Department for Business Innovation & Skills

POWER TO SET THE NATIONAL MINIMUM WAGE FINANCIAL PENALTY ON A PER WORKER BASIS

Impact Assessment

OCTOBER 2014

Title: Power to set the National minimum wage financial penalty on a per worker basis **IA No: BISLM004** **Lead department or agency:** Department for Business Innovation and Skills (BIS) **Other departments or agencies:**	**Impact Assessment (IA)** **Date:** 02/10/2014 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries:** Ben Kerry: 0207 215 2210

Summary: Intervention and Options

RPC Opinion: Not required

Cost of Preferred (or more likely) Option				
Total Net Present	**Business Net**	**Net cost to business**	**In scope of One-**	**Measure qualifies as**
£0m	£0.0m	£2.15	No	NA

What is the problem under consideration? Why is government intervention necessary?

All employers are obliged to pay the National Minimum Wage (NMW) at the rate which is set by the legislation to workers within its scope. The NMW Act is enforced by HMRC officers who have powers to issue notices of underpayment (NOU) to any employer they consider has underpaid its workers NMW. Any employer in receipt of a NOU is subject to a penalty which is calculated as a percentage of the underpayment subject to a minimum and a maximum. The percentage and minimum and maximum can be set by secondary legislation.

The Government is taking a tougher approach on employers that break NMW law and announced on 15 January and 28 February 2014 that they will bring in legislation to issue a penalty of up to £20,000 'per worker' (rather than per notice) as soon as possible. This would mean that the upper limit is determined by the underpayments owed to each of the workers covered by a NOU rather than a set penalty limit applied to that notice irrespective of the number of underpaid employees.

What are the policy objectives and the intended effects?

The Government wants to increase the maximum penalties that can be imposed on employers that underpay their workers in breach of the national minimum wage legislation. The increase in the penalty is intended to ensure that workers are correctly paid by deterring employers from underpaying them.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

We have currently employed a temporary measure to achieve the Prime Minister's commitment to issue a penalty of up to £20,000 per worker (announced on 28 February). Employers who are found to have underpayments of more than £20,000 to one worker or a group of workers (for any pay reference periods falling on or after 7 March 2014) are issued one NoU per worker or group of workers who have been underpaid by £20,000 or more. However, the extra administration for HMRC of issuing and responding to more than one NoU is not seen as a cost effective means of achieving the policy aim but is the best solution until we make the change to the NMWA.

Introducing primary legislation will align the statutory power to set the maximum penalty with the practice adopted in March 2014 to meet the Prime Minister's announcement. This will result in greater clarity on the calculation and application of the penalty, making it easier for employers to understand and for HMRC to enforce. Therefore the preferred option is to bring in primary legislation changes to calculate the maximum penalty per worker.

Will the policy be reviewed? It will be reviewed. **If applicable, set review date: May 2018**

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** Yes	**< 20** Yes	**Small** Yes	**Medium** Yes	**Large** Yes
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs.

Signed by the responsible SELECT SIGNATORY: Date: 28/10/2014

Summary: Analysis & Evidence — Policy Option 1

Description: Option 1: Power to set the National minimum wage financial penalty on a per worker basis

FULL ECONOMIC ASSESSMENT

Price Base Year	PV Base Year	Time Period Years	Net Benefit (Present Value (PV)) (£m)		
2013	2014	10	**Low: £** 0	**High:** £0	**Best Estimate: 2.15**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	0.0		0.0	**0.0**
High	0.0		0.0	**0.0**
Best Estimate	0.0		1.8	**15.5**

Description and scale of key monetised costs by 'main affected groups'

None of these costs would arise under 100% compliance with existing NMW regulations. The total penalty is the same as what would be paid under the current system as the method of calculating the penalty is the same.

Based on the number of cases in 2013/14, the cost to non-compliant employers would be an additional £1.8m in penalty fees.

Other key non-monetised costs by 'main affected groups'

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low	0.0		0.0	**0**
High	0.0		0.0	**0.0**
Best Estimate	0.0		£2.1	**£17.6**

Description and scale of key monetised benefits by 'main affected groups'

None of these benefits would arise under 100% compliance with existing NMW regulations. The total penalty is the same as what would be paid under the current system as the method of calculating the penalty is the same.

Based on the number of cases in 2013/14, the exchequer would receive an additional £1.8m in penalty fees and save £250k in administration costs.

Other key non-monetised benefits by 'main affected groups.' Greater punishment for non compliance with the NMW law should result in fewer cases of non-compliance.

Key assumptions/sensitivities/risks — **Discount rate (%)** 3.5

The costs and benefits associated with this policy change are largely transfers that would not arise in a situation of 100% compliance.

BUSINESS ASSESSMENT (Option 1) Power to set the National minimum wage financial penalty on a per worker basis

Direct impact on business (Equivalent Annual) £m:			In scope of OITO?	Measure qualifies as
Costs: £0m	**Benefits:** £0m	**Net:** £0m	No	NA

Evidence Base (for summary sheets)

Problem under consideration and rationale for intervention

A: Strategic overview

The National Minimum Wage Act 1998 (NMWA) applies to most workers working or ordinarily working in the United Kingdom who are over compulsory school age. All employers are obliged to pay the NMW at the rate which is set by the legislation to workers within its scope. The NMWA is enforced by HMRC officers who have powers to issue notices of underpayment (NOU) to any employer they consider has underpaid any of its workers NMW. This is a formal notice which sets out the arrears owed to workers, and the financial penalty they have to pay. Any employer in receipt of a NOU is subject to a penalty which is calculated as a percentage of the underpayment subject to a minimum and a maximum. The percentage and minimum and maximum can be set by secondary legislation.

The Government is taking a tougher approach on employers that break national minimum wage law. We have already increased the penalty percentage from 50% to 100% and the maximum penalty from £5,000 to £20,000[1] via the National Minimum Wage (Variation of Financial Penalty) Regulations 2014. These changes came into force on 7 March 2014.

The Prime Minister made the following announcement on NMW financial penalties: 'We are also clamping down on those who employ people below the minimum wage. They will pay the price with a fine of up to £20,000 for every under-paid employee – more than four times the fine today.' (27 November 2013). The next step is to amend the National Minimum Wage Act 1998 to achieve the Prime Minister's commitment for the penalty of up to £20,000 to be applied on a 'per worker' basis.

Outlined below is how the penalty regime will change to address the Prime Minister's commitment. We have currently implemented a temporary measure (B) to reach a position that is broadly comparable to the Prime Minister's commitment. This method allows us to increase the amount of penalty paid compared to the previous penalty regime (A) in cases where there are very high arrears by issuing *one NoU per worker or group of workers* who have been underpaid by £20,000 or more.

However, the extra administration for HMRC issuing and responding to more than one NOU is not seen as a cost effective means of achieving the policy aim (C).

Introducing primary legislation will align the statutory power to set the maximum penalty with the practice adopted in March 2014 to meet the Prime Minister's announcement. This will result in greater clarity on the calculation and application of the penalty, making it easier for employers to understand and for HMRC to enforce.

<u>(A) Previous penalty regime for pay reference periods 6 April 2009 to 6 March 2014</u>

If HMRC investigates an employer and believes as a result of that investigation that s(he) is breaking NMW law they will issue the employer with one NoU and one penalty for all workers that have been underpaid for pay reference periods within the period 6 April 2009 to 6 March 2014. The penalty is capped at £5,000 per NoU.

<u>(B) Penalty regime for pay reference periods from 7 March 2014 introduced a temporary measure to meet the Prime Minister's commitment.</u>

It was announced in a 15 January 2014 press release that employers who are found to have underpayments of more than £20,000 to one worker or a group of workers (for any pay reference periods falling on or after 7 March 2014) will face a penalty of £20,000 for that worker or group. This will be achieved by issuing *one NoU per worker or group of workers* who have been underpaid by £20,000 or more (in these pay reference periods). Therefore, an employer may receive more than one NoU covering underpayments in the same pay reference periods. The upper limit for the penalty imposed by one NOU is £20,000; the actual penalty is dependent on

[1] The minimum penalty that can be issued is £100.

the amount of arrears owed. So the upper limit is determined by the number of workers rather than a set penalty limit applied irrespective of the number of underpaid employees. Where the underpayments owed by an employer in pay reference periods after 7th March 2014 are less than £20,000 in total HMRC will issue one NOU, as previously.

(C) Penalty regime after the primary legislation changes

The penalty is applied on a per worker basis. Upper limit on the penalty imposed by a NOU is determined by the amount of underpayment per worker up to £20,000 rather than a set penalty limit applied irrespective of the number of underpaid employees.

The RPC have confirmed that the changes to the primary legislation will fall out of scope of One-in-two-out (OITO) as penalties will only be incurred if an employer is found to owe arrears and therefore is found to infringe the requirements placed upon them under the NMWA. The costs for employers arising from the new system of one NOU per worker or group of workers who have been underpaid by £20,000 or more are therefore avoidable under full compliance with the legislation. The proposals do not impose any additional requirements for compliant employers and may benefit such employers by removing the financial benefits gained by non-compliant employers.

B: Policy objectives

The aim of the National Minimum Wage (NMW) is to provide protection to low-paid workers by avoiding potential exploitation by employers who, in the absence of legislation, could undercut competitors by paying unacceptably low wages; and also to provide incentives to work.

The Government's vision for the NMW is that everyone who is entitled to the NMW should receive it by making sure the right deterrents are in place to ensure employers comply with the law, preventing arrears from arising in the first place.

The increase in the penalty is intended to deter employers from breaking National Minimum Wage law and ensure that workers are correctly paid. Once we bring in legislation for the maximum penalty to be applied on a per worker basis, employers with high arrears will face a substantially higher penalty as the upper limit for a penalty imposed by a NOU will be determined by the amount of arrears owed to each worker rather than a set penalty limit applied irrespective of the number of underpaid employees covered by the notice. Furthermore, this will be a more cost effective approach than the one employed during the temporary measure as all workers will be included on one NOU (rather than *one NOU per worker or group of workers* who have been underpaid by £20,000).

C: Options identification

We will need primary legislation to make the necessary amendment to the National Minimum Wage Act 1998 to be able to calculate the maximum £20,000 penalty on a per worker basis. Introducing primary legislation will align the statutory power to set the maximum penalty with the practice adopted in March 2014 to meet the Prime Minister's announcement. This will result in greater clarity on the calculation and application of the penalty, making it easier for employers to understand and for HMRC to enforce.

Until then employers who are found to have underpayments of more than £20,000 (in any pay reference periods falling on or after 7 March 2014) will receive one NOU per worker or group of workers who have been underpaid by £20,000 or more, resulting in receiving more than one NOU. Issuing and responding to more than one NOU covering the same pay reference periods is not seen as a cost effective means of achieving the policy aim as this would incur additional resource costs and administrative burdens totalling approximately £250K. However, it allows us to apply the penalty consistently with the National Minimum Wage Act 1998 until we make the change to the NMWA to set the maximum penalty on a per worker basis in line with the Prime Minister's announcement.

D: Analysis of options

Analysis of costs and assumptions

Penalties will only be incurred if an employer is found by HMRC to owe arrears and therefore is found to infringe the requirements to pay NMW. The costs for employers arising from the new system are therefore avoidable through full compliance with the existing legislation. The proposals do not impose any additional requirements for compliant employers.   The penalty may remove any competitive advantage gained by an employer through failure to pay NMW to its workers.

Based on the number of cases from 13/14, there will be no change in the amount of penalties generated from the changes to primary legislation compared to the penalty regime during the current temporary measure.

It will be business as usual for cases that have arrears below £20,000 per employer. Data shows that in 2013/14 only 6% of cases (n=40) had arrears of greater than £20,000 so there will only be a small percentage of cases where the employer will pay a penalty of £20,000.

Table 1[2] shows that based on the number of cases and arrears in 13/14, employers would have to pay a total of £3m in penalties under the current temporary measure[3] (and after changes to primary legislation) compared to approximately £1.1m under the previous penalty regime[4] (see table 2[5]).

Therefore, the current temporary measure (and primary legislation changes) will bring in an additional £1.8m in penalties.

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[2] Period is from 1st April 2013 to 23rd March 2014

[3] From 7 March 2014 employers pay a penalty of 100% of total underpayments owed to workers with a maximum of up to £20,000. A minimum of £100 is applied for any underpayments of less than £100. A discount of 50% is applied if employers pay back arrears to workers within 14 days.

[4] From 6 April 2009- 6 March 2014 the penalty was 50% of total underpayments owed to workers with a maximum of £5,000. A minimum of £100 is applied for any underpayments of less than £100. A discount of 50% is applied if employers pay back arrears to workers within 14 days.

[5] Period is from 1st April 2013 to 23rd March 2014

Table 1. Penalties paid during the current temporary measure and after the primary legislation changes.

Arrears	No of cases	% of cases	**Total arrears**	No of workers	Arrears per worker	Arrears per case	Penalty amount	Cases paid in 14 days	Cases paid after 14 days	Penalty paid in 14 days	Penalty paid after 14 days*	**Total penalty paid**
Based on number of cases in 13/14												
£1-£100	84	13	£4,772	136	£35	£57	£100	60	24	£2,984	£2,432	£5,416
*£101-£500	136	21	£37,647	660	£57	£277	£277	103	33	£14,295	£9,082	£23,377
£501-£1000	90	14	£64,338	229	£281	£715	£715	61	29	£21,765	£20,819	£42,585
£1,001-£5000	225	34	£582,702	3383	£172	£2,590	£2,590	167	58	£215,889	£150,972	£366,861
£5,001-£10,000	52	8	£370,491	2234	£166	£7,125	£7,125	34	18	£120,413	£129,675	£250,088
£10,001-£20,000	28	4	£372,457	1239	£301	£13,302	£13,302	19	9	£124,152	£124,152	£248,304
£20,001-£50000	25	4	£815,502	5494	£148	£32,620	£32,620	22	3	£352,149	£111,205	£463,353
£50,001-£100,000	9	1	£655,840	3219	£204	£72,871	£72,871	8	1	£286,930	£81,980	£368,910
£100,000+	6	1	£1,651,107	5137	£321	£275,185	£275,185	3	3	£412,777	£825,554	£1,238,330
Total	655	100	£4,554,856	21731	£1,685	£404,741	£404,785	477	178	£1,551,354	£1,455,869	**£3,007,223**

*These are either paid after 14 days, or S19D or appeal. They will not necessarily all be paid

Table 2. Penalties paid under the previous penalty regime.

Arrears	No of cases	% of cases	**Total arrears**	No of workers	Arrears per worker	Arrears per case	Penalty amount	Cases paid in 14 days	Cases paid after 14 days	Penalty paid in 14 days	Penalty paid after 14 days*	**Total penalty paid**
Based on number of cases in 13/14												
£1-£100	84	13	£4,772	136	£35	£57	£100	60	24	£2,984	£2,432	£5,416
*£101-£500	136	21	£37,647	660	£57	£277	£138	103	33	£7,143	£4,538	£11,681
£501-£1000	90	14	£64,338	229	£281	£715	£357	61	29	£10,881	£10,408	£21,288
£1,001-£5000	225	34	£582,702	3383	£172	£2,590	£1,295	167	58	£107,936	£75,480	£183,415
£5,001-£10,000	52	8	£370,491	2234	£166	£7,125	£3,562	34	18	£60,205	£64,836	£125,041
£10,001-£20,000	28	4	£372,457	1239	£301	£13,302	£5,000	19	9	£46,667	£46,667	£93,333
£20,001-£50000	25	4	£815,502	5494	£148	£32,620	£5,000	22	3	£53,977	£17,045	£71,023
£50,001-£100,000	9	1	£655,840	3219	£204	£72,871	£5,000	8	1	£19,688	£5,625	£25,313
£100,000 +	6	1	£1,651,107	5137	£321	£275,185	£5,000	3	3	£206,388	£412,777	£619,165
Total	655	100	£4,554,856	21731	£1,685	£404,741	£158,045	477	178	£515,868	£639,806	**£1,155,674**

*These are either paid after 14 days, or S19D or appeal. They will not necessarily all be paid

There should not be any increase in costs to the Exchequer resulting from the changes in primary legislation compared to the current temporary system.

Table 3 below provides a historical overview of the number of investigations conducted by HMRC since the introduction of the penalty in April 2009. Over the whole period there have been just over 12,000 HMRC investigations and employers in over 38% of these cases have been found to be non-compliant. Since 2009 108,664 workers have been affected by underpayment totalling £20,410,659

It should be noted that these data relate only to cases that HMRC investigate and do not necessarily represent the full extent of NMW non-compliance.

Table 3 HMRC investigations into non-compliance with the NMW.

Year	Closed cases	% found to be non-compliant	Total arrears (current £)	Number of workers
2009/10	3,643	34%	£4,390,023	19,245
2010/11	2,901	39%	£3,818,396	22,919
2011/12	2,534	38%	£3,582,685	17,371
2012/13	1,696	43%	£3,974,008	26,519
2013/14	1,455	47%	£4,645,547	22,610

Source: HMRC.

In 13/14, 1,455 employers were subject to a completed investigation by HMRC's NMW compliance teams, of which 655 (47%) were found not to be paying the national minimum wage, covering 22,610 workers. 477 (73%) of these employers paid back the arrears in 14 days and 178 (27%[6]) after this period[7];

We make the following assumptions:

- The number of complaints remains unchanged – We currently have a penalty in place, therefore the impact of any changes in the number of complaints should be small. The penalty of £20,000 being issued per worker should act as a deterrent, particularly to employers who owe a higher amount of arrears to workers and will mean that employers have more incentive to comply with the existing legislation;
- The number of risk assessed cases remain unchanged;
- The proportion of all cases investigated found to be owing arrears remain unchanged;
- The average number of workers per non-compliant case is 16;[8]
- The 23 employers that appealed against the NOU during 2013/14 would also appeal; against the penalty under the new system;
- It is likely, that an appeal which was successful in 2013/14 would also be successful after the changes to the primary legislation (and vice versa).

In 2013/14, HMRC closed 23 cases that had been appealed to the tribunal (some of these cases include appeals submitted during 2013/14, others were carried forward from previous years). Of these cases, 17 appeals were successfully defended by HMRC, and one further appeal was successfully defended in part (the amount of arrears was amended by the tribunal). In the remaining 5 appeals, the NOU was withdrawn by HMRC prior to hearing and in these cases, either a replacement NOU would have been issued, or no further action taken.

6 The remaining 26% either paid after 14 days or did not pay i.e. S19, ET, or insolvency

7 These figures are based on 1st April 2013– 23rd March 2014

8 This figure would apply overall to all 1,455 cases.
(22,610) / (1,455) = 15.5

It is too early to tell whether applying the £20,000 penalty per worker will have an impact on the number of appeals in relation to NOUs made to an employment tribunal. The changes may lead to increased costs on public expenditure if there is an increase in the number of appeals. Although the overall number of appeals lodged have increased since the implementation of the penalty in April 2009 (which is consistent with the fact that there is a bigger pool of employers who will receive a penalty under the new regime), the overall numbers are relatively small as demonstrated in the table below. Therefore, it appears that most employers do not formally contest the amount of arrears/penalty owed.

	2006/07	**2007/08**	**2008/09**	**2009/10**	**2010/11**	**2011/12**	**2012/13**
Appeals lodged	18	10	3	23	44	26	23

Conversely, the increase in penalties may have a deterrent effect resulting in fewer NOUs and so less possibility for appeal leading to fewer cases in the employment tribunal.

Sectors and groups affected

The NMW applies to all sectors and businesses in the UK. The Low Pay Commission identify low paying sectors, with a higher proportion of NMW workers, as accommodation and food services (i.e. hotels and restaurants), wholesale and retail (i.e. general retail and sectors comprising of apprentices), care (including nursery assistants, nannies etc), and hairdressing.

In their 2014 report[9] the LPC highlighted evidence of a growing risk of non-compliance with payment of the NMW to workers in adult social care.

Analysis of benefits

Workers

The imposition of higher penalties which may result when the maximum is set at £20,000 per worker, so enabling an NOU covering more than one worker to contain a penalty in excess of £20,000 serves the purpose of incentivising employers to comply with the existing National Minimum Wage legislation. This means that there will be fewer workers being underpaid overall.

Exchequer

The effect of the changes to the primary legislation in terms of money received (in penalties) by the Exchequer will not change compared to the current temporary system as employers who are found to have underpayments of more than £20,000 (in any pay reference periods falling on or after 7 March 2014) will receive one NOU per worker or group of workers who have been underpaid by £20,000 or more.

Savings of 250k will be made in administration costs after the primary legislation changes compared to the current temporary measures.

Based on the figures from 13/14 and on the assumption that there are no changes to the number of appeals (as a result of primary legislation), the costs to the Exchequer for depending appeals would be up to £317, 952.

F: Risks

There is a risk that the increased penalty does not have any impact on employers who choose not to pay the minimum wage. There may also be a risk of more challenges and therefore an increase in the number of appeals made to the employment tribunal.

[9] National Minimum Wage Low Pay Commission report 2014 page 153

The increase in total debt imposed by a NOU, combining arrears with increased penalties may make it more difficult for companies in financial difficulties being able to pay both arrears and penalty. This may result in companies choosing to pay the penalty ahead of paying workers which may delay, or reduce workers receiving payment of arrears.

There may also be more companies going into liquidation which could result in neither the penalty nor arrears being paid. However, data from 2013/14 shows that only 6% of employers (n=40) had arrears of greater than £20,000 so this may only affect a small percentage of cases.

G: Enforcement

The NMW is enforced by HM Revenue and Customs (HMRC) on behalf of BIS. HMRC investigates all complaints made to the Pay and Work Rights Helpline. In addition, HMRC conducts risk-based enforcement in sectors or areas where there is a higher risk of workers not getting paid the legal minimum wage. If HMRC investigates an employer that is breaking NMW law and issues a NOU containing details of the underpayments, the period to which they relate and the workers affected the employer will have to pay back the arrears owed to workers, face a financial penalty and can be publicly named and shamed under the NMW Naming scheme, unless it successfully appeals against the NOU.

H: Summary of costs and benefits

Table 4 below presents a summary of the quantifiable costs and benefits associated with the proposed policy change. It should be noted that none of the extra costs and benefits identified below would arise in a situation of 100% compliance with payment of NMW. Therefore these figures are largely transfers from one party to another and should not be considered as additional economic costs and benefits arising from the policy changes themselves.

The intention of the policy is to encourage greater compliance with the NMW, so if successful we would expect to see a decrease in number of cases per year and associated costs.

Table 4. Summary of quantifiable costs and benefits.

	Costs	**Benefits**
Employers Total	£1.8m (penalty fees)	None
Workers Total	None	
The Exchequer		£1.8m (penalty fee)* £250K (administration costs)
Total	**£1.8m**	**£2.05m**

Source: BIS estimates based on enforcement data from HMRC. * NB: There will also be revenue income from prosecution cases but this is not quantifiable.

Implementation

The Government plans to implement this new legislation as soon as possible.

“One in, two out” rule

The changes to the primary legislation will fall out of scope as penalties will only be incurred if an employer is found to owe arrears and therefore is found to infringe the requirements placed upon them under the National Minimum Wage Act[10].

[10] If HMRC withdraw the NoU, they would consider paying costs to the employer. If the case reaches an ET then an employer can apply for HMRC to reimburse costs as governed by ET rules.

Annex 1:

Small and micro business assessment

For the purposes of this assessment, the parameter used to define small businesses is up to 49 full-time employees, and for micro businesses up to 10 employees.

The aim of the National Minimum Wage (NMW) is to provide protection to low-paid workers by preventing their potential exploitation by employers who, in the absence of legislation, could undercut competitors by paying unacceptably low wages. The National Minimum Wage Act 1998 (NMWA) applies to most workers working or ordinarily working in the United Kingdom who are over compulsory school age. All employers are obliged to pay the NMW at the rate which is set by the legislation to workers within its scope.

The Low Pay Commission's (LPC) remit requires them to consider the impact of the NMW on small firms. Their recommendations in their 2014 report were based upon extensive analysis and gathering of evidence, including evidence received from, and discussion with, small businesses and their representatives. The LPC noted in their report that smaller firms were more likely to pay their employees at or below the minimum wage. Micro (1-9 employees) and other small firms (10-49 employees) together only accounted for around 19 per cent of all employee jobs, but they made up over 35 per cent of minimum wage jobs. There is a clear relationship between the proportion of minimum wage jobs and size of firm – the proportion of minimum wage jobs decreases as the firm size increases. Minimum wage jobs accounted for just under 4 per cent of jobs in large firms (with 250 or more employees); about 6 per cent of jobs in medium-sized firms (those with 50-249 employees); 8 per cent of jobs in other small firms; but 13 per cent of jobs in micro firms[11].

For the purpose of the small and micro assessment, the following exemptions were considered:

- Full Exemption
- Partial exemption
- Extended transition period
- Temporary exemption
- Varying requirements by type and/or size of business
- Direct financial aid for smaller businesses
- Opt-in and voluntary solutions
- Specific information campaigns or user guides training and dedicated support for smaller businesses

Following from the evidence above, allowing any exemptions targeted at small and micro business could have a negative impact on the benefit derived from the primary legislative changes, in terms of providing protection to low-paid workers by preventing exploitation.

Public Sector Equality Duty

The Department for Business, Innovation and Skills (BIS) is subject to the public sector equality duties set out in the Equality Act 2010. An equality analysis is an important mechanism for ensuring that we gather data to enable us to identify the likely positive and negative impacts that policy proposals may have on certain groups and to estimate whether such impacts disproportionately affect such groups. The 2014 LPC report[12] stated these groups include women, young workers, older workers, people with disabilities, ethnic minorities, migrant workers, and those with no qualifications are more likely to be on or

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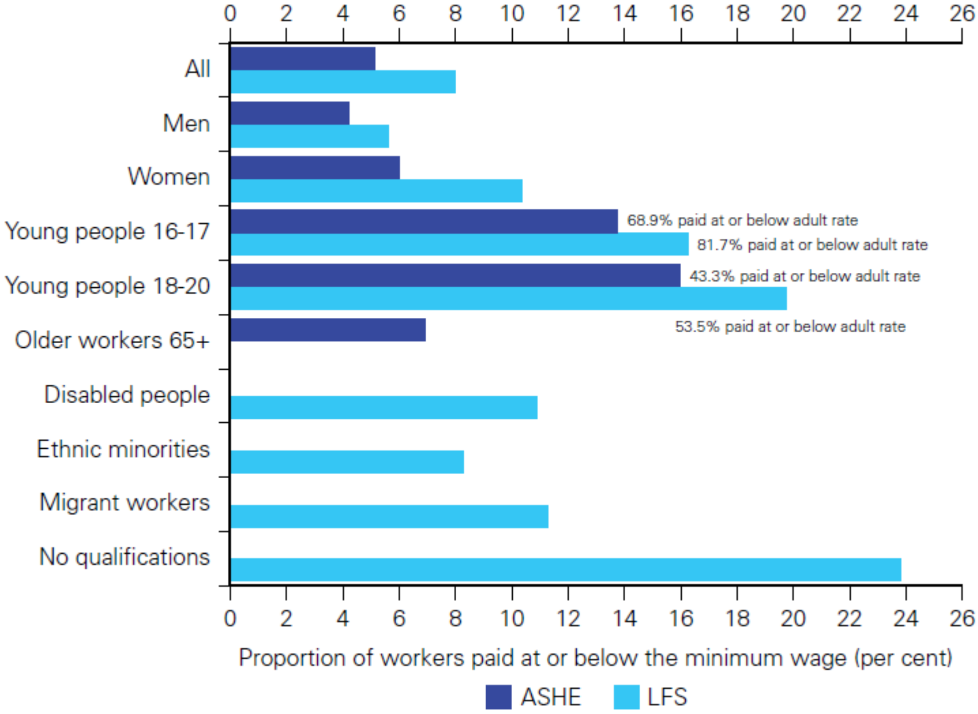
[11] https://www.gov.uk/government/publications/national-minimum-wage-low-pay-commission-report-2014 page 23
[12] National Minimum Wage Low Pay Commission report 2014 page 28

below the NMW. Chart A4 below shows the proportions of minimum wage workers of each of these groups compared to the general population.

Chart A4: National Minimum Wage Workers, UK, 2013[13]



Source: LPC estimates based on ASHE 2010 methodology, low-pay weights, including those not on adult rates of pay, UK, April 2013 and LFS Microdata, income weights, quarterly, not seasonally adjusted, UK, Q2 2013.
Note: Minimum wage jobs defined as adults (aged 21 and over) earning less than £6.24, youths (aged 18-20) earning less than £5.03, and 16-17 year olds earning less than £3.73 in April 2013.

Chart A4 shows that a higher proportion of women than men were minimum wage workers in 2013.

The LPC identified that a higher proportion of young workers and older workers are minimum wage workers. They noted in their 2014 report that there was an increase in the proportion of 18-20 year olds paid below or at (including those paid up to five pence above) their age related NMW rate . It is also possible that some of those paid below the age-related rates were paid at the Apprentice Rate or paid at focal points about the Apprentice Rate but below the youth rates, therefore would be compliant. Research found that non-compliance was more prevalent among part-time employment and shift workers, which may also disproportionally affect young people[14].

The proportion of workers of ethnic minorities that are minimum wage workers shown in chart A4 are slightly higher (10.8%) than jobs held by the same group (10.1%) according to the Labour Force Survey figures. Minimum wage jobs accounted for 8.3 per cent of jobs held by ethnic minorities as opposed to 7.7 per cent for White workers. However, it is important to note that this category is made up of many different ethnicities, masking some of the variability between more detailed groups. For example, the proportions of black workers and Indian workers in minimum wage jobs (5.4 per cent and 6.2 per cent respectively) were lower than that of white workers (7.7 per cent). In contrast, 15.3 per cent of Pakistani and Bangladeshi workers earned the minimum wage[15].

[13] National Minimum Wage Low Pay Commission report 2014 page 29
[14] National Minimum Wage Low Pay Commission report 2014 page 134
[15] National Minimum Wage Low Pay Commission report 2013 page 24

Chart A4 shows that the proportion of people with disabilities that are minimum wage workers is higher than for the overall population.

We considered the impact on protected groups (e.g. race, gender, disability, age, religion, sexual orientation etc), these measures will not directly or in-directly discriminate these groups. Workers will continue to receive arrears calculated on the basis of the current NMW rate.

The aim of the policy change is to strengthen the employment rights of these groups and therefore should have a positive impact on all workers who are entitled to the national minimum wage, including workers with protected characteristics.

Removal of barriers which hinder equality

The change to the NMWA is designed to have a positive impact on all workers in low paid sectors regardless of their characteristics.