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EUROPEAN SOCIAL CHARTER

33rd National Report on the implementation of
the 1961 European Social Charter

submitted by

THE GOVERNMENT OF THE UNITED KINGDOM

(Articles 2, 4, 5 and 6
for the period
01/01/2009 – 31/12/2012)

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COUNCIL OF EUROPE

THE EUROPEAN SOCIAL CHARTER

THE UNITED KINGDOM'S THIRTY-THIRD REPORT

OCTOBER 2013

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[1] The United Kingdom has not accepted and does not report on Article 4, Paragraph 3

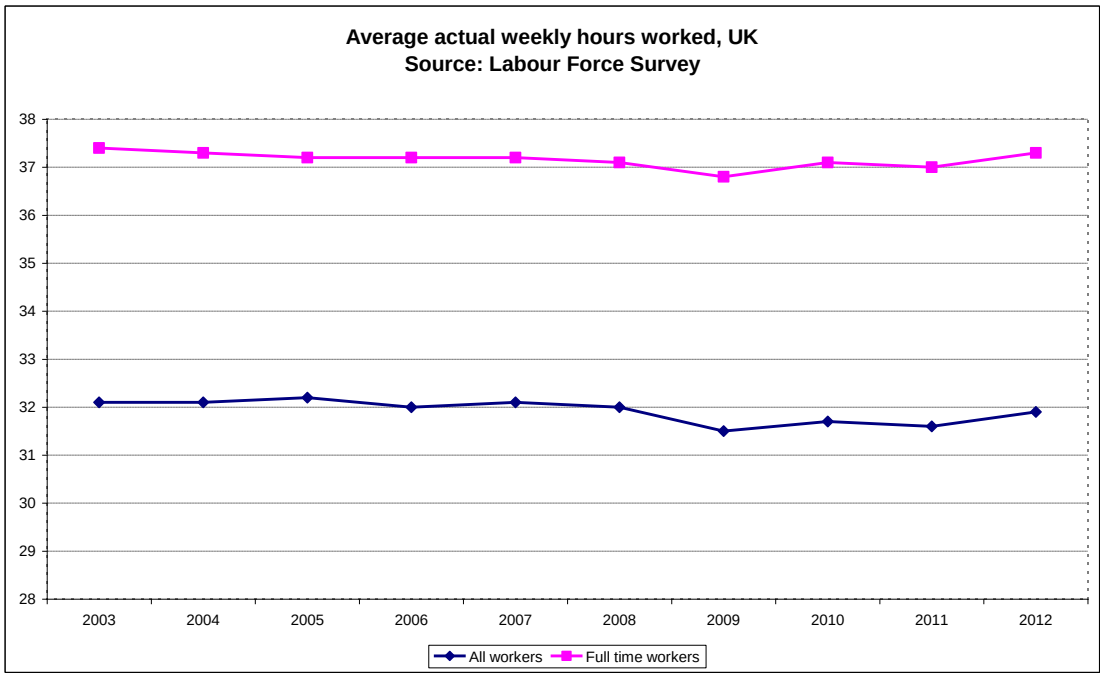
Article 2 – the right to just conditions at work

United Kingdom

Article 2, Paragraph 1

1. The legal position for daily and weekly working hours has not been changed in the period since the twenty-ninth report. Individuals can work up to 48 hours per week (usually averaged across a 17-week reference period), but have the right to opt-out of this limit. However, hours worked remain limited by requirements for daily and weekly rest periods.

2. In the UK, average weekly working hours have been falling over time. The chart below shows average actual weekly hours worked in the UK both for full-time workers and across all workers. This chart does suggest that average actual hours worked are leveling off now. The slight dip from 2009 to 2011 reflects the fact that during the recent recession the total hours worked fell. It was not until 2012 that total hours worked recovered to 2008 levels.



Article 2, Paragraph 2

In Conclusions XIX-3, the Committee of Social Rights concluded that the situation in the UK is not in conformity with Article 2§2 of the Charter on the ground that it has not been established that the right to public holidays with pay is guaranteed.

1. The introduction in 1998 of the right to 4 weeks' paid annual leave gave workers an entitlement to paid annual leave. The Government extended the statutory paid holiday entitlement beyond that required by the European Working Time Directive to 5.6 weeks for most workers – for someone working 5 days a week this would mean an entitlement of 28 days. This was because in some cases workers were required to include public holidays within their 4 week paid annual leave allowance. This change was introduced in Great Britain by the Working Time (Amendment) Regulations 2007 SI 2007/2079[1] and in Northern Ireland by the Working Time (Amendment) Regulations (Northern Ireland) 2007 SR 2007/340[2]. Workers cannot forego their right to 5.6 weeks of paid leave for financial compensation (except that upon termination of employment, there is an entitlement to a payment in respect of any untaken statutory leave which is due). This annual leave situation is more generous than in many countries.

2. There is no entitlement to take leave on bank and public holidays – inevitably some people are required to work on bank and public holidays. Equally this gives flexibility to workers. Some workers will prefer not to take leave on bank holidays for a variety of personal reasons. However, if they do work on a bank holiday they are still entitled to the same total paid leave, but it might be taken on an alternative day or days - the rate of pay and circumstances in which work may be performed on a bank holiday is a matter for individual contracts (subject to employment law restrictions, such as the national minimum wage and restrictions on working hours).

3. The UK's Labour Force Survey shows that 79 per cent of employees were paid at least their basic rate for all bank holidays not worked, with a further 3% paid at least basic rate for some bank holidays not worked. Of the 18% who said they were not paid for bank holidays not worked, around 15% said they hadn't started their current job at the time of the relevant bank holidays, while 20% received paid annual leave (excluding bank holidays) of 28 days or more. It is very unusual for workers to work on all of the UK's public holidays. 87% of those working at least three public holidays got at least 20 days paid annual leave (excluding bank holidays).

4. A recent survey (The Fourth Work-Life Balance Employee Survey, 2012[3]) showed that the majority of employees in the UK (78 per cent) took

[1] http://www.opsi.gov.uk/si/si2007/uksi_20072079_en_1
[2] http://www.legislation.gov.uk/nisr/2007/340/pdfs/nisr_20070340_en.pdf
[3] http://www.bis.gov.uk/assets/biscore/employment-matters/docs/F/12-p151-fourth-work-life-balance-employee-survey.pdf

their full leave entitlement. Compared to previous surveys this is an increase, albeit slight.

Article 2, Paragraph 3

In relation to days lost to illness during annual leave, in consideration of the UK's 29th report, the Committee of Social Rights concluded that the situation is not in conformity with Article 2§3 of the Charter on the grounds that workers who fall ill or are injured during their holiday are not entitled to take the days lost at another time.

5. The legislation on annual leave entitlement, the Working Time Regulations 1998 (WTR), has not been amended since the last report in relation to the interaction of sickness and annual leave. However, there have been legal judgments on its meaning that also have a bearing on the Committee's Conclusions.

6. If possible, the WTR must be interpreted in conformity with the Working Time Directive (of the EU). It is clear from judgments of the Court of Justice of the European Union (for example, *Pereda*[1]) that the Working Time Directive requires that if a worker is unable to take any of their 4 week annual leave entitlement due to sickness, the worker can chose to take it at a later date, including, if necessary, in the next leave year. The WTR does not contain a prohibition on a worker who is sick during annual leave from changing that leave to sick leave and taking the annual leave later in the leave year. Therefore, the WTR should be interpreted to permit this.

7. On the issue of whether leave which is untaken due to sickness can be carried over, the WTR provide that leave may only be taken in the year in which it is due. However, in light of domestic judgments (*NHS Leeds v Larner*[2] and *Sood Enterprises v Healy*[3]), the WTR can be interpreted compatibly with the Directive so that although leave may usually only be taken in the year in which it is due, there is an exception for cases where the worker was unable or unwilling to take it because the worker was on sick leave and as a consequence did not exercise the right to annual leave. This means that a worker should be able to carry-over into the next leave year any of the 4 week annual leave entitlement which has not been taken due to sickness.

8. As a result:

- where statutory annual leave coincides with sickness, the worker should be able to take it at a later date; and
- at the end of a leave year, if any of a worker's 4 week leave entitlement is untaken due to sickness, it falls to be carried over into the next leave year.

[1] C-227/08.
[2] [2012] EWCA Civ 1034 (Court of Appeal).
[3] UKEATS/0015/12/BI (Employment Appeal Tribunal).

Article 2, Paragraph 4

1. The position remains as previously described.

In response to the UK's previous Report, the Committee of Social Rights noted that the guidelines published by the Government do not form a binding legal basis and that there is still no provision in UK legislation for working hours to be reduced or additional leave to be granted to workers engaged in dangerous or unhealthy occupations. It therefore reiterated its finding of non-conformity. The Committee concluded that the situation in the UK is not in conformity with Article 2§4 of the Charter on the ground that it has not been established that measures reducing exposure to risks are provided.

2. The Government, respectfully, does not agree with the Committee's conclusions. The approach taken by the UK, as described below, is explicitly focused on reducing exposure to occupational health risks in line with a set of principles enshrined in legislation. It can be argued that the UK has a robust framework for reducing risk that is focused on reducing exposure under the established principles of elimination, reduction, assessment and control of risk. In the Government's view, this goal-setting approach presents the potential for higher levels of risk control than simply focusing on reducing the time of exposure to the risk or by providing additional leave once the workers have been exposed to risks to their safety or health at work.

3. The Government considers that the best way to ensure the health and safety of workers, regardless of the type of work carried out, is to ensure that work-related risks are properly managed. To achieve this, a comprehensive health and safety system is in place, with a robust framework for reducing risk that focuses on reducing exposure under the well-established principles of elimination, reduction, assessment and control of risk.

4. In Great Britain, Regulation 4 of The Management of Health and Safety at Work Regulations 1999 sets out the principles of prevention to be applied. Similar legislation applies in Northern Ireland. Schedule 1 to the Regulations sets out the hierarchy of measures implemented as a result of Article 6(2) of the EU Council Directive 89/391/EEC.

5. This goal–setting, preventive approach presents the potential for higher levels of risk control than simply focusing on reducing the time of exposure to the risk. The UK considers that through this comprehensive system, risks should be eliminated or sufficiently reduced in all work carried out to the extent that provision of reduced working hours or additional paid holidays would serve no practical purpose.

6. The Government draws the Committee of Social Rights' attention to ILO Convention No. 187, the 'Promotional Framework for Occupational Safety and Health', which the UK ratified in 2008. This Convention includes the requirements to contribute to the protection of workers by eliminating or minimizing, so far as is reasonably practicable, work-related hazards and

risks, in accordance with national law and practice, in order to prevent occupational injuries, diseases and deaths and promote safety and health in the workplace. The Convention advocates prevention as the method by which to ensure workers' safety and health rather than palliative measures such as providing additional leave for workers who have arduous working conditions.

Working time and the management of risks from fatigue and shift work

7. The Government would also draw the Committee's attention to the fact that UK provision exceeds the 4 weeks leave required in EU working time legislation giving all workers 5.6 weeks annual leave, since 1 April 2009. The Working Time Regulations 1998 (as amended) lay down the minimum legal requirements on how to organise working time. However, within the UK legislative framework for health and safety at work it is not sufficient to rely on these requirements alone to manage the risks from fatigue and shift work.

8. When employers organise shift working arrangements they must comply with the general duties under the Health and Safety at Work etc. Act 1974 (as amended). These duties require employers, including the self-employed, to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all their employees. The implementation of EU Directives into the UK framework has further strengthened the legislative position, specifically in terms of the duties under MHSWR. The duties under MHSWR Regulation 3 require employers to make a suitable and sufficient risk assessment of the risk to employees from work activities and to introduce measures to remove or control these risks. The duties under MHSWR Regulation 5 require employers to make appropriate arrangements for the effective planning, organisation, control, monitoring and review of the preventive and protective measures. These measures include actions taken to mitigate the risks to safety and health of workers arising from the number of hours worked and how these hours are scheduled.

9. There are also industry-specific Regulations, which impose specific requirements on employers with regards to the number of hours worked and how these hours are scheduled. For example, the Railway and Other Guided Transport Systems (Safety) Regulations 2006, which are enforced by the Office of Rail Regulation (ORR).

10. The Health and Safety Executive (HSE) published guidance to help employers meet their legal duties in July 2006. Managing Shift Work (HSG256)[1] - guidance for employers on managing the risks from working hours associated with shift working. This provides advice on the nature of the risks, how to assess them and on designing safer, optimal working patterns. It includes a series of goal-setting 'Good Practice Guidelines' which employers are encouraged to use to help them improve the design of the working patterns they specify for their workers.

11. In addition, particularly where work may be hazardous or safety critical,

[1] http://www.hse.gov.uk/pubns/books/hsg256.htm

the guidance advocates use of the Fatigue Risk Index calculator. This tool was commissioned as an aid to risk assessment. It helps employers to identify the risks associated with rotating shift patterns. This tool takes account of the type of work, commuting time, the number and frequency of breaks, as well as the shift length, start and finish times. It then highlights the points in the shift schedule where fatigue and risk are highest so that employers can reduce the risks by changing the shift pattern, for example altering the timing or length of the shifts or incorporating more breaks, and so forth.

12. Together, Managing Shift Work (HSG256), the Good Practice Guidelines and the Fatigue Risk Index provide employers with comprehensive advice and tools to enable them to control properly the health and safety risks associated with working hours.

13. The UK does not lay down requirements for breaks which apply to all types of work, but it is the nature and mix of demands made by the job which determine the length of break necessary to prevent fatigue. General guidance is provided on HSE's website[1] [2] .

14. Some examples of specific regulations and measures designed to reduce exposure to risks in occupations, or involving work processes, in situations where it has not been possible to eliminate all residual risks are set out below.

- **Manual Handling Operations Regulations 1992 (as amended) (MHOR) and associated guidance**[3].

  HSE has also produced a series of free and internet-accessible supporting guidance on a range of musculoskeletal topics to assist employers meet their duties:
  - The Manual Handling Assessment Charts (MAC)[4]; and
  - Assessment of Repetitive Tasks (ART)[5] tool.

  This suite of guidance provides practical support for employers in the assessment and management of risk.

- **Health and Safety (Display Screen Equipment) Regulations 1992** and associated guidance[6].

- **The Control of Substances Hazardous to Health (COSHH) regulations (2002)**[7] requires employers to control substances that can harm workers'

[1] http://www.hse.gov.uk/contact/faqs/workingtime.htm
[2] http://www.hse.gov.uk/humanfactors/topics/10fatigue.pdf
[3] http://www.hse.gov.uk/pubns/books/l23.htm (free to download)
[4] http://www.hse.gov.uk/msd/mac
[5] http://www.hse.gov.uk/msd/uld/art
[6] http://www.hse.gov.uk/pubns/priced/l26.pdf (free to download)
[7] http://www.hse.gov.uk/coshh

health (Regulations 6 and 7). COSHH essential information sheets[1] give advice on controlling substance use in a range of common tasks.

15. Interventions aimed at raising awareness and reducing incidence rates have been developed and utilised by HSE and industry regarding topics including occupational dermatitis (for example in hairdressing)[2] [3], exposure to silica (such as in quarries and construction), those exposed to Isocyanates[4] [5] [6](for example vehicle paint sprayers) and occupational asthma[7] (such as bakers and motor vehicle repairers).

16. HSE has worked in partnership with employer and employee organisations to build upon the existing legislative framework and develop the Management Standards for **work-related stress**[8]. The UK has used a wide variety of interventions to encourage organisations to tackle work-related stress, including workshops, a help line, inspection activity, the provision of a comprehensive web resource and guidance[9].

[1] http://www.hse.gov.uk/coshh/essentials
[2] http://www.hse.gov.uk/hairdressing/bad-hand.htm
[3] http://www.hse.gov.uk/skin
[4] http://www.hse.gov.uk/pubns/priced/hsg261.pdf
[5] http://www.hse.gov.uk/research/hsl_pdf/2006/hsl0611.pdf
[6] *Isocyanate exposure control in motor vehicle paint spraying: evidence from biological monitoring* Ann. Occupational Hygiene, Vol. 57, pp. 200-209, 2013 [regarding effectiveness of Safety Health and Awareness Days (SHADs)]
[7] http://www.hse.gov.uk/asthma
[8] http://www.hse.gov.uk/stress/standards
[9] http://www.hse.gov.uk/stress/resources.htm

Article 2, Paragraph 5

1. The position remains largely as previously described.

2. The table below shows that the overwhelming majority – 83 per cent of those in employment in the most recent data - benefit from a Sunday off work.

Table 1: Those in employment, UK, who work Sundays

	Report usually working on Sunday	Those who report usually working on Sunday as a % of those in employment	Those who report usually working on Sunday as a % of employees
Q2 2006	4609395	15.9%	15.2%
Q2 2007	4574522	15.7%	15.0%
Q2 2008	4458434	15.1%	14.4%
Q2 2009	4607346	16.0%	15.0%
Q2 2010	4795446	16.6%	15.7%
Q2 2011	4771919	16.4%	15.5%
Q2 2012	5065920	17.2%	16.1%

Source: Labour Force Survey

In Conclusions XIX-3 the Social Rights Committee concluded that the situation in the UK is not in conformity with Article 2§5 of the Charter on the grounds that there are inadequate safeguards to prevent that workers may work for more than twelve consecutive days without a rest period.

3. The situation where a person might work more than 12 days between weekly rest is where a special case under Regulation 21 of the UK Working Time Regulations applies, e.g. there is a need for business continuity, unusual or unforeseen circumstances etc. In such cases compensatory rest is due under Regulation 24. These cases are in keeping with Article 17 of the EU Working Time Directive.

4. The Working Time Regulations are quite clear that workers should not normally work for more than 12 consecutive days. Workers are usually entitled to one whole day off a week. There are some exceptions to this, for example to deal with emergency situation, but these are limited and subject to the condition that workers get compensatory rest. Days off can be averaged over a two-week period, meaning workers can take two days off a fortnight. Days off are taken in addition to the paid annual leave entitlement. Different rest break periods apply to young workers – for example, young workers are usually entitled to two days off each week. This cannot be averaged over a two-week period and should normally be two consecutive days.

Isle of Man

Article 2 Paragraph 1

This paragraph has not been accepted by the Isle of Man

Article 2, Paragraph 2

Questions 1 to 3

The position remains as previously described.

Article 2, Paragraph 3

Questions 1 to 3

1. The position remains as previously described.

In response to the Committee's conclusions on the 2009 report, the Isle of Man Government would make the following additional comments.

2. As regards postponement of annual leave, while the Annual Leave Regulations 2007 do not make provision for annual leave to be carried forward to a subsequent leave year there may be contractual arrangements between employers and workers which permit carryover of annual leave. For example a civil servant may carry over up to 12 days' leave which may be taken during the following leave year.

3. As regards sick leave, the Annual Leave Regulations 2007 provide for workers to be sick for up to 6 months in a complete leave year or up to half of a part leave year without any loss of statutory annual leave. While provision is not made for workers who fall ill or who are injured during their holidays to take their leave at another time some employers may nevertheless permit conversion of annual leave into sick leave. For example, if a civil servant falls sick during a period of annual leave the period of illness may be treated as sick leave and not as annual leave provided that certain requirements are fulfilled.

Article 2 Paragraph 4

Questions 1 to 3

The position remains as previously described.

Article 2 Paragraph 5

Questions 1 to 3

The position remains as previously described.

Article 4

Article 4, Paragraph 1

The National Minimum Wage (NMW) legal framework

1. All workers in the UK, except the genuinely self-employed, are entitled to be paid at least the NMW. Further information on who is covered can be found on the Government website[1]. There are detailed requirements relating to the NMW rates, the method of calculation and exclusions or modifications. A worker's right to the NMW is enforced by Government who have the power to inspect employers and, if they find that workers are not being paid the NMW, take action to require employers to pay arrears to underpaid workers.

2. In April 2009, the legal provisions on enforcement were strengthened with the introduction of automatic penalties for employers who are found to be non-compliant with NMW requirements, a new method of calculating arrears that takes into account the length of time since the underpayment occurred and stronger powers for those who enforce the NMW. The aim of these reforms was to improve and strengthen the NMW enforcement regime by providing a more effective penalty regime to deter compliance and ensure a fairer way of dealing with NMW arrears.

In response to the UK's previous Report, the Committee of Social Rights took the view that the minimum wage cannot be considered fair as it falls too far behind the average national wage and is inadequate.

3. The Government, respectfully, does not agree with the Committee's assessment of a "fair" bite. The Committee's case-law on Article 4 of the European Social Charter indicates that a net wage which falls below the 60% of the net average wage would be considered unfair within the meaning of the Charter. The aim of the NMW is to maximise the hourly minimum rate of pay without damaging employment prospects. That is why the Low Pay Commission (LPC) recommends the rates and calculates the bite using 'gross pay' (i.e. before tax and other deductions) rather than net pay.

4. Furthermore, average earnings can be affected by those on very high incomes and can affect the NMW bite. For this reason the NMW is reported as a percentage of median hourly earnings (which is less affected by very high earners). The limit of 60% quoted by the Committee appears to use the average wage as a benchmark and not the median

5. The Government invites the Committee to consider the following summary of the main elements in its policy.

National Minimum Wage (NMW)

6. The Government's strategy is to provide fair standards in the workplace

[1] https://www.gov.uk/national-minimum-wage

and make work pay. That is why the NMW was introduced. Over the past ten years it has brought substantial benefits to the lowest-paid workers. The aim is to help the low paid by setting an increased NMW while making sure that we do not damage their employment prospects by setting it too high.

7. On 1 October 2012, the NMW for adult workers increased from £6.08 to £6.19. The rate for 18-20 year olds was frozen at £4.98, as was the rate for 16 and 17 year olds at £3.68.

8. Around 1 million workers have benefited from the NMW each year since its introduction.

9. The independent Low Pay Commission (LPC) recommends the rates which it believes are appropriate based on a thorough consultation and the economic evidence available.

10. The Department for Business, Innovation & Skills (BIS) estimates that the bite adult NMW (as a percentage of median earnings) has risen from 45.6% in 1999 to 53.7% in 2012. According to OECD data, the UK minimum wage bite in 2011 was similar to the OECD average[1]. In terms of purchasing power, the UK minimum wage was 7th highest among the OECD countries that had a statutory minimum wage in 2012.

Real increase in NMW between 1997 and October 2012

11. In October 2012, the adult rate was increased to £6.19, a 72% increase compared to its level when the NMW was introduced in April 1999. In real terms, the NMW rose by about 16% compared to RPI and by about 28% compared to CPI over the same period.

How is the current rate decided?

12. The Government takes advice on NMW rates from the independent Low Pay Commission. The LPC carries out a wide ranging consultation (including with worker and employer representatives) and considers economic evidence in coming to its recommendations. The aim when setting the rates is to help the low paid through an increased minimum wage, while making sure that we do not damage their employment prospects by setting it too high.

NMW alongside other policies to support the low paid

13. The NMW is just one element of the Government's wider strategy for tackling low living standards. Because peoples' circumstances vary, the NMW needs to be seen in conjunction with other measures for alleviating poverty.

14. In addition to the minimum wage, the Government is helping all working people on low pay by maximising their take-home pay. That is why

[1] National minimum wage as a percentage of mean earnings, un-weighted average

we are cutting income tax for the low paid and by the end of 2012, the change had benefitted 25 million workers.

15. Since the October 2012 NMW uplift, an adult on the minimum wage working 28 hours a week has not paid income tax.

Measures taken to implement the legal framework

16. The Low Pay Commission (LPC) was established by the Government in July 1997. It is independent of Government and comprises of nine Commissioners, three of whom have a trade union background, three with an employer background and two academic labour relations specialists and an independent Chair. The LPC's task is to make recommendations on the minimum wage to Government. The LPC undertakes extensive consultation, which supplements their analysis of research and official data. They receive written submissions and take oral evidence for a wide range of representative organisations. They also make visits across the UK to enable them to have direct contact with businesses in low paying sectors and areas with unemployed and low-paid workers and their representatives.

17. HM Revenue & Customs (HMRC) officials act as enforcement officers for the purposes of the NMW. HMRC's enforcement of employers' obligations to pay workers the NMW is focussed on the workers' right to receive what they are entitled to. Enforcement is initiated either by a complaint from workers or third parties, or as a result of risk assessment by HMRC. The purpose of an investigation is to determine whether or not an employer has complied with the requirement to pay workers the NMW. Where a compliance officer discovers that the NMW has not been paid to a worker or group of workers, the officer's aim is to ensure that workers receive what they are entitled to as soon as practicable.

Key statistics

National Minimum wage rates

Table 1 below provides information on NMW rates by age band over time.

Table 1: UK National Minimum Wage rates

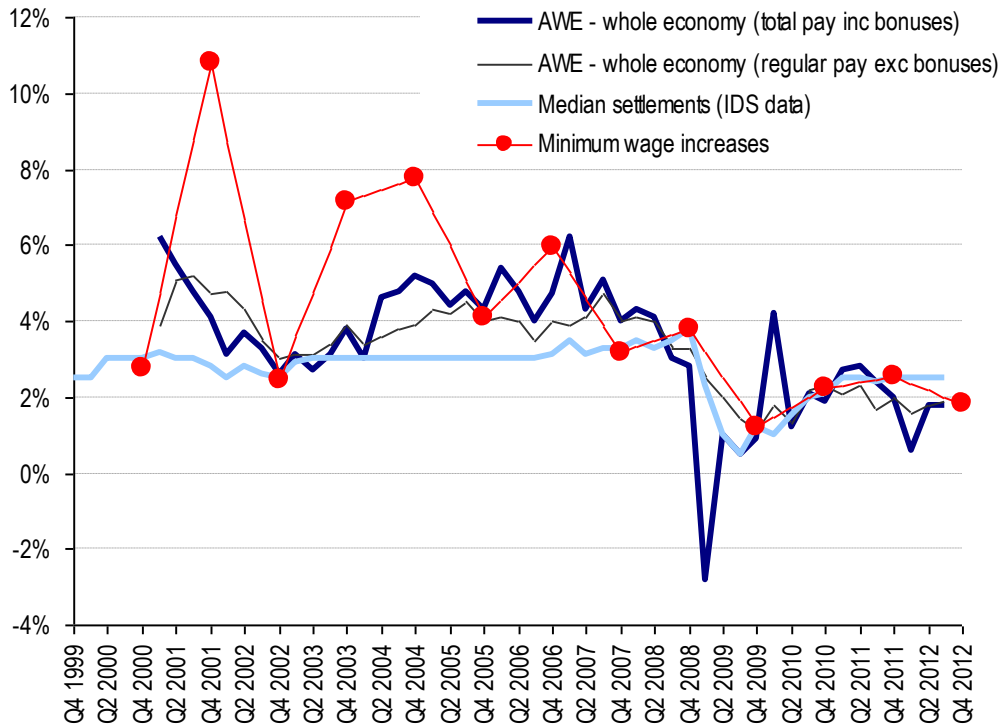
	Adult Rate	Development rate	16-17 year old rate
	For workers aged 21+	For workers aged 18-20	
1st October 2012	£6.19	£4.98	£3.68
1st October 2011	£6.08	£4.98	£3.68
1st October 2010	£5.93	£4.92	£3.64
	For workers aged 22+	For workers aged 18-21	
1st October 2009	£5.80	£4.83	£3.57
1st October 2008	£5.73	£4.77	£3.53
1st October 2007	£5.52	£4.60	£3.40
1st October 2006	£5.35	£4.45	£3.30
1st October 2005	£5.05	£4.25	£3.00
1st October 2004	£4.85	£4.10	£3.00
1st October 2003	£4.50	£3.80	-
1st October 2002	£4.20	£3.60	-
1st October 2001	£4.10	£3.50	-
1st October 2000	£3.70	£3.20	-
1st April 1999	£3.60	£3.00	-

Source: Low Pay Commission

Average earnings, pay settlements and increases in the NMW

18. Overall wage growth has remained modest over the period of the NMW (see chart 1). Average weekly earnings generally tended to increase at between 3% - 5% until the 2008 recession, when they were shocked downwards. Post recession, average weekly earnings have tended to increase by 1% - 3% annually. Chart 1 also plots annual NMW increases; the largest percentage rise in the NMW was in October 2001. Since around 2005, adult minimum wage increases have been broadly in line with increases in measures of average earnings.

Chart 1: Average annual earnings growth, pay settlements and NMW increases

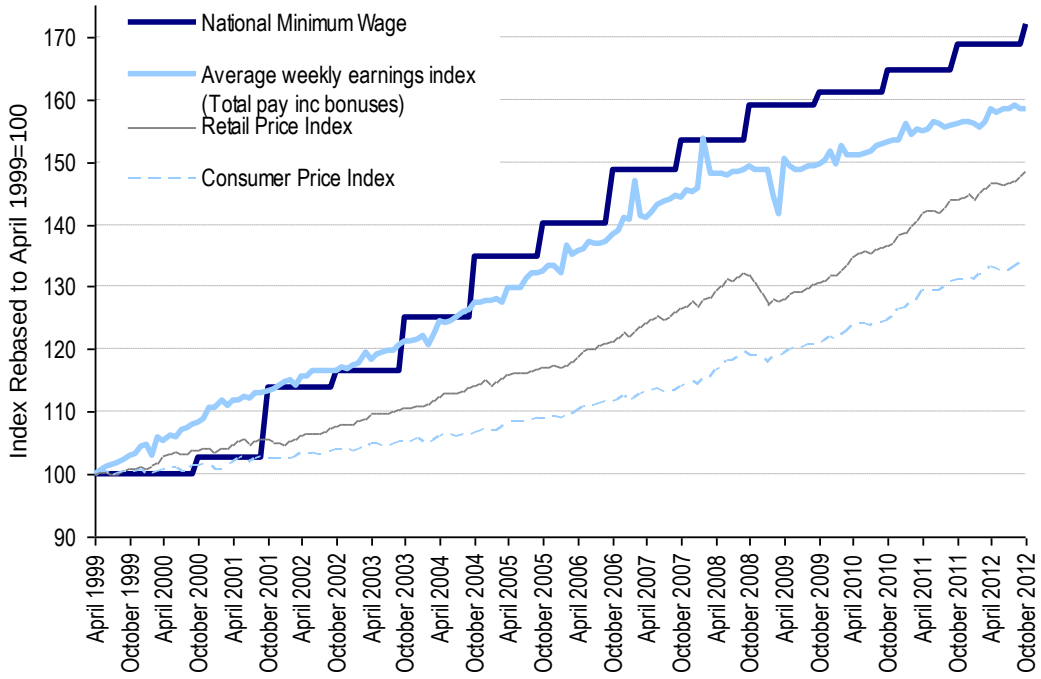


Source: Office for National Statistics, Average Earnings Index (excluding bonuses); Median settlement (IRS data)

NMW increases and earnings growth

19. Since it was introduced, the NMW rate has increased substantially faster than both average earnings and prices (chart 2). Since it was introduced in April 1999 the adult NMW rate has risen by around 72 per cent (up to October 2012). In comparison, the rise in Average Weekly Earnings (total pay, including bonuses) between April 1999 and October 2012 is estimated to be around 58.5 per cent (see Chart 2.6). The increase in the Retail Price Index (RPI) is estimated to be around 49 per cent, and the Consumer Price Index (CPI) around 34 per cent over the same period.

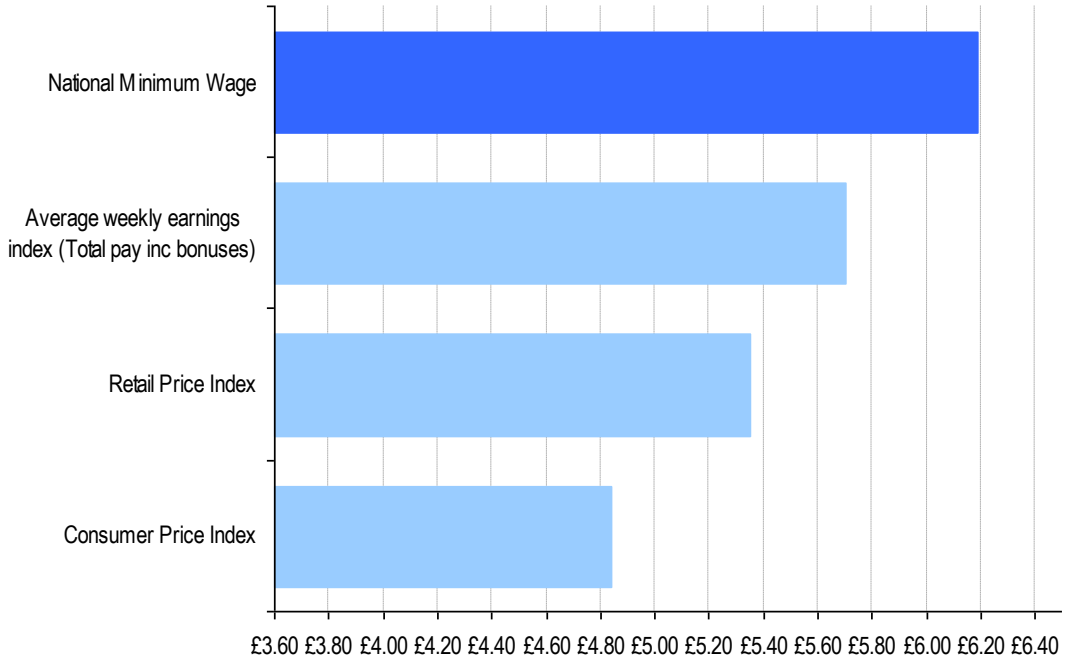
Chart 2: Adult NMW increases compared to earnings growth and inflation
Index Rebased to April 1999 = 100



Source: Office for National Statistics; Retail Price Index, Consumer Price Index and Average Weekly Earnings Index
Low Pay Commission; National Minimum Wage

20. Another way of looking at NMW growth is to compare the actual NMW with what it would have been had it grown in line with average earnings or prices. The adult NMW was increased to £6.19 in October 2012. If the initial rate of £3.60 had instead been indexed to average earnings, the October 2012 rate would have been £5.70. If it had been indexed to the Retail Price Index it would have been £5.35 and if indexed to the Consumer Price Index it would have been £4.84 (see Chart 3). However, reflecting a cautious approach, the NMW was initially set at a relatively low level and therefore increases above inflation and average earnings may have been expected in its early years.

Chart 3: Adult NMW indexed to earnings growth and inflation*



Source: BIS estimates; Office for National Statistics
*AWE, RPI and CPI Indices as at end of October 2012. Adult NMW rate as at October 2012.

21. In recent years (since around 2008 to present), consumer price inflation has generally been above increases in average earnings. When taking into account RPI, the adult minimum wage of £6.19 in October 2012 was lower in real terms than at any point since 2003. Adjusting for CPI shows a similar trend, with the adult rate in 2012 the lowest in real terms since 2004, although significantly higher than the CPI adjusted rate in 1999 of £4.84 an hour. If we adjust for the growth in Average Weekly Earnings (AWE), then in August 2012 the minimum wage reached its highest ever value.

The bite of the minimum wage

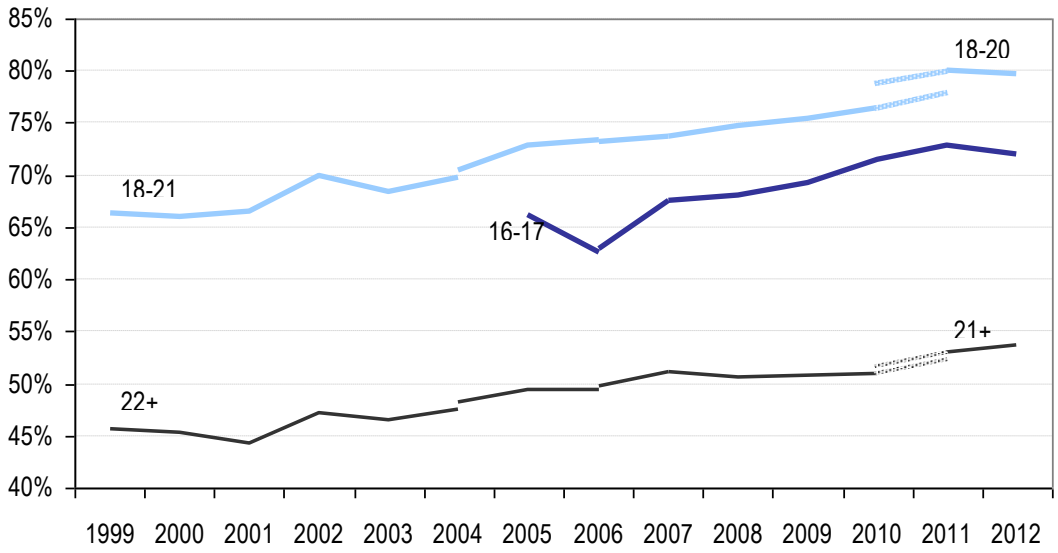
22. The minimum wage as a proportion of earnings is often termed the 'bite' and is a measure of how high up in the earnings distribution curve the NMW cuts in. Usually median earnings are the preferred measure of average earnings. Since its introduction, the bite of the adult NMW has increased from 45.6 per cent of the median wage to 53.7 per cent in April 2012 (see Chart 4).

23. The bite has therefore increased by around 8 percentage points since the NMW was introduced in 1999. It increased by 0.6 percentage points between April 2011 and 2012, reflecting the October 2011 £0.15 increase in the adult minimum wage. This bite estimate does not include the October 2012 uprating in the minimum wage, as we do not yet have median earnings data for this period. The October 2012 minimum wage increase (1.8 percent) is slightly above the average annual earnings growth for April 2012 (1.5

percent), which might indicate that the bite in April 2013 could increase slightly.

24. The rate for 18-20 year olds also continued to increase, reaching 79.7 per cent of the median in 2012. There was a big jump in the 16-17 year old bite due to the uprating to £3.30 in October 2006. Their bite increased from 63 per cent in Spring 2006 to around 68 per cent in Spring 2007. Since then, the bite for 16-17 year olds increased gradually up to April 2011, before falling slightly between 2011 and 2012 to reach 72 per cent.

Chart 4: The bite of the NMW
Minimum wage as a per cent of median earnings



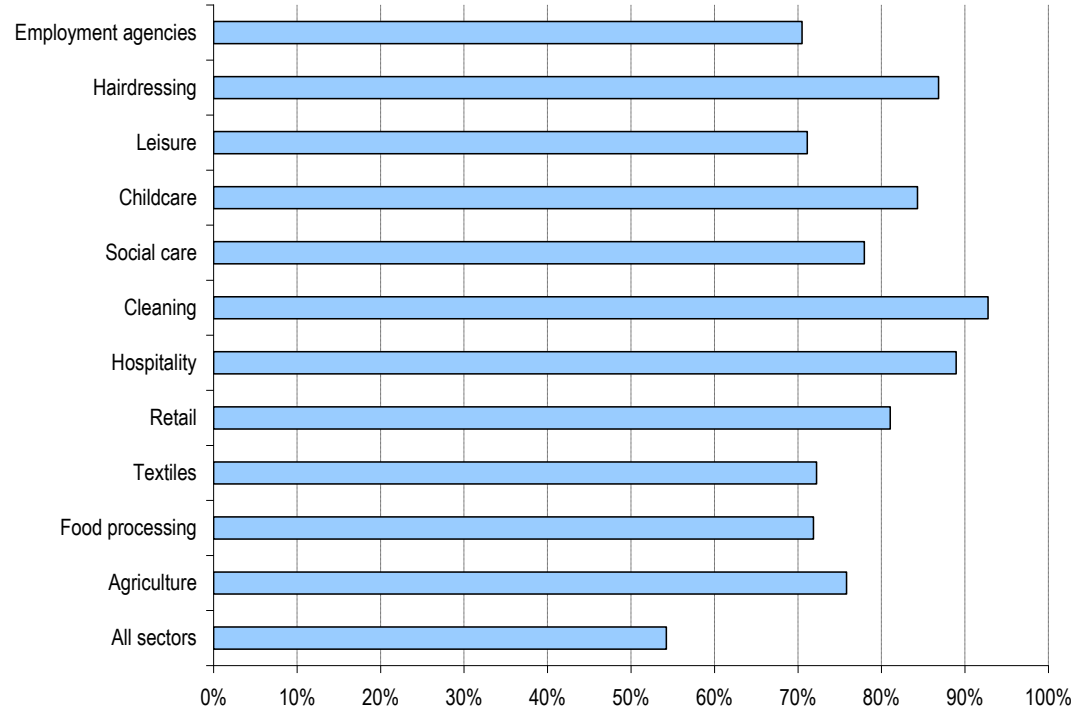
Source: Office for National Statistics, Annual Survey of Hours and Earnings. 1999-2004 ASHE data - excluding supplementary information 2004-2006 ASHE data - old methodology. 2006-2012 ASHE data - new methodology.

The minimum wage and low paid sectors

25. The minimum wage is more likely to impact on employment in those sectors that are more reliant on low-wage workers. The Low Pay Commission defines a number of sectors as being 'low-paid', which employ large numbers of people earning near the NMW[1]. The adult bite is much higher in these sectors, with an un-weighted average bite of around 79 per cent. The bite ranges from 70 per cent of the median in employment agencies to 93 per cent in cleaning (see Chart 5). In addition, some of the largest low-paid sectors such as retail and hospitality have some of the biggest bites at 81 per cent and 89 per cent respectively.

[1] Defined as Retail, Hospitality, Social care, Employment agencies, Food processing, Leisure, travel and sport, Cleaning, Agriculture, Childcare, Textiles and clothing and Hairdressing.

Chart 5: The bite of the NMW in low-paid sectors
Adult minimum wage as per cent of median wage, April 2012



Source: Office for National Statistics, Annual Survey of Hours and Earnings
Those aged 21+.

Table 2 below shows the median and mean gross hourly earnings by sector in

April 2012 in the UK.

Table 2: Hourly pay - Gross (£) - For all employee jobs[a]: United Kingdom, 2012

Description	Code	Median (£)	Mean (£)
ALL EMPLOYEES		11.26	14.82
AGRICULTURE, FORESTRY AND FISHING	A	8.39	9.85
MINING AND QUARRYING	B	16.79	19.93
MANUFACTURING	C	12.15	14.48
ELECTRICITY, GAS, STEAM AND AIR CONDITIONING SUPPLY	D	16.38	18.59
WATER SUPPLY; SEWERAGE, WASTE MANAGEMENT AND REMEDIATION ACTIVITIES	E	12.00	14.09
CONSTRUCTION	F	12.46	14.83
WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES	G	8.21	11.59
TRANSPORTATION AND STORAGE	H	11.25	13.67
ACCOMMODATION AND FOOD SERVICE ACTIVITIES	I	6.50	8.42
INFORMATION AND COMMUNICATION	J	17.23	20.55
FINANCIAL AND INSURANCE ACTIVITIES	K	16.41	23.38
REAL ESTATE ACTIVITIES	L	11.87	14.69
PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES	M	15.38	19.64
ADMINISTRATIVE AND SUPPORT SERVICE ACTIVITIES	N	8.55	11.42
PUBLIC ADMINISTRATION AND DEFENCE; COMPULSORY SOCIAL SECURITY	O	14.41	15.80
EDUCATION	P	13.36	15.98
HUMAN HEALTH AND SOCIAL WORK ACTIVITIES	Q	11.66	14.66
ARTS, ENTERTAINMENT AND RECREATION	R	8.72	12.74
OTHER SERVICE ACTIVITIES	S	10.00	13.00
ACTIVITIES OF HOUSEHOLDS AS EMPLOYERS; UNDIFFERENTIATED GOODS-AND SERVICES-PRODUCING ACTIVITIES OF HOUSEHOLDS FOR OWN USE	T	8.50	9.44
ACTIVITIES OF EXTRATERRITORIAL ORGANISATIONS AND BODIES	U	14.44	15.92

a Employees on adult rates whose pay for the survey pay-period was not affected by absence.

Source: Annual Survey of Hours and Earnings, 2012 Provisional Results: Office for National Statistics.

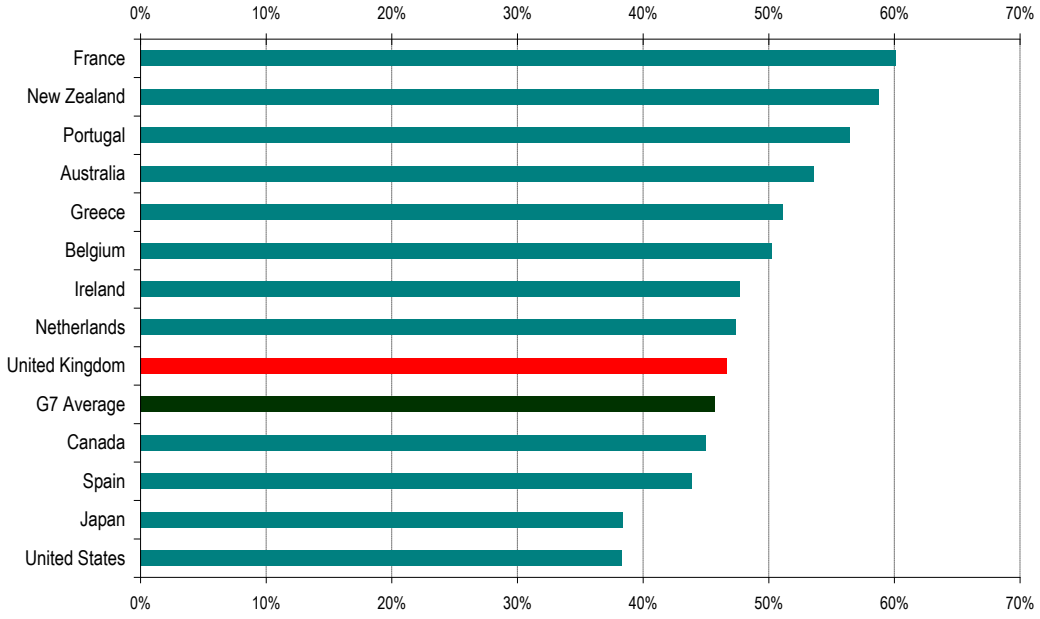
International comparisons of NMW bite

26. Chart 6 provides a comparison of the bite with other countries. These comparisons are limited by differences in data methodologies.

27. However, on the available evidence using the countries identified in chart 6, the UK bite is greater than the un-weighted G7.

28. The level of the UK minimum wage is compared internationally by adjusting for purchasing power parity (see Chart 7)[1]. However, these purchasing power parity figures should be treated only as a rough guide as they are sensitive to the assumptions used and can be buffeted by exchange rate fluctuations.

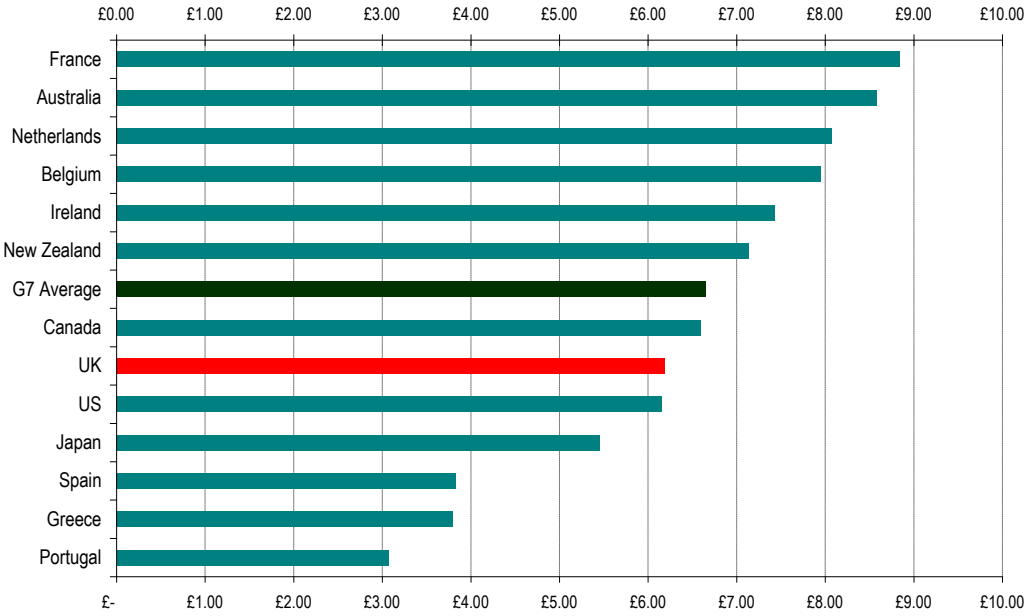
Chart 6: International comparisons of the minimum wage bite, 2011
Per cent of median earnings



Source: OECD

[1] Purchasing power parity is a method measuring the relative purchasing power in different countries' currencies over the same type of goods and services. Because goods and services may cost more in one country than in another, PPP allows us to make more accurate comparisons of standards of living across countries.

Chart 7: International comparisons of the minimum wage, 2012
NMW in pound sterling (£) Purchasing Power Parity (PPP) terms



Source: Low Pay Commission, National Minimum Wage Report 2013

NMW and the tax system

29. The National Minimum Wage forms part of the Government's wider strategy to support the low paid.

30. Trying to use the National Minimum Wage alone to increase in-work income would mean setting it at a level that would risk job losses for low-skilled workers. And while wages do not respond to family circumstances – such as number of children – tax credits do.

31. In addition to National Minimum Wage, the Government is helping all working people on low pay by maximising their take-home pay. That is why the Government has cut income tax for the low paid. Since October 2012, an adult on the minimum wage working 28 hours a week no longer pays income tax.

Data collection

32. The UK Office for National Statistics (ONS) collects and publishes wage data. The ONS Annual Survey of Hours and Earnings (ASHE)[1] provides information about the levels, distribution and make-up of earnings and hours paid for employees within industries, occupations and regions.

[1] http://www.ons.gov.uk/about/who-we-are/our-services/unpublished-data/business-data/ashe/index.html

Article 4, Paragraph 2

1. The position remains largely as previously described.

Measures taken to implement the legal framework

2. Beyond the minimum standards set out in law, employers and employees are free to negotiate terms and conditions. The employee, the representative or trade union are free to, and often do, negotiate better terms for inclusion in the contract of employment.

3. As the enforcing body, HM Revenue and Customs ensures that the National Minimum Wage is paid for the hours worked, but does not consider any enhancements above this for extra hours. It is for employment tribunals to consider contractual issues.

The Committee concluded that the situation in the UK is not in conformity with Article 4§2 on the grounds that workers do not have adequate legal guarantees ensuring them increased remuneration for overtime.

4. The Government does not agree with the conclusions of the Committee of Social Rights. Workers are protected through setting of a National Minimum Wage. Beyond certain minimum standards set out in law, employers and employees are free to negotiate terms and conditions. The relationship between employer and employee is governed by English law of contract. It is for employers to decide whether to offer increases above the minimum rates. In many cases in the UK it is the norm for employers to pay an increased rate for overtime hours. Entitlement to overtime pay is not a right that is enforced by Government.

5. As far as part-time workers are concerned, further protection for employees is contained in the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000[1], which provide that a part-time worker must receive the same overtime rate as full-time workers once they have worked up to the relevant full-time hours.

Article 4, Paragraph 4

The legal framework

1. The Employment Act 2006 consolidated the earlier Employment Act 1991 and extended the rights of full-time employees to notice and certain rights during notice which were contained in the earlier Act to all part-time employees, irrespective of the number of hours worked.

[1] http://www.legislation.gov.uk/uksi/2000/1551/regulation/5/made

2. Under the Employment Rights Act 1996 employees are entitled to receive at least a week's notice from their employer after one month's service, increasing to at least two weeks after two years' service. Employees with three years' service are entitled to at least three weeks' notice.

Measures taken to implement the legal framework

3. The Government is firmly committed to ensuring that there is a framework of fair minimum standards in the workplace. Our provisions guaranteeing employees minimum periods of notice of termination of employment are part of that framework. We also believe that terms and conditions of employment above statutory minima are best left to negotiation and agreement between employers and employees (or their representatives). Excessive regulation would risk inhibiting competitiveness and reducing job opportunities.

4. In the flexible labour market which we believe best serves both employers and employees, they are of course free to agree terms and conditions of employment which go beyond the minimum fair standards set out in legislation. This applies to notice periods just as much as to other terms and conditions of employment. And research has shown that some employers and employees do agree longer notice periods than the minimum. About a third of employers outside the public sector give four weeks' notice to short-service employees.

The Committee concluded that the situation in the UK is not in conformity with Article 4§4 of the Charter because notice of termination of employment for workers with less than three years' service is too short.

5. The Government notes the negative conclusion reached by the European Committee of Social Rights on the last report. However, it continues to believe that the current UK statutory right to a minimum period of notice of termination of employment strikes the correct balance between fairness for employees and flexibility for employers, and that increasing notice rights for employees with less than 3 years' service would risk upsetting that balance.

6. The law does not prevent employers from giving longer notice. Employers and employees (or their representatives) are free to negotiate longer notice periods. If a contract of employment provides for longer notice than the 1996 Act, the longer period will apply. Statutory notice rights in the UK are not a contentious issue and this is attested by the fact that the Government receives no representations suggesting that they should be longer.

7. The position remains, therefore, that then Government believes these notice periods are sufficiently long to provide a fair minimum standard in the workplace.

Article 4, Paragraph 5

1. The position remains largely as previously described.

The Committee asks if the National Minimum Wage Act applies to all forms of deductions, including trade union dues, fines, maintenance payments, repayment or wage advances, etc.

2. Under UK law, there are limited circumstances in which deductions can be made which would bring wages below the level of the minimum wage.

3. The main exception to this is where an employer provides accommodation to a worker. From 1 October 2012, the amount which can be deducted for housing provided by the employer is £4.82 per day.

4. Under the National Minimum Wage Regulations 1999, there are certain other limited situations where deductions from wages can be made even where these would bring wages below the level of the minimum wage. These permitted deductions are as follows:

- *Penalties*. An employer may deduct a sum from a worker's pay because of some event related to misconduct, as long as the employer is permitted to make the deduction under the terms of the worker's contract;
- *Advance of wages*. An employer may deduct a sum for repayment of all, or part of, an advance of wages;
- *Purchase of shares or securities*. An employer may deduct the purchase price of shares or securities in the firm which have been bought by the worker;
- *Accidental overpayment of wages*. An employer may make a deduction from a worker's pay to recover an accidental overpayment of wages; and
- *Deductions not connected with the employment*. An employer may make other deductions from a worker's pay as long as they are:
  a) not required expenditure in connection with the worker's employment; or
  b) not for the employer's own use or benefit.
  This would cover, for example, trade union subscriptions, maintenance payments or pension contributions.

Isle of Man

Article 4, Paragraph 1

Questions 1 to 3

1. The position remains as previously described, with the following additional information.

2. During the reporting period statistics on minimum wage rates for workers aged 18 or over were as follows:

Year	National net average wage £ per hour	National net average minimum wage £ per hour	Net national minimum wage as % of net average rate	% at or below NMW
2009	12.20	5.64	46%	0.9
2010	12.54	5.60	45%	0.9
2011	12.73	5.70	45%	1.8
2012	12.92	5.71	44%	0.8
Notes:				
These figures are calculated using historical Earnings Survey results				

3. Working families and disabled workers with incomes below prescribed levels may also be eligible to receive a social assistance benefit known as Employed Person's Allowance (EPA). EPA replaced and consolidated the former Family Income Supplement (FIS) and Disability Working Allowance (DWA) schemes in January 2012. Eligibility for EPA is subject to, inter alia, the claimant (or in the case of a couple, at least one member of that couple) working for a prescribed minimum number of hours each week. For single disabled workers, lone parents and couples[1] at least one member of which is severely disabled or is caring for a severely disabled person the prescribed minimum is 16 hours a week. For couples with a child(ren), neither member of which is severely disabled or is caring for a severely disabled person the prescribed minimum is 30 hours a week. A premium is payable if the claimant (or at least one member of a couple) works for at least 24 hours a week. EPA is not available to single able-bodied people nor to couples without child dependants neither member of which is severely disabled or is caring for a severely disabled person.

[1] Married couple or civil partnership, unmarried heterosexual couple or same-sex couple

4. The following table sets out the minimum weekly income guarantees at April 2009 and April 2013 for certain families, taking account of FIS, DWA and EPA and net of tax and National Insurance contributions, but excluding Child Benefit, and confirms the percentage increases in real terms between those dates:

Weekly minimum income guarantees			
	April 2009	April 2013	Percentage increase in real terms[1]
Single disabled worker, part-time	£166.88	£182.57	- 2.91%
Lone-parent with one child, part-time	£211.29	£233.29	- 8.19%
Couple with one child, full-time work[2]	£262.97	£288.80	- 8.78%
Couple with two children, full-time work	£293.07	£331.26	- 5.57%

Article 4 Paragraph 2

Questions 1 to 3

The position remains as previously described.

[Article 4 Paragraph 3

This paragraph has not been accepted by the Isle of Man.]

Article 4 Paragraph 4

Questions 1 to 2

The position remains as previously described.

Article 4 Paragraph 5

Questions 1 to 2

The position remains as previously described.

[1] RPI growth April 2009 to April 2013 confirmed by IOM Treasury as 18.6%
[2] Full-time work is assumed to be 35 hours. Part-time work is assumed to be 16 hours.

Article 5 – The right to organise

United Kingdom

1. The position generally remains as previously described.

Conclusions XIX-3 (2010)

In response to the UK's 29th Report, the Committee of Social Rights concluded that the UK is not in conformity with Article 5 of the Charter on the grounds that section 15 of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A), which makes unlawful for a trade union to indemnify an individual union member for a penalty imposed for an offence or contempt of court, and section 65 of TULR(C)A, which severely restricts the grounds on which a trade union may lawfully discipline members, represent unjustified incursions into the autonomy of trade unions.

2. It should be noted that similar provisions operate in Northern Ireland, namely Article 8 of the Industrial Relations (Northern Ireland) Order 1992, and Article 32 of the Trade Union and Labour Relations (Northern Ireland) Order 1995.

Government response

2. The Government respectfully repeats its own firmly held view that these provisions do not breach Article 5 and are necessary in a democratic society for the protection of the rights and freedoms of others. This section of the law has been in place in this form for approximately two decades. Trade unions and others should by now be very familiar with its effects, and the Government has received no representations from parties dissatisfied with this section of the law. The Government therefore has no plans at present to change this area of the law. However, it is prudent that we monitor the application of the law to ensure that the legal framework is fit for purpose.

3. As explained in detail in the UK's 29th report, the Government would also point out that section 19 of the Employment Act 2008, which amended sections 174 and 176 of TULR(C)A, modified the rights of a trade union to determine its conditions for membership, and to take political party membership into account when deciding whether a person should belong to a trade union. These provisions, details of which are provided in the explanatory notes to the 2008 Act, broadened a trade union's ability to exclude or expel individuals. This section of the 2008 Act did not apply to Northern Ireland.

4. This section of the 2008 Act came into force in Great Britain on 6 April 2009. In its comments on the UK's 29th Report, the Committee reserved its position in relation to section 19 of the 2008 Act and asked the Government to

provide in this report examples of how it is applied and interpreted by domestic courts. In response, the Government is not aware of any cases or examples arising involving how section 19 of the 2008 Act might be applied and interpreted by UK domestic courts.

Isle of Man

Article 5

The position remains as previously described.

Article 6

United Kingdom

Article 6, Paragraph 1 – Joint Consultation

In response to the UK's 29th Report, the Committee noted that the obligation on employers to inform and consult under the Information and Consultation of Employees Regulations 2004 (the I & C Regulations) does not operate automatically. It is triggered either by a formal request, from at least 10% of the employees in the undertaking, subject to a minimum of 15 employees and a maximum of 2,500, for an information and consultation (I & C) agreement, or by employers choosing to start the process themselves. The Committee asked whether the triggering of the obligation is controversial or not.

1. The Central Arbitration Committee (CAC) is a permanent independent body with statutory powers which deals with the relationship between the individual employer and a trade union. Its main function is to adjudicate on applications relating to the statutory recognition and de-recognition of trade unions for collective bargaining purposes. It can also resolve applications and complaints under the I & C Regulations.

2. Since the I & C Regulations came into force in April 2006, the CAC has received 18 requests under the provision by which employees can remain anonymous; four of these arose in the period 2009-12.

3. Under the Regulations, the CAC can ask the employer to provide a list of employees so that the CAC can inform both parties how many requests from employees have been made. There is no direct sanction for the employer not complying with this request but the CAC has never encountered a situation in which an employer has refused. This element in the Regulations has therefore not proved to be controversial.

4. Under regulation 13 of the I & C Regulations, an employer can challenge the validity of a request, whether made direct to the employer or to the CAC. The CAC has received no applications under this provision.

5. If an employer ignores a request, the standard provisions will automatically come into effect and the employer is required to hold a ballot to elect I & C representatives. If the employer does not take that course of action, the employees can complain to the CAC and, if the complaint is upheld, they can apply to the Employment Appeal Tribunal (EAT) for a penalty award. This has happened in two cases where the employer has not acted once a request was made: the EAT imposed a penalty of £55,000 on Macmillan in 2007 and in another case in 2010, a penalty of £20,000 was imposed on G4S.

6. The threshold for the 'trigger' for a formal request is low (10%) and, as can be seen above, the sanction for ignoring it can be draconian.

Article 6, Paragraph 2 – Negotiation procedures

In Conclusions XIX-3, following the UK's 29th Report, the Committee considered the UK not to be in conformity with Article 6§2 of the Charter on the grounds that:

- ***Workers do not have the right to bring legal proceedings against employers who made offers to co-workers in order to induce them to surrender their union rights; and***

- ***In such cases, trade unions cannot directly claim a violation of the right to collective bargaining.***

Outline of Government response

1. The Government acknowledges that Article 6 of the European Social Charter (ESC) obliges it to ensure the effective exercise of the right to bargain collectively and the UK recognises that preventing workers from being induced to surrender their trade union rights is frequently stated to be included within that right.

2. Following legislative amendments made in the light of *Wilson and others. v UK*[1] , UK law provides that individuals who are trade union members have the right not to have an offer made to them by their employer for the sole or main purpose of inducing them not to be or seek to become a member of a trade union (section 145A Trade Union and Labour Relations (Consolidation) Act 1992 ('TULR(C)A')). In addition, the law provides union members, or those seeking to become union members, with the right not to have an offer made to them by their employer where acceptance of that offer would mean that workers will no longer be covered by collective bargaining arrangements with a trade union (section 145B TULR(C)A).

3. The Government considers that the current state of domestic law relating to collective bargaining gives sufficient protection to the rights of workers and trade unions under Article 6 of the ESC. By introducing a statutory prohibition on offers to induce workers to surrender their trade union rights, the UK Government believes that it has helped protect the effective exercise of the right to bargain collectively.

4. Finally, the Government does not consider that Article 6(2) ESC guarantees a right for co-workers or trade unions to bring proceedings regarding offers to induce the surrender of union rights.

Issue (a) – the treatment of workers who did not receive an offer

5. The Government recognises the value of collective bargaining as provided for in Article 6(2) ESC and accepts that the previous domestic legislation pre – *Wilson*, which did not prohibit offers to induce the surrender

[1] Application Nos. 30668/96, 30671/96, 30678/96

of union rights, undermined the right set out in Article 6(2) ESC. However, the Government considers that the introduction of a right not to have an offer made, as contained in section 145A TULR(C)A, was a sufficient amendment to ensure the protection of the right in Article 6(2) ESC. The discrimination in the ***Wilson*** case was between those union members who had accepted the offer made to them by the employers and those union members who had not accepted the offer made to them. The case did not involve any consideration of the position of union members to whom no offer had been made; so far as the Government is aware there were no such members.

6. The Government does not consider that Article 6(2) ESC guarantees a right for co-workers or trade unions to bring proceedings regarding offers to induce the surrender of union rights. There is nothing in the text of Article 6(2) ESC which indicates that the right extends so far, and the Government considers that such a wide interpretation is not correct and is unnecessary to secure the key right set out in Article 6(2) ESC.

7. Any such offers to induce a surrender of membership are made to individual workers, and the right not to receive such offers is personal to them, and it is appropriate therefore that those workers personally have the right of enforcement. This is consistent with other individual rights in industrial relations law, for example, section 146 TULR(C)A which provides the worker with a right not to be subjected to a detriment at the hands of their employer on grounds related to union membership or activities; this right is specific to, and only enforceable by, the affected worker. This is a protection that has existed continuously in various forms since 1971.

8. On a practical level, it would be very difficult for a co-worker or trade union to bring a claim and provide sufficient evidence of any prohibited offers if the worker who received the offer did not wish to participate in any proceedings.

9. The Government is not aware that any proceedings have ever been taken to enforce the right set out in section 145A TULR(C)A (inducements relating to union membership or activities), which suggests that such offers are rare, if they occur at all.

Issue (b) – the rights of the trade union

10. The Government suggests that on a fair reading of Article 6, the right of the applicant unions to strive for the protection of their members' interests is not a right separate from and independent of the Article 6 right of their members to freedom to belong to a union for the protection of their interests, it is contingent upon the members' own right. It follows, therefore, that infringement of the rights of the union only occurs as a consequence of infringement of the right of the individual to whom the inducement is made – the union has no freestanding right. The Government contends that the rights of trade union members are adequately protected and section 145A TULR(C)A provides them with a means of enforcing their right; this is sufficient to protect any parasitic trade union right.

19. The Government is content that domestic law satisfies the judgement in *Wilson* and is in conformity with the ESC. The Government has no plans at present to change this area of the law. However, it is prudent for the Government to continue to monitor the application of the law to ensure that the legal framework remains fit for purpose.

General question from the Committee to State Parties

In its General Introduction to Conclusions XIX-3, the Committee asked State Parties for information on the procedures governing the possible extension of collective agreements.

21. The UK takes a voluntarist approach to collective issues. Collective bargaining is largely a matter for individual employers, their employees and their trade unions. Therefore, the situation, where public authorities decree any extensions to collective agreements subject to tripartite analysis of the consequences it would have on the sector to which it applied, is not relevant for the UK.

22. In keeping with the UK's voluntarist approach, it is largely a matter for individual employers to decide whether they wish to recognise a trade union for collective bargaining purposes. Most collective bargaining in the UK takes place because employers have voluntarily agreed to recognise a trade union and bargain with it.

23. The Employment Relations Act 1999 (ERA 1999) does provide for a statutory recognition procedure that gives independent trade unions the right to apply to the Central Arbitration Committee (CAC) to be recognised by an employer for collective bargaining purposes. Under this legislation, a union can only be awarded recognition where a clear majority in the bargaining unit which the union wishes to represent wants it. The premise under this legislation is that it is reasonable to require a union to demonstrate support in the workplace before an employer is statutorily required to recognise it.

24. There is also a statutory de-recognition process. If a union has been statutorily recognised for three years, a worker who believes they no longer have the support of the bargaining unit can apply to the Central Arbitration Committee (CAC) to ballot the members of the collective bargaining unit. If the union fails to maintain majority support in the workplace, it will be de-recognised.

25. Therefore, if an employer recognises a union that has minority support in a workplace, another union that has – and can demonstrate to the CAC – majority support in that workplace can obtain statutory recognition for collective bargaining purposes.

Article 6, Paragraph 3 – Conciliation and arbitration

1. There have been no changes in the reference period (1 January 2009 to 31 December 2012) since the UK's 29th Report regarding the legal framework within which collective conciliation and arbitration services are provided in the UK. At the Committee's request, a full up-to-date description of the situation is provided below.

2. The previous information provided in the UK's earlier reports on the conciliation and arbitration system in the public and private sectors continues to apply, with the following update:

- ACAS' funding via Grant in Aid in 2012/13 amounted to £46.45 million.

- The current Chair of ACAS, Ed Sweeney, will retire at the end of 2013 after six years as Chair. His replacement is yet to be announced. Anne Sharp was appointed as ACAS' new chief executive in early 2013, following the retirement of John Taylor.

- During 2012/13, ACAS received 871 requests for assistance in collective conciliation and were able to resolve matters or help the parties move towards resolution in 93% of cases. The disputes ACAS worked on were pay-related issues (45%), followed by recognition, other trade union matters and working practices, which accounted for 13%, 12% and 12% of cases, respectively.

- During 2012/13, ACAS received 17 cases that were referred to collective arbitration, which over recent years has become less common as the basis for resolving disputes. More than half of these cases related to dismissal and discipline issues.

- In its early years (from its foundation in 1975 to the late 1990s), ACAS was essentially focused on collective dispute resolution. From 2000, ACAS has been equally concerned about dispute prevention by emphasising the link between good employment relations and high performance in workplaces.

- There has therefore been a shift away from collective dispute resolution to ACAS resolving workplace disputes involving individuals. ACAS has a legal duty to promote the settlement of claims in the Employment Tribunal (ET). In 2012/13, the number of post-claim conciliation cases received was 67,825. This is a decline of 6% on the previous year and continues a slow decline in the number of claims to the ET from a peak in the summer 2009.

- In 2009, ACAS introduced pre-claim conciliation (PCC). The purpose of PCC is to resolve cases before an employment tribunal (ET) is involved, saving money for the taxpayer and the parties. Success is measured by the number of ET claims avoided. In 2012/13, 22,630 PCC cases were

received and the proportion of completed cases in which no subsequent claim was made to an ET was 77%.

- In view of the success since 2009 of ACAS' PCC scheme, the Government has asked ACAS to introduce an Early Conciliation (EC) service. As part of the Enterprise and Regulatory Reform Act 2013 (ERRA), the new EC service will be introduced in early 2014. Those wishing to bring an ET claim will be required to notify ACAS first. There will be a mechanism to 'stop the clock' for a calendar month on the limitation period in which claims can be submitted, to allow the voluntary exploration of settlement with ACAS.

- EC will provide a systematic opportunity to resolve issues in all individual workplace dispute cases before they proceed to legal action, maximising the benefits currently achieved through successful PCC. If those involved are unable, or unwilling, to resolve matters through EC, they may proceed to the ET.

- Full details of ACAS' activities and a copy of their annual report 2012-13 can be viewed on its website at: http://www.acas.org.uk/media/pdf/5/k/Acas-Annual-Report-2012-2013.pdf

Article 6, Paragraph 4 – collective action

In Conclusions XIX-3, following the UK's 29th Report, the Committee considered that the UK is not in conformity with Article 6.4 of the Charter on the grounds that:

- ***the scope for workers to defend their interests through lawful collective action is excessively circumscribed;***

- ***the requirement to give notice to an employer of a ballot on industrial action, in addition to the strike notice that must be issued before taking strike action, is excessive; and***

- ***the protection of workers against dismissal when taking industrial action is insufficient.***

The Committee also asked two further questions:

- ***has the UK Government followed-through on its previously stated intention to amend Section 59 of the Merchant Shipping Act?***

- ***Has section 235A of the Trade Union and Labour Relations (Consolidation) Act 1992 (TULR(C)A) ever been used to try to stop strike action?***

The Government's response

Issue (a)–scope of workers to defend their interests excessively circumscribed

3. The Government respectfully continues to disagree with the Committee's conclusions in this area for the following reasons:

- According to the Appendix to Article 6.4, each party may regulate the right to strike by law, provided those restrictions can be justified in accordance with Article 31. The UK, like all other countries, regulates the freedom of unions to organise industrial action.

- There are a number of countries, e.g. Germany and Spain that have restrictions in place with regard to secondary action. Others make it unlawful for unions to induce industrial action during the life of a collective agreement. The UK does not have these limitations but has its own restrictions. These restrictions, in the context of the UK's systems, practices and traditions of industrial relations, are necessary in a democratic society for the protection of the rights and freedoms of others or for the protection of the public interest. Where an employer is not a direct party to a trade dispute there may be little, if anything, they can do to resolve disputes in other workplaces. They have no control over the dispute and no ability to negotiate. Their fortunes become reliant on the quality of the industrial relationship in a workplace over which they have no influence and with which they have no relationship. The complexity and extent of supply chain relationships and wider inter-connectivity in the modern global economy means that this workplace may not be in the same sector, region or even country.

- The UK's restrictions, in terms of the prohibition of secondary action, are proportionate, particularly so when the UK context and industrial relations history is taken into account. In the 1970s and 1980s, the annual average of working days lost was 12.9 million and 7.2 million respectively. The UK's economic performance was greatly impaired during this period and this resulted in the reforms to industrial action law, including the prohibition of secondary action, in the 1980s and 1990s.

- The economic damage to the UK economy in the 1970s and 1980s by these strikes was disproportionately large due to the severe impact of secondary action on the UK's very decentralised industrial relations structure. In the UK, there exist a very large number of separate bargaining units, where trade unions and one or more employers discuss terms and conditions of employment, usually on an annual basis. The collective agreements they enter, including their procedural and dispute agreements, are not legally enforceable and there is no restriction on trade unions in organising industrial action during the life of a collective agreement. These freedoms regarding collective bargaining are a long-

standing feature of the UK's system of industrial relations, and are strongly supported by both trade unions and employers.

- This very large number of bargaining units, and the consequentially large amount of bargaining undertaken each year, means that there is scope for many disputes or disagreements between the parties to arise in any year. In the past, when secondary industrial action was lawful in the UK, such disputes often spilled over and affected other employers and the general public as well as severely impacting on the UK economy as a whole.

- The reforms to the UK's industrial action law, including the prohibition of secondary action, introduced during the 1980s and 1990s are now a well-established part of the UK's industrial relations framework. In general, both trade unions and employers have fully adapted to it. Perhaps as a consequence, the incidence of industrial action is now much less than in the 1970s and 1980s, with average days lost at around 700,000 per year over the last 20 years. However, difficulties remain: many unions in the UK still adopt a confrontational attitude to industrial relations. According to the European Industrial Relations Observatory, in relation to developments in industrial action 2005-2009, the average number of working days lost in the UK over that period was around the average for both EU and OECD countries. In 2011, the number of working days lost rose to 1.4 million, its highest level for many years. Furthermore, in September 2012, the Trades Union Congress (TUC) passed a motion calling on the TUC to lead 'a coalition of resistance taking co-ordinated action where possible with far reaching campaigns including the consideration and practicalities of a general strike.'

- In view of the UK's industrial relations history, the current difficulties outlined above and the fact that the UK has no other controls on industrial action (eg restricting action according to proportionality or banning it during the life of a collective agreement), the Government is concerned that lifting the prohibition of secondary action would jeopardise the UK's economic recovery: there would be a real risk that the effects of secondary action would be disproportionately large and would seriously weaken the UK economy at a difficult time whilst impacting on the Government's ability to deliver services to the general public.

- It is important to note that the UK's prohibition of secondary action does not prevent secondary action in respect of lawful picketing. Hence workers from another employer that is not involved in a trade dispute have the right to protest and picket the workplace in dispute. Furthermore, individual workers employed by an employer not involved in a trade dispute are free to withdraw their labour by taking unofficial secondary action. However, employees who take such action may be dismissed by their employer for so doing.

- Therefore, the Government has no plans at present to change the law in this area. However, it is prudent that we monitor the application of the law to ensure that the legal framework is fit for purpose.

Issue (b) – the requirement to give notice of a ballot is excessive

4. The Government respectfully continues to disagree with the Committee's conclusions in this area for the same reasons given in the UK's 29th Report. We do not wish to reiterate these again here.

5. The Government considers the UK's legal requirements regarding ballot notices serve a useful and constructive purpose, and are proportionate. The Government therefore has no plans at present to change the law in this area. However, it is prudent that we monitor the application of the law to ensure that the legal framework remains fit for purpose.

Issue (c) – the protection of workers against dismissal when taking industrial action is insufficient

6. The Government respectfully continues to disagree with the Committee's conclusions in this area for the same reasons given in the UK's 29th Report. We do not wish to reiterate these again here.

7. The Government firmly believes that the statutory protections against dismissal for workers taking industrial action, set out in the UK's 29th Report, are substantial. Few dismissals of strikers therefore occur. The Government believes that the law strikes a reasonable balance between the rights and interests of workers, and the rights and interests of the employer, and it importantly encourages parties to resolve their disputes through negotiation.

8. The Government therefore has no plans at present to change the law in this area. However, it is prudent that we monitor the application of the law to ensure that the legal framework is fit for purpose.

Issue (d) – has section 59 of the Merchant Shipping Act been repealed?

9. The Government regrets to inform the Committee that section 59 of the Merchant Shipping Act has not yet been repealed. The Government restates its intention to amend section 59 of the Merchant Shipping Act 1995. In any event, as indicated in previous reports, as a matter of UK policy, prosecutions under section 59 in its present form are not undertaken, and the UK courts will not impose sanctions on striking seamen, unless their actions endangered the life of persons, etc. This is because section 59 must be read so as to be in conformity with the Human Rights Act 1998 which incorporates the European Convention of Human Rights into UK law.

Issue (e) – has section 235A of TULR(C)A ever been used?

10. The Government confirms that section 235A of TULR(C)A (which provides for the possibility for third parties to obtain an injunction against a

trade union organising industrial action under certain conditions) has only been used once when a disruptive pupil unsuccessfully sued his teachers for refusing to teach him (P v National Association of Schoolmasters / Union of Women Teachers [2003] UKHL8. [2003 IRLR307]. Following this sole unsuccessful attempt to use section 235A, it has never been used since.

Isle of Man

Article 6 – The right of workers to bargain collectively

Article 6, Paragraphs 1 - 3

Questions 1 to 3

1. Tradition in the Isle of Man is that terms and conditions of employees are negotiated between the parties either within or without the framework of a trade union recognition agreement. Recognition agreements are extensive within the public sector.

2. The Isle of Man Government continues to fund the Manx Industrial Relations Service (MIRS), an independent organisation part of whose job is to promote good industrial relations on the Isle of Man. In recent years the Service has been expanded from one full-time Industrial Relations Officer (IRO) to two.

3. Part of MIRS' function is to help to settle employment disputes between employers and trade union through conciliation, mediation or arbitration. MIRS encourages a non-adversarial approach to resolving difficulties.

4. The Trade Disputes Act 1985 lays down a procedure for resolving a 'trade dispute', which for this purpose is a dispute between workers and their employer, or between groups of workers, relating wholly or mainly to such matters as pay, conditions, discipline, jobs, union membership and union recognition.

5. Where a trade dispute exists or is apprehended, an Industrial Relations Officer (IRO) may, or at the request of any party to the dispute must, inquire into the dispute and offer the parties assistance by way of conciliation, arbitration or other means, with a view to securing a settlement. If the dispute is not settled, an IRO may, or if required by any party to the dispute must, request the Council of Ministers to establish a Court of Inquiry. Where the Council agrees to the request, a Court investigates the dispute and reports its findings to the Council of Ministers, making recommendations for settlement where practicable. An IRO is to take steps to secure a settlement in accordance with those recommendations.

6. Special procedures apply where there is a trade dispute affecting services designated as 'essential services'. No services have yet been designated for this purpose.

Article 6, Paragraph 4

Questions 1 to 2

The update to article 5 in the 2009 report summarises the relevant changes made by the Employment Act 2006.

Question 2

Industrial action in the reporting period:

2009: 1 instance involving 8 workers (time lost is unrecorded)
2010: no instances.
2011: 1 instance. 84 workers were involved in the dispute and 15 minutes were lost.
2012: 1 instance over a 3 day period, The number of workers involved ranged from 77 to 80.

There were no lockouts in the reporting period.