

**BERR**

Department for Business  
Enterprise & Regulatory Reform

**EMPLOYMENT BILL**

Impact Assessment – Cadet  
Force Adult Volunteers

DECEMBER 2007

## Summary: Intervention & Options

|   |  |                              |
|---|--|------------------------------|
| <b>Department /Agency:</b><br><b>MoD/BERR</b>   | <b>Title:</b><br><b>Impact Assessment of Employment Bill: Cadet Force Adult Volunteers</b> |                              |
| <b>Stage:</b> Final   | <b>Version:</b> Final  | <b>Date:</b> 5 December 2007 |
| <b>Related Publications:</b> National Minimum Wage and Voluntary Workers: Government Response to Consultation |  |                              |

### Available to view or download at:

<http://www.berr.gov.uk/files/file42756.pdf>

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

Cadet Force Adult Volunteers (CFAVs) have a long tradition of volunteering their time for the benefit of the young people who join the Cadet Forces. However there are elements of being a CFAV which cloud their legal status as volunteers and there is a small risk that this could bring into question their qualification for the National Minimum Wage.

In the absence of government intervention there may be confusion over the CFAVs eligibility for the minimum wage which could damage the ability of the Cadet Forces to continue to provide training programmes for young people.

### What are the policy objectives and the intended effects?

The objective of this policy is to clarify the position that Cadet Force Adult Volunteers do not qualify for the National Minimum Wage. By avoiding doubt over their position and removing the small risk that the voluntary nature of CFAVs could be challenged, the Cadet Forces will be able to continue to deliver a wide range of military themed activities and allow more young people to benefit from the Cadet experience.

### What policy options have been considered? Please justify any preferred option.

MoD has considered a number of options for altering the delivery of Cadet Force activity to remove the existing confusion about the eligibility of the National Minimum Wage. Options considered have included making CFAVs employees or enlisting them in the Reserve Forces. All the options considered would have a significant impact on the ability of the Cadet Forces to provide the full scale and scope of activities.

### When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

The MoD holds regular meeting with Cadet Force Associations where the welfare of Cadet Force Adult Volunteers is subject to continuous review.

### **Ministerial Sign-off** For final proposal/implementation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) the benefits justify the costs.***

Signed by the responsible Minister:

Pat McFadden, Minister of State (Employment Relations and Postal Services)

.....Date: 6 December 2007

## Summary: Analysis & Evidence

|                       |  |
|-----------------------|--|
| <b>Policy Option:</b> | <b>Description: Exclusion of CFAVs from qualifying for the NMW</b> |
|-----------------------|--|

|  |   |   |            |  |
|--|---|---|------------|--|
| <b>COSTS</b>   | <b>ANNUAL COSTS</b>                               | Description and scale of <b>key monetised costs</b> by 'main affected groups' There are no costs associated with the preferred option |            |  |
|  | <b>One-off</b> (Transition) <b>Yrs</b>            |   |            |  |
|  | <b>£ 0</b>  |   |            |  |
|  | <b>Average Annual Cost</b><br>(excluding one-off) |   |            |  |
|  | <b>£ 0</b>  | <b>Total Cost (PV)</b>  | <b>£ 0</b> |  |
| Other <b>key non-monetised costs</b> by 'main affected groups' |   |   |            |  |

|  |  |   |            |  |
|--|--|---|------------|--|
| <b>BENEFITS</b>  | <b>ANNUAL BENEFITS</b>                               | Description and scale of <b>key monetised benefits</b> by 'main affected groups' There would be financial savings from preventing employment tribunals. See below for non-monetised benefits. |            |  |
|  | <b>One-off</b> <b>Yrs</b>                            |   |            |  |
|  | <b>£ 0</b>   |   |            |  |
|  | <b>Average Annual Benefit</b><br>(excluding one-off) |   |            |  |
|  | <b>£ 0</b>   | <b>Total Benefit (PV)</b>   | <b>£ 0</b> |  |
| Other <b>key non-monetised benefits</b> by 'main affected groups' Removes doubt over NMW applicability to CFAVs; sustains volunteer ethos; maintain cadet force delivery |  |   |            |  |

|                                     |
|-------------------------------------|
| Key Assumptions/Sensitivities/Risks |
|-------------------------------------|

|                    |                      |  |  |
|--------------------|----------------------|--|--|
| Price Base<br>Year | Time Period<br>Years | <b>Net Benefit Range (NPV)</b><br><b>£ 0</b> | <b>NET BENEFIT (NPV Best estimate)</b><br><b>£ 0</b> |
|--------------------|----------------------|--|--|

|   |              |              |               |              |
|---|--------------|--------------|---------------|--------------|
| What is the geographic coverage of the policy/option?                 | UK           |              |               |              |
| On what date will the policy be implemented?                          | asap         |              |               |              |
| Which organisation(s) will enforce the policy?                        | HMRC         |              |               |              |
| What is the total annual cost of enforcement for these organisations? | £ N/A        |              |               |              |
| Does enforcement comply with Hampton principles?                      | Yes          |              |               |              |
| Will implementation go beyond minimum EU requirements?                | No           |              |               |              |
| What is the value of the proposed offsetting measure per year?        | £ N/A        |              |               |              |
| What is the value of changes in greenhouse gas emissions?             | £ N/A        |              |               |              |
| Will the proposal have a significant impact on competition?           | Yes/No       |              |               |              |
| Annual cost (£-£) per organisation<br>(excluding one-off)             | Micro<br>N/A | Small<br>N/A | Medium<br>N/A | Large<br>N/A |
| Are any of these organisations exempt?                                | No           | No           | N/A           | N/A          |

|   |                    |                       |            |
|---|--------------------|-----------------------|------------|
| <b>Impact on Admin Burdens Baseline</b> (2005 Prices) |                    | (Increase - Decrease) |            |
| Increase of    £ 0                                    | Decrease of    £ 0 | <b>Net Impact</b>     | <b>£ 0</b> |

Key:      Annual costs and benefits: Constant Prices      (Net) Present Value

## Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### **A: Strategic overview**

To enable the Cadet Forces to continue to operate as successfully as they currently do, changes to the NMW Act are required to clarify that Cadet Force Adult Volunteers (CFAVs) are exempt from the National Minimum Wage.

The Cadet Forces are voluntary, community-based organisations that currently engage about 130,000 young people in a range of challenging activities. The Cadet Forces are sponsored by the MoD. No other Government department sponsors a youth organisation in the way the MoD sponsors the Cadet Forces and the proposal to exclude CFAVs from qualifying for the NMW places no obligation on any other Government Department.

By clarifying the position of CFAVs this change enables the Cadet Forces to continue to operate as they currently do. In doing so it does not place any burden on the private or public sector.

### **B: The issue**

Cadet Force Adult Volunteers (CFAVs) have a long tradition of volunteering their time for the benefit of the young people who join the Cadet Forces. However there are elements of being a CFAV which cloud their legal status as volunteers and there is a small risk that this could bring into question their qualification for the National Minimum Wage.

In the absence of government intervention there may be confusion over the CFAVs eligibility for the minimum wage which could damage the ability of the Cadet Forces to continue to provide their programmes for young people.

### **C: Objectives**

To amend the National Minimum Wage Act 1998 to explicitly exclude persons serving with the MoD sponsored Cadet Forces (Cadet Force Adult Volunteers or CFAVs) from qualifying for the minimum wage.

This will clarify the position that CFAVs do not qualify for the NMW and therefore for the avoidance of doubt.

### **Background**

The MoD sponsors four Cadet Forces, the Combined Cadet Force, Sea Cadet Corps, Army Cadet Force and Air Training Corps. These are voluntary, community-based organisations that use military themes based on the culture and ethos of the Armed Forces to promote personal and social development including self-confidence, self-reliance, initiative, loyalty and a sense of service among young people aged between 12-20. The Cadet Forces focus on bringing adventure and enjoyment to young people, known as cadets, with a view to steering them towards responsible citizenship. Many activities lead to a qualification or award, such as the Duke of Edinburgh's Award or vocational qualifications. By involving young people in these

activities and inculcating a sense of citizenship, the Cadet Forces contribute to the Government's broader policy on engagement with the young and by extension benefiting particularly socially excluded groups.

The Cadet Forces are not part of the Armed Forces or the Reserve Forces, although some adult instructors may be serving members of the Regular or the Reserve Forces. All four Cadet Forces are national youth organisations that exist without any formal status under the law.

CFAV is the generic term adopted by the MoD to refer to any adult (over the age of 18) who volunteers to assist in the delivery of the MoD-sponsored Cadet Force programme as set out above. CFAVs act in a supervisory role and receive appropriate training in order to allow them to safely deliver the Cadet Force programme often in a military environment. They have to undergo special security clearances, including in most cases signing the Official Secrets Act. In addition they are trained to allow their safe access to MoD facilities and equipment (including firearms and ammunition handling) as well as to take responsibility for publicly and privately funded equipment and stores. This training can lead to nationally recognised qualifications. Some CFAVs have military ranks and some wear military uniforms. The rank structure used follows that of the parent service. The chain of command is based on the ranks held. The majority of CFAVs come forward from the local community and many have no previous military experience.

CFAVs volunteer their services without receiving remuneration, to assist in weekday cadet parade nights and weekend activities, the level of time commitment being left to the individual CFAV to determine. In addition, depending on their role, some CFAVs may claim fixed rates of remuneration based on the rank they hold to cover attendance at whole days training, annual camps, and training courses. There is no specific entitlement to this remuneration, which is limited to a maximum of 28 days, as set out in the individual Cadet Force regulations (i.e. the internal rules issued by the governing bodies of the Cadet Forces), and is subject to there being sufficient funds available and to the authorization of the relevant chain of command. In practice at the moment, current levels of annual remuneration range from a maximum of 5 days for the Sea Cadet Corps to a maximum of 21 days for the Army Cadet Force regardless of the number of training sessions and camps attended over and above this.

Annex A provides details of the current rates of remuneration. The funds for remuneration are provided by MoD; individual payments are authorised by the local Cadet Force commander. Rates of remuneration are linked to the rates paid to the Armed Forces and are reviewed annually, and information about the rates is made available to each Cadet Force. As they are acting on a voluntary basis, CFAVs tend not to complain if they do not receive remuneration but are less likely to volunteer for weekend activities or annual summer camps if the potential for remuneration is removed. Liability for income tax and National Insurance is settled on a PAYE basis through the MoD payment system.

The current estimated membership of the MoD sponsored Cadet Forces is set out in the following table:

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**Table 1. Size of the MoD sponsored Cadet Forces as at 1 April 07.**

| Cadet Force          | Number of CFAVs | Number of Cadets |
|----------------------|-----------------|------------------|
| Combined Cadet Force | 2,200           | 42,000           |
| Sea Cadet Corps      | 4,500           | 11,000           |
| Army Cadet Corps     | 8,400           | 44,000           |
| Air Training Corps   | 10,900          | 33,000           |
| Total                | 26,000          | 130,000          |

Source: Cadet HQs annual returns

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Of the 26,000 CFAVs approximately 20,000 receive remuneration. The total number of CFAVs receiving remuneration broken down by parent service is illustrated in Table 2. Also shown is total number of days remuneration claimed. The number of weekday evenings volunteered, for which the CFAVs receives no remuneration, and the total number of weekend volunteered is shown in Table 3. The typical number of evenings and weekends volunteered by each rank is broken down at Annex B.

**Table 2. Remuneration of CFAVs.**

| Parent Service <sup>1</sup> | Cost (£m) <sup>2</sup> | Number of Remunerated CFAVs | Number of Remunerated Days |
|-----------------------------|------------------------|-----------------------------|----------------------------|
| RN                          | £2.83                  | 3,895                       | 20,832                     |
| Army                        | £14.00 <sup>3</sup>    | 10,630                      | 223,000                    |
| RAF                         | £5.44                  | 5,381                       | 71,037                     |
| <b>Total</b>                | <b>£22.27</b>          | <b>19,906</b>               | <b>314,869</b>             |

Source: Cadet HQs

**Table 3. Estimated level of volunteer commitment.**

| Cadet Force          | Total weekend days volunteered | Total evenings volunteered |
|----------------------|--------------------------------|----------------------------|
| Combined Cadet Force | 54,000                         | 86,000                     |
| Sea Cadet Corps      | 184,000                        | 273,000                    |
| Army Cadet Corps     | 274,000                        | 894,000                    |
| Air Training Corps   | 78,000                         | 376,000                    |
| <b>Total</b>         | <b>590,000</b>                 | <b>1,630,000</b>           |

Source: Cadet HQs

## The problem

The MoD has always categorised CFAVs as volunteers and this is clear on their various websites and literature. However, elements of being a CFAV could cloud their legal status. For instance, CFAVs often sign personal declarations or agreements undertaking certain standards of behaviour associated with their position in a quasi military role, and access to MoD facilities and equipment. These could be confused with employment contracts. CFAVs also receive occasional remuneration beyond the reasonable expenses usually received by volunteers. If CFAVs were not considered volunteers for the purposes of the National Minimum Wage Act, they may be classed as workers. This would both remove the voluntary status of CFAVs and bring NMW entitlements.

CFAV remuneration is linked to rank. At a “typical” cadet summer camp adult volunteers are active at least 12 hours a day (7am to 7pm). Only those CFAVs remunerated at Chief Petty Officers, Sub Lieutenants and above and their equivalents are compliant with the NMW if this were the only period they were involved in Cadet Force activity.

However, if CFAVs were judged to be workers they would have to be remunerated at least the NMW for all hours they volunteer, including all weekend activity and week day parade nights. CFAVs have a duty of care at all times they are with cadets. This may mean occasionally being on call through the night. Consideration would have to be given to whether the minimum

<sup>1</sup> The Combined Cadet Force has RN, Army and RAF elements and is funded by all three services

<sup>2</sup> FY 05/06

<sup>3</sup> Approximate figures

wage should also be paid for these periods. Tables 2 and 3 show the magnitude of additional volunteer commitment that would have to be funded if all volunteer activity were to be remunerated.

Ultimately, a CFAV could decide to challenge his status at an employment tribunal. It is unlikely that a CFAV would do this, given that CFAVs volunteer with no expectation of being remunerated. Nonetheless, without legal clarity there is a small risk that an employment tribunal could result in a CFAV being classified as a worker, entitled to receive the NMW for all the time that they previously volunteered. It is unsatisfactory to allow such uncertainty, and the associated liabilities, to continue (see Table 4). In order to clarify the position that CFAVs do not qualify for the NMW the MoD have proposed a specific exemption to exclude Cadet Force Adult Volunteers from qualifying for the National Minimum Wage.

## **D: Options identification**

MoD and BERR have worked together to identify alternatives to amending the NMW Act. Beyond the 'do nothing' option, other options considered include:

- i. Gradual phase-out of payments made to CFAVs
- ii. Limiting attendance to a specific number of periods on duty at the NMW rate
- iii. Making CFAVs employees
- iv. Enlistment of all CFAVs in the Reserve Forces

These options are discussed in greater detail below.

### ***(i) Gradual phase-out of payments made to CFAVs.***

Under this scenario, CFAVs could still receive payment for legitimate out-of-pocket expenses, provided sufficient funds were available from MoD. This would be in keeping with the voluntary ethos.

The withdrawal of payments would have a significant impact on CFAVs numbers<sup>4</sup> and as a consequence harm the ability of the Cadet Forces to provide so many young people with the cadet experience. This is because the remuneration also acts as some reward for CFAVs who undergo unique inconveniences when they join the Cadet Forces, such as accepting the need for training, undergoing special security clearance and for following strict procedures when using military facilities, firearms and other equipment.

The withdrawal of payments would not totally remove risk. Aspects of being a CFAV which could cause confusion about legal status would still remain– for instance, there is a small risk that the personal agreements some CFAVs may sign could be mistakenly confused with contracts of employment.

The results of public consultation indicated that implementation of this option would be likely to have a major impact on the supply of CFAVs either because of resignations among existing volunteers or the lack of incentives needed to recruit new ones. This would undermine the delivery of cadet activity. That would mean that the various developmental opportunities available to 130,000 young people serving as cadets would have to be drastically reduced or cease, which could have social costs for young people and the communities in which they live.

Whilst this option could save approximately £22m per annum we do not consider it acceptable.

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<sup>4</sup> In their response to consultation the Army Cadet Force Association predict that some 25% of Army Cadet Force CFAVs would leave almost immediately with a further 40% to 50% leaving within 2 years.

### ***(ii) Limiting attendance to a specific number of periods on duty at the NMW rate***

Remunerating at NMW rates but maintaining current levels of expenditure by limiting the number of sessions each CFAV attended would significantly curtail the number of hours a CFAV could contribute and would reduce the cadet experience to about one third of current activity levels. To remain cost neutral an ACF Sergeant Instructor could only contribute 199 hours per year<sup>5</sup>. The typical CFAV volunteers three times this amount<sup>6</sup>. Restricting the scale and breadth of activities would seriously compromise the quality of experience among cadets. It would also make the Cadet Forces less attractive to newcomers, and current cadets would be less inclined to stay, thereby losing the opportunity to develop new skills and enjoy a uniquely disciplined and challenging experience in a safe and controlled way, whilst developing character, confidence, leadership, self reliance, and an enduring sense of service to others.

### ***(iii) Making CFAVs employees***

CFAVs have always been regarded as volunteers – that is a long established tradition<sup>7</sup> – and individuals who join do so on that clear understanding. It would be possible to change their status and make them employees or workers, but that would be wholly contrary to the voluntary nature of CFAVs. Such a change of status would bring with it a different relationship between CFAVs and the Cadet Forces including a mutuality of obligations and other complexities that currently are not an issue. Instead of being flexible and informal, CFAVs and the Cadet Forces would need to agree and put in place all the necessary features of an employer-worker relationship, including payment of the NMW, which would be unsuited to the Cadet Forces. The parties concerned – CFAVs, the Cadet Forces and MoD – have no wish to create a contractual relationship, but rather wish to maintain the tradition of volunteering.

Based on current activity levels, additional funding of up to £100m per annum would be required for this option. This figure does not include other employment rights such as pensions and maternity benefit that would accrue. This is not simply a question of affordability - this option is highly likely to be unacceptable to the CFAVs who prize their position as volunteers<sup>8</sup> and would not wish to regularise their commitment.

### ***(iv) Enlistment of all CFAVs in the Reserve Forces***

Enlisting CFAVs into the Reserve Forces would gain Armed Forces exemptions from the NMW. Under existing regulatory powers found in the Reserve Forces Act 1996, it would be possible to make CFAVs a special category of the Reserve Forces. Each individual would then have to enlist into the Reserve Forces; such enlistment cannot be mandatory without it becoming a form of conscription. CFAVs would have an expectation to be treated equally to other reservists in respect to pay and bounty.

This move would alienate a significant number of CFAVs who may not want to enlist into the reserves. This would also confuse CFAVs with the deployable integrated Reserve Forces with potential for mobilisation, which was never the intention. At an estimated additional cost of

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<sup>5</sup> An average ACF Sergeant instructor is remunerated for 21 days at £52.19 per day – a total of £1095.99. At a NMW hourly rate of £5.52 this is the equivalent of 199 hours. Ignoring on call time and assuming 12 hours days at camp this equates to just 17 days. Or 8.5 days when on call time is included.

<sup>6</sup> Typical ACF Sergeant volunteers 29 days (12 x 29 = 348 hours) plus 95 x 3 hour evening sessions = 633 hours.

<sup>7</sup> Since 1860 cadet units have been run by volunteers for the benefit of children. The practice of remunerating CFAVs for a proportion of the time they give to cadets was introduced in the years following the Second World War when it was necessary to attract adult volunteers to the cadet forces.

<sup>8</sup> In their response to consultation the Combined Cadet Force Association stated that “Our dialogue with our members over many years convinces us that CFAVs consider themselves to be volunteers, first and foremost.”



£29M per annum to provide parity with reservists, this option would be both unaffordable and present a significant risk to the continuance of the Cadet Forces.

**(v) Do nothing**

The current uncertainty means that an individual CFAV could pursue his own claim in an employment tribunal if he considered himself to be entitled to the National Minimum Wage. As CFAVs have volunteered without expectation of remuneration at minimum wage levels, it may be unlikely that they would do this. Nonetheless, without legal clarity the risk remains that a case could be taken and considered by an employment tribunal, and although unlikely, it is possible that this could result in a CFAV being classified as a worker and entitled to receive NMW [see *Making CFAVs employees*]. It is unsatisfactory to allow such uncertainty, and the associated liabilities, to continue. This option presents an enduring risk and does not provide a robust long-term solution.

**Consultation**

The public consultation about the NMW and voluntary workers ran from 12 June to 4 September 2007. There were 40 responses received of which 10 commented on the CFAV issue. The consultation document invited views on the principle of excluding CFAVs.

**Three** of the respondents were from the charitable associations that represent CFAVs and support the Cadet Forces. They were strongly supportive of the exclusion. No comments were received from individuals who perform the duties of CFAVs.

**Four** respondents expressed neither support nor opposition, but made specific points about the sorts of payments that should be allowed for all voluntary workers/volunteers and the need for better guidance about the law on volunteering.

**Three** other respondents expressed concern about the exclusion, commenting that not enough evidence had been presented as to why CFAVs should be excluded. Because of this, they asked whether other organisations that deliver activities for young people should achieve the same exclusions.

The government response to consultation was published on 27 November and is available on the BERR website at: [www.berr.gov.uk/consultations/page39871.html](http://www.berr.gov.uk/consultations/page39871.html)

MoD maintains ongoing consultations with all stakeholder groups, primarily the cadet associations that support and represent the CFAVs.

## E: Analysis of options

The broad costs and benefits of each of the options have been discussed in the previous section and are summarised in the table below

**Table 4. Summary of costs and benefits of each option**

| Option   | Estimated Financial Impact   | Benefit   | Disadvantage  |
|--|--|---|---|
| Phase-out of payments  | Saving of £22m   | Reinforce volunteer ethos.<br>Remove uncertainty over legal status.   | <ul style="list-style-type: none"> <li>• Less chance of attracting new volunteers.</li> <li>• Loss of CFAVs already serving.</li> <li>• Undermine delivery of cadet activity.</li> <li>• Other elements of a CFAVs duties, different to that of a typical volunteer, still remain.</li> </ul> |
| Limiting attendance to a specific number of periods on duty at the NMW rate. | Cost neutral   |   | <ul style="list-style-type: none"> <li>• Significantly reduction cadet activity.</li> <li>• Significant reduction in the number of young people that benefit from the cadet experience.</li> </ul>  |
| Making CFAVs employees.  | Cost of £100m/year   | Clarify the legal status of CFAVs.  | <ul style="list-style-type: none"> <li>• Alienate CFAVs who consider themselves volunteers.</li> <li>• Impose employment law on volunteer activity.</li> </ul>  |
| Enlistment of all CFAVs in the Reserve Forces.                               | Cost of £29m/year  |   | <ul style="list-style-type: none"> <li>• Alienate CFAVs who do not want to enlist in the Reserves.</li> <li>• CFAVs would have to comply with Service regulations inappropriate for a volunteer organisation.</li> </ul>  |
| Do nothing.  | Potential cost from employment tribunals; same cost of "Making CFAVs employees", plus risk of retrospective NMW payments |   | <ul style="list-style-type: none"> <li>• Small but enduring risk to the Cadet Forces that CFAVs could be deemed workers or employees.</li> </ul>  |
| NMW exemption.   | Saving from preventing employment tribunals  | <ul style="list-style-type: none"> <li>• Removal of doubt over NMW applicability to CFAVs.</li> <li>• Sustains volunteer ethos.</li> <li>• Maintains Cadet Force delivery.</li> </ul> |   |

Source: MoD

## F: Risks

The UK Government and the devolved administrations are committed to offering young people tangible and realistic opportunities to enable them to develop social skills and get the best possible start in life. The government continues to look at ways to help young people by improving the opportunities available to them. As a result each government department is charged to focus on how it can contribute to achieve this aim.

MoD plays a leading role in the Government's youth agenda through the sponsorship of the Cadet Forces. The range of activities provided for and by the cadet organisations is wider than any other youth organisation in the United Kingdom, and is unique in being based on military themes, carried out under a disciplined military hierarchy and conducting a variety of potentially hazardous activities in a safe and controlled way. The Cadet Forces are popular with young people because of the unparalleled range of exciting, challenging and safe activities they provide.

The key risks from not amending the National Minimum Wage Act 1998 to exclude persons serving with the MoD sponsored Cadet Forces (Cadet Force Adult Volunteers (CFAVs)) from qualifying for the minimum wage would be:

### ***Direct***

- Current lack of legal clarity over status prolongs the small risk of employment tribunals which would have to be contested<sup>9</sup>.
- Although unlikely, if an employment tribunal did conclude that CFAVs were employees or workers, this would destroy the voluntary nature of the activity and enforce an obligation to participate on the CFAVs, thus reducing the number of adults wishing to participate.
- This would also increase operating cost to unsustainable levels.
- If the average cost per CFAV goes up, then with a set budget this means either:
  - MoD could only afford to remunerate fewer CFAVs which has a knock-on effect on the number of places available to young people, reducing the number of young people able to benefit from the Cadet experience.
  - Reduction or curtailment of the range and quality of activities available to Cadets for the development of their team-building, leadership, communication and other skills.
- Adversely affect the delivery of the Government's programmes relating to young people, including those from socially excluded groups.

### ***Indirect***

- The Cadet Forces often provide the only visible sign of the Armed Forces within local communities and an important source for disseminating information about careers in the Armed Forces to those communities. Reduction in cadet activity would have significant impact on the visibility of the Armed Forces in local communities.
- Recruitment into the Armed Forces would reduce. Although not an output of the cadet programme a number of cadets choose to join the Regular or Reserve forces each year as a result of their time in the Cadet Forces.
- Retention. At the non-commissioned officer level within the Armed Forces approximately 50% are former cadets. Without this nucleus of dedicated individuals personnel throughput and therefore training costs would be significantly higher.
- Public Service ethos would decline. Through participation in the Cadet Programme many cadets develop a public service ethos with many former cadets joining the uniformed public services (e.g. Police, Fire and Rescue, Ambulance and Prison Service).

The Cadet Forces, and the supporting role of CFAVs, therefore have a wider social value. Exclusion of CFAVs from the NMW Act would enable the Cadet Forces to continue to deliver safe recognised youth activities at current levels, thereby contributing to the economic and social wellbeing of the country.

## **G: Enforcement**

Her Majesty's Revenue and Customs (HMRC) enforce the NMW on behalf of BERR. The administration of exclusion of CFAV from the NMW will fit into the existing NMW legislation structure and will be implemented through existing regulator inspection services and data collection channels; no new regulator or sanctions are required.

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<sup>9</sup> As individuals who have volunteered their time, it is unlikely that CFAVs would take a claim that they should be receiving the minimum wage. However, uncertainty over legal status prolongs this risk.

As a measure to increase clarity, this proposal will not impose any burden on NMW enforcement. In general, legislation which is clear about entitlements is easier to enforce.

## **H: Recommendation and summary table of costs and benefits for the options**

A summary of the estimated quantifiable and unquantifiable costs and benefits is given in Table 4 in Section E above.

The Government's preferred option is to exclude CFAVs from qualifying for the NMW as this will avoid doubt over their position and remove the small risk that the voluntary nature of CFAVs could be challenged. The Cadet Forces will be able to continue to deliver a wide range of military themed activities with confidence, allowing young people to benefit from the cadet experience.

## **I: Implementation**

Whilst this legislation will come into force at the earliest opportunity following Royal Assent of the Bill, it enables the current successful practice of the Cadet Forces to continue and therefore will not involve a change of practice. We will confirm the change with Cadet Forces and HMRC so that they are aware.

## **J: Monitoring and evaluation**

The MoD holds regular meeting with Cadet Force Associations where the welfare of Cadet Force Adult Volunteers is subject to continuous review.

## ANNEX Tables.

**Table A1. Numbers of CFAVs and rates of remuneration within the cadet forces**

| Rank  | Daily remuneration rate from 1 April 07 | Number of CFAVs |     |      |      |
|---|---|-----------------|-----|------|------|
|   |   | CCF             | SCC | ACF  | ATC  |
| Commander (SCC), Lieutenant Colonel (RM), Lieutenant Colonel (ACF) & Wing Commander (ATC), OF4 (CCF)                        | £150.99                                 | 89              |     | 145  | 60   |
| Lieutenant Commander (SCC), Major (RM), Major (ACF) & Squadron Leader (ATC), OF3(CCF), Chaplains (CF3)                      | £107.56                                 | 232             | 221 | 340  | 309  |
| Lieutenant (SCC), Captain (RM), Captain (ACF) & Flight Lieutenant Officer (ATC), OF2 (CCF), Chaplains (CF4)                 | £85.38                                  | 463             | 452 | 1125 | 1587 |
| Sub Lieutenant (SCC), Lieutenant (RM), Lieutenant (ACF) & Flying Officer (ATC), OF1 (CCF)                                   | £66.63                                  | 816             | 163 | 2415 | 1424 |
| Acting Sub Lieutenant (SCC), 2nd Lieutenant (RM), 2nd Lieutenant (ACF) & Pilot Officer (ATC), OF1 (CCF)                     | £55.44                                  | 452             |     |      |      |
| Midshipman (SCC) and Acting 2nd Lieutenant (RM), OF1 (CCF)  | £26.38                                  |                 | 8   |      |      |
| Chief Petty Officers (SCC), Colour Sergeant (RM), Warrant Officers Class 1 Instructors (ACF) & Adult Warrant Officers (ATC) | £65.15                                  |                 | 519 | 58   | 832  |
| School Staff Instructor (CCF), Petty Officers (SCC), Sergeant (RM), Warrant Officers Class II Instructors (ACF)             | £61.62                                  | 210             | 877 | 1071 | 14   |
| Staff Sergeant Instructors (ACF) & Adult Flight Sergeant Instructors (ATC), OR7 (CCF)                                       | £56.02                                  |                 |     | 1743 |      |
| Sergeant Instructor (ACF) & Adult Sergeant Instructors (ATC), OR6 (CCF)   | £52.19                                  |                 |     | 2615 | 655  |
| Probationary Petty Officers (SCC) & Probationary Sergeant (RM), OR6 (CCF)   | £26.38                                  |                 | 727 |      |      |

Source: MoD

**Table A2. Average evening and weekend attendance for CFAVs<sup>10</sup>**

| Rank  | Number of CFAVs |     |     |     |     |     |     |     |
|---|-----------------|-----|-----|-----|-----|-----|-----|-----|
|   | CCF             |     | SCC |     | ACF |     | ATC |     |
|   | Eve             | Wnd | Eve | Wnd | Eve | Wnd | Eve | Wnd |
| Commander (SCC), Lieutenant Colonel (RM), Lieutenant Colonel (ACF) & Wing Commander (ATC), OF4 (CCF)                        | 38              | 22  |     |     | 60  | 20  | 80  | 21  |
| Lieutenant Commander (SCC), Major (RM), Major (ACF) & Squadron Leader (ATC), OF3(CCF), Chaplains (CF3)                      | 38              | 22  | 92  | 80  | 90  | 29  | 81  | 22  |
| Lieutenant (SCC), Captain (RM), Captain (ACF) & Flight Lieutenant Officer (ATC), OF2 (CCF), Chaplains (CF4)                 | 38              | 22  | 92  | 75  | 95  | 29  | 75  | 18  |
| Sub Lieutenant (SCC), Lieutenant (RM), Lieutenant (ACF) & Flying Officer (ATC), OF1 (CCF)                                   | 38              | 22  | 92  | 63  | 95  | 29  | 80  | 14  |
| Acting Sub Lieutenant (SCC), 2nd Lieutenant (RM), 2nd Lieutenant (ACF) & Pilot Officer (ATC), OF1 (CCF)                     | 38              | 22  |     |     |     |     |     |     |
| Midshipman (SCC) and Acting 2nd Lieutenant (RM), OF1 (CCF)  |                 |     | 92  | 50  |     |     |     |     |
| Chief Petty Officers (SCC), Colour Sergeant (RM), Warrant Officers Class 1 Instructors (ACF) & Adult Warrant Officers (ATC) |                 |     | 92  | 75  | 60  | 20  | 61  | 15  |
| School Staff Instructor (CCF), Petty Officers (SCC), Sergeant (RM), Warrant Officers Class II Instructors (ACF)             | 38              | 43  | 92  | 63  | 95  | 29  | 61  | 15  |
| Staff Sergeant Instructors (ACF) & Adult Flight Sergeant Instructors (ATC), OR7 (CCF)                                       |                 |     |     |     | 95  | 29  |     |     |
| Sergeant Instructor (ACF) & Adult Sergeant Instructors (ATC), OR6 (CCF)   |                 |     |     |     | 95  | 29  | 112 | 14  |
| Probationary Petty Officers (SCC) & Probationary Sergeant (RM), OR6 (CCF)   |                 |     | 92  | 38  |     |     |     |     |

Source: MoD

<sup>10</sup> Averages calculated from the attendance figures of a representative sample of cadet units.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

| Type of testing undertaken | <i>Results in Evidence Base?</i> | <i>Results annexed?</i> |
|----------------------------|----------------------------------|-------------------------|
| Competition Assessment     | No                               | No                      |
| Small Firms Impact Test    | No                               | No                      |
| Legal Aid                  | No                               | No                      |
| Sustainable Development    | No                               | No                      |
| Carbon Assessment          | No                               | No                      |
| Other Environment          | No                               | No                      |
| Health Impact Assessment   | No                               | No                      |
| Race Equality              | No                               | No                      |
| Disability Equality        | No                               | No                      |
| Gender Equality            | No                               | No                      |
| Human Rights               | No                               | No                      |
| Rural Proofing             | No                               | No                      |

## Annexes

Please see the summary impact assessment for the details of the specific tests carried out with respect to this policy area.



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