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LOW PAY
COMMISSION

AN COIMISIÚN UM PÁ ÍSEAL

REPORT ON THE ALLOWANCES
PROVIDED FOR BOARD &
LODGINGS UNDER THE NATIONAL
MINIMUM WAGE

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**REPORT OF THE LOW PAY COMMISSION ON THE
ALLOWANCES PROVIDED FOR BOARD & LODGINGS
UNDER THE NATIONAL MINIMUM WAGE**

Contents

1	Introduction and Background	1
2	Submissions	7
3	Options	11
4	Conclusions and Recommendations	16
	Appendices	20-32

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Chapter 1 Introduction

Our Brief

Section 10c(4)(a) of the National Minimum Wage Act, 2000 provides that, if so requested by the Minister, the Commission shall examine and report its views and recommendations on such matters as are specified in that request.

In September 2016 the Minister for Employment & Small Business, Mr Pat Breen, T.D. asked the Commission to review the allowances for board and lodgings under the National Minimum Wage Act, 2000, and in particular to examine and advise on the appropriate inflator that should be applied to the rates set in 2000 and to recommend new rates, taking into account the time that has passed since the rates were first set.

Current System

The current system of board and lodging allowances was introduced as part of the National Minimum Wage Act, 2000. If an employee receives food (known as board) and/or accommodation (known as lodgings) from an employer, this may be taken into account in the minimum wage calculation.

The Schedule to the Act specifies the reckonable components which may be included in the calculation of pay, and includes the following:

The monetary value of board with lodgings or board only or lodgings only, not exceeding the amount, if any, prescribed for the purposes of this item.

The current maximum rates which may be taken into account are:

- €54.13 for full board and lodgings per week, or €7.73 per day
- €32.14 for full board only per week, or €4.60 per day
- €21.85 for lodgings only per week, or €3.14 per day

While the National Minimum Wage has been adjusted on nine occasions since its introduction, the rates provided for board and lodgings have not been adjusted or reviewed since being set in 2000 (see Appendix 1).

Background

Prior to the introduction of the National Minimum Wage in 2000, provision for board and lodgings was made in a number of Employment Regulation Orders (EROs) within the Hospitality, Catering and Agriculture sectors. The value of the rates varied considerably across the EROs, reflecting sectoral differences (see Tables 1 and 2 below).

Table 1: Catering and Agriculture ERO rates for fully trained employee 1999

	Allowance for Board only	Allowance for Lodgings only	Allowance for Board & Lodgings
Catering Industry	£7.00 per week	Not Applicable	£24.45 per week
Agricultural Workers	£6.51 per day	£0.62 per day	£7.12 per day

Source: S.I. 68/1999 Employment regulation order (Catering Joint Labour Committee) 1999. & S.I. 255/1999 Employment regulation order (Agricultural Workers Joint Labour Committee) 1999.

Table 2: Hotel Workers ERO (Excluding Cork, Dublin and Dun Laoghaire) for fully trained employees 1999

Minimum Rates of Weekly Remuneration for fully qualified adult workers from 21/09/1999				Value of board and lodgings	
Section	With board only	With board and lodgings	Without board or lodgings	Board	Lodgings
Cooks	£157.32	£140.00	£182.63	£25.31	£17.32
General Workers	£139.91	£122.59	£165.22	£25.31	£17.32
Waiter/Waitress	£129.12	£111.80	£154.43	£25.31	£17.32
Barman/Barmaid	£140.04	£122.72	£165.35	£25.31	£17.32
House Assistant	£118.00	£100.68	£143.31	£25.31	£17.32
Porter	£129.12	£111.80	£154.43	£25.31	£17.32
Page	£91.11	£73.79	£116.42	£25.31	£17.32

IR£1 = €1.27

Source: S.I. 283/1999 Employment Regulation Order (Hotels Joint Labour Committee) 1999.

The precedent set by the EROs in providing rates for board and lodgings ultimately underpinned the recommendation in 1999 of the Inter-departmental Group on Implementation of the National Minimum Wage, that a provision should be included for

board and lodgings. The reasoning behind this recommendation is explained in section 4.45 of the Group's final report (below):

“4.45. The Group recommends that benefits-in-kind should be excluded from the definition due to the practical difficulties which would arise in valuing many such benefits and the inconsistency, having regard to the Payment of Wages Act, of allowing such benefits to count as pay for purposes of the minimum wage. However, the Group recommends that an exception should be made to this general approach in relation to board and lodging provided by the employer to an employee. The Employment Regulation Orders for the Hotels (excluding Cork, Dublin and Dun Laoghaire) and Catering (except Dublin and Dun Laoghaire) Joint Labour Committees provide for a monetary deduction to be made from the statutory minimum pay of an employee if provided with board and lodging. It appears reasonable to the Group to continue this practice in relation to the national minimum wage. The Group, therefore, recommends that when the Minister prescribes the national minimum hourly rate of pay, a monetary daily value should also be specified for board and lodging or board only, which amount an employer can include for national minimum wage purposes if an employee is provided with board and lodging or board only. The initial monetary value for board and lodging or board only should be set by consultations with relevant interested parties. In the view of the Group this monetary value would not be market value, and would be similar to the amount permitted in the Employment Regulation Order referred to above.”

The Inter-departmental Group on the Implementation of the National Minimum Wage also considered the role of domestic workers (including au pairs) in the context of their deliberations on the NMW. In their final report they stated that:

“7.9 Domestic workers are excluded from the scope of minimum wage provision in some other countries but there did not appear to the Group to be any clear rationale for this exclusion. The Group considers that domestic employees should therefore be included within the legislation.”

Based on this recommendation no special status was accorded to domestic workers under the National Minimum Wage Act 2000. Similarly while there may have been some confusion about the employment status of domestic child minders, legally no separate programme has ever existed in Ireland for such domestic workers and Ireland has not ratified the 1968 European Agreement on Au Pair Placement, although it is not unusual in this respect in that very few countries have ratified this agreement.

The Hotel Workers Employment Regulation Order served as the basis for the value of the rates which were applied in the Minimum Wage Act for board & lodgings in 2000, the weekly value of the allowance for board and lodgings being set at £42.63 (€54.13), the rate set in September 1999 in the ERO. The Minimum Wage Act did not specify a system for adjustment of the rates into the future, although the ERO system had operated on the basis that the value of the rates increased in percentage terms in line with increases in the ERO pay rates. See Table 3 below, which shows the value of both pay and board and lodgings increasing by the same 10% over the period from July 1996 to September 1999.

Table 3: Board and Lodgings rate progression under Hotels ERO

Board and Lodgings Progression under Hotels Employment Regulation Orders						
Date	24.07.96	24.01.97	19.08.97	18.09.98	21.09.99	Change
Fully Trained Cook w/o B & L	£166.64	£168.31	£172.52	£176.40	£182.63	10%
Fully Trained Cook with B & L	£127.73	£129.01	£132.24	£135.22	£140.00	10%
Value of B & L	£38.91	£39.30	£40.28	£41.18	£42.63	10%

Source: Employment Regulation Orders (Hotels Joint Labour Committees) S.I. 208/1996, 342/1997, 330/1998, 283/1999 1996,1997,1998 & 1999

With no formal system in place for regular review of the allowances provided for board and lodgings the rates have remained static since their introduction, despite the historic custom and practice of movement in line with pay increases. The value of the allowances relative to the National Minimum Wage has therefore declined as increases to the National Minimum Wage have taken effect.

Definitions and the System in Practice

The National Minimum Wage Act 2000, provides that (subject to maximum monetary limits) the monetary value of board with lodgings, board only or lodgings only may be included by an employer as a reckonable component in calculating the national minimum hourly rate of pay. S.I. No. 95 of 2000 sets out the maximum limits applicable.

While provision is made for the inclusion of this monetary allowance for board only, lodgings only and board & lodgings, there are no definitions provided for the terms board or lodgings, and the S.I. makes no references regarding standards or quality of either the board or lodgings provided. The sole definition in S.I. 95 of 2000 is in relation to a “day” (and this definition refers to ‘full board’).

3 (2) In this article “day” means a day on which the full board and lodgings, full board only or lodgings only, as the case may be, is or are provided by an employer to an employee.”

In order to get a better understanding of how the system operates in practice the Commission spoke to the Workplace Relations Commission (WRC) Inspectorate to hear the issues which they have encountered in the course of monitoring compliance with NMW legislation. The WRC advised that they do not keep compliance data specific to issues regarding board and lodgings. As a result, the evidence they gave reflects the experiences of inspectors on the ground. The WRC inspectorate stressed that their inspections focus on areas which they consider are at a higher risk of non-compliance; accordingly the views expressed by employees should not be taken to be representative of all employees.

A number of the issues which the WRC Inspectorate has encountered are:

- The concern that any increase in the allowance amounts will result in a reduction of the employee’s take home pay.
- A view that there should be an opt-out clause in relation to the inclusion of a non-monetary element in their pay in calculating the National Minimum hourly rate. In some instances, employees have indicated that they would prefer to receive the National Minimum Wage hourly rate in full as a monetary sum, and to provide their own food requirements.
- Complaints about the quality of and the lack of variety of meals provided in certain undertakings/sectors. There is no minimum standard about what constitutes a meal.
- Board covers the provision/availability of food but not its consumption. This has been a source of discontent for employees in certain instances as the rates are applied where the employees do not avail of the board provided or, in some cases, where employees are absent from work and not in a position to avail of the board provided. In some instances, employees are not given adequate time to avail of the meals provided.
- Some part-time employees do not work sufficient hours to avail of full board but the employer applies the rate for full board allowance daily.
- The current regime only provides for full board. Under the former ERO regime, a per meal allowance was provided for.

Complaints are also received about the lack of transparency regarding the allowances

- employees may not be aware of the availability of board where an employer has not provided written terms of employment,
- employers may not include details of board in employees' written terms of employment
- there is no obligation on an employer to include details of board provided in an employee's statement of wages and deductions (payslip).

As stated previously these issues do not necessarily represent the views of the WRC and are merely the concerns and sources of discontent which the WRC inspectorate has encountered from employees on the ground.

Data and prevalence

There is not currently any data available in terms of how many employees or employers are affected by the board and lodgings allowances provided for under the National Minimum Wage Act. It is also important to stress that such data may not be obtainable at any stage due to the sample sizes involved and the lack of an appropriate mechanism with which to source the data.

However having received submissions from representatives in the major sectors where board and lodgings are traditionally used, and having consulted the WRC, the Commission is able to draw certain conclusions about the use of the allowances. The number of employees impacted by the allowances is relatively small and appears to be concentrated in certain sectors. The provision of board is still in relatively widespread use throughout the hospitality, catering and restaurant sectors although submissions did stress that due to the complexity of the arrangement it has become less appealing to employers and that its use is declining. The provision of lodgings is far less common and would appear to be restricted to a small number of rural hotels and agricultural workers. Little evidence was presented to the Commission of the formal usage of NMW/board and lodgings in the domestic worker/au pair sector.

Chapter 2 Submissions

On the 1st of December 2016, the Commission published a request for submissions from interested parties to help inform its recommendations to Government in relation to board and lodgings as a reckonable component of the National Minimum Wage. The Commission received 14 submissions from a range of individuals and groups (listed below).

- *CARA International (au pair sector)
- Unite Here
- *Individual (employer of au pairs)
- Individual (low pay worker, with children)
- SK Dublin (au pair sector)
- *Irish Hotels Federation
- Small Firms Association
- *Irish Farmers Association*
- Richard Grogan & Associates (Solicitor)
- *SIPTU
- ICTU
- *MRCI
- ARAI (au pair sector)
- Fianna Fáil

In addition, the Commission conducted oral hearings with a number of the groups and individuals (marked by an asterisk in the list above) who had provided written submissions.

The submissions put forward a wide range of arguments and suggestions and in many ways reflected the complexities surrounding setting appropriate rates for board and lodgings as part of the National Minimum Wage. Submissions came from employer groups and trade unions active in sectors in which allowances for board and lodgings have traditionally been applied, namely in the hospitality, catering, and agricultural sectors. A second set of submissions focused on the impact of the Workplace Relations Commission Decision on the 8th of March 2016 that there is no separate legal definition of the term au pairs and that for legal purposes au pairs as domestic workers are employees and therefore have the same entitlements regarding pay and conditions as any other worker.

Traditional Sectors

Submissions from groups representing workers within these sectors tended to focus on the lack of definitions and how this has left the system open to abuse. They cited examples of workers living in sub-standard accommodation, being provided with food of poor quality or which was unfit to meet their dietary needs, and workers having no opportunity to opt in or out of the provision for board and/or lodgings. They argued that, due to the complexities involved and the differences across sectors, the setting of rates for board and lodgings would be better done through employment regulation orders as part of sectoral collective bargaining than through national legislation. Unions and groups representing workers felt that at the very least the allowances should not be increased as this would negate any recent increases that had been made in the National Minimum Wage.

In contrast employer groups within these sectors generally felt that the allowances should be increased. They argued that the rates have not been changed since they were introduced as part of the National Minimum Wage in 2000 while the NMW itself has increased by 62%. As a result they felt that the rates are not reflective of the costs incurred by employers for providing accommodation and food in 2017. While these groups were in broad agreement that the rates should be increased, different calculation methods and figures were suggested.

The Irish Hotels Federation (IHF) argued that there should not be a 'catch up' increase, but rates should be reviewed in line with future increases in the National Minimum Wage. The IHF also stated that the allowances are of benefit to employees and that every effort should be made to ensure the legislation is uncomplicated so that it remains attractive to employers. The Irish Farmers Association and Small Firms Association both felt that more significant increases were required to reflect the passage of time since the rates were last set and to bring the rates more in line with the market values of board and lodgings. In terms of the offset for lodgings, employer groups acknowledged that there is a benefit to having the workers living on site but felt that the low value of the offset reduces the incentive for employers to provide accommodation. They argued that if the offset was higher it might encourage the provision of more and better quality accommodation by employers.

Domestic Workers & Au Pairs

A further set of submissions focused on the au pair/domestic worker sector. Following the Workplace Relations Commission Decision any question surrounding the status of au pairs as workers has been removed (see Appendix 2 for further details). As a result, au pairs/domestic workers in Ireland are covered by minimum wage legislation. As the nature of this work often requires the employee to “live in” with their employer the rates provided for board and lodgings are of relevance to this sector.

A number of the submissions from au pair agencies or individuals who were employing au pairs within their homes argued that a distinction should be drawn between domestic workers and what they termed “genuine au pairs” who are here as part of a short-term cultural exchange programme in which they are treated as part of the family by their host and given an opportunity to learn a new language. Their primary purpose is not to work as cleaners or child minders, but to learn about the culture of a country in a family setting and to improve their language skills. These submissions drew attention to the fact that a number of European countries have specific legislation in place governing au pairs, and argued that Ireland should provide likewise for such exemption, whereby such workers would not be covered by minimum wage legislation.

Submissions from au pair agencies and individuals who employ or have previously employed au pairs also stated their view that the board and lodgings allowances should be increased. They argued that there is a significant benefit to an au pair living in a family home as their accommodation and food is provided for and that any income which they receive for their work within the home is essentially discretionary income. They pointed to the high costs of rent in Ireland and the fact that €54.13, as the maximum deduction allowed for board and lodgings, does not come close to reflecting the amount that a family could achieve if they were to rent out a room in which an au pair is staying.

The high cost of childcare in Ireland was also raised in these submissions. Au pair agencies maintained that working families will be unable to afford to employ au pairs under the current allowances provided for board and lodgings. As a result they themselves may be forced out of the workforce, or into employing domestic workers at cheaper rates via the black economy, as affordable childcare is simply not available.

Groups representing employees and migrant workers argued strongly against any increase in the allowance figures and were opposed to any move which would go

against the WRC Decision that for legal purposes au pairs are no different to other workers. These groups argued that au pairs are in reality domestic workers and as such are entitled to the same protection under minimum wage legislation as any other worker. They maintained that any move to legislate for au pairs as a group distinct from domestic workers would be difficult to define and would be open to abuse.

These groups also argued that living within your place of work is not the same as renting a private dwelling. Domestic workers are often restricted in terms of the facilities they can use within the home and may have no input into the food they receive. In addition, they may be called on outside of their usual working hours simply by virtue of their presence in the workplace. They also referenced the particular difficulties with regard to monitoring compliance with NMW legislation for domestic workers.

Chapter 3 Options

Having considered the submissions and oral evidence presented, which extended considerably beyond the question of if or how the rates should be increased, and having heard the experiences and views presented by the WRC Inspectorate, the Commission examined a range of options as to what amendments, if any, were needed regarding the allowances provided for board and lodgings.

In this chapter we will briefly review a number of these options and consider their merits and possible impacts.

Position in UK

The Commission looked to the UK to consider if there were lessons to be learned from the UK experience in this area. In the UK there is no allowance for board provided but there is an accommodation offset for lodgings provided of £6.00 per day (€7.12). This compares with the current Irish rate of €3.14 per day for lodgings.

The most recent in-depth review of the accommodation offset was conducted in 2013. It recommended that the accommodation offset be increased in stages, eventually reaching the adult level of the minimum wage – that is the daily accommodation offset would equal the hourly adult minimum rate.

Their rationale for this recommendation was as follows:

“At its optimal level the offset will balance the benefits of employer-provided accommodation for worker and employer, and will support the provision of accommodation where that is mutually beneficial. However, the evidence indicates that the provision of accommodation by employers has decreased. Although this is the result of several factors, we believe a higher offset would help to encourage mutually beneficial provision of accommodation. On the other hand we do not favour reducing the take-home pay of the lowest earners at a time when, like other workers, they are experiencing erosion in the real value of their wages. It is therefore our intention to recommend staged increases in the accommodation offset towards the value of the hourly adult rate of the NMW when economic circumstances mean that the real value of the NMW is tending to rise.” (National Minimum Wage Low Commission Report 2013, paragraph 33).

International Position

It is difficult to find information regarding the extent to which similar systems exist in other countries. Some countries, like Spain and Greece, have no provision for accommodation. Of those that do have a provision, the extent and complexity of the arrangements varies considerably. A review of the position in other countries was undertaken by the UK in the context of its 2013 Report on the National Minimum Wage (see Appendix 3). The UK Commission noted that most of the provisions had changed little since they first looked at them in 1999.

Options considered

Option 1: Keep current rates and system in place

The Commission considered the possibility of keeping the current rates and system in place. Among the arguments which the Commission could see in favour of such an approach were that, with the exception of employers within the domestic work and agriculture sectors, there were no significant calls from either employees or employers for the rates to be increased. Also, the rates can be seen as providing a floor and level of protection for workers against exploitation.

Arguments which were considered against such a decision were that the rates have not been increased since their introduction and as a result employers have seen increases in the national minimum wage without a corresponding increase in the amount which they can offset for board and lodgings. This has meant a decline in the real value of the offset, at a time of generally increasing accommodation costs.

If no provision is made for updating the rates, they will be eroded over time which may, over time, amount to their effective abolition through non-usage.

Option 2: Keep current system in place and allow sectoral collective bargaining to determine rates

This option was considered due to the difficulty in setting one rate for board and lodgings across a range of sectors. As we have seen in Chapter One the original justification for including a provision for board and lodgings within the National Minimum Wage was the protection offered to workers and the fact that such provisions were already included within a number of employment regulation orders (EROs). The main argument in favour of this option is that it would allow sectors to set their own rates based on collective bargaining between employers and employees and would therefore enable the rates to reflect the complexities of each sector e.g. an allowance which may be appropriate for the hospitality sector may not be appropriate for domestic workers.

However as EROs require agreement to be reached between employer and employee groups this option would not necessarily provide a universal solution (for example, currently only two EROs are operating, in the contract cleaning and security sectors). In such an option the current rates might need to be retained as a protection for workers not covered by EROs.

Option 3: Abolish rates

Abolishing the rates could mean removing the rates altogether or abolishing one of either board or lodgings and retaining the other. This option was considered in terms of the minimum wage being intended as a minimum rate of pay and that the provision for the allowances essentially means that some employees are paid in monetary terms less than the minimum wage. Arguments against this option were that the allowances as they currently exist provide some protection to workers. It was also considered that if the rates were to be removed the market would effectively dictate the rates for board and lodgings, and this might leave employees worse off.

Option 4: Keep current rates and tie future increases to increases in the NMW

This option would essentially replicate the system which was in place in the Hotel workers ERO prior to the introduction of the NMW, increasing the allowances in line with increases in the NMW in percentage terms. Advantages of this option were seen to be

that it would put a system in place which would gradually increase the rates without having a major impact on employees take home pay. At the same time over the longer term it may keep the rates as an attractive option for employers. The argument against this approach is that it does not restore the relative value of the rates to where they were when first introduced.

Option 5: Increase rates substantially

The Commission considered this option based on a number of submissions received from employer groups. The main argument in favour of such a move is that given the length of time since the rates were introduced an increase is needed to reflect the cost to employers of providing board and lodgings. The Commission was however of the opinion that in the interest of fairness it would be unreasonable to impose a significant increase on current minimum wage workers to compensate for the fact that the rates had not been increased in the years since its introduction, as such a move would significantly reduce the take home pay of low paid workers, and erode any gains made through recent increases in the NMW.

Option 6: Set different rates for domestic workers

While much of the debate around the board and lodging allowances focussed on the issue of au pairs or domestic child minders, the Commission is not of the view that the issues affecting this sector can be resolved by the rates provided for board and lodgings. Setting separate rates for a particular sector would lead to more complicated legislation which would be difficult to enforce and would also undermine the idea of the national minimum wage as a protection for all workers.

While the Commission is sympathetic to the difficulty many people have in finding affordable childcare, it is not of the view that this issue can or should be resolved by increasing the allowance for board and lodgings. Similarly while there may be concern over non-compliance with regard to the minimum wage amongst domestic workers this problem is unlikely to be resolved by setting higher rates for board and lodgings.

Option 7: Retain current system (*with or without rates adjustment as per earlier options*) but address issues around lack of definitions, quality and standards, and/or provide for right of employees to opt in/out of arrangements

The lack of definitions regarding what constitutes board and lodgings and how the rates should be applied is an issue that was raised by employers, the WRC inspectorate and groups representing employees. Instances of abuse which were reported to the Commission often focussed on the lack of quality or choice available to the employee. While clear definitions might go some way to reducing cases of abuse, the Commission did consider that it would be difficult both to legislate for and to enforce such a system and that in making the allowances more complex, employers may decide to abandon the provision of board and lodgings altogether. Likewise, while an opt in/out clause for board might provide some choice for workers it would greatly increase the complexity of the system from an employer perspective. The issue of the difficulty in an enforcement context in assessing how 'real' the choice might be, particularly for new and younger, less-experienced, employees, was also a factor in adding to the complexities of such an approach.

Option 8: Change board allowance to an hourly rate

This option was proposed to the Commission during oral hearings with parties who are amongst the highest users of the board offset. It was argued that changing the board allowance to an hourly rate as opposed to the current system of weekly and daily allowances would be simpler from an administrative standpoint (and therefore of benefit to employers) and would produce a fairer arrangement for employees where the allowance value would reflect the hours which they actually worked. At the current board allowance rate this would equate to 82 cents per hour (the current weekly rate of €32.14 divided by 39 hours).

Chapter 4 Conclusions and Recommendations

In coming to its conclusions and recommendations, the Commission was guided by a number of core principles:

- 1) The need to make legislation as simple and straightforward as possible. The Commission believes that keeping legislation easy to understand and apply is important in helping to ensure compliance. To this end the Commission wished to avoid making recommendations which would be sector-specific or include overly-complicated definitions.
- 2) The need to ensure that the recommendations are fair to all parties. The Commission is of the view that, when applied correctly, allowances for board and lodgings can be of benefit to both employers and employees. To this end the Commission considered the implications of a wide range of options and possibilities when making its recommendations.
- 3) The need to protect the rights of low paid workers. In the Commission's view the primary function of the allowances provided for board and lodgings under the National Minimum Wage is to provide a level of protection to workers. As a result the Commission is not prepared to make any recommendation which would reduce the take home pay of minimum wage workers. While the Commission recognised that there should be some form of compensation to employers for providing board and/or lodgings they are cognisant of the fact that the allowances were never intended to represent the market value of the provision.

Conclusions

The Commission draws a number of conclusions from its examination of the history, background and operation of the board and lodgings offset, and from the submissions and oral evidence presented to it by workers, employers and WRC enforcement officers.

In particular, the Commission concludes that:

- a) The provision for allowances for board or lodgings under Employment Regulation Orders formed the rationale behind their introduction as part of the National Minimum Wage Act. Under certain EROs the value of the allowances had increased in percentage terms in line with increases in rates of pay.
- b) The allowances do not reflect market value and it was never intended that they would do so.
- c) The allowances are intended as a form of protection for minimum wage workers against exploitation, and as a recognition to employers that there is a cost to the provision of board and lodgings to employees.
- d) The allowances are not in widespread use and the number of people affected by the allowances is relatively small. Their use is concentrated in certain sectors, such as hospitality, agriculture and domestic work.
- e) While some employees might favour the abolition of the allowances in many cases they can represent a not insignificant benefit to employees.

While a number of submissions focused on au pairs, and suggested that they are a distinctive group, the current legislation does not provide for a distinction to be made between different categories of workers.

Recommendations

Having considered all available data, submissions and arguments the Low Pay Commission makes the following recommendations with regard to the allowances provided for board and lodgings under the National Minimum Wage Act.

1. The allowances for board and lodging as a reckonable component for calculating the national minimum wage should be retained

The Commission is of the opinion that allowances for board and lodgings should be retained as a reckonable component for calculating the national minimum wage. The Commission considered the implications of abolishing the allowances for board & lodgings, board only or lodgings only but felt that overall the allowances provide an element of protection for minimum wage workers. While the allowances are not in widespread use they are concentrated in certain sectors and their removal may lead to employees facing exploitation. While there was some anecdotal evidence of non-

compliance regarding the allowances, there was also a recognition from both employers and employees that if used correctly the allowances can be of benefit to all concerned. In recommending the retention of the allowances the Commission is adhering to its principle of aiming to provide protection to low-paid workers.

2. The current rate for lodgings should not change at this point in time, but in future the rate may be reviewed annually in conjunction with the review of the National Minimum Wage.

The Commission considered a range of options in terms of setting the value of the rate into the future. While a number of submissions from employer groups stressed the cost of providing accommodation and food to employees, the Commission considers that the rates should not reflect market value. In addition, the Commission is of the opinion that to apply a 'once off' increase to the allowances, which would result in a real decrease in pay to minimum wage workers, should not be recommended.. The Commission notes that the rates have remained the same since their introduction but that during this time there have not been significant calls from employers to increase the allowances, indicating that the current rates provide employers with some level of compensation.

However, the Commission also recognises that the value of the allowance has diminished, relative to its starting point, and if this continues it may lead to a situation where an employer would cease to offer the benefit at all, thereby potentially depriving an employee of a not insignificant benefit. By providing for a more regular adjustment to the rates, which would gradually increase the rates without having a major impact on employees' take home pay, it may permit the small number of employers who currently offer this option to continue to offer it into the future.

3. The method of calculation of the allowance for board should move from the current weekly/daily rate to an hourly rate.

The proposal to move to an hourly as opposed to a weekly or daily rate for board was put to the Commission during a meeting with representatives from the Irish Hotels Federation (IHF) whose members are relatively significant users of the allowance system. The IHF advised that where the allowance for board was applied within their industry it is of benefit to both employee and employer. They believe however that it

should be amended to make it as administratively simple as possible so that it remains attractive to employers. An hourly rate was proposed as a more straightforward process particularly when applied to modern payroll systems.

The Commission considered this to be a practical proposal and also acknowledged that by moving to an hourly as opposed to weekly or daily rate for board, employees would no longer face a situation where they would have the full daily or weekly allowance applied as a component of the minimum wage despite working relatively few hours and therefore not being in a position to avail of three full meals during the course of their working day. On balance the Commission considers that it offers a degree of transparency of operation and fairness of approach.

See tables in Appendix 4 which set out the income comparisons under this proposal.

Summary

In summary, therefore, the Commission recommends that the allowances for board and lodgings should be as follows:

Lodgings:	€21.85 per week, or €3.14 per day.
Board:	€0.82 per hour worked.

The Commission also recommends that the allowances may be reviewed annually in conjunction with the review of the National Minimum Wage.

APPENDICES

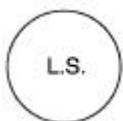
1. *S.I 95/2000 – Current rates of board and lodging offset*
2. *Background note on domestic workers and au pairs*
3. *International comparisons for board and lodging rates*
4. *Comparison of hourly vs weekly board allowance*
5. *Revenue benefit-in-kind (BIK) rules on food and accommodation*

S.I. No. 95/2000 - National Minimum Wage Act, 2000 (National Minimum Hourly Rate of Pay) Order, 2000

I, Mary Harney, Minister for Enterprise, Trade and Employment, in exercise of the power conferred on me by [section 11](#) of the [National Minimum Wage Act, 2000](#) (No. 5 of 2000), having taken into account the impact the national minimum hourly rate of pay may have on employment, the overall economic conditions in the State and national competitiveness, hereby order as follows:

1. This Order may be cited as the National Minimum Wage Act, 2000 (National Minimum Hourly Rate of Pay) Order, 2000.
2. The national minimum hourly rate of pay is £4.40.
3. (1) The national minimum hourly rate of pay may include the following allowances:
 - (i) for full board and lodgings, £42.63 per week or £6.09 per day;
 - (ii) for full board only, £25.31 per week or £3.62 per day;
 - (iii) for lodgings only, £17.21 per week or £2.47 per day.(2) In this article “day” means a day on which the full board and lodgings, full board only or lodgings only, as the case may be, is or are provided by an employer to an employee.

Given under my Official Seal, this 31st day of March, 2000.



Mary Harney

Minister for Enterprise, Trade and Employment.

Explanatory Note

(This note is not part of the Instrument and does not purport to be a legal interpretation).

This Order sets the national minimum hourly rate of pay at £4.40 and also sets out the monetary allowances for (i) full board and lodgings, (ii) full board only and (iii) lodgings only, which may be included by an employer in calculating the national minimum hourly rate of pay of an employee, not exceeding those specified in the Order.

Domestic Workers and Au Pairs

Present Position

In 2016 the Workplace Relations Commission (WRC) awarded a Spanish woman who had worked in Ireland as a domestic child minder or au pair for an Irish family €9,229. The award was made on the basis that the family had breached aspects of the National Minimum Wage Act, the Organisation of Working Time Act and the Terms of Employment Act. The woman in question had worked for the family for 25 weeks receiving €100 per week plus board and lodgings. The WRC found that the woman's case that she had not been paid the minimum wage of €8.65 (as it was at the time of her employment) was "well founded". The woman was awarded €3,829 in arrears of wages which represented the difference between the wages paid and the wages she should have received. The woman was also awarded €400 under the Terms of Employment Act as she had not been provided with a written statement of her terms and conditions. The family as her employers were also found to have breached the law in terms of annual leave and were ordered to pay the woman €5,000 in compensation.

As such the WRC Decision means that au pairs are to be treated the same as any other worker and therefore are entitled to all of the rights and entitlements contained in employment legislation including a written statement of employment, minimum wage, payslips, tax, PRSI and USC must be deducted, annual leave and public holidays, redundancy entitlements, unfair dismissal rights, record keeping requirements, equal rights, maternity entitlements, the right not to be discriminated against, right to privacy, to be registered as an employee with Revenue, minimum notice, rest periods and maximum weekly working hours.

This Decision has a significant impact on the rights of au pairs working in the domestic sector in Ireland. Since the Decision several other cases have been brought by domestic child minders claiming that they did not receive the correct pay and conditions for the work they undertook. A number of further payments have been awarded to domestic workers and further cases are waiting to be heard by the WRC.

In 2015, Ireland ratified the International Labour Organisation (ILO) Convention on Decent Work for Domestic Workers (No. 189), 2011. A "domestic worker" is defined in the Convention as "any person engaged in domestic work within an employment relationship". Domestic work may involve a range of tasks, including cooking, cleaning a house, washing and ironing laundry, general housework, looking after children, the elderly or persons with disabilities, and maintaining gardens. The Convention requires countries to take measures to ensure that domestic workers, like other workers generally, should enjoy fair terms of employment, and sets out provisions in this regard

such as requiring that where the domestic workers reside in the household for which they work, they should enjoy decent living conditions that respect their privacy.

A statement by Minister Bruton (9th July 2014) states that “Ireland’s existing suite of employment rights legislation is already fully compliant with the provisions of Convention 189. Legally employed domestic workers already enjoy the full protections of Ireland’s robust suite of employment rights legislation by virtue of the fact that all Irish employment rights legislation, including provisions relating to redress for violations of employment rights, apply to domestic workers in the same way as they apply to other categories of employees in Ireland”.

In 2007 a voluntary Code of Practice for Persons Employed in Other People’s Homes was developed under the Industrial Relations Act 1990. It was drawn up by the Labour Relations Commission (LRC), in conjunction with employers’ and employees’ representatives, and was adopted by way of Statutory Instrument. The Code sets out certain employment rights and protections for persons employed in other people’s homes, and encourages good practice and compliance with the law in such employment situations. In any proceedings before a court, or a workplace relations dispute resolution body, the code of practice shall be admissible in evidence and any provision of the code which appears to the court, body or officer concerned to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

The role of domestic workers including au pairs had been considered by the Interdepartmental Group on the Implementation of the National Minimum Wage in section 7.9 of their final report where they stated that:

“7.9 Domestic workers are excluded from the scope of minimum wage provision in some other countries but there did not appear to the Group to be any clear rationale for this exclusion. The Group considers that domestic employees should therefore be included within the legislation.”

Based on this recommendation no special status was reserved for au pairs or domestic workers under the National Minimum Wage Act. Similarly while there was some confusion about the employment status of domestic child minders, legally no separate programme has ever existed in Ireland for domestic workers and Ireland has not ratified the 1968 European Agreement on Au Pair Placement.

This point was emphasised by Gerard Nash as Minister for State at the time in the Department of Jobs, Enterprise & Innovation on March 22nd 2016. When asked to clarify the position of au pairs following the WRC Decision he responded as follows:

“There is no separate legal definition of the term au pair in Irish legislation, and individuals described as “au pairs”, “nannies” or “child-minders” are not exempted or treated as separate categories of workers under Irish employment law. Ireland’s body of employment rights legislation protects all employees who are legally employed on an employer-employee basis, regardless of what title is given to them.

Therefore, once it is clear that a person is working under a contract of employment (written or verbal), on a full-time or part-time basis, that person has the same protection under employment law as other employees, including entitlement to the national minimum wage. The National Minimum Wage Act 2000 defines a contract of employment as a contract of service or apprenticeship, or any other contract whereby an individual agrees with another person to do or perform personally any work or service for that person.

All employers, including those in private homes, carry the same obligations in relation to compliance with employment law. Where the Workplace Relations Commission (WRC), which is responsible for securing compliance with employment legislation, receives a complaint involving somebody described as an au pair, the WRC will investigate with a view to establishing whether a person has statutory entitlements under employment law. Complaints involving au pairs are considered on a case-by-case basis, in the light of the facts of each case.”

Prior to the Decision however there had been a degree of confusion regarding the status of domestic workers. On the 27th May 2015 Frances Fitzgerald, the Minister for Justice & Equality stated to the Dáil that *“An au pair is an individual who wishes to improve his/her knowledge of the English language by undertaking an au pair arrangement through residing with a family whilst attending English language classes. An au pair arrangement is a private, voluntary, shared understanding between the parties concerned, namely a private household or sponsor family and a private individual. An au pair is regarded not as an employee but is received by a family and treated as a family member in exchange for certain services, such as a limited amount of light housework or baby-sitting. This activity is regarded as primarily cultural rather than economic and its main focus is the learning of English by the au pair. The Department of Jobs, Enterprise and Innovation does not issue employment permits to au pairs, child minders or domestic workers and accordingly, there is no immigration permission specifically assigned to these categories of activity. A non-EEA national who applied to do au pair work or for a visa on this basis would be refused. This does not prevent EU nationals the right to exercise free movement and engaging in this activity.”*

However later in 2015 the Department of Jobs, Enterprise & Innovation advised in a written statement that *“a person working under a contract of employment (written or verbal), on a full time or part-time basis, that person has the same protection under employment law as other employees.”* When asked in December 2015 to clarify the position Kieran Mulvey as the then Director General of the Workplace Relations Commission, advised that *“If you bring an individual into your home as an au pair I am advising people you are entering an employment relationship with that au pair. Au pairs aren't there to be exploited, they are domestic workers, and that has a very important meaning, we have minimum wage regulation, we have health and safety regulation, we have working time regulations, rest period regulations. And even though you may think they're working in your home, for the purposes of the employee that is their business that is the employment relationship.”*

The WRC Decision in 2016 has effectively clarified the position and has ruled that if an au pair is found to be working in an employment relationship they are entitled to the same rights as any other worker, including the minimum wage. It is therefore important to emphasise that under the WRC Decision people who do not adhere to the NMW and standard terms of employment when employing domestic child minders could find themselves liable at a later date and must be cognisant of their role as employers.

International Context

A number of countries do currently have specific legislation for au pairs as part of a cultural exchange programme. However these arrangements are not without their critics and there have been allegations of abuse and worker exploitation, and calls for a phasing out of the system.

Au Pairs – Sample terms and conditions in UK, Denmark and Norway

UK

An au pair isn't classed as a worker or an employee if most of the following apply:

- they're a foreign national living with a family in the UK
- they're an EU citizen or have entered the UK on a [Youth Mobility visa](#) or [student visa](#)
- they're here on a cultural exchange programme
- they've got a signed letter of invitation from the host family that includes details of their stay, e.g. accommodation, living conditions, approximate working hours, free time, pocket money
- they learn about British culture from the host family and share their own culture with them
- they have their own private room in the house, provided free of charge
- they eat their main meals with the host family, free of charge
- they help with light housework and childcare for around 30 hours a week, including a couple of evenings babysitting
- they get reasonable pocket money
- they can attend English language classes at a local college in their spare time
- they're allowed time to study and can practice their English with the host family
- they sometimes go on holiday with the host family and help look after the children
- they can travel home to see their family during the year

Denmark

The idea of an au pair stay is for a young person to stay with a host family with children under the age of 18 'on equal terms' with the other members of the family.

- You must be between the ages of 18 and 29 (both years included) at the time of application
- You may not be married or be in a co-habiting relationship or registered partnership
- You must have completed the equivalent of nine years of schooling.
- you may not previously have had two or more au pair stays in other EU/EEA countries or Switzerland
- you may not previously have stayed in Denmark as an au pair with different host families for more than one year
- you may not have the same nationality as one or more members of the host family

Conditions to be met by your host family

- Your host family must be comprised of at least one parent and one child under the age of 18 who is living at home.
- At least one parent must be a Danish citizen in order that your host family can introduce you to the Danish language and culture.
- Your host family must take out the following three insurances covering you: insurance against industrial injuries, insurance against personal injury outside work, and insurance covering transportation to your home country in the case of your death, serious illness or injury
- Your host family must pay DKK 5170 (2017 level) to the Danish Agency for International Recruitment and Integration. This amount is to help finance part of the Danish state's expenses for Danish language classes for you.

Other conditions and terms

- You and your host family must fill in and sign the au pair contract developed by the Danish Agency for International Recruitment and Integration.
- You should assume a role as a member of the family. This means that you should contribute to the household by carrying out chores related to the family's daily housekeeping, such as babysitting, cleaning and washing clothes.
- You may not take on responsibilities related to personal care or sick care of adult members of the host family
- You are entitled to a minimum monthly allowance of DKK 4150 (2017 level) from your host family as well as free food and lodging
- The allowance must be paid into a Danish bank account in your name no later than the last work day of each month

- You are entitled to your own bedroom in the family's home during your entire stay.
- Your host family may not have other au pairs besides you.
- You must carry out daily chores for three to five hours per day, six days per week, i.e. 18 to 30 hours per week.
- You are entitled to one-and-a-half day off every week. A half day off means you can complete your chores of 3 to 5 hours either before or after 2 p.m. on the day in question
- You are entitled to a day off on official Danish national Holidays
- You are entitled to sufficient time off to follow language courses and pursue cultural and professional interests, including participation in religious events
- If you should fall ill, you must still have full use of your room, and your host family must continue to provide you with food and lodging and pay your monthly allowance
- Your host family must pay your trip to Denmark if you live in a country outside the EU/EEA or Switzerland.
- Your host family must pay your trip home when your au pair stay ends, if you go back home to your country of origin or previous country of residence, and this country is outside the EU/EEA or Switzerland.
- You and your host family cannot agree that you should work more than five hours per day in return for more days off. Likewise, you and your host family cannot agree that you should work more than 30 hours per week in return for more pay. (Penalties apply.)

You may be granted a residence permit for a maximum of 24 months. However, it cannot exceed the duration of your au pair contract, nor can it exceed the point at which the youngest child living in the family turns 18.

Your host family can terminate the contract with one month's notice.

Tax and Employment law

So far as taxation and holidays are concerned, the relationship between you and your host family is regarded as an employer/employee relationship and is therefore subject to Danish taxation laws and is subject to Danish regulations covering the right to holiday and holiday pay.

Norway

- You must be over the age of 18 and not have turned 30.
- You cannot have any children of your own.
- The host family can be a married couple, partners or cohabitants with or without children, or a single parent with children.

- The host family must have good knowledge of Norwegian society and speak Norwegian to the au pair.
- If a person in the host family is from the same country of origin as the au pair, you can normally not be a host family.
- No one in the host family can be the au pair's spouse, cohabitant, parent, child, sibling, cousin, brother/sister in law or uncle/aunt.
- The purpose of your stay in Norway must be cultural exchange.
- You and your host family must have signed UDI's [Contract for cultural exchange between au pair and host family](#)).
- The host family must treat you like a member of the family (for example, you are entitled to eat together with the family, accompany them on outings etc.)
- The host family can only have one au pair at a time.
- You are to carry out light tasks such as housework, child care and caring for pets (dog, cat etc.).
- The working hours must normally not exceed five hours a day, and the maximum number of working hours per week is 30. You cannot work more than 30 hours, not even for extra pay.
- You cannot work for other employers or other families than your host family, neither for pay nor for free.
- You must be given the opportunity to participate in Norwegian language classes and recreational activities.
- The host family shall pay for you to attend a Norwegian language course in the amount of at least NOK 8,400 per year.
- You must live with the host family for the whole of the contract period and have your own room in their home.
- You shall have free board and lodging and receive at least NOK 5,600 per month before tax as pocket money/pay. You are also entitled to holiday pay in accordance with the Holidays Act. (25 working days of holiday per calendar year.)
- You must pay tax to Norway. Pocket money and free board and lodging are taxed as pay.
- You are entitled to at least one day (24 hours) off per week, and at least one such day per month must be a Sunday.
- The host family shall cover the necessary travel expenses in connection with your return journey. This does not apply if you remain in Norway after your time as an au pair is over or if you want to travel to another country than your home country.
- The host family shall take out insurance for you that covers your return travel expenses/repatriation if you should become ill or injured or if you should die.
- You can be granted an au pair permit for up to two years, but not for longer than the contract period

International Comparisons – extract from the UK Low Pay Commission 2013 Report on the National Minimum Wage

Table A3.6 Accommodation Offset, International Comparisons, 2012

Country	Accommodation offset
Australia	No accommodation offset as part of the minimum wage. The minimum wage is the minimum hourly rate that can be paid to employees. An employer is, however, allowed to make a deduction (such as accommodation) from an employee's pay if certain conditions are met, including that the employee has agreed in writing and the deduction is principally for the employee's benefit.
Belgium	No accommodation offset. Different arrangements can be negotiated at either sectoral or company level, but in principle the minimum wage represents a basic 'core minimum salary'.
Canada	Out of thirteen provinces and/or territories, six have provisions for deductions for room and board. Maximum deductions per week range from \$51.00 in Quebec to \$71.82 in Alberta. The federal maximum, applying to private sector industries which are federally incorporated and operate inter-provincially, is \$0.60 per day for accommodation and \$0.50 per meal for a maximum deduction of \$2.10 per day.
France	Offset allowed for accommodation (the amount depends on the number of rooms and on the employees' income) and for food. The offset costs will be deducted from the gross salary but subjected to taxes.
Greece	No accommodation offset.
Ireland	If an employee receives board and lodgings, board only or lodgings only from an employer, then the following amounts are reckonable: €54.13 for full board and lodgings per week (or €7.73 per day), €32.14 for full board only per week (or €4.60 per day), €21.85 for lodgings only per week (or €3.14 per day)
Japan	No accommodation offset.
Netherlands	Arrangements exist for employers to compensate employees for accommodation costs incurred as a result of employment, paid free of tax, but these arrangements do not depend on the level of the minimum wage.
New Zealand	The maximum that can be deducted is 15 per cent for board and lodging or 5 per cent if lodging alone.
Portugal	Payments in kind cannot exceed 50 per cent of the minimum wage. The limit for accommodation is 12 per cent and/or an indicative €27.36 per month per unit of accommodation provided. The actual value attributed to the house to calculate the offset is defined according to the current prices in the region in question. For meals the limit is 35 per cent of the minimum wage (all meals provided) or 15 per cent (where one main meal provided).
Spain	No accommodation offset.
UK	Employer-provided accommodation is the only benefit-in-kind that can count towards the NMW. The accommodation offset limit is £4.82 a day.
US	Reasonable cost or fair value of lodging may be considered part of the wages. Decided on a case-by-case basis. The two main principles are that the employee must agree in advance and that the employer cannot profit from the arrangement. Employers must submit their proposals for agreement to the Wages & Hours Division of the Department of Labor.

Source: British Embassies, High Commissions, and Low Pay Commission.

Comparison of Weekly/Daily versus an Hourly board allowance

In order to get a better understanding of how an hourly system would work in practice and what the implications would be for employers and employees the Commission carried out a number of calculations. The Commission took the value of an hourly allowance for board to be €0.82 (the current weekly allowance for board, €32.14, divided by 39 hours, taken as the standard working week). The Commission found that based on this rate, employees on minimum wage working less than 39hrs and currently having the full weekly allowance for board applied would stand to benefit, see table 4. An employee working twenty hours for instance would be €15.74 better off each week based on the hourly rate. Similarly an employee working thirty hours per week would see an increase in their weekly take home pay of €7.54.

Table a: Current weekly allowance for board versus hourly allowance

Current system - Fixed amount			
		NMW = €9.25 Offset = €32.14p.w.	
Hours worked	NMW	Offset for board	NMW less offset
39	€360.75	€32.14	€328.61
30	€277.50	€32.14	€245.36
20	€185.00	€32.14	€152.86
10	€92.50	€32.14	€60.36
Proposal - Hourly Rate			
		NMW = €9.25 Offset = €0.82p.h.	
Hours worked	NMW	Offset for board	NMW less offset
39	€360.75	€31.98	€328.77
30	€277.50	€24.60	€252.90
20	€185.00	€16.40	€168.60
10	€92.50	€8.20	€84.30

Difference between weekly amount and hourly rate	Difference as % of earnings
€0.16	0.00%
€7.54	2.70%
€15.74	8.50%
€23.94	25.90%

When it comes to comparing the current daily rate for board (€4.60) to an hourly rate of €0.82, an employee will be in a better position financially if they work less than six hours in any given day and in a worse position if they work more than six hours per day, see table five below for a number of scenarios based on the hourly versus daily rate. According to 2014 SILC data 31.3% of minimum wage workers in Ireland work an average of between 1-19 hours per week while 38.75% work an average of over 35 hours per week. The majority (51.3%) of minimum wage workers are part time. A move to an hourly rate therefore would mean a financial benefit to the majority of minimum wage workers although a slight reduction would occur in the case of employees working longer hours on a daily or weekly rate.

Table b: Current daily allowance for board versus hourly rate
Scenarios based on Daily rate versus Hourly rate for Board
allowance

Daily rate = €4.60 Hourly rate = €0.82

Hours worked	Number of days	Allowance under daily rate	Allowance under hourly rate	Difference
30	5	23.00	24.6	-1.60
30	4	18.40	24.60	-6.20
20	5	23.00	16.40	6.60
20	4	18.40	16.40	2.00
20	3	13.80	16.40	-2.60
20	2	9.20	16.40	-7.20
10	2	9.20	8.20	1.00

Note on Revenue Rules in relation to benefit-in-kind (BIK)

Provision of Accommodation

Under Revenue rules provision of accommodation by an employer incurs a tax liability under benefit-in-kind legislation

To qualify for exemption from the benefit-in-kind charge, the following conditions must be met:

1. the employee must be required, by the terms of his or her employment, to live in the accommodation provided by the employer in part of the employer's business premises so that he or she can properly perform his or her duties, and either
2. the accommodation is provided in accordance with a practice which, since before 30 July 1948, has commonly prevailed in trades of the class in question as respects employees of the class in question, or
3. it is necessary, in the particular class of trade, for employees of the class in question to live on the premises.

If the exemption conditions do not apply, the taxable benefit is based on the rent which the employer could reasonably expect to obtain if the property were let on an arm's length basis.

Where the accommodation consists of a house/apartment etc. near the company's premises the taxable benefit may be based on 8% of the market value of the relevant property or, where documentary evidence is available to show that the rental value of the property is lower, such rental value.

Where the accommodation is furnished, a taxable benefit equal to 5% of the market value of the furniture when first provided also arises.

Provision of Meals

A taxable benefit does not arise in respect of free or subsidised meals where meals are provided for the staff generally. The facility must be available to all employees. Otherwise, the exemption does not apply. No cost should be attributed to an employee who specifically indicates that s/he does not wish to, and does not use the facilities provided.

May 2017

LPC NO. 5 (2017)