



## Wage rates in public procurement contracts

This paper explores the different wage options in the United Kingdom and considerations that should be made when procuring goods and particularly services in relation to those.

### Background

The **National Minimum Wage** and the **National Living Wage** rates are set by Government and reviewed annually. They are statutory in employment law, linked to age, and companies can be prosecuted if they pay lower amounts.

The **Real Living Wage** and the **London Living wage**, are agreed values set by the [Living Wage Foundation](#). The real Living Wage is the only UK wage rate that is voluntarily paid by 7,000 UK businesses who believe their staff deserve a wage which meets everyday needs - like the weekly shop, or an urgent trip to the dentist.

They are optional for employers to pay however provide employees with a higher income, companies with a reputation of treating their staff better and therefore usually increase staff retention prospects.

In April 2016, the government introduced a higher minimum wage rate for all staff over 25 years of age. However, this wage is not calculated according to what employees and their families need to live. Instead, it is based on a target to reach 66% of median earnings by 2024. Under current forecasts this means a rise to £10.50 per hour by 2024. For under 25s, the minimum wage rates also consider affordability for employers.

The real Living Wage rates are higher because they are independently-calculated based on what people need to get by.

All the rates paid are reviewed annually.

The below table, from the Living wage foundation, summarises the differences and provides further background.

# Explaining UK Wage Rates

	THE MINIMUM WAGE <small>Government minimum for under 25s</small>	NATIONAL LIVING WAGE <small>Government minimum for over 25s</small>	REAL LIVING WAGE <small>The only wage rate based on what people need to live</small>
WHAT IS IT?	£8.20	£8.72	£9.50 across the UK and £10.85 in London
IS IT THE LAW?	Statutory	Statutory	Voluntary
WHAT AGE GROUP IS COVERED?	23 and older	23 and older	18 and older
HOW IS IT SET?	Negotiated settlement based on recommendations from businesses and trade unions	A % of median earnings, it aims to reach 68% of median earnings by 2024.	Calculation made according to the cost of living, based on a basket of household goods and services
IS THERE A LONDON WEIGHTING?	No London Weighting	No London Weighting	Yes - Separate higher rate for London

## The Living Wage Foundation

There are currently over 7000 accredited living wage employers across the UK (this includes LUPC). Each of these suppliers has made a commitment to pay the independently-calculated Living Wage rates to all staff in London and the UK or are working to an agreed timetable of implementation.

## Stipulation in procurement contracts, including framework agreements – Legal position

In procurement contracts, it is not legally permissible to insist that contractors to pay anything more than the statutory minimum.

During 2015 the Scottish Government obtained clarification from the European Commission. It confirmed that contracting authorities are unable to make payment of the Living Wage a mandatory requirement as part of a competitive procurement process where the Living Wage is greater than any minimum wage set by or in accordance with law. In the UK, this is the National Minimum Wage.

However, it is possible to ask pertinent questions regarding a supplier's stance on paying the living wage. The following are examples of questions which are asked by the UK Universities purchasing consortia nationally:

- What initiatives or proactive steps has your organisation taken to ensure that those employed within your supply chain are paid a Real living wage?
- If requested to do so at call off, would you be willing to pay your employees on an awarded contract the Real Living wage?
- Please declare your current position and provide evidence on your staff payment and benefits policy. If you are successful in appointment to the Framework Agreement and your position changes at any time, you must update the contracting authority as soon as possible and declare your new position on payment of The Living Wage.

## **Practical considerations**

### **Which contracts should I consider as highly relevant to include living wage clauses in?**

Any contract which involves an element of service delivery and is seen as a low wage industry (this is not such an issue in businesses employing Architects or legal services for instance) should be considered. The most prevalent areas include cleaning, security, catering/restaurant workers, caregiving and childcare, delivery drivers.

### **What is your organisational position on the different rates paid?**

As with all contracts, the cost of a service provision will be passed on to the buyer, therefore it is important to understand fully the breakdown of costs which make up the price of any contract. The largest part will always be labour therefore recognising the impact of different wage structures is essential. The increased costs of paying the Real Living Wage, versus the statutory Minimum Wage will have an impact on the total cost of the contract – consider if you have budget for this in your organisation. Are the senior leadership team able and willing to pay the additional amount? Also are they aware of the reputational benefits which are associated with that for the business?

Staff that are paid a fair price for the work they do tend to be better motivated and stay in their roles longer. This is beneficial for both the individuals and the employers.

### **Other factors**

When contracts are let careful consideration is given to the evaluation scoring allocated to suppliers in a variety of areas relating to the treatment of workers. Whilst the payment of the Real Living Wage may be desirable, it cannot be specified as a mandatory requirement for the reasons stated above (if buyers have budgeted for this), there are also other responsible procurement considerations made in contracts which enable us to understand if a supplier treats its staff fairly. Consortia contracts now include a number of questions to understand and ensure suppliers follow fair work practices, these include compliance with all relevant employment, equality and health and safety law and human rights standards.

A short note on TUPE. The Transfer of Undertakings (Protection of Employment) Regulations purpose is to protect employees if the business in which they are employed changes hands. If you have an existing contract, where employees are being paid a set amount, and you change supplier, those staff will likely transfer across to the new contractor and will be required to be remunerated under the same terms as previously. Therefore, when considering a new provider or moving to changing the terms of current employment (for the better), it is important to think about the long term implications of this.

Should you have any questions please do not hesitate to contact us.