

JULY 2017

**LOW PAY COMMISSION CONSULTATION
ON THE APRIL 2018 NATIONAL MINIMUM
WAGE RATES**

Submission by the Association of Labour Providers



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INTRODUCTION

ALP (www.labourproviders.org.uk) is a trade association promoting responsible recruitment and good practice for organisations that supply the workforce to the consumer goods supply chain across the food processing, horticultural and wider manufacturing, industrial, warehousing and distribution sectors.

ALP member organisations supply approximately 70% of the temporary contingent workforce into the food growing and manufacturing supply chain. Many of these workers progress to form the permanent workforce for UK industry. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters and Labour Abuse Authority (GLAA).

ALP's members predominantly provide unskilled workers and semi-skilled workers. Market pressures mean that unskilled work is either at, or very close to, national minimum wage (NMW). For many years these irregular low-paid jobs have been largely filled by migrant workers, able to earn more than they can in their home country. Depending on region EU workers make up between 70 and 100% of workers supplied by labour providers, the remainder being British nationals and those migrants from non-EU countries that have been given right of residence in the UK.

Labour providers operate in a very competitive market largely resulting from the downward pressure on costs exerted by the consumer goods supply chain. It follows that margins are thin, although just adequate to allow efficient businesses to continue.

The actual hourly rate charged by a labour provider to the hiring client for the supply of temporary workers is ultimately a commercial agreement. Any agreed rate should take into account the particular costs of supply. Hirers of temporary labour that pay unrealistically low rates are knowingly or recklessly conniving in illegality as these rates can only be achieved either through worker exploitation or tax evasion or both.

ALP SUBMISSION

The ALP makes the following points to the LPC to take account of in considering its recommendations to government on future wage policy.

1. RISING LABOUR COSTS

- 1.1. The ALP produces indicative charge rate guidance. Charge rates lower than those in the rates tables plus a sustainable net margin may indicate illegal activity.

NATIONAL MINIMUM AND LIVING WAGE	Apprentices	Age 16-17	Age 18-20	Age 21-24	Age 25+
1. Minimum wage	£3.50	£4.05	£5.60	£7.05	£7.50
2. Employers' NI Contributions	£-	£-	£-	£0.43	£0.49
3. Annual Holiday Pay (5.6 weeks entitlement)	£0.42	£0.49	£0.68	£0.90	£0.96
4. Apprenticeship Levy (for businesses with over £3m paybill)	£0.02	£0.02	£0.03	£0.04	£0.04
5. Pensions Auto-Enrolment Cost (1% of qualifying earnings)	£-	£-	£-	£0.04	£0.05
6. Total Wage Costs	£3.94	£4.56	£6.31	£8.47	£9.05
7. Guideline Statutory Sick/Maternity Pay cost	£0.11	£0.11	£0.11	£0.11	£0.11
8. Guideline Minimum Labour Provider Overhead & Service Cost	£0.65	£0.65	£0.65	£0.65	£0.65
9. Hourly Cost of Supply (not including Labour Provider Margin)	£4.70	£5.32	£7.07	£9.23	£9.81

- 1.2. The National Living Wage (NLW) is a higher rate of the National Minimum Wage (NMW) for workers aged 25 and over and is subject to a government target of reaching 60% of median earnings by 2020 with greater tolerance by government of negative employment consequences. The March 2017 OBR estimate is that an NLW set at 60 % of median earnings in 2020 would be around £8.75, with the April 2018 figure putting the NLW linearly on course at around £7.90. This linear NLW estimate for 2018 is a 5.33% increase compared to the May 2017 Retail Price Index measure of inflation at 2.7%.

- 1.3. The NLW applies to workers aged 25 and over, however, consumer goods suppliers are required to meet supra national ethical labour standards in accordance with the [ETI Base Code](#). The code requires equal pay for work of equal value and therefore to apply the age related NMW levels to younger workers is assessed by social compliance auditors as age discrimination. This means to be compliant with ethical labour standards, consumer goods suppliers (including their labour providers) must pay the higher NLW rate to all workers with the incumbent increase to overall labour cost that this incurs.

- 1.4. The Apprenticeship Levy, whilst implemented with reasonable intentions to raise skills and part address the UK productivity gap, is a business tax of 0.5% on all payments to employees that are subject to employer Class 1 secondary National Insurance contributions less an allowance of £15,000 each year. In the case of labour providers, the capacity to make use of the Apprenticeship Levy is constrained due to the nature of their business being to supply a temporary and flexible workforce.

- 1.5. The current rate of auto-enrolment pension contribution is 2%, comprising a 1% employer and 1% employee contribution. In April 2018, this increases to a contribution of 5%, comprising a 2% employer and 3% employee contribution. This is an additional cost for business, whilst employees and workers on NMW will see their take home pay rise hardly at all.
- 1.6. Labour providers responding to the March 2017 ALP Labour Market Survey stated that 4 out of 10 client businesses have had to increase wage rates to attract workers.
- 1.7. There is an accelerator effect on other social charges causing a significantly greater increase on total wage bills than the increase in NLW alone, as the table below shows which has been extracted from the [ALP Charge Rate Guidance](#) and is calculated on a 40 hour week worked:

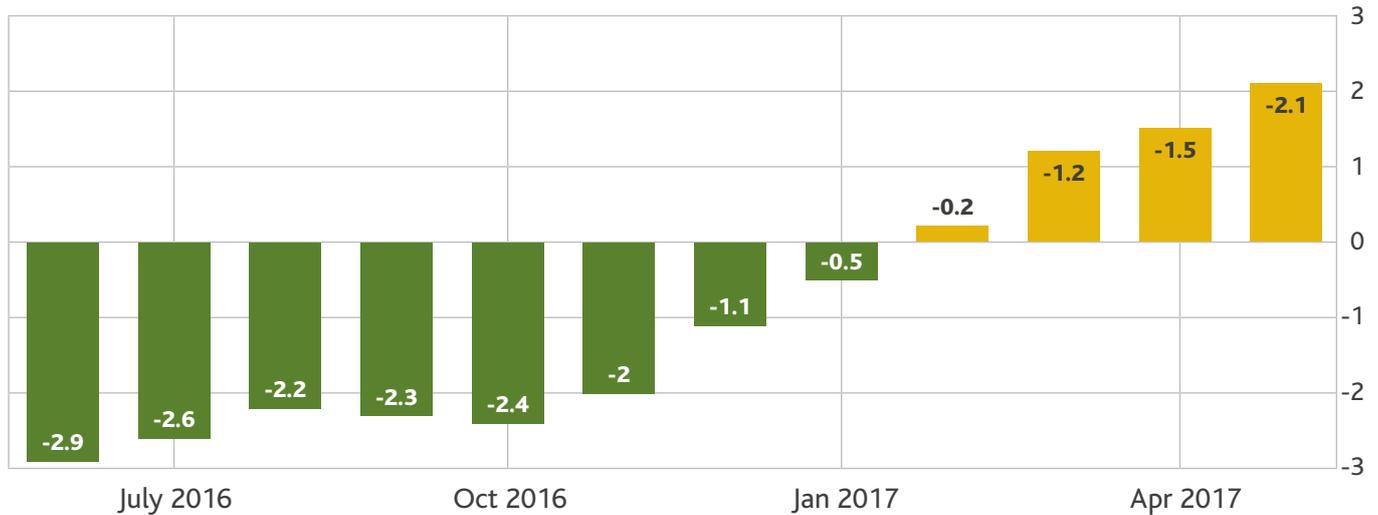
NATIONAL MINIMUM AND LIVING WAGE	April 2015-2016	April 2016-2017	April 2017-2018	Est. April 2018-2019
1. Minimum wage	£6.70	£7.20	£7.50	£7.90
2. Employers' NI Contributions	£0.39	£0.46	£0.49	£0.55
3. Annual Holiday Pay	£0.86	£0.92	£0.96	£1.02
4. Apprenticeship Levy			£0.04	£0.05
5. Pensions Auto-Enrolment Cost	£-	£0.04	£0.05	£0.10
6. Guideline Statutory Sick/Maternity Pay cost	£0.11	£0.11	£0.11	£0.11
7. Total Wage Costs	£7.94	£8.62	£9.05	£9.61
Percentage Increase		8.58%	4.92%	6.27%

- 1.8. The horticulture, unbranded food & beverage manufacturing sector and wider consumer goods supply chain operate on tight margins driven by market pressures. There is, as a broad statement, little further scope to significantly reduce operating costs without radical business restructuring, transformative automation, overseas relocation where production labour costs are significantly lower or outsourcing and importing produce from third party growers or manufacturers.
- 1.9. The impact of increasing labour costs is reflected in increasing food inflation and in rising rates of companies at significant risk of business failure as follows:

According to insolvency firm Begbies Traynor's [Red Flag Alert research](#) for Q1 2017, which monitors the financial health of UK companies, levels of 'Significant' financial distress within key sectors in the UK supply chain have risen by 26% on average over the past year following increased cost pressures from rising inflation in both fuel and food prices. Industrial Transportation & Logistics businesses experienced the largest increase in 'Significant' distress, up 46% year-on-year (Q1 2017: 7,539 companies), with a 16% increase in the Wholesale sector (Q1 2017: 7,706 companies) and a 15% increase in the Food & Beverage Manufacturing sector (Q1 2017: 6,405 companies).

UK FOOD INFLATION -STATISTICS

Source: Tradingeconomics.com | Office for National Statistics



2. LABOUR MARKET

Labour providers to the consumer goods supply chain are experiencing the most extreme shortages of labour supply since prior to 2004 with a variety of push and pull factors influencing this as follows:

2.1. Labour supply and demand, according to current Office of National Statistics [data](#):

- The employment rate (the proportion of people aged from 16 to 64 in work) is 74.8%, the highest since comparable records began in 1971. The employment rate among men, 79.5%, is the highest since 1991, although well short of the record 92.1% of 1971. The employment rate among women is at an all-time record of 70.2%.
- There are 777,000 job vacancies
- There are 31.95 million people in work – 381,000 more than a year ago. Of these, 28.3 million are UK born and 3.55 million non-UK born. 2.32 million non-UK nationals are from the EU and 1.23 million from outside the EU.
- The unemployment rate (those unemployed as a proportion of those in work plus those unemployed), is the lowest since 1975 with 1.54 million unemployed people, 152,000 fewer than a year earlier. In many rural communities where horticultural work is situated, unemployment is less than 2%, with, to all intents and purposes, a full employment economy existing.
- There are 8.83 million people aged from 16 to 64 who are economically inactive (not working and not seeking or available to work).

According to [Eurostat](#) figures,

- The unemployment rate across the 28 countries in the European Union is 9.5%, compared to 10.2% a year previously. The key labour sourcing countries for UK labour have falling jobless rates and are below the EU28 average. Europe’s top economies are competitors for EU migrant workers and of these, Germany has one of the lowest eurozone jobless rate at 3.9%.

2.2. The ALP made an [evidence based submission](#) to the EFRA [Feeding the nation: labour constraints](#) inquiry including a survey of labour provider members which found that:

- 21% of labour providers do not expect to be able to source and supply sufficient workers for summer 2017
- 4 out of 10 client businesses have had to increase wage rates to attract workers
- Over 1/3 of labour providers believe that the quality of labour is worse than 12 months ago as opposed to less than 1 in 10 who say that it is better
- 2 out of 3 labour providers have had to invest more money and resources into sourcing workers thereby increasing the cost of labour
- Over three quarters of labour providers believe that there will be insufficient or lower quality workers in 2017 compared to 2016

2.3. Access to EU workers:

- Since 2014 there have been no new labour markets supplying into the UK. Romania and Bulgaria are the current principal sourcing regions for new workers into UK food and horticulture.
- Since the referendum result the pound has devalued significantly against the euro meaning that the exchange value of wages for EU workers has fallen by over 10%, more than counteracting the national living wage increase.
- Since the referendum result there has been a rise in openly expressed anti-migrant sentiment, from shopfloor banter up to and including hate crime; negative briefings by certain EU states' media to their citizens regarding working in the UK and a delay in the commitment to EU workers currently in the UK due to UK/EU exit negotiations. These all combine to create uncertainty regarding future employment opportunities and a feeling amongst EU nationals that they are not welcome in the UK anymore.

2.4. The UK benefits system and other legislation directly or indirectly dissuades individuals from working or from working longer hours

- The rigidity of the UK benefits system dissuades many unemployed people from taking up irregular work or increasing hours. In effect, a "Dependant Class" has been created where it is not financially beneficial for these people to work. The Universal Credit being rolled out across the UK over a period of years is designed to address this by introducing flexibility and to ensure that increased work undertaken means increased pay.
- Whilst figures are not readily available, it is understood that around three quarters of those claiming unemployment benefits also claim disability or single parent benefits. This potentially indicates a limitation on the type of work that these individuals can undertake or that additional support may be needed.
 - Current employment tax and national insurance policy discourages a proportion of workers from working longer hours. Hitting the tax and NI threshold acts as a catalyst for a proportion of workers to cease working.
 - National Minimum Wage Regulations require piece rate workers who work set hours to have their pay topped up to the national minimum wage within the pay reference period. This has the effect of barring slower workers and indirectly discriminates against and impacts older workers and those with disabilities disproportionately.

2.5. The consequences of labour supply shortages since the EU Referendum have been:

- A smaller pool of workers to select from resulting in a lower quality workforce and lower spoken English and comprehension levels.
- Increasing employer focus on workforce planning, recruitment and retention strategies to source and secure labour supply.
- Labour providers investing in candidate resourcing and increasing efforts to source labour from rural Bulgarian and Romanian communities and exploring opportunities in EU countries with high unemployment rates.
- Increased labour costs:
 - Increased labour sourcing costs as labour providers need to invest more in advertising and recruitment costs.
 - Increased wage rates to attract and retain a labour force

These labour cost increases compound the already spiralling labour cost increases of the national living wage.

- Higher turnover as workers are presented with availability of other work options.
- Peak period supply challenges, which as yet have not significantly impacted on food production, but have added cost in terms of extra overtime hours.
- Increased production costs passed on as higher retail selling prices and consequent food inflation.

2.6. Future consequences of continued labour shortages and labour cost increases will be:

- A labour shortfall to meet the Summer and Christmas peaks.
- An increase in business failures.
- Growers and food producers moving overseas to where labour supply and labour cost are more favourable to business. During an ALP webinar 41% of food growers and producers stated that to cope with the increasing cost of labour they would need "to substantially change the way we operate to survive".
- Increased automation to replace manual jobs. However, in many businesses, particularly smaller and medium sized ones, due to small margins the return on investment case cannot be justified. In many horticultural sectors such as soft fruit automation is estimated to be at least 10 years off.
- Lost opportunities for import substitution and export, particularly in a time of favourable exchange rates. This is contrary to Government policy to put trade at the heart of its agenda and the ambitions and objectives of the International Action Plan for Food and Drink, the International Food Plan and the Great British Food Unit.

3. NATIONAL LIVING WAGE AND DISCRIMINATION

3.1. As previously referred to, the NLW is in effect state legalised age discrimination. The Equality Act 2010 contains a specific exemption to the usual rules on age discrimination in relation to payments in keeping with the National Minimum Wage and this allows employers to lawfully base their pay structures for young workers on the National Minimum Wage pay bands and pay workers different rates.

As part of the evidence gathering for the 2017 report the LPC should engage with the Equality and Human Rights Commission (EHRC) for an independent assessment of whether the current age differential wage rates are a proportionate means to meet a legitimate aim.

3.2. The NLW has opened up a number of discrimination traps for employers. One example of how employers may inadvertently discriminate is as follows. An employer paying for example at NMW rates and overtime at 1.5 times basic is paying a discriminatory overtime rate as the Equality Act 2010 exemption is lost as the rates go above the minimum.

Wales and Northern Ireland executives have issued Agricultural Wages Orders with different overtime rates for workers aged over and under 25. ALP has referred this to the Equality and Human Rights Commission who are reviewing whether this is age discriminatory (though their jurisdiction does not extend to Northern Ireland).

4. PROVISION OF ACCOMMODATION AND THE IMPACT OF THE "ACCOMMODATION OFFSET"

4.1. For migrant workers coming to the UK, their primary priorities are finding a job and finding somewhere to live. Under the accommodation offset arrangements, employers who provide accommodation to their workers can count up to £44.80 a week as payment towards the minimum wage. The level of the accommodation offset means that employers economically cannot legally provide accommodation to their own workers paid at or around NMW other than in the most basic forms of accommodation. This has been further exacerbated in a number of cases by the cut in mortgage interest tax relief which came into effect in April 2017.

4.2. The impact of the level of the accommodation offset on workers is that:

- When provided by housing by employers they can only be accommodated in caravans, mobile homes, hostel style accommodation or houses of multiple occupation with multiple workers sharing a living space
- They are left to the vagaries of the open market prey to those seeking to exploit vulnerable individuals

4.3. The impact of the level of the accommodation offset on employers is that:

- It is not economically viable to invest in building / adapting / improving accommodation for workers
- They are unable to enter into arrangements with letting agents to supply accommodation to their workers

4.4. The 2013 LPC report described the decrease in the provision of accommodation by employers as a "concerning trend in cases where it was beneficial to both employer and employee" and that "a higher offset would help encourage mutually beneficial provision of accommodation." The LPC confirmed that it would continue with its "signalled intention to increase its level when there were real increases in the NMW."

- 4.5. ALP requests that the LPC convenes a working group with employers and trade associations to develop proposals regarding the accommodation offset to be considered by the LPC which:
- Are fair to workers and protects them from exploitative landlords and employers
 - Enables employers to invest in developing higher standards of accommodation for workers
 - Enables employers to provide good quality accommodation to workers
 - Assists in encouraging supply of labour to the UK
 - Recognises the difference where worker must live in employer provided accommodation or has a choice over taking the accommodation.

5. PROVISION OF OPTIONAL TRANSPORT TO WORK TO WORKERS

- 5.1. This is a matter of significance to all sectors where workers at or around NMW are offered transport to work. The ALP 2012 and 2013 submissions to the LPC have dealt with this matter in considerable detail.
- 5.2. Labour providers prefer not to have to provide a transport to and from work service due to the legal, operational and administrative burdens involved but are obligated to do so in order:
- To deliver workers to factories and farms in predominantly rural areas not serviced by public transport
 - To provide access to work for workers who do not have their own means of travel
- 5.3. This issue describes a situation where a labour provider:
- Makes no profit from the transport service it provides, very often running at a loss; and
 - The workers are wholly free to choose to use the transport or not; and those who do pay a daily charge to contribute towards costs, client labour charge costs not extending to cover these costs.
- 5.4. HMRC interpretation is that the deductions of such sums reduce pay for NMW calculation purposes. However, HMRC does accept that, if the workers were paid their remuneration and then charged in cash, or by way of direct debit, for the (optional) transport charge, the sums would not stand to be deducted for the purposes of calculating the NMW.
- 5.5. The HMRC interpretation of the NMW legislation has resulted in:
- Significant operational difficulties for labour providers providing this service;
 - Many labour providers withdrawing from providing transport to work, denying access to work to those workers unable to source transport themselves;
 - Additional costs for labour providers and workers;
 - Less transparency in arrangements;
 - Less reputable labour providers adopting evasive methods presenting safety risks to workers as detailed in previous submissions.

5.6. LPC is requested to recommend a process whereby industry and HMRC may discuss and agree “technical exemptions” in specific situations whereby the literal application of NMW legislation has perverse and/or unintended consequences that:

- impose burdens on business and have a neutral impact on low paid workers; or
- have a negative impact on low paid workers

5.7. ALP proposes that this process is piloted using this provision of optional transport to work.

6. NMW GUIDANCE, ENGAGEMENT AND ENFORCEMENT

6.1. GOV.UK generally does a good job in getting the basics of the NMW across. ALP is pleased to see that its request to improve access to reporting non-payment of NMW to HMRC NMW Enforcement by linking the pay and work rights complaints webpage to the main GOV.UK NMW webpages. The BEIS guidance [Calculating the Minimum Wage](#) should also be accessible from the main GOV.UK NMW webpages.

6.2. ALP is pleased that NMW and NLW review dates have been harmonised and aligned with National Insurance threshold revision dates in April.

6.3. ALP wrote (several times) to the Scottish, Welsh and Northern Irish Agricultural Wages Boards formally requesting them to align commencement dates with the NMW; for confirmation that increases are determined early enough to allow industry to effectively plan for the increase and to address age discriminatory overtime provisions.

There was partial success. All the Boards have aligned with an April start date – but not that they commence on the PRP following 1st April. Wales and Northern Ireland confirmed their rate increases in the week of the increase. ALP has written to formally complain that this does not allow business time to prepare for such increases.

ALP requests that LPC offer technical support to the Agricultural Wages Boards in matters relating to the minimum wage.

6.4. Trade associations representing businesses operating in low pay sectors should be able to:

- Meet formally and regularly (every 6 months) as a group with appropriate individuals within BEIS and HMRC to raise and address policy matters
- Access and work with NMW Technical Advisors to develop their own sector relevant guidance and to assist with complex and challenging issues.

6.5. Current NMW name and shame policy is heavy handed and disproportionate and does not accord with the [Regulators Code](#) in that “Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.” [The NMW offender name and shame list](#) should be for those businesses which deliberately set out to pay workers below the NMW rather than reputable companies who inadvertently fall foul of a technical breach of NMW where guidance is absent or unclear and who remedy this immediately.

6.6. The ALP welcomes the establishment of the Office of the Director of Labour Market Enforcement and the appointment of the Director, Sir David Metcalfe. The ALP has been unconvinced for many years about the effectiveness of HMRC NMW enforcement policy in apparently focusing on minor technical misdemeanours rather than sectors and businesses which wholly ignore and are contemptuous of NMW legislation.