

The National Living Wage and Alternative Enforcement

By George Wilson

The surprise announcement in July of plans to introduce a 'national living wage' for workers over 25 in the UK has generated much debate. In effect a higher minimum wage for adult workers, the living wage will initially be set at £7.20 per hour and will be reviewed each year by the Low Pay Commission. The current Conservative government, who are responsible for the policy, have made clear their intention to increase the living wage to £9 per hour by 2020. Although this appears to be high, the living wage would still be less than two-thirds of the median wage in the UK.¹

On the one hand, proponents of the policy believe it will help an estimated 2.7 million workers who currently earn below the new threshold (D'Arcy and Kelly 2015). On the other hand, commentators have labelled the policy a cynical attempt to hijack the popularity of living wage campaigns for short-term political gain (Wilson 2015a); the national living wage will not be set against criteria to ensure workers can maintain a decent standard of living.²

Although a higher minimum wage is welcome, increasing its level from the current rate of £6.70 per hour to upwards of £7.20 per hour raises concerns regarding the effectiveness of the existing enforcement regime. Businesses in traditional low wage sectors, including agriculture, hospitality, retail and social care, have argued they will find it difficult to pay the national living wage (Sky News 2015). Minimum wages only help those who rely upon them if they are paid, or put differently, if they are effectively enforced.

The Current Enforcement Regime

Our image of non-compliance is one of unscrupulous employers paying cash wages to casual workers but, as recent headlines attest, this is not necessarily the case. Retailers French Connection and Foot Locker were 'named and shamed' in March for paying below the national minimum wage. Both were found by a Her Majesty's Revenue and Customs investigation to have short-changed staff by over £16,000 (The Independent 2015).

French Connection and Foot Locker won't be the last employers to hit the headlines, but why and what can be done to stop the exploitation of minimum wage workers?

It appears the potential savings employers can make by underpaying staff far outweigh the threat of serious sanctions. Between 2006 and 2014 there were only four criminal prosecutions of employers who failed to pay the national minimum wage. The deterrence effect of employers being fined for non-compliance is similarly weak, average fines of £2,000 pale in comparison to maximum fines of €500,000 in Germany (Schulten 2014; Wilson 2015b). The jury is still out on the success of naming and shaming by the Department for Business, Innovation & Skills.

Plans to introduce a taskforce to tackle employers who fail to pay the national minimum wage and (BBC News 2015), as was recently announced, a statutory Director of Labour Market Enforcement miss an important point (Department for Business, Innovation & Skills 2015); enforcement measures fail not just because of limited resources but equally because of how resources are deployed. The current enforcement regime is state-centric, relying upon government agencies in isolation rather than cooperating with employers associations and trade unions. More closely involving the social partners is imperative given the number of workers that will be entitled to the national living wage.

An Alternative Model of Enforcement

The current enforcement regime could be altered to promote greater cooperation.³ Employers associations and trade unions could be granted joint responsibility by the government for auditing their members. This would replace the mostly reactive approach of waiting for a complaint of underpayment with one that is more proactive. An independent body such as an 'enforcement council' could

ensure that audits were conducted properly and contributed towards the achievement of centrally set targets e.g. a reduction in the number of non-complying businesses in a certain industry. What is known as 'governance in the shadow of law' could further foster compliance; if social partners fail to meet targets, their ability to self-regulate could be removed.

A similar system of company audits has been adopted with regard to reducing the gender pay gap under the Equalities Act of 2010.

This alternative model of enforcement also speaks to the way in which statutory minimum wage regimes are administered. There is often a focus on involving social partners in the setting of minimum wages, especially in countries with a tradition of their involvement in social law and policy,⁴ but this does not extend to enforcement. Involving social partners in enforcement can be seen not only as a way of protecting minimum wage workers but also of supporting industrial relations more broadly: legislation should aim to complement rather than compete with collective labour law. Such approaches that exploit linkages between the state and society are a necessity if low wage workers are to benefit from the introduction of the national living wage.

¹ The ILO definition of a 'low wage' is a wage below two-thirds of the national median wage.

² Unlike the independent Living Wage Foundation's living wage, see <http://www.livingwage.org.uk>

³ This model is heavily influenced by insights from social systems theory and theories of reflexive law.

⁴ The recent German Minimum Wage Act is an example.

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