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# **RESTRUCTURING MINIMUM WAGES**

Complexity, compliance and a case for reform

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## Summary

- The National Minimum/Living Wage system has become too complicated, making unintentional non-compliance a problem, and is in danger of becoming a political football.
- The Low Pay Commission should reject the Taylor Review proposal for new separate minima for workers on zero-hours contracts.
- We should revert to having just two rates – one for 18-24 year-olds and one for those aged 25 and over. Those under 18 are now required to be in education and training and should not be treated as if they were full-time workers.
- The 'National Living Wage' title is misleading, suggests that employers have responsibilities which belong to government, and should be dropped.
- The Low Pay Commission has performed its duties well and should have its powers to recommend rates fully restored. Politicians should not be involved in a bidding war which could damage employment prospects for some groups of workers.
- However it may be appropriate for the LPC to recommend different rates to the national governments/administrations and possibly also to the London mayor.
- Rather than HMRC being paid to engage in 'fishing expeditions' to seek out non-compliance, employees should be incentivised to make their own claims by making fines payable as compensation to underpaid workers rather than going to the government.
- Clearer and more comprehensive guidance on minimum wage regulations should be made available to employers and employees. The policy of 'naming and shaming' non-compliant employers should be confined to those intentionally or negligently underpaying.

# Introduction

We have now had a National Minimum Wage (NMW) for almost twenty years. When introduced by Tony Blair's government, it was fiercely opposed by the Conservatives. But now the principle of setting a floor to hourly pay seems to be accepted right across the political spectrum.

This was brought sharply home when George Osborne surprised the political world in 2015 by introducing a new National Living Wage (NLW) for those aged 25 and over. Set significantly above the previous adult NMW, it is scheduled to reach 60 per cent of median hourly earnings by 2020.

We now have five age-related minimum hourly wage rates, and it proposed that we should also add further rates for people who are employed on zero-hours contracts. Additional complexity arises from the need to apply legislation to other forms of payment such as piece rates, bonuses and commission, and to make allowances for employer-provided accommodation. Court and tribunal judgments have added further nuances to the requirements placed on employers by primary legislation.

The rules are difficult to understand and apply, leading to compliance problems. This in turn has led to increased resources being devoted to enforcement.

This paper examines these issues and argues for a simplification of the minimum wage structure facing employers, recognising changes which have occurred in the labour market since the National Minimum Wage was introduced. It also argues that politicians should steer clear of wage-setting as far as possible and restore greater responsibility to the Low Pay Commission (LPC).

Given the large variations in pay around the UK, there is however a case for variations in minimum wages between the four nations of the United Kingdom, and between London and the rest of England.

## Developments and Issues

Economists have mixed opinions on government-ordained minimum wages (Bourne and Shackleton 2014, 2016). While ostensibly benefiting many low-paid workers, they can lead to lower employment in the longer term (possibly through encouraging automation of low-skilled jobs<sup>1</sup>) or deterioration in other aspects of working conditions.<sup>2</sup> It is also widely understood that they are not a particularly effective device for raising people out of poverty. Many of the poorest are not in work and cannot benefit, while a high proportion of those getting the minimum live in households which are not in poverty.

Moreover, a substantial majority of those on the minimum hourly rates are working part-time and so cannot hope to reach an acceptable living standard from work income alone. This may not matter, however, as large numbers of minimum wage workers are students, semi-retired or second-earners in households.

Negative effects of the UK's minimum wage rates on employment seem so far to have been slight. This is probably the result of sensible and cautious advice provided by the Low Pay Commission (LPC), which is charged with recommending minimum rates 'that will help as many low-paid workers as possible without any significant adverse impact on employment or the economy'.

The LPC has accordingly made recommendations that reflect the overall health of the economy and the labour market at the time. For instance, evidence indicates that young people find the greatest difficulty in obtaining jobs during economic downturns and so the LPC has recommended very low increases in minimum rates for young people at times when unemployment has been rising.

Now, however, the LPC (which was, bizarrely in view of its official responsibilities, not consulted over the introduction of the National Living Wage) is operating under the constraint that the NLW must reach 60 per cent of median hourly earnings in the next two years.

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<sup>1</sup> Lordan and Neumark (2018); Cribb et al. (2018).

<sup>2</sup> For example, availability of higher overtime rates, training facilities, flexible hours or discounts on the firm's products. There may also be less obvious knock-on effects. Where fees paid by local authorities for care home residents have failed to increase in line with the new NLW, it appears that the quality of care services have suffered (Giupponi and Machin 2018).

Decoupling the trajectory of the NLW from an assessment of labour market conditions has created the potential for a political bidding war<sup>3</sup> and raises fundamental questions about the future role of the LPC.

There are also more immediate questions which the government has posed to the LPC. One is what should be done about youth minima in the medium term. The other is whether the government should implement the recommendation of the Taylor Review (2017) that workers on zero-hours contracts should receive higher minimum hourly rates than those on fixed-hours contracts.

### *A complicated system*

Should the Taylor recommendation be accepted, it would further complicate an already more elaborate system than those of most countries with a national minimum wage.

Many countries just have one minimum wage rate for all age groups, and many people would like to see the same in the UK: the Living Wage Campaign<sup>4</sup>, for example. Having separate minima for different age groups looks like age discrimination, and indeed the Equality Act 2010 had to make a specific exemption for age-related wages.

Right from the start, however, there were concerns that an adult rate would be inappropriate for young workers. When the NMW was introduced in 1999, there were just two age rates: an adult rate (then £3.60 an hour) for workers aged 22 and over, and a 'Youth Development Rate' (then £3.00) for those aged 18-21 – equivalent to 83 per cent of the adult rate.

The idea behind the lower rate was that young and inexperienced workers were not as productive as more mature workers, and thus their employment prospects could be worsened if they were paid the same (Pyper 2018: 9). Similar logic led in 2004 to the introduction of a lower rate for 16-17 year-olds, and in 2010 a (lower still) rate for apprentices.<sup>5</sup> In the same year, however, the adult rate was extended to 21-year-olds.

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<sup>3</sup> See, for instance, <https://www.independent.co.uk/news/uk/politics/jeremy-corbyn-minimum-wage-rise-10-per-hour-labour-local-elections-2017-a7675671.html> (accessed 8 August 2018).

<sup>4</sup> A campaign under the aegis of the Living Wage Foundation, a coalition of church leaders, trade unionists, poverty campaigners and sympathetic businesspeople. They publish annually two living wage rates, one for London and one for the rest of the UK. These rates are considerably higher than the NLW.

<sup>5</sup> This is (probably unnecessarily) further complicated, as the apprentice rate applies if you are under 19 (not 18), or over 19 but in the first year of an apprenticeship.

So, including the National Living Wage (effective from April 2016), there are now five minimum wage rates (the current rates are shown in Table 1). If Taylor's recommendation of higher rates for zero-hours contract workers were agreed, this could in theory lead to there being as many as nine different rates (apprentices by definition having a form of fixed-hours contract). Such an elaborate system of rates at the national level would have no equivalent in any other country.

**Table 1: National Minimum Wage Rates (from April 2018)**

<b>Age 25 and over (the National Living Wage)</b>	<b>£7.83</b>
<b>21-24</b>	<b>£7.38</b>
<b>18-20</b>	<b>£5.90</b>
<b>16-17</b>	<b>£4.20</b>
<b>Apprentice*</b>	<b>£3.70</b>
*This rate is applicable to all apprentices under 19 and to apprentices 19 and over in the first year of their apprenticeship	

The NMW/NLW system has further complexity. Employers who provide staff accommodation (hotels, for example) are allowed to pay less than the relevant minimum wage by an amount known as the 'accommodation offset', which is fixed each year (currently £7 a day). There are consequently many restrictions on how accommodation can be provided in return for 'voluntary' services for charities and universities.<sup>6</sup>

The NMW/NLW is an hourly rate, yet the minimum must clearly cover workers who are not paid in this way. Consequently there have to be rules and formulae determining the minimum which must be paid to people on annual salaries, those on piece rates (known as 'output work') and those who do 'unmeasured work' (being paid a lump sum for completing a task irrespective of the time it takes to complete). There are also rules on how to treat bonuses and commission which may be paid periodically rather than each day, week or month.

The rules alter from time to time. For example, until 2009 it was possible (as it still is in the USA) for employers in bars and restaurants to pay less than the minimum rate if workers regularly earned significant amounts in tips. This is no longer the case.

<sup>6</sup> <https://www.independent.co.uk/student/news/exeter-university-criticised-for-not-paying-student-workers-national-minimum-wage-a7014521.html> (accessed 8 August 2018).

Often these rule changes result not from legislation discussed in Parliament but from tribunal or court judgments, or else from deals which HMRC strikes with errant employers.

For example, case law has established that employees must now be paid for travel time between jobs, for time waiting for work, and for time passing through security systems.<sup>7</sup> Hours spent asleep on site by residential care workers now have to be paid for at the relevant minimum hourly wage rate, although the conditions under which this is required remain obscure.<sup>8</sup> Many types of interns are now entitled to minimum wages. Employers cannot charge staff for uniforms. Very recent judgments – which may be appealed – have held that some ‘gig’ workers, previously classified as self-employed and therefore not entitled to the NMW/NLW, are legally ‘workers’<sup>9</sup> and should be paid the legal minimum hourly rate.

It is difficult for employers to interpret existing rules, particularly where, as in the case of staff sleeping on shifts in care homes, HMRC was itself offering advice which turned out to be misleading. In this case HMRC was forced to waive compensation to employees and penalties which should have applied to employers going back over many years.<sup>10</sup>

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<sup>7</sup> Sports Direct was requiring shiftworkers to undergo extensive searches before and after work at a warehouse. This was adding to their working day but the extra time was not paid. This dragged the average hourly rate paid for time on the premises below the NMW. <http://www.cityam.com/247574/sports-direct-agrees-pay-back-workers-1m> (accessed 8 August 2018).

<sup>8</sup> <https://www.peoplemanagement.co.uk/experts/legal/sleep-shifts-national-minimum-wage> (accessed 8 August 2018).

<sup>9</sup> ‘Workers’ and ‘employees’ have different legal statuses and rights, but both are entitled to the relevant minimum wage.

<sup>10</sup> <https://www.icas.com/technical-resources/hmrc-publishes-revised-nmw-enforcement-guidance> (accessed 8 August 2018).

## Compliance and enforcement

Given the complexities associated with minimum wages, it would be surprising indeed if the rules were always fully complied with. Trade unions and other lobbyists often assert that there is large-scale cheating by unscrupulous employers. The Low Pay Commission is less convinced, admitting that the evidence base is inadequate.

However the LPC suggests that several hundred thousand could potentially be underpaid (Low Pay Commission 2017a). It bases this primarily on analysis of the Annual Survey of Hours and Earnings (ASHE), a 1 per cent sample of HMRC tax records conducted each April, supplemented by information from the Labour Force Survey. The figures suggest that at peak times between 305,000 and 579,000 are being paid less than their age-specific minimum wage rates would suggest they should be paid. These numbers constitute 1-2 per cent of the workforce but as much as one in five of low-paid workers.

However, there seems to be a strong ‘frictional’ element in apparent underpayment, which is at its highest immediately after a rate change but drops away as employers correct the shortfall in subsequent pay periods.<sup>11</sup>

Moreover the data do not include reliable information on the accommodation offset, apprenticeship status, piecework, salary sacrifice schemes, commission and bonuses – all of which might explain why people are apparently not being paid the rate to which they are entitled.

An obvious question which these high-ish estimates pose is: why are there in practice so very few complaints by employees? As with breaches of many other types of employment regulation, workers can take employers to employment tribunals. However this route is rarely used for minimum wage breaches, most complainants making use of an alternative mechanism involving contacting an ACAS helpline. If ACAS believes that there is a case, the complaint is passed to HMRC which (acting for the Department of Business, Energy and Industrial Strategy) has powers to investigate. In 2016-17, only 4,660 enquiries were made to the helpline. Just 2,310 of these were forwarded to HMRC.<sup>12</sup>

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<sup>11</sup> There may also be lagged adjustment to birthdays which switch workers from one rate to another.

<sup>12</sup> In principle, complainants can contact HMRC directly, although few do so.

The Low Pay Commission suggests that many employees may be unaware of their rights, or be unwilling to upset work relationships, or be afraid of losing their jobs. But these arguments apply equally – or in some cases rather more forcefully – to other breaches of employment law. Yet much larger numbers come forward: in the same period, the Employment Tribunal system received for example 10,647 claims for equal pay, 7,934 for breach of contract, and 7,628 for age discrimination. These claims had already been through a screening process by ACAS, and at that time people had to pay fees<sup>13</sup> to submit an ET claim. Minimum wage claims handled by HMRC involved no fee at all. And, unlike ET claims, HMRC action can be started by a third party.

Other reasons have been suggested for the paucity of complaints compared with the numbers theoretically underpaid. In some cases underpaid employment may offer offsetting advantages, such as a high volume of tips or non-cash benefits, which compensate potential complainants and thus deter complaints. There are also suggestions that in some cases employers may collude with employees to under-report pay so that income-related benefits can be claimed.

But a more common reason may be that the sums involved are often trivial, as we shall see. Many on the minimum rates will be casual workers who do not stay long enough in the job to make claims worth pursuing – particularly since in 2016-17 they took on average 215 days to resolve.

### *Enforcement*

Whatever the reason for the modest numbers of complaints, the policy is now for HMRC to expand its enforcement activities. Its aim is to seek out non-compliance even in the absence of complaints, looking forensically at returns from employers in sectors where low pay is known to be concentrated. It also encourages large employers to ‘self-correct’ by checking for previous arrears.

As the potential numbers ‘at risk’ of underpayment are increasing with the planned increase in the National Living Wage – by 2020 3.3 million workers are expected to be covered by NMW/NLW rates – resources

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<sup>13</sup> As a result of a recent legal judgment, there are currently no fees for instigating an Employment Tribunal claim.

for enforcement have been increased. HMRC now has an annual budget of £25 million for this purpose, and employs 400 officers. It has been given powers to impose much larger fines than previously, now up to 200 per cent of pay arrears. In principle it can also initiate criminal prosecutions, but has only done this on thirteen occasions since 2007.<sup>14</sup>

This increased activity has uncovered larger amounts of arrears, but the scale is still not enormous. In only 42 per cent of investigations were arrears discovered, and the amount per worker is typically quite small. In 2016-17 HMRC identified £10,999,647 in arrears for 98,594 workers, an average of £111.57 per head. The bulk of underpaid workers (70,867) were in retailing, where arrears were £54.62 per head. A well-publicised case<sup>15</sup> in 2017 found that Debenhams had arrears of £135,000. But this was for 11,800 workers who were each owed an average of just £11.48, apparently as a result of a minor payroll error. With such relatively small amounts owed to individuals it is less surprising that few underpaid workers make spontaneous claims.

There are inevitably particular examples of egregious behaviour<sup>16</sup> by firms and other organisations,<sup>17</sup> but the bulk of underpayment which HMRC turns up seems often to be the result of not understanding the complicated rules. As part of its enforcement procedures, BEIS regularly publishes a list of offenders, its 'naming and shaming' policy. The numbers of offenders listed have grown over time, but the average arrears per worker have fallen. The content of these lists is revealing.

In March 2018, for example, the list of 179 offenders was headed by the Wagamama restaurant chain, which was fined and made to repay an average of £50 to 2,630 employees who had been asked to wear black trousers or a black skirt along with a Wagamama top.

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<sup>14</sup> The LPC would like to see more prosecutions, but these require a higher level of proof, are costly (£50,000+ per case) and take a long time.

<sup>15</sup> <https://www.theguardian.com/business/2017/feb/15/debenhams-tops-governments-shame-list-for-underpaying-staff> (accessed 8 August 2018).

<sup>16</sup> Really bad behaviour, however, is more likely to be found in the informal economy and in particular in the 'modern slavery' area, where many laws other than minimum wage regulations are broken. These serious cases are the responsibility of other law enforcement agencies and are not picked up in the HMRC figures.

<sup>17</sup> It is not all about unscrupulous profit-maximisers. There are significant numbers of apparently underpaid workers in the public sector and in charities and other not-for-profits. A factor here is that many employees in these areas are salaried and employers do not naturally think of hourly rates. However when their actual working hours are added up and divided into the annual salary the implicit hourly rate can fall below the NMW or the NLW.

In a similar example another restaurant chain, TGI Fridays, had to pay £26 per head to 2,302 staff who had been asked to wear black shoes at work, another breach of the rule that any uniform must be paid for by the employer. In a rather different case, Stoke City football club was found to have offended by allowing its stewards and other matchday staff to pay for club shirts and memorabilia by deductions from their pay.

It can be argued that big companies such as these, with access to legal and HR support, should have known better. Perhaps, at a stretch, the same might also be said about a well-known charity, the Epilepsy Society, which was ‘devastated and shocked’ at having misapplied the accommodation offset.<sup>18</sup>

Yet most of these regular lists of offenders is taken up by a rather pathetic parade of car washes, tea shops and hairdressers. A large proportion of these small businesses are set up by people with little prior business experience or legal expertise, many by recent immigrants.<sup>19</sup> Apart from the financial costs such businesses incur, they may face damaging publicity in their local communities even if their offences are the result of oversight and confusion rather than intent: local press reports rarely explain the nuances or follow up the details.

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<sup>18</sup> <https://www.epilepsysociety.org.uk/epilepsy-society-responds-claims-around-national-minimum-wage#.W0YMEuRy4dU> (accessed 8 August 2018).

<sup>19</sup> <https://www.telegraph.co.uk/business/2016/05/11/immigrants-far-more-likely-to-be-entrepreneurial-than-british-bo/> (accessed 8 August 2018).

## Some reform proposals

The current minimum wage set-up, then, is over-complicated and not well-targeted. What should be done to reform it?

### *Zero-hours contracts should not have separate rates*

But first, a reform which should not be implemented. The Low Pay Commission should strongly recommend rejection of the Taylor Review (2017) proposal to introduce higher hourly minimum rates for zero-hours contracts (ZHC).<sup>20</sup>

Having up to a possible nine different rates would complicate the minimum wage system for employers and employees still further. The likely consequences are unclear. A higher rate for ZHC workers would surely create resentment amongst fixed-hours workers, who might be working the same (or fewer<sup>21</sup>) hours as those averaged by ZHC workers. If it meant a cut in the hourly rate, fewer existing ZHC workers would wish to switch to a fixed-hours contract, presumably not what Taylor wants to see. It would probably mean that in future employers would be less likely to offer zero-hours contracts. This might please those, such as Jeremy Corbyn, who wish to ban all such contracts, but it would close off opportunities for the significant group of workers who we know to be unable or unwilling to commit to fixed hours.<sup>22</sup> And employers might try to recover a degree of flexibility by putting more workers on fixed-term rather than permanent contracts.

All this would make it virtually impossible for the Low Pay Commission to forecast the employment effects of changing recommended rates, given the cross-elasticities of demand between different employment categories. As the LPC's expert advice on these matters is arguably its

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<sup>20</sup> Taylor's argument was that ZHC workers should be compensated for the uncertainty of their income stream by being paid a higher rate. There were just over 900,000 people on zero-hours contracts in October-December 2017. Given that these workers are younger than the average for the workforce as a whole and are concentrated in low-paid sectors (Office for National Statistics 2018), it is likely that many are on minimum wage rates. However, since a high proportion of ZHC workers prefer to work in this way because of other commitments, it is not clear that the problems of some of these workers are easily dealt with by a pay increase rather than targeted benefit provision.

<sup>21</sup> ZHC workers average 25 hours a week, more than most part-time workers with a fixed-hours contract.

<sup>22</sup> <https://www.replgroup.com/zero-hours-contracts/> (accessed 8 August 2018).

whole raison d'être, its recommending acceptance of this Taylor proposal would be a turkeys-voting-for-Christmas moment. More importantly, it would make it still more likely that politicians would substitute their own arbitrary targets for anything suggested by the LPC.

### *Simplify the future rate structure*

It appears that after 2020 the NLW is to rise indefinitely in line with median hourly earnings – or even faster. If median hourly earnings fell, it is difficult to see that the NLW would be reduced, which means that the NLW/median ratio would rise. When median earnings picked up again, there would be pressure to increase the NLW, so this would suggest a 'ratchet' process pushing the ratio still higher. Moreover there now appears to be some impact of changes in the NLW on pay above the rate,<sup>23</sup> as slightly higher-paid workers seek to maintain differentials, again dragging the NLW up.

The LPC is concerned about the implication of this upward drift for the youth rates. There may be an expectation that these rates will rise in line with the adult rates in the longer term, but the fear is that this could price younger workers out of the jobs market.

The answer may be to scrap the lowest rates. There has never been a minimum wage for school students below school-leaving age,<sup>24</sup> as these young people were expected to concentrate on their studies and, in any case, face restrictions on the hours which they can work and the goods and services they can produce or sell.

When the 16-17 year-old rate was introduced in 2004, nearly 30 per cent of this age group was in full-time work. Now, however, we have moved to requiring all those under 18 to be in education or training. The most recent figures show that only 17 per cent of this age group are now full-time workers, and this figure falls to 7 per cent when apprentices are excluded. There is a strong argument for simplifying the minimum wage structure by once again applying it only to those aged 18 and above, thus further encouraging young people to continue their education.

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<sup>23</sup> Low Pay Commission (2017b: Chapter 2).

<sup>24</sup> Not as clear-cut as you might think, incidentally. As school-leaving age is defined differently in different parts of the UK, it appears to be possible for some 15-year-olds to be entitled to the minimum wage in Scotland, while some 16-year-olds are not entitled to the minimum wage in England.

At the same time, a separate apprentice rate seems unnecessary. The rules surrounding this rate are complicated, suggesting that they were drawn up as a compromise. They produce oddities: a new apprentice aged 22 is paid the same rate as a 16-year-old for the first year of his or her apprenticeship, but switches to the 21-24 rate in the second year while the younger apprentice remains on the apprentice rate.

In reality many apprentices are already paid well above the minimum rate and earnings of apprentices have been rising faster than other low paid groups for some time. Emerging new rules on apprenticeships, following the government's Apprentice Levy, need to ensure that young people are not employed simply as cheap labour but have a genuine learning experience.<sup>25</sup> But there need not be a government-fixed minimum rate for apprentices.

There is a case for having just one rate for all workers aged 18 and over, possibly with a phasing-in period for young workers when a lower rate could be paid. A less radical proposal would be to merge the 18-20 and 21-24 rates, thus leaving a simpler structure of just two rates as was the case when the NMW was started.

The gap between the two rates is currently quite substantial and may cause concern that 18-20 year-olds would find job opportunities drying up. This danger can be exaggerated: from the Low Pay Commission's own estimates, only around 10 per cent of 18-20 year-olds are paid at or around the rate for their age group, with around half being paid above the NLW.

### *Devolved rates*

If putting the 18-20 group on the same rate as the 21-24 year-olds involves some possible risk of disemployment effects, these might be offset by having different rates in different parts of the UK. The LPC gives as one of its reasons for having different pay rates for different age groups that the 'bite' of the minimum wage rate – the proportion it bears to median hourly earnings – is higher for younger age groups. But the bite also varies from region to region, as Table 2 indicates.

In 2017 the ratio of the NLW to median hourly earnings was 45 per cent in London, but much higher in the East Midlands, for example,

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<sup>25</sup> I have argued elsewhere that apprentices should have access to student loan-style finance to cover part of their costs during apprenticeships.

**Table 2: National Living Wage rate as a percentage of median hourly earnings (excluding overtime) for all employee jobs, by region April 2017**

North East	64.8
North West	64.7
Yorkshire and Humber	66.7
East Midlands	67.1
West Midlands	65.2
East	62.1
<b>London</b>	<b>44.9</b>
South East	57.3
South West	64.1
<b>Wales</b>	<b>67</b>
<b>Scotland</b>	<b>60</b>
<b>Northern Ireland</b>	<b>68.2</b>

*Source:* own calculation from ASHE data

where it reached 67 per cent. The Low Pay Commission has always had to bear in mind that a big increase in a minimum wage rate would probably have little impact on employment opportunities in London but might put jobs at risk in Northern Ireland.

The case for having regionalised minima has been supported by economists for some time. Gordon Brown considered it seriously but it was decided that it would be too complicated to have different rates in every region to reflect different labour market conditions and costs of living. An especial problem was the overlap between contiguous regions – such as the East and West Midlands – particularly given commuting patterns which see many workers employed in different regions from their place of residence.

However, in the last fifteen years there has been considerable devolution to the nations of the UK, and it may be appropriate to devolve minimum wages. Wales, Scotland and Northern Ireland have labour markets which are fairly discrete from that of England, and their having separate rates would not create any major overlap problems. More controversially, because it would put minimum wages within the influence of the London mayor, there is a case for saying that the London labour market is so different from the rest of England that it should also have its own rates.<sup>26</sup>

<sup>26</sup> The Living Wage campaign has long advocated a separate rate for London. It publishes a London rate which is calculated by the London Mayor's Office

Such a setup would in principle make it possible to set minimum wage rates which were more appropriate than a one-size-fits-all national rate. It would allow some experimentation which would enable the LPC to get a better understanding of how employment reacts to different wage rates.

### *Renaming rates*

If the rates were to be devolved, they should no longer have 'National' in their titles. It is also debatable whether in any case the higher rate should continue to be called a 'living' wage. George Osborne's use of this description for his new rate was a bit of political theatre. It has created confusion – probably intentional – with the Living Wage Campaign, a private initiative which aims to sign employers up voluntarily to a markedly higher minimum.

'Living wage' is an ideologically loaded term dating back to the 19th century. Its use suggests that employers, rather than paying workers for what they contribute to productivity, have an open-ended government-imposed responsibility to enable all workers, whatever their individual circumstances, to maintain a lifestyle determined by expert opinion to be adequate. It is particularly inappropriate in relation to an hourly rate, as around 60 per cent of those on minimum wage rates are working part-time and cannot get a 'living wage' from employment alone.

With having just two national rates it would be simplest just to call the rates the Minimum Wage (Higher and Lower Rate). If devolution occurred, there would be the Scottish Minimum Wage, London Minimum Wage and so on.

### *The future of the Low Pay Commission*

Whether we remain with national rates or move towards devolved rates, the Low Pay Commission, which has had a very good record both in suggesting sensible changes to rates and in carrying out or commissioning high-quality research on the impact of minimum wages, should continue in this role. It is important, once the 2020 target rate of the NLW is reached in 2020, to restore full autonomy to the LPC to set recommended rates according to its original remit.

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<sup>27</sup> Rather like the government's relation to the Bank of England and interest-rate setting.

The government (or governments/administrations) would be free, as now, to reject these rates, but would have to take a specific decision to do so and to defend such decisions in public.<sup>27</sup> We should try as far as possible to depoliticise the annual minimum wage-setting sequence – although it would always be possible for politicians to advocate reforming or even scrapping the system.

The Low Pay Commission has only a small core team. If the suggested devolution of rates were accepted, it might be thought appropriate to move the LPC outside London, which would involve relatively little expense or disruption. This could be to Belfast, Cardiff or Edinburgh – though another possibility would be to move it to Newport, Gwent alongside the Office for National Statistics with which it already works closely.

### *Compliance and enforcement*

The government needs to consider whether the extra expenditure on HMRC's enforcement role (outlined above) has been justified and whether the current policy should be maintained. Underpaid people might be given greater incentive to make their own complaints rather than relying on HMRC's 'fishing expeditions'.

One possibility might be to make it more worthwhile for individuals to complain directly to the ACAS helpline by ensuring that fines on employers for non-compliance go to those underpaid rather than to the government. If individual reporting is currently not worthwhile because of the small sums involved, the possibility of receiving double or triple the amount underpaid might alter the picture.

The practice of 'naming and shaming', however, needs to be reviewed. If the purpose is to punish offenders, this is already met by the increase in possible fines. If the purpose is to educate employers in general, the government should publish fuller details about the offences committed: the way the lists are currently published does not give sufficient detail of exactly how delinquent employers broke the law.

Names and locations should only be published where the breach of the rules was unequivocally deliberate, or through culpable ignorance (what the LPC describes as 'unintentional with negligence') or a repeat offence. Decisions about this should be made simultaneously with decisions to fine employers, and the reasoning made a matter of record.

### *Clearer guidance*

The government is currently engaged in a campaign to publicise the problem of non-compliance. A commendable part of this initiative is the publication in July of this year (Department for Business, Energy and Industrial Strategy 2018) of a 50-page guide to paying minimum wages. Paradoxically, however, this guide just emphasises the difficulties of understanding the rules, particularly for small businesses where you may only be talking about one or two part-time employees.

Partly, this is the legalistic precision which is difficult for the untrained to follow:

.... if the pay reference period starts on 19 April, the allocated pay between 1 April and 18 April 2018 will be based on the April 2017 rate for the minimum wage rates of pay. Allocated pay from the 19 April 2018 onwards should be based on the April 2018 rates, which will apply from 1 April 2018, for the minimum wage rate. (p16)

But more importantly, in too many cases the legal position is unclear. One area already mentioned is paying people while they are asleep on the employers' premises, where the advice is simply that 'the government is considering the implications of this case [Mencap v. Tomlinson/Blake and Shannon v. Rampersad] ...each case may be different' (p30). Or, on record-keeping:

By law, you are required to keep sufficient records to show that you are paying your workers at least the minimum wage. There is no definition of what counts as 'sufficient' records. The situation will vary from employer to employer and from worker to worker. It is left to your own judgment for each worker (p51, my emphasis).

In these circumstances, employers may opt to take a risk that they may be in breach of the law, or alternatively take a defensive line by doing more than the law requires them to do and incurring unnecessary costs. Either outcome is unsatisfactory and suggests that the government has more to do in clarifying and simplifying its guidance to employers and workers.

## Conclusion

Minimum wages remain controversial: their effects on employment are debatable and their utility as an antipoverty device is limited. But despite economists' scepticism, the UK's National Minimum Wage/ National Living Wage system has taken root and is popular both with politicians and the public. It has so far had few obvious negative effects on the labour market.

The system has already, however, become excessively complicated and difficult to understand. As a result there are compliance problems. These problems are likely to increase as more and more workers are drawn within the orbit of government wage-setting. As it approaches its third decade, the system needs to be rethought and simplified. This paper has suggested some ways in which this might be done.

It advocates a reduction to two basic rates, exclusion of those under the age of 18 from the minimum wage apparatus, and rejects the case for introducing special rates for workers on zero-hours contracts.

It emphasises the need for simplification and clarity of the rules, and the use of enforcement procedures to inform employers and provide redress for workers rather than shame those who are uncompliant through ignorance rather than intention.

Perhaps more controversially, a suggestion is made that wage-setting should be devolved: rather than one national set of rates, each nation of the United Kingdom should be able to set its own rates, best suiting the labour market conditions which it faces. Recognising the unusual characteristics of the London labour market, this devolution could also apply to the capital.

Whatever reforms may be adopted, the paper emphasises that the Low Pay Commission's role in providing informed and impartial advice to government should be maintained and if possible enhanced. We must not drift into a position where politicians engage in competition to set ever-higher minimum wages without consideration of their possible effects on the job market.

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*All links to references were tested to 8 August 2018.*

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