and the increase in trade union membership that this brought, coupled with the assertion of the community's interest through Government action, acted together as the starting-gun for post-war plans. The Whitley Committee's Report brought together the main ideas of the period, and Trade Boards played a large role in the Committee's plans for industrial relations in the United Kingdom. Some of the proposals along with some of the recommendations made by other bodies, such as the Industrial Conference which was set-up by the Government in 1919, called for State action that went beyond those covered by the Trade Boards. Out of these plans the only one to really survive was an expansion of the Trade Boards. National schemes of wage negotiation along with the idea of a national minimum wage had failed to make it through the post-war slump.

John Whitley<sup>101</sup> was appointed to chair a Committee to report on 'The Relations of Employers and Employees,' known as the Whitley Committee.<sup>102</sup> It was established in 1916, as was the Ministry of Labour, and the Ministry of Reconstruction in 1917.<sup>103</sup> It was given the following terms of reference:

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<sup>100</sup> Official History of the Ministry of Munitions Volume V: Wages and Welfare, Part 1, (HMSO, London), p 64

<sup>101</sup> Liberal Member of Parliament for Halifax, West Yorkshire (1900-1928)

<sup>102</sup> The Reconstruction Committee on Relations between Employee and Employer made five reports which formed the basis of much of the labour legislation that was passed after the First World War

<sup>103</sup> The Department ceased to be by 1919

[1] To make and consider suggestions for securing a permanent improvement in the relations between employers and workmen. (2) To recommend means for securing that industrial conditions affecting the relations between employers and workmen shall be systematically reviewed by those concerned, with a view to improving conditions in the future.<sup>104</sup>

The Committee was made up of employers and trade union officials, along with economists and social workers. The Committee was keen to stress the benefits that could be achieved by both sides of industry co-operating:

[T]he feature which gives the Whitley scheme a definite place in the history of industrial relations, lies in the emphasis placed on the community of interest of all engaged in the industry.<sup>105</sup>

At the end of the First World War the Government was of the mind that it would be foolish to allow wartime wage controls to expire immediately. As a result, it enacted the Wages (Temporary Regulation) Act 1918. The Act maintained the levels of wages, although the Minister of Labour let it be known that ‘the Government are particularly anxious to encourage each industry to deal with wages and allied questions for itself as soon as practicable.’<sup>106</sup>

The Committee brought into effect one aspect of the Trade Boards which had previously been in the background. It was more concerned with their possibilities as precursors of collective bargaining than with their function as suppressors of sweating. In the Committee’s scheme of things, the ideal was a universal system of Joint Industrial Councils (JICs) resting on trade unions and employers’ associations. It was identified that some industries were already capable of supporting JICs, others could do so with some encouragement as they already had effective organisation on both sides and the rest would need a Trade Board.<sup>107</sup> The opinion of the Committee was that there should be ‘two classes of industry... industries with Industrial Councils and

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<sup>104</sup> Henry Clay, *The Problem of Industrial Relations and Other Lectures*, (Macmillan & Co, London, 1929) P 149

<sup>105</sup> Ministry of Labour, *Report on the Establishment and Progress of Joint Industrial Councils*, 1923, p 2

<sup>106</sup> Wages (Temporary Regulation) Bill, HC Deb, 18<sup>th</sup> November 1918, Col 3311

<sup>107</sup> *Supra* 9, p 14

industries with Trade Boards.<sup>108</sup> The Boards were to be substitutes for voluntary collective bargaining until both employers and employees were in a strong enough position to do so without aid. They were intended to only be 'a temporary expedient facilitating organisation within the industry, so that, in the course of time, the workers or the employers will not have need of the statutory regulations.'<sup>109</sup>

Compared with the very limited purpose of the Boards that were envisaged under the TBA 1909, this proposal was intended to transform their status. The Committee liked the makeup of the Boards' representative structure along with the similarity of their proceedings to those of voluntary negotiating bodies. The Committee wanted the Boards to be an expression of the community's desire to foster the practice of collective bargaining in trades which could not support it unaided. They envisaged the Boards as being the Embryo of JICs.

The process of growth and development which would render the Boards redundant was one which led the Committee to envisage circumstances in which it would be difficult to distinguish clearly between a JIC and a Board. For example, the Committee recommended that if one part of a trade was outside the scope of a JIC then the Minister should either set up a Board, which would include members of the JIC, for that part of the trade, or should give the JIC the powers of a Board. The Committee went so far in emphasising all the ways in which the Boards could be made similar to voluntary JICs that the Ministries of Labour and Reconstruction had to publish a joint Memorandum on Industrial Councils and Boards.<sup>110</sup> The Memorandum made it clear that 'the purpose, structure and functions of Industrial Councils and Trade Boards are fundamentally different.' The Committee was able to get its main recommendations turned into legislation through the Trade Boards Act 1918. The absence of voluntary negotiations was made the chief test for the need of a Board.

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<sup>108</sup> Ministry of Reconstruction. Committee on Relations Between Employers and Employed, Second Report on Joint Standing Councils. Cd. 9002, 1918, p 5

<sup>109</sup> George Roberts, Minister of Labour. Second Reading of the Trades Board Bill. House of Commons Debs. 107 5s 70, June 17<sup>th</sup> 1918

<sup>110</sup> Ministry of Reconstruction and Ministry of Labour, Memorandum on Councils and Trade Boards. Cd. 9085, 1918

This new legislation gave the Minister of Labour the authority to set up a Board in any trade where:

No adequate machinery exists for the effective regulation of wages throughout the trade, and that accordingly, having regard to the rate of wages prevailing in the trade, or any part of the trade, it is expedient that the Act should apply.<sup>111</sup>

While the Committee's concern was to concentrate legislative attention on the methods of wage settlement – the main requirement, in practice, was the need to protect the weakest workers against sweating – the same aims as the TBA 1909. In order to prevent a collapse in confidence in the future of national wage settlements, the Government made the wage rates payable at the Armistice legally enforceable for six months.<sup>112</sup> This was extended until the end of September 1920. In the Committee's first Report it had been predicted that the Government would give legal backing to JIC agreements.<sup>113</sup>

In 1919 both the Provisional Joint Committee to the Industrial Conference and the War Cabinet Committee on Women in Industry suggested that all workers, not only those covered by Trade Boards, should be ensured a minimum wage by law. The broadening of the Trade Boards was seen by the Government as a means of weakening the pressure for a national legal minimum. The Boards were acknowledged as second best by those who wanted a national minimum wage for all. The Industrial Conference's Committee urged that until there was a national minimum wage that Trade Boards should be founded in all of the less organised trades. The Woman's Employment Committee of the Ministry of Reconstruction, in 1917, had determined that of the two million women working in industry after the Great War 350,000 would be covered by existing Trade Boards, and that a further million would require the protection of such Boards. On this size the Trade Boards system would have taken on an entirely new magnitude in wage determination.

The TBA 1918 not only laid down new benchmarks for the establishment of Trade Boards, but it also provided a much simpler and quicker administrative procedure for

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<sup>111</sup> Trade Boards Act 1918, S1 (2)

<sup>112</sup> Wages (Temporary Regulations) Act 1918

<sup>113</sup> Interim Report on Joint Standing Industrial Councils, Cd. 8606, 1917

their creation. New Boards were to be established using the Special Order procedure;<sup>114</sup> the Minister would release a draft Order, allow forty days for any complaints to be lodged, and then if Parliament did not dissolve the Order, the Board would be established.<sup>115</sup> This same procedure applied for abolishing existing Boards. The Minister could, if he desired, hold a public inquiry before establishing or abolishing any Trade Board. In this way any decisions about the expansion of the Trade Boards system passed in the hands of the Minister.

The formula for changes in minimum wages was streamlined and the six months' period of implied terms of contracts was brought to an end. Once the Board had issued its proposals, two months (previously three), were allowed for any concerns to be recorded. The Minister was allowed a month to decide whether or not to authorise the proposals. The rate fixing powers of the Trade Boards were extended. Minimum time rates remained the only rates which were mandatory, but in addition to permissive powers over general minimum piece rates, the Boards were enabled to set overtime rates since they had the power to shape what the 'normal numbers of hours of work per week or for that day'<sup>116</sup> were. The Boards were also able to settle guaranteed time rates for piece workers. As a result, the new powers of the Boards were made similar to that of voluntary collective bargaining bodies.

The establishment of new Trade Boards got off to a rather slow start. Only two were created in the first half of 1919. The time limit on the legal enforcement of war time wages, along with the Government's resistance to lasting national legal minimum wages, eventually resulted in a huge expansion of the Trade Boards system. By the end of 1920 there were around three million workers and 300,000 employers that were covered by the Trade Board system. According to Bayliss's study around 70 per cent of the workers that were covered by a Trade Board were women.<sup>117</sup> The chief trades in which Boards were established were jute and flax manufacturing, laundries, milk distribution, boot and shoe repairing and tobacco manufacturing.<sup>118</sup>

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<sup>114</sup> Trade Boards Act 1918, S1 (2)

<sup>115</sup> Trade Boards Act 1918, S2 (4)

<sup>116</sup> Trade Boards Act 1918 S3 (1) (c)

<sup>117</sup> *Supra* 9, p 17

<sup>118</sup> *Supra* 9, p 17

In 1919 the Government announced that it intended to form Trade Boards for retailing and in 1920 two Boards for the grocery and provision trades were set up. Many of the newly created Trade Boards encompassed smaller trades such as toy manufacturing, button making and cotton and general waste salvage.

By 1921 the Ministry of Labour was completing preparations for a major expansion of the Trade Boards programme. By September of that year Special Orders were made by the Minister for Trade Boards to cover the sale of poultry, fish, vegetables, fruit, glowers along with hairdressing trades. Notices were also issued of the intention for the Acts to apply to the optical industry, jute, flax and hemp finishing and the meat distribution industry. This huge increase in the number of Trade Boards meant that the administration of the system became a major focus of the work for the Ministry of Labour.<sup>119</sup>

Plans for further expansion of Trade Boards depended on the continuation of the post-war economic boom. As soon as that boom ceased it became noticeable that an effect of the Boards was to impose a delay on the employers' power to reduce wages. For industries where no Trade Board existed, in times of increased unemployment, those employees had no protection at all against an employer who wished to lower wages straight away. Bayliss, identified in his book *British Wages Councils*,<sup>120</sup> that although the downward pressure on wage rates began in the autumn of 1920, Trade Board minimum rates for men did not begin to decline until May 1921, and that the decline was at a much more glacial pace than either wage rates in those industries where no Trade Board existed, or than prices.<sup>121</sup> With these new economic circumstances the mood of industrial relations shifted, and the establishment of new Boards simply ceased.

Despite the queries and the research that had already been made for the creation of new Boards, the Government simply ended the expansion of the system. Whereas 23

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<sup>119</sup> The Ministry estimated that there were another two million workers in sixty trades to whom, on the same grounds as the Trade Boards already established, legal minimum wage regulation should apply. The objective was, therefore, a Trade Board system covering around five million workers and half a million employers, consisting of around 100 Boards

<sup>120</sup> *Supra* 9, p 18-19

<sup>121</sup> Dorothy Sells, *British Wages Boards, A Study in Industrial Democracy*, (1<sup>st</sup> Edn, The Brookings Institution, Washington DC, 1939), pp 270-277

Trade Boards were created in 1920, in 1921 this had diminished to just 3. Thomas Macnamara, in April 1921, described the situation as 'desirable in the present circumstances to proceed with caution in the establishment of new Trade Boards.'<sup>122</sup> As unemployment began to rise the prospects for all of the schemes for strengthening collective bargaining along with the legal protection for wages began to disappear.

JICs would only remain effective whilst both trade unions and employers found it to be worthwhile for them to operate, whereas Trade boards had a permanent existence. A shift in the bargaining power of employers was not, in itself, enough to bring about the abolition of a Trade Board. It was this permanence and the inflexibility of the Trade Boards which lured attacks from employers during the latter half of 1921. Employers had wanted to lower wage rates in trades where Boards existed, as they were doing in trades without Boards, but they discovered that the Boards were standing in their way and they were unable to do so. Under the leadership of the Association of British Chambers of Commerce a campaign was organised to amend the TBA 1918.

Some employers were pressing for the abolition of Trade Boards altogether, however, the general consensus was that single national minimum rates should be abolished, and that employers should be given the freedom to settle rates of pay with their own employees. For example, Bayliss identified that:

It was proposed that wages should be fixed for districts, that it should be possible for Boards to change rates faster, and that if employers and workers agreed on a rate lower than the Board rate then it should replace the rate specified by the Board.<sup>123</sup>

The Minister gave in to the critics of the Trade Board system and in September 1921 he appointed a committee<sup>124</sup>, chaired by Viscount Cave,<sup>125</sup> to 'inquire into the working effects of Trade Boards Act and to report what changes, if any, are required'. The

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<sup>122</sup> Dr Thomas Macnamara, Minister of Labour. House of Commons Debs. 140 5s 1090, April 13<sup>th</sup> 1921

<sup>123</sup> Supra 9, p 19

<sup>124</sup> Report of the Committee appointed to inquire into the Working and Effects of the Trade Boards Acts of 1909 and 1918. Referred to as the Cave Committee

<sup>125</sup> George Cave, Home Secretary 1916-1918; Lord Chancellor 1922-1924 and 1924-1928

Trade Boards system was put on trial at the point when it became under the most strain.

The conclusion drawn to by the Cave Committee was that the TBA 1918 had unjustifiably extended the degree of State interference in the settlement of wages and that as a result, drastic amendments were necessary.

The view that was held by the Cave Committee on the purpose of statutory wage regulation differed from the views that had been formed by the Whitley Committee. Trade Boards had been created with the view that they would evolve into voluntary bodies for the settlement of wages. The Cave Committee was of the opinion that:

While the coercive powers of the State, and particularly the criminal law, may be properly used to prevent the unfair oppression of individuals and the injury of the national health that results from sweating of workers, the use of those coercive powers should be limited to that purpose and that any further regulation of wages should be left to the process of negotiation and collective bargaining.<sup>126</sup>

It was grasped from this general slant, as it followed from the Webb's argument for a national minimum wage,<sup>127</sup> that Trade Boards should only involve themselves with stamping out sweating, and that the law should only be used to compel employers to pay their workers a wage that was sufficient for existence. The Committee made two central proposals. These were that Trade Boards should only be established where it could be shown that sweating exists, and that the Boards should only have the statutory power to set a rate no greater than that needed for subsistence. In order to give effect to its first recommendation the Committee proposed that the conditions that were laid out in both the TBA 1909 and 1918 should be present before a Board was created. This meant that 'exceptionally low'<sup>128</sup> wages and 'no adequate machinery for the effective regulation of wages'<sup>129</sup> would have to exist together. Bayliss suggests that there could be no situation in which low wages could be accompanied by

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<sup>126</sup> Report of the Committee appointed to inquire into the Working and Effects of the Trade Boards Acts of 1909 and 1918. Cmd. 1645, 1922, p. 26

<sup>127</sup> *Supra* 58, p 766-784

<sup>128</sup> Trade Boards Act 1909, S1 (2)

<sup>129</sup> Trade Boards Act 1918, S1 (2)

adequate collective bargaining and that the Committee's recommendation amounted to a simple sweating criterion and a return to the TBA 1909.<sup>130</sup>

The Committee's determination on the existence of low wages was intended to remove all possibility of Boards being established just because of the lack of voluntary dialogues between employer and employee. It was rejected, by the Committee, the view that Trade Boards were potentially part of the national system of collective bargaining and:

Sought to lop off the accretions that have grown upon the original Trade Boards Act of 1908, and not to extend direct legal interference with wages beyond classes or workpeople who are, in popular language, sweated, or liable to be sweated.<sup>131</sup>

The Committee's second suggestion sought to go one step further and go back on the provisions of the TBA 1909. One of the principles that was laid down by the 1909 Act was that a Trade Board exercised all of its powers, whether mandatory or permissive, in the same way, and in the name of the entire Board. The Boards were obliged to set time rates and had the option, if so inclined, to set piece rates. The rates were decided by a popular vote of the Board and the levels set would be defended by the criminal law. In setting time rates a Board was able to distinguish between classes of workers, and were able to take into account whatever factors seemed relevant at the time. The Committee was of the mind that a Board should only set a rate of pay which would cover the cost of subsistence only. It suggested that this rate alone should be settled by a majority vote of the Board and enforced by the criminal law and that all other rates:

Should be determined by agreement by the two sides of the Trade Board without the vote of the Chairman or Appointed Members, and when confirmed should be enforceable by civil proceedings only.<sup>132</sup>

These proposals, which were inherent in the view that the Boards' function was to prevent sweating, would, according to Bayliss, have had two outcomes if put into

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<sup>130</sup> Supra 9, p 20-21

<sup>131</sup> Arthur Pigou, 'Trade Boards and the Cave Committee', *Economic Journal*, [1922] 32 (127), p 322

<sup>132</sup> Supra 114, p 28

practice. In order to establish the subsistence, wage the Boards would have had to have been given a definition of subsistence, and the closer that definition the less room for argument between the representative members – the Board would have become administrators of a statutory subsistence wage for sweated workers.<sup>133</sup> All similarities between the Boards and collective bargaining would therefore have simply ceased.

Bayliss indicates that the second consequence would have been that in all but a limited number of cases no other rates other than the subsistence minimum, called ‘the true minimum’ by the Committee, would have been settled. Deprived of their vote on wages other than ‘the true minimum’ the independent members would have been deprived of their power to bring the Boards to decisions, and without adequate trade union organisation the workers would have no means of getting the employers to enter into negotiations with them.<sup>134</sup>

Other recommendations were made by the Committee with the aim of reducing the impact of the decisions made by the Boards on a trade. The Committee suggested that the Minister should have the powers, in certain trades, to create District Committees with the powers to establish local wage rates and thereby ending national minimum wages. The Committee also wanted to reduce the participation of trade unions in the work of a Board by implementing a rule that three out of four workers’ representatives should have worked within that trade.

There can be no doubt that the pressures of the time helped the Committee arrive at the conclusion that the powers of the Boards needed to be reduced. The opposition of employers to the Boards, the rapidity with which wages outside the Trade Board system were falling, and the general withdrawal of the Government from responsibility for maintaining the level of wages, all served to make the Committee hostile to the system. Those members of the Committee who held a minority opinions could do little to temper its recommendations. There was no Minority Report and even the two

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<sup>133</sup> Supra 9, p 21

<sup>134</sup> Supra 9, p 21-22

members of the General Council of the Trade Union Congress who served on the Committee<sup>135</sup> signed off on its report.

The Committee's recommendations were accepted by the Government and a plan to introduce new legislation implementing these recommendations was announced. The Government also issued a statement of policy<sup>136</sup> which set out the administrative means which that the Government would adopt in order to implement the Committee's recommendations which did not require any fresh legislation. Since the TBA 1918 left it to the pleasure of the Minister for deciding whether a new Board should be created, it followed that he could follow the suggestions of the Committee and simply cease to create any new Trade Boards.

Contained within the Government's statement were details indicating that no new Boards would be established without their first having been a public inquiry where it could be shown that both 'unduly low wages and no adequate machinery for the regulation of wages existed'. The 1918 Act permitted the Minister to hold a public inquiry if he so desired and since he was able to interpret the phrase 'having regard to the rates of wages' conveyed in the Act as meaning 'unduly low wages' the Government was able to execute the first recommendation of the Committee without the need for fresh legislation.

The second recommendation that subsistence rates of pay should be decided on and administered in the manner set out in the TBA 1918 and that other rates should only be by agreement between employer and employee and could only be enforced by civil proceedings, did necessitate new legislation. The Minister did as much as he could within the limits of the existing law to instigate the recommendations. In the Government's statement he said that he hoped that the Boards would only propose rates other than the minima where there was agreement between the two sides, and

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<sup>135</sup> E L Poulton, General Secretary of the National Union of Boot and Shoe Operatives and Chairman of the TUC Parliamentary Committee 1920-1921, and Arthur Pugh, General Secretary of the Iron and Steel Trades Confederation

<sup>136</sup> A statement of the Government's Policy on the Administration of the Trade Boards Acts of 1909 and 1918 pending legislation dealing with the recommendations of the Committee of Inquiry into the Working and Effects of the Acts. Cmd. 1712, 1922

that 'the Minister in confirming rates would bear the recommendations of the Cave Committee in this respect in mind'.<sup>137</sup>

The Government introduced a Trades Boards Bill in the House of Commons, but the Bill had only had its first reading by the time that the Government called a General Election in 1923. It was seen that the Bill went one step further than the suggestions that were made by the Committee. It provided for autonomous District Boards in all of the trades at the discretion of the Minister. Because a large quantity of the proposals made by the Committee did not need new legislation the Bill was not deemed to be urgent. The Conservatives lost the 1923 election and it saw the return of the first Labour Government. They put a stop to the Bill, and when the Conservatives were returned to power in 1924 the Bill was not introduced again and none of its proposals were not adopted.

The experiment with the TBA 1909 had shown that intervention by the State was compatible within a principally voluntary system of wage settlements. At the time when State intervention was being debated many suggested for a more direct approach with an introduction for a national minimum wage, guaranteeing all workers a legal minimum rate. However, these ideas were not adopted and the system of Trade Boards were employed. The Trade Boards system literally put the power of the State behind the decisions of the representatives on a Board. The Boards began, after the First World War, to be generally accepted as the State's contribution to the bargaining between unions and employers' associations as the means of settling wages. Once again a call for a national minimum wage was rejected. The intention was that:

No longer were the Trade Boards solely designed to operate in cases of glaring exploitation, but henceforward they would be a normal method of supplementing voluntary collective bargaining.<sup>138</sup>

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<sup>137</sup> Supra 124, p 6

<sup>138</sup> Otto Kahn-Freud, 'Minimum Wage Legislation in Great Britain' University of Pennsylvania Law Review, [1949] 97 (6) pp 787-788

## Chapter 2

### The Australian and New Zealand Systems

#### **Introduction**

The model which minimum wage legislation in the United Kingdom is based upon are to be found in the history of the movement in the State of Victoria (Australia) and New Zealand. Investigations were carried out in Australia and New Zealand during the 1880s and 1890s. These investigations discovered that, despite the abundance of land and relative lack of labour there was a problem with excessive sweating. However, unlike in Britain, Australia had been prepared to use State intervention to help alleviate the problems associated with sweating. New Zealand opted for a different approach to combat sweating. Here the courts of arbitration were used. The Industrial Conciliation and Arbitration Act 1894 was originally enacted to prevent strikes and lockouts. The Act gave legal recognition to unions and enabled them to take disputes to a Conciliation Board. These Boards consisted of elected members, elected by both employee and employer. If the decision of the Board was not satisfactory to the parties, then an appeal could be made to the Arbitration Court. The court consisted of a Supreme Court judge and two assessors. The assessors represented the employers' association and one from the unions. By 1898 local courts of arbitration were also permitted to fix wages for low-paid workers.

#### **The State of Victoria (Australia)**

In the Victoria wage regulation was embodied in the Factory and Shops Act 1896, following a campaign by the Victoria Anti-Sweating League. This allowed for the creation of Wages Boards which could regulate wages, hours and conditions of employment. The law was intended as a temporary measure, been in force until 1<sup>st</sup> January 1900. The Act was re-enacted on the 20<sup>th</sup> February 1900, again as a temporary measure – lasting for two years. In June 1900 a Royal Commission was also established to look at the issue of sweating and wages.

The Australian Act set a minimum rate of 2s. 6d per week for those working in a factory or a shop. It also gave the Governor the power to appoint Special Boards to fix legal minimum wages. These Boards were able to set occupation specific, age specific and

gender specific minimum rates of pay. Initially, six trades that were believed to be acutely prone to sweating were established. These were in the boot, bread, clothing, furniture, shirts and underclothing trades. Later changes were made to the law to increase the scope of the legislation. This, essentially, allowed for the creation of a Special Board for practically any trade. Between 1900 and 1902 an additional 31 Special Boards were created, and by 1913 there were 126 Special Boards – covering roughly 110,000 workers.<sup>139</sup>

The events in Victoria, with minimum wages, were observed with interest by Australian, American and British economists, social reformers and civil servants. Many of whom visited Victoria to witness first-hand the working of the law.<sup>140</sup> Many of the witnesses deemed the Factory and Shops Act 1896 as having successfully increased the wages of the low paid, whilst causing little economic harm to the employers. The social reformer and future United States Supreme Court Justice Louis Brandeis stated that the law ‘had created much better conditions in industry than had existed prior to its (the Acts) passage.’<sup>141</sup> Sidney Webb, wrote:

[I]n the sweated trades to which the law was first applied, wages have gone up, the hours of labour have invariably been reduced, and the actual number of persons employed, far from falling, has in all cases, relatively to the total population, greatly increased.<sup>142</sup>

A thorough study of the Victoria wages system was carried out by the American economist and vice chairman of the Industrial Commission of Ohio, M. B. Hammond. He spent six months in Victoria between 1911 and 1912 studying the Special Boards and carrying out interviews with both workers and employers. He concluded that the main effects of the Factory and Shops Act 1896 were higher wages for many of the workers where a Special Board was in operation, and the virtual abolition of sweating

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<sup>139</sup> Victoria, Report of Chief Inspector, 1914, p 18-22

<sup>140</sup> Marilyn Lake, ‘Challenging the “Slave-driving employers”’: understanding Victoria’s 1896 minimum wage through a world-history approach, *Australian Historical Studies* [2014] 45 (1) p 89-90

<sup>141</sup> Louis Brandeis, ‘The Constitution and the minimum wage: defence of the Oregon minimum wage law before the United States Supreme Court, *The Survey*, 1915, p 494

<sup>142</sup> Sidney Webb, ‘The economic theory of a legal minimum wage’, *Journal of Political Economy* [1912] 20 (10) p 973-974

along with general improvements in industrial relations.<sup>143</sup> He also examined a number of potentially negative effects of minimum wages and concluded that the Factory and Shops Act 1896 caused only minimal substitution between different types of workers, unemployment of older and slower workers, and relocation of business to other Australian States. Even the initial leader of the employers' opposition to the Act, the boot manufacturer Sir Frederick Sargood, said in 1900:

... that there are a large number of trades that, rightly or wrongly, believe that it would be to their interest – and I am speaking now more of the employers than the employees – to come under the Factory and Shops Act 1896.<sup>144</sup>

## New Zealand

New Zealand was the first country to pass a law providing a means for fixing a legal minimum wage. This was done through the Industrial Conciliation and Arbitration Act 1894. The Act gave legal recognition to Trade Unions and allowed them to take disputes to a Conciliation Board. The Board's membership was made up of people elected by both workers and employers. Where the parties did not agree with a decision made by the Board they were able to appeal to the Arbitration Court which was made up of a Supreme Court judge and two assessors. One elected by unions and the other by employers' associations. The 1966 Encyclopaedia of New Zealand stated that 'After some 70-years of operation the system of industrial conciliation and arbitration has become firmly accepted – perhaps even a traditional – way of determining minimum wage rates and handling industrial disputes...'<sup>145</sup>

In 1906 the then leader of the UK Labour Party, Ramsay MacDonald, visited New Zealand to study the arbitration system. MacDonald was not impressed, saying 'Trade unions in New Zealand exist mainly to get an award out of the Arbitration Court... They

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<sup>143</sup> M. B. Hammond, 'Where life is more than meat: The Australian experience with Wage Boards,' *The Survey* [1915] p 498

<sup>144</sup> M. B. Hammond, 'Wages Boards in Australia: IV. Social and economic results of Wages Boards,' *The Quarterly Journal of Economics* [1915] 29 (3), p 129

<sup>145</sup> Available at: <https://teara.govt.nz/en/1966/labour-department-of> accessed 12th July 2017

cannot strike; it is no good their grumbling; they simply pay their fees into union funds because they are legally bound to do so.<sup>146</sup>

In the end, the UK Government opted for a system similar in nature to that used in Australia. Where Boards would set rates for their own specific industry and the industries where Boards should be established would be decided by the relevant Minister.

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<sup>146</sup> Quoted in H Roth, *Trade Unions in New Zealand Past and Present* (Reed Education, Wellington, 1973) p. 56

## Chapter 3

### The Wages Councils Act 1945 & The Catering Wages Act 1943

“We have renamed the Trade Boards Wages Councils... Many people might ask what is in a name, but as the purpose of the Bill is unfolded it will be seen that the change in the name not only widens Trade Board legislation, but is a declaration by Parliament that the conception of what was known as sweated industry is past...” (Ernest Bevin)<sup>147</sup>

The potentialities of the TBA 1918 were never fully exploited and in the economic depression of the inter-war years the Trade Board system, so far as becoming a means of protecting the wages of a greater number of workers, was fortunate to have survived. As a result of this experience the Catering Wages Act 1943 and the Wages Councils Act 1945 were passed. Apart from their significance as instruments for extending the system of wage regulation, they were devised by Ernest Bevin to prevent statutory wage regulation from being kicked into the long grass when it was needed the most, as it had been during the 1920s. This chapter will examine the reasons behind the enactment of these key pieces of legislation and the effects that they had upon wages within the United Kingdom. This chapter will conclude by exploring the policy reasons behind the final abolition of the Wages Councils.

Ernest Bevin<sup>148</sup> had argued that statutory wage regulation was essential if Britain was to avoid the destructive effects of unemployment and disruption to collective bargaining. The next major changes to take place affecting wages happened after the Second World War. The General Election of 1945 was held less than two months after VE Day and was the first to be held since 1935. The Labour Party, which had campaigned and promised to create full employment, a tax-funded National Health Service, the embracing of Keynesian economic policies and a cradle-to-the-grave welfare system. The Party’s election slogan was ‘Let us Face the Future’.<sup>149</sup>

The new Government introduced a wave of legislation aimed at strengthening the rights of workers, tackling low pay and had adopted the proposals made in the Social

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<sup>147</sup> Second Reading of the Wages Councils Bill, HC Debs, 407 5s 69 and 74, January 16<sup>th</sup> 1945

<sup>148</sup> Minister of Labour and National Service (1940-1945) in the wartime coalition Government

<sup>149</sup> The Labour Party election manifesto, 1945

<http://www.politicsresources.net/area/uk/man/lab45.htm> Accessed 7 December 2016

Insurance and Allied Services Report,<sup>150</sup> written by Sir William Beveridge. The proposals that were made in the Beveridge Report and subsequently passed into law became what is now regarded as the beginnings of the Welfare State.<sup>151</sup>

In 1943 the Catering Wages Act was passed and by 1945 the Government had enacted the Wages Councils Act.<sup>152 153</sup> This piece of legislation repealed the existing Trade Boards Acts of 1909 and 1918.<sup>154</sup> It replaced the Trade Boards with Wages Councils.<sup>155</sup> According to Bayliss the Wages Councils Act 1945 was based on:

The premise that the state should use its powers not simply to ameliorate the effects of sweating but to keep collective bargaining going when economic circumstances tended to destroy it.<sup>156</sup>

Blackburn explains that the re-naming of the boards indicated a return to the principles of the 1918 Act (which stressed lack of collective bargaining machinery), along with the desire to remove the stigma that was associated with sweating.<sup>157</sup>

### The Catering Wages Act 1943

In 1943 Bevin had brought forward a Bill to regulate wages in the catering industry. This was something that the second Labour Government (1929-1931) had unsuccessfully embarked upon. The Bill had some immediate aims – if working conditions in the industry were not improved then workers would leave the industry and that would have a detrimental effect upon the war effort. In introducing the Bill, the Government was primarily concerned with general social policy. Bevin made that argument that:

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<sup>150</sup> Commonly Referred to as the Beveridge Report

<sup>151</sup> Legislation included such things as the Family Allowances Act 1945; National Insurance (Industrial Injuries) Act 1946; National Insurance Act 1946; National Health Service Act 1946; Pensions (Increase) Act 1947; Landlord and Tenant Act (Rent Control) Act 1949

<sup>152</sup> Catering required its own piece of legislation because, technically, it did not fit into the category of a trade. However, under the Wages Councils Act 1959, both Wages Councils were consolidated

<sup>153</sup> Further consolidating legislation was introduced with the Wages Councils Act 1979

<sup>154</sup> Wages Councils Act 1945, S20 (1)

<sup>155</sup> Wages Councils Act 1945, S20 (2)

<sup>156</sup> Frederick Bayliss, *British Wages Councils* (Blackwell, Oxford, 1962), p 56

<sup>157</sup> Sheila Blackburn, 'The Problem of Riches: From Trade Boards to a National Minimum Wage' *Industrial Relations Journal* [1988] 19 (2) 124-138, p 126

The Government takes the view unanimously, as a fixed policy, that it is our duty to encourage in every way we can self-government in industry wherever we can, but where we cannot, not to leave these people unprotected.<sup>158</sup>

Such a general policy meant that all industries which could not sustain voluntary collective bargaining ought to have statutory wage regulations imposed upon them.

Bevin dealt with catering as a separate issue than with other trades which followed with the Wages Councils Act 1945. This was done for various different reasons. Bevin knew that there would be a great many people that would be hostile to the implementation of legal minimums within the catering trade. He said, 'I was told from the beginning, before I produced the Bill at all, that I was going to be fought to the death.'<sup>159</sup>

Catering was quite a complex trade. It included such things as international hotels and boarding houses, public houses and snack bars, and there was heavy resistance to the proposed legislation – particularly from the hotel trade. The principal argument against the Bill was not that it would be bad for the industry but that Bevin's motive was purely party political. The opposition to the Bill's Second Reading was led by Sir Douglas Hacking,<sup>160</sup> who said:

The difference between (Bevin's) views, political views if you like, and those of my friends and myself is that he would desire to interfere with private enterprise in any circumstances, while I would say that you should never interfere with private enterprise until you have proved that it is not doing its job.<sup>161</sup>

Many of the actions of the Ministry of Labour had interfered with private enterprise in the interests of the war effort. However, the Catering Wages Bill sought to go one step further and introduce a permanent interference and as a result opponents of the Bill were in a very strong position to oppose it. Only a few months earlier the Government had considered what it would do regarding social legislation, and it had given a

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<sup>158</sup> Second Reading of the Catering Wages Bill, HC Debs. 386 5s 1203, February 9<sup>th</sup> 1943

<sup>159</sup> HC Debs. 388 5s 1627, April 20<sup>th</sup> 1943

<sup>160</sup> Conservative MP for Chorley 1918-1945

<sup>161</sup> Supra 145, at 1212

promise that it would only legislate on matters of social reform where there was 'a general measure of agreement on which action can satisfactorily be based.'<sup>162</sup> Apart from debating the content of the Bill, those opposed to it felt that they could show that there was not 'a general measure of agreement' on it they could claim that the Government had broken its pledge.

There had been no indication in the King's speech at the opening of the Parliamentary session that the Government intended to introduce such a Bill, nor had any inquiry taken place into the catering trade. However, despite this and the hostility presented by Conservative back-benchers there was no stopping Bevin's agenda. He was uncompromising in his justification of statutory wage regulation, saying:

I defy any honourable member to point to one industry that was not improved in efficiency as a result of coming under (a Trade Board). There is all this talk about ruining and wrecking the industry. Read your debates of 1909. Everything has been falsified. When the two parties have come together under a Board they have contributed to the efficiency of the industry and have never done a single thing that can be shown to be against the public interest...<sup>163</sup>

Bevin had refused to allow any concessions to be made to the Bill at the Committee Stage. His adversaries were of the opinion that they were strong enough to warrant some changes. They believed that the Catering Wages Act was a price which had to be paid for having Bevin as a wartime Minister of Labour. However, Bevin believed that there could be no separation of labour problems into wartime and post-war classifications. The guarantee of certain minimum conditions of employment to all workers was for him a fundamental right of all citizens. Workers in the catering trade could only get the basic protection through the law and Bevin was frank in insisting that they got this protection.

The catering trade was not one single industry, but instead a collection of trades that shared a common trait that they supplied food, drink or accommodation. Those

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<sup>162</sup> Sir Stafford Cripps, Leader of the House of Commons, HC Debs. 385 5s 83, November 12<sup>th</sup> 1942

<sup>163</sup> HC Debs. 388 5s 572, April 6<sup>th</sup> 1943

employed within these categories would be covered by the Act. However, the trade was not sufficiently cohesive to be administered by a single regulating body.

The Act created the Catering Wages Commission to watch over the whole trade. The Commission was to have tripartite membership consisting of three independent members along with four representative members – two for the employers and two for the workers. The representatives were not to act as assessors or spokespeople for the interests in the catering trade – they had to be ‘qualified to represent the views of employers and workers respectively, but are not themselves directly connected with the hotel and catering trade.’<sup>164</sup>

The Commission had two principal functions. It had the authority for deciding how the trade should be divided into sections for the purpose of wage regulation. The Minister was only authorised to create a Board with the recommendation of the Commission. However, he was able to instruct the Commission to make an inquiry on terms of reference set by him, and he was able to refer back the recommendations of the Commission. The Minister could not set up a Board on his own initiative or modify what the Commission had recommended. He had the power to refer recommendations back to the Commission and since there was no limit on the number of times he could do so it amounted to a power of veto. However, the clear intention was to hand to the Commission the power to determine the structure of statutory wage regulation in the trade.

This function of the Commission’s work was of the greatest importance when it was initially established and when the boundaries between the Boards were being drawn up. Between 1944 and 1945 five Boards had been created.<sup>165</sup>

The second function of the Commission served to justify it as a permanent body making an annual report to Parliament. It was to conduct inquiries ‘into means for meeting the requirements of visitors from overseas, and for developing the tourist

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<sup>164</sup> Catering Wages Act 1943, Schedule 1, Para 3

<sup>165</sup> Industrial and Staff Canteen Undertakings, Licensed Non-Residential Establishments, Licensed Residential Establishments and Licensed Restaurants, Unlicensed Places of Refreshment and Unlicensed Residential Establishments.

traffic.’<sup>166</sup> Boards were given the powers to make their own inquiries and to submit their findings to the Commission. Since 1918 Trade Boards had had the power to carry their own inquiries, and the Minister’s power to order a Board to carry out an inquiry derived from the TBA 1909. No Board had ever used the power under the TBA 1918, and only one inquiry had ever been ordered by the Minister under the Act of 1909.<sup>167</sup>

It is possible to draw a conclusion from this that although the function of Trade Boards was to concern themselves with a wider question than just wages and conditions of employment they showed no real interest in doing so. The function of the Commission as leader of the whole industry, showing employers how to take advantage of new developments derived very little encouragement from the Boards. However, the Commission had a statutory existence along with its own staff which enabled it to make a number of inquiries. Between 1944 and 1947 the Commission had published a number of reports. These were on the rehabilitation of the catering industry, the staggering of holidays, training, tips, employment agencies, and allegations of over-charging for holiday accommodation. However, the Commission had no statutory power to make any changes. The Act only provided that government departments should take the recommendations of the Commissions ‘into consideration’.<sup>168</sup> The Commissions wide and varying powers were not accompanied by any authority to put its recommendations into practice.

Apart from the existence of the Commission there were two other main differences between the Catering Wages Act 1943 and the Wages Councils Act 1945. Probably one of the main differences was that employment in catering usually required long working hours. The working day was quite different in hotels than that in a factory or a shop. The Act required that the Board to fix ‘the intervals for meals or rest to be allowed’.<sup>169</sup> The other peculiarity of catering which produced special legislation had to do with the difficulty that was inherent in identifying catering undertakings. There were a number of difficulties linked to discovering all of the employers that came within the scope of a Wages Council or Board, but the normal means could not be relied upon

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<sup>166</sup> Catering Wages Act 1943, S2 (1) (b)

<sup>167</sup> Industrial Conditions in the Cutlery Trade. A Report of the Cutlery Wages Council 1946. In 1944 The President of the Board of Trade had asked the Cutlery Trade Board to make an inquiry into ‘the poor environmental conditions under which a good deal of the work of the trade is carried on.’

<sup>168</sup> Catering Wages Act 1943, S2 (2)

<sup>169</sup> Catering Wages Act 1943, S8 (1) (b)

to be effective within the catering trade. The Minister had the power to command that all employers that were covered by a Board register that they did so. This power had only been used in one situation, and it was a disaster. In 1946, on the instruction of the Commission, the Minister required that all employers that fell within the scope of the Unlicensed Residential Establishment Wages Board should register. Boarding houses were the main type of business that fell within this scope and they presented the greatest problem. By 1950 there were there was only 20,130 employers who had registered compared with what the Commission believed to be between 60,000 to 80,000 in this section of the trade alone.<sup>170</sup>

### **The Wages Councils Act 1945**

In 1909, the minority report of the Royal Commission on the Poor Laws and Relief of Distress,<sup>171</sup> largely drafted by Beatrice Webb, saw statutory wage regulation as part of an integrated strategy, along with social insurance, for addressing persistent labour market inadequacies along with related imbalances.<sup>172</sup> A number of steps were taken towards confirming a national minimum wage during the early part of the twentieth century. The National Industrial Conference of 1919, which was set-up with the encouragement of the post-war Liberal Government, put forward detailed proposals for a legally binding 48-hour working week along with a universal minimum wage, only for these plans to falter in the face of opposition from employers.<sup>173</sup> The result that was reached with the enactment of the Wages Councils Act 1945 was a compromise. It involved the expansion of the Wages Councils alongside government support for industry-level, multi-employer bargaining in the voluntary sector. In doing so the Government gave its backing to the enforcement of basic wage levels along with terms and conditions on an industry-by-industry basis, but it also preserved the autonomy of collective bargaining, which was of major significance at a time of 'collective laissez-faire' UK industrial relations.<sup>174</sup>

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<sup>170</sup> Catering Wages Commission. Report of an Inquiry into the Operation of the Catering Wages Act 1943, in the Hotel Industry. Cmd. 8004, 1950, p 17

<sup>171</sup> Cmnd 4499 (HMSO, London, 1909)

<sup>172</sup> Sidney Webb and Beatrice Webb, *The Public Organisation of the Labour Market: Being Part Two of the Minority Report of the Poor Law Commission* (Longmans, Green & Co, London, 1909)

<sup>173</sup> Rodney Lowe, 'The Failure of Consensus in Britain: The National Industrial Conference 1919-1921' [1978] *The Historical Journal* 2 (13) 649-675

<sup>174</sup> Otto Khan-Freund, 'Labour Law.' In Morris Ginsberg, *Law and Opinion in England in the 20<sup>th</sup> Century* (Stevens & Sons, London, 1959) pp, 215-263

As the Second World War drew to an end the existing Trade Board system was replaced with the Wages Councils Act 1945. There was a reason for the change of name. The Act not only widened 'Trade Board legislation but is a declaration by Parliament that the conception of what was known as a sweated industry is past'.<sup>175</sup> Whilst a robust scheme was required wholesale State regulation of wages was not an option since it was not a practical proposition:

I cannot believe... that Parliament could ever satisfactorily adjust the actual wages to be paid to the people in respective industries, in view of the change in conditions that continually takes place in the industries. Therefore, the legislature took a middle course. It adopted the principle of legal enforcement, together with the creation of autonomous Boards to say what the wages were to be enforced should be.<sup>176</sup>

The powers that were given to Wages Councils were similar in nature to those that were conferred by the Catering Wages Act 1943 in that a Council could make suggestions to the Minister rates of remuneration, holiday entitlements along with holiday pay. The Councils would be given the authority to set a guaranteed weekly minimum wage. The terms of the wages orders would become an implied term in the contract of employment. As well as civil action any employer breaching these wage regulations could face potential criminal charges. The passage of the Act meant that the:

Wages and conditions of work of fifteen million men and women, the overwhelming majority of the working population, would come under the protection of negotiated agreements or statutory regulations.<sup>177</sup>

Bevin's intention was that the Wages Councils Act would be the 'statutory foundation of a comprehensive system of industrial relations'.<sup>178</sup> The immediate purpose of the legislation made it possible to regulate wages within the retail distribution trade, and to incorporate a number of modifications to the system. However, its principal aim was

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<sup>175</sup> Supra 134, col 69

<sup>176</sup> Supra 134, col 71

<sup>177</sup> A Bullock, *The Life and Times of Ernest Bevin*, Vol II (Heinemann, London, 1967), p 354

<sup>178</sup> Supra 9, p 53-54

to allow for the provision of legislative framework for collective bargaining which would guarantee all workers, in all industries, certain industrial rights.

The fundamental considerations that were taken in drawing up the Act was the need to protect voluntary collective bargaining against the effects of economic depression. The improvements that were made to collective bargaining during the First World War, the recommendations made by the Whitley Committee, the extension of JIC's and the Trade Boards themselves, had been swept away at an unbelievable rate when the post-war boom began. After the Second World War, Bevin intended that a system of national collective bargaining would survive and economic slump. The Economist commented that the new law was 'one of the most important pieces of legislation ever laid before Parliament.'<sup>179</sup>

The Act was theoretically applicable to every worker in the country, whereas the TBA 1918 limited coverage to those working in 'specified trades',<sup>180</sup> the 1945 Act could be applied to 'the workers described in the order and their employers...'<sup>181</sup> who could be defined in any way in which the Minister desired. The actions for creating Councils remained the same as those that were established under the TBA 1918. However, it was possible, under the 1945 Act for employers and trade unions to apply jointly to the Minister for the creation of a Council 'on the grounds that the existing machinery for the settlement of remuneration and conditions of employment is likely to cease to exist or be adequate'.<sup>182</sup> Furthermore, the Minister was given the power to set in motion the procedure for establishing a Council when in his opinion, the voluntary bargaining machinery was likely to break down. This addition to the law was anticipated to act as a safety net allowing the State to be able to employ a Council where negotiations between the parties was not working. Voluntary negotiating bodies would have greater assurance in the face of unemployment knowing that they were able to ask the Minister to establish a Wages Council to take over their jobs, if they were unable to carry on, trades would not be left without any means of regulating wages. The Act also provided that organisations of employers and employees could,

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<sup>179</sup> The Economist, 13 January 1945, p 37

<sup>180</sup> Trade Boards Act 1918, S1 (1)

<sup>181</sup> Wages Councils Act 1945, S1 (1)

<sup>182</sup> Wages Councils Act 1945, S2 (1)

if they wished, make a joint application for the Council to be abolished on the grounds that their voluntary machinery was adequate.

A provision was also made within the Act that the Minister was required to refer a joint request for a new Council to a Commission of Inquiry for its examination. The Commission could recommend that the Council be created because 'the existing machinery is likely to cease to exist or be adequate and that as a result a reasonable standard of remuneration... will not be maintained'.<sup>183</sup>

Perhaps, however, the most important element of the Wages Councils Act 1945 was the increased power that it gave to the Wages Councils. They were able to regulate all aspects of pay<sup>184</sup>, hours and holidays<sup>185</sup> within the trades in which they operated. Approximately one in four of all workers (4.5 million) had their pay, hours and holidays regulated through a wages council.<sup>186</sup> This new legislation, just by the sheer weight of the numbers affected transformed Britain's statutory wage-fixing machinery.

The Act intended to prevent the breakdown of collective bargaining in the following way. The rise in unemployment along with the downward pressure on wages, would lead some employers to end the agreements that they had with the trade unions in the understanding that the unions would be too fragile to force them to keep the agreements. The result would be that employers would receive a competitive advantage over those employers that stuck to the agreements with the unions. This would then have seen more and more employers negate on the agreements with the unions, even some of those employers who wished to keep to the arrangement would not want to see themselves losing a competitive edge against other businesses. The procedure under the Act would allow those unions and employers who remained on the joint negotiating body to make an application to the Minister for the creation of a Wages Council. This request would have to be assessed by a Commission of Inquiry. If the Commission's findings were that voluntary negotiations were likely to become

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<sup>183</sup> Wages Councils Act 1945, S4 (4)

<sup>184</sup> Wages Councils Act 1945, S10 (1) (a) For fixing the remuneration to be paid, either generally or for any particular work, by their employers to all or any of the workers in relation to whom the council operates

<sup>185</sup> Wages Councils Act 1945, S10 (1) (b) For requiring all or any such workers as aforesaid to be allowed holidays by their employers

<sup>186</sup> Supra 164, p 245

inadequate and that as a result, remuneration would become unreasonably low, then a Council would be recommended. If created, the Council would ensure that negotiations continued between both the unions and employers, and through the legal administration of its minimum wages and working conditions, would prevent the decline of standards through competition to lower wage costs.

Wages Councils amounted to the use of State power to keep collective bargaining going when the economic circumstances could have destroyed it. It asserted the need for the legal protection of negotiations between organised groups of workers and employers. The system of Trade Boards had always underlined the rights of the delegates of industry to suggest the wages which should be imposed within the specific trade. The power of the Minister was restricted to a veto, and only used in exceptional circumstances. However, the setting up of new Boards had been dependent solely upon the Minister and, as had been the case in 1921, if he decided to stop creating Boards then that was it, final. The Wages Councils Act granted both unions and employers powers over the establishment of Councils. These powers were similar to those that they had over wages in Trade Boards. The Act also reduced the powers of the Minister, making it difficult for him to block the creation of a Council on an application made jointly by unions and employers.

Commissions of Inquiry were given a high standard by which to judge the suitability of negotiating machinery that was being used. The Commissions had to assess the future performance of the mechanisms that were in use and had to be certain that the entirety of a trade conformed to the voluntary arrangements before they could judge whether the methods were suitable. With regards to wages, the Commissions had to be confident that they would be reasonable in the future before they could reject any application for a Wages Council. The whole ethos behind the Act was that if unions and employers wanted a Wages Council within their trade then they must be allowed to have one. As one of the aims of the Act was to substitute Wages Councils with collective bargaining bodies for when unemployment threatened, it was reasonable to assume that the wishes of those within the industry should be paramount. This argument carried even more weight when the evidence from 1921 was taken into consideration, when the Minister had stood by whilst the economic situation was destroying collective bargaining machinery throughout the country.

A further weight on the Act was the need for Councils within the retailing trade. This need had been acknowledged since 1939 and the changes that had been made within the trade during the war had occurred on the notion that statutory wage regulation would, eventually, be provided to the trade. The retailing trade was such a large and important one that its needs were reflected within the legislation. The Shop Assistants' Union had taken advantage of the fact that the Conditions of Employment and National Arbitration Order 1940 would allow for them to have the very few voluntary arrangements that they had in place recognised as forming part of the terms and conditions of employment for the whole trade.

When the Act came into effect four JICs in the retailing<sup>187</sup> trade took advantage of their rights under the law and applied to the Minister for the creation of Wages Councils and in November 1945 the Minister appointed a Commission of Inquiry to examine these applications. The JICs for Retail Pharmacy and the Retail Meat Trade did not make an application for a Wages Council and as such they were excluded from the subsequent inquiries.

The Commissioners had a number of questions that needed answering. The first was is the existing voluntary negotiating machinery adequate and is it likely to remain adequate? Secondly, do the existing voluntary agreements cover all aspects of both wages and working conditions, and are they observed throughout the trade? And finally, if the negotiating machinery was inadequate was a reasonable standard of remuneration being maintained? Only if the first two questions received a no, could the final question then be considered by the Commissioners, for a Council would only be established if inadequate negotiating machinery was accompanied with unreasonable remuneration.<sup>188</sup> Therefore it was feasible that a Commission could decide against the creation of a Council for the reasons that although the negotiating machinery was inadequate, remuneration was reasonable.

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<sup>187</sup> Retail Drapery, Outfitting and Footwear JIC, Retail Food Trades JIC, Hairdressing JIC and Retail Furnishing and Allied Trades JIC

<sup>188</sup> Wages Councils Act 1945, S1 (2)

In retailing the Commissions reached the conclusion that the JICs did not form an adequate negotiating machinery and the Commissions did not believe that there were any prospects that they would become strong enough to control wages and conditions within the trade.

Following the enactment of the Wages Councils Act 1945, the system of Wages Councils expanded. At their peak there was approximately 2.5 million workers that were covered by a Council.<sup>189</sup> However, throughout the 1960s and 70s attitudes towards the need for Wages Councils changed. The predicted mass unemployment following the disruption of the Second World War did not materialise and the following fifteen years of economic growth led many to question the attractiveness of expanding statutory wage regulation. Those who were in opposition to the Wages Councils began to assert that they were, in fact, redundant. Bayliss was amongst the chief opponents of the Wages Councils. He was the only person to have produced a major study on the Councils and projected that 'full employment was to be a permanent feature of society but for a small proportion of the work force, the new economic circumstances had rendered Wages Councils obsolete.'<sup>190</sup> Bayliss also stated that Wages Councils actually hindered free collective bargaining, and that steps should be taken to ensure that unnecessary councils could be abolished more speedily.<sup>191</sup> This same opinion was also expressed by the trade union movement and was echoed in the report of the Royal Commission on Trade Unions' and Employers' Associations (Also known as the Donovan Commission) and by the National Board for Prices and Incomes (NBPI).<sup>192</sup>

The evidence provided to the Donovan Commission, by the Ministry of Labour, was particularly critical of the wages councils. It signalled a crucial change in the Department's post-war support for statutory wage regulation. The Minister stated that future policy would be directed towards the removal of wages council's as soon as

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<sup>189</sup> Paul Davies and Mark Freedland, *Labour Legislation and Public Policy* (OUP, Oxford, 1993), p 29-30

<sup>190</sup> *Supra* 9, p 150-154

<sup>191</sup> *Supra* 9, p 64

<sup>192</sup> NBPI, *General Problems of Low Pay*, Report No. 169 (Cmnd. 4646, HMSO, London, 1971) Para. 124

- Royal Commission on Trade Unions' and Employers' Associations 1965-1968 (Cmnd. 3623, HMSO, London, 1968) p. 66

collective bargaining was deemed to be adequate.<sup>193</sup> With the Ministry of Labour affirming that the taking apart of the wages councils would create few complications, it was hardly a surprise then that the Commission on Industrial Relations (set-up by the Conservative Government in 1971) could, after scrutinising thirty councils, recommend that five should be purged.<sup>194</sup>

The 1979 Wages Councils Act consolidated the provisions of the Wages Councils Act 1959 along with substantial amendments that were made by the Employment Protection Act 1975 and some minor amendments that were introduced by the Industrial Relations Act 1971 (these will not be discussed in this thesis).

During the 1980s the Conservative Government's began to view the work that the Wages Councils did as both unnecessary and undesirable. In 1985 they were advocating the abolition of the Councils and a consultative paper was issued which set out grounds for either reform or outright abolition. Outright abolition did not materialise. However, Part 2 of the Wages Councils Act 1986 made a number of major changes to the power of the Councils. These included, excluding workers under the age of 21 from the scope of the Councils, restricting them to setting a single minimum hourly rate, a single hourly overtime rate along with a maximum accommodation charge offset. The Act required Councils to consider the impact on jobs of the rate set and it introduced a much more simplified procedure for abolishing or changing the scope of Councils. It gave the Secretary of State the power 'to consult such persons or organisations as he considers appropriate'. Further changes to the system were again made in 1993.<sup>195</sup> The Government's arguments for abolishing the Councils were based on three points. These were:

1. That minimum wages did little to alleviate poverty, as most workers that were covered by a Council did not live in poor households. A Department of Employment Press Notice stated that: 'Eighty per cent of people in Wages Councils industries live in households with at least one other source of income'.

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<sup>193</sup> Royal Commission on Trade Unions' and Employers' Associations (Minutes of Evidence), (HMSO, London, 1966) pp. 231-232

<sup>194</sup> Hugh Clegg, *The Changing Systems of Industrial Relations in Great Britain*, (Wiley-Blackwell, Oxford, 1979) p 425

<sup>195</sup> Wages Councils were totally abolished with the repeal of Part II of the Wages Councils Act 1986 by S35 of the Trade Union Reform and Employment Rights Act 1993

2. The minimum wages set by Wages Councils reduced employment in covered industries. 'Where the Wages Councils force companies to pay more than they can they destroy jobs.'<sup>196</sup>
3. The Wages Council system was an anachronism; the issues they were set up to solve were yesterday's problems and were therefore no longer relevant to today's labour market:

Wages Councils were established in the early 1900s when there were no employment rights, no general health and safety legislation and little social security protection. They have no role to play in the 1990s.<sup>197</sup>

The Conservatives claimed that any falls in wages due to the abolition were likely to be small. There were two parts to its claim. Firstly, it argued that only a small number of workers in trades that had a Council received a wage at or close to the minimum. Secondly, it argued that those earning above the minimum would not be affected by the Council's abolition. The Government's argument therefore was that wages would not fall as a result of abolition as the majority of those that were protected by a Council were already paid above the minimum rates within their trade and that the system was irrelevant for them. However, Dickens and others have suggested that this idea was wrong. They identified that 'minimum wage rates do seem to affect workers located higher in the wage distribution, although with a declining impact on those earning higher wages.'<sup>198</sup>

Both the Trade Boards Acts 1909 and 1918 along with the Wages Councils Acts of 1945, 1959 and 1979 failed to establish a universal legal entitlement to a minimum wage. In their book, *Industrial Democracy*, the Webb's' had argued for:

A systematic and comprehensive Labour Code, prescribing the minimum conditions under which the community can afford to allow industry to be carried on; and including

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<sup>196</sup> Supra 192

<sup>197</sup> Supra 192

<sup>198</sup> Dickens R, Machin S and Manning A, *The effect of Wages Councils on employment*, (London School of Economics, London, 1993)

not merely definite precautions of sanitation and safety, and maximum hours of toil, but also a minimum of weekly earning.<sup>199</sup>

David Metcalf identifies that, Fabian writers had, at the time, a fully worked out hypothesis of the minimum wage. They had foreseen later debates over levels, enforcement along with the relationship between the statutory minimum wage and the social security system.<sup>200</sup>

Both the Labour and Conservative Party agreed that Wages Councils were no longer viable for a modern economy. However, both had differing opinions on the issue of the future of State intervention with wages. The Conservative's favoured total abolition of the Councils, with no State intervention thereby allowing the market to regulate pay. Whereas Labour favoured replacing the Councils with a single national minimum wage, applicable across all trades throughout the country.<sup>201</sup>

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<sup>199</sup> Supra 58 p, 232

<sup>200</sup> David Metcalf, 'Why Has the British National Minimum Wage Had Little or No Impact on Employment' *Journal of Industrial Relations* [2008] 50 (3) 489-511

<sup>201</sup> Doug Pyper, 'The National Minimum Wage: Historical Background' House of Commons Library, 21<sup>st</sup> May 2014, p 4

## Chapter 4

### The National Minimum Wage Act 1998 and Beyond

“The National Minimum Wage has become a genuine national treasure since it was introduced in 1999. The concept enjoys support from business leaders and trade unions alike and is a matter of political consensus.”<sup>202</sup>

The National Minimum Wage Act 1998 (NMWA) introduced a statutory right to be paid a certain amount of remuneration for work carried out. Almost all workers in the UK are entitled to receive the National Minimum Wage (NMW) or the National Living Wage (NLW).

This thesis has shown that throughout the majority of the twentieth century there has been some form of statutory wage regulation in the UK, albeit not a universal national minimum, applicable to all trades and all regions of the UK. In this chapter my thesis will examine the implementations of the NMW. It will look at the policy reasons behind why the Act was introduced along with the developments of the legislation since its enactment which led to the NLW.

A NMW for the whole of the UK had been under examination within the Labour Party for decades. However, during much of that time this policy was not only opposed by businesses, but was a source of argument or lack of interest, within the labour movement as a whole. The commitment to introduce a NMW was a feature in Labour’s 1992 general election manifesto, but it was proven to be a source of vulnerability rather than a winning policy idea and Labour failed to win the election. After this election defeat a number of things happened which saw the beginnings of the policy that Labour would take into government in 1997. First to change was the academic debate which surrounded the idea of a national minimum wage began to change. A number of academics started to publish research that began challenging the long held view that a national minimum wage would destroy jobs. Pioneering empirical research carried out by David Card and Alan Krueger in the United States had identified that

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<sup>202</sup> Trade Union Congress, National Minimum Wage Enforcement, May 2013 p 2. Available at: [https://www.tuc.org.uk/sites/default/files/ImprovingNationalMinimumWag%20Enforcement\\_0.pdf](https://www.tuc.org.uk/sites/default/files/ImprovingNationalMinimumWag%20Enforcement_0.pdf) accessed 9<sup>th</sup> June 2017

there was no adverse effect on employment for those aged 25 and over, and that there was only a small effect for those aged under 25.<sup>203</sup> Within the UK, academics analysed the effects of the abolition of the Wages Councils and arrived at the conclusion that they had not reduced employment.<sup>204</sup>

This change in academic thinking was accompanied by a shift within the Labour Party. In the days before the sudden death of John Smith,<sup>205</sup> employment spokesperson, John Prescott announced the decision not to set a specific level of minimum wage until at least the next general election, saying 'There will come a time when we have to set the rate, but let us argue about the principle first.'<sup>206</sup>

By 1995 the Labour Party had made a pledge to establish a Low Pay Commission (LPC). The Commission was to be made up of representatives from employers, employees along with independent members, which would set the national minimum wage rate. However, simply making these pledges was not enough and arrangements were started for a new government to introduce a NMW. Two groups were created to develop the proposals between 1994-1996 and were both headed by Ian McCartney.<sup>207</sup> One group would look at the implementation of the minimum wage, whilst the other would look at coverage of it along with enforcement.

Whilst all of this was taking place, the Labour Party started to build the political case for the NMW. They initially began with the business case, arguing that low pay weakened the ability of businesses to compete and that high turnover brought higher costs through training and recruitment. The Party also started to reposition the NMW to put it in the wider economic context of welfare reform, using the slogan – Making Work Pay. Equally, they started to build the political case through their 'fat cats'

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<sup>203</sup> David Card and Alan Krueger, *Myth and Measurement: The New Economics of the Minimum Wage*, (Princeton University Press, New Jersey, 1995)

<sup>204</sup> Richard Dickens, Stephen Machin and Alan Manning, 'The Effects of Minimum Wages on Employment: Theory and Evidence from Britain', *Journal of Labour Economics*, vol 17:1 (1999), pp 1-22

<sup>205</sup> Labour Party leader 1992-1994

<sup>206</sup> Barrie Clement, 'Labour delay on minimum wage rate', *The Independent* (10<sup>th</sup> May 1994), available at: <http://www.independent.co.uk/news/uk/politics/labour-delay-on-minimum-wage-rate-1434866.html> Accessed 9th June 2017

<sup>207</sup> Labour Party Member of Parliament for Makerfield (1987-2010)

campaigns, underlining the inequality of the treatment of people at the bottom of the pay ladder in contrast to those at the top. Cedric Brown, former British Gas Chief Executive, was the poster boy of the campaign.<sup>208</sup>

All of this preparatory work resulted, by 1997, in the idea of a NMW becoming a relatively non-controversial proposition and the Confederation of British Industry (CBI) was even prepared to lend its support to the notion. In 1995, the CBI had been arguing ‘that even a low minimum wage would reduce job opportunities and create major problems for wage structures in a wide range of companies’.

The Labour Party’s manifesto for the General Election of 1997 explicitly made the case for the introduction of a NMW:

[T]here should be a statutory level beneath which pay should not fall... Every modern industrial country has a minimum wage, including the US and Japan... Introduced sensibly, the minimum wage will remove the worst excesses of low pay (and be of particular benefit to women), while cutting some of the massive £4 billion benefits bill by which the taxpayer subsidises companies that pay very low wages.<sup>209</sup>

In contrast to 1992, the Party’s 1997 election manifesto made a pledge to introduce a method to set the minimum wage:

Decided not on the basis of a rigid formula but according to the economic circumstances of the time and with the advice of an independent low pay commission, who’s representatives will include representatives of employers, including small businesses, and employees.<sup>210</sup>

The NMW was established through the NMWA 1998. The Act came into effect on the 31<sup>st</sup> July 1998. The Act provided a broad definition of an eligible worker and made it clear that there would be a single national rate and that it would apply to all regions of

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<sup>208</sup> Nigel Cope, ‘Controversy over fat cats dogs Brown to the end’, The Independent (30<sup>th</sup> April 1996), available at: <http://www.independent.co.uk/news/business/controversy-over-fat-cats-dogs-brown-to-the-end-1345188.html> Accessed 9th June 2017

<sup>209</sup> New Labour, ‘Because Britain Deserves Better’ (1997), available at <http://www.politicsresources.net/area/uk/man/lab97.htm> accessed 9th June 2017

<sup>210</sup> Supra 211

the UK, all sectors and all sizes of business. S1 (3) of the Act grants the Secretary of State the power to amend the rate of the minimum wage. The Act also grants workers the right to recover any past underpayments of wages.<sup>211</sup> A worker can commence proceedings against their employer to recover arrears either in the Employment Tribunal (or, in Northern Ireland, the Industrial Tribunal) for a breach of Part II of the Employment Rights Act 1998 (or Part IV of the Employment Rights (Northern Ireland) Order 1996) as an unlawful deduction from wages claim or as a breach of contract claim. Or, in the County Court (or, Sheriff Court in Scotland) as a breach of contract claim.

The NMWA 1998 also specified financial penalties for businesses which failed to comply with the requirements of the legislation. The Act ensured that all workers, except those whom were self-employed were covered and it provided for the creation of the LPC on a statutory basis.<sup>212</sup> However, the Act did leave some important elements to Regulations, such as the definition of pay and hours, along with the rate of the NMW.

Crucially, the NMWA 1998 put the LPC on a permanent statutory footing with an ongoing remit to make recommendations on the NMW. This move proved to be unpopular and was opposed by HM Treasury which had wanted to take over the right to set the minimum wage rate in the future.

The Conservatives intensely opposed the introduction of the NMW in angry debates on the floor of the House of Commons, much like they did during the debates on the TBA 1909. However, the party soon began to make noises that they were planning to drop their opposition to the NMW just a month after it came into effect; apparently as a part of an attempt to secure the resignation of John Redwood from the shadow cabinet, a vocal opponent of the NMW.<sup>213</sup> On the 2<sup>nd</sup> February 2000, the then Conservative Party leader, William Hague, reshuffled his shadow cabinet, removing

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<sup>211</sup> National Minimum Wage Act 1998 S17 (1)

<sup>212</sup> The LPC was established in July 1997 on a non-statutory basis

<sup>213</sup> Nicholas Watt, 'Redwood out in the cold as Tories back minimum wage', The Guardian (29 May 1999), available at <https://www.theguardian.com/politics/1999/may/29/uk.politicalnews1> accessed 9th June 2017

John Redwood and appointing Michael Portillo as Shadow Chancellor. One of Portillo's first acts was to reverse the party's opposition to the NMW.<sup>214</sup> Portillo saying that the party should not be concerned with the NMW 'at the modest level at which it has been set by the government... The minimum wage has caused less damage to employment than we feared', instead pledging to improve the way in which it was administered.<sup>215</sup>

The 2001 Conservative Party election manifesto, however, made no reference to the NMW. It was not until the general election of 2005, under the leadership of Michael Howard, that the party made a manifesto commitment to retain the NMW.<sup>216</sup> In that same year, David Cameron, the then shadow Secretary of State for Education and Skills, commented that the NMW had 'turned out much better than many people had expected, including the CBI'.<sup>217</sup> Similarly, in a 2008 lecture, the then shadow Chancellor, George Osborne, said that 'modern Conservatives acknowledged the fairness of a minimum wage'. And the then Mayor of London, Boris Johnson, advocated a living wage for London. Essentially, a higher minimum wage to account for the higher living costs associated with the capital.<sup>218</sup>

The NMWA owes much of its design to the system of Wages Councils, and even more to the original TBA 1909. The structure of the Low Pay Commission is almost identical to those arrangements that were introduced for the Trade Boards at setting wages. As with the TBA 1909, the NMWA contains no statutory mechanism for automatically uprating the NMW in line with the increase in prices and the cost of living. This can be contrasted with our European neighbours, notably the French model of the 'minimum growth wage' (*Salair minimum interprofessionnel de croissance* (SMIC)). The law governing the SMIC, which has been in place since 1970, directly links minimum pay

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<sup>214</sup> 'Tories deny Portillo-Hague deal', BBC (9 February 2000), available at: [http://news.bbc.co.uk/1/hi/uk\\_politics/636384.stm](http://news.bbc.co.uk/1/hi/uk_politics/636384.stm) accessed 9th June 2017

<sup>215</sup> Patrick Barkham, 'Portillo transforms Tories' economic outlook', The Guardian (3 February 2000), available at: <https://www.theguardian.com/politics/2000/feb/03/thatcher.uk3> accessed 9th June 2017

<sup>216</sup> 'Are You Thinking What We're Thinking?' Conservative Election Manifesto (2005), available at: <http://www.politicsresources.net/area/uk/ge05/man/manifesto-uk-2005.pdf> accessed 9th June 2017

<sup>217</sup> Cited in Alan Manning, *The UK's National Minimum Wage* (2009), available at: <http://cep.lse.ac.uk/pubs/download/cp290.pdf> accessed 9th June 2017

<sup>218</sup> *Supra* 220

to price inflation, and also makes a provision for it to be raised each year by at least half the increase in the value of the purchasing power of the average wage.<sup>219</sup>

The LPC produces annual reports and there have been a number of adjustments to the minimum wage rates over time, along with the introduction of a rate for 16-17 year olds in October 2004 and a rate for apprentices which was introduced in October 2010. According to the LPC the NMW had a significant impact to those at the bottom of the income scale – particularly women who comprised 70% of the beneficiaries and who were not covered by existing collective agreements.<sup>220</sup>

As has been seen throughout this thesis the debate surrounding the desirability and need of a NMW has focussed almost entirely on issues of both social and economic policy. The claim of the social right that a worker be paid at a rate which was satisfactory to support an adequate standard of living for a family was, as already discussed, a persistent feature of pay demands in the nineteenth century. The TBA 1909 sprung, in part, from this general acceptance of the justice of this aim. A more persistent social theme that has been touched upon in this thesis has been the unacceptability of employers obtaining the benefits of labour at rates of pay which left workers in poverty. As social security became more extensive Simpson identifies that it was seen to be more:

Socially unacceptable that employers should receive what is in effect a State subsidy towards their labour costs where low pay... meant that the standard of living of those workers... receiving it was only brought up to a socially acceptable level through the provisions of State benefits.<sup>221</sup>

When the debate on a NMW turned to economic policy, these issues proved to be much more quarrelsome. Strong arguments were made over the centuries both for and against a NMW regarding its potential effects on employment levels along with

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<sup>219</sup> Simon Deakin and Francis Green, 'A Century of Minimum Wages in Britain', IDEAS Working Paper Series from RePEc, 2009

<sup>220</sup> Low Pay Commission, Making a Difference: Third Report of the Low Pay Commission, vol. one, p vi

<sup>221</sup> Bob Simpson, 'A Milestone in the Legal Regulation of Pay: The National Minimum Wage Act 1998', Industrial Law Journal [1998] 28 (1) p 3

the competitiveness of employers, particularly in international markets. Along with the arguments based on data from countries which already had some form of minimum wage in place,<sup>222</sup> and the exclusion of workers under 21 from the remit of Wages Councils in 1986 along with their final abolition in 1993, provided both sides with opportunities to delve through the data to assess whether any evidence as to how the introduction of a NMW would affect the labour market.<sup>223</sup>

In order for a person to qualify for the NMW that individual must be a worker, they must be working and must be over compulsory school age.<sup>224</sup> The term worker is given a broader sense in the Act and extends beyond just employees.<sup>225</sup> S34 of the Act also provides that agency workers<sup>226</sup> qualify to be paid the NMW along with homeworkers.<sup>227</sup>

A long standing question is what is a satisfactory rate of pay and what amount of money does a person need to be able to live on to be able to afford all of the things needed in life, such as the ability to pay rent or a mortgage, travel, food and bills etc.? This question was answered in the Australian case of *Ex parte H.V. McKay* - <sup>228</sup> commonly referred to as the Harvester Case which was a landmark labour law decision in Australia. The case came about under the Excise Tariff Act 1906. This Act contained a provision that excise would not be payable on products if a manufacturer paid a fair and reasonable wage to its employees.<sup>229</sup> The question, therefore, for the Court to answer was what was a fair and reasonable wage for this purpose?

In this case Justice Higgins of the Commonwealth Conciliation and Arbitration Court decided to determine what a 'fair and reasonable' wage was using the following test:

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<sup>222</sup> For a summary of and data relating to other minimum wage systems, see the Low Pay Commission's First Report, *The National Minimum Wage*, Cmnd 3976 (London, HMSO, July 1998) Appendix 6 'Minimum Wage Systems in Other Countries'

<sup>223</sup> For a review of the literature see Sue Fernie and David Metcalf, *Low Pay and Minimum Wages: The British Evidence*, (LSE, London, 1996)

<sup>224</sup> National Minimum Wage Act 1998, S1 (2)

<sup>225</sup> National Minimum Wage Act 1998, S54 (3)

<sup>226</sup> These are people that are supplied by an agent to work for a principal under contracts which do not make them workers within the statutory definition of worker

<sup>227</sup> National Minimum Wage 1998, S35 (2)

<sup>228</sup> (1907) 2 CAR 1

<sup>229</sup> Excise Tariff Act 1906, S2 (d) (Australian)

In the case of unskilled labourers – what are the normal needs of the average employee regarded as a human being living in a civilised community?... The conditions as to the remuneration must be fair and reasonable whether the profits [of the business] are small or great...<sup>230</sup>

This judgment gave rise to the legal requirement for a basic wage. In defining a fair and reasonable wage, Higgins J employed Pope Leo XIII's *Rerum novarum* of 1891 which was an open letter to all the Bishops addressing the conditions of the working classes.<sup>231</sup> Higgins J ruled that:

A fair and reasonable remuneration... means that the wages shall be sufficient to provide... the means of obtaining commodities... and clothing, and a condition of frugal comfort estimated by current human standards.<sup>232</sup>

His judgment read as follows:

... what is meant by 'fair and reasonable,' what is the model or criterion by which fairness and reasonableness are to be determined. It is to be regretted that the Legislature has not given a definition of the words. It is the function of the Legislature, not of the Judiciary, to deal with social and economic problems; it is for the Judiciary to apply, and, when necessary, interpret the enactments of the Legislature...

The provision for 'fair and reasonable' remuneration is obviously designed for the benefit of the employees in the industry; and it must be meant to secure to them something which they cannot get by the ordinary system of individual bargaining with employers....

The standard of 'fair and reasonable' must therefore be something else, and I cannot think of any other standard appropriate than the normal needs of an average

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<sup>230</sup> Supra 222

<sup>231</sup> Encyclical of Pope Leo XIII, on Capital and Labour, 15<sup>th</sup> May 1891. Available at [http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf\\_l-xiii\\_enc\\_15051891\\_rerum-novarum.html](http://w2.vatican.va/content/leo-xiii/en/encyclicals/documents/hf_l-xiii_enc_15051891_rerum-novarum.html) Accessed 9th June 2017

<sup>232</sup> Supra 222

employee, regarded as a human being in a civilised community. If, instead of individual bargaining, one can conceive of a collective agreement - an agreement between all the employers in a given trade on the one side, and all the employees on the other - it seems to me that the framers of the agreement would have to take as the first and dominant factor the cost of living as a civilised being...<sup>233</sup>

The ruling was regarded as a benchmark in Australian labour law. Higgins J regarded the minimum wage as sacrosanct and applied the reasoning to a number of subsequent judgments.

So what is a fair and reasonable wage and is the NMW in the United Kingdom fair and reasonable? Can those who are only paid the basic wage afford to live in comfort? Does it take them out of poverty? Are they able to provide for themselves and their families?

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<sup>233</sup> Supra 222

## The Living Wage Campaign & The National Living Wage.

‘A living wage must not be a killing wage. If it cripples or destroys the industry from which it is drawn it is guilty of *felo de se*. You must not kill the goose that lays the golden egg.’<sup>234</sup>

One question that has dominated the discussions surrounding wages in recent years in the United Kingdom since the introduction of the NMW is does it provide a reasonable remuneration? Do wages take people out of poverty? What does a person need to earn to live in frugal comfort?

The principle argument underlying the calls for a living wage is a simple yet powerful one: that work should bring dignity and should pay enough to provide families the essentials of life. As has been discussed throughout this thesis this very notion has deep historical roots, which first began to emerge in Britain during the 1870s. Sidney and Beatrice Webb argued that the early trade unions began to challenge the doctrine of supply and demand with the doctrine of a living wage.<sup>235</sup> Workers began to make demands that wages should be at a rate to afford them to buy such things as food, clothing and shelter for themselves and their families.

Betsy Clary argues that a wage is much more than mere compensation for labour. It is a means of securing a living and leads to public policies that address both the level of the wage as well as the fairness, adequacy, and its decency.<sup>236</sup> Adam Smith, in his *Inquiry into the Nature and Causes of the Wealth of Nations*,<sup>237</sup> recognised that rising real wages lead to:

The improvement in the circumstances of the lower ranks of people and should be regarded as an advantage to society... Servants, labourers and workmen of different kinds, make up the far greater part of every great political society. But what improves the circumstances of the greater part can never be regarded as inconveniency to the

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<sup>234</sup> Mark Oldroyd, *A Living Wage*, (McCorquodale & Co Ltd, London, 1891), p 15

<sup>235</sup> *Supra* 58

<sup>236</sup> Betsy Clary, ‘Smith and Living Wages: Arguments in Support of a Mandated Living Wage’, *American Journal of Economics and Sociology* [2009] 68 (5), pp 1063-1084

<sup>237</sup> Often referred to simply as *The Wealth of Nations*

whole. No society can surely be flourishing and happy, of which the far greater part of the members are poor and miserable. It is but equality, besides, that they who feed, clothe, and lodge the whole body of the people, should have such a share of the produce of their own labour as to be themselves tolerably well fed, clothed and lodged.<sup>238</sup>

According to some living wage advocates Smith advocated that labour should receive an equitable share of what labour produces. For Smith, this equitable share amounted to more than just subsistence. Smith equated the interests of labour and the interests of the land with overarching social interests. He reasoned that as wages and rents rise, as a result of higher productivity, societal growth will occur thereby increasing the quality of life for the greater part of its members.<sup>239</sup>

The first full-length treatise advancing the calls for a living wage was written in 1894 by the Liberal Member of Parliament for Dewsbury, Mark Oldroyd. In a speech to the Dewsbury Pioneers Industrial Society<sup>240</sup> given in December 1894, Oldroyd declared that: 'A living wage must be sufficient to maintain the worker in the highest state of industrial efficiency, with decent surroundings and sufficient leisure'.<sup>241</sup> He defined a living wage as:

[A] wage by which the worker may obtain the means of subsistence for himself and for those whom are legitimately dependent upon him. A wage by which the worker may provide reasonable home comforts and fit himself for the discharge of the duties of citizenship and; that the wage should be earned under such conditions as regards sanitary regulations, physical and mental effort, and duration of working hours, as will not interfere with his powers of recuperation, and as will afford reasonable time for recreation and rest.<sup>242</sup>

During the debates and passing of the TBA 1909, social reformers sought to bring rigour and clarity to the concept of a living wage. The leading figure was Benjamin

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<sup>238</sup> Adam Smith, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Digital Edition, accessed at [https://www.ibiblio.org/ml/libri/s/SmithA\\_WealthNations\\_p.pdf](https://www.ibiblio.org/ml/libri/s/SmithA_WealthNations_p.pdf), p 65-66

<sup>239</sup> Supra 239

<sup>240</sup> Later the Dewsbury Co-operative Society

<sup>241</sup> Supra 237, p 8

<sup>242</sup> Supra 237, p 7-8

Seebohm Rowntree, who developed a methodology for calculating the living wage, or what he called the human costs of labour. Rowntree carried out research in York to price the food, rent, clothing, fuel and miscellaneous items needed by a man with three children. He argued that poverty was the result of low wages, going against the traditionally held view that the poor were responsible for their own plight.

Rowntree was a key supporter in the extension of Trade Boards and believed that they should cover every industry; and that that should fix wages around the new standard of 35.s and 3.d per week – based on the 1914 prices for all adult men. He argued that the nation depended on a living wage to ensure its workers were fit and healthy enough to work and take part in the wider community.

The NMW has been set at a level determined by the market rather than Rowntree's formula of the human needs of labour. Section 7 of the NMWA 1998 requires that the LPC consult employers' and workers' representative bodies in making their recommendations, and in doing so 'shall have regard to the effect of this Act on the economy of the United Kingdom as a whole and on competitiveness.'<sup>243</sup> Therefore the NMW reflects what the market can bear rather than what an individual actually needs to earn in order to live.

The Independent Labour Party (ILP) took up the mantle for the demand for a living wage and adopted it as official party policy from 1925. A Living Wage Bill was proposed, by James Maxton,<sup>244</sup> in the House of Commons in February 1931. Maxton positioned the policy within the context of the curse of under-consumption. At a time of economic crisis, high unemployment and in the wake of the general strike, Maxton sought to focus on the politics of consumption as well as production. A living wage, it was argued, would allow the population to consume 'the essential things of life... food, better housing... better furnishings, equipment inside their home, better illumination of those homes, and better sanitation.'<sup>245</sup> This, in turn, would stimulate growth, jobs and prosperity for the nation as a whole. Putting money into the pockets of the poor, it was argued, was a way out of decline. However, in the event, although 124 Labour Party

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<sup>243</sup> National Minimum Wage Act 1998 S7 (5)(a)

<sup>244</sup> Member of Parliament for Glasgow Bridgeton 1922-1946

<sup>245</sup> James Maxton, Living Wage Bill, HC Deb, 6<sup>th</sup> February 1931, col. 2271

MPs voted in support of the Bill, it failed to win enough votes in the Commons to allow it to proceed.

With hindsight, it is clear that during the post-war years the welfare state slowly but surely began to eclipse the demand for a living wage. As has already been discussed in this thesis - the provision of education, health, housing and pensions, together with the growth of collective bargaining and the operation of Wages Councils, relegated to the side-lines the demand for a living wage.

The notion of a living wage was not to resurface as a political demand in the country until in 2001 when a campaign began in London's East End led by the charity London Citizens. The campaign that began in the UK arose, partly through the experiences of their sister organisation in the USA, notably in Baltimore, where the living wage movement had taken off during the mid-1990s, but it also arose from the very structure of London's economy. In 2000 London Citizens held a listening campaign to identify what the pressures on families and communities existed in the East End. After speaking to thousands of people it was identified that the common burden on families was that parents had less time to spend with their children and with their local communities. Why? Was the question that was asked – the answer – because both parents were working sometimes two or three jobs to make ends meet. Why was this? Because the minimum wage is not enough to live on.

In 2005, following a series of successful Living Wage campaigns, and with a growing interest from a number of employers, the Greater London Authority established the Living Wage Unit to calculate the London Living Wage. By 2008, Trust for London selected the London Living Wage as a special initiative and made a grant of over £1 million to deliver direct campaign work, research and an accreditation scheme for employers.<sup>246</sup>

Local campaigns began to emerge across the whole of the UK offering the opportunity to involve many more employers and lift many more thousands of families out of

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<sup>246</sup> Living Wage Foundation, 'For the real cost of living', Available at: <https://www.livingwage.org.uk/history> Accessed 9th June 2017

working poverty. The current UK Living Wage rate is set at £8.45 per hour and the Living Wage rate for London is set at £9.75 per hour.<sup>247</sup> The Living Wage is reviewed each year by independent academics, with rate increases announced in November during Living Wage Week. The Living Wage Foundation awards the Living Wage Employer Mark to employers that commit to pay the Living Wage or higher. There are 3,249 employers across the United Kingdom that pay the Living Wage or greater.<sup>248</sup>

The Centre for Research in Social Policy<sup>249</sup> (CRSP) funded by the Joseph Rowntree Foundation<sup>250</sup> began calculating a UK wide Minimum Income Standard<sup>251</sup> (MIS) figure. The MIS is an average across the whole of the UK, but does not reflect the variation of the cost of living inside and outside of London.

The CRSP's research, from 2017, suggested that the following groups need a weekly MIS to meet basic needs:<sup>252</sup>

Single Person <sup>253</sup>	Couple <sup>254</sup>	Single Parent <sup>255</sup>	Single Parent <sup>256</sup>	Single Parent <sup>257</sup>	Couple <sup>258</sup>	Couple <sup>259</sup>	Couple <sup>260</sup>
£296.82	£443.63	£603.91	£711.54	£824.59	£692.93	£800.17	£923.27

<sup>247</sup> Living Wage Foundation, 'For the real cost of living', Available at: <https://www.livingwage.org.uk> Accessed 9<sup>th</sup> June 2017

<sup>248</sup> See <https://www.livingwage.org.uk/who-pays-the-living-wage> for a full list of employers paying the Living Wage. Accessed 9<sup>th</sup> June 2017

<sup>249</sup> The Centre for Research in Social Policy is an independent research centre based in the Department of Social Sciences at Loughborough University. Further information can be found at: <http://www.lboro.ac.uk/research/crsp/>

<sup>250</sup> The Joseph Rowntree Foundation is an independent organisation working to inspire social change through research, policy and practice. Further information can be found at: <https://www.jrf.org.uk>

<sup>251</sup> A Minimum Income Standard for the UK is a major programme of work regularly reporting on how much income households need to afford an acceptable standard of living. Further information can be found at: <http://www.lboro.ac.uk/research/crsp/mis/>

<sup>252</sup> Full details of the research conducted by the CRSP can be found at: [http://www.lboro.ac.uk/media/wwwlboroacuk/content/crsp/downloads/Budget\\_summaries\\_2008-2017.pdf](http://www.lboro.ac.uk/media/wwwlboroacuk/content/crsp/downloads/Budget_summaries_2008-2017.pdf)

<sup>253</sup> No children

<sup>254</sup> No children

<sup>255</sup> With one child (aged 0-1-year-old)

<sup>256</sup> With two children (one aged 2-4, one primary school age)

<sup>257</sup> With three children (one aged 2-4, one primary school age, one secondary school age)

<sup>258</sup> With one child (aged 0-1)

<sup>259</sup> With two children (one aged 2-4, one primary school age)

<sup>260</sup> With three children (one aged 2-4, one primary school age, one secondary school age)

These amounts are the minimum amounts that individuals or couples need to have available to afford the basics such as rent, mortgage and food and have some left over for leisure. So how does this look when compared against the NMW?

As already discussed the NMW does not take into consideration a person's circumstances with regards to relationship status or whether or not they have dependent children. The NMW rates as of April 2017 are as follows:<sup>261</sup>

Aged 21-24	Aged 18-20	Under 18	Apprentice Rate
£7.05 per hour	£5.60 per hour	£4.05 per hour	£3.50 per hour

The Office for National Statistics (ONS) puts the average weekly hours for 2017 at 37.5 hours per week.<sup>262</sup> Based on this the amount that an individual would earn, after income tax and national insurance payments equate to:

Aged 21-24	Aged 18-20	Under 18	Apprentice Rate
£7.05 per hour	£5.60 per hour	£4.05 per hour	£3.50 per hour
£242.88 per week <sup>263</sup>	£203.64 per week <sup>264</sup>	£151.88 per week <sup>265</sup>	£131.25 per week <sup>266</sup>

From these figures it is evident that the NMW is not a sufficient amount to live on, according to the CRSP, and falls considerably below the MIS for certain groups, especially when dependent children are taken into consideration.

<sup>261</sup> National Minimum Wage rates available at: <https://www.gov.uk/national-minimum-wage-rates> accessed 22nd August 2017

<sup>262</sup> Office for National Statistics, Weekly hours of work for full-time workers (seasonally adjusted), available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/timeseries/ybuy/lms> accessed 22nd August 2017

<sup>263</sup> Listen to Taxman, available at: <https://listentotaxman.com/7.05?plan=2&time=1950> accessed 22nd August 2017

<sup>264</sup> Listen to Taxman, available at: <https://listentotaxman.com/5.60?plan=2&time=1950> accessed 22nd August 2017

<sup>265</sup> Listen to Taxman, available at: <https://listentotaxman.com/4.05?plan=2&time=1950> accessed 22nd August 2017

<sup>266</sup> Listen to Taxman, available at: <https://listentotaxman.com/3.50?plan=2&time=1950> accessed 22nd August 2017

Since 1999, when the NMW was introduced, successive governments have avoided setting the actual rate at which it is to be paid – leaving it to the LPC to make recommendations based on the need to avoid damaging the economy or prospects for employment. The Chancellor,<sup>267</sup> in his summer budget of 2015, announced the beginning of a National Living Wage (NLW), placing the issue of wages squarely into the political sphere. The Chancellor saying ‘Britain deserves a pay rise and Britain is getting a pay rise.’<sup>268</sup>

The LPC has a slightly different remit in relation to the NLW than it does for the other bands of the minimum wage. For the NLW the LPC were asked to make recommendations on the pace of increase towards a target, the ambition being that it should increase from its introductory rate of £7.20 per hour and reach £9 per hour by 2020, subject to sustained economic growth.<sup>269</sup> However, a leading labour think-tank has warned that the government is likely to miss its target of £9.00 per hour as a direct result of Brexit and, according to the Resolution Foundation, low-paid workers are set to lose around 40p per hour because of the projected slowdown in economic growth.<sup>270</sup> Evidence of this slowdown in the planned rise of the NLW were seen in April 2017. The government had initially planned to raise the rate to £7.60 per hour but, it only increased to £7.50 per hour.<sup>271</sup>

The NLW should not be confused with the Living Wage. The Living Wage is a voluntarily hourly rate that is set independently from the NLW. It is calculated according to the cost of living in the United Kingdom. The calculation takes into account such things as accommodation, travel, healthy food along with a little extra for such things as birthday presents.<sup>272</sup>

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<sup>267</sup> George Osborne, Chancellor of the Exchequer May 2010 – July 2016

<sup>268</sup> Financial Statement, HC Debs, 8<sup>th</sup> July 2015, col 337

<sup>269</sup> National Minimum Wage, Low Pay Commission Report Autumn 2016, November 2016, cm 9272

<sup>270</sup> Robert Booth, ‘Government likely to miss £9 minimum wage target, think-tank warns’, The Guardian (12 October 2016), available at: <https://www.theguardian.com/uk-news/2016/oct/12/government-likely-to-miss-9-minimum-wage-target-thinktank-warns> accessed 20<sup>th</sup> August 2017

<sup>271</sup> Rate increased through the National Minimum Wage (Amendment) Regulations 2017, Regulation 2

<sup>272</sup> Living Wage Foundation, ‘Everything you need to know about the Living Wage’, Available at: [https://d3n8a8pro7vhmx.cloudfront.net/newcitizens/pages/250/attachments/original/1447867827/Everything\\_you\\_need\\_to\\_know\\_about\\_the\\_Living\\_Wage\\_2016.pdf?1447867827](https://d3n8a8pro7vhmx.cloudfront.net/newcitizens/pages/250/attachments/original/1447867827/Everything_you_need_to_know_about_the_Living_Wage_2016.pdf?1447867827) accessed 9<sup>th</sup> June 2017

So what then is the NLW? There was much confusion when the Chancellor made his announcement regarding the NLW's introduction. No initial details were provided on what changes would need to be made to existing legislation. Would a new Act be introduced through Parliament or would a Statutory Instrument be sufficient? It transpired that no new primary legislation would be used and that, the NLW, was just to be another tier of the NMW.

As already mentioned, the NMW is a single hourly rate that is applicable to all workers, regardless of the location in which they work or the sector that they work within. However, there has always been a power contained within the NMWA 1998, to pass regulations to provide for different rates of pay for those under 26 years of age.<sup>273</sup>

The National Minimum Wage Regulations 2015,<sup>274</sup> which consolidated a wide range of earlier Regulations, set out four minimum wage rates.<sup>275</sup> These were set as age bands: over 21 years old; 18 but under 21 years old; under 18; and a rate for apprentices. The NLW applies to all workers who are aged 25 and over, so it seems that the 2015 Regulations were tailor-made to specify a new rate of the NMW for that specific age group. Indeed, that is what happened. No new exciting legislation was laid before Parliament. There was no National Minimum Wage Bill like that that was introduced in the 1930s. Instead, the Government simply used the 2015 Regulations to add a new tier to the age bands and gave the band a name 'the National Living Wage' when, in-fact, the NLW, for all of its hype, is simply a rewording of the highest tier of the NMW.

The so named NLW was added to law through the National Minimum Wage (Amendment) Regulations 2016.<sup>276</sup> Regulation 3 of the 2016 Regulations made an amendment to regulation 4 and added a regulation 4A of the 2015 Regulations. The newly added regulation 4 states: 'The single hourly rate of the national minimum wage for the purposes of section 1 (3) of the Act ("the national living wage rate') is £...' New regulation 4A became the provision for all other hourly rates.

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<sup>273</sup> National Minimum Wage Act 1998, S3

<sup>274</sup> SI 2015/621

<sup>275</sup> Part 2, Regulation 4

<sup>276</sup> SI 2016/68

The introduction of the NLW on the 1<sup>st</sup> April 2016, was a significant intervention in the labour market. The introductory rate for workers aged 25 and over was a 7.5 per cent overnight pay increase. There was a concern as to how businesses would adjust to the higher costs of labour. The main sectors that worried about the short-term effect comprised of social care providers, who warned of a ‘serious risk of catastrophic failure’<sup>277</sup> if the new NLW was not fully funded. Convenience stores, small firms in general, some food manufacturers, and horticulture and other labour intensive trades, such as textiles all voiced concerns.<sup>278</sup>

As with the NMW it is a criminal offence for an employer not to pay a work the NLW or above if they fall into that age category. Regulation 2 of the 2016 Regulations increased the financial penalty from 100 per cent to 200 per cent of arrears. The maximum penalty is £20,000 per worker, although this is reduced by half if the unpaid arrears and financial penalty are paid within 14 days. Her Majesty’s Revenue & Customs also operates a name and shame policy for employers who break the law by not paying the NMW or NLW. According to a BBC report the government named 360 businesses that failed to pay either the NMW or NLW in 2016. These received fines totalling £800,00. Amongst these were well known firms such as Debenhams, Subway and Lloyds Pharmacy. In total more than 15,500 workers had to be paid back nearly one million pounds’ worth of arrears.<sup>279</sup> However, the ONS has calculated that in April 2016 there were 362,000 jobs that did not pay the minimum wage.<sup>280</sup>

The BBC reported that excuses that were made by some employers for not paying the full basic wage included using tips to top up pay, making reductions to pay for the Christmas party, or making staff pay for their own uniform.<sup>281</sup>

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<sup>277</sup> ‘Living Wage could harm home care sector’, BBC (27 July 2015), available at: <http://www.bbc.co.uk/news/health-33678919> accessed 9th June 2017

<sup>278</sup> Supra 274, p 37-38

<sup>279</sup> ‘Hundreds of companies failing to pay minimum wage’, BBC (15 February 2017), available at: <http://www.bbc.co.uk/news/business-38979368> accessed 24th August 2017

<sup>280</sup> Office for National Statistics, Low pay in the UK: April 2016, available at: <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/bulletins/lowpay/apr2016> accessed 24th August 2017

<sup>281</sup> Supra 282

Does the NLW provide a MIS when compared to the data from the CRSP?

Worker aged 25+
£7.50 per hour
Net weekly income of £254.36 <sup>282</sup>

From this it is clear that the NLW falls far below the amount that the CRSP state is enough to live on to pay for rent, bills, food etc. Going from the MIS figures, a single person would need a gross weekly income of £343.70, equating to £9.17 per hour for a 37.5-hour average working week, to receive the MIS advocated by the CRSP of £296.82. Much higher than the hourly rate of £8.45 for those outside of London, although the London rate of £9.75 as advocated by the Living Wage Foundation, would put a single person just ahead of the MIS.<sup>283</sup>

When the NLW was introduced, there were a number of people who suggested that the age at which the level of pay is mandatory is age discrimination. There was also concern raised that employers would focus their attention on the recruitment of those under 25 years of age in a bid to save on wage costs. The Federation for Small Businesses advised employers that focusing recruitment on the under-25s runs the risk of breaching age discrimination legislation.<sup>284</sup> Indeed S39 (1)(a) of the Equality Act 2010 states that an employer must not discriminate against a person in arrangements made for deciding whom to offer employment to. However, in practice it would prove to be extremely difficult to establishing whether an employer had discriminated on grounds of age by offering employment to somebody under 25 rather than over.

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<sup>282</sup> Listen to Taxman, available at: <https://listentotaxman.com/7.50?plan=1&time=1950> accessed 24<sup>th</sup> August 2017

<sup>283</sup> See <https://www.livingwage.org.uk> for further details on the Living Wage rate.

<sup>284</sup> Stephen Simpson, 'National living wage: extra age band encourages discrimination', Personnel Today (9 June 2016), available at: <http://www.personneltoday.com/hr/national-living-wage-age-discrimination-recruitment> accessed 24th August 2017

In June 2016 a debate was held in Westminster Hall. The topic – age discrimination and the National Living Wage. During the debate Holly Lynch<sup>285</sup> highlighted the grievances felt by the under-25s saying:

Young workers under the age of 25 rightly feel a sense of injustice at having been left out of the pay rise... many workers, under 25, will have discovered that their pay package is substantially less than their older colleagues. About 6 million young people aged 18 to 24... could be affected... this debate provides an opportunity to examine the inequality underpinning that decision and to ask the Government to plan for an extension of the national living wage to under-25s.<sup>286</sup>

For the first time since the minimum wage was introduced in 1999 under 25s are now viewed as a distinct, and less deserving, group. This is a situation which is almost unique to the UK with only Greece having a similar age threshold in the entire developed world.<sup>287</sup> France pays the full rate from 18 onwards, as does Germany, and even in the USA there is no age threshold apart from the option to pay workers under the age of 20 a lower rate for their first few months of employment.<sup>288</sup>

There is little public support for the NLW only applying to those workers aged 25 and over. A poll found that 66 per cent of respondents believed that the same minimum wage rate should apply to those that are under-25. Even amongst Conservative supporters 55 per cent supported an equal wage for under-25s compared to 35 per cent who did not.<sup>289</sup>

In April 2016, when the NLW was introduced, The Guardian ran a story about Anthony. A 23-year-old who worked in a warehouse in London. Overnight, older colleagues became entitled to a higher wage for doing the same job that he did. Anthony claiming that 'it's discrimination against young, hard workers'. He went on to say 'I was already

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<sup>285</sup> Labour MP for Halifax, 2015-

<sup>286</sup> Age Discrimination: National Living Wage, Westminster Hall Deb, 8<sup>th</sup> June 2016, col 182WH

<sup>287</sup> Low Pay Commission, National Minimum Wage: Low Pay Commission Report Spring 2016, Cm 9207, p.100

<sup>288</sup> United States Department of Labour, see <https://www.dol.gov/whd/minwage/q-a.htm> for further information. Accessed 25<sup>th</sup> August 2017

<sup>289</sup> Ned Simons, 'Labour Party Conference HuffPost Poll: Under-25s should be given national living wage', HuffPost (26 September 2015), available at: [http://www.huffingtonpost.co.uk/2015/09/26/poll-under-25s-should-be-given-national-living-wage\\_n\\_8194992.html](http://www.huffingtonpost.co.uk/2015/09/26/poll-under-25s-should-be-given-national-living-wage_n_8194992.html) accessed 28th August 2017

getting £7.20 per hour... I'm now on £6.70 per hour. It's been cut just because I'm 23 and not 25... I'm getting less for doing the same job... I feel so worthless.'<sup>290</sup>

It is clear that the NLW has given those aged over 25 a premium to their wages, those under 25 feel aggrieved that their older colleagues, many of them carrying out the same task, should be paid such a premium while they are not. Why, therefore, did the Government choose to set the NLW at 25 and not 18? A key argument that the Government used was that a lower minimum rate of pay for younger workers reduces youth unemployment by 'incentivising employers to take on young people.'<sup>291</sup> However, as already mentioned employers must comply with the Equality Act 2010 when recruiting.

Youth unemployment has been a major concern for the UK and Europe since the financial crash in 2007. The tables below show the numbers of people aged between 16-24 that were not in education, employment or training during those quarters since 2015.

Jan-Mar 2015	Apr-Jun 2015	Jul-Sep 2015	Oct-Dec 2015
943,000 <sup>292</sup>	922,000 <sup>293</sup>	848,000 <sup>294</sup>	853,000 <sup>295</sup>

<sup>290</sup> Frances Ryan, 'Think young people are better off on the 'national living wage'? Ask Anthony', The Guardian (7 April 2016), available at: <https://www.theguardian.com/commentisfree/2016/apr/07/national-living-wage-kick-young-people> accessed 28th August 2017

<sup>291</sup> Supra 287

<sup>292</sup> Office for National Statistics, Young people not in education, employment or training (NEET), UK: May 2015, available at: <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/youngpeoplenotineducationemploymentortrainingneet/2015-05-21> Accessed 27th August 2017

<sup>293</sup> Office for National Statistics, Young people not in education, employment or training (NEET), UK: August 2015, available at: <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/youngpeoplenotineducationemploymentortrainingneet/2015-08-20> Accessed 27th August 2017

<sup>294</sup> Office for National Statistics, Young people not in education, employment or training (NEET), UK: November 2015, available at: <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/youngpeoplenotineducationemploymentortrainingneet/november2015> Accessed 27th August 2017

<sup>295</sup> Office for National Statistics, Young people not in education, employment or training (NEET), UK: February 2016, available at: <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/youngpeoplenotineducationemploymentortrainingneet/february2016> Accessed 27th August 2017

Jan-Mar 2016	Apr-Jun 2016	Jul-Sep 2016	Oct-Dec 2016
865,000 <sup>296</sup>	843,000 <sup>297</sup>	857,000 <sup>298</sup>	826,000 <sup>299</sup>

Jan-Mar 2017	Apr-Jun 2017
800,000 <sup>300</sup>	790,000 <sup>301</sup>

From analysis of these figures it is clear that youth unemployment has fallen since the introduction of the NLW. It is not possible to say whether this is because younger workers are paid a lower rate of pay than those aged 25 and above. However, it would be reasonable to assume that this has, to a certain extent, contributed to the decline in youth unemployment.

There has been a general fall in unemployment over recent years. In a recent BBC report it was stated that unemployment now stands at 4.3 per cent and represents the lowest rate since 1975. It also reported that there continues to be a squeeze on incomes, with wages – in real terms, falling by 0.4 per cent due to inflation.<sup>302</sup> If the

<sup>296</sup> Office for National Statistics, Young people not in education, employment or training (NEET), UK: May 2016, available at: <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/youngpeoplenotineducationemploymentortrainingneet/may2016> Accessed 27th August 2017

<sup>297</sup> Office for National Statistics, Young people not in education, employment or training (NEET), UK: August 2016, available at: <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/youngpeoplenotineducationemploymentortrainingneet/aug2016> Accessed 27th August 2017

<sup>298</sup> Office for National Statistics, Young people not in education, employment or training (NEET), UK: November 2016, available at: <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/youngpeoplenotineducationemploymentortrainingneet/nov2016> Accessed 27th August 2017

<sup>299</sup> Office for National Statistics, Young people not in education, employment or training (NEET), UK: February 2017, available at: <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/youngpeoplenotineducationemploymentortrainingneet/feb2017> Accessed 27th August 2017

<sup>300</sup> Office for National Statistics, Young people not in education, employment or training (NEET), UK: May 2017, available at: <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/youngpeoplenotineducationemploymentortrainingneet/may2017> Accessed 27th August 2017

<sup>301</sup> Office for National Statistics, Young people not in education, employment or training (NEET), UK: August 2017, available at: <https://www.ons.gov.uk/employmentandlabourmarket/peoplenotinwork/unemployment/bulletins/youngpeoplenotineducationemploymentortrainingneet/august2017> Accessed 7th September 2017

<sup>302</sup> 'Unemployment rate falls to 4.3% as wages stagnate', BBC (13 September 2017), available at: <http://www.bbc.co.uk/news/business-41252976> accessed 13th September 2017

NLW did apply to all adult workers, i.e. those aged 18 and over, inflation would still be a problem, However, all workers would have more income to offset this and help alleviate the problem of stagnant wages.

The Charter of Fundamental Rights of the European Union (the Charter)<sup>303</sup> is an instrument of the European Union (EU). It forms part of EU law and subject to the interpretation of the Court of Justice of the European Union. EU law is given effect in national law through the European Communities Act 1972. The Charter was given legal effect by the Lisbon Treaty when it entered into force in December 2009. Article 6 (1) Treaty on European Union provided for the Charter to have the same legal status as other EU Treaties. Although the Charter applies to the institutions of the EU at all times – it only applies to member states when it is acting within the scope of EU law. Article 21 of the Charter states: ‘Any discrimination based on any ground such as... age... shall be prohibited’. This, along with the Equality Act 2010, may eventually persuade the Government that selecting an age rate of 25 for the NLW is a form of age discrimination and amend it to 18 – after all, a person aged 18 is by no means less capable of doing a job than somebody aged 25. There is a very present risk that employers will change their recruitment policies to take on more under 25s in an attempt to lower the cost of labour. The downside for the person that is potentially discriminated against would be in proving a case of age discrimination – no employer would ever admit to recruiting under 25s in a bid to save money.

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<sup>303</sup> Can be accessed at: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012P/TXT&from=EN> accessed 27 August 2017

## Conclusion

This thesis has examined, discussed and analysed the systems of minimum wage regulation from the 19<sup>th</sup> to 21<sup>st</sup> centuries, that have led the UK to its present form – the NWM and the NLW. In concluding this thesis will draw together, what I believe, have been the main developments in legislation that led the UK Government to enact a national minimum wage and a national living wage. This conclusion will also comment on what the future may hold for minimum wage regulations in the UK.

The journey that the UK has been on in establishing a universal minimum wage has been an exciting one. As this thesis has shown, initially the State had always been reluctant to interfere in the negotiation of contracts between employer and employee. Preferring to leave it to the market to set the rate. As this thesis has explained, the Government was forced to re-think this approach due to the increased campaigns highlighting the issue of sweating and the atrocious working conditions associated with it. This resulted in the enactment of the TBA 1909. This Act firmly established that the Government was willing to intervene in the market when public pressure forced it to do so.

Since the passing of the TBA 1909 there have been many changes to wage regulation that have varied according to whichever party is in Government. One of the most important pieces of legislation was the Munitions Acts of 1916 and 1917. This thesis has examined how the Munitions Act were drastically different in nature to the TBA 1909 as they authorised the Minister to set actual rates of pay – something that the 1909 Act had been careful not to do.

After the First World War, the Government appeared to be moving towards exercising much wider control over wages. This thesis has examined the effects of various Select Committees and the recommendations that were made, some believing that the function of Trade Boards should be extended, whilst others believed that the Government had already gone too far and that the system of Trade Boards should be scaled back.

This thesis has examined the social legislation that was introduced by the Labour Government after the Second World War and its extension of what become known as Wages Councils. The Councils extended the system of wage regulation. The Wages Councils Act 1945 would ensure that future Governments would not be allowed to ignore the issue of wages.

The programme of wage regulation did not change much until the 1980s. This thesis has examined the changes that were made to wage regulation by the Conservative Government and the ultimate abolishing of the Councils. The impact that this had on wages for the lowest paid people in society cannot be underestimated. The progress that had been made since the passing of the TBA 1909 was beginning to be unravelled at the expense of the lowest paid.

Finally, in 1998 the UK caught up with much of the industrial world. The newly elected Labour Government introduced a national minimum wage. This would be applicable to all workers over a certain age, in all regions and within all types of business – regardless of size. This thesis has examined the impact that the NMW had on businesses along with wages in general terms.

There was a growing campaign that began in the 1990s, advocating the notion of a living wage. The key argument was and remains, that wages should be sufficient enough, in order for people to afford to live. The Living Wage Foundation is an independent body, who has set a precedent of what is required for the average person to live on, both inside and outside of London. The NLW was introduced by the Government in April 2016. This thesis has shown it is an extension of the NMW, with a new banding for persons aged 25 and above. There is some debate surrounding the differences within the age brackets and whether the NLW is a true comparative to The Living Wage.

The impending years will likely see a plethora of changes in the field of employment law, as the UK begins the process of exiting the EU. It is difficult to establish at this moment, if this will impact on wages and if so to what extent – will the Governments plan of having a NLW of £9.00 per hour, by 2020, come to fruition or will they reconsider their plans? This thesis has already shown that increases in the NLW rate

has slowed down, in part, due to the impact that leaving the EU has already had on UK economic growth.

**Word Count: 30,080**

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