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To whom it may concern,

National Minimum Wage Naming Scheme – Department for Business, Energy & Industrial Strategy (BEIS)

Thank you for your representation to BEIS seeking exemption from the National Minimum Wage Naming Scheme.

All employers have the opportunity to make representations to BEIS. Further details on the way in which we operate these criteria are available in the Naming Scheme policy set out at section 5 of "National Minimum Wage Law: Enforcement" (which is available at: <https://www.gov.uk/government/publications/enforcing-national-minimum-wage-law>).

The criteria for not being named are also outlined in HMRC's closure letter dated 17 May 2018 and factsheet "National Minimum Wage information for employers" (see copy attached).

Employers are only considered unsuitable to be named if they meet one of the exceptional circumstances below and are able to provide details:

- Naming by BEIS carries a risk of personal harm to an individual or their family;
- There are national security risks associated with naming in this instance; or
- There are other factors which suggest that it would not be in the public interest to name you/the company.

As you may know, the Naming Scheme was paused while the government undertook a review of its effectiveness. We have completed the review and made changes to the Naming Scheme as detailed in the link above.

BEIS has considered your earlier representation and concluded that it does not meet any of the above exemption criteria. However, we are writing again to you (and all other employers eligible for naming) to give you another opportunity to submit a representation in case your circumstances have changed and you believe you may now meet the criteria for exemption. Please note, however, that the criteria against which employer representations are measured have not changed as part of the review; this opportunity to make another representation is offered on the grounds of



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the length of time that has passed since you submitted your representation and the possible change in circumstances in the intervening period.

Please note that, due to COVID-19 restrictions, we recommend that you send representations by email to nmw.namingscheme@beis.gov.uk. This is due to disruption with the Department's post and difficulty with officials accessing our office to receive it. If you are unable to access email you can still send postal representations to the following address: Department for Business, Energy and Industrial Strategy, National Minimum Wage Team, NMW Naming Scheme Representations, Spur 2, 1st Floor, 1 Victoria Street, London, SW1H OET.

If you choose not to make any representations, or your representation is rejected, please note that your business will be included in a press release alongside the names of other employers. If you make a representation, then you will receive another letter either approving or rejecting your representation. If you choose not to make any representation you will be named no earlier than 19 October.

If your business is named, we will send you a copy of the press release once this has been released. Please provide an e-mail address to nmw.namingscheme@beis.gov.uk (along with the name of your business) if you would like a copy of the press release to be sent to you by e-mail shortly before publication.

Yours sincerely,
National Living and Minimum Wage Team



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Your personal data

If you provide us with any personal data, this section explains how it may be used and sets out your rights.

1. The identity of the data controller and contact details of our Data Protection Officer

The data controller is the Department of Business, Energy and Industrial Strategy (BEIS). The Data Protection Officer can be contacted by phone at 020 7215 5000 or by email to dataprotectionofficer@beis.gov.uk.

2. What BEIS will use personal data for

Any personal data will only be used by BEIS for the purposes of the national minimum wage (NMW) naming scheme.

3. Our legal basis for processing your personal data

Under article 6(1)(e) of the General Data Protection Regulation 2016/679 (GDPR), BEIS may, as a government department, process personal data as necessary for the effective performance of a task carried out in the public interest, which in this case is the NMW naming scheme. Where the processing involves special categories of data such as about personal health (as defined in the GDPR) our legal basis is provided by article 9(2)(g): the processing is necessary for reasons of substantial public interest, namely the NMW naming scheme.

4. Sharing your personal data

We will not routinely share any personal data you provide to us with HMRC or other government departments, but may do so occasionally to check its accuracy against records they hold.

We will publish names of employers, including those trading as individuals, in accordance with the NMW naming scheme policy set out at section 5 of "National Minimum Wage Law: Enforcement", which is available at: <https://www.gov.uk/government/publications/enforcing-national-minimum-wage-law>.

5. How long we will keep your personal data

Your personal data will be held for 12 months after the naming scheme round you provide it for. After this it will be deleted within the following 6 months as part of our periodic deletion programme.

6. Your rights, e.g. access, rectification, erasure

You have considerable say over what happens to your personal data (see ico.org.uk). You have the right:

- a. to see what data we have about you
- b. to ask us to restrict the way we use your data, but keep it on record
- c. to have all or some of your data deleted or corrected
- d. to object to our use of your data
- e. to lodge a complaint with the independent Information Commissioner (ICO) if you think we are not handling your data fairly or in accordance with the law. You can contact the ICO at ico.org.uk, or telephone 0303 123 1113.

7. Further points

Your personal data:



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- will not be sent overseas
- will not be used for any automated decision making
- will be stored in a secure government IT system.



About National Living Wage and the National Minimum Wage checks

This factsheet tells you about the checks we carry out to make sure you're paying your workers at least the National Minimum Wage (NMW) or National Living Wage (NLW).

The NMW and the NLW are the minimum legal amounts that employers must pay their workers. You're responsible for making sure that your workers are paid at least the appropriate rate of NMW or NLW.

You must also keep records to prove that you've done this.

Our role

We're responsible for making sure that employers pay their workers at least the NMW or the NLW.

We do this on behalf of the Department for Business, Energy and Industrial Strategy (BEIS).

We carry out checks on employers and talk to workers to make sure all workers are paid what they're legally due. We choose which employers to check based on one of the following:

- our own research
- where we've received a complaint that an employer is paying one or more of their workers below the NMW or the NLW

Our visits and requests for information

We're allowed to ask for:

- any information we think will show whether workers are being paid at least the NMW or the NLW
- explanations of anything contained within records
- any additional information we need to determine whether the NMW or the NLW has been paid

We're also allowed to visit you to get the information we need, and we may need to visit you more than once. We'll try to make an appointment at a time that's convenient for you. We do not have to tell an employer why we're checking their records or give them details of the information we've received.

We have made a short video to help you prepare for our checks and you can watch this at <https://register.gotowebinar.com/recording/889582277758111234>

The law that covers what we do is the National Minimum Wage Act 1998.

HM Revenue and Customs (HMRC) may observe, monitor, record and retain internet data which is available to anyone. This is known as 'open source' material and includes news reports, internet sites, Companies House and Land Registry records, blogs and social networking sites where no privacy settings have been applied.

Our personal information charter sets out the standards you can expect from us when we request or hold information about you. Go to www.gov.uk/government/organisations/hm-revenue-customs/about/personal-information-charter

What happens during a visit

We'll need to speak to you about the work patterns of your workers, and the arrangements you have in place for calculating their pay. We'll need to speak to the person responsible for calculating pay, if this is not you.

We'll also need to see records that show how much your workers are paid and may need to take copies of some records. It will save time if you have these ready when we visit. If we think there are ways that you should improve your record keeping, we'll tell you.

We may have to do more research or ask you, or your workers, for more information before we can decide whether you've paid them at least NMW rates.

At the end of our check

We'll let you know when we've completed our visits and check. We'll also write to you to confirm any advice given to you about changes to your record keeping.

If we've found that you've paid any of your workers below the NMW or NLW, we'll let you know if you owe them any arrears of pay.

Arrears of NMW due

We compare the amount the worker was actually paid against the amount they should have been paid if the correct NMW rate had been applied. The difference is the amount they've been underpaid.

If the NMW or NLW rate originally due is the same as the current rate, the amount of arrears will be the same as the amount underpaid.

The rate originally due may be lower than the current rate, because of an annual rate change or age-related rate change. If so, then the arrears due will be more than the amount originally underpaid.

For more information on how arrears are calculated, go to www.gov.uk/national-minimum-wage

Arrears of pay

If we find that you've paid any of your workers less than the NMW or the NLW, we'll send you a notice of underpayment. This will tell you:

- how much you owe each worker and when you must pay them
- whether you have to pay us a penalty and when you must make payment by

A notice of underpayment is a legal demand for payment. If you do not pay the amounts due to your workers, we can pursue payment through a civil court or an Employment Tribunal (Industrial Tribunal in Northern Ireland).

Penalties

Employers found to have paid less than the NMW rates will also have to pay us a penalty for any underpayments that relate to pay periods starting on or after 6 April 2009. For more information, go to www.gov.uk/government/publications/enforcing-national-minimum-wage-law

If you disagree

If you disagree with the notice of underpayment you can appeal to an Employment Tribunal. You must do this within 4 weeks of the date of the notice of underpayment. We'll send details of how to appeal when we send you the notice.

If you do not co-operate with us

We encourage you to help us at all stages of our checks. If there's a genuine reason why you cannot keep an appointment or give us what we ask for, please tell us as soon as possible. It's a criminal offence to intentionally prevent us from carrying out our checks or not give us the information we've asked for.

Criminal prosecutions

If we find that you've deliberately broken the law, we may prosecute you. You can find more about the criminal offences regarding NMW and NLW from our website. Go to www.gov.uk/government/publications/enforcing-national-minimum-wage-law

Publishing details of employers who break National Minimum Wage law

If we find you've paid any of your workers less than the NMW you'll be referred to BEIS for consideration under the NMW naming scheme. This is because the payment of the NMW is very important and the public should be aware of the employers who fail to comply with NMW rules. You'll not be named until after the HMRC investigation has concluded.

As the employer, we'll remind you that you'll be named by BEIS in a case closure letter issued by HMRC after we've completed our checks and 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 BEIS will not name an employer.

You'll have 14 days from the date the case closure letter is issued to send representations to BEIS outlining whether you fall under any of these exceptional criteria:

- naming by BEIS 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 you or the company - you'll need to provide details

For more information on the BEIS NMW naming scheme, go to www.gov.uk/government/publications/enforcing-national-minimum-wage-law

Your adviser

If you want to appoint an adviser to act on your behalf, you'll need to send us form 64-8 'Authorising your agent'. You can get one of these from our website. Go to www.gov.uk/government/publications/tax-agents-and-advisers-authorising-your-agent-64-8

If you prefer, you can get one if you phone either the officer that wrote to you, or our orderline on 0300 200 3610.

Your rights and obligations

'Your Charter' explains what you can expect from us and what we expect from you. For more information, go to www.gov.uk/hmrc/your-charter.

To check current and past rates of the NLW or the NMW, go to www.gov.uk/national-minimum-wage-rates

Workers' rights

Workers are legally protected from being sacked or victimised because they've complained about not being paid the NMW or the NLW.

More information

If you want more information:

- phone us on the number on our covering letter
- go to www.gov.uk/national-minimum-wage
- go to www.gov.uk/guidance/help-and-support-for-employing-people#the-national-living-wage-nlw-and-the-national-minimum-wage-nmw for NLW and NMW webinars and eLearning

BEIS produces detailed guidance about the NMW:

- go to www.gov.uk/beis/minimum-wage-guide
- phone 020 7215 5000

The Acas Helpline provides free, confidential advice in over 100 languages. You can phone Acas on 0300 123 1100.

