1. **What is the National Living Wage?**

A compulsory National Living Wage (NLW) will be introduced on 1 April 2016 for eligible workers aged 25 and over, and will be set at £7.20 per hour. The current National Minimum Wage (NMW) for those under the age of 25 will continue to apply.

The Low Pay Commission, which currently recommends the level of the NMW, will recommend any future rises in the NLW rate.

The new NLW should not be confused with the Living Wage, which is an hourly rate of pay set independently by the Living Wage Foundation and is calculated according to the basic cost of living in the UK.

2. **Who will be entitled to the National Living Wage?**

The National Living Wage (NLW) will be introduced from the 1 April 2016. Most workers who are over the age of 25 will be entitled to the NLW. This includes:

- employees
- agency workers
- casual or seasonal workers
- pieceworkers
- agricultural workers in England employed on or after 1st October 2013

Apprentices aged 25 and over and still in the first year of their apprenticeship are entitled to the apprentice NMW rate. Apprentices aged 25 and over who have completed the first year of their apprenticeship are entitled to the NLW rate.

3. **Do the same rules apply to National Living Wage as to National Minimum Wage?**

As the National Living Wage will be introduced under the National Minimum Wage Act 1998, all current National Minimum Wage rules will apply to the National Living Wage rate as well.

4. **Who will not be entitled to the National Living Wage?**

The National Living Wage (NLW) will be introduced from the 1 April 2016. Most workers who are over the age of 25 will be entitled to the NLW if they are a worker for National Minimum Wage (NMW) purposes.

However, there are a number of people who are not entitled to the NMW. These include:

- self-employed people
- volunteers and voluntary workers
- some company directors
- work experience or placement students
- family members working for a family business, or people who live in the family home of their employer who undertake household tasks

5. What are the National Minimum Wage and the National Living Wage rates?

<table>
<thead>
<tr>
<th>Year</th>
<th>25 and over</th>
<th>21 to 24</th>
<th>18 to 20</th>
<th>Under 18</th>
<th>Apprentice</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>(National Living Wage)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>1 April 2016</td>
<td>£7.20</td>
<td>£6.70</td>
<td>£5.30</td>
<td>£3.87</td>
<td>£3.30*</td>
</tr>
<tr>
<td></td>
<td>(21-24 rate plus 50p premium)</td>
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</tr>
<tr>
<td>1 October 2015</td>
<td>£6.70</td>
<td>£5.30</td>
<td>£3.87</td>
<td>£3.30</td>
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<td></td>
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</tr>
</tbody>
</table>

*Any worker aged 25 and over who is in the first year of their apprenticeship is still eligible to the apprentice rate.

The new National Living Wage (NLW) rate will be payable from the first pay reference period on or after 1\textsuperscript{st} April 2016. Until that date the current National Minimum Wage rates will continue to apply.

Current and previous rates are available at www.gov.uk/national-minimum-wage-rates

Example of when NLW/NMW applies

For NMW/NLW purposes the pay allocated to a pay reference period is any pay
- received during that period
- earned in that period but not received until the next pay reference period

Example of when NLW will be payable

For a weekly pay reference period of 28\textsuperscript{th} March - 3\textsuperscript{rd} April, NLW would be payable from the next pay reference period 4\textsuperscript{th} April to 10\textsuperscript{th} April. Even if it is not paid until 18\textsuperscript{th} April, it does not matter when the payment is made it is what pay reference period that it covers that determines the rate payable.
6. **When will National Minimum Wage/National Living Wage rates increase?**

National Living Wage takes effect from 1 April 2016 and the rate is set at £7.20 per hour for **eligible workers aged 25 and over**. The rates will be reassessed annually, and any change is expected to take effect from 1 April each year.

**National Minimum Wage rates** for those aged under 25 are also reassessed annually, and any changes normally take effect from 1 October each year.

The Government is undertaking an internal review to assess the case for aligning the NMW and tax year, which will report in due course.

7. **Types of Work**

There are four different types of worker for National Minimum Wage and National Living Wage purposes:

- time
- salaried hours
- unmeasured
- output

These are explained in detail at [www.gov.uk/minimum-wage-different-types-work](http://www.gov.uk/minimum-wage-different-types-work)

8. **Do employers need to keep records to demonstrate they are paying National Minimum Wage?**

Employers must keep sufficient records to show that they are paying the National Minimum Wage (NMW) to those workers who are entitled to it. These must be kept for three years after the end of the **pay reference period** following the one that the records cover, although it may be advisable to keep them for six years as claims concerning the NMW can still be made within this time frame.

Employers must also keep:

- for **unmeasured workers**, any daily average agreement
- for **output workers**, any written notice about the average hourly output rate.

9. **Can workers ask to see an employer's records if they believe they are not being paid National Minimum Wage?**

Workers can make a request in writing to their employer to inspect wage records. The employer must produce these records for inspection within 14 days, and the worker can inspect and copy wage records relating to them. The worker can be accompanied by another person of their own choosing so long as their written request states that they intend to be accompanied.

If an employer refuses or fails to allow access within 14 days, the worker can make a claim to an Employment Tribunal (in Northern Ireland, a **Industrial Tribunal**) regarding this failure. If the Employment (or Industrial) Tribunal upholds the complaint, the employer may be required to pay the worker an amount equal to 80 times the hourly rate of the NMW in force at the time of the award. Alternatively, a worker may choose to make a complaint to HMRC who can investigate and take action against the employer where the complaint is well founded.
10. What options are available to a worker who is not being paid the National Minimum Wage?

The worker could discuss the matter with their employer, who may be able to resolve the issue or arrange to make payment, if there are amounts owed. Alternatively, the worker has the option to raise a formal grievance with their employer.

If the worker does not feel comfortable approaching the employer, they have the option:

- to make a complaint to HMRC via the Acas helpline (0300 123 1100) who will investigate the complaint, or
- to make a claim to an Employment Tribunal ((in Northern Ireland, an Industrial Tribunal) or a civil court.

11. Can an employer make a deduction from a worker’s pay if this would bring them below the appropriate National Minimum Wage/National Living Wage rate?

The following pay deductions do not have the effect of reducing the amount of pay for the purposes of calculating whether they have received the appropriate rate of National Minimum Wage:

- tax and national insurance deductions
- deductions made towards repayment of a loan or advance of wages
- deductions made to recover a previous accidental overpayment of wages
- other deductions that are not for the employer's benefit e.g. student loan repayments, pension contributions, trade union subscriptions
- deductions made in respect of the employee's conduct that are allowed for by the contract of employment

Therefore if the amount of pay that the worker would have received before the deduction was made would meet or exceed the NMW rate, the employer will have complied with their obligations under the NMW legislation.

The following deductions do have the effect of reducing the amount of NMW pay received by the worker:

- deductions in respect of the worker's expenditure in connection with his or her employment e.g. deductions made by an employer towards the cost of tools or uniform
- deductions made for the employer's own use or benefit (excluding those listed above)

Therefore the amount of pay that the worker receives after the deduction has been made must meet or exceed the appropriate NMW rate for each hour worked in order for the employer to comply with their obligations under the NMW Regulations.

For more information, go to:
https://www.gov.uk/government/publications/calculating-the-minimum-wage
12. How can I check that I have paid my workers correctly?

There is a National Minimum Wage (NMW) calculator to enable employers to check whether they are paying a worker the NMW and whether they owe them arrears for previous years. You can find the calculator at:

https://www.gov.uk/minimum-wage-calculator-employers

You can find guidance at:

https://www.gov.uk/government/publications/calculating-the-minimum-wage

13. What happens if I realise that I have underpaid workers?

Legislation allows for payment of additional remuneration to allow an employer to self-correct an underpayment of National Minimum Wage (NMW) pay.

If an employer has paid workers below the applicable NMW rate, but correctly pays all the arrears (including any uplift) owing to the workers before any contact from a NMW Officer then issuing a Notice of Underpayment will not be appropriate. In these circumstances penalties and naming will not apply. Employers wishing to self-correct should contact HMRC via the Acas helpline (0300 123 1100).

14. How do I appeal against a Notice of Underpayment?

If you disagree with a Notice of Underpayment, you can appeal against it to an Employment Tribunal (in Northern Ireland, an industrial tribunal), an independent body. You must make your appeal within 28 days of the date on which the Notice of Underpayment is served. Details of how to appeal are sent with the Notice of Underpayment.

15. What happens if I do not co-operate with an investigation?

If there is a genuine reason why you cannot keep an appointment or give us what we ask for, please tell us as soon as possible. It is a criminal offence to intentionally prevent us from carrying out our checks or not give us the information requested.

16. Will I be named?

If we find you have paid any of your workers less than the National Minimum Wage (NMW), you will be automatically named by the Department for Business, Innovation and Skills (BIS) under its Naming Scheme. You will not be named until after the HMRC has finished its investigation.

You will be reminded that you will be named by BIS in a case closure letter issued by HMRC after checks have been completed and HMRC are satisfied that the arrears of minimum wage have been paid to workers.

The case closure letter will also set out the exceptional circumstances when BIS will not name an employer and you have 14 days after issue to send representations to BIS outlining whether you fall under any of these exceptional criteria:
- naming by BIS carries a risk of personal harm to an individual or their family
- there are national security risks associated with naming in this instance
- other factors which suggests that it would not be in the public interest to name

For more information on the BIS NMW Naming Scheme, go to: www.gov.uk/government/publications/enforcing-national-minimum-wage-law

17. Will I have to pay a penalty?

Employers found to have paid less than the NMW rates will also have to pay HMRC a penalty for any underpayments that relate to pay periods starting on or after 6 April 2009. You can find information at: www.gov.uk/government/publications/enforcing-national-minimum-wage-law

18. Is the penalty rate due to increase?

Yes. The rate is due to increase from 100% to 200%. This will be effective for any pay reference periods beginning on or after 1 April 2016. It will not be retrospective for earlier pay reference periods.

19. What payments or benefits can be included when calculating if the National Minimum Wage or the National Living Wage is being paid?

The National Minimum Wage (NMW) is calculated on gross pay (pay before deductions like tax and National Insurance contributions).

The following can be included when calculating if the NMW is being paid:

- pay for hours worked - including overtime
- time spent travelling on business
- incentive pay (performance related)
- bonuses (to limited extent)
- commission
- different pay for different jobs if all under the same contract.

For more information, go to: https://www.gov.uk/government/publications/calculating-the-minimum-wage

20. Are Agricultural workers included in the introduction of NLW?

Agricultural workers covered by agricultural wages laws are entitled to the Agricultural Minimum Wage rather than the NNLW/MW. No agricultural worker can be paid less than the NLW/NMW. Some agricultural workers must be paid more than the NLW/NMW because there is a higher Agricultural Minimum Wage rate.

Where at any time the NLW/NMW becomes the higher hourly rate, then the Agricultural minimum rate must be equal to the NLW/NMW.

For more information go to: https://www.gov.uk/agricultural-workers-rights/overview
21. Can Commission payments count for NMW/NLW?

Yes - commission payments can be counted

For more information, go to page 18 of this guidance: https://www.gov.uk/government/publications/calculating-the-minimum-wage (see under “Incentive pay”).

22. Do child care vouchers count for NMW/NLW?

No. Child care vouchers do not count for NMW purposes.

For more information, go to page 24 of this guidance https://www.gov.uk/government/publications/calculating-the-minimum-wage.

23. Are family members entitled to NMW/NLW?

It depends on the precise facts.

For more information and guidance, go to page 15 of: https://www.gov.uk/government/publications/calculating-the-minimum-wage.

24. What is the difference between NMW/NLW?

The NLW is simply an additional rate which is payable, from 1 April 2016, to eligible workers who are aged 25 and over. The NMW applies to workers under 25. See FAQs 2 and 5.

25. Is a worker required to be paid for travelling time?

Where the travelling time is in connection to the worker’s job, such as between assignments, then the time spent travelling is working time and needs to be included in the time for which the NLW/NMW must be paid.

Travel between a person’s home and their place of work is not time which counts for NLW/NMW purposes.

For more guidance see page 33 of: https://www.gov.uk/government/publications/calculating-the-minimum-wage.

(Note that the formatting of the text below the last bullet on page 33 has gone awry. That text (shown in bold) should be the last bullet about travelling time.)
26. Can overtime or shift allowance be included in the calculations of NMW/NLW?

Overtime payments should be included in worker’s total remuneration when calculating NMW/NLW.

However, for time workers, where payments are made at a premium rate above the worker’s lowest hourly rate in a particular pay reference period, adjustments must be made when calculating NMW/NLW. For more information see page 19 and example at https://www.gov.uk/government/publications/calculating-the-minimum-wage

If the worker performs output work, see http://www.hmrc.gov.uk/manuals/nmwmanual/NMWM09280.htm”.

27. What are the implications of salary sacrifice for NMW/NLW?

Under a genuine salary sacrifice, the worker sacrifices an amount of cash pay in return for a benefit in kind. With the exception of employer-provided living accommodation, benefits in kind do not count for NMW purposes. So the lower amount of pay (i.e., after the sacrifice) is used for calculating the NMW/NLW.

Example

Under their contract of employment, a worker is entitled to pay of £150 a week. The worker and employer agree to vary the worker’s contract so that they are entitled to £130 a week plus a weekly child care voucher with a face value of £20.00.

Before the salary sacrifice, the worker’s pay for NMW/NLW purposes is £150.00. But after the sacrifice, the worker’s pay for NMW/NLW purposes is £130.00 as child care vouchers do not count for NMW/NLW purposes (See FAQ? [insert number of FAQ about child care vouchers]).

For more information on the treatment of benefits in kind for NMW/NLW purposes, go to page 24 of the guidance at this link https://www.gov.uk/government/publications/calculating-the-minimum-wage

28. Are directors entitled to NMW/NLW?

A director is the holder of an office. As an office-holder is not a worker for NMW purposes, they are not entitled to the NMW/NLW. But if a director has a contract of employment or other contract with the company which makes them a worker, they are entitled to the NMW/NLW for the work they do under that contract.
29. Should a worker be paid NMW/NLW when they are on call or on standby?

This will depend on the type of work being performed. See

Time work
http://www.hmrc.gov.uk/manuals/nmwmanual/NMWM08270.htm

Also see page 35 of the guidance
https://www.gov.uk/government/publications/calculating-the-minimum-wage

Salaried hours work
http://www.hmrc.gov.uk/manuals/nmwmanual/NMWM08170.htm

Also see page 30 of the guidance
https://www.gov.uk/government/publications/calculating-the-minimum-wage

Output work
http://www.hmrc.gov.uk/manuals/nmwmanual/NMWM08380.htm

Unmeasured work http://www.hmrc.gov.uk/manuals/nmwmanual/NMWM08480.htm

30. Do pension deductions affect NMW/NLW calculations?

Deductions for pension contributions do not reduce NMW/NLW pay provided the amounts:

- are not expenditure in connection with the worker’s employment; or
- are not for the employer’s own use or benefit.

See page 23 of the guidance
https://www.gov.uk/government/publications/calculating-the-minimum-wage

31. Should a bonus be included in the calculation for NMW/NLW?

Generally, yes. But see this guidance
http://www.hmrc.gov.uk/manuals/nmwmanual/NMWM09140.htm

32. Does the NMW/NMW have to be paid for sleeping time?

It depends on the facts. See pages 31 and 32 of the guidance
https://www.gov.uk/government/publications/calculating-the-minimum-wage

33. How does the NMW/NLW apply to apprentices in their 1st year and

See FAQ 5.
34. Where can I find more information about the National Living Wage and the National Minimum Wage?

You can find out more about the National Minimum Wage (NMW), including rates and who is entitled to the NMW, at the following:

https://www.livingwage.gov.uk/
https://www.gov.uk/government/collections/national-minimum-wage
https://www.gov.uk/national-minimum-wage
https://minimumwage.blog.gov.uk/
www.hmrc.gov.uk/manuals/nmwmanual/Index.htm
https://www.gov.uk/government/publications/calculating-the-minimum-wage