

Shoot beaters and pickers up: right to work, minimum wages and Real Time Information

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This briefing paper aims to clarify the position for shoots that use beaters on ensuring they are eligible to work, how much they should be paid to comply with the National Minimum Wage and National Living Wage, and what and when shoots have to report to HMRC to comply with the Real Time Information rules.

The rules on these issues are complicated and they are also subject to change. HMRC is currently conducting a number of inspections of shoots to assess whether the minimum wage rules are being correctly applied.

In order to ensure that they comply, we know that some shoots pay their beaters / pickers up / loaders £8.00 per hour (gross) or more, treat them as employees of the shoot or estate and deal with their tax deductions. Pickers up are also paid mileage when they use their own vehicles. This of course increases the cost to shoots but it does ensure compliance.

Many beaters and pickers up do not view what they do as a job or employment but do it for pure enjoyment as a hobby. Even where this is the case, the rules on minimum wage apply unless the arrangement between the beater and the shoot would be considered as a 'very casual arrangement' (see the third bullet point under National Minimum Wage and National Living Wage). Many consider the rules unreflective of how shoots, and beaters, operate and will hope for a change in them.

This briefing paper will be revised if the results of these inspections change the position as set out below and as we learn more about the approach taken by HMRC during inspections. We will also review it if the *Independent Review of Employment Practices in the Modern Economy* by Matthew Taylor changes the position.

Right to work in the UK

The shoot must check that any worker is allowed to work in the UK and keep a copy of their documents that prove their eligibility to work, such as:

- a UK passport
- a passport or national identity card from a European Economic Area country or Switzerland
- other acceptable documents, which are listed at <https://www.gov.uk/legal-right-work-uk>

The 'right to work' process is set out at <https://www.gov.uk/check-job-applicant-right-to-work> . An employer must see the applicant's original documents, check that they are valid with the applicant present and then make and keep copies of the documents and record the date the check was made.

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National Minimum Wage and National Living Wage

All 'workers' on a shoot are entitled to receive at least the National Minimum Wage, which applies to under 25s, or National Living Wage, for over 25s, for each hour that they work. This is a legal requirement for all workers and cannot be opted out of. Failure to comply is a criminal offence¹. The minimum rates, set out in the table below, are gross of tax and are the minimum that should be paid regardless of tax payer status.

Who is a 'worker' is widely defined, and likely to cover most beaters, and in particular those operating on formal commercial shoots. The only exemptions are:

- anyone genuinely self-employed (pickers up may be an example - see pickers up section below) but one would expect them to be actively marketing their services to third parties, rather than just being recruited by a shoot to be an integral part of it;
- volunteers, who are paid only expenses, such as a petrol contribution and a packed lunch
- very casual arrangements, where there is no intention to create legal relations. However, the typical lump sum daily payment, plus the provision of benefits such as lunch and a brace of pheasants, could well be construed as intention to create legal relations, particularly if beaters are expected to turn up to scheduled shoots on set days

£ / HOUR MINIMUM <i>(NB gross, before tax and NI deductions)</i>		FROM 1 OCTOBER 2016	FROM 1 APRIL 2017
25 and over	(NLW ²)	£7.20	£7.50
21 to 24	(NMW)	£6.95	£7.05
18 to 20	(NMW)	£5.55	£5.60
Under 18	(NMW)	£4.00	£4.05
Apprentice	(NMW)	£3.40	£3.50

What counts as working time?

For all types of work, working time includes time spent:

- at work from when workers are required to be working (but does not include lunch, time between shifts, rest breaks and, arguably, time at the end of the shoot when beaters may choose to stay around to socialise)
- travelling in connection with work (but not travel between home and work)
- training or travelling to training

Advice from accountants is that shoots should keep detailed records of the working time for all workers.

What counts as pay?

Lunch and the option to take a brace of birds do not count as pay and cannot be used to reduce the amount that needs to be paid to meet NMW or NLW³.

Using these rates, here are some examples of what a shoot should pay its workers:

	HOURS PER SHOOT DAY <i>(8.00am to 4.00pm, with 2 hours for lunch and rest)⁴</i>	£ / HOUR MINIMUM	PAY PER DAY
Worker aged 55	6 hours	£7.50	£45.00
Worker aged 19	6 hours	£5.60	£33.60

¹ The penalty for non-payment of the minimum wage is 200% of the amount owed, unless the arrears are paid within 14 days, up to a maximum of £20,000 per worker, and employers can be banned from being a company director for up to 15 years.

² National Living Wage (NLW) applies to over 25s and has the same effect as the National Minimum Wage (NMW).

³ If lunch is provided in a local pub or restaurant, it is a benefit in kind and liable to be taxed. Lunch provided by the shoot on its own premises for everyone involved in the shoot, including office staff, is not considered a benefit in kind and so is not liable to be taxed. A voluntary deduction for lunch would not reduce pay for National Minimum Wage purposes.

⁴ Six hours is used for illustration only as day lengths vary according to factors such as the time of year.

Pickers up

Pickers up, due to the greater involvement of caring for and providing a dog and often their own transport, can fit the criteria to be classed as self-employed, particularly if they are advertising similar services generally, and / or can send a substitute, i.e. they do not have a contract to provide a personal service. Therefore they can choose between being self-employed and being a worker on a shoot.

PROS OF SELF-EMPLOYMENT

- Can claim expenses (for providing own transport, vet bills, kennels, dog food)
- Can offset expenses against picker up income (for example for travel from the place of work [the dog's kennels] to a shoot)

CONS OF SELF-EMPLOYMENT

- No entitlement to NMW / NLW
- Need to submit a tax return and send invoices to the shoot

Advice will be required where engaging a worker as self-employed as there are tax and compliance risks, including penalties, of engaging a worker as self-employed when on the facts of the engagement they should be treated as an employee. This is a particular focus of both HMRC and the Courts following recent high profile cases on worker status and possible future changes following the Government review into working practices.

Deducting tax and Real Time Information – permanent employees

Shoots are responsible for accounting to HMRC for PAYE and National Insurance Contributions for any permanent employees. Every time such an employee is paid, the shoot must tell HMRC how much tax and National Insurance has been deducted using the on-line Real Time Information (RTI) system for all employees, including all beaters and pickers up.

From April 2016 there will no longer be an exemption under RTI that allows a shoot to report payments to beaters on a monthly basis. This change now means all payments will need to be reported to HMRC within 7 days, so it is recommended that any payments made to beaters or pickers up are given to your accountants within a day or so of them being made.

Deducting tax and Real Time Information – casual workers

Shoots do not have to deduct tax and National Insurance from a worker's pay if they employ them for two weeks or less. However, their pay is still taxable income and the worker must ensure that any tax due is paid; some shoots pay tax on behalf of the worker to avoid any potential underpayment.

If a shoot does not have any permanent employees, it does not have to report workers' pay through the RTI system provided all of the criteria below are met:

- none of them is paid more than the National Insurance Lower Earning Limit (LEL) (currently £113 per week)
- the worker works on a casual daily basis
- is taken on for one day or less
- is paid off at the end of that period (i.e. they are made a leaver after each time they are paid)
- has no contract for further employment

Shoots must keep records of all the payments they make to workers for at least three years. This allows HMRC to track whether the worker has paid the tax he should have. The shoot should keep the following information for each worker as a minimum:

- full name
- date of birth
- gender
- National Insurance number
- address
- how much you pay them

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End

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