



Department
for Business
Innovation & Skills

**TRIENNIAL REVIEW OF THE LOW
PAY COMMISSION (LPC)**

MARCH 2013

Contents

Introduction	3
Summary of Conclusions and Recommendations	4
Review Stage 1: Functions	6
Review Stage 2: Governance	23
Annex A - Email text sent to stakeholders to request evidence for the LPC Triennial Review.	27
Annex B: Stakeholder engagement	30
Annex C: International comparisons	33
Annex D: Summary timetable of Low Pay Commissioner activity by month	35
Annex E: Low Pay Commission Remit	36
Annex F: LPC Framework Agreement	37
Annex G: Potential for a merger between OME and LPC	41
Annex H: assessment against principles of good governance	44
Annex I: Low Pay Commission: Terms of Reference of appointment	59
Annex J: Code of Practice for the Low Pay Commission	64

Introduction

1. The LPC is being reviewed as part of the Cabinet Office's Triennial Review programme. The Cabinet Office has identified two principal aims for Triennial Reviews:

- Stage 1: to provide robust challenge to the continuing need for individual NDPBs – both their functions and their form (stage one); and
- Stage 2: where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance (stage two).

Scope and purpose of Triennial Reviews

2. All reviews are to be conducted according to the following principles:

- *Proportionate*: not overly bureaucratic; appropriate for the size and nature of the NDPB.
- *Timely*: completed quickly to minimise disruption and reduce uncertainty.
- *Challenging*: robust and rigorous, evidencing the continuing need for functions and examining and evaluating a wide range of delivery options.
- *Inclusive*: open and inclusive. Individual NDPBs must be engaged, key users and stakeholders should have the opportunity to contribute. Parliament should be informed about the commencement and conclusions.
- *Transparent*: all reviews should be announced and reports should be published.
- *Value for Money*: conducted to ensure value for money for the taxpayer.

3. The programme of departmental Triennial Reviews is agreed on a rolling basis with the Cabinet Office. BIS agreed to carry out a review of the LPC starting in the second quarter of 2012-13.

4. The then BIS Minister for Employment Relations, Consumer and Postal Affairs, Mr Normal Lamb, announced the Triennial Review of the Low Pay Commission in a Written Ministerial Statement on 10 July 2012. The team was drawn from across BIS in order to bring a measure of independence.

5. The review team was drawn from a range of BIS Directorates to ensure a measure of objectivity, and consisted of:

- Mitchell Leimon, (lead reviewer), Head of Student Funding Delivery
- Claire Goldstraw, Head of Public Weather Service Customer Group
- Asad Ghani, Economic and analytical advisor
- Antonia Custance-Baker, Economic and analytical support.

Summary of Conclusions and Recommendations

6. We set out here the overall conclusions and recommendations from both stages of the review.

Stage 1:

Conclusion 1: The LPC's role contains significant technical elements, in the management of economic evidence, and these form a core part of its operation.

Conclusion 2: The operation of LPC as a technical function generating a respected evidence base and conclusions is highly valued by all parties. Although other parts of government could perform these functions, a valuable body of expertise has been developed in the current Secretariat.

Conclusion 3: The successful operation of the LPC since its inception has ensured that a controversial area of policy has secured broad acceptance.

Conclusion 4: The LPC's impartiality and perceived balance between academic, employer and trade union interests is highly valued by all parties, and is seen as essential to the delivery of a sensitive policy area.

Conclusion 5: While all parties broadly agreed that there was no overwhelming technical barrier to an abolition of the LPC and its absorption into BIS, all parties stressed a range of concerns that would flow from such a change – in particular the increased likelihood of uncertainty about the nature and timing of potential NMW decisions, should a less overtly economic and technical approach be adopted.

Conclusion 6: We therefore conclude that the LPC satisfies the three tests in that it performs a technical role, and delivers appropriate impartiality and independence for a politically sensitive (rather than regulatory or funding) function.

Conclusion 7: given the LPC's clear and focused rationale, and the strong endorsement of all stakeholder groups for its independence and technical/analytical approach to the challenge, the current organisational structure is appropriate and should not be changed.

Conclusion 8: Given the small size of the LPC and the continuing process of budgetary reduction, no change to organisational structure would be likely to yield material savings to balance the risks of disruption arising from any major change of structure.

Conclusion 9: As set out in Annex G, we have reviewed the potential for merger with OME and believe it to offer limited or no scope for savings, and be attended with significant risks.

Stage 1 Recommendation

Recommendation 1: We recommend that the LPC continue to operate as a statutory advisory NDPB, and that it be considered to have met the Cabinet Office's test criteria.

Stage 2 Recommendations

Recommendation 2: The LPC reviews its current cross-government working practices with HMRC with the aim of improving them where necessary to ensure closer working and better shared understanding.

Recommendation 3: The LPC develops and agrees Terms of Reference which bring together what is already agreed as part of the NMW Act and remit, including the understood and accepted goal to raise the wages of the lowest paid without damaging employment or the economy.

Recommendation 4: The BIS sponsor team should work with the LPC to develop and expand the Framework Agreement to include the role of the sponsor team, in line with BIS guidelines and best practice.

Recommendation 5: The BIS Departmental Board should receive an annual performance report on the LPC from the BIS sponsor team to allow ongoing performance and impact to be monitored and assessed.

Recommendation 6: The LPC should publish the Code of Practice for the Low Pay Commission on the LPC web site (Annex I) and this document should be amended to capture in one place all relevant duties and other obligations.

Review Stage 1: Functions

7. This section sets out the detailed findings, conclusions and recommendations from Stage One of the Triennial Review of the Low Pay Commission. It makes formal recommendations on the functions and appropriate forms of the LPC. This is not a review of National Minimum Wage policy.
8. The Low Pay Commission (LPC) was established as an independent body by the National Minimum Wage Act 1998, in order to advise the Government about the National Minimum Wage.

Stage 1 Process

9. In line with Cabinet Office guidance, the first stage of the review identifies and examines the key functions of the LPC. It assesses how the functions contribute to the core business of the LPC and the sponsor department, and considers whether the functions are still needed. Where the conclusion is that a particular function is still needed, the review should then examine how this function might best be delivered.
10. The review therefore includes an assessment against the government's 'three tests' for the NDBP delivery option:
 - Is this a technical function (which needs external expertise to deliver)?
 - Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?
 - Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?
11. We argue that LPC essentially delivers a single function – independent advice to ministers on the basis of which they set the National Minimum Wage – but we also review the activities performed by LPC to exercise this function.
12. The review then examines a wide range of delivery options:
 - Abolish
 - Move out of Central Government (e.g. to voluntary or private sector)
 - Bring in-house (e.g. to an existing Executive Agency of BIS)
 - Merge with another body
 - Delivery by a new Executive Agency
 - Continued delivery by an NDPB.
13. The review assesses each of these options, and where appropriate, includes a cost and benefits analysis.

Our approach to the Review

14. A consultation letter (Annex A) on the Triennial Review was sent to stakeholders of the Low Pay Commission on August 2nd 2012, setting a response deadline of 31 Aug 2012. A reminder was sent on the 31 Aug 2012. These stakeholders, listed at Annex B, included LPC commissioners, Devolved Administrations, analytical experts, Trade Unions, employer bodies, and other government departments.
15. We received 25 responses (around fifty percent of stakeholders contacted), with representatives of each stakeholder group.
16. In addition we received two written responses from LPC commissioners, two responses from the devolved administrations, two responses from bodies involved in analysis, four responses from business representatives and three from other government departments, as well as five responses from BIS colleagues. We also received verbal input from LPC commissioners, including David Norgrove, the independent Chair.
17. The review team attended a meeting of the Commission, and accompanied Commissioners on two regional visits.
18. In addition to the consultation, invitation letters to workshops were sent on 4 Sept 2012 to stakeholders. Separate workshops were held with representatives from Business and Trade Unions and other representatives, as well as separate meetings with representatives from the National Minimum Wage sponsor and policy team in BIS, the enforcement team in HMRC, the secretariat of the Office of Manpower Economics (OME) and policy leads in HMT.
19. This report uses the responses from both the consultations and subsequent meetings, as well as examining the outputs and achievements of the LPC over the last thirteen years, to judge whether the functions of the LPC still meet the three criteria of technical expertise, political impartiality and independence from ministers. We also use these responses to inform our recommendations on the preferred modes of delivery.

Current structure of the LPC

20. The LPC consists of 9 Commissioners of whom three have a Trade Union background, three have an employer background and two are academic labour market economists, plus an independent Chair, David Norgrove. Each Commissioner serves in an individual capacity and not as representatives of the organisations for which they work..
21. The Commissioners are supported by a Secretariat of 8 staff, which works to provide an evidence base on which the LPC can base its findings, and to provide administrative support for the Commissioners.

22. The Commissioners meet several times a year, undertake a programme of fact-finding visits, hold oral evidence gathering sessions, take written evidence and hold a 2 day retreat at which they decide on recommendations to government on the National Minimum Wage (NMW) rates. A table summarising the activities undertaken by commissioners throughout the year is given at Annex D. The LPC, including the Secretariat receives its funding from BIS, and the relationship between the two organisations is governed by a Framework Agreement (Annex F).
23. The LPC's budget has been reducing year-on-year since 2010/11. In 2012-13 the LPC budget is £827,000. The budget is split between research, secretariat staffing, and other costs in particular travel.
24. The below table shows the LPC's actual expenditure years from 2009/10, and the planned expenditure for 2012/13. Staff costs this year are around 10 per cent less than 2009/10 and over the same period the headcount has reduced from 8.6 to 7.6 FTE.

	2009/10	2010/11	2011/12	2012/13
Salaries	533,000	537,000	492,000	482,000
Research	215,000	278,000	315,000	272,000
Total T&S (including Commissioners Fees) of which:	45,000	38,000	34,000	39,000
commissioners fees	unavailable	14,000	12,000	
Commissioners T&S	unavailable	11,000	13,000	
Secretariat T&S	unavailable	13,000	9,000	
Other**	82,000	34,000	31,000	34,000
Total	875,000	887,000*	872,000	827,000

**initial allocation was £910,000, but reduced in-year.*

*** includes stationery, training, office machines, IT, publications, entertainment, postage, conference (i.e. the retreat), and the Annual*

Report production. The Annual Report production and retreat account for about 60% of this expenditure.

25. The Secretariat reports expenditure to BIS on a monthly basis, and all expenditure is made in accordance with BIS departmental guidelines. The LPC Secretariat is staffed by BIS employees, and the LPC is supported by BIS finance and HR systems. Sponsorship of the LPC is provided by a team within the Labour Markets Directorate of BIS.

Function of the LPC

26. The Low Pay Commission (LPC) was established as an independent body as a result of the National Minimum Wage Act 1998 to advise the Government about the National Minimum Wage. The LPC has the status of a statutory advisory NDPB.
27. The LPC undertakes a range of activities, including monitoring and evaluating the impact of the National Minimum Wage, particularly the effect on pay, employment and competitiveness in low paying sectors and small firms; the effect on different groups of workers; the effect on pay structures; and the interaction between the minimum wage and the tax and benefit systems. This allows LPC to make recommendations to Government on the level of the National Minimum Wage adult, development, 16-17 year old and apprentice rates and the accommodation offset.
28. Each year the Government sets the remit for the LPC's next report, which mainly seeks its minimum wage rate recommendations. The LPC's aim is to have "a minimum wage that helps as many low-paid workers as possible without any significant adverse impact on employment or the economy", and the Prime Minister has endorsed this goal. The Low Pay Commission's remit for the 2013 report is given in Annex E. The LPC Annual Reports and recommendations are considered by the National Minimum Wage policy team within BIS who are also the LPC sponsors.
29. The LPC and Secretariat undertake the following activities in order to fulfil the remit:
- Research and consultation
 - Commission research projects
 - Analyse In house data and encourage the Office of National Statistics to establish better estimates of the incidence of low pay
 - Carry out surveys of firms in low-paying sectors

- Consult employers, workers and their representatives
 - Take written and oral evidence from a wide range of organisations
 - Undertake fact-finding visits throughout the UK to meet employers, employees and representative organisations
 - Liaise with relevant Government Departments
 - Public representation of the LPC at events, through the media, etc
30. The aim of the LPC is to ensure that the Government, in setting the minimum wage each year, has recommendations which enjoy the backing of employer and trade union representatives, and academic experts. The review team was struck by the LPC's intense focus on maintaining its evidence base and ensuring that LPC's deliberations, and discussions and external visits focus closely on evidence.
31. The 2009 BIS Report, *"Better regulation, better benefits: getting the balance right"* noted that:
- "Most of the success of the regulation is rightly attributed to the Low Pay Commission, which has the colossal task of consulting business representatives, Trade Unions and the Government, collecting both economic and non-economic evidence and recommending new rates to Government each year. The Commission's work has earned a high regard amongst stakeholder groups, in no small part due to trust in its independence. For such a controversial subject, this arms-length input seems especially valuable."
32. The LPC was reviewed in July 2010 as part of the post election scrutiny of arms length bodies across Government, and was not subjected to major change as a result.

ANALYSIS OF LPC FUNCTIONS

The review team has assessed again the LPC against each of the government's 'three tests':

Test 1: Is this a technical function (which needs external expertise to deliver)?

33. This section examines whether or not the functions that the Low Pay Commission performs are 'technical' in that they require specialist skills and expertise, and, if so, whether or not the Low Pay Commission possesses the necessary skills to complete the functions to a high standard.

In-house analysis of data and research findings

34. A key part of the evidence base for recommendations and LPC Reports comes from the LPC's analysis of data including monthly labour market, macroeconomic, and pay/prices analysis. It also involves the use of micro-data from the Annual Survey of Hours and Earnings (ASHE) and Labour Force Survey (LFS).
35. The LPC also analyses National Minimum Wage rates and methodologies in other countries. These rates are set using a wide range of methods. A summary is given at Annex C, taken from the National Minimum Wage Report, 2011.

Commissioning research

36. The LPC commissions research projects. The LPC's terms of reference for the research programme were confirmed in 2001. The annual remits from government will in addition identify any specific topics or perceived evidence gaps for that year's review. For example in recent years specific reports have been commissioned on the impact of the NMW on earnings and employment during the recession, and the impact on young people.
37. The response from many stakeholders as well as the LPC's recent internal process review was that commissioned research is still essential for informing the LPC's advice and recommendations. Though, as discussed below there were some suggestions to reduce the quantity of commissioned reports. The commissioned research allows an independent look at the impact of the NMW and therefore gives added credibility to the Commission's findings among stakeholders. The commissioned research also looks into detail at specific issues, which in-house time and other resources would not allow.
38. When mentioned by stakeholders it was always agreed that the framing and commissioning of these research projects requires a high level of specialist skill, as does making the most effective use of their results within the overall analysis. The Secretariat estimated, as part of its process review that the resources consumed in 2011 on in-house analysis represented around £140,000 of the LPC's budget.

Other analytical evidence gathering

39. The LPC gathers additional evidence through surveys of firms in low-paying sectors; consultation with employers, workers and their representatives; written and oral evidence; and fact-finding visits throughout the UK.
40. In the triennial review workshops, while some of the representatives from business questioned the need for continuing the fact-finding visits, this area of research received strong support from the Trade Union representatives, who stressed the need for 'real life' examples to inform recommendations.

Comments received

41. Some additional examples of stakeholder responses on the technical nature of the LPC's function are in box 1 below.

Box 1: Evidence from stakeholder responses on whether the LPC performs a 'technical' function

Welsh Government: The nature of the policy means that accurate assessment of the impact of the minimum wage is central to its implementation. Assessing the impact of the minimum wage can be technically complex that requires specialist knowledge.

TUC. The LPC's work is to a considerable degree a technical issue. There is a strong sense that advising on the NMW is to a considerable degree a technical issue, where a wealth of evidence must be weighed, debated and synthesized in order to generate each recommendation. This is a complex task that could not be completed properly by anybody who had not spent a lot of time immersed in consideration of the evidence around the NMW, or who had not had the opportunity of debating the issue fully with the stakeholders and leading academics.

TUC. [The LPC's]... role includes commissioning and evaluating evidence on a broad range of aspects of the NMW, including not just the rates, but also the minutiae of the enforcement regime and a range of narrow issues such as the use of the accommodation offset... This kind of question benefits from evaluation by experts within an institution that has both in-depth knowledge of the subject and also organisational continuity.

CBI. Equally important is that a broad range of factors – including affordability, competitiveness, productivity, unemployment and the economic climate – are considered when looking at the potential impact of the rate.

LPC Commissioner. The work of the Commission is also quite technical, thus justifying the use of a specialist body to carry it out.

Some of the issues draw on specialist knowledge in a way that could only be handled well within an institution that can consider them over a number of years. For example, at the moment the LPC is looking at the future of the accommodation offset. This is a difficult issue involving some hard-to-reach groups of people.

Does the LPC have the technical expertise necessary?

42. There was a strong positive response from stakeholders on the LPC's technical expertise, both for the secretariat and the commissioners.

43. The level of expertise for in house analysis was praised in the workshops and meetings by representatives from Trade Unions, business and HMRC. The statistical and economic analysis was found to be accurate, thorough and clearly presented. The Department of Business Innovation and Skills continues to use the LPC's work and analysis throughout the year, and the annual report has become of great wider value for response to inquiries on employment related issues.
44. For both the commissioned research and the other forms of evidence gathering, the responses from meetings and workshops were again very positive. The commissioned reports are of high quality are provided by the leading labour market economists and research institutions, and both Trade Unions and business representatives praised the way LPC took on board the other forms of evidence gathered for an example through survey work.
45. The fact that the Commission contains representatives from Trade Unions, businesses as well as academics from different universities was praised for bringing a mix of expertise and providing differing perspectives, making the analytical assessment and recommendations more rigorous. None of the respondents have suggested that the LPC lack the technical expertise to complete these functions. Some examples of stakeholder responses on this topic are recorded in the box below.

Box 2: Evidence from Stakeholder Responses on whether the LPC has the necessary level of technical expertise.

Welsh Government on the Triennial Review of the Low Pay Commission (LPC). The LPC commissions the assessment work which is then performed by academics who are experts in their field. The commissioners have the expertise needed to decide upon the research needed to inform policy and to assimilate the findings of the research.

CBI. The LPC's programme of longer-term research also allows for high quality analysis of the NMW and its impact, and particularly supports the establishment of an evidence base which looks at the longer term impact and at less well-understood aspects of the NMW, such as the apprentice rate.

CBI. In our view the LPC's key strength are its independence and rigorous approach. We value the independence of the Commission and the fact that,

as Commissioners are drawn from a range of employee, business and academic backgrounds, the resulting recommendations are independent and evidence based with the LPC having undertaken extensive research and consultation with employers, workers and their representatives. This process allows the recommendations to continue to be supported by employees, employers and the Government.

CBI. We maintain a good relationship with the LPC and believe that we have sufficient opportunities to get involved in both their core work and in commenting on or influence the programme of work, if necessary. The visits programme, allowing commissioners to gather 'on the ground' experience of the impact of the NMW, is a valuable way for the LPC to see policies in action.

LPC Commissioner. I am absolutely certain that this inquiry [accommodation offset]... could not be handled so competently outside of the LPC.

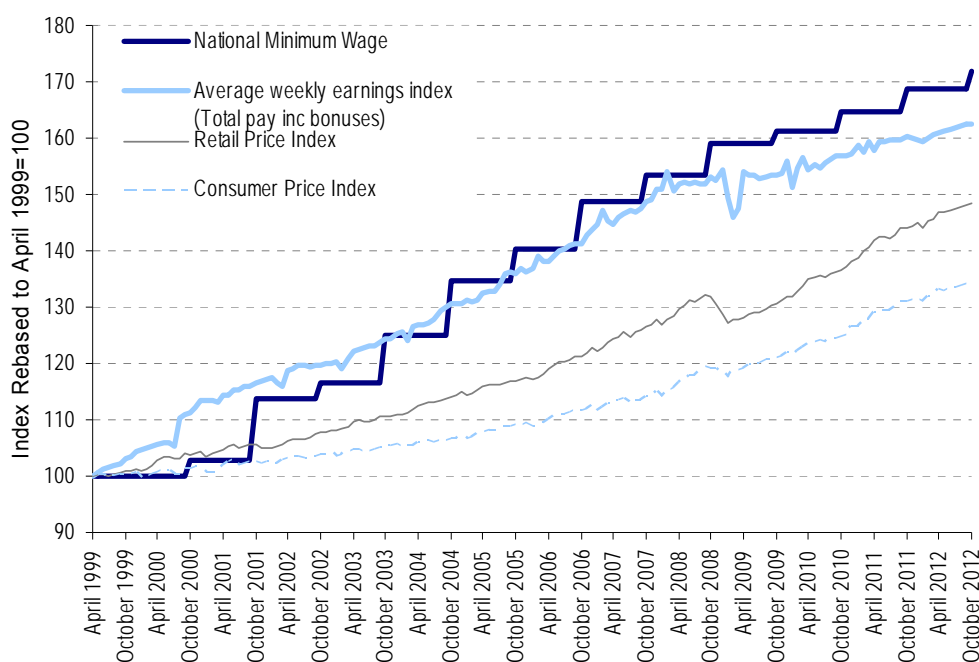
The LPC conducts its business by testing every fact, economic prediction and piece of evidence in debate. The LPC also commissions independent research to help it to see the prospects for the minimum wage more clearly. Our recommendations emerge through a hard fought examination of the available evidence. The independence of the commission and the vigour of its internal debate mean that it produces what is generally accepted to be the definitive view on minimum wage issues.

46. The LPC's aim, as set by Government, is to identify "a minimum wage that helps as many low-paid workers as possible without any significant adverse impact on employment or the economy."

47. When first introduced the level of the National Minimum Wage was set cautiously. After its introduction compliance was shown to be high, and the minimum wage has been widely accepted. There were several significant up-ratings in the period 2001–2006, meaning that the adult minimum wage has increased by around 70 percent, considerably higher than inflation or average earnings. (See Chart 1 below). This can be construed as an indication of effective influence on policy through accurate technical working.

Chart 1: Adult NMW increases compared to earnings growth and inflation estimated to October 2012

Index Rebased to April 1999 = 100



Source: Office for National Statistics; Retail Price Index, Consumer Price Index and Average Weekly Earnings. Low Pay Commission; National Minimum Wage. Between April 1999 and December 1999 Average Weekly Earnings was extrapolated using the Average Earnings Index. Actual data until May 2012 for RPI and CPI followed by BIS estimates based on HMT independent forecasts. Actual data for earnings until April 2012 followed by BIS estimates based on HMT independent forecasts.

48. There has been no discernable negative impact on employment or the economy resulting from these annual increases, and employment in the low paid sectors has remained resilient even during the current recession. (See Chart 2 below).

Chart 2: Annual jobs growth

Annual per cent change Index Rebased to 2008 Q1 = 100



Source: Office for National Statistics, Employee jobs

Test Two: Is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions)?

Test Three: Is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity?

49. This section examines whether the LPC performs a function which needs to be, and be seen to be, delivered with absolute political impartiality and also whether it needs to be delivered independently of Ministers to establish facts and/or figures with integrity. In the context of the Low Pay Commission, it is not possible to separate these two tests, and so they will be considered together.

50. All stakeholders who expressed a view stressed their desire that the LPC Secretariat and Commissioners need to be, and be seen, as absolutely politically impartial and independent.

51. This was a key theme that was repeated widely and highly valued for reasons including:

- National Minimum Wage policy and other related policy areas (such as the Living Wage) are politically contentious.
- Understanding by stakeholders that recommendations are arrived at without political interference allows acceptance of the recommendations, even when there are areas of disagreement. In addition, this is seen as helping embed any changes and decisions.
- Stakeholders were clear that they felt able and comfortable to provide open, candid and complete evidence to the LP Commissioners because they were assured of the integrity and independence of the LPC.
- The 'real-world' experience that the LP Commissioners bring by coming from a range of employee, business and academic backgrounds is seen as being an important factor in ensuring a robust analysis of evidence and recommendations that are generally supported by employers, employees and the Government.
- The LPC recommendations are accepted UK-wide and the consent of the Devolved Administrations is facilitated by the LPC's independence.

52. Sample stakeholder responses relating to the requirement for the LPC to be politically impartial and independent are given in Box 4.

Box 4: Evidence from Stakeholder Responses on the requirement for the LPC to be politically impartial and independent.

UNISON. The LPC has a clear, established, impartial and popular identity. It passes, in our opinion, the second and third tests for an NDPB existence; namely the need for political impartiality. It also is of great value to low paid workers to have an independent commission with a clear process of evidence gathering when austerity and the economy is at centre stage of national political and media debate. Such a dispassionate approach means that evidence of falling living standards, rising costs and the state of the labour market will be taken in to account rather than political imperatives and messages.

Welsh Government: It is essential that stakeholders have absolute confidence in the independence and integrity of the LPC. This can be achieved only if its recommendations on the National Minimum Wage are seen to be free from manipulation. The LPC publishes all the work it commissions. All work is peer reviewed and authors are obliged to present their work at seminars organised by the LPC. The research published by the LPC is viewed by the academic community as being of a high standard and free from manipulation. This integrity might be seen to be compromised if the arrangements were no longer perceived to be as robust and independent.

CBI. While in principle the NMW is now widely accepted and supported, the appropriate rate remains a subject of contention, particularly as the economy remains fragile. The political nature of pay policy means the independence and integrity of the LPC are vital to ensuring its recommendations are relevant and appropriate to the labour market. In our view the LPC's key strength are its independence and rigorous approach. We value the independence of the Commission and the fact that, as Commissioners are drawn from a range of employee, business and academic backgrounds, the resulting recommendations are independent and evidence based with the LPC having undertaken extensive research and consultation with employers, workers and their representatives. This process allows the recommendations to continue to be supported by employees, employers and the Government.

British Hospitality Association. If government was controlling the process within a Department, the integrity (to use the wording in your third test) would be at risk. The fact that the National Minimum Wage has not been controversial in practice, even when it was rising sharply, owes much to the LPC's perceived independence.

TUC. Political impartiality is essential. First, setting the NMW is a function which needs to be, and be seen to be, delivered with absolute political impartiality. The LPC goes through a process of balancing conflicting evidence and building consensus that would be impossible for Government itself to deliver. Whilst some LPC recommendations may attract criticism from

one stakeholder or another, any recommendations from government would be certain to attract roars of protest. The TUC's view is that government would be wise to take every precaution to ensure that impartiality is always maintained to the highest degree.

In addition, in some countries where government has a more direct role in generating the rates, there has sometimes been a tendency to use the minimum wage as a "political football". In these cases, perhaps unsurprisingly, the biggest rate increases precede elections but take little account of what the labour market will bear. In these countries the minimum wage is a constant point of political contention.

The work of the LPC is a function which needs to be delivered independently of Ministers to make a robust assessment that balances the broad aim of bearing down on poverty pay with a complex assessment of what will be sustainable involves absorbing vast amounts of evidence, synthesising a view, and debating that view with other stakeholders in order to reach a rounded recommendation.

Triennial Review: Conclusions on the three tests

53. The Triennial Review team therefore proposes the following conclusions against the three steps:

- **Conclusion 1: The LPC's role contains significant technical elements, in the management of economic evidence, and these form a core part of its operation.**
- **Conclusion 2: The operation of LPC as a technical function generating a respected evidence base and conclusions is highly valued by all parties. Although other parts of government could perform these functions, a valuable body of expertise has been developed in the current Secretariat.**
- **Conclusion 3: The successful operation of the LPC since its inception has ensured that a controversial area of policy has secured broad acceptance.**
- **Conclusion 4: The LPC's impartiality and perceived balance between academic, employer and trade union interests is highly valued by all parties, and is seen as essential to the delivery of a sensitive policy area.**
- **Conclusion 5: While all parties broadly agreed that there was no overwhelming technical barrier to an abolition of the LPC and its absorption into BIS, all parties stressed a range of concerns that would flow from such a change – in particular**

the increased likelihood of uncertainty about the nature and timing of potential NMW decisions, should a less overtly economic and technical approach be adopted.

- **Conclusion 6: We therefore conclude that the LPC satisfies the three tests in that it performs a technical role, and delivers appropriate impartiality and independence for a politically sensitive (rather than regulatory or funding) function.**

Stage One, part 2: Analysis of LPC optimal form

54. On the basis of the above conclusion that the LPC's functions remain of value, we explore below the alternative structures within which they could be exercised. The models offered are those set out in the Cabinet Office guidance on Triennial Reviews.

Delivery model	Appropriate ?	Comments
Abolish	No	<ul style="list-style-type: none"> • As concluded above, the LPC provides a valuable function and absorption by BIS would be regarded as high risk. • Delivery of recommendations by the LPC is seen as a key function by all stakeholders. • Abolition of the LPC would require a change to primary legislation.
Maintain the status quo (NDPB – using the three tests)	Yes	<ul style="list-style-type: none"> • Analysis of the LPC function against the three tests indicates a strong requirement to maintain the status quo and no evidence to indicate otherwise.
Move out of Central Government (e.g. to voluntary or private sector)	No	<ul style="list-style-type: none"> • There would be resistance and lack of buy-in from key stakeholders, including the Trade Unions and Business Bodies. • No obvious recipient body exists (e.g. charity, university, think tank). • There are unlikely to be significant cost savings as the independent research element of the LPC would still be required. • The LPC is seen as a credible organisation, and has established a track record which offers stakeholders predictability. A new supplier would have to develop a comparable level of market confidence over multiple annual cycles. • Charities are exempt from paying the National Minimum Wage under some circumstances and therefore this could lead to a conflict of interest.

Bring in-house (e.g. to an existing Executive Agency of BIS)	No	<ul style="list-style-type: none"> • This could result in some cost savings through a reduction in Secretariat costs, although the research budget would still be required, and other overhead costs of LPC are absorbed by BIS which might require to be recognised in an Agency budget. • The loss of independence of the LPC Commissioners and Secretariat would be damaging to the function of LPC as described above.
Merge with another body	No	<ul style="list-style-type: none"> • A merger with the Office of Manpower Economics (OME) was considered in 2010, but rejected. The OME reviews public sector pay, while the LPC's remit covers private sector low pay. Both stakeholder workshops stressed that the real and perceived differences would cause difficulties for stakeholder acceptance. • OME/LPC co-location and some sharing of admin functions have resulted in small cost-savings. • Merger with OME has been reviewed in more depth in Annex G and we set out our recommendations against it there. • No other bodies with appropriate synergies with the LPC have been identified.
Delivery by a new Executive Agency	No	<ul style="list-style-type: none"> • An Executive Agency would appear to lack the independence from Government stressed as desirably by all stakeholders. The transition costs and risks would not be justified.

55. No stakeholders argued in support of change to the LPC's organisational form.

56. Many stakeholders noted the risk to the continued political, social and economic success of the NMW that would result from making any changes to the current structure of the LPC. The potential for conflict of interest was highlighted as a significant risk that could result from other delivery models, particularly any involving the private or third sector.

57. Examples of stakeholder responses relating to the requirement for the LPC to continue in its current form are given in Box 5.

Box 5: Evidence from Stakeholder Responses on the requirement for the LPC to continue in its current form.

TUC. Abolition would leave a complete vacuum and would thus be unfeasible; delivery outside of government would cause outrage, with either employers or workers absolutely certain to think the process completely unfair; direct ministerial control would of course be possible but not desirable, as it would weaken confidence in the fairness of the NMW and would be likely lead to less well-balanced recommendations; and we can see no argument at all for establishing a different type of executive body. The LPC should continue to advise the government on developing the minimum wage. The criteria in the Cabinet Office review asks us to consider a range of options. Having done so, the TUC's assessment is that the Low Pay Commission is by far the best option for advising the Government on the NMW.

UNISON. UNISON believes that the Low Pay Commission (LPC) should continue to be delivered by an independent and separate Non-Department Public Body (NDPB) and not bought under direct influence of ministers, merged or outsourced. It has we believe the support of trade unions and business organisations.

Stage one, Part 2: Triennial review team conclusions on LPC form

58. We conclude that:

Conclusion 7: given the LPC's clear and focused rationale, and the strong endorsement of all stakeholder groups for its independence and technical and analytical approach to the challenge, the current organisational structure is appropriate and should not be changed.

Conclusion 8: Given the small size of the LPC and the continuing process of budgetary reduction, no change to organisational structure would be likely to yield material savings to balance the risks of disruption arising from any major change of structure.

Conclusion 9: As set out in Annex G, we have reviewed the potential for merger with OME and believe it to offer limited or no scope for savings, and be attended with significant risks.

Recommendations

59. We therefore recommend as follows:

Recommendation 1: We recommend that the LPC continue to operate as a statutory advisory NDPB, and that it be considered to have met the Cabinet Office's test criteria.

Review Stage 2: Governance

60. The Minister for Employment Relations and Consumer Affairs concluded on 30 January 2013, in response to the stage 1 report of this Triennial Review, that the Low Pay Commission (LPC) should remain an advisory NDPB. This section sets out the findings of Stage 2 of the Review, which concluded in January 2013.
61. The second stage of the Review considers how far LPC's practice aligns with principles of good governance. The assessment is summarised below, and set out in detail in Annex H.

Accountability

62. The Review Team found the Low Pay Commission (LPC) to be compliant in all required aspects of accountability.
63. The LPC is an advisory body, established by the National Minimum Wage (NMW) Act 1998, in order to advise the Government about the NMW. The Act specifies that, if matters are referred to the LPC, the LPC is to provide a report setting out its recommendations to the Government. The Act also requires that the report be published.
64. The Commissioners who sit on the LPC are appointed in accordance with the Code of Practice issued by the Commissioner for Public Appointments. The Employment Minister and Secretary of State (for BIS) are accountable for the overall performance of the LPC and arrangements are in place to ensure accountability for its work and the way it does it.
65. In addition to the areas covered in Annex H, the Review Team found one area where closer working could improve the accountability and effectiveness of not only the LPC but also wider government. HMRC has responsibility for increasing compliance with the NMW and effectively enforcing it. In 2010 BIS and HMRC published a joint NMW Compliance Strategy with input from the LPC's secretariat. However, evidence from the HMRC compliance team indicated that a clearer understanding of the work of the LPC would inform a more effective Compliance Strategy.
66. **Recommendation 2: The LPC review its current cross-government working practices with HMRC with the aim of improving them where necessary to ensure closer working and better shared understanding.**

Role of the Sponsoring Department

67. The Review Team found the BIS sponsoring team and LPC to be compliant in most aspects of governance and oversight.

68. The NMW policy team within BIS are the LPC's sponsors. The NMW policy team annually sets, on behalf of Government, the remit for the LPC's next report, which mainly seeks its minimum wage rate recommendations.
69. Although implicit within the NMW Act and annually agreed remit, the Review Team found that the LPC does not have an explicit Terms of Reference document. In addition, the Team noted that the Government-endorsed goal to have "a minimum wage that helps as many low-paid workers as possible without any significant adverse impact on employment or the economy", was not included explicitly in either the Act or remit.
- 70. Recommendation 3: The LPC develop and agree Terms of Reference which bring together what is already agreed as part of the NMW Act and remit, including the understood and accepted goal to raise the wages of the lowest paid without damaging employment or the economy.**
71. The Review Team found some discrepancy between what the sponsor team considered the role of the LPC to be and the LPC Secretariat view, particularly with regard to the strict adherence to the annual remit. This has resulted in some tension, which although it can be healthy could also result in disagreement.
72. The Review Team found that the Framework Agreement between the LPC and sponsor team set out clearly the role of the LPC, but there was no clear written agreement about the role of the sponsor team.
- 73. Recommendation 4: The BIS sponsor team should work with the LPC to develop and expand the Framework Agreement to include the role of the sponsor team, in line with BIS guidelines and best practice.**
74. In addition, the Review Team agrees with the BIS sponsor team's assessment that BIS's Department Board does not currently receive adequate information to allow the appropriate level of scrutiny of the LPC.
- 75. Recommendation 5: The BIS Departmental Board should receive an annual performance report on the LPC from the BIS sponsor team to allow performance and impact to be assessed.**

Roles of the Chair and Board Members

76. The Review team found the LPC to be compliant in all aspects of governance relating to the role of the LPC Chair and Board Members. The Commissioners who sit on the LPC are appointed in accordance with the Code of Practice issued by the Commissioner for Public Appointments. Their roles and responsibilities, terms of office and remuneration are made clear to them in the letter of employment (Annex I) and Code of Practice (Annex J), although it would be preferable if these elements were in a single document.
77. However, to ensure even greater transparency, all relevant documentation relating to the role of the Chair and Board Members should be available on the LPC web site.
- 78. Recommendation 6: The LPC should publish the Code of Practice for the Low Pay Commission on the LPC web site (Annex I) and this document should be amended to capture in one place all relevant duties and other obligations.**

Communications

79. The Review team found that the LPC complies with most specified communication requirements.
80. However, the LPC does not publish meeting agendas and minutes. The Review team is supportive of this approach. This is because the meetings often cover policy development and it could be unhelpful and confusing to publish records of these discussions until the fully formed policy has been agreed. In addition, the published LPC Annual Report includes a full and comprehensive record of all the work undertaken by the LPC over the previous year, including externally commissioned research reports of survey of employers.

Conduct and Behaviour

81. The Review team found the LPC to be compliant with most specified conduct and behaviour requirements.
82. The only area of discrepancy was found to be in relation to future employment of members of the body, where the LPC has no rules currently in place. The Cabinet Office Code of Conduct for Board Members of Public Bodies states that on leaving office a person must comply with the rules of the body on the acceptance of future employment or appointments. On the basis that there are no obvious restrictions arising from the work of the LPC, other than the general rule of confidentiality, the Review team recommends that the LPC does not need to establish any rules for LPC Commissioners.

Conclusion and Recommendations

83. The Stage 2 assessment has found that LPC governance largely complies with Cabinet Office's principles of corporate governance. In some instances where it does not, this is for good reasons, arising from LPC's role in policy development.
84. However, the Review has also identified several opportunities to make improvements, to help BIS to make the best use of the LPC, the sponsor team and wider government.

Summary of Stage 2 recommendations

Recommendation 2: The LPC reviews its current cross-government working practices with HMRC with the aim of improving them where necessary to ensure closer working and better shared understanding.

Recommendation 3: The LPC develops and agrees Terms of Reference which bring together what is already agreed as part of the NMW Act and remit, including the understood and accepted goal to raise the wages of the lowest paid without damaging employment or the economy.

Recommendation 4: The BIS sponsor team should work with the LPC to develop and expand the Framework Agreement to include the role of the sponsor team, in line with BIS guidelines and best practice.

Recommendation 5: The BIS Departmental Board should receive an annual performance report on the LPC from the BIS sponsor team to allow ongoing performance and impact to be monitored and assessed.

Recommendation 6: The LPC should publish the Code of Practice for the Low Pay Commission on the LPC web site (Annex I) and this document should be amended to capture in one place all relevant duties and other obligations.

Annex A - Email text sent to stakeholders to request evidence for the LPC Triennial Review.

Mr Normal Lamb announced in a Written Ministerial Statement on 10 July that his Department would be conducting a Triennial Review of the Low Pay Commission (LPC) as part of BIS's routine programme of reviewing all of its Non Departmental Public Bodies (NDPBs).

The review team (Mitchell Leimon, Claire Goldstraw and Asad Ghani) is conducting the LPC Triennial Review and expects to submit its initial conclusions in early October. This team is drawn from other groups in BIS in order to bring a measure of independence.

The team would welcome comments from stakeholders on the work of the LPC, bearing in mind the scope of the reviews as set out below in the Cabinet Office guidance. We would particularly welcome comments by August 31.

All respondents, whether or not planning to comment, are invited to indicate by 31 August whether they would like to attend a workshop/challenge panel (currently planned for 20 September) noting where appropriate any particular discussion points.

We provisionally intend to hold up to three workshops on 20 September, aimed respectively at i) business ii) Trade Unions iii) think tanks and other bodies interested particularly in the LPC's analytical work. Your comments on this approach are welcome.

Responses are welcome from other Government Departments, and these will be followed up in meetings and correspondence in September. Please contact claire.goldstraw@bis.gsi.gov.uk, or telephone 07876 590674 with responses or queries.

The Triennial Review is not a review of policy on the National Minimum Wage.

Context:

The aim of the review is set out in the Cabinet Office guidance as follows:

Scope of Triennial Reviews

"Triennial Reviews have two principal aims:

- (i) to provide a robust challenge of the continuing need for individual NDPBs – both their functions and their form; and
- (ii) where it is agreed that a particular body should remain as an NDPB, to review the control and governance arrangements in place to ensure that the public body is complying with recognised principles of good corporate governance.

The first stage of the review should identify and examine the key functions of the NDPB. It should assess how the functions contribute to the core business

of the NDPB and the sponsor Department and consider whether the functions are still needed. Where the Department concludes that a particular function is still needed, the review should then examine how this function might best be delivered.

When assessing how functions should be delivered, the review should examine a wide range of delivery options. This should include whether the function can be delivered by the local government, voluntary or private sectors. It should also include an examination of different central government delivery models, including whether the function can be delivered by the sponsoring Department, by a new or existing Executive Agency or by another existing central government body. It is Government policy that NDPBs should only be set up, and remain in existence, where the NDPB model can be clearly evidenced as the most appropriate and cost-effective model for delivering the function in question.”

The Government’s three tests for the existence of an NDPB are:

1. is this a technical function (which needs external expertise to deliver);
2. is this a function which needs to be, and be seen to be, delivered with absolute political impartiality (such as certain regulatory or funding functions);
3. or is this a function which needs to be delivered independently of Ministers to establish facts and/or figures with integrity.

Delivery options for review

□ **Abolish.** Why does the function need to continue? How does this contribute to the core business of the NDPB and the parent Department? How does this contribute to wider Government policy objectives? Is there a demand for the function or activity from users? Is providing the function a justifiable use of taxpayers’ money? What would be the cost and effects of not delivering the function?

□ **Move out of Central Government** Why does central government need to deliver this function? Can the function be delivered by local government, by the voluntary sector or by the private sector? Is there an existing provider (or providers) in the local government, voluntary or private sector that could deliver this function? Can the function be privatised or delivered under contract by the voluntary or private sector? Can the function be delivered by a mutual, Community Interest Company or social enterprise? What are the risks and benefits of moving the function out of central government?

□ **Bring In-House.** Why does the function need to be delivered at arms length from Ministers? Can the function be delivered more efficiently or effectively by the parent Department or by an existing Agency of the parent Department? What would be the cost and benefits of bringing the function in-house?

□ **Merge with another body.** Are there any other areas of central government delivering similar or complimentary functions? Does the function

duplicate work undertaken elsewhere? Could the function be merged with those of another public body?

☐ **Delivery by a new Executive Agency.** Could the function be delivered by a new Executive Agency? What would be the costs and benefits of this?

☐ **Continued delivery by a NDPB.** Does the function pass at least one of the Government's "three tests"? How well is the NDPB currently delivering the function? What is the view of users and stakeholders? Are the freedoms and flexibilities inherent in the NDPB model being used to deliver the function? Have all other possible delivery options been examined and evaluated?

The LPC's key purpose is to advise the Government about the National Minimum Wage.

Annex B: Stakeholder engagement

Internal Stakeholders:

1. Permanent Secretary	<i>No Response</i>
2. Vince Cable, Secretary of State	<i>No Response</i>
3. Norman Lamb, Minister for Employment Relations, Consumer and Postal Affairs	<i>No Response</i>
4. SPADs	<i>No Response</i>
5. M&LG Group including LMD	<i>Responded</i>
6. Strategy and Growth including Analysis	<i>Responded</i>
7. Apprenticeship Unit	<i>Responded</i>
8. Apprenticeship Unit	<i>Responded</i>
9. Geoff Dart, OME	<i>Responded</i>
10. BIS parliamentary branch	<i>No Response</i>

External Stakeholders:

11. Clerk, House of Commons Departmental BIS Select Committee	<i>No Response</i>
12. HMT	<i>Responded</i>
13. No.10	<i>No Response</i>
14. DEFRA	<i>No Response</i>
15. HMRC	<i>Responded</i>
16. Dept of Health	<i>Responded</i>

Business:

17. Confederation of British Industry	<i>Responded</i>
18. EEF (Manufacturers' Organisation)	<i>Responded</i>
19. Federation of Small Businesses,	<i>No Response</i>
20. British Chambers of Commerce,	<i>No Response</i>
21. British Retail Consortium	<i>Responded</i>
22. Forum of Private Businesses,	<i>Responded</i>
23. Association of Convenience Stores	<i>Responded</i>
24. British Hospitality Association	<i>Responded</i>
25. Federation of Master Builders	<i>No Response</i>
26. Homes for Scotland	<i>No Response</i>
27. Gangmaster Licensing Authority	<i>No Response</i>

Unions:

28. TUC	<i>Responded</i>
29. Unite	<i>Responded</i>
30. UNISON	<i>Responded</i>
31. USDAW	<i>Responded</i>

Analysis:

32. National Institute of Economic and Social Research	<i>No Response</i>
33. Policy Exchange	<i>No Response</i>
34. Social Market Foundation.	<i>No Response</i>
35. Resolution Foundation	<i>Responded</i>
36. Institute of Fiscal Studies	<i>Responded</i>
37. Institute of Government	<i>No Response</i>
38. Citizens Advice Bureau	<i>Responded</i>

Devolved Administrations:

39. Scottish Govt,	<i>No Response</i>
40. Welsh Assembly Govt	<i>Responded</i>
41. Northern Ireland Govt	<i>Responded</i>

LP Commissioners:

The review team met the Commission formally and met a range of Commission members informally, while also attending several regional visits. In addition two members provided written submissions.

42. David Norgrove	<i>Responded</i>
43. Susan Anderson	<i>Responded</i>
44. Peter Donaldson	<i>Responded</i>
45. Prof Bob Elliott	<i>Responded</i>
46. Neil Goulden	<i>Responded</i>
47. John Hannett	<i>Responded</i>
48. Prof Stephen Machin	<i>Responded</i>
49. Frances O'Grady	<i>Responded</i>
50. Heather Wakefield	<i>Responded</i>

Stakeholder Workshop Attendees

Business and other representatives

CBI

British Retail Consortium

British Hospitality Association

Association of Convenience Stores

Trade Union representatives

TUC

Unite

UNISON

USDAW

Apologies were received from:

Forum of Private Businesses

Resolution Foundation

All external stakeholders listed above were invited.

Annex C: International comparisons

Country Method of uprating (taken from the National Minimum Wage Report 2011).

Australia In April 2008 the Australian Government announced that the Australian Fair Pay and Conditions Standard, which set out base minimum conditions of employment such as the minimum wage, would be replaced by the National Employment Standards (NES). The NES came into effect in January 2010. The NES include minimum entitlements to pay, leave, public holidays, notice of termination and redundancy pay, operating alongside minimum wage orders.

Belgium The minimum monthly average guaranteed income is set for the private sector by collective labour agreements reached at the National Labour Council (social partners). All workers benefit from salary indexation which is currently set at 5.1 per cent until 2010 (this varies according to inflation).

Canada In most provinces, minimum wages are fixed (and increased) by regulation. A provincial Governor-in-Council has the authority to change regulations which are frequently based on recommendations of a Minimum Wage Board, Review Committee, Labour Standards Board or the Minister of Labour. The rate for the federal jurisdiction is the general adult minimum rate of the province or territory where the work is performed.

France The minimum wage is reassessed each year on 1 January. The uprating must be in line with inflation and at least half that of the increase in purchasing power of the average hourly wage. The wage is automatically raised by the price index increase if it increases by over 2 per cent during the year. The Government can also increase the minimum wage at any time.

Greece The National Minimum Wage is set by the National General Collective Labour Agreement (NGCLA) which is agreed by the social partners and then voted into law. The latest NGCLA was signed in July 2010 and covers a three-year period. The new agreement foresees a freeze in the minimum wage for 2010, and increases in line with Eurozone inflation for each of the following two years. There has also been a lowering of youth minimum wages.

Ireland The National Minimum Wage can only be increased following a recommendation in a national agreement. Where there is no national agreement the Labour Court can be asked to examine the minimum hourly rate. The Labour Court can then make a recommendation to the Minister. As part of wider government economic plans, a @1 an hour reduction in the minimum wage is due to be introduced in February 2011.

Japan The system operates regionally. The minimum wage is reviewed and amended each autumn. The Central Minimum Wage Council makes recommendations to the 47 Regional Minimum Wage Councils, comprising representatives of labour unions, employees and public agencies. The final

decision is made by the Regional Director of the Labour Standards Agency. Industry level minimum wages can also be set within a prefecture.

Netherlands The Ministry of Social Affairs normally uprates twice yearly (on 1 January and 1 July). Wage inflation is used to determine the size of the minimum wage increase.

New Zealand The Minister of Labour conducts annual reviews in line with the Minimum Wage Act 1983 by 31 December of each year, with changes effective from the following 1 April.

Portugal Since 2007 a tripartite committee (representatives from Government, unions and employers) has monitored economic conditions to consider the social and economic impacts of the minimum wage and recommend an annual upgrade.

Spain The Government uprates annually following consultation with the social partners. It is obliged to take a number of economic indicators into account. Spain's Prime Minister has pledged to increase the minimum monthly wage to Euro 800 by 2012.

US Changes to the federal minimum wage are voted on by Congress intermittently. Most states have their own minimum

Annex D: Summary timetable of Low Pay Commissioner activity by month

Low Pay Commissioner meetings	May, June, Sept., Oct., Nov., Feb.
Commissioner regional evidence gathering visits	June – Dec.
Research workshops	April, Sept.
Oral Evidence days	Nov.
Written evidence taken	June – Sept.
Secretariat meetings with stakeholders	Aug., Sept., Oct.
Retreat for Commissioners to take and consider evidence	Dec., Jan.
Presentation of NMW report to government	Feb.
Publication of NMW report	Mar.

Annex E: Low Pay Commission Remit

LOW PAY COMMISSION REMIT – 2013 REPORT

The Government supports the National Minimum Wage (NMW) because of the protection it provides to low paid workers and the incentives to work it provides. Our aim is to have NMW rates that help as many low-paid workers as possible, while making sure that we do not damage their employment prospects.

The Low Pay Commission (LPC) is asked to:

1. Monitor, evaluate and review the levels of each of the different NMW rates and make recommendations on the levels it believes should apply from October 2013.
2. Review the contribution the NMW could make to the employment prospects of young people, including those in apprenticeships. As part of this review, the LPC is asked to consider the implications of the introduction of the Raising of the Participation Age in England on the youth rates and the apprentice rate.
3. Review the accommodation offset.
4. Evaluate the regulations for salaried hours workers and consider whether there are any measures that the Government could take to ensure that it is as simple and easy as possible for employers to make sure they are paying at least the NMW and for individuals to be confident that they are being paid at least the NMW.

In evaluating and making recommendations in the areas set out above, the LPC is asked to take account of the state of the economy and employment and unemployment levels. There is also the wider policy context to consider, including pensions' reform, the introduction of universal credit, the raising of the personal tax allowance, any implications of the proposed abolition of the Agricultural Wages Board for England and Wales (pending the outcome of the legislative process), and other Government reforms that may affect the NMW.

Timing

The LPC is asked to report to the Prime Minister, Deputy Prime Minister, and the Secretary of State for Business, Innovation and Skills by the end of February 2013.

Annex F: LPC Framework Agreement

Framework Agreement between the Department of Business Innovation and Skills and the Low Pay Commission.

Framework Agreement between the Department of Business Innovation and Skills and the Low Pay Commission

Introduction

1. The purpose of this Framework Agreement is to describe the partnership between the Department of Business Innovation and Skills (BIS), the sponsoring department, and the Low Pay Commission (the Commission) and define a clear framework of respective responsibilities and accountabilities to ensure the safeguarding and proper use of public funds.

Statutory Relationship

2. The statutory authority for the Commission is the National Minimum Wage Act 1998. Schedule 1 of the Act requires the Secretary of State to provide the Commission with such staff, accommodation, equipment and other facilities, and such sums as he or she may reasonably determine are required by the Commission for carrying out its duties in preparing any report on matters referred to it under the Act. Employment Relations (ER) Directorate is the Commission's sponsoring team within BIS.

The Low Pay Commission

3. The purpose of the Commission is to provide advice to the Prime Minister and Secretary of State for Business Innovation and Skills on matters relating to the National Minimum Wage referred to it by the Secretary of State for Business Innovation and Skills.

4. The Commission is independent of Government and bases its recommendations on detailed analysis of facts. Its independence gives the Commission a high degree of credibility with stakeholders and is essential to its success.

5. The Commission consists of a chairman and eight other members appointed by the Secretary of State. The Commissioners appointed have a balance of knowledge or experience of, or interest in, trade unions or matters relating to workers; employers' associations or matters relating to employers generally; or other relevant knowledge or experience. Commissioners serve in a personal capacity and are governed by Terms and Conditions of Appointment covering such matters as period of appointment, financial arrangements, conduct, conflict of interest, political activities and termination of appointment.

6. The Commission is supported by a Secretariat, staffed by civil servants from BIS and other Government departments.

7. The Commission takes an open and consultative approach to its work. Although the detailed deliberations of the Commission have to be confidential, the information that informs those considerations is gathered through wide-ranging research and consultation, including visits and discussions with business, workers, representative bodies, Government and academics. The Commission is required to include in its report, the names of the Commissioners making the report; the procedures adopted in respect of consultation, the taking of evidence and the receiving of representations; the reasons for their recommendations; and, if applicable, note it has taken into account any additional factor which has been specified by the Secretary of State.

The Secretary of the Low Pay Commission and the Role of Accounting Officer

8. BIS's Permanent Secretary, as the Department's principal Accounting Officer, is responsible to Parliament for the issue of the grant-in-aid to the Commission. The principal Accounting Officer designates the Secretary of the Commission (the Secretary) as the Commission's Accounting Officer, and may withdraw the accounting officer designation if he/she believes the incumbent is no longer suitable for the role. The requirements upon the Accounting Officer shall reflect the size and resources of the Commission, and the fact that it utilises BIS's financial systems and adheres to its financial procedures.
9. As the Accounting Officer, the Secretary shall be responsible for safeguarding the public funds for which he/she has charge; for ensuring propriety and regularity in the handling of those public funds; for maintaining appropriate records relating to the accounts; and for making efficient, economic and effective use of resources, including staffing, assets and equipment.
10. The Secretary shall complete a Corporate Governance questionnaire on an annual basis from which the principal Accounting Officer can satisfy his/her responsibilities and draw assurance in the preparation of his/her Corporate Governance Statement.

The Commission's Grant-In-Aid

11. The Commission is funded from the Department's Resource and Capital DEL. Cash Grant in Aid will be made available to support the Commission's expenditure in year. The Commission's grant in aid shall be used only in the exercise of the Commission's functions under the 1998 Act. The grant-in-aid is made to the Commission subject to the conditions set out in this memorandum, and in addition to any guidelines or directions issued by the Secretary of State for Business Innovation and Skills in respect of any functions or duties of the LPC; and also in conjunction with the relevant chapters of Government Accounting and other relevant guidance which is issued from time to time.
12. The Commission shall bid for its grant in aid annually through BIS's ER Directorate and as part of the BIS Business Planning Process. It will also propose future levels of funding to inform ER Directorate's contribution to BIS's proposals as part of the Government's bi-annual Spending Review. For both, the Commission shall provide a case to support its requirement in a format agreed with ER Directorate, setting out the Commission's priorities and planning assumptions. ER Directorate shall confirm the Commission's grant in aid allocation as soon as is practical.
13. The Commission and ER Directorate shall regularly, and at least quarterly, inform and consult each other on matters relating to the Commission's grant-in-aid. The Commission shall keep ER Directorate informed about its financial position and emerging needs, including a quarterly statement of expenditure, in an agreed format. ER Directorate shall provide the Commission with requests for budget information in a timely manner to enable the Commission to respond and manage its grant-in-aid effectively.

14. The Secretary shall be responsible for expenditure within the Commission's grant in aid allocation and may incur expenditure, within his/her delegated authority, without reference to ER Directorate or others in BIS. The Secretary may as required reallocate funds in-year between Salaries and General Administrative Expenditure on the basis that a continuing extra charge on public funds is not created. The Secretary shall not enter into any undertaking to incur expenditure that falls outside his/her delegations and which is not provided for in the grant-in-aid approved by ER.

15. The Commission shall aim to ensure that it utilises its grant in aid within the allocated period. Where agreed budgets for the Commission are unspent at year end, the Department will consider End Year Flexibility (EYF) to allow resource budgets to be rolled forward from one year to the next. EYF will be considered where this is as a result of slippage, as opposed to over provision or abandonment of a specific aspect of work. The Secretary shall make any request for carry over (EYF) to ER Directorate in writing as soon as the requirement is known. The Commission's EYF would form part of BIS's resource budget.

Payment of Grant-in-Aid

16. The Commission shall formally request its grant-in-aid from ER Directorate in arrears at the end of each quarter within the financial year. The request shall be made within 30 days of the quarter end and shall cover the actual expenditure for the period.

Staffing

17. Authority is delegated to the Secretary to create and make appointments to posts below SCS level where funds are available from within the Commission's grant in aid to meet the cost of any such appointments. The Secretary shall recruit under the BIS recruitment procedures, but reserves the right to trawl vacancies Civil Service wide without first advertising within BIS if it is deemed appropriate. The Secretary shall inform ER Directorate of changes to staff grading and numbers. The Department retains the right to audit staff grading and numbers.

Procurement

18. The Commission shall adhere to BIS's procurement policies. Contracts shall be placed on a competitive basis and tenders accepted from suppliers who provide best value for money. However, where deemed appropriate, and within BIS guidelines, the Secretary may let a single-tender or restricted contract. In such cases, the Secretary shall report to ER Directorate at the end of the financial year detailing any contract for which competitive tendering was not employed.

Timeliness in Paying Bills

19. The Commission shall pay all matured and properly authorised invoices in accordance with the terms of contracts or within 30 days, as provided for in Annex 16.2 of Government Accounting. In accordance with the government target, the commission should seek to pay SME invoices on an as soon as possible basis and within 10 days.

Gifts and Hospitality

20. The Commission shall keep a written record of gifts or hospitality, of a value of £10 or more, given or received by Commissioners or members of the Secretariat, detailing the estimated value and, in the case of gifts, whether they are disposed of or retained.

Asset Management

21. BIS shall provide the Commission with the requisite accommodation, furniture and ICT equipment to enable it to carry out its duties. The Commission shall be responsible for achieving the most cost effective procurement of office equipment needed outside of that provided by BIS, using BIS's contracts as appropriate. All assets used by the Commission, whether or not provided direct by BIS, shall be included on BIS's fixed asset register. The Commission shall dispose of any assets through the BIS.

Risk Management

22. The Commission shall identify the risks which it faces and manage these in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, and shall develop and maintain a risk management register. The Commission shall update BIS of these risks on a quarterly basis. It shall adhere to BIS's policies and practices to safeguard itself against fraud and theft.

Business Plans and Reporting Performance

23. The Commission shall identify its key milestones at the start of every year, and report its progress against these to BIS every quarter.

Internal Audit

24. The Secretary shall make arrangements to be included in BIS's internal audit programme in discussion with BIS's Internal Audit Directorate and FRM. The range of internal audit activity should cover the full remit of the Secretariat's systems and internal controls. The Commission shall when requested make its records available for inspection by Internal Audit or any other persons authorised by BIS.

Delegated Authorities

25. The Commission's delegated authorities are set out in appendix 1. The Commission shall obtain the department's prior written approval before undertaking to incur any expenditure that falls outside the delegations or which is not provided for in the Commission's annual budget as approved by the department.

Review and Wind-up

26. The status and remit of the Commission will be reviewed on an annual basis, or as determined by Ministers. In the event that the Commission is wound up, BIS shall ensure that the assets and liabilities of the Commission are accounted for properly.

Annex G: Potential for a merger between OME and LPC

1. This paper supports the 2012 Triennial Review of the Low Pay Commission and sets out the analysis which underpinned the Review Team's Stage 1 report which recommended against merging LPC secretariat with that of OME, which the challenge panel saw as the most relevant. The views below are those of the Triennial Review team, but comments have been tested with the sponsor and policy teams, and BIS colleagues in the OME and LPC secretariats.

2. The Cabinet Office has set out that for NDPBs to remain independent they must either carry out a technical function, be required to act with political impartiality and/or act independently and transparently to establish facts. We are also required to test whether Government needs to carry out activities or whether they can be carried out more effectively. We believe that the LPC clearly provides a technical function, that must be carried out politically impartially and that it acts independently and transparently to establish facts.

Joining OME/LPC Secretariats

3. The Secretary of State agreed with Francis Maude in 2010 that the Department would explore the possibility of joining the LPC Secretariat with that of OME. Both bodies have separate and distinct remits, in part statutory, and the Secretary of State and Francis Maude agreed that they would remain independent.

4. While there are some similarities between the two bodies, there are also profound differences. In both cases BIS hosts an independent secretariat which facilitates the operation of NDPB panels of independent experts who seek to provide balanced and independent advice.

5. The Agricultural Wages Board, whose remit does conflict with that of LPC, is expected to be abolished imminently, subject to successful consultation.

OME

6. OME provides support to the pay review bodies, focusing solely on public sector pay, taking explicit account of various government policies including economic policy, pay policy, inflation targets and "affordability", and taking a strong steer for these on evidence from the Government of the day (especially in the context of the current partial pay freeze): http://www.ome.uk.com/Review_Bodies.aspx.

7. The primary focus within OME's mandate is on the successful recruitment and retention of public servants within the public pay mandate, rather than social and economic fairness. OME also evaluate pension schemes.

8. OME has no experience of managing social partnership discussions, and would see this as inimical to its explicit role in arbitrating between public sector employers and staff unions. Any proposal for change would require consultation with and agreement from the employers, including HMT Cabinet Office, MoJ, Home Office, MoD, DH and the Devolved Administrations, that the change was consistent with Government policy.

9. The pay review bodies are set out below: while a range of employee groups is included, there is a significant focus on professions and on the better, and best, paid public servants.

[Armed Forces' Pay Review Body](#)

[Review Body on Doctors' and Dentists' Remuneration](#)

[NHS Pay Review Body](#)

[Prison Service Pay Review Body](#)

[School Teachers' Review Body](#)

[Senior Salaries Review Body](#)

[Police Advisory Board for England & Wales](#)

[Police Negotiating Board.](#)

LPC

10. LPC focuses overwhelmingly on the private sector as very few public sector workers are on the minimum wage, and its recommendations are informed by detailed economic and labour market analysis of the low-paying sectors and low-paid workers, as well as wide consultation. Annually, the Government sets the remit for the LPC's next report, which mainly seeks its minimum wage rate recommendations. The LPC's aim is to have "a minimum wage that helps as many low-paid workers as possible without any significant adverse impact on employment or the economy", and the Prime Minister has endorsed this goal. The LPC operates as an explicit social partnership with independent members drawn from employer, union and academic backgrounds in equal proportion.

Conclusions

11. As the two organisations are currently lean, and with distinct and separate remits, different ways of working, and separate areas of expertise, any potential savings from joining the two secretariats could only be in back office functions. There is little overlap in their areas of research or analysis.

12. While both bodies are independent, the nature of their remit is different.

13. Representatives of both organisations made clear to the Review Team that any proposed merger of the OME and LPC secretariats would be looked on askance by both sets of stakeholders. There would be hostility among OME's stakeholder base to alignment with the low paid, and a perception among Government employers that key aspects of the role may be jeopardised.

14. Meanwhile LPC's stakeholder group – and the LPC commissioners themselves – would see OME's closer alignment to government's public sector pay policy as at odds with LPC's ministerially endorsed objective, and as eroding the distance from Government pay policy which is key to its role. In both cases therefore any merger of support would be

likely to be met with very significant public adverse stakeholder reaction and potential resignations from the Low Pay Commissioners, and Chairs of Pay Review Bodies.

15. The Review Team recognises that any merger brings with it potential for economies. However:

- a. Both organisations share low cost accommodation and overheads since they are hosted by the Competition Service and use BIS ICT, HR, payroll, finance and support systems. Therefore scope for merger efficiencies is lower than would otherwise operate.
- b. OME and LPC already share office space and facilities such as photocopying.
- c. OME and LPC continue to explore further efficiencies.
- d. LPC's costs (c. 7 FTE staff) are low.

16. We conclude that:

- a. Any adverse reactions to a proposed or actual merger would reduce the LPC's ability to continue to operate as a technical and independent body in the way this review has concluded delivers value and meets the Cabinet Office's three tests.
- b. The merger of secretariats would probably cause very significant adverse stakeholder reactions within the commissions, the pay review bodies and the wider stakeholder base, potentially to include resignations of commissioners.
- c. There would be no policy or delivery benefits from merger to offset the risks.
- d. There are unlikely to be real or material savings in any merger.
- e. There would be costs in transition (arising at least from communicating the change).

17. We therefore conclude that in the absence of meaningful cost savings, there is no business case for taking the indicated risks to disruption of LPC or OME's business and potential loss of credibility.

18. Therefore any such proposed merger fails to clear the appropriate hurdles, and ministers should be advised that the Review Team recommended against it.

Annex H: assessment against principles of good governance

Principles of corporate governance for advisory NDPBs	Assessment	Comments
Accountability: The Minister is ultimately accountable to Parliament and the public for the overall performance, and continued existence, of the public body	Green	There are rigorous procedures in place (which are followed) for the appointment of Commissioners and for the LPC to report regularly to BIS on its progress against agreed milestones and expenditure.
The Minister and sponsoring department should exercise appropriate scrutiny and oversight of the public body. This includes oversight of any public monies spent by, or on behalf of, the body.	Comply	<p>There is a dedicated sponsor team within the Labour Market Directorate of BIS. The LPC draws up an annual Business Plan, which is agreed with the sponsor team, and published on the LPC's website. This business plan includes milestones and a breakdown of its resources. The LPC reports monthly to the sponsor team on its expenditure and quarterly on achievements against its milestones (including a review of its risk register).</p> <p>The sponsor team has regular meetings with members of the LPC Secretariat where any issues/concerns are discussed.</p>
Appointments to the board should be made in line with any statutory requirements and, where appropriate, with the Code of Practice issued by the Commissioner for Public Appointments.	Comply	All Commissioner appointments to the LPC are undertaken and managed by the sponsor Department. All appointments are made in line with both the provisions in the National Minimum Wage Act 1998 ("the NMW Act") relating to the LPC and the Code of Practice issued by the Commissioner for Public Appointments. The sponsor Department maintains records of the process followed for each appointment.
The Minister will normally	Comply	As stated above, all appointments

appoint the Chair and all board members of the public body and be able to remove individuals whose performance or conduct is unsatisfactory.		<p>to the LPC (including that of the Chair) are made in line with the Code of Practice issued by the Commissioner for Public Appointments and all appointments are made with the appropriate Ministerial agreement.</p> <p>Schedule 1 to the NMW Act provides that the Secretary of State (SoS) can remove a Commissioner who has become bankrupt, has been absent for two or more meetings, or is in the opinion of the SoS unable or unfit to perform his/her duties. The terms of appointment, accepted by Commissioners upon appointment, state the grounds on which a Commissioner's appointment can be terminated.</p>
The Minister should meet the Chair on a regular basis.	Comply	<p>The LPC works on an annual cycle, culminating in the production of an annual report. The Chair of the Commission meets with the Employment Minister to present and discuss the report's recommendations and any other issues. In addition to this, the Chair would be expected to meet with the Minister, if either are new appointments. Other than these meetings, there is no specific timetable/frequency of meetings between the Chair and the Minister.</p>
There should be a requirement to inform Parliament and the public of the work of the public body through publication of an annual report (or equivalent publication).	Comply	<p>Under section 6(2) of the NMW Act, the SoS may at any time refer a matter relating to the NMW to the LPC. Where he has done so, the LPC is required to make a report, containing its recommendations, to the Prime Minister and SoS. To date, the LPC has reported, as required, within the terms of its annual remit. Section 7(7) of the NMW Act requires the SoS to publish the</p>

		Commission's report. Since the LPC was formed, thirteen reports have been produced and published and are publicly available on the LPC's website.
The public body must be compliant with Data Protection legislation.	Comply	All data and information held by the Commission's Secretariat is held in BIS's data and information system (e.g. MATRIX). The LPC is compliant, therefore, with Data Protection legislation in the same way as BIS is, as its sponsoring Department.
The public body should be subject to the Public Records Acts 1958 and 1967.	Comply	As above, the LPC is subject to the Public Records Acts 1958 and 1967, the same as its sponsor Department, BIS.

<p>Role of the Sponsoring Department: The departmental board ensures that there are appropriate governance arrangements in place with the public body.</p> <p>The sponsor team within the department provides appropriate oversight and scrutiny of, and support and assistance to, the public body.</p>	Amber/Green	<p>There is open and regular dialogue between the LPC and its sponsor team which enables current or upcoming issues to be discussed.</p> <p>The Departmental Board should receive, from the sponsor team, annual performance information so that it can effectively manage its impact.</p> <p>The LPC has a number of documents which taken together set out its role and operating procedures. However, arguably there should be in place, one overarching document which sets out the LPC's Terms of Reference.</p> <p>The sponsor team's role is not clearly defined. Labour Markets Directorate will ensure that this is done.</p>
<p>The departmental board's regular agenda should include scrutiny of the performance of the public body.</p>	Explain	<p>The sponsoring Department's Board does not currently have a regular agenda item to cover scrutiny of the LPC's performance. The LPC is a small body with a clearly defined function and output (i.e. its annual report). The LPC's work is of high political importance and its output is scrutinised by a number of Departments (and other bodies). Day-to-day scrutiny of the LPC's work is delegated to Group level, and undertaken through various measures (see 3(1) above).</p> <p>However, the Departmental Board should receive, on an annual</p>

		basis, proportionate performance information on the LPC from the sponsor team, so that its impact is kept under review.
There should be a document in place which sets out clearly the terms of reference of the public body. It should be accessible and understood by the sponsoring department and by all board members. It should be regularly reviewed and updated.	Explain	There is not a formal single document that sets out the Terms of Reference for the LPC. The NMW Act sets out the statutory function of the LPC and the LPC also receives an annual remit from the Government which sets out the matters it is to report on for that year. The Framework Agreement between BIS and the LPC sets out the partnership between the two bodies and the LPC's responsibilities and accountabilities. Taken together these supply the LPC with clear TOR, albeit not in a single document.
There should be a dedicated sponsor team within the parent department. The role of the sponsor team should be clearly defined.	Explain	There is a dedicated sponsor team within the Labour Market Directorate of BIS. The role of the sponsor team is not, however, currently set out and clearly defined; Labour Markets will ensure that this is set out.
There should be regular and ongoing dialogue between the sponsoring department and the public body.	Comply	The LPC Secretariat is made up of permanent BIS staff on secondment to the LPC. There is open and regular dialogue between the sponsor team and members of the LPC's Secretariat, both formally and informally. There are regular keep-in-touch meetings and informal contacts as and when required.
There should be an annual evaluation of the performance of the board and its committees – and of the Chair and individual board members	Comply	To date Commissioners have been appraised by the Chair every eighteen months. However, Commissioners are now to be appraised annually (commencing March/April 2013) to coincide with the end of the annual reporting

		<p>cycle. All appraisals are documented. The Chair is appraised by the Director of Labour Markets Directorate (BIS).</p> <p>At the first meeting of each report cycle, Commissioners consider its operation over the last twelve months and whether changes are necessary.</p>
--	--	--

Role of the Chair: The Chair is responsible for leadership of the board and for ensuring its overall effectiveness.	Green	Appointments are made in accordance with official guidance and the Chair has ensured the LPC fulfils its obligations efficiently and effectively.
The board should be led by a non-executive Chair.	Comply	Yes. The LPC is an advisory body and so has no executive functions.
There should be a formal, rigorous and transparent process [for the appointment of the Chair]	Comply	The appointment of the Chair is made under the auspices of the Commissioner for Public Appointments and in accordance with the Commissioner's Code of Practice. The process is undertaken by the sponsoring Department.
<p>The duties, role and responsibilities, terms of office and remuneration of the Chair should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements. The responsibilities of the Chair will normally include:</p> <ul style="list-style-type: none"> ➤ representing the public body in discussions with Ministers; ➤ advising the sponsoring Department and Ministers about board appointments and the performance of individual non-executive board members; ➤ ensuring that non-executive board 	Comply	<p>The terms and conditions of appointment as Chair of the LPC are set out in the appointment letter. This does not, however, include details of the actual duties and role and responsibility of the Chair, which is covered by the Code of Practice for the LPC and the job specification.</p> <p>The Chair does:</p> <ul style="list-style-type: none"> ➤ Represent the LPC in discussions with Ministers and the media; ➤ Discuss and agrees training and development needs of Commissioners during appraisals; and ➤ Effectively and efficiently run Commission meetings, ensuring the decisions have the support of all Commissioners. <p>The Commission has, to date, fulfilled the requirements of every annual remit it has received from</p>

<p>members have a proper knowledge and understanding of their role and responsibilities. The Chair should ensure that new members undergo a proper induction process and is normally responsible for undertaking an annual assessment of non-executive board members' performance;</p> <ul style="list-style-type: none"> ➤ ensuring that the board, in reaching decisions, takes proper account of guidance provided by the sponsoring department or Ministers; ➤ ensuring that the board carries out its business efficiently and effectively; ➤ representing the views of the board to the general public. 		<p>the Government, and all its recommendations to Government have had the agreement of all Commissioners.</p>
--	--	---

Role of Board Members: Board members should provide independent, expert advice.	Green	There is a strong balance of Commissioners on the LPC. They are fully aware of their individual and collective responsibilities and there is a robust induction process in place which ensures new Commissioners are brought up to speed promptly.
There should be a formal, rigorous and transparent process for the appointment of non-executive members of the board. This should be compliant with the Code of Practice issued by the Commissioner for Public Appointments.	Comply	The appointment of Commissioners is made under the auspices of the Commissioner for Public Appointments and in accordance with the Commissioner's Code of Practice. The process is undertaken by the sponsoring Department.
Board members should be properly independent of the Department and of any vested interest (unless serving in an ex-officio or representative capacity).	Comply	All Commissioners are appointed as individuals and are not drawn from Government. The Terms of Reference of Appointment, agreed by each Commissioner upon appointment, sets out the responsibility of individual Commissioners to declare any interest which could influence their judgement in performing their function. Commissioners are also required to complete, annually, a register of interests, which is published on the LPC's website.
Board members should be drawn from a wide range of diverse backgrounds. The board as a whole should have an appropriate balance of skills, experience, independence and knowledge.	Comply	The NMW Act stipulates that there should be a balance on the LPC of persons with knowledge or experience of matters relating to workers; with knowledge or experience of matters relating to businesses; and with other relevant knowledge or experience. Since it was formed, the LPC has consisted of three Commissioners with worker experience, three with

		<p>business experience, two labour market academics and an independent Chair.</p> <p>As Commissioners leave, or come to the end of their term of office, they are replaced by individuals with similar experience to ensure that the balance of the LPC is maintained.</p> <p>Advertisements for new Commissioners are drawn up to ensure that the role specification and selection criteria do not include barriers to deter women, BMEs or disabled candidates but at the same time include those with the relevant experience. Details of LPC vacancies are sent to members of the BIS Equalities Advisory Group for forwarding to their networks.</p>
The duties, role and responsibilities, terms of office and remuneration of board members should be set out clearly and formally defined in writing. Terms and conditions must be in line with Cabinet Office guidance and with any statutory requirements.	Comply	The terms and conditions of appointment of Commissioners are set out in the individual letters of appointment. This letter does not, however, include details of the duties and role and responsibility of Commissioners, which are covered by the Code of Practice for the LPC and the job specification. The letter of appointment refers to compliance with the Code.
All board members must allocate sufficient time to the board to discharge their responsibilities effectively.	Comply	<p>The annual minimum commitment of Commissioners is set out in the Terms of Reference of Appointment agreed by each Commissioner. Attendance is discussed during the appraisal with the Chair. Any concerns regarding attendance would be addressed.</p> <p>Ultimately, the Secretary of State has the power to remove a Commissioner if their attendance falls below that required (see</p>

		Section 3(3) above). To date, there have been no issues with regard to any Commissioner's attendance which have required referral/discussions with the sponsor team.
There should be a proper induction process for new board members. This should be led by the Chair. There should be regular reviews by the Chair of individual members' training and development needs.	Comply	There is a formal, structured induction process in place. After appointment, a Commissioner meets with the Chair. They then attend a 1-2 day induction meeting with the Secretariat, where the Commission's history, role, processes and current issues are discussed and meet with other Commissioners at the earliest opportunity. All Commissioners have undergone this induction process upon appointment.
All board members should ensure that high standards of corporate governance are observed at all times. This should include ensuring that the public body operates in an open, accountable and responsive way.	Comply	The Terms of Reference of Appointment and the Code of Practice for the LPC set out how Commissioners should conduct themselves. A Commissioners' Register of Interests is published and updated at least annually, as are details of fees and travel and subsistence payments made to Commissioners.

Communications: The Public Body should be open, transparent, accountable and responsive.	Green	There is strong, open public engagement on LPC matters. Information is made public, but only at a time when it would not interfere with the ability of Commissioners to have a free and frank exchange of views.
The public body should operate in line with the statutory requirements and spirit of the Freedom of Information Act 2000.	Comply	The LPC's information is held in BIS's information management systems and the LPC is subject to the Freedom of Information Act (Fol) in the same way as BIS. The LPC has a publication scheme that is fully consistent with the spirit of the Fol Act, and all Fol responses are published on the LPC website.
The public body should make an explicit commitment to openness in all its activities. Where appropriate, it should establish clear and effective channels of communication with key stakeholders. It should engage and consult with the public on issues of real public interest or concern. This might include holding open meetings or annual public meetings. The results of reviews or inquiries should be published.	Comply	<p>Engagement with a wide range of stakeholders is crucial to the success of the LPC, as it requires a wealth of evidence on which to base its recommendations. Each year, it undertakes a consultation exercise (publicised on its website), and Commissioners undertake a series of visits around the UK (details published on its website) as well as sitting for two days of oral evidence from stakeholders. Participation by stakeholders in any of these events is widely encouraged.</p> <p>The LPC's annual report sets out the evidence it has found during the year. Non- confidential consultation responses are made public and, as from 2013, these will be published on the LPC's website.</p> <p>The LPC's Secretariat maintains regular contact with main stakeholders.</p>
The public body should proactively publish agendas and minutes of board	Explain	This is not done. The Commission has developed a communication model tailored to its particular task

meetings.		<p>of producing recommendations to Government on an annual cycle. As well as the public engagement mentioned above, it delivers its recommendations in a detailed report which includes the justification for these recommendations, including details of evidence gathered during the year. The report is in effect, among other things, the summary of the meetings of the Commission during the year leading up to its production. Publishing papers or minutes of the meetings ahead of the report to which they are contributing would inhibit free exchange among Commissioners. Publishing minutes afterwards would be duplicative of the report.</p> <p>Any request to see any Commission papers would be considered under the terms of the Fol Act.</p>
<p>There should be robust and effective systems in place to ensure that the public body is not, and is not perceived to be, engaging in political lobbying. There should also be restrictions on board members attending Party Conferences in a professional capacity.</p>	Comply	<p>The Terms of Reference for Appointment and the LPC Code of Practice set out what is required of Commissioners in terms of political activities. Political activities are recorded in the (published) register of interests.</p> <p>Given the occupation and position of many Commissioners, it would be expected that some would attend party conferences in their professional capacities. They do not attend in their capacity as Commissioners. The Terms of Reference for Appointment make it clear that with regard to political activities, Commissioners must be conscious of their general public responsibilities and exercise proper discretion, particularly with regard to the work of the LPC.</p>

<p>Conduct and behaviour: Board members should work to the highest personal and professional standards. They should promote the values of the public body and of good governance through their conduct and behaviour.</p>	Amber/Green	<p>There are rules in place covering Commissioners' conduct and behaviour, but there is a degree of duplication (see below).</p> <p>The LPC's Code of Practice and Terms of Reference for Appointment are two separate documents (which reference to each other) and have a degree of duplication. These documents will be updated so that there is a Code of Conduct for the LPC which is annexed to the Terms of Reference for Appointment. The Terms of Reference for appointment will include details such as period of appointment, remuneration and also details of the role, responsibilities and duties of Commissioners.</p>
<p>A Code of Conduct must be in place setting out the standards of personal and professional behaviour expected of all board members. This should follow the Cabinet Office Code. All members should be aware of the Code. The Code should form part of the terms and conditions of appointment.</p>	Comply	<p>The LPC has a Code of Practice which sets out standards required of Commissioners, based on the Seven Principles of Public Life.</p> <p>The Terms of Reference for Appointment, agreed by each Commissioner, state that a condition of appointment will be adherence to the LPC's Code.</p> <p>Although this code does not fully follow the Cabinet Office Code of Conduct for Board Members of Public Bodies, the Terms of Reference for Appointment cover issues that are in the Cabinet Office Code but not the LPC Code.</p>
<p>There are clear rules and procedures in place for managing conflicts of interest. There is a publicly available Register of Interests for board members. This is regularly updated.</p>	Explain	<p>Commissioners are required to declare any conflict of interests at the appropriate time. If this is during a Commission meeting, this conflict will be recorded in the minutes. Commissioners are also required to update annually the register of interests, which is published on the LPC's website</p>

<p>There must be clear rules in place governing the claiming of expenses. These should be published. Effective systems should be in place to ensure compliance with these rules.</p>	<p>Comply</p>	<p>The Terms of Reference for Appointment sets out the rules with regard to claiming expenses. The levels of fees and expenses that can be claimed are published on the LPC's website. All claims for expenses or fees made by Commissioners are checked by the Secretariat and authorised by the</p> <p>LPC's Secretary. Details of fees and expenses made to</p> <p>Commissioners are published annually on the LPC's website.</p>
<p>There are clear rules and guidelines in place on political activity for board members and that there are effective systems in place to ensure compliance with any restrictions.</p>	<p>Comply</p>	<p>The Terms of Reference for Appointment sets out the rules with regard to political activities. Commissioners are required to declare any political activity and details of these are published in the register of interests.</p>
<p>There are rules in place for board members and senior staff on the acceptance of appointments or employment after resignation or retirement. These are enforced effectively.</p>	<p>Explain</p>	<p>There are no specific rules in place. There is, however, a duty of confidentiality on all Commissioners in relation to the information they have received. We have not been able to identify a circumstance in which it would be inappropriate for a former Commissioner to accept an appointment. Thus there are no restrictions arising from the work of the LPC, other than the general rule of confidentiality. Given the nature of the annual nature of the LPC's work, it is extremely unlikely that any appointment or employment after a Commissioner has left the LPC would be problematic.</p>

Annex I: Low Pay Commission: Terms of Reference of appointment

Dear

LOW PAY COMMISSION: TERMS OF REFERENCE OF APPOINTMENT

I am delighted that you have agreed to accept the post as an employee representative member of the Low Pay Commission (LPC) and hope you find the work of the LPC interesting and enjoy the time you spend with them. I am writing to inform you of the terms of reference of your appointment, in accordance with Schedule 1 of the National Minimum Wage Act 1998.

Period of Appointment

Your term of appointment as a member of the LPC will begin on 1 November 2012 and will be for just over three years, ending on 31 March 2016.

In order to maintain the Department's high standards of public life any appointments made by the Secretary of State may be terminated in the event that an appointee is convicted of a criminal offence, and/or where the Secretary of State believes that the appointee's conduct means that he or she is no longer a suitable person for the office of Low Pay Commission.

Should the LPC be dissolved, restructured or wound up during the period of your appointment, your appointment would, of course, also cease with effect from that dissolution or such other date as is specified in any relevant legislation.

You may at any time resign your office by giving the Secretary of State a signed notice in writing stating that you resign the office.

Grounds for Renewal of Appointment

Subject to a review of the position before the end of your current term, you may be eligible for a reappointment for a second term. There is no guarantee of reappointment and reappointments will be governed by the time and performance criteria set out below.

The maximum period of appointment must not exceed 10 years in total on the same Board. A performance review process will provide the necessary evidence for offering a term of reappointment. Account will be taken of your contribution, record of attendance, conduct and the overall balance of the interests of the LPC in deciding whether to offer a period of reappointment.

Performance

As outlined in the person specification for this position, you will be required to:

- be an open-minded strategic thinker, bringing your own experience to bear on issues under discussion;
- be committed to an evidence-based approach, and appreciate the implications of complex and multi-faceted evidence;
- extract the essence of an argument from papers or presented evidence;
- make important and difficult objective decisions within fixed timeframes, whilst ensuring your judgement is not swayed by personal bias or interests;
- constructively challenge the opinions of others, work to achieve a shared consensus and accept collective responsibility;
- have excellent communication skills, both oral and written, and be able to express yourself clearly and succinctly;
- appreciate the obligations involved in serving on a Public Body and ensure your credibility in doing so; and
- be able to work collaboratively as part of a team and with a small Secretariat.

Minimum Level of Commitment Required

Members are expected to commit, on average, 18 days per year to the work of the LPC. This includes attending regular LPC meetings in London, attendance at up to 4 LPC visits around the UK and, occasionally, representing the LPC at events. The LPC meetings themselves last either half a day or one day and will usually be held at the LPC's offices at Victoria House, Southampton Row, London, WC1B 4AD. The appointment may be terminated, without notice, if attendance becomes so erratic as to interfere with the good running of the LPC.

Remuneration and Terms

You will be entitled to a fee of £242.12 for each full day you attend on LPC business.

This appointment is classed as an "Office Holder" for tax and National Insurance purposes and, as such, under Section 19(1)1 of the Income and Corporation Taxes Act 1988, the fee is liable to tax under Schedule E and attracts Class 1 National Insurance liability.

It is the responsibility of the Department for Business, Innovation & Skills (BIS) to apply PAYE deductions in respect of income tax and National Insurance, unless instructed to the contrary by HM Revenue and Customs or the Contribution Agency. If appropriate, it will be for you to arrange authorisation of the non-application of PAYE or National Insurance.

Your fee earnings will not attract any benefits from the Principal Civil Service Pension Scheme. The role is advisory and this appointment does not mean that you are an employee of the Department or the Crown.

Expenses and Subsistence

The Department will reimburse all reasonable expenses (including travel, subsistence and other expenses) properly and necessarily incurred in respect of your appointment. Claims or invoices for reimbursement with supporting receipts should be sent to the LPC secretariat.

As an “Office Holder”, payments made to you in respect of your travel and subsistence expenses to and from the usual place of work for this appointment are taxable under Schedule E and also attract Class 1 National Insurance liability (this is not likely to be the case for activities in relation to this appointment which take place away from the usual place of work). However, our intention is that the amount you receive for travel and subsistence in these circumstances should be equivalent to the amount you actually spend. We have therefore entered into special arrangements with HM Revenue and Customs (HMRC), which mean we can effectively pay the tax on your behalf by paying it to HMRC at a special rate. We will also pay your share of the National Insurance contributions that are due.

If you wish to participate in these arrangements you will need to sign an agreement with HMRC. The agreement should be that travelling, subsistence and other expenses paid to you, which come within its scope, would not form part of your income for tax purposes. This would mean that:

- you would not have to pay tax on these expenses; and
- you would not be able to reclaim the tax we have paid on your behalf.

The terms of this agreement are set out in the attached letter (Annex A). If you decide to adopt the agreement please complete Annex A and return it to the Secretariat. If you do not wish to enter into this agreement we shall operate PAYE in these expenses in the same way as we shall operate it on the fee / honorarium paid to you.

Conflicts of Interest

The Nolan Principles of Public Life, which are the foundations of the public appointments process and provide guidance on the standards expected of public appointees, apply to this appointment. You must declare any personal or business interests which may, or may be perceived to, influence your judgements in performing your functions.

These interests will be included in a register of interests maintained by the LPC and you must ensure that your entries are kept up to date. Should a particular matter give rise to a conflict of interest a member is required to inform the Secretary of the LPC in advance and withdraw from discussions or consideration of the matter.

You are encouraged to register your own non-pecuniary interests and interests of close family members and persons living in the same household which are closely related to the activities of the LPC.

You must inform the Secretary of State and the Chair of the LPC in advance of any new appointments, which may impinge on your duties as a member of the LPC.

Declaration of Political Interests

You are not expected to occupy paid party political posts or hold particularly sensitive or high roles in a political party. Subject to the foregoing, you are free to engage in political activities provided that you are conscious of your general public responsibilities and exercise a proper discretion, particularly with regard to the work of the LPC.

You are expected to inform the Secretary of State of any intention to accept a prominent position in any political party and to understand that the appointment may be terminated if the Secretary of State feels that the positions are incompatible.

If you accept a nomination for election to the House of Commons, etc., then you will resign the appointment.

Confidentiality

The appointment carries with it a duty of confidentiality in relation to the information you will receive.

Conduct

All Board members have a duty regarding conduct, propriety and confidentiality. You will be required as a condition of your appointment to abide by the LPC's Code of Practice (Annex J). We value diversity and equality and expect demonstrable commitment during your appointment.

Gifts and Hospitality

All members are expected to ensure that acceptance of gifts and hospitality can stand up to public scrutiny. Gifts should be declined wherever possible, and any offers should be reported to the Secretary of the LPC. Where it would be ungracious or otherwise difficult not to accept, you should inform the Secretary of the LPC of the gift, the estimated value and the donor. Members must take personal responsibility to ensure that a record is placed in the hospitality register of the LPC. Similarly, care should be taken that no extravagance is involved with working lunches and other social occasions.

Further Information

If you have any questions about this or any other issues concerning your appointment, please contact Robin Webb, Secretary to the LPC on 020 7271 0454 or by email to robin.webb@lowpay.gov.uk.

I would be very grateful if you would sign the Acceptance Declaration at the end of both sets of these papers (at Annex C) and return one copy to my colleague, Natasha Chopra, BIS, Labour Market Directorate, 3rd Floor Abbey 1, 1 Victoria Street, London SW1H 0ET, as soon as possible. The top copy is for you to retain.

As soon as we receive the declaration, a Minute of Appointment will be sent to you confirming the appointment and that, together with the provisions of this letter, will constitute the instrument under which you are appointed.

Annex J: Code of Practice for the Low Pay Commission

Public service values

1. The members of the Low Pay Commission are expected to observe the highest standards of impartiality, integrity and objectivity at all times in relation to their contribution to the work of the Commission. To this end, all Commissioners are expected to observe the following Seven Principles of Public Life as set out by the Committee on Standards in Public Life:

- Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family or their friends.
- Integrity: Holders of public office should not place themselves under any obligation, financial or otherwise, to individuals or organisations that might seek to influence them in the performance of their duties.
- Objectivity: Decisions and recommendations should be based on evidence.
- Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- Openness: Holders of public office should be as open as possible about the decisions and actions that they take. They should give reasons for their decisions and restrict information only when it is in the wider public interest.
- Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- Leadership: Holders of public office should promote and support these principles by leadership and example.

2. Commissioners should disclose any office in a political party, paid or unpaid, and should exercise care and discretion if engaged in political activities on matters that could be related to the work of the Commission. When engaging in other political activities, Commissioners should be conscious of their public role and exercise proper discretion.

3. Individual Commissioners may be removed from office by the Secretary of State should they fail, in his or her opinion, to perform the duties required of them in line with the standards expected in public office.

4. The Low Pay Commission's secretariat, which is staffed by civil servants, is covered by the Civil Service Code of Practice which is available on the Cabinet Office website www.cabinetoffice.gov.uk.

5. Commissioners are appointed as individuals, not bound as delegates, and should regard themselves as free to exercise their personal judgement on the matters they are called upon to decide. When agreeing the recommendations they will make to Government, Commissioners will work to reach consensus wherever possible

6. Members of the Low Pay Commission have collective responsibility and should engage fully in the collective discharge of their functions and responsibilities, taking into account all relevant factors and information. Commissioners are expected to explain and stand by agreements collectively arrived should they be called upon to do so.

7. All Commissioners should record in the Commission's Register of Interests any private interest which might influence their judgment or which could be perceived (by a reasonable member of the public) to do so. Commissioners should make an oral declaration of any interest if the interest is likely to be relevant to an issue under consideration at a Commission meeting and this should be recorded in the minutes of the meeting. It is the responsibility of individual Commissioners to ensure that their entry in the [Register of Interests](#) is kept up to date. The register will be open to public inspection.

© Crown copyright 2013

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. Visit www.nationalarchives.gov.uk/doc/open-government-licence, write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

This publication available from www.gov.uk/bis

Any enquiries regarding this publication should be sent to:

Department for Business, Innovation and Skills
1 Victoria Street
London SW1H 0ET
Tel: 020 7215 5000

If you require this publication in an alternative format, email enquiries@bis.gsi.gov.uk, or call 020 7215 5000.

BIS/13/P181