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EUROPEAN SOCIAL CHARTER

29th National Report on the implementation of
the European Social Charter

submitted by

THE GOVERNMENT OF THE UNITED KINGDOM

(Articles 2, 4, 5 and 6
for the period 01/01/2005 – 31/12/2008)

Report registered by the Secretariat on 19 November 2009

CYCLE XX-1 (2010)

COUNCIL OF EUROPE

THE EUROPEAN SOCIAL CHARTER

THE UNITED KINGDOM'S TWENTY NINTH REPORT

OCTOBER 2009

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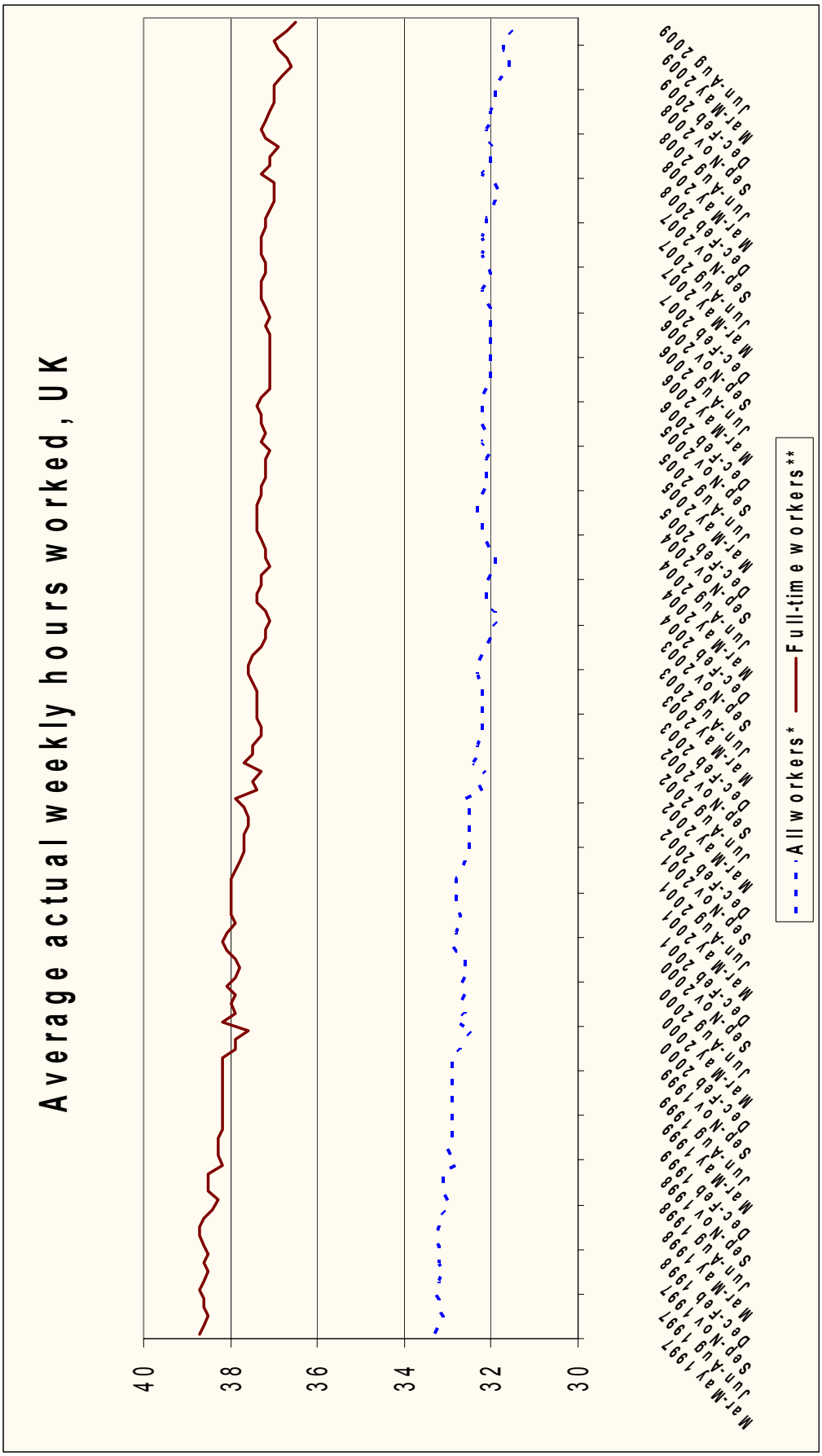
[1] The United Kingdom has not accepted, and does not therefore report on, Article 4, Paragraph 3.

Article 2 – the right to just conditions at work

United Kingdom

Paragraph 1

1. The position remains as previously described with the exception of annual leave entitlement, which is dealt with below. As far as average weekly hours worked in the United Kingdom (UK) are concerned there has been a more or less continuous trend in the decline in the number of hours worked by full-time workers, and all other workers, over the past twelve years (see table below).


Average actual weekly hours worked, UK
40
38
36
34
32
30
All workers*
Full-time workers**
Mar-May 1997
Jun-Aug 1997
Sep-Nov 1997
Dec-Feb 1998
Mar-May 1998
Jun-Aug 1998
Sep-Nov 1998
Dec-Feb 1999
Mar-May 1999
Jun-Aug 1999
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Mar-May 2007
Jun-Aug 2007
Sep-Nov 2007
Dec-Feb 2008
Mar-May 2008
Jun-Aug 2008
Sep-Nov 2008
Dec-Feb 2009
Mar-May 2009
Jun-Aug 2009

Paragraphs 2 and 3

2. The position remains as previously described with the following developments. In its previous Conclusions, the Committee asked about entitlement to paid public holidays and whether employees are entitled to time off in lieu and, or increased remuneration. It also wished to be informed of the impact of any change to the Working Time Regulations. The introduction in 1998 of the right to 4 weeks' paid annual leave gave workers an entitlement to paid annual leave. The Government was however aware that some people, particularly the lowest paid, had to include time taken off on bank and public holidays against their annual holiday entitlement. The Government considered this unfair and has extended the statutory holiday entitlement beyond that required by the European Working Time Directive to 5.6 weeks – for someone working 5 days a week this would mean an entitlement of 28 days. This change was introduced by the Working Time (Amendment) Regulations 2007 SI 2007/2079[1]. Workers cannot forego their right to 5.6 weeks leave for financial compensation.

3. There is no entitlement to take leave on bank and public holidays – inevitably some people are required to work on bank and public holidays. If someone works on a bank or public holiday they will still be entitled to 5.6 weeks leave and so leave might be taken on an alternative day or days - the rate of pay and circumstances in which work may be performed is a matter for individual contracts. About one per cent of workers work all bank or public holidays.

4. In relation to days lost to illness during annual leave, the Government is currently considering the impact of two recent ECJ cases (*Stringer* and *Pereda*) relating to the interaction of sick leave and annual leave on the application of the Working Time Regulations.

5. The UK Government undertook an extensive campaign to raise awareness of the increased legal entitlement to annual leave. The Government has also more recently launched the new Pay and Work Rights helpline[2] as part of a wider campaign to raise awareness of workplace rights enforced by Government. It provides a unified point of contact for both employers and workers. This is in addition to Acas – the government funded Advisory, Conciliation and Arbitration Service that provides individual help and advice in relation to wider employment rights.

6. A recent survey (Fair Treatment at Work survey[3] – see section 3.4.2, p 31 and charts 3.5 and 3.79) shows awareness of holiday entitlement at 87% in 2008; up from 80% in the 2005 survey.

[1] http://www.opsi.gov.uk/si/si2007/uksi_20072079_en_1
[2] http://payandworkrightscampaign.direct.gov.uk/index.html
[3] http://www.berr.gov.uk/files/file52809.pdf

7. The Government has plans to commission a further survey on annual leave in the near future. Success will be evaluated by the number of workers taking at least 5.6 weeks holiday a year.

Paragraph 4

8. The position remains as previously described with the following developments. The Committee in its previous conclusions, noting the Government's response in its previous report, asked for evidence of measures to reduce the risks in those occupations typically considered as dangerous and unhealthy.

9. In July 2006, HSE published 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.

10. In addition, particularly where the work may be hazardous or safety critical, the guidance advocates use of the Fatigue Risk Index calculator. This is a tool that HSE 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.

11. 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 & safety risks associated with working hours.

[1] http://www.hse.gov.uk/pubns/priced/hsg256.pdf

Paragraph 5

12. The situation remains as described in the previous report. The Committee has raised the matter of entitlement to a weekly rest period. Workers are entitled to one whole day off a week. 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. Employers must make sure that workers can take their rest by checking how their working time is arranged and whether they are able to take the rest breaks to which they are entitled. Different rest break periods apply to young workers – for example, young workers are entitled to two days off each week. This cannot be averaged over a two-week period and should normally be two consecutive days.

13. Furthermore the table below shows that the overwhelming majority – 84% - of those in employment benefit from a Sunday off work.

Table 1
Total number of people in Great Britain who normally work on a Sunday

	Usually work on Sunday[1]	*Total in employment*	*Total Working Age Population*	*% of all in employment*	*% of total working age population*
2006	*4,465,126*	*27,985,763*	*37,342,000*	*16.0%*	*12.0%*
2007	*4,429,290*	*28,113,315*	*37,544,000*	*15.8%*	*11.8%*
2008	*4,304,359*	*28,481,315*	*37,716,000*	*15.1%*	*11.4%*
2009	*4,467,304*	*27,921,321*	*37,918,000*	*16.0%*	*11.8%*

Source: Labour Force Survey, ONS
Note:
1. Data only available for April to June quarters.

Isle of Man

Article 2, Paragraphs 1 and 2

1. The position remains as previously described.

Article 2, Paragraph 3

2. The position remains as previously described, with the following additional comments.

3. Since the previous report, the Isle of Man has introduced a statutory right to paid annual leave. The right was introduced by way of the Annual Leave Regulations 2007 and the Annual Leave (Agency Workers and Trainees) Order 2007, made under enabling powers in the Employment Act 2006. The right came into force in September 2007.

4. All workers over compulsory school age, including part-time workers, agency workers and trainees, are entitled to 4 weeks' paid leave each year and payment, when their employment terminates, for any leave to which they are entitled but which they have not taken.

5. There is no qualifying period for these rights. But in the first year of a worker's employment, his or her entitlement accrues at the rate of one twelfth per month. A week's leave allows a worker to be away from work for a week and is the same amount of time as his or her working week: if a person works a 5 day week, he or she is entitled to 20 days' leave in a leave year; if he or she works 3 hours a week, the entitlement is 12 hours' leave. Employers may count any paid bank holidays taken by workers towards their entitlement.

6. Prior to the right coming into force, the Department of Trade and Industry (DTI) published an information booklet and arranged a number of briefing sessions to assist employers implement the new rights. Advice and guidance about paid annual leave is available from both the DTI and the independent Manx Industrial Relations Service (MIRS). The DTI Employment Inspectorate checks compliance with the legislation in its rolling programme of visits to employers. The right is enforced by way of an individual making a complaint to the Isle of Man Employment Tribunal although the intervention of the MIRS will often achieve a resolution of any dispute without recourse to the Tribunal.

Paragraphs 4 and 5

7. The position remains as previously described.

Article 4- The right to a fair remuneration

Paragraph 1

Question 1

The National Minimum Wage

1. Nearly all workers in the UK, apart from the genuinely self-employed, are entitled to be paid at least the NMW. Further information on who is covered can be found at the Directgov website[1]. There are detailed requirements relating to the NMW rates, the method of calculation and exclusions or modifications. Workers' 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.

National Minimum wage rates

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

Table 1

UK National Minimum Wage rates (Source: Low Pay Commission)

	Adult Rate (for workers aged 22+)	**Development Rate** (for workers aged 18-21)	**16-17 Year Olds Rate**
01-Apr-99	£3.60	£3.00	-
01-Oct-00	£3.70	£3.20	-
01-Oct-01	£4.10	£3.50	-
01-Oct-02	£4.20	£3.60	-
01-Oct-03	£4.50	£3.80	-
01-Oct-04	£4.85	£4.10	£3.00
01-Oct-05	£5.05	£4.25	£3.00
01-Oct-06	£5.35	£4.45	£3.30
01-Oct-07	£5.52	£4.60	£3.40
01-Oct-08	£5.73	£4.77	£3.53
01-Oct-09	£5.80	£4.83	£3.57

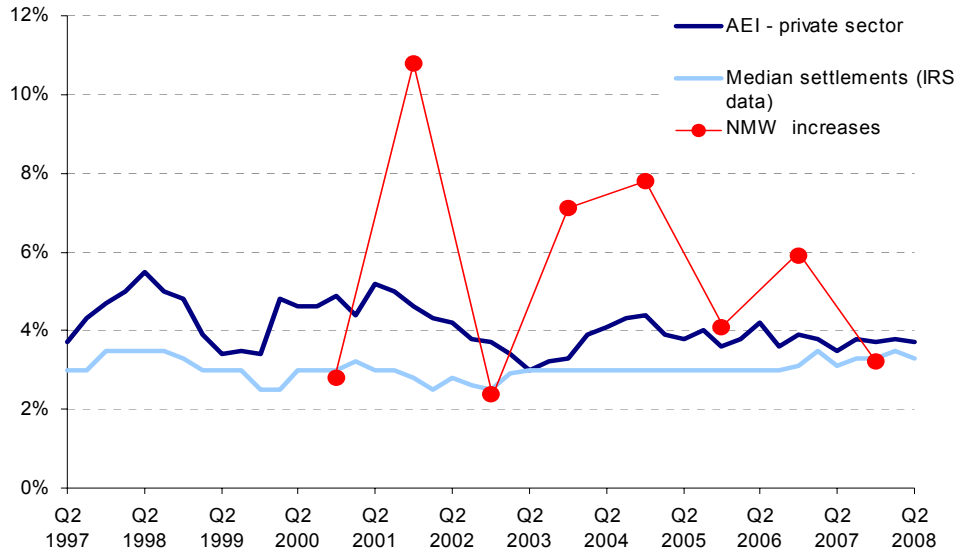
[1] http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_175113

Average earnings, pay settlements and increases in the NMW

3. Overall wage growth has remained modest over the period of the NMW (see chart 1). Chart 1 also plots annual NMW increases; the largest percentage rise in the NMW was in October 2001.

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

Proportion of working age population



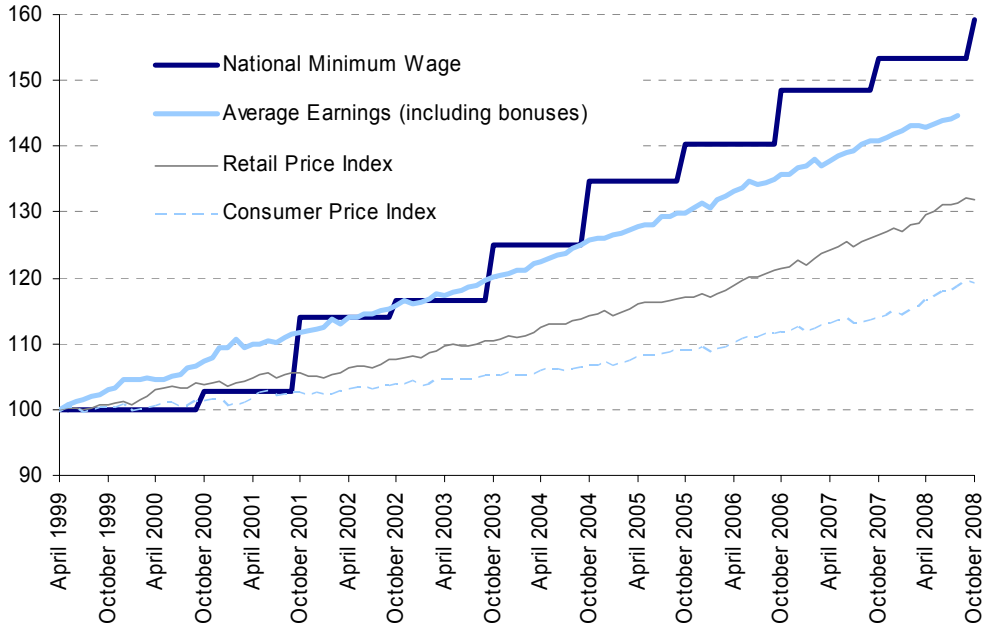
Source: Office for National Statistics, Average Earnings Index (excluding bonuses); Median settlement (IRS data)

NMW increases and earnings growth

4. Chart 2 shows that the NMW has increased substantially faster than both average earnings and prices, especially since 2001. Since it was introduced in April 1999 the adult NMW has risen by around 59 per cent (up to October 2008) and will increase by around 61% in October 2009. In comparison, the Average Earnings Index has risen by only around 46 per cent between April 1999 and the end of September 2008. The Retail Price Index has increased by around 32 per cent over the same period, while the Consumer Price Index rose by around 19 per cent.

Chart 2: Adult NMW increases compared to earnings growth and inflation

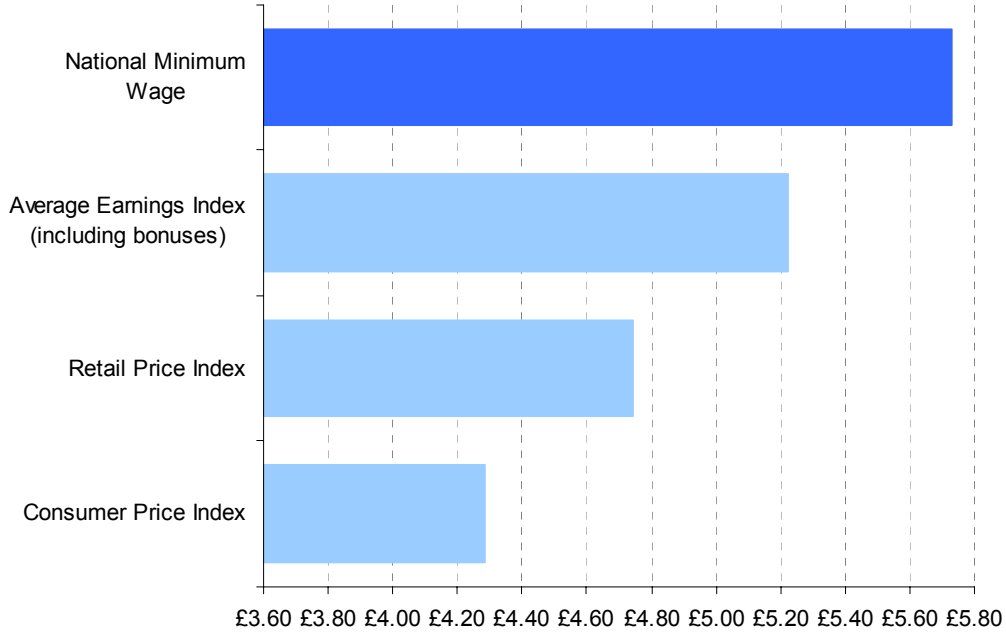
Index Rebased to April 1999 = 100



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

5. 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 £5.73 in October 2008. If the initial rate of £3.60 had instead been indexed to average earnings, the October 2008 rate would have been £5.22. If it had been indexed to the Retail Price Index it would have been £4.76 and if indexed to the Consumer Price Index it would have been £4.30 (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: BERR estimates; Office for National Statistics
*AEI Index as at end of September 2008, RPI and CPI Index as at end of October 2008. Adult NMW rate as at October 2008.

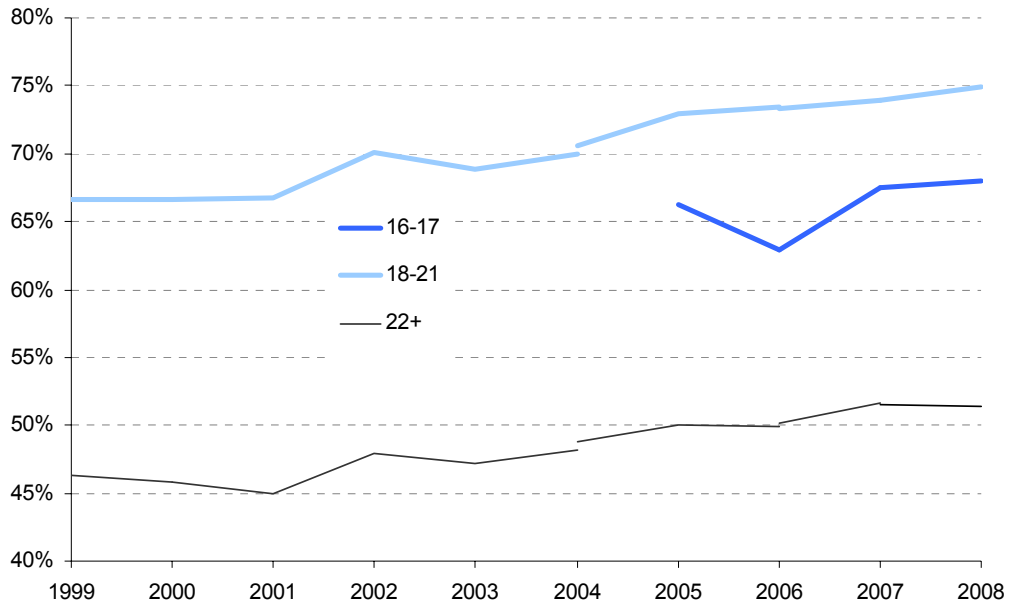
The bite of the minimum wage

6. 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 46.4 per cent of the median wage to 51.3 per cent in April 2008 (see Chart 4).

7. Therefore, the bite has increased by around 5 percentage points since the NMW was introduced in 1999. It increased by 1.4 percentage points between April 2006 and 2007, reflecting the October 2006 £0.30 increase in the adult minimum wage. This bite estimate does not include the October 2008 uprating in the minimum wage, as we do not yet have median earnings data for this period. However, the October 2008 minimum wage increase (3.8 percent) was broadly in line with average earnings growth in 2008, suggesting the bite might be broadly stable between 2008 and 2009.

8. The rate for 18-21 year olds also continued to increase, reaching 75 per cent of the median in 2008. 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 it has remained constant, the bite for 16-17 year olds in 2008 is 68 per cent.

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



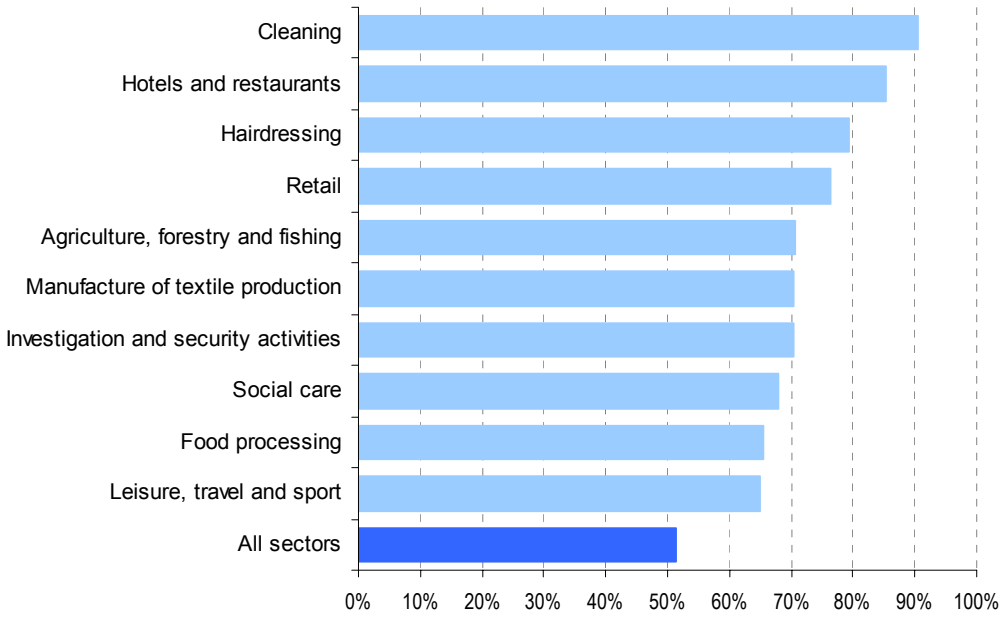
Source: Office for National Statistics, Annual Survey of Hours and Earnings
1999-2004 ASHE data - excluding supplementary information
2004-2006 ASHE data - old methodology
2006-2008 ASHE data - new methodology

The minimum wage and low paid sectors

9. 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 74 per cent. The bite ranges from 65 per cent of the median in leisure, travel and sport to 90 per cent in cleaning (see Chart 5). In addition, some of the largest low-paid sectors such as retail trade and hotels and restaurants, have some of the biggest bites at 76 per cent and 85 per cent respectively.

[1] Defined as hotels and restaurants; cleaning; hairdressing; retail; agriculture, forestry and fishing; investigation and security activities; manufacture of textile products; food processing; social care; leisure; and travel and sport.

Chart 5: The bite of the NMW in low-paid sectors
Adult minimum wage as per cent of median wage, 2008



Source: Office for National Statistics, Annual Survey of Hours and Earnings
Those aged 22+.

Points to note

Median versus average earnings NMW bite

10. Average earnings can be affected by those on very high incomes and can affect the NMW bite. For this reason we report the NMW as a percentage of median hourly earnings (which is less affected by very high earners). The Social Charter's limit of 60% appears to use the average wage as a benchmark and not the median.

Net pay

11. In Article 4 of the European Social Charter - 'A net wage which falls below the 60% of the net average wage is considered unfair within the meaning of this charter'. BIS and the LPC calculate the NMW bite using 'gross pay' (i.e. before tax and other deductions) not net pay.

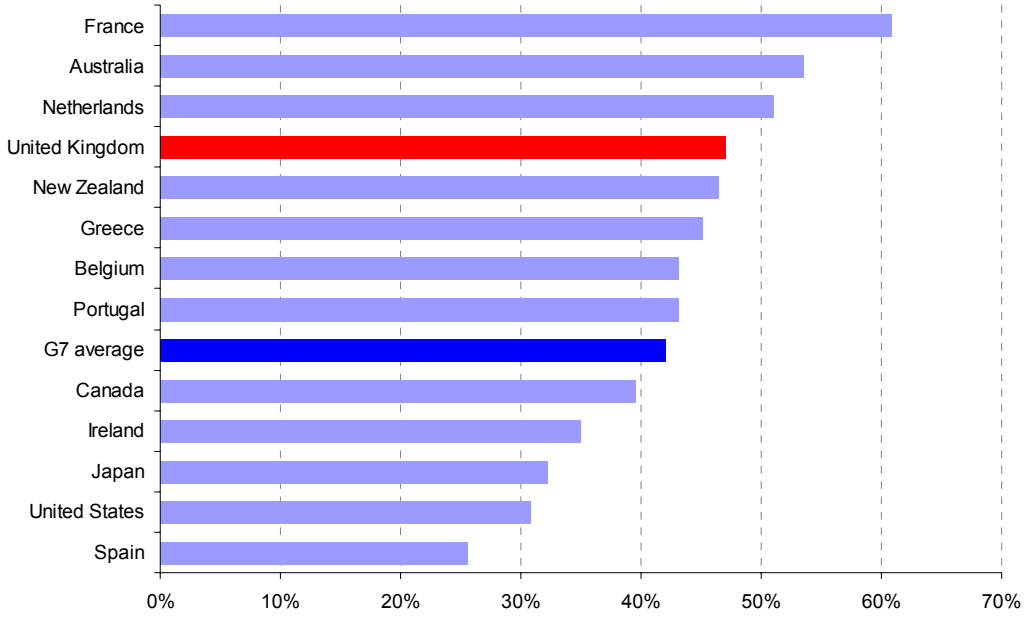
International comparisons of NMW bite

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

13. However, on the available evidence using the countries identified in chart 6, the UK bite is greater than the un-weighted G7 average with France, Australia and Netherlands all having a higher bite.

14. 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.

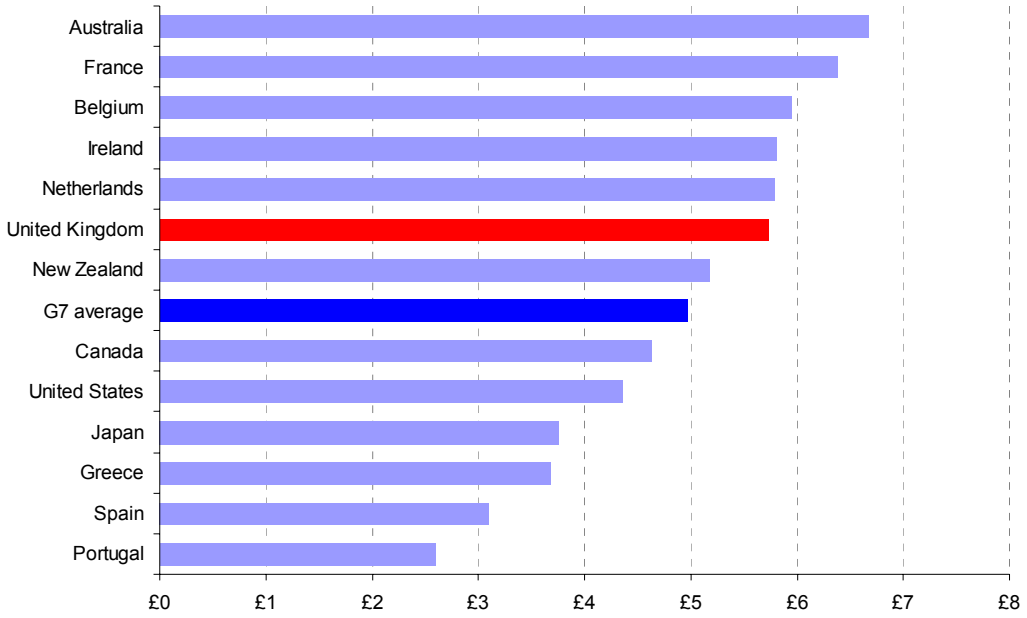
Chart 6: International comparisons of the minimum wage bite
Per cent of median earnings



Source: Various

[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
NMW in pound sterling (£) Purchasing Power Parity (PPP) terms



Source: Various

NMW and the tax system

15. The NMW forms part of the Government's wider strategy for tackling low living standards and - because peoples' circumstances vary – it should be seen in conjunction with other measures for alleviating poverty.

16. The NMW complements tax credits in achieving fairness combined with flexibility in the labour market and - together with the Working and Child Tax Credits and other benefits – from October 2009, it will provide families with one child and one person working 35 hours a week a net income of £306 per week. This is compared to £182 in 1999 when the NMW was first introduced.

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

18. Table 2 below sets out the weekly minimum income guarantees when combining the NMW with tax credits.

Table 2

	April 1999	October 2009	% increase in real terms
Family, one child, full-time work (35 hours)	£182	£306	31%
Family, one child, part-time work (16 hours)	£136	£238	36%
Single person, no children, 25 or over, full time work (35 hours)	£113	£197	36%
Couple, no children, 25 or over, full time work (35 hours)	£117	£232	54%
Disabled person (single), full time work (35 hours)	£139	£245	37%
Disabled person (single), part time work (16 hours)	£109	£177	26%

Note: these assume the prevailing rate of NMW and that the family is eligible for Family Credit/Disability Working Allowance and Working Tax Credit/Child Tax Credit. References to "family" also apply to lone parent families and couples with children alike.

19. Since 1997, the Government has introduced a foundation of minimum standards in the workplace. This included ending the UK's opt out from the "Social Chapter", and implementing the Working Time Directive. People at work in Britain have benefited from the right to a minimum wage, paid holidays, rest breaks, time off for family emergencies, a cap on the working week and measures to support working parents; part-time workers have the same rights as their full-time colleagues.

20. The Government has established a labour market characterised by both fairness and flexibility. Fairness aimed at providing the necessary protection for workers combined with the freedom for businesses to create wealth and employment. Flexibility aimed at providing opportunities for individuals to take up and keep the work that suits their circumstances and allows them to do a good job. No market, including the labour market, can function without rules. Our aim has been to get the rules right so that they provide the essential protections but do not inhibit choice and opportunity.

Committee of Experts' Conclusion

The Committee took the view that the minimum wage cannot be considered fair as it falls too far behind the average national wage and is inadequate.

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

National Minimum Wage (NMW)

22. The Government's strategy is to provide fair standards in the workplace and make work pay. That is why we introduced the NMW. 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.

23. On 1 October 2009, the NMW for adult workers increased from £5.73 to £5.80. Rate for 18-21 year olds increased from £4.77 to £4.83 and the rate for 16 and 17 year olds increased from £3.53 to £3.57.

24. Around 1 million workers have benefited from the NMW each year since its introduction. We estimate that between 950,000 and 1 million workers will benefit from the 2009 increase, nearly two-thirds of them women.

25. The independent Low Pay Commission (LPC) recommends the rates which it believes are appropriate based on a thorough consultation and the economic evidence available. The Government agreed that the LPC's 2009 report should be delayed to allow them to consider more data covering the downturn in the economy.

26. The Department for Business, Innovation & Skills (BIS) estimates that the bite adult NMW (as a percentage of median earnings) has risen from 46% in 1999 to 51% in 2009. The UK minimum wage bite is now around the OECD average (national minimum wage as a percentage of mean earnings) and is actually one of the highest in the OCED in terms of purchasing power.

27. From October 2008, the minimum wage (adult rate) will provide, with Working Tax Credits and other benefits, a guaranteed income of at least £306 per week for families with one child and one full time worker, which is equivalent to £8.15 per hour.

Real increase in NMW between 1997 and October 2009 (estimate)

28. The adult rate has increased by 59% from the outset (April 1999 to October 2009). In real terms, the NMW has risen by about 27% from April 1999 to October 2009. (Estimate made at May 2009 based on assumptions of RPI growth in 2009 from independent forecasts.)

How is the current rate decided?

29. 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. The October 2009 adult minimum wage is estimated to be around 27% higher in real terms from its introduction in 1999.

NMW not high enough

30. 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, particularly tax credits.

31. From October 2009, the minimum wage (adult rate) will provide, with Working Tax Credits and other benefits, a guaranteed income of at least £306 per week for families with one child and one full time worker, which is equivalent to £8.15 per hour. Attempting to use the NMW alone to increase in-work income would require setting it at a level that would damage the employment of low-skilled workers. While wages do not respond to family circumstances, such as number of children, tax credits do.

Question 2

32. 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 three academic labour relations specialists. 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.

33. HM Revenue & Customs (HMRC) acts 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, his aim is to ensure that workers receive what they are entitled to as soon as practicable.

Question 3

Data collection

34. 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.

Hourly wages by industry

35. Hourly gross wages by industry is presented in Table 3 ASHE does not report wages on a net basis (wages after the deduction of social security contributions and taxes)

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

Table 3

Table 1 Hourly pay - Gross (£) - For all employee jobs[a]: United Kingdom, 2008

Description	Code	Median (£)	Mean (£)
ALL EMPLOYEES		10.61	13.90
AGRICULTURE, FORESTRY AND FISHING	A	7.95	10.28
MINING AND QUARRYING	B	15.38	18.45
MANUFACTURING	C	11.50	13.49
ELECTRICITY, GAS, STEAM AND AIR CONDITIONING SUPPLY	D	16.61	18.17
WATER SUPPLY; SEWERAGE, WASTE MANAGEMENT AND REMEDIATION ACTIVITIES	E	11.05	13.05
CONSTRUCTION	F	11.68	13.77
WHOLESALE AND RETAIL TRADE; REPAIR OF MOTOR VEHICLES AND MOTORCYCLES	G	7.65	11.00
TRANSPORTATION AND STORAGE	H	10.30	12.39
ACCOMMODATION AND FOOD SERVICE ACTIVITIES	I	6.05	8.37
INFORMATION AND COMMUNICATION	J	15.95	19.34
FINANCIAL AND INSURANCE ACTIVITIES	K	14.98	21.39
REAL ESTATE ACTIVITIES	L	11.25	14.26
PROFESSIONAL, SCIENTIFIC AND TECHNICAL ACTIVITIES	M	14.49	18.74
ADMINISTRATIVE AND SUPPORT SERVICE ACTIVITIES	N	7.99	10.84
PUBLIC ADMINISTRATION AND DEFENCE; COMPULSORY SOCIAL SECURITY	O	13.01	14.47
EDUCATION	P	11.99	14.85
HUMAN HEALTH AND SOCIAL WORK ACTIVITIES	Q	10.69	13.45
ARTS, ENTERTAINMENT AND RECREATION	R	8.40	11.13
OTHER SERVICE ACTIVITIES	S	9.63	12.27
ACTIVITIES OF HOUSEHOLDS AS EMPLOYERS; UNDIFFERENTIATED GOODS-AND SERVICES-PRODUCING ACTIVITIES OF HOUSEHOLDS FOR OWN USE	T	8.24	9.41
ACTIVITIES OF EXTRATERRITORIAL ORGANISATIONS AND BODIES	U	x	16.38

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

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

Paragraph 2

Committee of Experts' Conclusion

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

36. UK Employment legislation lays down minimum standards below which employers must not fall, such as the minimum wage or minimum period of notice.

37. There are statutory protections for vulnerable workers in this area:

- The national minimum wage sets a baseline level of pay. Workers must receive at least NMW for each hour they work.
- The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 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.

38. Beyond the minimum standards set out in law, employers and employees are free to negotiate terms and conditions. The employee or the representative or trade union is free to, and often does, negotiate better terms for inclusion in the contract. The relationship between employer and employee is governed by English law of contract.

Paragraph 4

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

39. 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.

40. 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 about 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.

Notice periods

41. 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. We believe that these notice periods are sufficiently long to provide a fair minimum standard in the workplace.

42. 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.

Paragraph 5

43. The position remains as previously described. The Committee previously concluded that the UK is not in conformity on the grounds that deduction from wages is left to the negotiation between the parties to an employment contract.

44. The Government's provisions on unlawful deductions from wages are another part of the UK's commitment to decent minimum standards in the workplace. As is the case with rights to notice of termination of employment, we believe that terms and conditions of employment above the statutory minimum are best left to negotiation and agreement between employers and employees (or their representatives).

45. UK Legislation provides comprehensive protection against deductions from wages unless certain conditions are met, such as that a deduction is provided for in an employee's contract of employment. While the legislation does not prevent employers and employees from negotiating and agreeing circumstances in which deductions can be made, this does not mean that there are no constraints on what can be deducted.

46. Since the introduction of the national minimum wage in 1999 it has been unlawful for employers to make deductions which reduce workers' pay below the point at which it is, on average, below the level of national minimum wage. This excludes deductions for accommodation (see below).

47. Accommodation is the only benefit in kind which can count against the national minimum wage. The amount which can count towards minimum wage pay is set by Government, following recommendations from the independent Low Pay Commission. From 1 October 2009, the amount which can be deducted is £4.51 per day, rising from £4.46.

48. Payments for uniforms, tools or other items which a worker needs to do his job do not count towards national minimum wage pay. The employer must pay the worker the national minimum wage in addition to the cost of the uniforms or other items. These are important protections against inappropriate deductions from pay.

Protection against unlawful deduction from wages

49. Under the Employment Rights Act 1996, one of three conditions has to be met for an employer lawfully to make deductions from workers' wages: they must be required or authorised by legislation, or the worker must have consented in writing to the deductions before they are made, or they must be authorised by the worker's contract. If they are authorised by the worker's contract, the worker must have been given a written copy of the relevant terms or a written explanation of them before the deductions are made.

50. The 1996 Act does not itself place any limit on what can be contractually authorised, but the national minimum wage legislation prevents

deductions which reduce a worker's pay, on average, below the level of the national minimum wage.

51. The Government believes that wage levels above the national minimum should be left to negotiation and agreement between employers and employees, and that the safeguards which ensure that national minimum wage provisions cannot be abused or circumvented would be inappropriate where wage levels are higher.

Isle of Man

Paragraph 1

Questions 1 to 3

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

2. Certain minor amendments were made to the Minimum Wage Act 2001 (MWA) by way of the Employment Act 2006. In particular provision has been made for an enforcement notice to be issued in respect of a *former* worker who was paid less than the minimum wage, as well as an existing worker.

3. 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
2005	10.66	4.82	45%	1.1%
2006	11.88	4.95	42%	0.3%
2007	12.15	5.11	42%	0.5%
2008	12.47	5.42	43%	0.6%
Notes				
Full time employees only for 2005 and 2006				
Full time and part-time employees only for 2007 and 2008				

4. Working families[1] with incomes below prescribed levels may also be eligible to receive a social assistance benefit known as Family Income Supplement. Eligibility is subject to, inter alia, the claimant (or in the case of a couple, at least one member of that couple) working for an average of at least 16 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. Family Income Supplement is not available to single people without dependants (though a similar benefit known as Disability Working Allowance may be available to them if they were receiving long-term incapacity benefits before taking up work, or are in receipt of certain disability benefits), nor is it available to unmarried couples or same-sex couples who have not formed a civil partnership who do not have a dependent child or children.

[1] Married couple or civil partnership (whether or not they have dependent children or young persons), unmarried heterosexual couple or same-sex couple who have not formed a civil partnership who have at least one dependent child or young person, lone parent with at least one dependent child or young person

5. The following table sets out the minimum weekly income guarantees at April 2004, April 2008 and April 2009 for certain families, taking account of entitlement to Family Income Supplement/Disability Working Allowance 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 2004	April 2008	Percentage increase in real terms[1]	April 2009	Percentage increase in real terms[2]
Family with one child, full-time work[3]	£204.20	£245.44	2.6%	£262.97	9.2%
Family with one child, part-time work	£165.41	£197.47	1.9%	£211.29	8.3%
Couple, no children, full-time work	£198.46	£235.60	1.4%	£251.70	7.6%

Paragraph 2

Questions 1 to 3

6. The position remains as previously described.

Paragraph 4

Questions 1 to 2

7. The position remains as previously described with the following additional comments.

8. The Employment Act 2006 has 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] RPI growth April 2004 to April 2008 confirmed by IOM Treasury as 17.11%
[2] RPI growth April 2004 to April 2009 confirmed by IOM Treasury as 17.89%
[3] Full-time work is assumed to be 35 hours. Part-time work is assumed to be 16 hours.

Paragraph 5

Questions 1 to 2

9. The position remains as previously described, with the following additional comments.

10. The Employment Act 2006 has consolidated and strengthened earlier provisions regarding deductions from wages formerly in the Employment Act 1991

11. The 2006 Act has extended protection to cover not only 'employees' but also 'workers', a term which covers wider groups of working people such as agency workers.

12. Deduction or payment of an employment agency's fees from a worker's wages has been made expressly unlawful.

13. The Employment Tribunal has been given the power to award a worker up to 4 weeks' pay where the employer has made or received an unauthorised deduction or payment, if it considers this to be just and equitable.

Article 5 – The right to organise

United Kingdom

Question 1 General legal framework

1. The UK's twenty fifth Report provided details of the Employment Relations Act 2004, which contained provisions relating to the right to organise. These measures have been brought into force.

2. Section 19 of the Employment Act 2008[1] 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 the trade union. These provisions broadened a trade union's ability to exclude or expel individuals, and were driven by a case brought against the UK in the European Court of Human Rights by the Aslef trade union.

3. Section 19 of the 2008 Act amends sections 174 and 176 of the Trade Union and Labour Relations (Consolidation) Act 1992 by specifically setting out circumstances where political party membership is excluded from the definition of protected conduct. However, it limits the power of a trade union to exclude or expel on the grounds of political party membership to parties where membership of that party is contrary to the rules of the union, or contrary to an objective of the union. It must be reasonably practicable for an individual to ascertain the objective in question. In addition, to be lawful, the exclusion or expulsion in question must meet the following conditions:

- the decision to exclude or expel must be taken in accordance with the union's rules;
- the decision must be taken fairly; and
- exclusion or expulsion must not cause the individual to lose their livelihood or suffer other exceptional hardship.

The explanatory notes to the 2008 Act[2] provide further detail on Section 19's provisions.

4. In drafting Section 19, the Government attempted to balance competing human rights about freedom of belief and freedom of association. The Government's approach was developed in discussion with a number of interested parties including Lord Lester of Herne Hill, one of the country's leading human rights lawyers, and Lord Morris of Handsworth, former General Secretary of the Transport and General Workers' Union, both of whom considered that safeguards against potential abuse needed to be expressly written into the law. This approach was also supported by Parliament's Joint Committee on Human Rights.

5. This section of the 2008 Act came into force on 6 April 2009.

[1] http://www.opsi.gov.uk/acts/acts2008/ukpga_20080024_en_1
[2] http://www.opsi.gov.uk/acts/acts2008/en/ukpgaen_20080024_en.pdf

Following the UK's previous report, the Committee stated that it continued to believe the United Kingdom was not in conformity with Article 5 on the grounds that:

(a) Section 174 of the 1992 Act constitutes an excessive interference by the law with trade union membership conditions;

(b) Section 65 of the 1992 Act severely restricts the grounds on which a trade union might lawfully discipline its members; and

(c) Section 15 of the 1992 Act which makes it unlawful for a trade union member to indemnify a member for a penalty imposed for an offence or contempt of court represents an unjustified incursion into the autonomy of trade unions.

7. 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. The Government would also point out the Section 174 has been amended by provisions in the 2008 Act, as explained above. Those changes are balanced and were drawn up to ensure that the rights of all parties are protected, including the rights of those who may be expelled or excluded from the trade union.

Question 2

8. Section 55 of the Employment Relations Act 2004 amended the 1992 Act (by inserting section 116A) to provide a power for the Secretary of State to provide money to trade unions to enable them to develop their services and modernise their ways of working. The Government has since used this power to establish a Union Modernisation Fund. The Government consulted fully on the rules and procedures of the Fund when setting it up.

9. The Union Modernisation Fund (UMF)[1] supports projects, which contribute to, or explore the potential for, a transformation in the organisational effectiveness and efficiency of a union. For example, the Fund supports transformational projects which: improve the understanding of modern business practices by full time officers and lay representatives, supports capacity building for union equality representatives, improve communications between the union and its members, respond to the needs of a diverse membership, develop the professional competence of union officers and apply modern management methods to the running of unions, and assess the challenges of a potential restructure or merger.

10. The Government issued the first call for applications to the UMF on 15 July 2005. Forty nine applications to the Fund were received from a wide

[1] http://www.berr.gov.uk/whatwedo/employment/trade-union-rights/modernisation/page16097.html

range of unions. Thirty five were approved for funding by the independent Supervisory Board. The projects commenced in early 2006 and have an average length of 18 months. The Government has worked with the Trades Union Congress to ensure the key lessons are widely disseminated and help spread the benefits across the union movement. Round Two of UMF was launched in November 2006. Fifty three applications were received from a good cross-section of unions across six priority themes.

11. The Government has commissioned researchers from Leeds Business School to undertake an independent evaluation of the first round of the Fund. Their first stage report, published in September 2006, concluded that a substantial number of high quality applications were supported and that the assessment process was transparent and robust. Their final report was published in October 2009.

Isle of Man

Questions 1 to 3

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

The previous report explained that in the Isle of Man it was planned to consolidate employment legislation in 2005 and to introduce a number of new employment rights. One of the aims being to strengthen individual rights in respect of trade union activities at recruitment, during employment and at termination of employment. The Committee asked for further information to be included in this next report.

2. The Employment Act 2006[1] has consolidated and strengthened *individual* rights of trade union membership and activities which were formerly contained in the Employment Act 1991.

3. Whereas job applicants enjoyed protection against discrimination at recruitment on grounds related to trade union membership or activities, etc the 2006 Act has extended protection to also cover discrimination on grounds of the applicant's *past* trade union membership and activities.

4. Whereas *employees* enjoyed protection against dismissal and action short of dismissal for exercising their right to be or not to be a member of a trade union, or to take part in union activities etc, *workers* are now protected against any detriment (including termination of their contract) for exercising trade union rights (this is now extended to cover some other types of trade union activities such as use of trade union services). Furthermore, dismissal of an employee for exercising these rights is automatically unfair. In addition, the Employment Tribunal has been given powers to order that an employee found to have been unfairly dismissed, should be reinstated or re-engaged (the previous remedy being restricted to financial compensation).

5. The 2006 Act contains a new provision whereby inducements by employers to workers to be, or not to be, trade union members or involved in union activities, or not to have their pay or conditions negotiated by collective bargaining, are made unlawful.

6. The 2006 Act has given workers the right to be accompanied at a disciplinary or grievance hearing by trade union representative (or a colleague). Workers are protected against any detriment (including termination of their contract) for exercising this right. Dismissal of an employee for exercising the right is automatically unfair with no qualifying service requirements or upper age limit being applied.

7. Employees have the new right to be protected against any detriment for taking part in "protected industrial action" provided that such action does

[1] http://www.gov.im/lib/docs/dti/employmentRights/acts/employmentact2006.pdf

not last longer than 4 weeks. Dismissal is automatically unfair with no qualifying service requirements or upper age limit being applied. Protected industrial action is considered lawfully organized, official industrial action when called by a registered union in compliance with the statutory procedures under the Trade Unions Act 1991.

8. In addition, protection in the Employment Act 1991 which was intended to prevent an employer selectively dismissing or rehiring striking employees (irrespective of whether the industrial action is either official or lawful) has been extended to disapply the previous requirements for the employee to have one year's service and be under the employer's retirement age.

9. There have also been some amendments to legislation in respect of collective trade union rights, notably the Trade Unions Act 1991. In particular the previous notification requirements, which form part of the requirement for taking lawfully organized industrial action, have been expanded whilst there is also a new requirement that industrial action ballots be conducted by post.

Article 6

United Kingdom

Paragraph 1: Joint Consultation

1. The position remains as preciously described with the following developments.

2. The UK's twenty fifth Report referred to the Information and Consultation of Employees Regulations 2004. ***The Committee asked for details of the revised version of the Regulations.***

3. The Information and Consultation of Employees Regulations 2004[1] established a right for employees, or their representatives, to be informed and consulted by their employer on issues in the businesses they work for. The regulations implement the EC Directive establishing a general framework for informing and consulting employees in the European Community (2002/14/EC), and are made under powers contained in section 42 of the Employment Relations Act 2004.

4. The Regulations came into force on 6 April 2005 for organisations with 150 or more employees, 6 April 2007 for organisations with 100 or more employees and 6 April 2008 for those organisations with 50 or more employees. The regulations apply to public and private undertakings which carry out an 'economic activity', including non-profit making organisations, public sector bodies who undertake commercial activity, but not central government departments.

5. The obligation on employers to inform and consult 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. An agreement must set out how the employer will inform and consult employees or their representatives on an on-going basis, but the legislation lets them agree arrangements and structures tailored to their individual circumstances.

6. If an employee request is made and an employer has a valid pre-existing agreement in place, the employer may ballot the workforce to determine whether it endorses the request. At least 40% of the workforce and a majority of those who vote must endorse the employee request. If the workforce endorses the request (or the employer decides not to hold the ballot) the requirement to negotiate a new agreement is triggered. If the workforce does not endorse the request in a ballot, the pre-existing agreement continues. To qualify as a pre-existing agreement or an I&C agreement, the consultative arrangements must cover all employees

[1] http://www.opsi.gov.uk/SI/si2004/20043426.htm

7. Employers must initiate negotiations for an agreement no later than three months after a valid request is made. During this three month period the employer must make arrangements for the appointment or election of employee negotiating representatives.

8. Negotiations can last for up to 6 months, but the employer and representatives can agree to extend this period in order to reach an agreement. Where negotiations take place but fail to lead to agreement, standard provisions to inform and consult I&C representatives apply.

9. A failure to inform and consult under either a negotiated agreement or the standard provisions can result in a complaint being taken to the Central Arbitration Committee (CAC). Complaints can be made by any individual employee, or a representative of the employees such as a trade union official. If the complaint is upheld, the CAC could order the employer to comply with the relevant requirements of the negotiated agreement or of the standard provisions. The complainant can also apply to the Employment Appeal Tribunal for a financial penalty to be imposed on the employer of up to £75,000.

10. A three year moratorium on further employee requests applies where a negotiated agreement is reached, or the standard provisions apply, or a pre-existing agreement has been upheld following a ballot to endorse an employee request.

11. From 6 April 2007, the Occupational and Personal Pension Schemes (Consultation by Employers and Miscellaneous Amendment) Regulations 2006[1] came into effect. These require employers with a hundred or more employees to consult affected members of the pension scheme (or their representatives) before making a significant change to their work-based pension scheme. On 6 April 2008, employers with 50 or more employees came within scope of the Regulations.

12. Following the UK's twenty fifth report, the Committee asks for more information on the outcomes of the Partnership at Work Fund projects. As previously explained, the Government funded 249 projects and committed over £12 million of financing. The Partnership at Work Fund closed to new applications on 31 July 2003. The projects under this scheme have all since been completed.

13. Researchers from the University of Warwick carried out research on behalf of the then Department of Trade and Industry in 2002, which examined the initial rounds of projects to date, some of which were still in progress. The evaluation identified several features of effective partnerships. This report was published in 2003 and can be viewed via the link below[2].

[1] www.opsi.gov.uk/si/si2006/draft/20063891.htm
[2] http://www.berr.gov.uk/files/file11540.pdf

The Committee asks for information on the content and implementation of the Civil Service Code of Practice on Information and Consultation

14. The Committee is invited to look at the information in the Cabinet Office Code of Practice on informing and consulting employees in the Civil Service that can be viewed via the link below[1].

[1] http://www.civilservice.gov.uk/Assets/ec_info_consultation_tcm6-2411.doc

Paragraph 2: Negotiation Procedures

Statutory Recognition and Derecognition Procedure

The Committee asked for more information on the scope of the measures in the Employment Relations Act 2004 and its implementation.

15. Following a large-scale review, a number of amendments to the statutory recognition and derecognition procedures were made in sections 1 - 21 of the Employment Relations Act 2004. As mentioned in the UK's twenty fifth Report, these measures were intended to make the statutory recognition procedures more efficient and clearer. All these changes have now been implemented, with most taking effect in April or October 2005.

16. The measures were listed in the Report. Further detail on them is provided in the explanatory notes[1] which accompany the Act and can be viewed via the link below. One of the major innovations the Act introduced was to make it unlawful for the employer, or the trade union, to use "unfair practices" during the period of recognition or derecognition ballot. Such "unfair practices" include actions to bribe, coerce or unduly influence workers within the bargaining unit, which are taken with a view to influence the outcome of a ballot. Guidance on the avoidance of unfair practices is given in the Code of Practice on Access and Unfair Practices During Recognition and Derecognition Ballots, a copy of which is also attached at the link below[2]

17. The twenty fifth Report described the Government's response to the judgment by the European Court of Human Rights (ECHR) in the case of *Wilson et al v the UK*. Sections 29 - 32 of the Employment Relations Act 2004 inserted new provisions into the Trade Union and Labour Relations (Consolidation) Act 1992 which, among other things, make it unlawful for employers to offer monies to induce workers to exclude themselves from the scope of collective bargaining. These provisions were brought into force in October 2004.

The Committee asked also:
(a) whether workers also have a right to claim that employers shall be prevented from making offers to co-workers in order to induce them to surrender their trade union rights; and
(b) whether trade unions can claim a violation of the right to collective bargaining in such event.

18. In response to point (a), the rights created by the 2004 Act do not provide for workers who did not receive an offer to complain about the making of offers to co-workers. The Government is content that this accords with the ECHR judgment. The discrimination identified by the Court in the *Wilson et al v the UK* case was between those union members who had accepted the offer

[1] http://www.opsi.gov.uk/acts/acts2004/en/ukpgaen_20040024_en_1
[2] http://www.berr.gov.uk/files/file14418.pdf

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 in the relevant bargaining unit to whom no offer had been made. Further, so far as the Government is aware there were no such members. The Government would observe that this is not simply a debating point. The essence of the Wilson and Palmer judgment was that UK domestic law failed to comply with Article 11 of the European Convention on Human Rights in that it permitted employers to make offers to union members to induce them to surrender important trade union rights within scope of the Article (paragraph 48 of the judgment). It must follow that there can be no failure to comply with the Article on the basis identified in the judgment in relation to members to whom no offer at all was made, and who therefore remained free, uninfluenced by any offer made by the employer in contravention of the Article, to continue to have their terms determined by a collective agreement.

19. As regards point (b), the provisions of the Act do not create a free-standing right for the trade union to complain about infringement of its rights. Again, the Government firmly considers that the ECHR judgment does not require the creation of such a right. While the Government accepts that the Court held that the Article 11 rights of the applicant unions had been infringed as well as the Article 11 rights of the applicant members, it is of the opinion that the infringement of the rights of the applicant unions simply resulted from and was consequential upon the infringement of the rights of their members rather than an infringement of a free-standing right of the unions.

20. To explain further, this was a case where the acts by the employers complained of were done in relation only to members of the applicant unions and not in relation to the unions themselves. It follows, in the view of the Government, that it is not necessary to give trade unions a separate remedy in order for the law of the UK to be compatible with the judgment. The Government therefore considers it sufficient to confer the remedy for acts of the kind that the Court held to infringe Article 11 on those in relation to whom the acts complained of would be done, that is to say, the members of trade unions.

21. The Government believes that, considered as a whole, the judgment supports its view. The key relevant passage of the judgment is paragraph 47 which relates throughout to the offers of inducement made by the employers to the members of the applicant trade unions and the consequences of the making of those offers. The last sentence of paragraph 47 and the relevant parts of paragraph 48 read as follows –

> "[47] However, as the House of Lords judgment made clear, domestic law did not prohibit the employer from offering an inducement to employees who relinquished the right to union representation, *even if the aim and outcome of the exercise* was to bring an end to collective bargaining and thus substantially to reduce the authority of the union, as long as the employer did not act for the purpose of preventing the individual employee from being a member of a trade union.

> [48] Under United Kingdom law at the relevant time it was, therefore, possible for an employer effectively to undermine or frustrate a trade union's ability to strive for the protection of its members' interests. ….[The Court] considers that, *by permitting employers to use financial incentives to induce employees to surrender important union rights,* the respondent State failed in its positive obligation to secure the enjoyment of the rights under Article 11 of the convention. This failure amounted to a violation of Article 11 as regards both the applicant unions and the individual applicants."

Emphasis has been added to those passages that, in the opinion of the Government, support its view.

22. The Government suggests that, on a fair reading of the above, the Article 11 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 11 right of their members to freedom to belong to a union for the protection of their interests. The position is, rather, that certain infringements of the rights of trade union members under the Article will also result, consequentially, in infringements of the rights under that Article of the trade unions of which they are members. This results from the fact that trade unions are voluntary associations consisting of their members; if adequate remedies are given to the members the rights of the union are also protected.

23. The Committee is asked to note that apart from the new section 145B inserted by section 29 of the 2004 Act specifically to address the issue determined in the *Wilson et al v the UK* case, section 146 of the 1992 Act and the new section 145A (also inserted by section 29) also provide rights to union members that protect their Article 11 rights. In particular, section 146 provides union members with the right not have action taken against them by their employer for the purpose of deterring them from or penalising them for their union membership. This is a protection that has existed continuously in various forms since 1971. It is clear that action taken against a union member contrary to the section damages the Article 11 rights of the union to which the member belongs as well as the Article 11 rights of the member. Nevertheless, the 1992 Act gives no separate right for the union to complain about the action taken against the member and it has not been suggested that it needs to do so to achieve compatibility with Article 11. The Government takes the view that the analysis is the same: by protecting the Article 11 rights of the member the rights of the union are also adequately protected in a way that secures compatibility with Article 11.

The Committee notes that the law allows an employer to make an offer to an in individual worker where the sole or main purpose is not connected with the aim of undermining collective bargaining or collective agreements. The Committee asks the Government to specify under which circumstances such inducement would not be deemed to be made with the sole or main purpose of undermining collective bargaining or collective agreements.

24. In response, the Government cannot specify all the circumstances where this could be the case. In the final event, it would always be a matter for the Employment Tribunal to determine in the light of the facts and circumstances of any individual case.

25. The Government does not believe it to be correct to infer from the ECHR judgement that domestic law is required to give a remedy against employers who make offers to workers who are union members and have the benefit of having their terms determined under a collective agreement where the purpose of the employer in making the offers is to retain or reward valuable staff and not to secure the result that the terms of employment of the members cease to be determined by collective agreement. The Government views it as extremely important that employers should be free to take the legitimate decisions they believe are needed to run their businesses effectively. Of course, decisions are not legitimate if they infringe Article 11 or other ECHR rights but the Government is firmly of the view that nothing in the judgment was intended to, or does prevent, employers from taking decisions to reward particular employees more highly than others when the motivation for doing so is to reward such employees in the interests of the business. Given this the Government considers the use of a purpose test to be essential.

26. The Government would point out that under the new section 145D(2) of the 1992 Act (introduced by section 29), it is for the employer to show what his sole or main purpose in making the offers was. In the opinion of the Government, the use of a sole or main purpose test coupled with a provision ensuring that the burden is on the employer to show what his sole or main purpose was achieves the most satisfactory balance and is consistent with the judgment of the Court.

27. The Committee will be aware that Employment Tribunals are accustomed under a number of their current jurisdictions to determining what the employer's sole or main reason for, or purpose in, doing certain acts was; an obvious example being unfair dismissal. The Government is therefore confident that Tribunals can apply the test in the new section 145B sensibly to distinguish between cases where offers are made for the purpose of, in effect, achieving derecognition of a union and cases where they are made for the purpose of retaining or rewarding valuable staff. The Government does not therefore take the view that the sole or main purpose test provides employers with an easy way of avoiding the intended impact of the new provisions.

Paragraph 3

28. There have been no changes since the twenty fifth Report regarding the legal framework within which collective conciliation and arbitration services are provided in the UK.

Paragraph 4

29. Sections 23 - 28 of the Employment Relations Act 2004 were brought into effect on 6 April 2005 or 1 October 2005. These provisions amend aspects of the Trade Union and Labour Relations (Consolidation) Act 1992 concerning industrial action law and the protections against dismissal for those engaged in protected industrial action. Among other things, these provisions significantly change the obligations on trade unions to provide information in the two types of industrial action notice. They also significantly extend protections against dismissal. Further details on these changes are provided in the explanatory notes on the 2004 Act which may viewed at the link below. [1]

30. In October 2005, a revised version of the statutory Code of Practice on Industrial Action Ballots and Notice to Employers was brought into effect, following a full public consultation on a draft text. The main reason for revising the Code was to ensure it reflected the changes to the law which the 2004 Act made. A copy of the Code is attached at the link below.[2] The provisions of the Code are admissible in evidence and must be taken into account in proceedings before any court where it considers them relevant.

Following the UK's twenty fifth Report, the Committee stated that it believed the United Kingdom was not in conformity with Article 1.2 on the grounds that the seamen on strike may face criminal sanctions. The Committee wishes to deal with this issue under Article 6.4 and asks to be kept informed of any developments in this respect.

31. In response, 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.

The Government notes that, in response to the twenty fifth report, the Committee has concluded also that the UK is not in conformity with Article 6.4, on the grounds that :

(i) the scope for workers to defend their interests through lawful collective action is excessively circumscribed ;

(ii) the requirement to give notice to an employer of a ballot on industrial action is excessive ; and

(iii) the protection for workers against dismissal when taking industrial action is insufficient.

[1] http://www.opsi.gov.uk/ACTS/acts2004/en/ukpgaen_20040024_en_1
[2] http://www.berr.gov.uk/files/file18013.pdf

33. The Government respectfully disagrees with the Committee's conclusions in this area.

34. The Government would point out that, according to the Appendix to Article 6.4, each party may regulate the right to strike by law, provided those restrictions can be justified by Article G. The UK like all other countries regulates the freedom of unions to organise industrial action. The Government respectfully submits that those 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 public interest. It further submits that these restrictions are proportionate.

35. The Government would point out that industrial relations are very decentralised in the UK. There exists 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 into, 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.

36. The very large number of bargaining units, and consequentially the large amount of bargaining undertaken each year, mean 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. The effects of those disputes became disproportionately large and seriously weakened the performance of the UK economy and the ability to deliver services to the general public. Against this background, the Government re-affirms its belief that it is necessary in the UK's particular circumstances that a trade dispute should be defined as it is and that secondary industrial action should be unlawful.

37. A notice of an industrial action ballot shows that the dispute between the employer and the trade union has moved closer to possible strike action. This gives both sides the opportunity for further efforts to resolve the dispute. Indeed, the holding of an industrial action ballot, and the announcement of its outcome, often have a major impact on bargaining processes. The Government considers that all reasonable attempts should be made by both parties to avoid industrial action being taken. This therefore provides both employers and trade unions with the opportunity to enter into discussions to resolve the dispute, or to make use of arbitration, conciliation or mediation services such as those provided by ACAS.

38. The law on notices in advance of a ballot on industrial action is provided by section 226A of the Trade Union and Labour Relations (Consolidation) Act 1992. This section has been substantially revised by the

Employment Relations Act 1999 and the Employment Relations Act 2004, following detailed consultation with trade unions and others. The informational requirements on trade unions have been lightened as a result. Among other things, the law requires trade unions to provide information that is "as accurate as is reasonably practicable in the light of information in the possession of the union at the time." This means that unions do not have to provide information which they do not hold, or which is held by their lay representatives, and there is no expectation that this information is perfect. The Government considers that these legal requirements regarding ballot notices serve a useful and constructive purpose, and are proportionate. Few legal cases arise as a consequence.

39. As regards point (iii), the Government would point out that the statutory protections against dismissal for those taking industrial action are now greater than ever before in the UK. As the Committee notes, it is unfair for an employer to dismiss an employee for taking lawfully organised, official industrial action which last twelve weeks or less. Virtually all industrial action in the UK lasts less than twelve weeks. This period does not include days when the employer has prevented workers from working or from returning to work by locking them out of the workplace. Second, regardless of the duration of the industrial action, it is unlawful for an employer to dismiss an employee for taking this type of industrial action if the employer has failed to take reasonable procedural steps to resolve the dispute with the trade union. Generally, this means that the employer must have exhausted the standard procedures for dispute resolution before dismissing any employees. If the trade union has requested it, the employer should have also used mediation and conciliation services.

40. The Government firmly believes that, in combination, these protections are substantial. Few dismissals of strikers therefore occur. However, the Government also considers that Article 6.4 should not be interpreted as meaning that employees can never be dismissed in any circumstances for taking industrial action. Protracted periods of industrial action can frequently threaten the very existence of a business and can endanger the livelihoods of other employees who are not involved. Their rights also need to be factored into the construction of a fair and balanced legal system. The Government feels 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.

Isle of Man

Questions 1 to 2

1. The position remains as previously described.

Question 3

2. There were no strikes or lock outs in the reporting period.