



BRIEFING PAPER

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The National Minimum Wage

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Summary

This briefing provides details of current and historic National Minimum Wage rates; discusses the introduction of the National Living Wage and different age-related rates; sets out the legislative mechanism for rate increases; explains the role of the Low Pay Commission; and discusses the various means of enforcing the National Minimum Wage.

The briefing is part of a series on the National Minimum Wage, including:

- [National Minimum Wage Statistics](#)
- [Economic impacts of the National Living Wage: in brief](#)
- [The National Minimum Wage: historical background](#)
- [The National Minimum Wage: volunteers and interns](#)

1. The rates

The National Minimum Wage (NMW) applies to most workers and sets minimum hourly rates of pay, which are updated annually in October. The rates are provided in regulations made by the Secretary for State with parliamentary approval. They are based on the Low Pay Commission's (LPC) recommendations, which are contained in annual reports published in response to remits set out by the Secretary of State.

The National Living Wage (NLW) was introduced on 1 April 2016, and is the new name for the NMW rate that applies to workers aged 25 and over. Previously, the full adult NMW rate applied to workers aged 21 and over; with the introduction of the NLW there is a new age band of 21-24, alongside the pre-existing 18-20 and under 18 rates..

The introduction of the NLW led to the creation of two NMW cycles; April-April for the NLW, and October-October for all other rates. The Government has indicated that, from April 2017, the cycles for all NMW rates will be aligned, so that all rates will in future be amended each April.¹

1.1 Current rates

The current NMW rates are:

25 and over	21 - 24	18 to 20	Under 18	Apprentice
£7.20	£6.95	£5.55	£4.00	£3.40

The apprentice rate applies to apprentices under 19, in their first year of level 2 or 3 apprenticeships; all other apprentices are entitled to the NMW rate for their age.

1.2 Previous years

The NMW was introduced on 1 April 1999 at the rate of £3.60 per hour for adults aged 22 and over, and £3.00 per hour for younger workers aged 18-21. Since then the rates have been increased annually.

The 16-17 year old rate was introduced on 1 October 2004 following the LPC's recommendations (see below).

The apprentice rate was introduced on 1 October 2010; at the same time, the age of entitlement to the main rate was reduced from 22 to 21.

The historic NMW rates are as follows:

¹ HM Treasury, [Budget 2016](#), HC 901, page 102

Year	21 and over	18-20	Under 18	Apprentice
2015	£6.70	£5.30	£3.87	£3.30
2014	£6.50	£5.13	£3.79	£2.73
2013	£6.31	£5.03	£3.72	£2.68
2012	£6.19	£4.98	£3.68	£2.65
2011	£6.08	£4.98	£3.68	£2.60
2010	£5.93	£4.92	£3.64	£2.50

Year	22 and over	18-21	Under 18	Apprentice
2009	£5.80	£4.83	£3.57	N/A
2008	£5.73	£4.77	£3.53	N/A
2007	£5.52	£4.60	£3.40	N/A
2006	£5.35	£4.45	£3.30	N/A
2005	£5.05	£4.25	£3.00	N/A
2004	£4.85	£4.10	£3.00	N/A
2003	£4.50	£3.80	N/A	N/A
2002	£4.20	£3.60	N/A	N/A
2001	£4.10	£3.50	N/A	N/A
2000	£3.70	£3.20	N/A	N/A
1999	£3.60	£3.00	N/A	N/A

1.3 Rate increases

The *National Minimum Wage Act 1998* empowers the Secretary of State to increase NMW rates by way of regulations, and provides for him or her to seek the advice of the LPC before making such an increase. [Section 2\(1\)](#) of the Act provides that:

The Secretary of State may by regulations make provision for determining what is the hourly rate at which a person is to be regarded for the purposes of this Act as remunerated by his employer in respect of his work in any pay reference period.

[Section 51\(5\)](#) provides that the regulations are subject to the affirmative procedure and must be approved by both Houses of Parliament before coming into force. [Section 6](#) allows the Secretary of State to refer any matter relating to the Act to the LPC “at any time”. This would, of course, include the level of the NMW and the question of whether it should be increased. [Section 7\(4\)](#) requires the LPC to consult organisations representing employers and workers before arriving at their recommendations. [Section 7\(5\)](#) requires them to “have regard to the effect of this Act on the economy of the United Kingdom as a whole and on competitiveness” as well as to any additional factors specified by the Secretary of State. If the Secretary of State does not accept the recommendations of the LPC, he must lay a report before Parliament setting out his reasons (sections [6\(3\)](#) and [5\(4\)](#)).

2. The National Living Wage

During the 2015 Financial Statement the Chancellor of the Exchequer announced the introduction of the NLW, setting out an objective for it to reach 60% of median earnings by 2020:

I am today introducing a new national living wage. The Low Pay Commission will recommend future rises that achieve the Government's objective of reaching 60% of median earnings by 2020. That is the minimum level of pay recommended in the report to the Resolution Foundation by Sir George Bain, the man the last Labour Government appointed as the first chair of the Low Pay Commission.

Let me address the impact on business and employment. The Office for Budget Responsibility today says that the new national living wage will have, in their words, only a "fractional" effect on jobs. The OBR has assessed the economic conditions of the country and all the policies in the Budget. It says that by 2020 there will be 60,000 fewer jobs as a result of the national living wage, but almost 1 million more jobs in total. It also estimates that the cost to business will amount to just 1% of corporate profits. To offset that, I have cut corporation tax to 18%. To help small firms, I will go further now and cut their national insurance contributions. From 2016, our new employment allowance will now be increased by 50% to £3,000. That means a firm will be able to employ four people full time on the national living wage and pay no national insurance at all.

Let me be clear on what this means for the low paid in our country: two and a half million people will get a direct pay rise. Those currently on the minimum wage will see their pay rise by over a third this Parliament, a cash increase for a full-time worker of over £5,000. In total, it is expected that 6 million people will see their pay increase as a consequence.²

The NLW's target of reaching 60% of median earnings followed the recommendations of a Resolution Foundation review chaired by Sir George Bain, which concluded:

Our view, based on UK and international evidence, is that a wage-floor worth 60 per cent of the median wage is a reasonable lodestar, indicating the most that a minimum wage could contribute to the goal of reducing low pay over the medium to long term.³

In their initial analysis of the Budget announcements, the OBR estimated that, based on an assumption that median earnings would rise in line with average earnings:

the NLW will rise from £7.20 in April 2016 (equivalent to around 55 per cent of estimated median hourly earnings for employees aged 25 and over) to around £9.35 in April 2020 (reaching 60 per cent of expected median hourly earnings for that group) in steps that imply the rise relative to median hourly earnings is a straight line. The effective minimum wage for the affected age group will

² [HC Deb 8 July 2015 c338](#)

³ Resolution Foundation, [More than a minimum The Resolution Foundation Review of the Future of the National Minimum Wage: The Final Report](#), p10

therefore be over 13 per cent higher in 2020 than would otherwise have been the case.⁴

In terms of its direct effect on earnings, the OBR estimated that:

around ¾ million people aged 25 and over would move from receiving the NMW to the higher NLW. Just under an additional 2 million people would move from having hourly earnings between the £8.25 assumed NMW and the £9.35 assumed NLW to at least the NLW. Hourly earnings of around £9.35 would place an individual at the 16th percentile of the earnings distribution. Assuming that spillover effects extend to the 25th percentile implies that an additional 3½ million people will also be affected, taking the total number of people affected to around 6 million.⁵

According to the OBR, assuming no change in employment or hours worked, the NLW would result in a 0.3 per cent increase in whole economy compensation of employees, which employers could respond to in a variety of ways, including: reducing hours; reducing jobs; replacing over 25s with younger workers; or increasing prices. It estimated that as a result of the NLW, by 2020 there would be 60,000 fewer jobs than there would otherwise have been.

The [Low Pay Commission Report Spring 2016](#) made a number of observations about the introduction of the National Living Wage, its impact and its reception by business, some of which is summarised below:

The main beneficiaries are low-paid workers: around 1.8 million workers are likely to be covered by the introductory rate of £7.20 in April 2016, with nominal annual earnings for a typical worker currently on the NMW increasing by £680, rising to £3,360 by 2020

...

Respondents to our consultation told us that firms expect to cope with the initial rate through consolidating the wider reward package, reduced premium payments and squeezing differentials as well as considering raising prices, reducing profits and reducing hours. Few had at this stage thought about how they would adjust to successive increases but the NLW would be likely to require structural change – for example, automation and redesigning services.

In principle there are good reasons to believe that older workers can bear a higher wage floor than younger workers with few negative consequences. Workers aged 25 and over have higher average pay, a lower bite, and lower unemployment than workers under the age of 25. Nonetheless, evidence suggests that the policy is new territory for the labour market.

The introductory rate of £7.20 is a 7.5 per cent increase, or 10.8 per cent year-on-year – the largest cash increase to date in the main rate of the minimum wage, and the joint highest percentage increase on an annual basis. In consequence, the real value of the minimum wage for workers aged 25 and over is set to be its highest ever even on an RPI basis, restoring and surpassing the value lost in the downturn. The relative value will also be at its

⁴ OBR, [Economic and Fiscal Outlook](#), Cm 9088, July 2015, pp200-201

⁵ Ibid.

peak, with the bite rising for this group from 52.1 per cent in 2015 to an estimated 55.1 per cent in 2016.

By 2020, the bite for workers aged 25 and over is likely to increase to 60 per cent of the median – an equivalent level for all workers of 62 per cent (since the bites of the minimum wage rates for younger workers are already over 70 per cent). Including the 2015 adult rate increase, the bite for workers aged 25 and over is set to increase by the same amount in the five years to 2020 as it did in the previous sixteen.⁶

The impact of the National Living Wage is discussed in the Library briefing [Economic impacts of the National Living Wage: in brief⁷](#) and in chapters 2-3 of the LPC report.

2.1 The NLW, NMW and the Living Wage

The NLW is the new name for the main adult rate of the NMW, which is now available only to workers aged 25 and over. It is not tied to the cost of living and is distinct from the Living Wage, currently set at £8.25 per hour outside London, and £9.40 per hour in London. The Living Wage is paid voluntarily by employers and set according to the cost of achieving an adequate standard of living, as judged by the Greater London Authority (for the Living Wage in London) and the Centre for Research in Social Policy at Loughborough University (for the Living Wage outside London).⁸

The decision to name the adult rate of the NMW the “National Living Wage” was criticised by some for conflating the NMW with the voluntary Living Wage. For example, the Scottish National Party’s Fair Work and Employment Spokesperson, Neil Gray MP, criticised:

... the damaging branding of the Chancellor’s minimum wage premium as a national living wage. It is not national—it is only available to over-25s—and it is not a living wage; it falls way short of the Living Wage Foundation’s independently set living wage, which is calculated based on the cost of living.⁹

The Government’s response was that, while some may have concerns about the NLW’s branding, the NLW is nonetheless “a dramatically positive step for low-paid workers”.¹⁰

⁶ PpXVII-XVIII

⁷ Commons Briefing Paper CBP-7319

⁸ For more background, see the [Living Wage website](#)

⁹ [HC Deb 18 November 2015 c172WH](#)

¹⁰ [Ibid.](#), c179WH

3. Age bands

The introduction of the NLW alongside a new 21-24 year old age band led to renewed interest in the rationale behind NMW age-banding, fears that workers over 25 would be discriminated against in favour of younger, cheaper, workers and concern that workers aged 21-24 were now ineligible for the full minimum wage. Some of the issues were discussed in a LPC blog article on Gov.uk: [New minimum wage rates for under 25s: why are they different?](#)

The rationale for minimum wage age-banding has typically been that younger workers occupy a more vulnerable position in the labour market, with a greater need to acquire experience, and that if younger workers were eligible for the full minimum wage they might be priced out of the labour market. The Low Pay Commission has in the past supported lower minimum wages for younger workers:

Since the formation of the Commission, we have believed that the minimum wage should be set at a lower level for young people. The evidence continues to show that they are more vulnerable in the labour market, and the threat of unemployment is greater for younger workers. When in employment, young people should of course be protected from exploitation, but we do not want the level of the minimum wage to jeopardise their employment or training opportunities.¹¹

3.1 The National Living Wage, the 21-24 year old rate and age discrimination

In their [spring](#) 2016 report, the Low Pay Commission noted concern that the introduction of the NLW alongside the new 21-24 year old rate created “perverse incentives for employers to substitute younger workers for older ones.”¹² The Federation of Small Business’s evidence to the Low Pay Commission said

some businesses may focus their recruitment on the under 25s. However by doing this, they run the risk of potentially breaching age discrimination legislation, which should lead many employers to re-evaluate this stance¹³

The relevant age discrimination legislation is the *Equality Act 2010*. The Act identifies two types of discrimination: [direct](#) and [indirect](#). Recruiting workers on the basis of their age would constitute direct age discrimination. Under [section 39](#) of the Act, both indirect and direct age discrimination in employment are unlawful unless the discrimination can be shown to be a “proportionate means of achieving a legitimate aim”; this is known as the “justification” test.¹⁴ If an employer recruited under 25s to avoid paying the NLW this may, without more,

¹¹ Low Pay Commission, *National Minimum Wage - Low Pay Commission Report 2013*, 2013, p76

¹² Low Pay Commission, *National Minimum Wage Low Pay Commission Report Spring 2016*, Cm 9207, March 2016, p242

¹³ *Ibid.*, p244

¹⁴ See [section 13\(2\)](#), which establishes the possibility of justifying direct age discrimination

be unlawful. That is because doing so would constitute direct age discrimination and saving costs would not, on its own, be a legitimate aim (and so the employer would be unable to justify its behaviour). The Equality and Human Rights Commission's *Equality Act 2010 - Employment Code of Practice* sets this out as follows:

Although reasonable business needs and economic efficiency may be legitimate aims, **an employer solely aiming to reduce costs cannot expect to satisfy the test**. For example, the employer cannot simply argue that to discriminate is cheaper than avoiding discrimination.¹⁵

This was touched on in an article for *Personnel Today*, which noted:

Another pitfall related to the national living wage is recruitment, especially if employers look to hire people aged under 25. They may, as Weightmans employment partner Jawaid Rehman says, "find themselves at risk of age discrimination claims".

"These claims can potentially be justified," he adds. "However a wish to save money may not, on its own, amount to a legitimate aim capable of justifying indirect discrimination. Where potential employees have scored the same at interview, organisations should always look to recruit those who are best for the role and not take age into account during the recruitment process."

In Livingstone's opinion, employers should not "favour employees under the age of 25 during the recruitment process as that would constitute direct age discrimination."¹⁶

3.2 18-20 year olds

The original rationale for the 18-20 year old rate is provided in the Low Pay Commission's first report:

Special Treatment of Young People

The threat of unemployment for young people, particularly those with poor skill levels, is far greater than for older workers. Since a large number of young workers are concentrated in only a few industries and are paid on average less than older workers, we had to be cautious in recommending a National Minimum Wage for this group.

In considering exemptions for, or a possible lower rate of, the National Minimum Wage, we had to decide for what age groups these might apply. Our terms of reference explicitly asked us to consider young people up to the age of 25. The position for 16 and 17 year olds and apprentices is clear; they are essentially in a preparatory stage, and should be exempt from the National Minimum Wage. But for those over the age of 18 not in structured training, the picture is very mixed.

A number of employers as well as employee representatives argued that people are young adults at age 18 and should be treated no differently from older workers. And unions argued strongly that workers are adult at age 18.

Incomes Data Services (IDS, 1998b) reported that 'in most industries, employees are paid adult rates from the age of 18....

¹⁵ Page 68. The Code discusses justification in relation to indirect discrimination, but the same reasoning applies to direct age discrimination

¹⁶ 'National living wage: how to steer clear of problems', *Personnel Today*, 28 January 2016

And recent trends indicate a general move away from the concept of age-related pay scales towards shorter term trial periods and skills or competency-based entry rates.'

This is true in both the private and public sectors. During our visit to Liverpool, for example, Littlewoods told us that they have moved away from an age-related pay system to one which is competency-based and which they intend to link with NVQs. Examples in the public sector include the Cabinet Office, the Home Office, Customs and Excise, the Inland Revenue and the Department of Trade and Industry.

Economic evidence points to a variety of ages when the full National Minimum Wage might best be applied. The concentration of young people in the lowest decile of earnings might lead to the conclusion that the age of 21 or 22 would be an appropriate cut-off point (see Figures 5.6 and 5.7). But the really dramatic distinctions in the youth labour market are in the earlier years: the most rapid change takes place in the years up to the age of about 20. Thereafter the transition from young worker to adult slows down.

Our judgment has to be informed by actual labour market practices. To put flesh on the economic data we specifically asked those giving evidence and those we met throughout the UK for their views on exceptions for young people.

A significant number considered that the adult rate should begin at age 18 or 19; the British Retail Consortium argued for a cut-off at age 19; the British Hospitality Association in its evidence concluded that 'the minimum wage should not apply to any staff aged under 21'; the overwhelming majority thought that any lower rate should not extend beyond the age of 20; an age differential beyond 20 was generally seen as an unwelcome and unnecessary complication.

We cannot be certain that we know just how the youth labour market will respond to the introduction of the National Minimum Wage. Those in the youth labour market, or trying to enter that labour market, are among the most vulnerable in the workforce. Above all else they need work, and they need work which will allow them to acquire basic skills to enable them to develop. We believe that applying the full National Minimum Wage to all young people when their current earnings have fallen so far behind older workers puts these opportunities at unreasonable risk.

We remain concerned about unemployment at any age. But by age 21 people are likely to need positive labour market intervention, such as the Government's New Deal and other unemployment and training strategies, to help them back to work. We consider therefore that by the age of 21 a worker should be regarded as an adult and be covered by the full National Minimum Wage.

Many young workers are really novices rather than fully skilled workers. Investment in young workers would bring benefits not only to them but, through higher productivity to employers as well. Ideally, we would prefer to link a lower rate of the National Minimum Wage to such investment. In the longer term this lower rate, the 'Development Rate' for young people, should be linked with, and clearly dependent on, the promotion of structured training and development. Government, employers and training

organisations need to develop coherent strategies for the education and training of 18–20 year olds.

But we need to have regard to the labour market as it is now. To avoid the threat of making youth unemployment worse, and losing valuable employer investment in young workers, **we recommend that a minimum Development Rate should be available for all 18–20 year olds.**¹⁷

3.3 16 – 17 year olds

The LPC's 2004 report, *Protecting Young Workers*, was published in March 2004. Having recommended in the past that 16 and 17 year olds should be exempt from the NMW, the LPC concluded that there was evidence indicating that a minimum wage for this age group should be introduced:

In our first three reports we recommended that 16–17 year olds should be exempt from the National Minimum Wage. This reflected our view that 16–17 year olds form a distinct segment of the labour market, preparing for working life, rather than being full participants in the workforce. Some 70 per cent are in full-time education, with many more in part-time education or training. And ideally all 16–17 year olds should be receiving education or good quality training.

In our analysis for the fourth report, however, we became concerned by evidence of full-time jobs offering extremely low rates of pay and which provided minimal training and few development prospects. We therefore recommended to Government that we should review the 16–17 year old group in detail this year, and advise on whether a minimum wage could be introduced which put a stop to clear exploitation while neither encouraging young people out of education nor harming the supply of training places.

We conclude that this balance is possible, and that a minimum wage for 16–17 year olds should be introduced. On the assumption that it is compatible with the age strand of the European Employment Directive (2000/78/EC), we recommend the introduction of a minimum wage of £3.00 per hour for 16–17 year olds in October 2004 and the retention of the current exemption from the minimum wage for apprentices under age 19. We also recommend that 16–17 year old participants on specified pre-apprenticeship programmes should be exempt from the 16–17 year old rate.

We believe that the recommended rate is prudent and should avoid the risk of pricing this age group out of the labour market. It should be reviewed periodically but we see no reason automatically to link its level to that of the youth Development Rate. In a few years' time we would wish to look again at the position of apprentices and participants on pre-apprenticeship programmes.¹⁸

¹⁷ Low Pay Commission, *The National Minimum Wage - First Report of the Low Pay Commission*, June 1998

¹⁸ Low pay Commission Report, *Protecting Young Workers: The National Minimum Wage*, March 2004

The Government accepted the LPC's recommendations for a new rate for 16 and 17 year olds, introducing this at £3.00 per hour from 1 October 2004.¹⁹

3.4 Children

Children do not qualify for the NMW. Those who have not passed compulsory school age are legally classed as children.²⁰ [Section 1\(2\)\(c\)](#) of the *National Minimum Wage Act 1998* provides that, in order to qualify for the NMW, the worker must have "ceased to be of compulsory school age". In England and Wales a child may not legally leave school until the last Friday in June of the school year during which they reach the age of 16.²¹

¹⁹ *National Minimum Wage Regulations 1999 (Amendment) (No. 2) Regulations 2004* SI 2004/1930

²⁰ *Education Act 1996*, section 558

²¹ *Education Act 1996*, section 8; DfEE Circular 11/97, *School Leaving date for 16 Year Olds*

4. Enforcement

The NMW is enforced in two ways: by workers, and by the State.

4.1 Enforcement by workers

The right to be paid the NMW takes effect as part of a worker's contract. A worker paid less than the NMW will be contractually entitled to whichever is the higher of:

- the difference between his pay and the rate he would have been paid had the NMW been complied with; or
- the difference adjusted to take account of any increase in the NMW as at the time the arrears are determined.²²

Given that the worker is contractually entitled to this, he may enforce his rights by taking a claim to an employment tribunal or to a civil court.²³ If the claim is brought in the employment tribunal there will be a three month time limit within which the claim must be brought (measured from the date of the last underpayment); the claimant will need to pay [employment tribunal fees](#) (unless remission applies); and claims are capped at two years' back pay.²⁴

4.2 Enforcement by the State

The NMW is enforced by Her Majesty's Revenue and Customs (HMRC) on behalf of the Department for Business, Energy and Industrial Strategy (BEIS). HMRC's approach to enforcement is set out in detail in [this](#) BEIS policy document.²⁵

The principal means by which HMRC enforces the NMW is through notices of underpayment. In more serious cases, the employer may have committed a criminal offence,²⁶ in which case HMRC may refer the matter to the Crown Prosecution Service. There is also an associated system of publically naming employers that breach NMW law, which is designed to deter employers from underpaying workers (see below). Under this system, employers issued with a notice of underpayment are named via a BEIS press notice.

Before describing the operation of notices of underpayment, the below sets out the previous system of "enforcement notices" and explains why the current system of financial penalties was introduced.

Enforcement notices

Until 2009, HMRC enforcement officers issued enforcement notices under section 19 of the *National Minimum Wage Act 1998*, requiring employers to pay the NMW. Although officers were also empowered to

²² See *National Minimum Wage Act 1998*, section 17

²³ Enforcing either his common law contractual rights or the right not to suffer unauthorised deduction from wages: see [Part II of the Employment Rights Act 1996](#)

²⁴ *Deduction from Wages (Limitation) Regulations 2014 (SI 2014/3322)*

²⁵ BEIS, *National Minimum Wage and National Living Wage - Policy on HM Revenue & Customs enforcement, prosecutions and naming employers who break National Minimum Wage law*, July 2016.

²⁶ *National Minimum Wage Act 1998*, section 31

impose financial penalties, they could only do this if an enforcement notice was ignored. This came to be seen as unsatisfactory: employers could easily avoid paying the penalty, therefore it had little deterrent effect. The Low Pay Commission noted this in its 2007 report:

We believe it is essential that employers who underpay the minimum wage are penalised to an appropriate degree. At present, however, the minimum wage legislation has no provision to enable this so long as the employer makes good minimum wage arrears within a prescribed timescale; only those who refuse to pay arrears might have a penalty applied. This in effect means that there is no deterrent to noncompliance....²⁷

The Commission recommended that “as a deterrent to non-compliance, the Government introduce a penalty to apply to any employer found to have underpaid the minimum wage”.²⁸

In May 2007 the Labour Government, having accepted the Commission’s recommendation, sought views on how best to implement a “simpler, more effective penalty”.²⁹ The consultation document indicated that, at that time, 95% of non-compliant employers identified by HMRC did not pay a penalty.³⁰ The Government published its consultation response in December 2007, stating that its preferred approach was to create a penalty, imposed whenever a notice is served, based on the total amount of NMW arrears owed to all workers by the employer.³¹

The changes to the penalty regime were implemented by the *Employment Act 2008*, which amended the *National Minimum Wage Act 1998* to replace enforcement notices with notices of underpayment.³²

Notices of underpayment and financial penalties

Sections 19 and 19A of the *National Minimum Wage Act 1998* form the statutory basis for notices of underpayment. Section 19 deals with the notices as they apply to arrears, providing that where an officer, acting for the purposes the Act, is of the opinion that a worker is entitled to additional remuneration, the officer may “serve a notice requiring the employer to pay to the worker, within the 28-day period, the sum due to the worker”.³³ Section 19A deals with the financial penalty that attaches to the notice of underpayment. Section 19A(1) provides:

A notice of underpayment must, subject to this section, require the employer to pay a financial penalty specified in the notice to the Secretary of State within the 28-day period.

²⁷ LPC, [National Minimum Wage - Low Pay Commission Report 2007](#), March 2007, p235

²⁸ *ibid.*

²⁹ BERR, [National minimum wage and employment agency standards enforcement](#), 16 May 2007, p21

³⁰ *ibid.*, p16

³¹ BERR, [National minimum wage and employment agency standards enforcement: Government response](#), December 2007, p11

³² For further background, see: [Employment Bill \[HL\] 2007-08](#), Library Research Paper 08/63, 11 July 2008

³³ Section 19(2)

The penalty is currently set at 200% of the total arrears owed to all workers to whom the notice relates, subject to a maximum of £20,000 per underpaid worker, and a minimum of £100.

The penalty is discounted for prompt payment: the employer need only pay 50% of the penalty if he pays it within 14 days, beginning with the day the notice was served.

Both the Coalition and current Conservative governments have increased the maximum penalties:

- **March 2014:** increased the penalty from 50% to 100% of arrears³⁴
- **March 2014:** increased the maximum from £5,000 to £20,000 per notice of underpayment (a notice of underpayment could cover multiple workers)³⁵
- **May 2015:** changed the application of the maximum of £20,000 from applying on a per notice of underpayment basis to applying on a per underpaid worker basis (meaning that the more workers the employer underpays, the greater the maximum penalty – e.g. the maximum for ten underpaid workers would be $10 * £20,000 = £200,000$)³⁶
- **April 2016:** increased the penalty from 100% to 200% of arrears³⁷

Naming

A naming scheme has been in effect since January 2011, under which the Government publishes the names of companies found to have breached NMW law, and who satisfy various criteria. The naming scheme was revised in October 2013. Under the original scheme, HMRC would refer cases to the Department for Business, Innovation and Skills (as it then was) for naming if one or more of the following applied:

- there is evidence that the employer knowingly or deliberately failed to comply with their minimum wage obligations
- there is evidence that the employer has previously received advice from HMRC about the steps they need to take to ensure future compliance with national minimum wage and has not taken those steps
- there is evidence that the employer has failed to take adequate steps to keep or preserve minimum wage records
- there is evidence that the employer has delayed or obstructed a minimum wage compliance officer in the performance of their duties

³⁴ [National Minimum Wage \(Variation of Financial Penalty\) Regulations 2014 \(SI 2014/547\)](#)

³⁵ Ibid.

³⁶ *Small Business, Enterprise and Employment Act 2015*, section 152; see [National Minimum Wage penalties increased on rogue employers](#), BIS press release, GOV.UK, 15 January 2014 (accessed 12 September 2014); [Small Business, Enterprise and Employment Bill, Commons Library Research Paper, 17 July 2014](#)

³⁷ [National Minimum Wage \(Amendment\) Regulations 2016 \(SI 2016/68\)](#), [regulation 2](#)

- there is evidence that the employer has refused or neglected to answer questions put to them by a minimum wage compliance officer
- there is evidence that the employer has refused or neglected to provide information or produce documents to a minimum wage compliance officer
- there is evidence that the employer refused or neglected to pay arrears of the minimum wage to workers, following HMRC intervention, which has resulted in HMRC taking action against the employer to ensure payment of arrears to workers.³⁸

The current approach to naming is set out in BEIS enforcement policy document as follows:

An employer that is breaking minimum wage law will be issued with a Notice of Underpayment by HMRC. This is a formal notice that sets out the arrears of minimum wage to be repaid by the employer together with the penalty for non-compliance with the requirement to pay workers the minimum wage. An information sheet is given to the employer at the start of the investigation which sets out details about the BIS naming scheme. The employer will have 28 days to appeal against the Notice of Underpayment issued by HMRC.

If the employer does not appeal or an appeal has been unsuccessful HMRC will refer the employer to BIS to be considered for naming once the HMRC case closure letter has been issued to the employer.

BIS only consider cases for naming where the total arrears owed to workers are more than £100. This financial criterion will be kept under review to ensure that the naming scheme continues to meet the policy objectives outlined in paragraph

The employer will have 14 days from the date of the HMRC case closure letter to make written representations to BIS outlining whether they fall under any of the exceptional circumstances for not being named under the scheme. The exceptional circumstances are:

- Naming by BIS carries a risk of personal harm to an individual or their family.
- There are national security risks associated with naming in this instance.
- Other factors which suggest that it would not be in the public interest to name the employer (employer to provide details).

In all cases where an employer makes representations to BIS, the employer will need to provide evidence in support of their case for not being named. If an employer seeks advice from a third party, which is incorrect, it does not necessarily mean that the employer will not be named. Employers have a personal responsibility to ensure that they are paying their workers the correct minimum wage rate

...

³⁸ BEIS, *National Minimum Wage and National Living Wage - Policy on HM Revenue & Customs enforcement, prosecutions and naming employers who break National Minimum Wage law*, July 2016, p19

If, on receipt of representations from an employer, BIS are satisfied that the employer meets one or more of the exceptional circumstances ... the employer will not be named under the naming scheme. If BIS do not receive any representations from the employer within 14 days of the date of the HMRC case closure letter or do not accept the representations made by the employer, the employer will be automatically named under the scheme via a BIS press notice. BIS will send a letter to employers stating that they will be named no earlier than 10 days from the date on that letter, attaching the fact sheet that HMRC gave them at the start of the process. BIS will not maintain a public register of employers who have failed to pay the minimum wage or who have been named.

Where compliance officers pursue payment on behalf of the worker or workers in the civil courts under section 19D(1)(c) of the 1998 Act; or in the employment tribunal under section 19D(1)(a) of the 1998 Act (or, in Northern Ireland, the industrial tribunal under section 19D(1)(b) of the 1998 Act), cases are closed but not referred to BIS for naming until the court or employment tribunal action is complete.³⁹

Criminal enforcement

Section 31 of the *National Minimum Wage Act 1998* provides that the following are offences:

- refusing or wilfully neglecting to pay the NMW
- failing to keep records of pay pursuant to the requirements of section 9 of the Act
- falsifying or allowing the falsification of records
- producing false records or information
- delaying or obstructing enforcement officers
- refusing or neglecting to answer an enforcement officer's questions
- refusing or neglecting to furnish any information or produce any document when required to by an enforcement officer

An offence under the Act is punishable by an unlimited fine.

The BEIS enforcement policy document indicates that civil enforcement is the primary means of enforcement, and that this "will be sufficient in the great majority of cases" however "For the small minority of employers that are persistently non-compliant and refuse to cooperate with compliance officers, criminal investigation is appropriate."⁴⁰ Very few prosecutions are in fact brought, as set out in the following answer to a Parliamentary Question on the issue:

[Minimum Wage: Written question - 42723](#)

Q

Asked by [Catherine West](#) (Hornsey and Wood Green)

Asked on: 13 July 2016

HM Treasury Minimum Wage - 42723

³⁹ Ibid., pp17-18

⁴⁰ Ibid., p12

To ask Mr Chancellor of the Exchequer, how many prosecutions have been brought against companies which have failed to pay the national minimum wage in each of the last five years.

A

Answered by: [Jane Ellison](#)

Answered on: 18 July 2016

The majority of employers identified as paying below National Minimum Wage pay arrears on receipt of a formal Notice of Underpayment. Employers are charged penalties of up to 200% of the arrears due and considered by the Department for Business, Energy and Industrial Strategy (BEIS) for naming. This provides the most effective resolution for those who have been underpaid and helps ensure the arrears due to them are paid. In line with the prosecution policy set out by BEIS, criminal investigations are reserved for the most serious cases. The number of cases brought for prosecution for non-compliance in each of the last five years is set out below:

Year	Cases brought for prosecution
2015/16	1
2014/15	0
2013/14	0
2012/13	1
2011/12	0

Each case resulted in conviction. There has been one further successful prosecution to date in 2016/17. During the last year, HM Revenue and Customs have also set up a specialist enforcement team to investigate serious non-compliance and identify the worst offenders for possible criminal investigation. The team works closely with other agencies to tackle labour market abuse and serious worker exploitation.

5. Low Pay Commission Reports

At the time of writing, the LPC has produced the following annual reports:

- June 1998: [The National Minimum Wage First Report of the Low Pay Commission;](#)
- February 2000: [The National Minimum Wage: The Story So Far. Second Report of the Low Pay Commission;](#)
- March 2001: [The National Minimum Wage: Making the Difference - Third Report. \(Volume One\) of the Low Pay Commission;](#)
- June 2001: [The National Minimum Wage: Making a Difference: The Next Steps. Third Report \(Volume Two\) of the Low Pay Commission;](#)
- March 2003: [The National Minimum Wage: Building on Success - Fourth Report of the Low Pay Commission;](#)
- March 2004: [Protecting Young Workers: The National Minimum Wage – Low Pay Commission Report 2004;](#)
- February 2005: [National Minimum Wage - Low Pay Commission Report 2005;](#)
- March 2006: [National Minimum Wage - Low Pay Commission Report 2006;](#)
- March 2007: [National Minimum Wage - Low Pay Commission Report 2007;](#)
- March 2008: [National Minimum Wage - Low Pay Commission Report 2008;](#)
- May 2009: [National Minimum Wage - Low Pay Commission Report 2009;](#)
- March 2010: [National Minimum Wage - Low Pay Commission Report 2010;](#)
- April 2011: [National Minimum Wage - Low Pay Commission Report 2011;](#)
- March 2012: [National Minimum Wage - Low Pay Commission Report 2012;](#)
- April 2013: [National Minimum Wage - Low Pay Commission Report 2013;](#)
- March 2014: [National Minimum Wage: Low Pay Commission report 2014;](#)
- March 2014: [The Future Path of the National Minimum Wage.](#)
- March 2015: [National Minimum Wage: Low Pay Commission report 2015](#)
- July 2016: [National Minimum Wage: Low Pay Commission report spring 2016](#)

5.1 Low Pay Commission research

The LPC commissions research to inform its recommendations.

Research commissioned since 2012 is available on Gov.uk, [here](#).⁴¹

Research commissioned prior to that is available on the now archived Low Pay Commission website, [here](#).⁴²

⁴¹ Low Pay Commission Research, Gov.uk (accessed 2 March 2015)

⁴² Research Projects, Low Pay Commission website (accessed 2 March 2015)

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