

NATIONAL MINIMUM WAGE

Government non-economic evidence
to the Low Pay Commission 2010

OCTOBER 2010

Ministerial Foreword

The Coalition Government fully supports the National Minimum Wage. It protects our low income workers and provides an incentive to work. We also fully support an independent Low Pay Commission and welcome the focus it has consistently had on helping the maximum number of low paid workers without having a negative impact on employment prospects or inflation.

In the remit we have given the Commission for this year we have asked them to have particular regard to the competitiveness of small firms in considering their recommendations. This reflects our focus on encouraging growth in the economy, where smaller firms have a key role in leading the UK out of recession. This document sets out what the Government is doing to help more of these businesses start up and grow.

Young people seeking work have been particularly affected by the recession and youth unemployment remains high. While the youth labour market is dynamic and there are some early signs of recovery, the Government is taking action to encourage these positive trends. That is why we have included in this year's remit to the Commission a request to review the labour market position of young people, including those in apprenticeships and internships.

Effective enforcement of the National Minimum Wage is key to its continuing success. We want to see an efficient penalty regime to deter non-compliance and a fair outcome for workers who have been underpaid. The Coalition Government supports the approach set out in the compliance strategy, which has been developed with the Commission and builds on the committed activity of HMRC to maximise our compliance impact by helping businesses to comply with their legal obligations while clearly targeting those most at risk of offending.

**GOVERNMENT NON-ECONOMIC EVIDENCE TO THE
LOW PAY COMMISSION 2010**

CONTENTS

| | |
|---|-----------|
| MINISTERIAL FOREWORD..... | 2 |
| SECTION 1: EXECUTIVE SUMMARY..... | 4 |
| SECTION 2: INTRODUCTION..... | 7 |
| SECTION 3: POLICY ISSUES..... | 8 |
| Competitiveness of Small Firms..... | 8 |
| Young People..... | 9 |
| Apprentices..... | 10 |
| Unpaid Work / Internships..... | 14 |
| Seafarers..... | 15 |
| Travel Schemes..... | 15 |
| Social Care..... | 16 |
| Workplace Pension Reforms..... | 18 |
| Tips..... | 19 |
| Agricultural Wages Board..... | 20 |
| SECTION 4: COMPLIANCE AND ENFORCEMENT..... | 21 |
| Introduction..... | 21 |
| NMW Compliance Strategy..... | 21 |
| Enforcement Statistics..... | 24 |
| Enforcement Issues..... | 29 |
| Wider Enforcement of Workplace Rights..... | 35 |
| Agency Workers and the Employment Agency Standards Inspectorate..... | 39 |
| SECTION 5: AWARENESS AND PUBLICITY | 42 |
| Awareness Raising – 2009/10 Campaign..... | 42 |
| Awareness Raising – 2010/11 Campaign..... | 48 |
| ANNEX A: Government Response to 2010 Recommendations..... | 50 |
| ANNEX B: Remit for the Low Pay Commission 2011 Report..... | 52 |
| ANNEX C: NMW Compliance Report 2009/10 and Forward Look..... | 53 |

SECTION 1

EXECUTIVE SUMMARY

1.1 The Government welcomes this opportunity to present the Low Pay Commission (LPC) with its non-economic evidence on the National Minimum Wage (NMW).

1.2 The NMW is one of the most important workplace rights and the coalition Government fully supports it. It is a key part of our strategy to provide fair standards in the workplace and make work pay.

1.3 This document does not include the Government's economic evidence. This will follow after publication of the Annual Survey of Hours and Earnings (ASHE) data.

Policy Issues

1.4 Section 3 provides details on a range of NMW policy areas aimed at particular groups of workers. This section includes details on competitiveness of small firms, young people, apprentices, interns, seafarers, travel schemes, social care, pensions, tips, agency workers and the entertainment sector, and our guidance programme.

1.5 Small firms have a key role in leading UK growth out of recession and the government's aim is to help small and medium sized businesses start and thrive through better and more targeted business support. In this section we outline how we intend to achieve this aim.

1.6 Growth in the UK economy has resumed and as the underlying labour market position stabilises, there has been some recent improvement in the youth labour market. The Government remains committed to tackling youth unemployment. To ensure that job opportunities are there for young people in the future, the Government's priority is to deal with the deficit to restore confidence in the economy, encourage enterprise, and support a recovery in output and jobs.

1.7 The Government accepted the LPC recommendation on the apprentice rate and this will come into force in October. The Government is concerned that requirements on employers to pay apprentice minimum levels of pay do not discourage the creation of apprenticeship places and the recruitment of young people. The implementation of the £2.50 hourly rate creates some risk and we ask the LPC to consider carefully the initial response of employers to its introduction.

1.8 We have recognised the concern that has been expressed by the LPC about the inappropriate use of internships, particularly in the entertainment sector. We outline the work that is continuing to find a solution that avoids the exploitation of interns without reducing the number of valuable internship opportunities.

1.9 Following our consultation on the use of travel and subsistence schemes, which are used by some Employment Businesses and umbrella companies for temporary workers paid at or near the NMW, the Government has concluded that action needs to be taken to prevent these travel expenses counting towards NMW pay. The Government aims that the amendment to the NMW regulations will take effect from 1 January 2011, pending Parliamentary approval. This will allow employers to make the necessary changes to their systems and processes.

1.10 The Government has announced a review of the workplace pension reforms. The review will consider whether the approach inherited from the previous administration strikes the right balance between cost, benefits and risks for individuals, for employers and for the tax payer. This consideration will include whether the National Employment Savings Trust (NEST) is the right intervention to support pension savings amongst low to moderate earners.

Compliance and Enforcement

1.11 Section 4 covers the Government's work on enforcement. During 2009/10 HMRC identified over £4.3 million of arrears for over 19,000 workers who were underpaid. Implementation of the new penalty regime has been a success and the additional element of arrears recovered for workers under the new regime was £94,075.

1.12 The National Minimum Wage Compliance Strategy was published in March 2010. The Compliance Strategy is a forward looking document which sets out a vision for the NMW – namely that everyone who is entitled to the NMW should receive it – and outlines the tools and approaches that we will use to achieve this vision.

Awareness and Publicity

1.14 Section 5 outlines the Government's work on awareness and publicity. As well as a strong enforcement regime, we need to ensure that employers and workers are made aware of any changes to the NMW. Research has shown a high level of awareness for the NMW, so our recent campaigns have been focused on changes to the rates, ensuring employers and workers know where to go for advice or to make a complaint and on the consequences for non-compliance for employers.

1.15 Evaluation of the 2009/10 **vulnerable workers** awareness campaign showed that 37% of workers recognised **elements** of the campaign. When advertising of the helpline began, call volumes rose by 124%. Online, over 500,000 visits were made to the Directgov campaign page. Publicity for 2010/11 takes place in the context of the Government's marketing freeze and will be driven through low or no-cost options, including the HMRC Employer

Bulletin, partner organisations and possible media features in sector and regional press.

SECTION 2

INTRODUCTION

2.1 The Government published the Low Pay Commission's 2010 report in May this year. The report recommendations included:

- From 1 October 2010 to increase the adult rate of the NMW from £5.80 to £5.93 per hour.
- To increase the Youth Development rate from £4.83 to £4.92 and the 16 – 17 year old rate from £3.57 to £3.64 per hour.
- The accommodation offset rate should increase from £4.51 to £4.61 per day.
- The introduction of the apprentice minimum wage set at a rate of £2.50 per hour from 1 October 2010.

2.2 Further details about all the LPC's recommendations and the Government's response to them can be found at **Annex B**.

2.3 In June, the Government published the LPC remit for their 2011 report. As well as asking the LPC to monitor, evaluate and review the NMW and its impact and to make recommendations, the Government also asked the LPC to have particular reference to the effect on pay, employment and competitiveness of small firms and the effect on pay structures and employment of different groups, women, ethnic minorities, people with disabilities and migrant workers. The LPC was also asked to review the labour market position of young people, including those in apprenticeships and internships.

2.4 The LPC has been asked to report by the end of February 2011. A copy of the full remit can be found at **Annex C**.

2.5 This year's NMW Regulations were debated in the House of Commons and the House of Lords on 19 and 20th July respectively. The Regulations (S.I. 1901) will come into force on 1 October 2010 and have the following elements:

- Rate increases for the NMW and the accommodation offset rate. The Regulations provide for increases in line with the recommendations in the LPC's 2010 report.
- Implementation of LPC recommendation that 21 year olds should be entitled to the adult rate.
- A new apprentice rate set at £2.50 per hour for workers who are employed under a contract of apprenticeship and are within the first 12 months after commencement of that employment, or who have not attained the age of 19.

SECTION 3

POLICY ISSUES

Competitiveness of Small Firms

3.1 Small firms have a key role in leading UK growth out of recession, and workers on the minimum wage are disproportionately more likely to be employed by small firms. Many start-ups and established small businesses are not reaching their full growth potential and a central element of the Government's growth plan is to make it as easy as possible to start, run and grow a business.

3.2 In their 2010 report, the LPC highlighted FPB reports that small businesses were finding it hard to cope with the recession and that half of its members had highlighted staff costs as a serious issue for their business. The LPC also said that small firms saw a large reduction in employment between the third quarter of 2008 and the third quarter of 2009 and the reduction in employment was greater in small firms than in medium-sized or large firms.

3.3 The Government's aim is to help small and medium sized businesses start and thrive through better and more targeted business support, improved access to finance and by building a more entrepreneurial culture. It has 2 broad objectives in pursuing this aim:

- ***Building an enterprise culture in which people are inspired to take more business opportunities and are given more opportunities to develop the skills needed to start-up successful businesses.*** In particular, we want to do more to encourage and help unemployed people to grasp the opportunities presented by self employment as a route out of benefits toward financial independence. The Department for Business Innovation and Skills (BIS) is working with the Department for Education to develop proposals to enhance the role of schools, further education and higher education in promoting enterprise. BIS are also, alongside the Department for Work and Pensions, looking at options to support unemployed people in setting up their own businesses and we are considering the role that mentoring could play in supporting new entrepreneurs.
- ***Ensuring more established SMEs achieve their full growth potential.*** In addition to addressing the specific market failures which impede growth, such as problems in accessing finance, this will require increased focus on encouraging SMEs to develop their internal capability to use knowledge and resources effectively, which in turn requires access to appropriate advice and guidance. To do this we will improve the services that banks provide to small businesses, including affordable lending and equity finance. We will simplify publicly funded venture and growth capital and reduce the volume of regulation and the administrative burdens on business.

3.4 In addition Government will be **creating more targeted business support services**. We will consult with businesses on how support can be best provided. We will be reviewing Business Link services and will conduct an audit of the current suite of solutions for business products.

Young People

3.5 Youth unemployment remains high. So, while the youth labour market is dynamic and there are some early signs of recovery, the Government is taking action to encourage these positive trends.

3.6 The ILO unemployment rate for 16-17 year-olds has been rising since the early 2000s, and the current rate is 33.1% (as at August 2010). For 18-24 year olds the ILO unemployment rate rose between 2004 and 2006, but had started to fall back until the recent global recession. Since the start of the recession the unemployment rate for 18-24 year olds increased from 11.8% in March-May 2008, peaked at 18.2% in August-October 2009, and was 17.5% in April-June 2010.

3.7 However the youth labour market remains dynamic. Off-flows from Job Seeker's Allowance (JSA) have held up well and around 80 percent of new young JSA claimants leave benefit within 6 months. There are also signs that the youth labour market is stabilising and latest labour market statistics (August 2010) showed a reduction in ILO unemployment and the claimant count for 18-24 year olds, and a rise in employment.

3.8 These figures are a small but welcome step in the right direction, but we absolutely do not underestimate the scale of the economic challenge we face. Youth unemployment remains high and the Government is taking action:

- To ensure that job opportunities are there for young people in future, by tackling the deficit to restore confidence in the economy, encourage enterprise, and support a recovery in output and jobs; and
- To help young people successfully compete for these jobs by putting in place an effective system to support them into sustainable work.

3.9 The benefits system as it stands sometimes seems to encourage people to stay on benefits rather than take on a job. The Government will radically simplify the back to work system by ending the complexity of the previous decade and replacing current schemes with a new Work Programme.

3.10 To ensure that as many people as possible benefit from the Work Programme as quickly as possible, the Government has announced the phasing out of many existing programmes. However, until the new Work Programme is in place, the Government will ensure that people continue to receive the support they need.

3.11 The Young Person's Guarantee, which is a guaranteed offer of work, training or work experience for young people reaching six months unemployed, will continue but will now not be extended into 2012. The Future Jobs Fund is not accepting any further bids but all existing commitments will be honoured, creating around 100,000 job opportunities in total.

3.12 In addition to the support provided through the Work Programme, the Government is investing in young people. We are re-deploying £200 million of Train to Gain funding to build new Further Education college buildings and to create new apprenticeship places. There will also be work experience opportunities available.

Apprenticeships

Apprenticeships strategy

3.13 Education and training are major priorities for the Government. There is much we can do to ensure that the beneficial power of learning reaches everyone, building stronger communities, stronger business and a bigger society. We are committed to creating more and better quality Apprenticeships for both young people and for adults, as an important route to skilled and secure employment. Changing demographics and the need to maintain and improve skill levels in the workforce, mean that it is vital that we continue to invest in the existing workforce, as well as training the next generation. Our early decision to redeploy £150 million of Government efficiency savings to create 50,000 new adult Apprenticeship places demonstrates our commitment to high-quality, employer-led skills.

3.14 The Government is concerned that requirements on employers to pay Apprentices minimum levels of pay do not discourage the creation of Apprenticeship places and the recruitment of young people. The implementation of the £2.50 hourly rate creates some risk and we ask the LPC to consider carefully the initial response of employers to its introduction.

3.15 The National Apprenticeships Service (NAS) has been in existence since April 2009 as the first organisation focused solely on promoting and delivering Apprenticeships in England. We will continue to look to NAS to work with employers, sectoral bodies and training providers to expand the programme and develop Apprenticeships as the primary vocational training route for young people and adults.

3.16 The Apprenticeships, Skills, Children and Learning (ASCL) Act passed onto the Statute book in the last Parliament. The Act was the first legislation on Apprenticeships for over a century. The Act also, through the Specification of Apprenticeships Standards in England, clarifies and specifies what constitutes an Apprenticeship.

Government priorities

3.17 The Government is committed to the provision of sufficient Apprenticeship places to meet the needs of young people including those not in education, employment or training (NEET). Both the Department for Business Innovation and Skills and the Department for Education support an all age Apprenticeship programme providing a coherent training and employment route. This will include provision for those not yet ready for an Apprenticeship through to those training at higher level.

3.18 The Government sees the development of Advanced Apprenticeships as the key to meeting increasing employer demand for technician level skills at intermediate level, with clear entry arrangements for those not yet ready for an Apprenticeship and routes for progression to Higher Apprenticeships, higher education and professional skills.

3.19 The reputation of Apprenticeships with parents, employers and young people will only be improved if Apprenticeships are seen to be high quality opportunities that offer relevant workforce skills and secure employment opportunities. Good quality Apprenticeships will equip individuals with the skills which are needed by employers and are vital to our economic success. Building high quality Apprenticeships is a priority for this Government. We will work with NAS, employer bodies and sectoral bodies to improve success rates and make Apprenticeships responsive to developing and emerging skill needs.

3.20 The role of Sector Skills Councils (SSCs) in this process is of paramount importance. SSCs are responsible for the design, monitoring and review of Apprenticeships frameworks for employers and employees in their sector and the promotion of training and skills. We look to SSCs to identify, for example, emerging technological trends and to work with employers and others to ensure there are appropriate frameworks to meet changing skills needs.

3.21 We have also invested in reviewing and redefining what is an effective Apprenticeship. The Specification of Apprenticeship Standards for England (SASE) is designed to ensure that all frameworks offer on and off the job guided learning and recognised high-quality qualifications. We plan that Apprenticeship frameworks will have to be compliant with the SASE by April 2011. The quality of Apprenticeships is a priority for this Government. Clearly we do not want to put in place barriers to employers taking on apprentices. However, if Apprenticeships are to be the high quality offer we expect them to be, we need to have clear and consistent occupational standards, and high quality frameworks

Current performance & evidence

3.22 Apprenticeship volumes have increased significantly in recent years, rising from 65,000 starts in the 1996/97 academic year to 240,000 in 2008/09. The number of starts fell slightly in 2003/04 to 2005/06 as the Learning and Skills Council (LSC) focussed on improving quality of provision and completion rates but recent years have seen a return to growth. Following strong growth in 2007/08 and 2009/09 the programme has continued to expand in 2009/10 and starts are forecast to exceed 250,000 in 2009/10.

3.23 Almost all of the increase in Apprenticeship numbers in the previous two years has been in adult starts, particularly those aged 25 and over. The number of 16-18 starts increased in the period 2005/06 to 2007/08 but dropped in 2008/09 as employer recruitment fell, affecting mostly young people entering the labour market. Forecasts of the number of young people starting an Apprenticeship in 2009/10 indicate that the fall in 16-18 numbers has been reversed and that the total 16-18 starts will be significantly higher than the previous year.

3.24 Successful completion rates have continued to increase with the overall success rate at 71 per cent in 2008/09. Success rates for young people and adults are only 2.5 percentage points different overall with young people more successful at advanced level but less successful at level 2.

3.25 The recession has affected the pattern of Apprenticeship provision, with reduced provision in traditional crafts occupations but increases in administrative, care and services frameworks. We are concerned by the large reductions, particularly amongst young people, in areas which are important to developing our technician skills base, such as construction, engineering and electro-technical which are all showing double digit percentage reductions in starts in 2009/10 compared to last year.

Pay considerations

3.26 The Government's view that an Apprenticeship is principally a training position delivered in the workplace for which the apprentice is also paid is widely shared. The case for a lower rate of pay for Apprentices while they are training is based on an individual accepting a lower income in the expectation of higher future earnings and the lower productivity of apprentices, particularly in the early part of their training. Employers make a considerable investment in Apprenticeships and, particularly in longer frameworks, may have an extended period of less productive employment by apprentices. While this investment by employers has clearly demonstrable medium and long-term benefits through a more productive and effective workforce, there are considerable up-front risks. There is considerable evidence to support the arguments of positive returns for both individuals and companies.

3.27 However, the increase in the Apprenticeship minimum wage from £80 to £95 per week from August 2009 (in England) and its replacement by a minimum wage of £2.50 per hour (across the UK) may affect employer behaviour, particularly in respect of employing young people.

3.28 It is important that employers are not discouraged from continuing to invest in training during the economic downturn. Maintaining investment in skills is essential to the country's ability to respond to economic and technological changes. There is widespread support for the Apprenticeship programme and maintaining employer goodwill and commitment to the programme is vital.

Conclusion

3.29 The Government has established a minimum wage for apprentices from October 2010 and asks the LPC to be mindful about the impact on supply of places, particularly for young people.

3.30 The Government's main concern in the establishment of a minimum wage for apprentices is in respect of young people, because of their vulnerable position in the labour market. We believe strongly that the interests of young people are best served by their participation in education or jobs with training and that barriers to their entry to the labour market must be minimised.

Unpaid work/Internships

3.31 The Government sees the provision of internships as a legitimate and, for the most part, helpful addition to the youth labour market. The best of them have a training element and can be an important way for young people to develop workplace skills. We do, however, recognise the concern that has been expressed by the LPC and others about the inappropriate use of internships in certain sectors, particularly in the entertainment sector. We are therefore considering what more can be done to:

- address potential exploitation without choking off valuable opportunities;
- deliver effective enforcement of any breaches of employment law; and
- ensure those from disadvantaged backgrounds have greater access to this method of gaining employment experience.

3.32 In the current economic climate, internships are being encouraged as a way of helping graduates to develop their skills in the workplace and increase their employability. The Office for Graduate Opportunities (OGO) has developed the Graduate Talent Pool (GTP) to support the growth of graduate internships, along with a number of subsidised graduate internships. OGO has been working with the TUC and also considering what action might be needed to promote and support undergraduate internships.

3.33 Since its inception, over 23,000 internship vacancies have appeared on the GTP site, 60% of which have been paid. In addition, more than 1500 paid graduate internships have been provided so far by Higher Education Institutions and local employers through HEFCE's Economic Challenges Investment Fund. Under the graduate internships policy, employers have been encouraged to offer paid internships and reminded that they must comply with employment law requirements, in particular with NMW legislation. The GTP website makes this clear and provides a link to the more detailed guidance about internships contained on the Business Link website.

3.34 The OGO has also been collaborating with the Gateways to the Professions Collaborative Forum on its work to improve the quality of and access to internships, especially for those from disadvantaged backgrounds. This is in response to the Milburn Panel on Fair Access to the Professions which pointed out that internships are increasingly a prerequisite for entry into the professions and that lack of access to them for young people without the contacts to obtain a placement or the means to undertake an unpaid internship constitutes a barrier to access to the professions. From January 2010, those graduating in 2009 and already receiving Jobseekers Allowance for six months or more have been able to do an unpaid internship for up to 13 weeks alongside claiming an allowance and looking for work.

3.35 The Milburn Panel recommended that the professional bodies, trade unions, Government and the third sector should produce a common best practice code for internships to address this and other aspects such as recruitment, conditions of work, supervision and induction. The Professions

Collaborative Forum is in the process of agreeing a draft code to be discussed with interested parties.

3.36 Guidance is currently available on the Business Link website about internships and work experience. BIS will be updating it to provide more clarification and introducing entertainment sector based examples. Details of changes in regulations and guidance related to agency workers in the entertainment and modelling sectors are set out in paragraphs 4.76-4.78

3.37 In the remit, we asked the LPC to consider internships as part of their review of the labour market position of young people. We will be particularly interested to read the evidence provided to the LPC on the extent and nature of internships across the market place, and LPC conclusions on developments in youth employment.

Seafarers

3.38 Following meetings with the maritime trade unions in March 2010, the former Government agreed to establish a working group to consider the legal position in relation to the application of UK National Minimum Wage legislation to non-UK ships in territorial waters travelling between UK ports. This working group had not met prior to the election. The Coalition Government has announced that it wishes to look afresh at the issues and evidence presented before taking further steps.

3.39 The issue is whether any attempt to enforce the NMW for workers on foreign-flagged vessels in UK territorial waters would infringe the fundamental right of innocent passage and would be incompatible with customary international law and with the UN Convention on the Law of the Sea (UNCLOS). Under UNCLOS, a coastal state may only enforce its jurisdiction on foreign vessels undertaking innocent passage in very limited circumstances that would certainly not extend to employment legislation. There is also a convention that states do not interfere in the internal affairs of a foreign vessel, even when that vessel is in internal waters, or docked in port because the flag State generally has jurisdiction.

Travel Schemes

3.40 In February 2010, the former Government launched a consultation on the use of travel and subsistence schemes put in place by some Employment Businesses and "umbrella companies" for temporary workers paid at or near the NMW. These schemes are designed to secure tax relief for the cost of what otherwise would be normal home to work commuting by using overarching employment contracts to change a series of permanent workplaces (for which no travel cost relief would be due) into a series of temporary workplaces (for which relief is due). They involve salary sacrifice whereby the worker agrees to give up an amount of his or her pay in return for a payment of tax- and NICs-free expenses. Tax and NICs are saved on the amount of the pay given up.

3.41 The consultation closed on 6 May 2010. A total of 54 responses were received – many were from Employment Businesses. Nearly all responses fell into two categories: either strongly in favour of action being taken or strongly opposed to such action; almost half the responses were from Employment Businesses which have or would like to implement such schemes and who were against action being taken.

3.42 The Government has concluded that, on balance, the responses to the consultation support action being taken to prevent these travel expenses counting towards NMW pay because there is evidence that these schemes exploit low paid workers. In many cases, the Employment Business retains most of the tax and NICs savings, with the worker receiving a small uplift in take home pay - typically in examples that HMRC has seen of between £5 to £8 per week, with the Employment Business perhaps benefiting by as much as £30 to £40 per week. There also is evidence that workers do not understand these arrangements. They can affect the worker's entitlement to earnings-related contributory benefits (in particular, basic and additional state pension) and this impact will usually not be explained to them. In addition, these schemes give rise to a competitive disadvantage for those Employment Businesses which do not wish to use such schemes.

3.43 The consultation provided that if the proposal were implemented, this would take effect from 1 October 2010. The Government now aims that the amendment will take effect from 1 January 2011, pending Parliamentary approval. This will give employers more time to make the necessary changes to systems and processes.

Social Care

3.44 The social care workforce plays a vital role in helping to put people who use social care services in control of their lives. We are aware that low pay can be a concern for some working in the sector.

3.45 However, the Government does not directly employ care workers. The Government allocates resources to local authorities who make decisions on what proportion of their budgets are spent on adult social care. Local authorities have to ensure that both they and the service providers from whom they commission offer best value and a quality service. The Government's position is that the terms and conditions of social care workers, including pay, are a matter for local employers within the existing requirements of employment legislation.

3.46 Analysis of recent available data from the National Minimum Data Set for Social Care (September 2009) shows that average hourly rates of pay for care workers ranged from £6.16 to £8.20, pay for senior care workers ranged from £6.80 to £10.46 and for community, support and outreach workers ranged from £6.68 to £9.71. This compares with the applicable NMW at the time of £5.73/hour. Higher rates are paid by the voluntary and public sectors with lower rates paid by the private sector; and rates for social care workers are higher in domiciliary care than in care homes.

3.47 As a result of the greater take-up of personal budgets, people who use services are increasingly employing personal assistants (PAs). Wages paid to PAs tend to be higher than the average for care workers (private sector) with a recent survey for the Department of Health (DH) showing an average hourly pay rate of £7.60 for PAs who participated in the research.

3.48 DH will continue to work with local authorities to ensure that the providers from whom they commission services offer fair terms and conditions, including payment of the NMW.

3.49 DH is aware of the need to support vulnerable employers. Adult social care transformation objectives support the establishment of local user-led organisations and the encouragement of local capacity building through Local Authorities. Good information, advice and guidance and an appropriate level of support should be provided to personal budget recipients.

3.50 DH, the Association of Directors of Adult Social Services and the Local Government Authority agreed key priorities and milestones dates for adult social care transformation in September 2009. These include:

- *Effective partnerships with people using services, carers and other local citizens* – by April 2011, that every council has at least one user-led organisation who are directly contributing to the transformation to personal budgets;
- *Information and advice* – by April 2011, that the public are informed about where they can go to get the best information and advice about their care and support needs.

3.51 Reform and personalisation are central to the Government's approach to social care. The Coalition Agreement proposes reform of the system of social care to provide more control to individuals and their carers, and to ease the cost burden that they and their families face. This includes:

- a Commission on long-term care, to report within a year;
- extending the greater roll-out of personal budgets to give people and their carers more control and purchasing power; and
- using direct payments to carers and better community-based provision to improve access to respite care.

3.52 DH is continuing to work with partner organisations on the six strategic priorities for the social care workforce, as follows:

- Leadership, management and commissioning
- Recruitment, retention and career pathways
- Workforce remodelling
- Workforce development
- Joint and integrated working between social and health care and other services
- Regulation

Workplace Pensions Reforms

3.53 Approximately 7 million people are currently not saving enough to deliver the pension income they are likely to want or expect. From October 2012, employers will be required to automatically enrol eligible jobholders¹ into a qualifying workplace pension arrangement. Employers will be free to choose the pension scheme(s) that best suits them. This may include Defined Benefit, Defined Contribution, Hybrid or Group Personal Pension schemes.

3.54 If an employer chooses a defined contribution scheme they must make a minimum 3% contribution (on a band of earnings). This will be supplemented by the jobholder's own contribution and tax relief on contributions. Overall contributions will total at least 8%.

3.55 The National Employment Savings Trust (NEST) is being set up as a low cost, qualifying Defined Contribution scheme that employers can use for jobholders on low to moderate earnings.

3.56 Implementation of the employer's duty to automatically enrol will be staged over the period from October 2012 to September 2016. Large employers will be the first to register and automatically enrol their jobholders, followed in later tranches by medium and finally small and micro-employers.

3.57 The payment of employers' minimum contributions to a Defined Contribution arrangement will be phased over time to help employers and employees alike adjust to the costs of pension savings gradually.

3.58 The gradual phasing of contributions is not possible for Defined Benefit and Hybrid schemes. Instead, employers providing these types of scheme will be able to delay their automatic enrolment duty for jobholders until October 2016. Jobholders will be able to opt into the scheme if they wish during this transitional period.

3.59 The Coalition Agreement confirmed the Government's commitment to introduce automatic enrolment as a means of increasing pension saving. However, recognising that the reforms underway were hugely significant, we announced a review of the workplace pension reforms in June 2010. This will consider whether the approach inherited from the previous Administration strikes the right balance between cost, benefits and risks for individuals, for employers and for the tax-payer. This consideration will include whether NEST is the right intervention to support pension savings amongst low to moderate earners.

¹ An eligible jobholder is someone aged at least 22 years, old who has not yet reached State Pension age and is earning more than £5,035 a year (in 2006/07 earnings terms).

Tips

3.60 The previous Government changed legislation to stop service charges, tips, gratuities and cover charges (tips) being used to pay the NMW. This came into force on 1 October 2009. Trade Unions called for wider action as, although acting legally, businesses were still being perceived to be acting unfairly by altering how tips were collected, used and divided. Tipping sectors include restaurants, hotels, casinos and hairdressers.

3.61 To address this, a voluntary Code of Best Practice was developed between trade bodies, consumer groups and trade unions with the aim of increasing the transparency of tipping policies within businesses. The Code has four principles:

- Businesses will clearly display on their premises prior to the point of purchase or choice their policy relating to mandatory and discretionary service charges, tips, gratuities and cover charges, and make this accessible.
- Businesses will have a process in place to deal with requests from customers about how and to whom all service charges, tips, gratuities and cover charges are distributed, and the level and purpose of deductions.
- Businesses should ensure that workers understand and are able to confidently explain the business' policy on service charges, tips, gratuities and cover charges to customers, or know where to direct customers for further information, and without risk of detriment.
- All workers should be fully informed on the distribution and breakdown of service charges, tips, gratuities and cover charges and the level and purpose of any deductions. Businesses should seek to reach agreement with workers on any change of policy.

3.62 The Department for Business Innovation and Skills led a "Who Gets the Tip?" communication and awareness campaign in Q1 2010, aimed at informing consumers in particular about the Code and encouraging them to ask about a tips policy. The target was to gain increased business uptake of the Code principles. Material was produced to translate the Code into a variety of languages and media formats to ensure that employees as well as businesses could access and understand the Code. The campaign had support from businesses, unions and the media including endorsement from well known restaurant chains and famous chefs.

3.63 The online 'social' media campaign focused on a campaign website. Traffic was driven there through 30 inbound links, which reached an estimated audience of 7.7 million, information carried by the MoneySavingExpert.com website which distributed the campaign message to their 5 million subscribers, and via social media sites such as Twitter, Facebook and Youtube. Traditional media was also utilised including radio and TV

interviews, and four national titles picked up the story along with a number of regional papers. This reached an estimated 1.85 million readers. In line with the Government's austerity measures (which include an expenditure freeze on communications and marketing) the communications effort in support of the Code will not be taken forward.

3.64 In February 2010, leaflets were sent by direct mail to businesses in sectors where receiving tips from customers is common, including hotels and restaurants, gambling and betting outlets, hairdressing and other beauty therapy businesses, and taxi operations. A leaflet for workers in sectors where receiving tips from customers is common was distributed on our behalf by stakeholders including the British Hospitality Association and unions.

3.65 The previous Government committed to the LPC to carry out targeted enforcement in the hospitality sector. HMRC will be prioritising risk assessed cases and complaints in this sector, which will include reviews of the treatment of tips.

3.66 The LPC will be receiving evidence from businesses and trade unions on the impact of the change in legislation, and will be presenting their analysis of the first year under the new regime in their next report.

Agricultural Wages Board

3.67 The Department for the Environment, Food and Rural Affairs has recently announced its proposal to abolish the Agricultural Wages Board (AWB).

3.68 The AWB was established in 1948 with one of its main functions to review and set minimum wage rates for agricultural workers. There are currently six rates in total – one for each of the six categories of agricultural worker.

3.69 The Government is proposing to abolish the AWB in light of changes in wider employment legislation both nationally and at EU level since the AWB was established, including the introduction of the NMW. It is considered that the current system of setting separate rates for agricultural workers is outdated; it duplicates the NMW and adds an unnecessary regulatory burden for the agriculture and horticulture industries.

3.70 Agricultural workers in England and Wales already fall within the framework of the NMW legislation. However, specific amendments to the NMW Act and other related legislation will be needed to remove any reference to the AWB and the Agricultural Wages Act 1948. This will happen simultaneously with the abolition of the Board.

3.71 Discussions on the proposal are at a very early stage. Departments are working together on the detailed aspects of the proposal. The necessary legislative changes will be introduced via the Government's Public Bodies (Reform) Bill.

SECTION 4

COMPLIANCE AND ENFORCEMENT

Introduction

4.1 The Department for Business, Innovation and Skills (BIS) is responsible for NMW policy, including the policy on compliance and enforcement. HM Revenue and Customs (HMRC) enforce the NMW on BIS's behalf and work closely with BIS to ensure that both our policy and our delivery strategy on compliance and enforcement are informed by their experience and intelligence obtained by them. This intelligence includes the reports of the LPC. BIS also works with the LPC Secretariat to ensure that emerging policies on compliance and enforcement take into account Commissioners' thinking and emerging trends which have come to the LPC's attention. BIS and HMRC also work with unions, business representatives and others to ensure that our strategy is informed by their knowledge of what is happening in the workplace. This year BIS also started a mini project to build wider links with other enforcers, for example, the Insolvency Service (including their Companies Investigations Branch). This project included a survey of 10 enforcement bodies which looked at risk assessment, joint working and intelligence sharing, staff engagement and performance indicators. The detailed results of this survey will be disseminated in the autumn.

4.2 HMRC also works collaboratively with other enforcement agencies to share best practice and maximise the impact of the tools and resources that the enforcement bodies have at their collective disposal. This includes information sharing where legal gateways exist and joint or sequential visits. The Employment Act 2008, which came into effect on 6 April 2009, created an information sharing gateway between HMRC and the Employment Agency Standards inspectorate (EAS) and – thanks in part to the ability of the Pay and Work Rights helpline to identify joint cases – we have seen a steady increase in the number of joint enquiries since that date. A joint operation which will target employment agencies in the Midlands region is planned for later in 2010. This will target approximately 50 employment agencies. The operation, which was initiated as a result of information obtained by HMRC's new Dynamic Response Team (see paragraph 4.43), will provide an opportunity to test the effectiveness of joint working on a significant scale.

The National Minimum Wage Compliance Strategy

Strategic Approach

4.3 In 2009 BIS instigated a review of NMW enforcement and worked with HMRC to examine the effectiveness of the current approach to compliance and enforcement. This culminated in the publication of the National Minimum Wage Compliance Strategy (NMW strategy) in March 2010. The NMW strategy is based on a clear outcome – that everyone who is entitled to the NMW should receive it – and positions enforcement activities clearly within a compliance driven strategy. It describes an approach to compliance which is

based on: prioritising according to risk; identifying opportunities to free up resources to focus on the most 'at risk' employers and workers; and utilising a range of tools and techniques to reach different audiences. Central to this is the proposition that a 'one size fits all' approach to compliance is not the most effective: employers who want to comply with the NMW need information and tools to enable them to do so (see paragraph 4.63); there should be effective deterrents to encourage compliance amongst employers who would otherwise be tempted to avoid the law; and there need to be sanctions for those who are determined to operate outside of the law. This tailored approach sends a clear message that the Government will do everything it can to facilitate compliance but will not tolerate deliberate abuse.

Risk-based approach to enforcement

4.4 Complaints from workers are a valuable source of top quality information and currently they account for around 60% of HMRC NMW investigations. HMRC also collect data and intelligence from a variety of other sources, which is used to identify workers 'at risk' of being underpaid and employers 'at risk' of being non-compliant. This informs our priorities, for example, in targeted enforcement and awareness-raising campaigns and accounts for the remainder of NMW investigations carried out by HMRC (around 40%).

4.5 Prior to 2010, HMRC were remitted under their Service Level Agreement with BIS to investigate all complaints from workers in full, requiring a compliance visit to every employer who was the subject of a complaint, irrespective of the seriousness of the case and the perceived risk to workers. This meant that employers who had apparently inadvertently breached the law received the same treatment as employers who were blatantly operating outside of it. Going forward HMRC will be trialling new ways of working under which they will prioritise their resources according to the perceived level of risk of non-compliance. Using this triage approach HMRC will use a range of interventions, e.g. contacting employers by phone and letter to resolve issues that can be resolved using that approach, as well as continuing with compliance visits to employers where the risk of non-compliance indicates that this would be the most effective intervention. BIS and HMRC believe that this new approach should ensure a more efficient and effective use of HMRC's resources whilst at the same time minimising the risk of burdening NMW compliant employers with unnecessary compliance visits². We will ensure that processes are in place to escalate a complaint if new information comes to light (e.g. if HMRC obtain new intelligence on the employer or if the employer fails to pay the complainant or provide sufficient information to enable HMRC to be reasonably confident that they are NMW compliant).

4.6 We do not have a precise figure for the underlying level of NMW non-compliance in the economy. Official statistics indicate that there may be around 250,000 jobs paying below the NMW, excluding jobs in the hidden

² Complaints are often unfounded and in 2009/10, of the total number of cases investigated by HMRC, 76% of employers investigated were found to be compliant.

economy but including jobs which are exempt from the NMW, e.g. voluntary work. The potential scale of non-compliance shows that we cannot achieve our overarching objective of ensuring 100% compliance through direct enforcement interventions by HMRC alone. The NMW strategy, therefore, makes it clear that we will make use of a variety of tools and techniques ranging from on-line guidance and tools to help employers comply (see paragraph 4.63), through to pro-active deterrence and the effective use of prosecutions (see paragraph 4.34). We will continue to prioritise and explore new and smarter ways of working to increase the reach and impact of the NMW strategy.

4.7 HMRC's risk assessment process, and consequently our understanding of risk, is continually being refined using intelligence and data from a variety of sources, e.g. wider HMRC data and intelligence, feedback from unions and the LPC's Report. Information is also obtained via the information sharing gateways that HMRC have with other enforcement bodies, e.g. the Employment Agency Standards inspectorate (EAS). HMRC also make use of local sources of intelligence, including Local Authorities and data trends extracted from past cases. We will continue to use this information to inform the NMW strategy and to identify areas where the Government might work with partners to encourage greater compliance.

Making wider use of leverage

4.8 BIS is developing a strategy to 'tap in' to the resources and contacts of other government departments and partner organisations. There are two prongs to this. First, we want to ensure that HMRC have access to all information which is relevant to the decision to enforce in a particular area, region or sector. Second, given the Government freeze on paid for communications, we need to identify other ways of promoting awareness of the NMW and the enforcement of it. BIS already has plans to work more closely with CAB to ensure that intelligence about rogue employers reaches HMRC and other enforcement bodies.

4.9 HMRC are also developing and testing less resource intensive forms of intervention: e.g. prompting employers who use agency staff and contract workers to carry out due diligence checks (i.e. to determine if they are paying the NMW) and making wider use of letters to employers/organisations in particular sectors, flagging up particular issues where there are common errors made by employers. This due-diligence work has included Local Authorities and one Local Authority has indicated that they will amend their Service Level Agreements for contracted out services to make payment of the NMW a requirement for obtaining and retaining the contract for the provisions of services. Other Local Authorities have confirmed that they already do this.

Adopting an outcome based approach to measuring success

4.10 Historically, HMRC's performance has been measured in terms of outputs: namely, the number of closed cases, number of workers for which arrears are identified, total value of arrears, and elapsed time per case.

These measures give a good indication year-on-year of activity carried out and associated results. However they do not tell us what outcomes have resulted from this activity for example whether or not we are moving any nearer to the goal of ensuring that everyone who is entitled to receive the NMW does so. We are considering whether we could revise the measurement regime to take account of the outcomes that we are trying to achieve, which are summarised below:

Desired outcomes

4.11 Both workers and employers need to know their rights and obligations and where to go for more information if needed; to have access to assistance and information that they can rely on (including comprehensive and up-to-date guidance); and believe it is better to operate within the system than outside it.

4.12 In addition workers need to have confidence they will be supported (e.g. following a complaint to the Pay and Work Rights Helpline); and employers need to be able to comply (e.g. by having access to tools which help them calculate how much they need to pay their workers).

NMW Enforcement Budget

4.13 HMRC's enforcement budget for 2009/10 was £8.1m funding from BIS and an additional £360,000 from the Department for Communities and Local Government's (CLG's) Migration Impacts Fund³. During 2010/11, CLG announced the withdrawal of the funds that they had provided through the MIF. As a result, HMRC have needed to identify in-year savings of £180,000 to sustain funding for their Dynamic Response Team (see paragraph 4.38), which BIS and HMRC agree is an important aspect of delivering the NMW strategy and trialling new ways of working. HMRC may need to identify further savings following the Comprehensive Spending Review (CSR) and we will review the NMW strategy once we know the outcome of the CSR to ensure that we continue to get best value for money from the resources and tools that we have at our disposal.

Statistics on NMW enforcement

4.14 In 2009/10 HMRC received over 2800 complaints and identified over £4.4 million in arrears (34% above target) for over 19,000 workers (44% above target). The average arrears per worker for the year were £228, which is 18% higher than the previous year (the average arrears per worker for 2008/9 were £193).

³ In the light of the overall fiscal position and the need for urgent action to tackle the deficit the Government concluded that the Migration Impacts Fund was not a priority funding stream.

Table 1: Complaints closed by trade sector

| Trade sector | 2006/07 | 2007/08 | 2008/09 | 2009/10 |
|-------------------------|----------------|----------------|----------------|----------------|
| Clothing/footwear | 37 | 39 | 35 | 23 |
| Retail | 266 | 381 | 408 | 301 |
| Hospitality | 416 | 558 | 578 | 590 |
| Hairdressing | 291 | 367 | 358 | 269 |
| Security/Cleaning | 78 | 113 | 111 | 146 |
| Social care | 129 | 163 | 168 | 132 |
| Production/Construction | 175 | 261 | 219 | 210 |
| Market service | 285 | 312 | 336 | 345 |
| Public service | 31 | 56 | 35 | 22 |
| Other services | 401 | 636 | 607 | 575 |
| Total | 2,109 | 2,886 | 2,855 | 2613 |

Notes on Table 1:

4.15 Of the 2613 complaints closed in 2009/10, 2151 of these were closed by HMRC operations (i.e. compliance officers) and 462 cases were closed by HMRC's Central Information Unit (CIU). When a second or subsequent complaint is received in respect of a case which operations are already working the second or subsequent complaint is closed by CIU.

Table 2: Complaints received by region

| Region | 2006/07 | 2007/08 | 2008/09 | 2009/10 |
|------------------|----------------|----------------|----------------|----------------|
| Scotland | 149 | 245 | 187 | 215 |
| Wales | 91 | 154 | 134 | 119 |
| London | 334 | 523 | 434 | 462 |
| North East | 256 | 172 | 108 | 116 |
| Northern Ireland | 105 | 104 | 80 | 63 |
| West Midlands | 183 | 305 | 267 | 236 |
| Merseyside | 39 | 68 | 44 | 36 |
| Yorks/Humberside | 176 | 302 | 222 | 258 |
| North West | 221 | 345 | 259 | 334 |
| East Midlands | 129 | 215 | 157 | 154 |
| East | 160 | 267 | 226 | 270 |
| South East | 230 | 309 | 228 | 323 |
| South West | 137 | 222 | 175 | 261 |
| Anon | 0 | 1 | 0 | 3 |
| Total | 2,210 | 3,232 | 2,521 | 2,850 |

Notes on Table 2:

4.16 2,850 complaints were received in 2009/10, compared to 2,521 in 2008/09. There is a difference between complaints received and closed cases as complaints are not necessarily opened and closed within the same financial year.

4.17 The introduction of the new enforcement regime in April 2009 had a significant impact on closed cases for 2009/10: in particular compliance

officers have had to familiarise themselves with new process and a new approach to enforcing the NMW.

4.18 In line with the NMW strategy published in March 2010, HMRC are moving towards a more risk based approach to enforcement. Risk assessed cases are typically larger and more complex than complaint cases. We do not expect the change in emphasis to have an adverse effect on processing complaints from workers as HMRC are piloting new ways of working, including a triage approach to investigations (see paragraph 4.5) which will ensure that all complaints are investigated whilst freeing up resources within HMRC to do more risk assessed work.

Table 3: Risk assessed cases closed by trade sector

| Risk assessed cases closed by trade sector | 2009/10 |
|---|----------------|
| Clothing | 16 |
| Hairdressing | 234 |
| Hospitality | 528 |
| Market | 188 |
| other | 183 |
| Production | 163 |
| Public | 6 |
| Retail | 182 |
| Security | 53 |
| Social | 164 |
| Total | 1717 |

Notes on Table 3

4.19 Of the 1717 risk assessed cases closed in 2009/10, 1492 cases were closed by HMRC operations and 225 cases were closed by CIU. Operations will return cases to CIU for closure for a variety of reasons, such as where the employer's circumstances have changed (e.g. the business has gone into formal insolvency proceedings) or where there are resource considerations (e.g. a sudden increase in complaints - which until now have taken priority over risk assessed cases).

Table 4: Risk assessed cases analysed by region

| Risk assessed cases registered by region | 2009/10 |
|---|----------------|
| Scotland | 130 |
| Wales | 252 |
| London | 29 |
| North east | 23 |
| Northern Ireland | 100 |
| West Midlands | 5 |
| Merseyside | 1 |
| Yorkshire/Humberside | 64 |

| | |
|---------------|-----|
| North West | 118 |
| East Midlands | 30 |
| East | 23 |
| South East | 76 |
| South West | 133 |
| Total | 984 |

Completed enquiries

4.20 A total of 3,643⁴ cases were closed in the year and non compliance was found in 1,256 cases – a strike rate of 34%⁵. Table 5 provides further details about completed enquiries, including: the number of closed cases, the strike rate, arrears identified; enforcement and penalty notices issued under the previous enforcement regime and financial penalties issued under the enforcement regime that came into effect on 6 April 2009.

Table 5: Incidence of non compliance identified

| | 2006/07 | 2007/08 | 2008/09 | 2009/10 |
|---|----------------|----------------|----------------|----------------|
| Total closed cases | 4,500 | 4,524 | 4,317 | 3,643 |
| Cases of non compliance | 1,523 | 1,650 | 1,746 | 1,256 |
| Strike rate | 34% | 36% | 40% | 34% |
| Total arrears | £3,039,680 | £3,897,374 | £4,478,485 | £4,390,023 |
| Uplift to current rates (note this is the additional element of arrears that workers became entitled to on 6 April 2009). | n/a | n/a | n/a | £94,075 |
| Average arrears per worker | £214 | £202 | £193 | £228 |
| No of male workers | 4,989 | 10,475 | 11,757 | 9,811 |
| No of female workers | 9,200 | 8,789 | 11,490 | 9,434 |
| Enforcement notices issued | 71 | 59 | 96 | n/a |
| Penalty notices issued | 2 | 25 | 30 | n/a |
| Penalties charged (post April 2009) | n/a | n/a | n/a | 480 |
| Notices of | n/a | n/a | n/a | 591 |

⁴ This is made up of complaint and risk assessed cases closed by HMRC operations (i.e. compliance officers). It does not include cases closed by CIU.

⁵ The statistics on strike rate are not directly comparable as, unlike the figures for previous years, both the 2008/09 and the 2009/10 statistics do not include cases closed by CIU. This change ensures that reported results reflect HMRC's operational activity and avoids double counting (e.g. where HMRC have multiple complaints involving the same employer).

| | | | | |
|---------------------------------------|--|--|--|--|
| Underpayment issued (post April 2009) | | | | |
|---------------------------------------|--|--|--|--|

Notes on Table 5:

4.21 Of the cases investigated by HMRC, non compliance was found in respect of 1256 cases. 848 of these cases related to worker or 3rd party complaints.

4.22 In April 2009, workers became entitled to have arrears of the NMW repaid at current rates, where these are higher than the rate that was in force at the time of underpayment. This change was retrospective (i.e. it applies to all arrears of the NMW owed to workers, not just arrears for pay reference periods starting on or after 6 April 2009).

Completed enquiries

4.23 Table 6 shows the main reasons for arrears of the NMW arising for pay reference periods starting on or after 6 April 2009 when the new enforcement regime came into effect.

Table 6: Reasons for non-compliance

| Reasons for arrears in closed cases where a Notice of Underpayment was issued to the employer | Percentage of total of non-compliant cases |
|--|---|
| Rates Below NMW | 42% |
| Apprentices | 30% |
| Rate Rise | 11% |
| Deductions | 11% |
| Accommodation | 6% |
| Birthday | 7% |
| Status | 2% |
| Commission | 2% |
| Young Workers | 2% |
| Fair Piece Rate | Less than 1% |
| Bonus | Less than 1% |
| Other | 4% |

Notes Table 6

4.24 There may be more than one reason for employers failing to pay the NMW, e.g. an employer who employs apprentices may also miss a rate increase.

Average number of workers per case

4.25 In cases where non-compliance is found, the average number of workers per case for whom arrears are identified has risen steadily since

2006/07. This means that HMRC's enquiries now have more impact in terms of the number of workers that HMRC have been able to help. HMRC consider that this is in part due to refinements in HMRC's risk assessment process and the investigative skills of their compliance officers – who now have eleven years experience of enforcing the NMW.

Table 7: Average number of workers per case

| | Average number of workers per case |
|---------|------------------------------------|
| 2006/7 | 9 |
| 2007/8 | 11 |
| 2008/9 | 13 |
| 2009/10 | 15 |

Enforcement Issues

Implementation of the new enforcement regime

4.26 In 2009/10, HMRC issued 591 notices of underpayment and identified a total of £4,390,023 in arrears owed to 19,245 workers. Workers are now entitled to be repaid arrears of the NMW at current rates⁶ and the additional element of arrears recovered for workers in 2009/10 was £94,075.

4.27 Penalties have been imposed in 480 cases amounting to nearly £162,106. Of those penalties, 236 were paid within 14 days and were therefore subject a 50% discount. The penalty that is charged is based on total arrears for pay reference periods starting on or after 6 April 2009 (when the new enforcement regime came into effect). As such we would expect to see an increase in the figure for penalties in subsequent years.

4.28 We are considering when would be an appropriate time to undertake a full review of the new regime.

Targeted enforcement – the hospitality sector

4.29 Given the LPC's continuing concerns about the level of non-compliance in the hospitality sector, HMRC increased the number of enquiries undertaken in this sector in 2009/10⁷ and will prioritise complaints and risk assessed cases in this sector in the final quarters of 2010/11.

4.30 HMRC remains committed to carrying out a full targeted enforcement campaign in the hospitality sector when resources permit but more consideration needs to be given to the role and form of such campaigns. Analysis of previous targeted communications campaigns has shown that compliance peaks during and immediately after the awareness raising element of the campaign and then trails off again – possibly owing to the transient nature of workers in the sector. We are therefore not convinced that

⁶ Where these are higher than the rate in force at the time of underpayment.

⁷ See table 1

the previous approach to targeted enforcement, including substantial communications campaigns, change behaviours in the long-term.

Targeted enforcement – hotel cleaners

4.31 In response to the LPC's concerns about the treatment of hotel cleaners, HMRC are planning to carry out targeted enforcement in respect of hotel cleaning agencies in the London area in the final two quarters of 2010/11.

4.32 There are a number of aspects to the targeted enforcement:

- HMRC will write to the main hotel chains to raise awareness of the problems which the LPC, and recent high profile cases, have highlighted with regard to the failure to pay agency and contract cleaners the NMW.
- In collaboration with HMRC's Labour Providers Unit (LPU), HMRC's NMW team will encourage hotel chains to carry out due diligence checks with regard to the providers of hotel cleaners which they use.
- HMRC will target articles at trade newsletters and websites aimed at promoting the targeted enforcement project and explaining the need for effective due diligence within the industry
- In collaboration with the LPU, HMRC's NMW team will contact the main hotel chains in London to establish which labour providers they use. This information will be used to inform HMRC's risk assessment process and identify employers for targeted interventions, including unannounced visits.
- HMRC will work with the Employment Agency Standards inspectorate (EAS) and other enforcement bodies, to identify employment agencies/businesses in the hotel sector which are at risk of not paying the NMW. This information will be used to identify suitable cases for further enquiry, including joint or sequential investigations with other enforcement bodies, including EAS.

4.33 The planned operation is a good example of 'joined up' enforcement and it will contribute to achieving the objectives of other employment rights enforcement bodies, in particular EAS and HMRC's LPU. Subject to resource constraints, we will review the success of this project with a view to extending the targeted enforcement to other areas where there appears to be a prevalence of the use of agency and contract cleaners.

Prosecutions

4.34 BIS and HMRC believe that prosecutions can have a deterrent effect as part of an integrated compliance strategy. With this in mind in 2009/10 HMRC started a project to help improve the capability of compliance officers to identify suitable cases for prosecution and gather appropriate evidence to underpin their referrals for prosecution.

4.35 The high cost of prosecutions in HMRC resource terms is relevant to the priority which should be attached to this single form of deterrence within

the overall enforcement regime. There have been 7 successful prosecutions since the then DTI agreed a policy on NMW enforcement and prosecutions with HMRC and the Revenue and Customs Prosecutions Office in May 2006. Since the Government's 2009 evidence to the LPC, there has been one successful prosecution where a Manchester optician was fined £3696 for failing to pay NMW to employees, falsifying records to hide this fact and neglecting to produce appropriate records to HMRC. The case received extensive publicity, particularly in the North West of England. We will continue to seek publicity for such legal cases because we believe they have a significant impact at both regional and national level.

4.36 Since November 2008 HMRC have been carrying out, on a sampling basis, a closed case review of a number of cases to monitor the level of repeat non-compliance by employers who have been the subject of a NMW enquiry where arrears have been identified. A random sample of cases found further NMW compliance issues in 16% of cases. If an employer falls into the category of a repeat offender, HMRC will always consider if it is appropriate to pursue prosecution action.

Additional powers

4.37 The Employment Act 2008 makes it possible for HMRC to use the investigation powers available to them under the Police and Criminal Evidence Act (PACE) 1984 to require the production of, or to search premises for, documentary evidence. Amendments to the PACE Application Order, which came into effect in March 2010, allow HMRC to use these PACE powers to enter and search premises; require the production of documents; question suspects following arrest; and use the powers of search that can be triggered following an arrest under PACE 1984 in respect of NMW investigations. These powers are reserved for the most serious cases and we envisage that they will be used for hidden economy cases where the employer is deliberately operating under HMRC's radar and cases where HMRC suspect that a serious offence has been committed. HMRC will seek to work in tandem with other enforcers on such cases.

HMRC's Dynamic Response Team

4.38 In October 2009, HMRC, via BIS, received £180,000 from the Migration Impacts Fund (MIF) to set up a new Dynamic Response Team (DRT) as a proactive, and geographically flexible, team to be used to target NMW 'hot spots' where employers are using migrant labour to undercut legitimate employers by offering wages below the NMW.

4.39 The project was initially funded through to March 2011 but in light of the need for urgent action to tackle the deficit, the Government has concluded that the MIF is not a priority funding stream and will withdraw funding for this project with effect from October 2010. The DRT team has been operating for less than a year but has already demonstrated that it is a useful compliance tool. It has therefore been decided to continue to fund it through HMRC's enforcement budget.

4.40 Identifying employers who are ‘at risk’ of not paying the NMW and workers who are ‘at risk’ of not being paid is crucial to the success of the DRT. A priority for the team at start up has been to raise awareness of the NMW, and HMRC’s powers to enforce it, with a view to encouraging Local Authorities and community groups to come forward with information on suspected abuse of NMW laws. To date the DRT has met with five Local Authorities and identified a number of key Local Authority projects and stakeholder groups. These links have helped to position the DRT in migrant communities and collect detailed information on the demographic make up of their area which has been used to inform HMRC’s picture of risk at a national level. Examples of outreach work include presentations to community bodies, eg the Refugee Asylum Strategy Group and Council Trading Standard Officers who work on the front line. HMRC are also meeting with community support officers and have plans to contribute to NMW awareness raising articles in local news publications.

4.41 The DRT team are working closely with HMRC Hidden Economy Group (HEG) to identify and investigate employers working in the hidden economy. An example of the work DRT is doing is a recent street sweep where 11 businesses were jointly visited by DRT and HEG officers in an eight hour period. The visits were unannounced. This ‘blitz’ approach raised the profile of NMW enforcement to employers operating in the vicinity and sent a strong signal that abuses of the NMW would not be tolerated. The street sweep identified 5 businesses where there is potential non-compliance and these businesses will now be subject to full investigations.

4.42 Going forward, HMRC are exploring opportunities for joined up compliance and enforcement initiatives with Local Authorities. They have started work on a project with Newham Council to identify opportunities for joint working and are looking into the scope for making joint visits with Council Enforcement Officers.

4.43 The team are investigating a range of employers from large employment businesses with high turnovers of staff to small business operating in the hidden economy. An example of the type of cases DRT work is a multi issue complaint involving both NMW issues and employment agency legislation which was received through the Pay and Works Rights Helpline. DRT took the lead in this case and have identified arrears in excess of £18,000 for 442 workers. This is one of a number of cases being worked with Employment Agency Standards (EAS) who, as mentioned above (para 4.2), will be conducting a joint operation with the DRT in the Midlands region later in the year. This operation will target around 50 employment agencies and will include joint unannounced visits.

Advertisement for unpaid internships

4.44 BIS and HMRC are aware that there is a growing concern about the number of advertisements for unpaid internships. All information provided by third parties on the use of unpaid interns, including that based on advertisements, feeds into HMRC's risk assessment process and informs BIS and HMRC's priorities going forward, e.g. with regard to targeted enforcement campaigns.

The informal economy

4.45 HMRC's NMW team have built strong links with HMRC's Hidden Economy Group (HEG). The Dynamic Response Team (DRT) has been working with HEG to target employers who appear to be deliberately non-compliant with tax and employment laws. This work has included an operation targeted at employers who are operating in or around the main Olympic sites in East London. This operation has included unannounced visits by HEG and to date 4 cases have been referred by HEG to the DRT for further investigation. HMRC's NMW team are also participating in HMRC's Olympic Visibility Project which aims to raise awareness of NMW with both employers and workers on the main Olympic sites. This project includes outreach work, for example, the DRT have attended drop in clinics for workers on the Athletes' Village Site to provide advice on the NMW.

Links across the spectrum of HMRC's compliance and enforcement work

4.46 In addition HMRC's NMW team are building an increasing number of links with specialised units within HMRC, for example the Labour Providers Unit (LPU). These links have facilitated information sharing with wider HMRC and inroads have been made into sharing best practice and ensuring that intelligence which would inform HMRC's picture of risk is shared promptly and effectively. HMRC's NMW team already have plans to make use of material produced by the LPU as part of the due diligence exercise that will precede HMRC's targeted enforcement operation on hotel cleaning, and are exploring whether it would be possible to take this networking a step further, for example, by conducting joint visits with other teams in HMRC.

4.47 The NMW team also receives information from the UK Border Agency which enables it to identify and target non-compliant employers using A8 nationals from the EU working in the UK under the workers' registration scheme. This information informs HMRC's picture of risk in respect of employers using migrant workers.

Change management within HMRC - Pacesetter

4.48 The Pacesetter Programme is an HMRC-wide initiative and has been developed to increase its productivity, develop strong leadership and create a more customer-focussed and continuous improvement culture. It is credited with up to 30% productivity increases in HMRC's processing work. It is being rolled out in Enforcement & Compliance (including NMW) during 2010/11.

Annual Report

4.49 In collaboration with HMRC, BIS will publish a NMW Annual Report in the autumn. The report is aimed a wider audience than the non-economic evidence and responds to the Commissioners' concerns about the perceived lack of visibility of HMRC's enforcement work. The report summarises HMRC's performance against key performance indicators for 2009/10 and looks forward to the first half of 2010/11 to raise awareness of the work that BIS and HMRC have started to drive forward the NMW strategy. A final version of the Annual Report is annexed to the non-economic evidence.

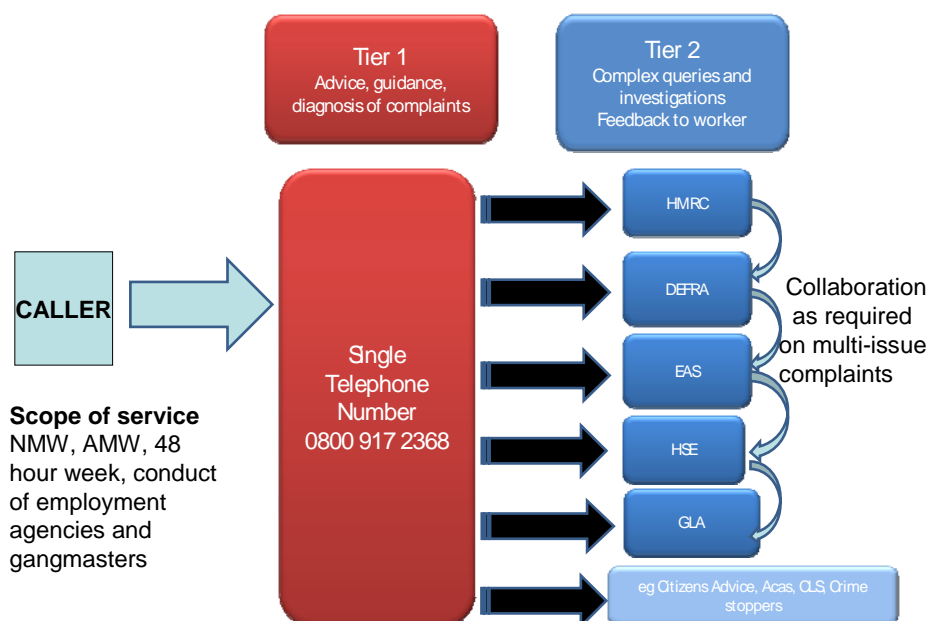
Wider Enforcement of Workplace Rights

Single Enforcement Helpline

4.50 Different government agencies have responsibility for enforcing different employment rights and related legislation. This can make it difficult for workers to navigate the system. Following the introduction of the Pay and Work Rights Helpline (0800 917 2368), a single enforcement line which provides access to information and advice about the NMW, the agricultural minimum wage, employment agency and gangmaster regulations and the 48 hour average working week, workers are able to obtain information and advice and report abuses of employment rights in these areas to a single point of contact.

4.51 Where the helpline agent cannot answer the caller's question or where further action may be needed, the helpline agent will refer complex queries, intelligence and complaints requiring investigation to the 5 enforcement bodies that stand behind the helpline via a secure electronic link. The new helpline has significantly simplified and streamlined access to these bodies, transferring the burden of navigating a complex enforcement framework from workers to Government. The structure of the telephone gateway is illustrated below.

PAY AND WORK RIGHTS LINE - DESIGN



4.52 The helpline is open from 8.00am to 8.00pm Monday to Friday, and from 9.00am to 1.00pm on Saturdays, although we will shortly be reviewing these opening hours in the light of data on usage outside standard working hours. Language Line translation facilities are also available for migrant and other callers where needed.

4.53 The new helpline started taking calls in May 2009, but was officially launched in October 2009 as part of a significant campaign to raise awareness of basic employment rights. Over the period October 2009 – June 2010, the helpline received over 69,700 calls, an average of nearly 8,000 calls a month. Of this total, nearly 18,000 calls related to the NMW.

4.54 Around 87% of the NMW-related calls are resolved by the Pay and Work Rights helpline operators at tier 1. The balance - comprising specific complaints of abuses, intelligence and complex queries - are referred on to HMRC for further action. There were 2,369 such cases over the period.

4.55 An evaluation of the helpline, including an independent survey of helpline callers showed almost 90 per cent were satisfied with the Helpline. There is some evidence the helpline is encouraging action by workers, and attracting those more vulnerable to employment problems to make a call. Full results are expected to be published in the autumn.

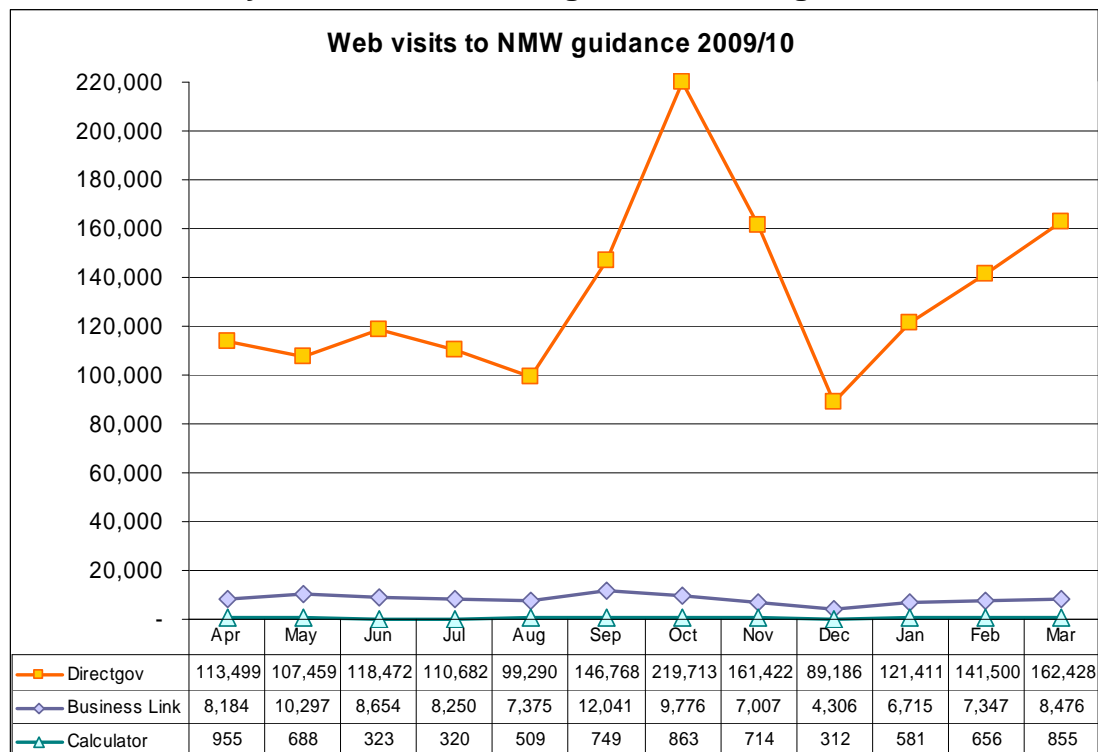
Web access to advice and help on enforcing the NMW and other rights

4.56 The streamlined telephone access arrangements have been replicated online. Workers and employers can e-mail the helpline for guidance or advice or a call back. They can also find information about the NMW and other employment rights through the Direct.gov and Business Link websites.

4.57 Over the past year the NMW content on the sites has received the following visits:

- 1,591,830 visits to the Directgov NMW guidance
- 98,428 visits to the Business Link guidance
- 7,525 successful completions of the NMW entitlement, rate and arrears checker on Business Link

Table 8: Monthly web visits to NMW guidance during 2009/10



| Month | Directgov visits | Businesslink.gov.uk visits | Calculator successful completions |
|--------------|------------------|----------------------------|-----------------------------------|
| April | 113,499 | 8,184 | 955 |
| May | 107,459 | 10,297 | 688 |
| June | 118,472 | 8,654 | 323 |
| July | 110,682 | 8,250 | 320 |
| August | 99,290 | 7,375 | 509 |
| September | 146,768 | 12,041 | 749 |
| October | 219,713 | 9,776 | 863 |
| November | 161,422 | 7,007 | 714 |
| December | 89,186 | 4,306 | 312 |
| January | 121,411 | 6,715 | 581 |
| February | 141,500 | 7,347 | 656 |
| March | 162,428 | 8,476 | 855 |
| Total | 1,591,830 | 98,428 | 7,525 |

4.58 A major development this year was the launch in April of an online form enabling workers to submit a complaint of abuse via a single online complaint

form. When completed, the form is transmitted automatically to the relevant enforcement body or bodies with an interest in the case. Some workers will prefer to make complaints of abuse to a telephone operator, but others will prefer the anonymity of an online channel. We also anticipate that the online form will be of value to experienced advisers such as Citizens Advice case workers who do not need to speak to the helpline, and will be able to complete complaint forms for clients. The complaint form is available at: <https://payandworkrights.direct.gov.uk/complaints/>

4.59 Since its launch, the online form has been used 51 times to report potential NMW abuses. HMRC regard it as too early to make a general assessment of the quality of reports made via this channel. Over the next year, however, we expect to give this option a higher web presence and profile.

Joint working between the workplace enforcement bodies

4.60 The helpline has also delivered significant benefits from an enforcement perspective as, for the first time, helpline operators have been trained in the full range of government-enforced rights. They are therefore able to diagnose and refer cases to all the enforcement bodies that have an interest. This has provided a strong stimulus to collaboration between the enforcement bodies which have been liaising more closely on the handling of multi-issue complaints and considering joint investigations wherever possible. Since the formal launch, the helpline has diagnosed more than 230 multi-issue cases. The two most common combinations of multi-issues have been NMW cases which involve an employment agency, and NMW and working time issues.

4.61 A BIS sponsored Best Practice Group has met periodically over the last year to develop arrangements for more collaboration at working level across the five enforcement bodies. The initial focus of the Group was the launch of the new helpline but it has also:

- Agreed and refined a cross-agency agreement on 'Procedures for handling multi-issue complaints'.
- Appointed and maintained a network of 'single points of contact' responsible for liaising on multi-issue cases when they are first referred.
- Arranged training for inspectors on the enforcement work of the other agencies. HMRC's NMW inspectors, for example, have had presentations on the work of the EAS, GLA and working time inspectors.
- Organised a joint outreach programme – in partnership with the TUC – to raise trade union awareness of the work of the enforcement bodies.
- Provided a cross-agency Forum for discussing issues arising from the operation of the Pay and Work Rights helpline.

4.62 The Group will continue to focus on ensuring effective joint working and will look to share more details on past and future enforcement activity, risk assessment techniques and other enforcement best practice, and sector and geographical intelligence wherever possible.

Working with Local Authorities, trade unions and other third parties

4.63 HMRC and the Employment Agency Standards inspectorate (EAS) ran a 12 month pilot with Newham Borough Council to encourage local council inspectors to pass on to the enforcement bodies suspicions of non-compliance with NMW and employment agency standards. Evaluation of the pilot in May this year established that further work to improve the council inspectors' understanding of the potential indicators of non-compliance with NMW would be useful. As a result, HMRC are working with Newham Council on shadowing opportunities for the inspectors to improve this understanding. Unannounced joint visits with Trading Standards Officers and the police are in the process of being arranged.

4.64 Between February and March 2010, the TUC, BIS and the enforcement bodies collaborated in running 5 regional briefing sessions for local union officials to:

- raise awareness of the role and functions of the enforcement bodies;
- consider how unions could best support the government's enforcement work; and
- raise awareness of the Pay and Work Rights line.

4.65 Presentations were given by BIS and the enforcement bodies, based around a short booklet about their roles and responsibilities. The events were well-attended and there was a good deal of constructive engagement between the enforcement bodies and local union representatives. The feedback from union delegates was very positive (a 100% satisfaction rate). The TUC hope to follow up this work as part of their UMF3 project by producing a video in collaboration with the enforcement bodies. The video will cover similar ground to the live presentations, and will be displayed on the vulnerable worker website which is being established as part of the UMF project activity. It will also be used for vulnerable worker courses.

4.66 Priority is being given this year to building closer links with Citizens Advice. Discussions are taking place to establish how best to make use of the various communication channels available to Citizens Advice to raise awareness of basic employment rights, the role of the enforcement bodies, the helpline, and the online complaints form amongst both clients and advisers.

Agency Workers and the Employment Agency Standards (EAS) Inspectorate

Increased resources and powers

4.67 Between April 2009 and March 2010, with a larger number of inspectors and stronger powers and penalties, EAS recovered over £200,000 for agency workers, a large proportion of which comprised unpaid wages. This compares with a sum of £63,000 for the previous year.

4.68 EAS also prohibited 4 individuals from being involved in the running of an employment business. One person was prohibited for 10 years and the other three for period of 5 years. EAS also had a successful prosecution, a successful appeal against this sentence.

4.69 EAS has used its new powers to request Production Orders in four cases and all of these cases have been referred for potential prosecution.

Changes to the Regulations

4.70 On 1 October 2010 changes to the Conduct Regulations come into force which gives additional protections to agency workers in the entertainment and modelling sectors. The changes ban the taking of upfront fees for photographic and fashion models. They also provide an extension of the current cooling off period from 7 days to 30 days for actors, background artists, dancers, extras, musicians, singers or other performers.

4.71 Where these groups are charged an up-front fee they will have the right to a refund if no publication is produced, and made available to potential hirers, 60 days after payment has been made.

4.72 EAS has produced and published guidance for both agencies (<http://www.businesslink.gov.uk/bdotg/action/detail?type=RESOURCES&itemId=1081756449&r.s=e&r.l1=1073858787&r.lc=en&r.l3=1081755778&r.l2=1084607683&r.i=1081756566&r.t=RESOURCES>) and workers (http://www.direct.gov.uk/en/Employment/Understandingyourworkstatus/Agencyworkersandemploymentagencies/DG_173262) on the changes to the Conduct Regulations.

Joint working

4.73 Through the creation of the Pay and Work Rights Helpline a significant number of joint referrals have been received and a number of cases have been jointly investigated by EAS and NMW enforcement staff. Joint management meetings have been held and inspectors from the two bodies have attended staff meetings to raise awareness. There is now a better understanding between the two bodies about how they carry out investigations

Vulnerable Worker Pilots

4.74 The final evaluation of two BIS-funded vulnerable worker pilots was published in March 2010 (BIS - Employment Relations Research Series No.108). Running from June 2007 to March 2009, the pilots tested practical ways of improving the advice and support available to vulnerable workers (including individuals likely to enter vulnerable employment) and their employers. Findings and insights from the pilots over their 2 year lifespan informed and influenced the work of the Department's Vulnerable Worker

Enforcement Forum and the development of initiatives to improve support for vulnerable workers.

Union Modernisation Fund

4.75 A third round of the Union Modernisation Fund was launched in February 2009, with a new focus on projects to improve the advice and support that the union movement is able to give to vulnerable workers. Various vulnerable worker themes were identified for the round, including: the development of new services aimed at raising awareness of employment rights; the developments of skills and training packages designed to meet the needs of vulnerable workers; the development of new models for working with the workplace enforcement bodies; and encouragement to unions to work with voluntary and community organisations. A total of 14 successful projects were announced in September 2009 (one has subsequently withdrawn). Projects commenced late 2009/early 2010 and have got off to a good start. The projects cover a broad range of activity and will, typically, run for two years. The learning and good practice that emerges from these projects will be shared across the union movement as well as with other stakeholders.

SECTION 5

AWARENESS AND PUBLICITY

5.1 Research has shown a high level of awareness of the national minimum wage (NMW). Our focus for recent campaigns is not only to raise awareness of the current NMW rates, but also to ensure that workers and employers know where to go for advice or to make a complaint.

Awareness Raising – 2009/10 Campaign

Objectives

5.2 The overall policy aim was to increase compliance with the NMW. Specific objectives for last year's campaign were:

- to increase awareness of the NMW amongst workers particularly new entrants to the employment market;
- to inform both employers and workers of the rates which came into effect on 1 October 2009;
- to inform employers, including agencies, about the changes that we took forward in the Employment Act 2008: in particular the new 'automatic' penalty and the changes to the way in which arrears of NMW are calculated;
- to promote the businesslink.gov 'NMW calculator' (the NMW entitlement, rate and arrears checker) which helps employers and workers alike to determine whether they are compliant with NMW legislation and calculate the extent of arrears that are due to a particular worker;
- to direct employers to the businesslink.gov website and workers to Directgov;
- to inform workers, where appropriate, of other basic employment rights; and
- a reminder that tips could no longer be used to make up the NMW.

Target audience

5.3 The target audience for this campaign was low-paid workers and their employers. In particular the following were priority groups for last year's campaign:

- Workers in low-paying sectors;
- New and recent migrants;
- Young workers (16 -21);
- Employers in low-paying sectors;
- Employment agencies.

What we did

5.4 The NMW awareness raising activity in 2009/10 was run as part of the wider **Vulnerable Workers (VW) campaign**. Since the VW campaign first began in Feb 2009, the communications strategy has used a wide variety of channels to reach the varied audiences. This has included using geo-targeting to focus on Agency Workers (EAS) during phase one, and moving to a more broadcast approach for the launch of the unified helpline at the start of phase two in September 2009. This campaign included discrete activity tailored to certain audiences with specific messages aimed at these groups.

5.5 The NMW messages were incorporated into phase two (Sept 2009) of the campaign. The umbrella burst of activity which launched the unified helpline to a broad audience with unifying messages of 'workers rights' was complemented by discrete activity for the EAS, NMW and GLA in October and November 09. These discrete communications focussed on the specific rights enforced by these agencies whilst referring to the newly launched unified helpline as a call to action. The above the line campaigns used the same imagery, straplines, messaging and logos to connect them to the umbrella messaging and create a strong overarching feel.

5.6 In addition to umbrella activity in the VW campaign, additional NMW-specific activities were carried out to target particular audiences.

5.7 A **direct mail** was sent out to 183,000 employers at the beginning of September 2009. The leaflet outlined all the changes that would be coming into effect on the NMW. The messages outlined the new rates that would be coming into effect from October 2009, changes in the Employment Act which brought in the revised penalty system where employers not paying the NMW would face an automatic penalty of up to £5,000 and a new way of calculating arrears. We also informed employers of the forthcoming advertising campaign and reminded them that tips could no longer be used to make up the NMW.

5.8 Two **leaflets**, one for workers and one for employers, were made available via the website and carried the messages on the new rates, penalties and new way of calculating arrears, deductions from pay (what does and doesn't count), a reminder about workers who do not qualify for the NMW, where to go for more advice (businesslink.gov, Pay and Work Rights helpline, ACAS) and a paragraph aimed at Agency workers (are they entitled to the NMW). A reminder about the new rules on tips was also included.

5.9 A poster and covering letter went to approximately 1,000 **secondary schools/sixth form colleges**. Our target audience was less affluent areas across Britain. The letter was based on relevant key messages around how the NMW affects young people.

Example NMW poster



5.10 An **ATM campaign** was aimed at general awareness for workers on NMW. There were a total of three screens during the transaction to display the message and those who printed receipts received a further reminder and something to take away with contact details of the Pay and Work Rights Helpline.

5.11 A very successful search and display **online campaign** for both workers and employers ran between September and December 2009. Building on this success, a second campaign was undertaken towards the end of the period.

5.12 As part of the wider Vulnerable Workers awareness campaign we also ran radio ads and undertook **community radio messaging** because they had proved very successful in previous campaigns.

5.13 The **homeworker** audience is extremely varied; they live across the country, have different ethnic backgrounds and vary in age and the sectors they work in. As it was a small and very specific audience we chose an on-line campaign, in part because this would give us the opportunity to impart far more information about workers rights without the need for the worker to call the helpline. It would also be seen by employers of homeworkers too.

5.14 Also as part of the campaign we undertook a small pilot of placing postcards in newsagent's windows because it would be seen by people other

than homeworkers and therefore might help to create a wider awareness of fair piece rates.

5.15 The **Virtual Communications Group** included the TUC and a number of unions such as Unite and USDAW. The group was sent information by BIS on NMW issues which they could use on their websites and in newsletter. BIS also offered to provide leaflets and posters for distribution. Links or information placed on their websites would coincide with BIS publicity campaigns.

5.16 The Citizens Advice Service operated the National Minimum Wage Helpline for **Northern Ireland** on behalf of the Department from September 2001 to 1 July 2009 when calls were redirected to the Vulnerable Workers Helpline.

5.17 In order to ensure the promotion of the minimum wage rates for October 2009, BIS asked Citizens Advice to prepare a campaign to educate Northern Ireland stakeholders as they had in previous years. The campaign had four elements:

- Reprinting of promotional materials;
- The NMW is getting Bigger' Regional Press Campaign;
- Promotional Walkabout Outreach Campaign;
- Direct mail out to stakeholder – voluntary/statutory sector and employers.

5.18 The promotional outreach campaign involved 26 days of outreach activity across Northern Ireland and covered 2200 miles. The NMW Development & Information Officer traveled to 39 locations delivering new rates cards to the local agencies and ensuring that posters were posted prominently throughout the area.

5.19 Future campaigns in Northern Ireland will be run by BIS as part of their normal publicity drive.

5.20 Action is also being taken to raise **awareness of wider employment rights in schools**. Following pilot work in Birmingham, a DVD teaching resource – *Starting Out* - has been developed designed to raise young people's awareness of their employment rights and responsibilities. It has been created primarily for Key Stage 4 (15 – 16 year olds) because this is the stage when young people receive their National Insurance numbers and when many will be undertaking work experience and starting part-time work. The DVD contains twenty; lively, pre-filmed scenarios acted out by professional actors linked to six 60-minute lesson plans with supporting worksheets. The lesson plans cover the following topics:

- **Basic Rights:** An introduction to the national minimum wage, sick leave and pay, holiday leave and pay, part-time workers' rights and agency workers' rights

- **Discrimination Issues:** Understanding how to identify and overcome discrimination and harassment and learn more about identifying employment rights
- **Information Sources:** Exploring where to find information about employment rights and responsibilities
- **Work Experience:** Identifying and applying work experience expectations and responsibilities
- **Health and Safety:** An introduction to health and safety principles and procedures
- **Bullying in the Workplace:** Investigating and resolving workplace bullying

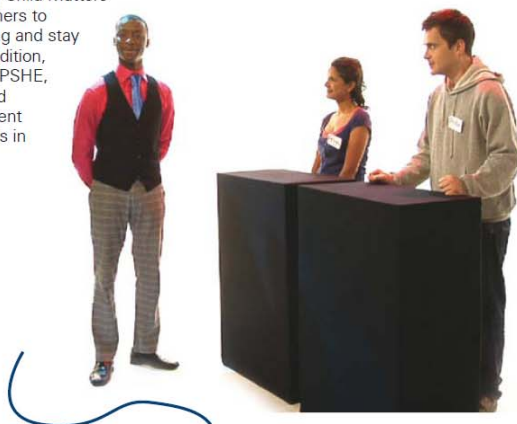
5.21 *Starting out* directly supports the provision of Personal, Social, Health and Economic (PSHE) education, Citizenship and Work-related Learning, and is being marketed to teachers responsible for these subjects via a number of channels, including through relevant contacts in LEAs and via the relevant teaching associations. More information about the teaching resource including a video preview and an order form is available at www.bis.gov.uk/starting-out-dvd. The resource will be available for use in schools from the start of this academic year.

STARTING OUT: YOUR EMPLOYMENT RIGHTS & RESPONSIBILITIES



Welcome to *Starting Out: your employment rights and responsibilities*

Starting Out: your employment rights and responsibilities is designed to raise young people's awareness of their employment rights and responsibilities. Created for Key Stage 4, *Starting Out* encourages learners to engage with work-related issues at a significant stage in their lives. Many young people will undertake work experience or part-time work from the age of 14, and also begin exploring their longer-term career plans. Through a combination of pre-filmed scenarios and classroom-based activities, *Starting Out* examines legal requirements, anti-discrimination rules and health and safety principles in an informative and entertaining way. *Starting Out* directly promotes the Every Child Matters programme by helping learners to achieve economic well-being and stay safe in the workplace. In addition, it supports the provision of PSHE, Citizenship and Work-related Learning and the development of PLTS and Functional Skills in English and ICT.



Department for Business, Innovation and Skills 2010

Starting Out: Your Employment Rights And Responsibilities 1

Campaign Evaluation

5.22 Evaluation of the NMW activities was undertaken as part of the assessment of the VW campaign, focussing on phase 2 in which NMW messages were incorporated. The results we saw in phase 2 showed that the campaign has again performed well; BSS call data shows that the number of calls received by the helpline increased by 124% after the helpline was officially launched and advertising began. Visits to the Directgov campaigns page exceeded 500,000 in total. Tracking mechanisms attached to online 'pay per click' activity also showed that 22,163 visits to the site were generated from homemaker related searches. Awareness response codes used by the helpline call centre show that radio has generated the most claimed calls of all advertising channels, followed by press. Of all press titles, The Mirror delivered the highest number of calls to the helpline (31% - BSS). Other areas of the strategy which performed well were those which included an element of face to face activity, such as the outreach and BME work. These types of activity are not measured in terms of calls generated, therefore are difficult to

compare directly to ATL channels.

5.23 In terms of evaluation of the campaign itself, overall the campaign has achieved good recognition levels amongst workers at 37% (recognise any). Over a third of workers recognised any elements within the campaign, which compares well with previous campaigns (Vulnerable Workers employment agencies campaign 33% and NMW at 27%).

5.24 The campaign was viewed as being very easy to understand and informative. The majority of workers agreed that it informed them about their employment rights and the helpline. However, confidence remained a key issue when it came to workers willingness to seek enforcement support or even information. When asked almost a half still had concerns that questioning whether they were receiving what they were entitled to could risk their jobs.

Awareness Raising - 2010/2011 Campaign

5.25 In the context of the Government marketing spend freeze plans, the majority of our publicity on the National Minimum Wage in 2010/11 will be driven through the low or no-cost options highlighted below.

5.26 Particular focus will be placed for the worker audience on routes that will reach the younger audience. This is considered a logical focal point given that the most notable changes (the shift from 22 to 21 in the application of the adult rate, and the introduction of an apprenticeship rate) will primarily impact younger workers. There is a near saturation of internet access and confident usage amongst those under 25, so awareness-raising can be achieved through low-cost online. Outlined below are the elements we will pursue for this year's campaign.

For employers

- HMRC Employer Bulletin
- CBI web presence and publications
- FSB web presence and publications
- Trade press article placement, primarily online, but some publications
- Businesslink page updates and links across to it from relevant associated pages

For workers

- BIS press office will issue a release on the day of the rate changes.
- Directgov page updates, highlighted links and video clips produced in house to provide examples of the changes taking place
- Media features in targeted local press, hopefully utilising case studies from HMRC

- Distribution of information through Citizens Advice’s public facing website, advisor database, and a series of publications intended for local branch staff.
- National Apprenticeship Service campaign (subject to a separate exemption request)

| Period | | | |
|--|---|--|--|
| Late August | September | October | November |
| Inclusion of information article in the HMRC bulletin to all employers | <p>Spread messages on new rates and their application to employers through partners in business organisations such as CBI, FSB, BCC</p> <p>Feed information through CAB publications to their advisers to prepare them for potential public queries after the new rates come into effect</p> <p>New rates and relevant information would be highlighted on the Businesslink.gov website for employers.</p> <p>Print information materials and distribute through partner organisations’ mail outs</p> | <p>1st Oct - Press Office will issue a press notice on the new rates</p> <p>Work through the TUC and its affiliates to distribute messaging around the new rates to workers</p> <p>Articles in relevant sector press to target employers. Achieved through direct approaches to publications</p> <p>New rates and articles highlighting the situations they are relevant too will be placed on Directgov for workers</p> <p>Establish a campaigns presence on Directgov to increase visibility and allow clear interlinking from the homepage</p> | <p>Articles in relevant sector press to target employers</p> <p>Maximise use of self run community outreach work through 3rd sector networks such as local CAB offices and London Citizens.</p> |

ANNEX A

GOVERNMENT RESPONSE TO 2010 RECOMMENDATIONS

National Minimum Wage rates

We recommend that the adult minimum wage rate should increase from £5.80 to £5.93 from October 2010.

We recommend that the Youth Development Rate should increase from £4.83 to £4.92 and that the 16-17 Year Old Rate should increase from £3.57 to £3.64 from October 2010.

We recommend that the accommodation offset should increase from £4.51 to £4.61 per day from October 2010.

ACCEPT

Apprentices

We recommend that non-employed apprentices are excluded from the apprentice minimum wage and continue to be exempt from the National Minimum Wage.

We recommend that the apprentice minimum wage be applied as a single rate to those apprentices currently exempt from the National Minimum Wage. That is all those under the age of 19 and those aged 19 and over in the first 12 months of their apprenticeship. The wage should cover both those employed on traditional contracts of apprenticeship and employed apprentices on government-supported Level 2 and 3 schemes.

We recommend that all hours of work and training (relating to both on-the-job and off-the-job) under an apprenticeship should be counted as hours for which the apprentice wage must be paid. All hours should be paid at the same wage rate.

We recommend that the apprentice minimum wage be set at an hourly rate.

We recommend the apprentice minimum wage is set at a rate of £2.50 per hour and is introduced from October 2010.

We recommend that in England transitional arrangements are put in place so that current apprentices retain a contractual entitlement to at least £95 per week for the remainder of their apprenticeship or until they are entitled to the National Minimum Wage.

We recommend that the Government includes the review of the apprentice minimum wage rate and arrangements in our annual terms of reference.

ACCEPT

Particular groups of workers

We recommend that the Government produces, in conjunction with interested parties, sector specific guidance on the National Minimum Wage for the entertainment sector.

We recommend that HMRC investigates whether contract and agency cleaners in the hotel sector are receiving their entitlement under the National Minimum Wage for their hours worked.

ACCEPT

Compliance and enforcement

We recommend that the Government commits, as a minimum, to maintaining current funding in real terms for monitoring and enforcement of the National Minimum Wage until at least March 2014.

NOTE

The Government considers that effective enforcement of the National Minimum Wage is extremely important; however we do not believe that it would be appropriate to accept a recommendation that would commit the Government to the allocation of resources for future years.

ANNEX B

REMIT FOR THE LOW PAY COMMISSION 2011 REPORT

The Low Pay Commission is asked to:

1. Monitor, evaluate and review the NMW and its impact, with particular reference to:
 - the effect on pay, employment and competitiveness in the low paying sectors, with particular reference to the competitiveness of small firms;
 - the effect on the pay structures and employment of different groups of workers, including in particular different age groups, women, ethnic minorities, people with disabilities and migrant workers.
2. Review the labour market position of young people, including those in apprenticeships and internships.
3. Review the levels of each of the different minimum wage rates and make recommendations for October 2011.
4. Review the arrangements for the apprentice minimum wage.
5. Report to the Prime Minister and the Secretary of State for Business, Innovation & Skills by the end of February 2011.

BIS | Department for Business
Innovation & Skills

National Minimum Wage
Annual Report for 2009/10

IN ASSOCIATION WITH



Delivering Results

National Minimum Wage Compliance

Report for 2009/10 and Forward Look to 2010/11

1

Working together to make a difference



NATIONAL MINIMUM WAGE – WHO DOES WHAT?

The Department for Business, Innovation and Skills (BIS) is responsible for national minimum wage (NMW) policy, including the policy on compliance and enforcement. Our work is informed by the independent Low Pay Commission, which reviews NMW rates and other aspects of NMW policy each year and makes recommendations to Government. HM Revenue and Customs (HMRC) enforce the NMW on BIS's behalf and work closely with BIS to ensure that both our policy and our strategy on compliance and enforcement is informed by their experience and intelligence obtained by them. HMRC also work collaboratively with other enforcement agencies, eg the Employment Agency Standards inspectorate, to maximise the impact of enforcement initiatives. BIS and HMRC also work with unions, business representatives and others to ensure that our strategy on compliance and enforcement is informed by their knowledge of what is happening in the workplace.

Highlights for 2009/10:

The year ended on a high note with the publication of the **National Minimum Wage Compliance Strategy** in March 2010. This focuses on a vision for how the compliance and enforcement landscape should look in 3-5 years' time. The strategy:

- recognises the need for HMRC and BIS priorities to continue to be based on intelligence and data;
- describes the tools and techniques that we have at our disposal outlines and how we will work with others to maximise our impact;
- outlines the different strategies that we will use to reach those who want to comply and those who deliberately flout the law; and
- makes it clear that underpayment is not an option.

To view the strategy visit www.bis.gov.uk/nmw-compliance-strategy

We continue to improve links with other workplace rights enforcement bodies to ensure that our approach to enforcement is 'joined up'. This year saw the introductions of:

- A new legal information sharing gateway between HMRC and the Employment Agency Standards inspectorate (EAS) which came into effect in 6 April 2009.
- A cross-agency agreement establishing procedures for handling multi-issue complaints referred to the five workplace right enforcement bodies that are covered by the new Pay and Work Rights Helpline.
- HMRC are also working with Local Authorities to inform HMRC's risk assessment and identify opportunities to work collaboratively with others in the community.

CASE STUDY – JOINED UP ENFORCEMENT

HMRC have worked closely with EAS and the Gangmasters Licensing Authority (GLA) on a number of cases in 2009/10. This has involved testing the effectiveness of different ways of working, including joint visits, parallel and sequential investigations. HMRC are currently working with EAS and the GLA on a case involving an employment agency using labour from Eastern Europe. The employment agency has been investigated before but workers have been reluctant to co-operate. Working collaboratively, HMRC, EAS and GLA have obtained evidence which suggests that the employer has failed to pay the NMW. This is a difficult enquiry that is only moving forward due to the ongoing co-operation of the three agencies.

Helped over
19,000
workers

£4.4m
in arrears

2

Making a difference for Workers

CASE STUDY

HMRC investigated an employer using workers from central and Eastern Europe. Foreign workers can find it difficult to open bank accounts and get accommodation without references and the employer had deducted £50 from each of the workers' pay for a letter confirming that they worked for the employer. Most deductions from pay reduce the amount of pay that counts for NMW purposes and as a result of this practice around 40 workers were underpaid an average of £78 for arrears covering a period of two years (the total arrears identified by HMRC were just over £3k).

In April 2009 we introduced a tougher enforcement regime which entitles workers to be repaid arrears of the NMW at current rates⁸. This compensates workers who have had to wait for their pay.

- In 2009/10 HMRC identified over £4.4 million in arrears (34% above target) for over 19,000 workers (44% above target). The average arrears per worker for the year were £228, which is 18% higher than the previous year (the average arrears per worker for 2008/9 were £193).
- Since the introduction of the new regime workers have received an additional £94,000 which represents the uplift to current rates that workers are now entitled to.

In September 2009 we introduced the new Pay and Work Rights Helpline (0800 917 2368) which enables workers, using a single telephone number⁹, to report abuses of basic employment rights, including failure to pay the NMW. The helpline has been widely welcomed, for example the Citizens Advice, said "*we wholly welcome the introduction by BIS of the Pay and Work Rights Helpline which will be a lifeline for those people who are being exploited or are at risk of exploitation but currently don't know where to turn.*"

- NMW enquires account for more than 60% of the calls made to the Pay and Work Rights Helpline and over 2500 of these enquiries have been referred to HMRC for further action. There is now an new on-line complaint form which is available at: <https://payandworkrights.direct.gov.uk/complaints/>
- This year HMRC registered almost 2,900 complaints about non-payment of the NMW, a 13% increase on the number received in 2008/09. The majority of these (89%) came from workers.
- This year NMW specific online guidance on Directgov and Businesslink has drawn 1,591,830 and 98,428 visits respectively. On Businesslink 7,525 visitors have also successfully completed the NMW entitlement, rate and arrears checker.

BIS provide up-to-date, accurate on line guidance for workers and their representatives at: www.direct.gov.uk/nmw

⁸ The 'uplift' to current rates applies where the current rate is higher than the rate that applied at the time of the underpayment – which has been the case since this change was introduced.

In 2009/10 480 employers received an automatic penalty

3

Making a difference for employers

Around 50% of employers paid worker's arrears and the penalty in 14 days

CASE STUDY – CHARGES IN EXCESS OF THE ACCOMMODATION OFFSET

A hotel offered accommodation to workers because there is very little rental property in the area that they worked which was affordable. HMRC discovered that the employer was making deductions of around £50 per week for the cost of accommodation. The charges made were in excess of the permissible accommodation offset for NMW purposes. In total 28 workers were affected by the charges for accommodation and they received around £6,500 in arrears.

The NMW provides important protection for law abiding employers who would otherwise be undercut by less scrupulous employers.

April 2009 saw the introduction of a new automatic penalty regime and a fairer method for calculating arrears of the NMW which compensates workers who have had to wait for their pay. These measures remove the competitive advantage that less scrupulous employers obtain by operating outside of the law.

- In 2009/10 480 employers received an automatic penalty. As the penalty only relates to arrears that post date 6 April 2009 we would expect this number to increase as the new enforcement regime moves into its second and subsequent years. 50% of employers paid the penalty within 14 days
- Employers who failed to pay the NMW had to pay £4.4m in arrears of the NMW, including an additional £94,000 which represents the uplift to current rates that workers are now entitled to.
- In 2010/11 BIS will introduce a scheme to name employers who flout NMW law.

Help for employers who want to comply. BIS provide on-line up-to-date guidance and an on-line NMW calculator for employers that enable employers to check whether they have paid the NMW and calculate arrears at: www.businesslink.gov.uk/nmw

2009/10 saw the introduction of regulations which outlawed the use of tips to top up wages to the NMW. HMRC plan to carry out targeted enforcement in the hospitality and hotel cleaning sectors in the final quarters of 2010/11. This will provide an opportunity to check that employers are complying with the new rules.

HMRC are also planning to make wider use of leverage (i.e. working with others to maximise the impact of NMW enforcement). In 2010/11 this will focus on young workers and in particular apprentices to ensure that employers are aware of, and complying with, the new rate for apprentices. This comes into effect on 1 October 2010¹⁰.

¹⁰ Prior to 1 October 2010, some apprentices were exempt from the NMW.

Department for Business, Innovation and Skills
www.bis.gov.uk
First published October 2010 © Crown Copyright
URN 10/1153