

National Minimum Wage
Compliance Strategy

MARCH 2010

Ministerial Foreword

The National Minimum Wage (NMW) is one of the most important workplace rights and we are proud of the difference it has made to the lives of the UK's lowest-paid workers. It is a key part of our strategy to provide fair standards in the workplace and make work pay.

Since its introduction in 1999 more than £38 million in NMW arrears for over 130,000 workers has been identified. In the financial year 2008/09 nearly £4.5m of arrears for over 23,000 workers – over £580,000 more than the previous year - was identified. This is no small achievement but we can't afford to become complacent. It is vital that we continue to learn from experience, adopt best practice, and make best use of the tools and resources at our disposal. The NMW Compliance Strategy sets out how we will do this and outlines the mechanisms that we will employ to achieve our aim that everyone who is entitled to the NMW should receive it.

Effective enforcement of the NMW is vital to its continuing success and last year we introduced a tougher enforcement regime, including an additional element of arrears that takes into account the length of time that a worker has been underpaid, to provide a fairer outcome for workers who have been underpaid and a more effective penalty regime to deter non-compliance. This approach is paying dividends and, since its introduction in April 2009, underpaid workers have received an additional £76,000 and employers have been charged a total of just over £100,000 in penalty charges.

We will continue to ensure that our approach to the enforcement of workplace rights is 'joined up', effective and targeted and the new Pay and Work Rights Helpline – which started taking calls last year – will play a key role by simplifying and streamlining access to workplace enforcement bodies. But the best protection that we can offer workers is to ensure that arrears do not arise in the first place and the strategy focuses on raising awareness through targeted guidance and deterring non-compliant behaviour as well as tackling abuses.

Our strategy builds on the new enforcement regime to maximise our compliance impact, focusing on how the compliance and enforcement landscape should look in

3-5 years' time, and continuing to recognise the need for HMRC and BIS priorities to be based on intelligence and data. We will continue to consider new and innovative ways of working and pilot new working methods: employing different strategies to reach those who want to comply and those who deliberately flout the law. We will make it clear to employers that underpayment is not an option.

A handwritten signature in black ink, reading "Pat McFadden". The signature is written in a cursive style with a large, prominent initial "P".

Pat McFadden

Minister for Business, Innovation and Skills

A handwritten signature in black ink, reading "Stephen C. Timms". The signature is written in a cursive style with a large, prominent initial "S".

Stephen Timms

Financial Secretary to the Treasury

National Minimum Wage Compliance Strategy

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1. Introduction

1.1 This document sets out the Government's strategy on national minimum wage (NMW) compliance and enforcement. It builds on the achievements of the last 10 years and looks forward to where we want to be in 3-5 years' time, taking advantage of the opportunities presented by the new enforcement regime introduced in April 2009.

1.2 The Department for Business, Innovation and Skills (BIS) is responsible for the NMW. Our policy, including the compliance and enforcement elements, is informed by the work of 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 us to ensure that our strategy is informed by their experience of enforcement and the intelligence gathered as part of that process. We 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.

In the last 10 years, HMRC have identified more than £36 million in arrears for over 80,000 workers.

In the last 2 years:

- **We introduced a tougher enforcement regime.** Provisions in the Employment Act 2008, which took effect in April 2009, introduced automatic penalties for non-compliance with the NMW. The Employment Act also introduced a new way of calculating NMW arrears that takes into account the length of time that the arrears have been outstanding. Since the introduction of the new regime, £3.5million in arrears has been identified for 14,000 workers. The Employment Act also made infringements of NMW legislation and employment agency regulations indictable offences so that they can be tried in a Crown Court where tougher penalties are available and cases can be brought by the enforcement body without having to rely on the testimony of vulnerable workers.

- **We introduced the Pay and Work Rights Helpline (0800 917 2368).**

This enables workers to report abuses of basic employment rights to one point of contact that can address multiple complaints. It is equipped to handle calls on the NMW, Agricultural Minimum Wage, Working Time and the special regulations that apply to employment agencies and gangmasters, thereby transferring the burden of navigating the system from workers to Government. It was launched in September 2009, and is making it easier for workers to report abuses and for Government to respond. An average of 400 calls a day are now being made to the helpline and translation facilities are available so the service is accessible to all. The helpline has been widely welcomed. Citizens Advice, for example, 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."

- **We launched a sustained £6m, three year campaign** in September 2009 to raise vulnerable worker awareness of basic employment rights and promote the new helpline.

- We have acted to improve links between the different workplace rights enforcement bodies and to tackle legal information-sharing barriers where they exist. Joint participation in the work of the Vulnerable Worker Enforcement Forum and, more recently, the Fair Employment Enforcement Board has fostered closer working. The Pay and Work Rights Helpline itself has effected a structural change by creating a common entry point for workers and employers and a new capacity to diagnose and refer potential abuses of all the Government-enforced workplace rights – including “multi-issue” cases of relevance to more than one enforcement body. Links between the enforcement bodies are now significantly stronger. Since its launch, 166 multi-issue complaints have been referred from the helpline to the relevant enforcement bodies. This represents about 11% of the total number of complaints. A number of these cases are being taken forward on a joint basis.

- We have acted to address legal barriers which – in some cases - constrain the extent to which enforcement officers can share information about potentially non-compliant employers. An amendment in last year’s Employment Act, which took effect in April 2009, established a gateway between NMW and employment agency officers and BIS has also recently completed consultation on proposals for a Legislative Reform Order to amend primary legislation to address the remaining barriers (in particular gateways between NMW officers, and inspectors responsible for enforcing working time regulations), and is considering how to take this forward.

2. Our Vision

The Government's vision is clear - **everyone who is entitled to the NMW should receive it**. We are taking action with both workers and employers to achieve this.

Workers

2.1 Workers need to **know their rights and obligations** and where to go for more information if needed. We will build on our current work to raise awareness by reviewing and updating the guidance that we have published on DirectGov, ensuring that it continues to meet customer requirements. We will also continue with our awareness raising campaigns which are targeted both at those most at risk of not being paid the NMW, like young workers and home workers, and on raising awareness of the NMW generally.

2.2 Workers need **access to assistance**. When non-compliance is reported, HMRC act swiftly to help workers recover the arrears which they are owed. Our new Pay and Work Rights Helpline gives workers access to information and advice on the NMW and, where the worker gives consent, refers cases to HMRC for enforcement. Because the helpline covers more than one enforcement agency, it allows for a multi-agency approach to enforcement where cases cross boundaries. Workers may also use the helpline to make anonymous complaints.

2.3 Workers need to have **confidence they will be supported** through the enforcement process. This encompasses the whole journey, beginning with the call to the Pay and Work Rights Helpline and continuing through the investigation to the repayment of any arrears which are found to be due. HMRC sees this as core to their approach.

2.4 Workers need to **believe it is better to operate within the system than outside it**. There are some cases where workers collude with employers to receive less than the NMW, for example in order to be eligible for other benefits. It is not legal for workers to waive their rights in this way, and often the workers do not realise that they miss out on, for example, holiday pay and pension rights. Workers need to: believe that employers who underpay will be caught and will face appropriate sanctions; believe that these sanctions will be sufficient to ensure that employers operate within the law after HMRC's intervention; and have confidence that their situation will improve as a result of HMRC's intervention. We will continue to prosecute the most serious offenders – there have been six successful prosecutions, covering all 6 offences in the National Minimum Wage Act, since 2006. Also, in line with the recommendations of the Low Pay Commission, we will introduce a new scheme later this year, naming employers who deliberately flout NMW law. Together with the new enforcement regime introduced in April 2009 and wider communications to highlight enforcement activity, this will make clear to workers as well as employers that underpayment is not an option.

Employers

2.5 Employers must **know their rights and obligations and the consequences of not paying the NMW**. We will build on existing publicity for the NMW, continuing to run awareness campaigns to publicise changes to the rate and any other changes to the law. We will also continue to undertake more specific campaigns, targeted at employers who are identified as being at risk of underpaying the NMW and we will publicise examples of those who have faced consequences for non-compliance.

2.6 Employers need to **have easy access to the information they can rely on**. We have already published comprehensive guidance to the NMW on Business Link and will periodically review this to ensure that it is up to date, pitched at the right level and accessible. HMRC also provides outreach to employers, through regular seminars. We will explore whether to build on this with sector or regional focused outreach in conjunction with trade associations or other bodies.

2.7 Employers must **be able to comply**. In addition to providing on-line guidance, we have given employers an on-line tool, hosted by Business Link, which helps employers to decide if an individual is entitled to the NMW, and if so at what rate. It also allows them to calculate arrears of the NMW where there has been an underpayment (or confirms that no arrears are due). This tool is already well used and has received over 16,000 hits since it was launched in February 2009.

2.8 Employers need to **believe it is better to operate within the system than outside it**. The key to this is employers believing that swift and appropriate action will be taken against those who do not comply. We will continue to prosecute the most serious offenders – there have been six successful prosecutions, covering all 6 offences in the National Minimum Wage Act, since 2006. Also, in line with the Low Pay Commission's recommendations, we will introduce a new scheme later this year, naming employers who deliberately flout NMW law. Together with the new enforcement regime introduced in April 2009 and wider communications to highlight enforcement activity, this will make clear to employers that underpayment is not an option.

3. What will success look like?

3.1 Delivery in these areas will move us towards our overall goal, including factors such as:

- widespread understanding across the economy of what we are trying to achieve and how we are trying to do it,
- a compliance regime which is flexible and responds to emerging needs,
- the capacity to deliver a swift response to tackle systemic, sectoral and occupation-related non-compliance,

- collaboration with other agencies, contributing to joined-up enforcement which benefits vulnerable workers across the board.

3.1 Dealing with individual complaints effectively and appropriately will remain a priority. Every complaint represents a worker who is potentially being underpaid, but worker complaints are also a core source of intelligence which helps us to build a picture of where we need to focus our pro-active targeted compliance efforts.

3.2 Looking forward over the next five years, we will set out on an annual basis how we intend to maximise the resources and tools that are available to us to target our enforcement activities where they will have most impact. Priorities will be reviewed throughout the year, reflecting new data such as the Low Pay Commission's reports and the outputs of the risk assessment process described at paragraph 4.3. Current priorities include the hospitality and hotel sectors, including hotel cleaners, where there is concern about underpayment.

4. How will we achieve our vision?

4.1 Encouraging compliance requires the use of a variety of tools and partnerships.

4.2 A key aspect is **intelligence** which enables us to analyse what is happening out in the market place and focus our efforts to achieve the maximum effect. Our top source of high-quality intelligence – leading to around 60% of cases investigated – comes straight from workers and former workers who tell us they have been underpaid. In cases arising from workers' complaints, HMRC check compliance across the employer's whole workforce, not just in the case of the complainant, so that many workers in an organisation can receive arrears as a result of one complaint. We also receive third party complaints – from friends and relatives of workers, from businesses who fear a rival is undercutting them by illegally paying low wages, or from unions who are representing their members.

4.3 We also collect data and intelligence from a variety of other sources, 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 campaigns and awareness-raising. It also leads to cases (around 40% of the total) where HMRC pro-actively investigates employers identified as being at high risk of underpaying the NMW. The Low Pay Commission's reports provide extensive data which is a key source of information here. HMRC's analysts identify and research sources of information which may help identify those employers most likely to underpay. Our understanding of risk indicators is continuously refined using feedback from case outcomes. These indicators are used to identify the level of risk across employers. Those employers with the highest risk are taken forward for investigation. Information is taken in through information sharing gateways with other enforcement bodies (within and outside HMRC), the local expertise of compliance officers, local sources

of intelligence, such as some Local Authorities, and data trends extracted from past cases. HMRC continually revise and improve the risk assessment process, and are currently engaged in a lot of work to further integrate third party data.

4.4 We use this intelligence not only to prioritise the enforcement activities of HMRC but also to enable us to identify areas where we might work with partners to encourage greater compliance. We will be developing our networks to ensure that we make best use of the sources of intelligence our stakeholders have, on both sectoral and regional bases. This work will include full consideration of the privacy and data protection requirements which will need to be satisfied by any developments.

4.5 HMRC is also piloting new ways of focusing resources, to ensure that their most experienced officers are working on the toughest cases. The Department of Communities and Local Government has provided funding for a new Dynamic Response Team – a virtual team spread across the country which can tackle the more complex cases and develop partnerships with Local Authorities and other local intelligence sources. We will pilot and test other new ways of working to see if they bring benefits, learn from best practice in other organisations to get the most from letters or phone calls.

4.6 We know most employers are doing the right thing and want to meet their obligations to their workers. This is why our work to **educate and inform** the market place, including our work with the media and, more generally, providing good information and helpful tools, is core to the compliance strategy. We will be developing our relations with key stakeholders, both sectorally and regionally, to make the most of their links with employer and worker communities to enable us to target our messages. While a prime focus is education and information, another key element is deterrence. We will employ different strategies to reach those who want to comply (but make genuine mistakes), those who act without reasonable care, and those who deliberately flout the law (eg. within the hidden economy). Our strategies will include reaching out through publicity campaigns and stakeholder groups to ensure that those who want to comply have the information they need to do so, publicising HMRC's enforcement successes, and publicly naming those employers who deliberately flout NMW law.

4.7 Optimum use of **the legal regime** that exists to protect the worker is vital to ensuring good compliance. This encompasses a number of elements, including HMRC's use of prosecutions to pursue the most serious cases, involving wilful and deliberate underpayment and/or obstruction of HMRC officers and falsification of records.

4.8 NMW enforcement has evolved over the last 10 years. Initially, it was focused on recovering arrears for workers, and cases which might now be considered for criminal investigations were dealt with through the civil courts and the Employment Tribunals. However, in 2006 an approach was agreed to deal with the most serious cases through criminal investigation leading to prosecution. 2009 saw another significant change, with the introduction of a

new enforcement regime, which makes employers who fail to pay the NMW liable to an automatic penalty of up to £5,000 and compensates workers who have had to wait for wages that are due to them by requiring arrears to be repaid at current rates. These changes were brought in by the Employment Act 2008 which also gave new inspection powers to HMRC officers and made changes to the criminal regime which, for example, enables HMRC officers to apply for production orders and search warrants and give HMRC the power to arrest individuals who are suspected of committing a criminal offence.

Employment Tribunals provide another avenue, for workers who want to bring their case themselves or where underpayment of NMW is a factor in a case primarily about another aspect of employment rights.

5. How will we measure our success?

5.1 While the Office for National Statistics publishes figures for those paid less than the NMW, this data as it stands is unsuitable for measuring our effectiveness. There are a number of circumstances where the NMW does not apply and so individuals may legitimately earn less than the NMW – for example, some apprentices. In addition, it depends on PAYE returns, and so may well not catch some employers in the hidden economy who are both deliberately underpaying and falsifying their tax returns. We will be exploring whether there are alternative ways of measuring our progress towards the overall outcome.

5.2 There are, however, performance measures which can give us an indication of whether we are on track and making significant progress, such as the regular evaluations of our communications activities, data on the usage of websites and of the Pay and Work Rights Helpline, as well as the detailed HMRC enforcement outputs. We will be developing our measurement framework further over the next year in collaboration with the LPC. HMRC intends to publish an annual report on its performance, at a time to fit with the LPC's reporting cycle.

Department for Business, Innovation and Skills
March 2010

