



Department for  
Business & Trade



Fair Work  
Agency

# Fair Work Agency Enforcement Policy Statement

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# Introduction

The Employment Rights Act 2025 (ERA 2025) provides the building blocks for the government to establish the Fair Work Agency (FWA) as an Executive Agency of the Department for Business and Trade (DBT), operating under the authority of the Secretary of State (SoS). The FWA is responsible for enforcing a wide range of labour market legislation and protecting workers from exploitation, non-compliance and abuse.

The FWA brings together enforcement functions previously exercised by multiple bodies into a single organisation. Its remit includes enforcement of employment agency standards, pay-related rights including national minimum wage and national living wage, requirements for a Gangmaster licence and conditions for licences, and protections against serious labour exploitation.

The FWA's enforcement authority extends across several key pieces of legislation:

- The Employment Agencies Act 1973
- Employment Tribunals Act 1996
- National Minimum Wage Act 1998
- Gangmasters (Licensing) Act 2004
- Fraud Act 2006
- Modern Slavery Act 2015
- Employment Rights Act 2025

The FWA enforces labour market legislation across England, Wales, Scotland and Northern Ireland, subject to jurisdictional arrangements and prosecutorial frameworks that apply in each nation.

The Secretary of State for the Department for Business and Trade has the power to expand the FWA's remit through regulations to include other labour market legislation as needed.

The FWA will work to ensure all workers understand their rights and have access to appropriate support. In sectors and situations identified as high-risk, the FWA adopts a proactive enforcement approach to prevent exploitation and ensure compliance with employment law and standards.

## Purpose of Enforcement

The purpose of the FWA's enforcement activity is to secure compliance with labour market legislation, protect workers' rights, and support fair competition by ensuring compliant employers are not undercut by those who break the law. Enforcement action across the FWA is undertaken to prevent future non-compliance, remedy harm where it has occurred, and disrupt, and address serious or persistent breaches.

# Principles of Enforcement

In carrying out its functions, the FWA will act in accordance with the principles of good regulation. Enforcement action will be proportionate, accountable, consistent, transparent and targeted, and will be carried out in a way that supports compliance while protecting workers' rights.

The FWA will seek to secure compliance with the law and prevent future breaches. Where appropriate, this will include the use of advice, guidance, and corrective action. However, the FWA will not hesitate to take formal enforcement action, where this is necessary to address serious or persistent non-compliance or exploitation.

The FWA enforcement policy is in accordance with the Regulators' Code and the regulatory principles required under the Legislative and Regulatory Reform Act 2006. The FWA is committed to fair regulation, guided by the following principles. The FWA will consider the Growth Duty under the statutory guidance under section 110(1) of The Deregulation Act 2015.

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## Proportionality

The FWA will ensure enforcement is proportional to breaches of employment legislation to secure compliance with the law. Achieving compliance may include intervention, based on the degree of risk or harm to workers by the employer, or a proportionate mechanism to correct non-compliance.

## Accountability

The FWA and its Enforcement Officers remain accountable for the efficiency, effectiveness and cost of their operations. FWA Enforcement Officers will give due regard to the FWA's duties to support economic growth and consider the growth duty and statutory guidance, while balancing the impact and cost effectiveness of prosecution and enforcement action. The FWA will publish detailed performance metrics for the previous financial year and have clear, accessible complaints and appeals processes.

## Consistency

The FWA will take a similar approach in similar cases across all jurisdictions in which it operates, including in England, Wales, Northern Ireland and Scotland. In all cases the FWA will take a consistent approach to treating employers, businesses and workers equally.

## Transparency

The FWA will help businesses and individuals understand what is required of them from the outset and what they should expect from the FWA in return. Transparency includes clarity on the consequences of non-compliance and the remedial action that may be taken.

## Targeting

The FWA applies a risk-based assessment process for determining priorities and directing compliance and enforcement work.

# Fair Work Agency Enforcement and Remit

## Statutory Rights and Entitlements enforced by the FWA

### Entitlement to the National Living and National Minimum Wage

The Secretary of State has arranged with HMRC for its officers to act as FWA Enforcement Officers for the purposes of enforcing the minimum wage. HMRC's enforcement of employers' obligations to pay workers the minimum wage is focused on the workers' right to receive the remuneration they are entitled to.

The National Minimum Wage Act 1998 ('the 1998 Act') introduced a statutory right to be paid a certain amount of remuneration for work performed. Almost all workers in the UK are entitled to the National Minimum Wage (NMW) or the National Living Wage (NLW). Workers are defined in section 54 of the 1998 Act.

A qualifying worker who is paid less than the minimum wage for any pay reference period is legally entitled to be paid arrears by his employer (section 17 of the 1998 Act).

Arrears are either:

- the difference between the remuneration received by the worker and the minimum wage rate which applied at the time they were underpaid; or
- where the current rate of minimum wage is higher than the rate that applied at the time of the underpayment, the arrears are calculated by reference to the current rate.

For more detail on entitlement to the minimum wage and how arrears are identified, see [Calculating the minimum wage](#).

### Enforcement of National Minimum Wage on behalf of seafarers

On 1 October 2020, the NMW (Offshore Employment) (Amendment) Order 2020, came into force, this extended the right to NMW equivalence:

- to all seafarers and employed fishers working in the UK territorial sea, regardless of where they ordinarily work or where a ship is registered
- to those working in the UK part of the continental shelf (with the exception of workers on ships exercising innocent passage or the right of transit passage)

The Maritime and Coastguard Agency is responsible for enforcing the Seafarers' Wages Act 2023. It requires payment of the equivalent to National Minimum Wage to seafarers that do not qualify for the national minimum wage/national living wage, while in UK waters and working on international services calling at a UK port at least 120 times a year. It is not the same as the national minimum wage and is therefore not subject to enforcement by the Fair Work Agency.

### Gangmasters Licensing

The FWA's Gangmasters licensing scheme regulates businesses who provide workers to the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law.

If acting as an employment agency, labour provider or gangmaster who provides workers to the sectors listed below, a Gangmaster licence is needed:

- Agriculture

- Horticulture
- Shellfish gathering
- Any associated processing and packaging

The FWA expects labour providers that operate in these sectors to hold a licence and be compliant with the licensing standards. If a labour provider does not hold a licence, then they will potentially be committing a criminal offence.

The FWA has responsibility for the investigation of criminal offences contrary to the Gangmasters (Licensing) Act 2004 in England and Wales, Scotland, and Northern Ireland.

Labour providers are assessed to check that they comply with the Gangmasters licensing standards. They cover health and safety, accommodation, pay, transport, training, and tax, National Insurance and VAT regulations.

## **Agency Standards**

The FWA protects the rights of agency workers in Great Britain by ensuring that employment agencies and businesses treat their workers fairly.

The FWA achieves this through working with recruitment agencies, hirers, and work-seekers to ensure compliance with employment rights, particularly for vulnerable work-seekers, who work through employment agencies and employment businesses (commonly called 'agency workers'), and that everyone who uses the services of a private recruitment agency to find work is treated fairly and can access their rights. This can include:

- working with employment agencies and businesses to help them comply with the law
- investigating complaints received about the conduct of employment agencies or employment businesses including agency workers and supporting the recovery of unpaid wages or money owed to temporary workers and unlawful fees charged to workers
- carrying out proactive targeted inspections of employment agencies and businesses to check their compliance with the law
- taking enforcement action through the powers at our disposal, including prosecution, prohibition or Labour Market Enforcement Undertakings or Orders

## **Serious Labour Abuse and Exploitation**

The FWA has a role to protect vulnerable and exploited workers covering certain aspects of the Modern Slavery Act (in England and Wales). The FWA works with partner organisations such as the police, the National Crime Agency and other government law enforcement agencies to target, dismantle and disrupt serious and organised crime.

The FWA is a First Responder Organisation. As a First Responder Organisation the FWA is authorised to refer potential victims into the National Referral Mechanism (NRM), the UK's framework for identifying and supporting victims of modern slavery and human trafficking.

The FWA First Responder Organisation status means certain Enforcement Officers in the FWA:

- Identify potential victims of modern slavery and recognise the indicators of modern slavery.
- Gather information in order to understand what has happened to them.

- Refer victims into the NRM (in England and Wales this includes notifying the Home Office if an adult victim does not consent to being referred) via the [Modern Slavery Portal](#).
- Provide a point of contact for the Competent Authorities to assist with the Reasonable Grounds and Conclusive Grounds decisions and to request a reconsideration.

## **Employment Tribunal Penalties**

The FWA has financial penalty powers against employers who fail to pay Employment Tribunal (ET) awards. This function is to ensure workers receive the money they are legally owed after winning a tribunal judgment and has the power to issue warning and penalty notices to non-paying employers.

The tribunal penalties function in the FWA enables individuals to chase outstanding employment awards and can impose additional penalties on employers of 50% of the unpaid amount of the relevant sum on the specified date (section 37 F(4) of the Employment Tribunals Act 1996).

# How the FWA carries out investigations and inspections

## Civil Investigations

### Identification and commencement

The FWA identifies potential non-compliance through a range of sources. These include complaints from workers or their representatives, referrals from other public bodies, intelligence from partner agencies, information obtained through proactive compliance activity, and analysis of data and risk indicators. The FWA will assess information received to determine whether it falls within its statutory remit and whether further investigation is appropriate. Not all reports will result in a formal investigation.

The FWA will consider every complaint received. In deciding whether further investigation is necessary, the FWA will:

- consider whether the complaint is in scope of the legislation enforced by the FWA or if it is better suited to another organisation,
- assess what other information can be obtained regarding the employer, business, employment agency, both from the complainant and other sources.

Following receipt of a complaint or information which needs to be followed up, the FWA will investigate in order to establish:

- causes of complaint
- any non-compliance with the legislation
- the seriousness of any breaches of the law
- what action has been taken, or needs to be taken, in order to comply with the legislation
- an appropriate and proportionate response to any breaches of the law that were identified
- that compliance with the law or licensing standards has been achieved.

An investigation will normally be regarded as commencing when an FWA Enforcement Officer first contacts a business or individual to make enquiries in relation to suspected non-compliance.

### Conduct of investigations and inspections, and use of powers

FWA Enforcement Officers are appointed under section 90 of the Employment Rights Act 2025, which gives Enforcement Officers powers to conduct investigations including obtaining information and evidence necessary to determine whether labour market legislation has been breached.

The FWA Enforcement Officers have statutory powers under the Employment Rights Act 2025 and related legislation to investigate suspected breaches of labour market legislation. Investigations carried out by the FWA may involve a range of activities, including requests for information, inspection of records, interviews with workers or business representatives, and visits to business premises.

Depending on the nature of the investigation FWA Enforcement Officers may by notice require a person:

- to attend at a specified time and place and to provide information by answering questions;
- to provide specified information, or information of a specified description, by a specified date;
- to provide specified documents, or documents of a specified description, by a specified date.

The extent and nature of investigative activity will be proportionate to the risks identified. In carrying out site visits, FWA Enforcement Officers follow the government's [Code of Practice - Powers of Entry](#). FWA Enforcement Officers will generally contact businesses in advance to arrange a site visit and agree this consensually. However, the FWA does have powers to carry out unannounced investigations.

Where appropriate, investigations may be conducted without a site visit, for example through remote examination of digital records or written inquiries.

Whilst FWA Enforcement Officers will generally operate on a consensual basis, an Enforcement Officer may for any enforcement purpose enter any premises, and exercise any powers they have. Where necessary, an Enforcement Officer will need to obtain a warrant in order to exercise these powers unless consent is arranged. A warrant is needed to enter a dwelling without consent.

Enforcement Officers may also extend their investigation if necessary to relevant labour providers or users such as those that use agency services, including hirers and agency workers, for information during an investigation.

Certain FWA Enforcement Officers are authorised to exercise additional powers for the purposes of criminal investigation where legislation allows. The use of such powers is subject to statutory safeguards and independent oversight.

On request, FWA Enforcement Officers are required to produce evidence of their identity as FWA Enforcement Officers, including evidence of their authority to exercise investigatory powers.

### **Criminal offences relating to false documentation and obstruction**

Sections 140 and 142 of the Employment Rights Act 2025 set out the criminal offences relating to obstruction and providing false documentation.

It is a criminal offence to provide false documentation. Where an employer provides an excuse, the FWA Enforcement Officer will consider whether any explanation given is reasonable. In particular, the FWA does not consider the following to constitute 'reasonable cause' to withhold information:

- inconvenience
- on a site visit, the need to consult lawyers prior to compliance without proper explanation as to why this is necessary (the FWA expects its licence holders and others using the services of labour providers to understand the FWA's powers)
- the absence of a senior member of staff
- general assertions that information is not required.

It is a criminal offence to obstruct an FWA Enforcement Officer exercising an enforcement function.

Further, an initial refusal to provide information on an inspection visit, including the refusal to allow access to premises and those individuals at those premises, preventing inspection, may be considered as intentional delay or obstruction. An attempt to prevent an FWA Enforcement Officer removing documents from the premises may also be considered as obstruction.

### **Criminal Investigations and enforcement**

A criminal investigation is carried out for the purposes of gathering evidence to establish whether a person has, or has not, committed a criminal offence. It aims to ensure that evidence of illegality is secured to enable prosecution or alternative sanction to be initiated, to eliminate gain, prevent harm, punish wrongdoing, avoid a recurrence and to act as a deterrent to others. Evidence gathered during an investigation will determine the appropriate enforcement outcome.

In determining whether it is appropriate to conduct a criminal investigation, the FWA will consider a range of factors including:

- The extent to which individuals have been affected by the breach and whether they have been subjected to abuse or detriment by the failure of the business to comply with the law
- any explanation or statement that has been provided by the business including in relation to non-compliance with the legislation
- whether a business or employer has been found to have breached the legislation previously and has disregarded any previous advice and guidance regarding compliance
- the impact or potential impact of the offence on the industry and the severity and degree of non-compliance
- the benefit, financial or otherwise, to the offender arising from the failure to comply
- the level of culpability of the offender whether there is sufficient admissible and reliable evidence to provide a realistic prospect of conviction

These factors are not exhaustive and those that apply will depend on the circumstances of each case.

FWA criminal investigations will be conducted in accordance with the rules governing the conduct of criminal investigations in the relevant jurisdiction of the UK.

Should the FWA establish a criminal offence has been committed, it will determine the best course of action, including alternatives to prosecution such as Labour Market Enforcement Undertakings and Orders, or use of civil enforcement powers. Each case will be considered on its own merits, taking into account the conduct and circumstances of the employer or business in question, and also what is in the affected workers' best interests.

## **Criminal investigations by authorised FWA Enforcement Officers using PACE powers**

### **Labour Abuse Prevention Enforcement Officers' Powers**

By virtue of regulations made under section 114B of the Police and Criminal Evidence Act 1984 (PACE), certain FWA Enforcement Officers have access to certain police powers for the purpose of criminal investigations into labour market offences. These Enforcement Officers hold letters of authority to access these powers set out by the Secretary of State. FWA Enforcement Officers only use PACE powers for cases involving suspected serious labour market offences under the Gangmasters (Licensing) Act 2004 and relevant Modern Slavery Act 2015 offences within the FWA's remit. The specific PACE powers available to authorised officers are defined in the PACE Regulations and in their individual authorisation letters.

Authorised FWA Enforcement Officers are empowered to use these additional PACE powers to facilitate their investigations into labour market offences in England and Wales. Such investigations adhere to the [PACE Codes of Practice for the conduct of investigations, searches, interviews and rights of suspects](#).

The specific PACE powers FWA Enforcement Officers may use are set out in '[The Police and Criminal Evidence Act 1984 \(Application to labour Abuse Prevention Enforcement Officers\) Regulations 2017](#)'. They may not use those powers in Scotland or Northern Ireland.

## Investigations through PACE powers

Alongside the powers of Enforcement Officers, certain officers are provided with additional powers, as authorised investigators. An authorised investigator may use PACE powers to investigate labour market offences but may not, for the same purpose, use any other powers in the Employment Rights Act 2025, to do so; they may only use the PACE powers they are authorised to use. The specific powers authorised investigators may use are set out in the Police and Criminal Evidence Act 1984 (Application to Enforcement Officers) Regulations 2026.

Authorised investigators may exercise PACE powers when conducting a criminal investigation into suspected labour market offences. When undertaking civil enquiries under the ERA 2025, these officers may continue to use the full range of ERA 2025 investigatory powers.

To maintain procedural clarity and evidential integrity, investigations should be conducted under one set of powers at a time. Where a civil investigation under ERA 2025 develops into a criminal investigation, an officer holding PACE authorisation may switch to using PACE powers. The scope and use of PACE powers will be defined in the officer's authorisation letter and associated operational guidance.

All FWA Enforcement Officers can obtain a warrant through ERA 2025 legislation; however, for Enforcement Officers using PACE powers only said Enforcement Officers can obtain a PACE warrant. Force may be used, where reasonable and necessary under section 102 ERA 2025, or when under PACE powers. Where possible, an Enforcement Officer will communicate with the occupant and obtain co-operation to effect entry unless this is impractical or will defeat the object of the entry. When entering under a PACE warrant, the entry and search should be at a reasonable hour, unless the purpose of the search would be frustrated by an entry at a reasonable hour. Enforcement Officers may also search anyone they find there, and seize material that may be relevant to their investigation.

Authorised FWA Enforcement Officers may arrest persons suspected of labour market offences. The power of arrest in such circumstances comes from section 24 PACE. They will arrange for an arrested person to be conveyed securely to a police station, where they will normally carry out interviews under caution with the arrested person. All investigative action, and interviews will be conducted in accordance with the [PACE Codes of Practice](#). This includes applications to police in charge of custody suites, and courts, to extend periods of detention during the investigation.

As defined in the Criminal Procedures and Investigation Act (CPIA) 1996, an investigation will be deemed to have been started when it is conducted by FWA Enforcement Officers with the intent to ascertain whether a person should be charged with an offence or whether a person charged with an offence is guilty of it, in relation to crimes that have been committed, or identifying whether a crime has been committed with a view to commencing criminal proceedings.

FWA Enforcement Officers must have regard to [CPIA codes of practice](#), particularly in relation to recording information and retaining records such as disclosure rules.

## Use of Investigatory Powers Act Powers

The Investigatory Powers Act 2016 (IPA 2016) provides certain additional legislative tools for the FWA to receive targeted authorisations for obtaining communications data.

The IPA 2016 enables authorisations to be obtained, for the purpose of preventing or detecting Serious Labour Abuse and Exploitation, to use investigatory powers for the interception and the acquisition of communications data where it is deemed necessary and proportionate to support an investigation of suspected offences. The FWA can only use these powers to investigate suspected offences under the **Modern Slavery Act 2015** and the **Gangmasters (Licensing) Act 2004**.

The extent to which Enforcement Officers are able to access communications data under such authorisations is limited by the legislation under sections 60A and 61AX of the IPA 2016.

## **Serious Labour Abuse and Exploitation in England, Wales, Scotland, and Northern Ireland**

In England and Wales, the FWA has responsibilities to investigate reports of Modern Slavery in all industry sectors.

In Scotland, the FWA enforces the Gangmasters (Licensing) Act 2004, and through its work cooperates with Police Scotland in tackling modern slavery. The FWA cooperates and works with Police Scotland to support activity to target, dismantle and disrupt serious and organised crime.

In Northern Ireland the FWA cooperates and works with the Police Service of Northern Ireland (PSNI) to support its tackling of modern slavery and human trafficking. In Northern Ireland the FWA operates under the Gangmasters (Licensing) Act 2004, to tackling worker exploitation, and health and safety negligence. The Department for Agriculture, Environment and Rural Affairs (DAERA) is the Northern Ireland department with policy responsibility for gangmaster licensing through arrangements with the FWA.

### **Safeguards and complaints of Enforcement Officers operating PACE powers**

PACE powers are provided subject to inspection and oversight by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS). If there is a complaint concerning the conduct and use of PACE powers by an authorised FWA Enforcement Officer, this will be referred to the Independent Office for Police Conduct (IOPC). The IOPC has the authority to investigate such complaints.

On receipt of a complaint the IOPC will decide whether the complaint requires investigation, or if it should be referred to FWA central services to investigate. In all circumstances complainants will be kept informed of the decision on how the complaint will be handled.

If an FWA Enforcement Officer is proposing a course of action that is deemed unreasonable there are routes for making a complaint. The FWA policy for external complaints [is set out in the FWA Complaints procedure](#).

For authorised FWA Enforcement Officers, a complaint can be made through the IOPC website [Submit a complaint | Independent Office for Police Conduct \(IOPC\)](#) or you can complain directly to the FWA.

### **Oversight of IPA Powers**

The use of IPA Powers is provided under the oversight of Investigatory Powers Commissioner's Office (IPCO). The Investigatory Powers Commissioner has responsibility for reviewing the use of investigatory powers by public authorities, such as intelligence agencies, police and local authorities. IPCO has a statutory obligation to inspect the use of investigatory powers as part of its oversight.

## How the FWA ensures compliance

Where non-compliance is identified, the FWA may take a range of enforcement actions depending on the nature and seriousness of the breach. The FWA will determine the most effective enforcement tools to address and prevent offending behaviour, ensuring that responses are proportionate and likely to prevent recurrence. These may include:

- Advice and guidance to secure compliance
- Warning letters
- Notices of underpayment and civil penalties
- Naming employers for underpaying the minimum wage
- Labour market enforcement undertakings or orders
- Licensing action, including refusal, modification, suspension or revocation
- Prohibition notice orders
- Civil proceedings
- Criminal investigation and prosecutions, where appropriate

### Advice and guidance to secure compliance

The FWA provides guidance, seminars, and support to enable businesses and employers to comply with the law. This guidance and proactive approach provide the opportunity for businesses to get the law right and or self-correct prior to enforcement action.

### Notice of Underpayments and Civil Penalties

The FWA issues Notices of Underpayment (NoUs) to employers for breaches of certain rights to pay. HMRC operates the NoU model, on behalf of the FWA, for underpayment of the national minimum wage (NMW). NoUs require employers to pay workers their due, and to pay a civil penalty to the government.

An NoU explains what an employer is liable to pay, including the total arrears payable for all workers named on the notice, and any penalty payable, how it has been calculated, the reduction for prompt payment and whether it has been suspended. An NoU requires the liable party to pay a penalty to government.

For the underpayment of NMW, employers issued an NoU will generally be referred to the NMW naming scheme. The FWA works with the Department for Business and Trade to name employers that do not pay the minimum wage.

### When a Notice of Underpayment should be issued, including use of self-correction

A Notice of Underpayment (NoU) should be issued where an FWA Enforcement Officer finds that arrears under statutory entitlement to NMW were outstanding at the start of an investigation, though FWA Enforcement Officers have discretion over the issuing of an NoU.

The government seeks to ensure that there is a sufficient deterrent against underpayment of the minimum wage. The basis for imposing a penalty on an employer is non-compliance with the requirement to pay workers the minimum wage. The 'start of an investigation' is the trigger point that is used to determine whether, in principle, a penalty should be imposed on the employer for non-compliance with statutory entitlements for which the FWA enforces.

NoUs should generally be issued where arrears are outstanding at the start of an investigation, notwithstanding that the employer claims that an underpayment was accidental. This includes where the employer has repaid the arrears to the worker after the start of the investigation and before the date the notice is issued.

An NoU should also generally be issued where an employer has partly repaid arrears before the start of an investigation but not the uplifted arrears calculated which reflect the increase to the minimum wage rates since the arrears originally arose.

An NoU should ordinarily not be issued where an employer has correctly repaid all the arrears that are owing to the workers before the start of an investigation, including where they have self-corrected, for example in response to FWA nudge activity.

FWA Enforcement Officers have discretion over whether to issue an NoU, based on their assessment of the facts of the particular case. While it is expected that an NoU will be issued in almost all situations where the FWA have become aware of arrears, there may be specific circumstances when FWA Enforcement Officers decide that the employer should not be issued with an NoU, and as such should not be subject to enforcement action, be named or face a financial penalty. Each decision to issue an NoU should be made on a case-by-case basis. Even in those cases where an NoU is not issued, the FWA will still require the employer to pay any arrears owed.

FWA Enforcement Officers may allow self-correction in certain circumstances. For example, FWA Enforcement Officers may issue an NoU for the full arrears for all current workers and require the employer to self-correct for ex-workers. In all cases of self-correction, the FWA needs to be confident that the employer will self-correct accurately and will not hesitate to issue an NoU if the employer is not fully compliant. The FWA ensures that all workers receive the money they are due.

For the purposes of underpaid arrears in all cases where an Enforcement Officer is considering using self-correction, they are likely to wish to be satisfied that the employer:

- has engaged cooperatively with FWA's investigation
- has taken, or will take, steps to ensure compliance with minimum wage rules going forward; and
- For NMW, has not had other minimum wage breaches relating to a similar failing in the previous six years

### **Withdrawal and reissue of Notice of Underpayment**

The FWA Enforcement Officer may withdraw a notice of underpayment that is incorrect in some way. The Enforcement Officer may, at the same time as withdrawing the original notice, issue a replacement NoU. Only one replacement notice may be issued.

A replacement NoU can be issued if the FWA Enforcement Officer deems the same condition has been met that led to them issuing the withdrawn notice under section 111 ERA 2025. The replacement NoU cannot include a worker who was not included in the original NoU under section 103 ERA 2025.

### **Issue of Notice of Underpayment where there are/may be criminal proceedings**

Section 103 ERA 2025 allows an FWA Enforcement Officer to issue an NoU with a provision suspending the requirement for the employer to pay a penalty where relevant criminal proceedings have been instituted, or may be instituted, against an employer.

The decision whether to issue an NoU containing such a provision is to be made on a case-by-case basis.

## **Quantification of arrears**

An NoU requires an employer to repay to the worker or workers the amount of arrears outstanding on the 'relevant day' as a result of underpayment of the minimum wage for the pay reference periods ending before the relevant day which are specified in the notice.

The 'relevant day' is defined as a day on which a sum was due under section 17 of the National Minimum Wage Act 1998 for one or more pay reference periods ending before that day. Where more than one worker is named on the NoU, the relevant day may be different for each worker.

Where a worker has been underpaid the minimum wage, the arrears that are repaid to the worker must take account of the length of time that has elapsed since the underpayment. Where the rate of minimum wage at the time the arrears are calculated is higher than the minimum wage rate that was in force at the time the underpayment occurred, the arrears should be calculated by reference to the current rate (in accordance with section 17(4) of the 1998 Act).

The underpayment of minimum wage (that is, the difference between the remuneration received by the worker and the minimum wage rate which applied at the time they were underpaid (section 17(2))) is divided by the rate of minimum wage that applied at the time of the underpayment and then multiplied by the rate of minimum wage that is currently in force.

Where a worker changes age bands, the current rate of minimum wage to be used in the calculation of arrears should be the current rate for the band that applied to the worker at the time the arrears accrued. So, for example, arrears incurred when the worker was aged 16-17 would be calculated by reference to the current 16-17 rate, not by reference to the current 21–22-year-old rate (even if the worker is now twenty-one or over).

## **Penalty and quantification of penalty**

The Secretary of State may, by directions, specify circumstances in which an NoU should not impose a penalty under section 108 ERA 2025. Where the notice includes a requirement to pay a penalty, the penalty may be suspended where criminal proceedings are envisaged or commenced and eligibility for naming suspended.

## **National Minimum Wage Secretary of State directions**

The Secretary of State has issued directions covering NMW penalties.

First, a direction that an NoU should not include a penalty where an employer has followed written or published guidance obtained from a government department or its agency about the employer's compliance with minimum wage requirements and this guidance is incorrect.

This direction only applies where the employer can demonstrate to the compliance Enforcement Officer that they have:

- sought written or published guidance from a government department or agency that was applicable to their situation; and
- obtained written or published guidance; and
- correctly followed that guidance; and
- the compliance Enforcement Officer considers that the written or published guidance obtained by the employer was incorrect.

Second, a direction has been issued relating to cases where NMW underpayments have arisen as a consequence of certain employer deductions from pay. This direction addresses some specific instances where the design of a salary sacrifice or deduction scheme is associated with NMW underpayments, despite delivering benefits to participating workers, and the worker in practical terms suffers little or no detriment.

The intention of the direction is to ensure that historical liabilities are repaid to workers, whilst providing employers with an opportunity to ensure their practices going forward are compliant with the law. The circumstances in which the direction will apply are tightly limited to ensure the continued protection of workers.

In summary, the direction has broadly the following effect. If, following an HMRC investigation, the only reason minimum wage was underpaid for a worker in a particular pay reference period was because the employer made a deduction from a worker's pay or operated a salary sacrifice or savings scheme falling within the permitted categories, with the worker's consent, and the worker has received the correct goods, services benefits or repayments as a result of that deduction or reduction (e.g. childcare vouchers, savings club, season ticket etc.), the employer will not face a financial penalty (or be named). This direction does not apply to deductions for items: in connection with employment (e.g. uniform), expenses, or accommodation. Employers that have been convicted of NMW offences (where the conviction remains unspent), been party to a labour market enforcement undertaking or order relating wholly or partly to NMW (and outstanding in any respect), or who have been issued an NoU in the past six years (unless for not more than £500, withdrawn or under appeal) will not benefit from this direction.

Directions by the Secretary of State are included in the annex A and B of this publication.

## **Penalties for National Minimum Wage underpayment**

The maximum penalty is £20,000 per worker. The penalty is calculated as 200% of the total underpayment for all of the workers specified in an NoU. Where this amount would be less than £100, the minimum penalty of £100 should still be applied. Where this amount would be more than £20,000 per worker, the maximum penalty of £20,000 per worker should be applied. The penalty is reduced by 50% if all of the unpaid wages and 50% of the penalty are paid in full within 14 days.

## **Policy on Naming Employers that breach National Minimum Wage legislation**

The FWA works with the Department for Business and Trade (DBT) to operate a naming scheme which is used to raise awareness of minimum wage enforcement and deter employers who would otherwise be tempted to break minimum wage law. The government recognises that some employers are more likely to respond to the social and economic sanctions that may flow from details of their payment practices being made public, than from financial deterrents.

The government envisages that raising awareness of minimum wage enforcement in this way could also encourage more workers who have been underpaid to come forward.

An employer that breaks minimum wage law will be issued with a NoU. This is a formal notice that sets out the arrears of minimum wage to be repaid by the employer together with the penalty for non-compliance with the requirement to pay workers the minimum wage. An information sheet is given to the employer at the start of the investigation which sets out details about the DBT naming scheme.

The employer will be referred to DBT for naming after the FWA case closure letter has been issued to the employer.

DBT considers all cases for naming where the total arrears owed to workers was £500 or more. However, a lower threshold of arrears of more than £100 applies in cases where on the date the NoU was issued the employer:

- has been issued with another NoU within the previous six years

- was subject to an outstanding Labour Market Enforcement Order or Undertaking, or,
- has previously been convicted of an NMW offence which is not spent

These criteria will be kept under review to ensure that the naming scheme continues to meet its policy objective.

Employers can make written representations to DBT if they believe they meet one or more of the criteria for not being named under the scheme. The criteria are strictly applied, and employers will only be exempted from naming if they meet one or more of the exceptional circumstances, which are:

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

In practice, DBT accepts very few representations. DBT takes a restrictive view on what is in the public interest: for example, DBT has named businesses that have made 'public interest' representations on grounds that they inadvertently breached the rules, or that they relied on advice from a third party, or that the underpayment took place under a previous owner or different trading name, or because they are a small business that is relied on by the community. This is because it is the employer's responsibility to ensure they are compliant with the legislation. In all cases where an employer makes representations to DBT, the employer will need to provide evidence in support of their case for not being named.

The details of where to send representations are provided in the case closure letter. DBT will also inform an employer if they are under consideration for naming in a 'Notification of Naming' letter. All representations must be received by 14 days after the date on the letter. This date is clearly stated in the letter to prevent confusion. If, on receipt of representations from an employer, DBT is satisfied that the employer meets one or more of the exceptional circumstances, the employer will not be named under the naming scheme and will receive correspondence informing them of this.

If none of the exceptional criteria apply to the employer, they will be named under the scheme. If the employer made no representation, they will receive no further correspondence unless they opt to be added to the email list to receive an electronic copy of the press release before publication. If the employer did make a representation and it was not accepted, they will be sent a letter informing them of this outcome.

Employers can be named once for every NoU that is issued. If they are issued multiple NoUs, then they may also be named multiple times.

## **Employment Tribunal Financial Penalties**

FWA Enforcement Officers have the authority to issue financial penalties on employers who have failed to pay Employment Tribunal (ET) awards or Acas settlements, this is following an application from an individual for enforcement action.

These penalties are intended to encourage non-compliant employers to make prompt payment to avoid incurring further charges. The Employment Tribunal Financial Penalties Team (ETP) within the FWA is responsible for enforcing these powers. ETP can issue warning notices and, where appropriate, financial penalty notices to employers who have not paid the amount owed. Penalties are set at 50% of the outstanding award or settlement, subject to a minimum of £100 and a maximum of £5,000.

An overview of the [ETP process can be found on GOV.UK](#).

## **Gangmaster Licence decisions**

Under the Gangmasters (Licensing) Act 2004 a licence can be suspended or revoked if a labour provider has failed to demonstrate compliance with the [licensing standards](#).

If a labour provider does not meet a standard, for example not being fit and proper, their licence may be revoked with immediate effect. This means the business cannot continue to supply workers to the FWA licensable sectors. This decision can be appealed, and any hearing will be expedited.

If a labour provider does not meet a condition such as payment of the minimum wage, their licence will be revoked without immediate effect. The decision will take effect after 20 days unless the business appeals this decision. If they appeal this decision they can continue to operate until an appeal is heard and the business will still be shown on the public register. If the appeal rules in favour of the labour provider they will be able to keep their licence, if not their licence will be revoked and they will be unable to supply labour in the FWA licensable sectors.

A labour provider can apply for a new licence before the appeal is heard and this application will be considered on its own merits.

A refusal to grant a licence or the modification of any licence by adding an additional licensing condition is also an appealable decision.

[FWA Gangmaster licencing standards can be found on GOV.UK](#).

## **Warning Letters**

For breaches of the Employment Agencies Act 1973 the FWA will initially seek compliance by issuing warning letters. Every warning letter will contain a clear statement of the breaches that have been found. They will also contain a formal warning of the FWA powers regarding LME undertakings and LME orders as well as prosecution and prohibition.

Those issued with warning letters will be asked to confirm in writing what remedial action they intend to take, or have taken, in order to correct each breach and, where appropriate, to provide supporting evidence. In all warning letters issued by the FWA, the employment agency or employment business will be asked to provide a written response with 14 days of the date of the warning letter.

If further time is needed to respond, for example to include revised documentation, the employment agency or employment business must contact the FWA and obtain written agreement to any extension. The FWA will consider extensions on a case-by-case basis and will usually grant these provided the employment agency or employment business has provided a reasonable justification.

A warning letter should ordinarily not be issued where an employment agency, employment business or employer has taken action to comply before the start of an investigation. This includes where they have self-corrected, for example in response to nudge activity. Nudge activity involves the FWA communicating with employment agencies or employment businesses and employers to help them proactively identify non-compliance. The FWA does not consider nudge activity to mark the start of an investigation into any individual employment agency or employment business.

The FWA may also use warning letters as a compliance tool for other areas of legislation.

### **Self-correction action before the start of an investigation**

Businesses, workers, labour providers and/or labour users who have previously operated outside of the legislation and wish to put their affairs in order may approach the FWA to make a voluntary disclosure or self-correct irregularities in their operations.

An example of where self-correction may be considered is where an employment business or agency voluntarily discloses non-compliance to the FWA in response to nudge activity. In such cases, the FWA may choose to write to the employment business or agency to invite them to self-correct within a specified period.

Where the employment business or agency takes appropriate steps to self-correct the disclosed non-compliance following this invitation the FWA will not pursue enforcement action in relation to the non-compliance that has been voluntarily disclosed and satisfactorily corrected.

In all cases of self-correction, the FWA needs to be confident that the employment agency, employment business or employer will self-correct accurately and the FWA will not hesitate to act where there is not full compliance.

In all cases where the FWA is considering using self-correction, they are likely to wish to be satisfied that an employer, employment agency or employment business:

- has engaged cooperatively with the FWA
- has taken, or will take, steps to ensure compliance going forward
- has not been issued with any Warning Letter relating to a similar failing in the previous 2 years

Decisions about the use of self-correction in a particular case are always for Enforcement Officers to make in light of all the facts of the particular case.

## Prohibition

Under section 3A of the Employment Agencies Act 1973, the FWA can, on application by the Secretary of State, apply to an employment tribunal to prohibit an individual or corporation from running or being involved in running an employment agency or employment business, because of their unsuitability on account of either their misconduct or another sufficient reason.

A prohibition can take different forms. Most commonly, once someone has been prohibited, they cannot run or be involved with running an employment business or agency during their prohibition period. However, different conditions can be attached. For example, a person can be prohibited from running an employment agency from their own home, but not necessarily from business premises.

A prohibition order could also prevent a person from running online job boards that were caught by section 13 of the Employment Agencies Act 1973 as employment agency or employment business activity, and where the activity was conducted from premises within Great Britain.

A prohibition may be sought by the FWA after a successful LME order; or an FWA prosecution for offences under the legislation.

The FWA may also use other evidence, including prosecutions by other enforcement bodies, as a basis for applications for a prohibition.

The maximum period of any prohibition order is 10 years. Any person who breaches a prohibition order can face criminal proceedings.

The FWA publishes a list [of prohibited individuals](#) who have been and are currently prohibited from running an employment agency or employment business.

In the case of a prohibition order, an order may be made against the corporation, or its directors, managers, secretaries or in a case of a partnership business or a Scottish partnership, the individual partners or a manager employed by the partnership business or Scottish partnership.

## Labour Market Enforcement – Undertakings and Orders

The Labour Market Enforcement regime covering Undertakings and Orders is designed to address criminal labour market offending where it may not be considered proportionate, to bring a prosecution. It provides an additional or alternative mechanism to prosecution where the FWA considers that securing compliance through specified remedial steps is a more effective means of preventing further offending and protecting workers.

A Labour Market Enforcement Undertaking (LMEU) may be used as an alternative to prosecution where there is evidence of a criminal labour market offence. An LMEU is a voluntary agreement between the FWA and a person or business that the FWA believes to have committed a criminal labour market offence, setting out the steps that must be taken to prevent further offending and protect workers. The agreement will set out what needs to be done, by a specific date, and how. An LMEU may be discharged where the FWA is satisfied that the required steps have been taken and the risk of further offending has been addressed. Where appropriate, an undertaking may remain in force for up to two years.

Where a person or business does not agree to enter into an LMEU within the statutory period, or where the LMEU is breached, the FWA may apply to a court for a Labour Market Enforcement Order (LMEO). A court may also impose an LMEO following conviction for a labour market offence, where it considers it appropriate to do so at the point of sentencing.

An LMEO may remain in force for up to two years and may be varied or discharged by the court on application, including where the court considers that there remains a continuing risk of further criminal labour market offending.

LMEOs and LMEUs operate as alternatives to prosecution for criminal offences and may be used alongside other lawful enforcement action to ensure compliance and protect workers, including the recovery of monies owed where appropriate.

The FWA will have regard to a [code of practice](#) to support its use LMEUs and LMEOs.

## Prosecution

The FWA will consider referral for criminal prosecution in cases of serious, deliberate or persistent non-compliance where criminal action is necessary to protect workers, deter offending, or uphold the integrity of the labour market. Prosecution is reserved for cases where civil enforcement tools would not adequately address the conduct or risk.

The FWA does not itself decide whether a prosecution will be brought. That decision is taken by the relevant independent prosecuting authority, applying the applicable prosecutorial code. The FWA will prepare and submit a case file containing the evidence gathered during its investigation and any representations relevant to public interest. The FWA will consider the statutory growth duty in deciding whether a case should be referred, but the duty does not override the need for effective criminal enforcement.

## Who prosecutes

Once the FWA has referred a case, responsibility for the prosecution decision passes to the appropriate body. In England and Wales, the Crown Prosecution Service considers cases referred by the FWA. In Scotland, the Procurator Fiscal makes these decisions, with the FWA operating as a Special Reporting Agency. In Northern Ireland, decisions are made by the Public Prosecution Service.

For offences under the Employment Agencies Act 1973 and the Employment Tribunals Act 1996, the FWA will refer the case to DBT prosecution lawyers within the Insolvency Service, who apply the Full Code Test in the same way as other prosecutors. In every jurisdiction, prosecution will only proceed where the relevant authority is satisfied that both the evidential and public interest stages of its statutory test are met.

### **Information Provided by the FWA**

In making any referral, the FWA will prepare a full case file in accordance with the requirements of the criminal justice system. This includes a summary of the facts and suspected offences, evidence gathered during the investigation, witness and victim accounts, and any relevant digital, financial or employment records. Where investigations are conducted as criminal investigations, the FWA will also record, retain and schedule material in accordance with its obligations under the Criminal Procedure and Investigations Act, ensuring that all material relevant to evidential and disclosure decisions is properly managed

### **General considerations for pursuing criminal prosecution**

There is a balance to be struck between effectiveness and value for money in enforcement. The FWA will focus criminal investigations on cases where prosecution will do most to deter employers from deliberately flouting the law.

The FWA will investigate the most serious cases where they form part of a pattern of criminality. This may include alignment with cross-government offences such as employing illegal workers and tax abuses. In these cases, FWA Enforcement Officers will join forces with the police or other criminal investigation teams.

Examples of circumstances that might indicate that prosecution would be in the public interest are set out below. These are for illustrative purposes only and are not minimum criteria. Each case will be considered on its own merits.

- Proportionality: whether an alternative sanction can achieve a similar enforcement outcome in a more cost-effective manner, and safeguard the interest and welfare of affected workers
- foreseeability of the offence or the circumstances leading to it
- intent of the offender, individually and/or corporately
- history of offending
- attitude of the offender to the offending
- deterrent effect of a prosecution, on the offender and others
- personal circumstances of the offender
- other relevant factors as set out in the prosecution codes that apply in each legal jurisdiction, or in relation to each offence type.
- Impact of the offence on the reputation of the regulatory regime
- Circumstances of and harm caused to the victim

On conviction the prosecutor may seek a LMEO in addition to any other sanction imposed by the court, where the offences include a labour market offence. In England and Wales, if a conviction relates to a modern slavery offence the FWA may seek a Slavery and Trafficking Prevention Order (STPO). In other circumstances the FWA may make an application for a STPO or Slavery and Trafficking Risk Order (STRO). Guidance on the use of STPOs and STROs can be found in the [Guidance on Slavery and Trafficking Prevention Orders and Slavery and Trafficking Risk Orders under Part 2 of the Modern Slavery Act 2015](#) guide.

## **Corporations, partnerships, and individuals**

Criminal proceedings may be brought against individual persons considered to be responsible for the offence. Where it is alleged that a corporation (company, limited liability partnership) or a Scottish partnership, is involved in the offence, the prosecutor can also prosecute that legal entity. The prosecutor may also commence legal proceedings against Enforcement Officers of any corporation, including directors, managers, secretaries, who have control over the relevant activities and there is considered to be sufficient evidence of their guilt or neglect or where it can be shown that the offence was committed with their consent, or they 'turned a blind eye' to the offence or the circumstances leading to it.

## **Sufficiency of evidence**

A prosecution will not be commenced or continued unless it is satisfied that there is sufficient, admissible, and reliable evidence providing a realistic prospect of conviction. Once the evidential test is satisfied the prosecutor will decide if it is in the public interest to prosecute. Public interest factors that can affect the decision to prosecute usually depend on the seriousness or prevalence of the offence and the circumstances of the offender.

## **Decision making, safeguards and oversight**

In deciding what enforcement action to take the FWA will consider the circumstances of each case. Factors may include the seriousness of the breach, the number of workers affected, the harm caused or risk of harm, whether the non-compliance was deliberate or repeated, the compliance history of the business and the steps taken to remedy the breach.

The FWA is a public authority and will exercise its powers lawfully, fairly and proportionately. It will comply with relevant legal requirements, including data protection and criminal justice safeguards.

Decisions to pursue civil or criminal enforcement will be taken in accordance with statutory requirements and relevant prosecutorial frameworks, including consideration of evidential sufficiency and public interest.

The FWA maintains routes for raising concerns about the conduct of its Enforcement Officers or enforcement activity. Where legislation provides for appeal or review, affected parties may challenge enforcement decisions through appropriate courts or tribunals

## **How to complain about an inspection or process**

You can complain if you think an FWA Enforcement Officer has acted inappropriately or a process has not been followed. You can complain by:

- email at [complaints@fairworkagency.gov.uk](mailto:complaints@fairworkagency.gov.uk)
- phone on 0345 161 6000
- post at Fair Work Agency, Loxley House, Station Street, Nottingham, NG2 3NG

Monday to Friday, 9am to 5pm (except public holidays) [Find out about call charges](#)

Details of how the FWA handles external complaints [are set out in the FWA Complaints procedure](#).

## Information sharing and data management

The FWA has a legal basis to share information with bodies included in Schedule 9 to the Employment Rights Act 2025.

The FWA will coordinate all enforcement activity, ensuring a unified and consistent approach to suspected offences across all areas of labour market legislation.

Enforcement Officers will share information they obtain while carrying out enforcement functions if information shared pertains to either one of the Secretary of State's functions under Part 5 of ERA 2025, or with an enforcement function of the person the information is being shared with.

The FWA may disclose to a person specified in Schedule 9 of the Employment Rights Act 2025 if information obtained in connection with the exercise of an enforcement function or a civil proceedings function if the disclosure is made for the purposes of the exercise of a function of the person.

All information sharing practices will adhere to UK GDPR and Data Protection (DPA 2018) laws. The FWA will ensure that any personal data shared is lawful, fair and transparent. All personal data will be securely handled and limited to what is necessary for enforcement purposes.

There will not be a breach with the requirements of the Data Protection Act (DPA) 2018 (including the General Data Protection Regulation) if the FWA is provided with information that it has lawfully requested even if this contains personal data.

The [personal information charter](#) sets out the standards you can expect from the FWA when we collect, hold or use your personal information.

# Annex A Secretary of State Direction - Incorrect Official Guidance

## Direction by the Secretary of State for Business and Trade

The Secretary of State for Business and Trade, in exercise of the power conferred by section 108(1) of the Employment Rights Act 2025, gives the following direction:

- 1) A notice of underpayment issued under section 103 of the Employment Rights Act 2025 must not include a requirement to pay a financial penalty under section 107(1) where the circumstances in paragraph 2 are met.
- 2) The circumstances are that the enforcement authority is satisfied that:
  - 1) the employer's failure to comply with National Minimum Wage obligations arose from reliance on written or published guidance issued by a Government department or its agency;
  - 2) this guidance was incorrect or misleading in a material respect;
  - 3) the employer acted in good faith in relying on that guidance; and
  - 4) it was reasonable in all circumstances for the employer to rely on that guidance.
- 3) These directions applies to notices of underpayment issued on or after the date of the direction, whether or not the investigation to which the notice relates to commenced before that date.

# Annex B Secretary of State Direction - Salary Sacrifice or Deductions from Pay

## Direction by the Secretary of State for Business and Trade

The Secretary of State for Business and Trade, in exercise of the power conferred by section 108(1) of the Employment Rights Act 2025, gives the following direction:

- 1) A notice of underpayment relating to a worker for a pay reference period (or relating to more than one worker and / or to more than one pay reference period) is not to impose a requirement to pay a financial penalty where all of the following five conditions are met in respect of each such worker and each such pay reference period.

### First condition: nature of the underpayment

All of the underpayment relating to the worker for the pay reference period is attributable to one or more of the following:

- 1) a reduction by the employer of the worker's pay in accordance with a salary sacrifice scheme, unless the sacrifice is made in order to comply with a requirement imposed by the employer in connection with the worker's employment;
- 2) an amount deducted by the employer from the worker's pay as respects the purchase by the worker of goods or services from the employer, unless the purchase is made in order to comply with a requirement imposed by the employer in connection with the worker's employment;
- 3) an amount deducted by the employer from the worker's pay under the terms of a savings scheme operated by the employer for the benefit of the worker and in accordance with which all amounts deducted are subsequently paid or to be paid to the worker.

### Second condition: exclusions

No part of the underpayment relied upon to meet the first condition is attributable to either of the following:

- 1) a deduction falling within the scope of regulation 13 of the National Minimum Wage Regulations 2015 (deductions or payments as respects a worker's expenditure);
- 2) a deduction falling within the scope of regulation 14 of the National Minimum Wage Regulations 2015 (deductions or payments as respects living accommodation).

### Third condition: consent of the worker

The worker has consented to the reduction or deduction.

### Fourth condition: receipt of goods or services or benefits by the worker

The worker has received the relevant goods or services, or the benefits envisaged under the relevant salary sacrifice scheme, or the repayment of monies under the relevant savings scheme, in full or in part and, where in part, in full compliance to date with the relevant terms or arrangements.

### Fifth condition: prior conduct of the employer

None of the following applies to the employer:

- 1) the employer has been convicted of an offence under the National Minimum Wage Act 1998 and that conviction remains unspent under the Rehabilitation of Offenders Act 1974, the Rehabilitation of

Offenders (Northern Ireland) Order 1978 or other relevant legislation relating to the rehabilitation of offenders;

- 2) the employer has given a labour market enforcement undertaking or been the subject of a labour market enforcement order (as referred to in Part 5 of the Employment Rights Act 2025) which relates wholly or partly to the National Minimum Wage and which (so far as it relates to the National Minimum Wage) remains in any respect outstanding; or
  - 3) the employer has within the six years prior to the date of the notice of underpayment been served with a previous notice of underpayment relating to the National Minimum Wage, unless: (i) the amount of the underpayment in the previous notice was not more than £500; (ii) the previous notice was withdrawn without replacement or rescinded on appeal; or (iii) the previous notice remains under appeal.
- 2) This direction applies to notices of underpayment issued on or after the date of the direction, whether or not the related investigation to which the notice relates to commenced before the date of the direction.

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**Department for Business and Trade**

The Department for Business and Trade is an economic growth department. We ensure fair, competitive markets at home, secure access to new markets abroad and support businesses to invest, export and grow. Our priorities are the industrial strategy, make work pay, trade and the plan for small business.

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