

REPORT TO: Executive Board

DATE: 24 March 2016

REPORTING OFFICER: Strategic Director, Community and Resources

PORTFOLIO: Resources

SUBJECT: National Living Wage – Under 25s

WARDS: Borough wide

1.0 PURPOSE OF THE REPORT

1.1 To seek Executive Board approval to pay the forthcoming National Living Wage to members of staff aged under 25. If agreed this would be implemented from April 2016.

2.0 RECOMMENDATIONS: That payment of the National Living Wage to members of staff aged under 25 be agreed and implemented from 1 April 2016.

3.0 SUPPORTING INFORMATION

3.1 Announced as part of the July 2015 Budget. The National Living Wage (NLW) is a compulsory payment and will be:

- Introduced in April 2016
- Payable to workers aged 25 and over
- Paid at an initial rate of £7.20 per hour

3.2 It is anticipated that the NLW rate will increase year on year to a rate of more than £9 per hour (or more). The government's objective is for the NLW to reach 60% of median earnings by 2020 and for it to continue to reflect any rises in median earnings. As currently proposed, this means there will be a 34% rise in the wage bill for workers aged 25 and over between now and 2020.

3.3 The NLW is compulsory payment. It is therefore different from the existing 'Living Wage' which is paid voluntarily by employers and is aimed at taking into account the cost of living. This is currently set at £8.25 per hour (and £9.40 per hour for London). While a number of employers have decided to pay their employees this 'living wage', it is on an entirely voluntary basis.

3.4 The compulsory National 'Living' Wage the rate of pay will have no link with the cost of living but is instead based around median earnings. It is in practical terms recommended that this be viewed in the same manner

as an increase to the minimum wage and as a supplement to the Minimum Wage

- 3.5 The National Minimum Wage is currently set at the following rates:
- Apprentices (if under 19 or in the first year of apprenticeship): £3.30 per hour ;
 - Under 18: £3.87 per hour;
 - 18-20: £5.30 per hour; and
 - 21 and over: £6.70 per hour.
- 3.6 Once the NLW is introduced the '21 and over' £6.70 National Minimum Wage rate will become a 21-24 rate, with the new NLW only applying to those aged 25 and over.
- 3.7 The draft National Minimum Wage (Amendment) Regulations 2016 have been laid before Parliament as a Statutory Instrument and come into force on 1 April 2016 as part of an amendment to the National Minimum Wage Regulations 2015.
- 3.8 They amend Regulation 4 of the Regulations to add the National Living Wage (NLW) rate of £7.20 an hour for workers aged 25 and over and move the remaining national minimum wage (NMW) rates (for those under 25) to a new Regulation 4A.
- 3.9 Regulation 2 amends the National Minimum Wage Act 1998 by increasing the financial penalty payable by employers who underpay the NMW from 100% to 200% of the underpayment due to each worker
- 3.10 The new NLW will apply to all categories of individual who are currently eligible for the National Minimum Wage. The National Minimum Wage is currently payable to:
- Employees;
 - Most 'workers' (defined as an individual working under a contract 'to personally do or perform work or services for another, provided that the other is not a customer or client of a profession or business undertaking carried on by the individual'); and
 - Agency Workers (It is the responsibility of the person who actually pays the agency worker to ensure that statutory minimum pay is received).
- 3.11 Volunteers, work experience or placement students and some apprentices will be excluded from the NLW.
- 3.12 The Government has asked the Low Pay Commission (LPC) to recommend future rates for both the National Minimum Wage and the NLW. The precise detail of future rises in the NLW is consequently unknown at present.

4.0 POLICY IMPLICATIONS

- 4.1 The National Minimum Wage Act 1998 provides the skeleton for National Minimum Wage law supplemented by the National Minimum Wage Regulations 2015, which are now amended to include provision for the NLW. All individuals working under an employment contract or a contract to personally perform services will be entitled to receive the NLW. The rates are set annually by additional Regulations which come into force each October. The National Minimum Wage is set by Government with the advice of the Low Pay Commission.
- 4.2 It was hoped that National Local Government pay negotiations would have concluded and provided a framework in relation to the payment of the NLW. Although an offer has been made and presented as final offer, the Joint Trade Unions have requested further negotiations around this offer. Unison members have voted to reject the offer by 64% to 36%. Consultation is still ongoing with Unite and GMB members, but they have indicated that they intend to recommend rejection of the offer to members in their consultations.
- 4.3 Given the practicalities of needing to implement the National Living Wage (NLW) from April, Halton has needed to prepare for the potential impact on pay structures without a new pay agreement being in place. SCPs 6, 7 and 8 are currently below the planned NLW figure of £7.20. It is unlikely, even with speedy consultation and acceptance of a new pay offer that the new pay rates would be available in time for payroll cut-offs for implementation in April.
- 4.4 As a minimum to ensure Halton will be legally compliant with the NLW an increase in the pay rates for SCPs 6, 7 and 8 to £7.20 with effect from 1 April will need to be made. This equates to a minimum FTE salary of £13,891 per annum with effect from 1 April. This figure has been calculated by multiplying the National Living Wage rate of £7.20 by the local government standard working week of 37 hours and then multiplied by 52.143 weeks. This updated figure of £13,891 should continue to be paid until such time as the NJC finalises a pay agreement.
- 4.5 Consideration should also be given as to whether the National Living Wage should be applied consistently across the Council to all employees and workers, rather than to those aged 25 and over. Currently 10 contractual staff aged under 25 (including 9 apprentices) and 157 casual staff aged under 25 are paid less than £7.20 per hour.
- 4.6 Debate is currently taking place as to whether the over 25s threshold for the NLW is age discriminatory. Existing pay differentials – which under the minimum wage apply only up to the age of 21 – can be justified as reflecting the increased productivity of workers who have completed apprenticeships or other on the job training. It is however

questionable whether there is a sufficient increase in skills and productivity between the age of 21 and 25 to justify paying older workers more than comparable younger workers simply on the basis of their age and a challenge against the government over the legality of restricting the NLW to older workers remains a possibility.

- 4.7 A decision to increase the pay of staff aged under the age of 25 has the potential to impact upon the Council's commercial operations such as those for Stadium and Catering and Leisure Services, by increasing the cost of wages to staff. This may in turn mean a small increase in costs to customers, making the Council's services more expensive or alternatively a decrease in profits. Any decision to apply the minimum wage to those below the age of 25 will therefore need to weigh the commercial costs against the benefits and equity of paying staff at the higher rate.
- 4.8 On balance, it is considered that there is insufficient justification to pay those under 25 less for doing exactly the same job and, in any case, when the National Pay Negotiations are concluded they will not differentiate between ages within spinal column points, so the Council will have to cope with this when it eventually happens.

5.0 FINANCIAL IMPLICATIONS

- 5.1 As well as the costs associated with raising those employees currently paid below £7.20 an hour to this level there will be a number of on-costs including pension, NIC, auto enrolment, taking employees out of salary sacrifice and the potential need to maintain pay differentials within the workforce. All of this comes at a time of diminishing budgets and requirement to make savings.
- 5.2 The LGA has calculated that the NLW will initially cost a minimum of £340 million a year for local authorities to introduce in 2016 with these costs continuing to rise significantly by the end of the decade.
- 5.3 For Halton, based on current staffing levels and ages, 370 of 2545 contractual staff (around 14.5%) and 543 of 1015 (53%) of casual staff are paid below £7.20 per hour. Of these, 10 contractual staff are below the age of 25 (including 9 apprentices) and 157 casual staff aged under 25 are paid less than £7.20 per hour. Overall, this equates to an additional total of £34,734 (including pension costs and estimated National Insurance costs and including those under the age of 25) more that will need to be paid to staff in 2016/17.
- 5.4 Projections of the cost of implementing the NLW up to 2020, based on current staffing levels and pay rates, and including the projected rise to a £9 per hour rate have also been produced. Care should be taken when using these figures however, as they do not take into account any already anticipated 1% increases in pay or rates already budgeted for and are based on staffing levels to remain the same as currently.

However, the estimates show a steady cumulative increase in the total cost over the 4 year period, based on increasing numbers of staff needing to be paid the NLW (from 370 (14%) in 2016 to 780 (31%) by 2020). Based on current staffing numbers (including casual staff) the estimated annual cost of implementing the NLW will reach almost £1.1m in year 2020/21.

- 5.5 Further costs may be incurred in the event of the resolution of the national pay agreements in terms of some additional uprating of staff pay up to scale point 17 by more than that anticipated 1% to take into account maintaining existing pay differentials.

6.0 IMPLICATIONS FOR THE COUNCIL’S PRIORITIES

- 6.1 At a time when the Council’s resources are continually reducing, the introduction of the NLW will put further pressures on the Council’s ability to maximise essential frontline services. However, the benefits to those employees affected is welcomed, given the downward pressures on pay that austerity has brought.

7.0 RISK ANALYSIS

- 7.1 There are limited risks in extending the NLW to under 25s, given that the national pay negotiations are likely to increase pay rates to incorporate the NLW for all employees. The decision sought of the Executive Board simply covers the period until such time that that circumstance applies.

8.0 EQUALITY AND DIVERSITY ISSUES

- 8.1 The decision to pay the same new rates for the under 25s would protect the Council from any equal pay claims as staff undertaking the same roles would be paid the same.

9.0 LIST OF BACKGROUND PAPERS UNDER SECTION 100D OF THE LOCAL GOVERNMENT ACT 1972

Document	Place of Inspection	Officer
Budget Statement July 2015	Kingsway House	Lisa Driscoll
National Minimum Wage (Amendment) Regulations 2016	Kingsway House	Lisa Driscoll
Equality Act 2010	Municipal Building	Lisa Driscoll