



House of Commons
Scottish Affairs Committee

**Response by the
Government to the
Committee's Report on
Homeworkers in
Scotland and the
Minimum Wage (HC 335)**

Third Special Report of Session 2002–03

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Third Special Report

On 3 April 2003 the Scottish Affairs Committee published its Second Report¹ of Session 2002–03 on Homeworkers in Scotland and the Minimum Wage. On 4 June we received a memorandum from the Government which contained a response to the Report. The memorandum is published without comment as an appendix to this Report.

Appendix

This memorandum constitutes the Government's response to the Scottish Affairs Committee's report *Homeworkers in Scotland and the Minimum Wage* (Second Report of Session 2002–03, HC 335 published on 3 April 2003).

The Government welcomes the Committee's report which concludes that a sizeable proportion of industrial homeworkers in the United Kingdom are earning less than the minimum wage and sets out 10 recommendations to address the issue. The Government responds to the individual recommendations later in this memorandum.

Although the statistics in this area are uncertain, the Government accepts that some homeworkers are not receiving the minimum wage, and is already taking positive action to address this important issue. These actions include:

Looking to see whether there is a case for replacing the present system of fair estimate agreements with a system of fair piece rates.

In its Third Report the Low Pay Commission recommended that “the Government should consult representatives of output workers and their employers to see whether there is a case for a change in the Regulations on fair estimate agreements”. The Government held discussions with key stakeholders in the second half of 2002, and

¹ Second Report from the Scottish Affairs Committee, Session 2002–03, Homeworkers in Scotland and the Minimum Wage,
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issued a consultation paper in February 2003. This set out the Government's proposal to replace the present fair estimate agreement system with a system of fair piece rates, designed to ensure that the average or ordinary homeworker would earn the minimum wage. The Government is presently considering the responses to the consultation paper with a view to amending the Regulations before the summer recess.

Looking to see how any new system might be best publicised and enforced.

If a new system of fair piece rates is introduced, the Government will consider what targeted publicity and enforcement would be needed to ensure that homeworkers are made fully aware of their rights and homeworker employers are made aware of their obligations. Officials will discuss possible options with interested parties, including the National Group on Homeworking (NGH).

Funding a pilot enforcement project aimed at improving awareness of and compliance with the minimum wage amongst homeworkers in the Bradford area.

DTI has funded an Inland Revenue/NGH pilot enforcement project aimed at improving awareness and compliance with the minimum wage in the Bradford and surrounding area. To date, the project has focused on building relationships and there have not yet been any significant complaints, although important leads are now being cultivated. The Revenue is expected to evaluate the success of the project shortly.

Designing a training package to help minimum wage compliance officers who have cases to investigate involving homeworkers.

A training package is being designed by the Revenue, with support from the NGH, to help compliance officers who have cases to investigate involving homeworkers. The Revenue aims to have at least one 'expert' in each compliance team with a detailed knowledge of how to handle homeworking cases.

Producing a minimum wage video.

The Government is presently producing a video to be used as part of a wider campaign to encourage individuals to approach the Inland Revenue, or a local community organisation, if they believe that they are working for less than the minimum wage. The target audience for this video will be primarily women from the Asian community who work in local factories or from home, for whom English is a second language, and who may be frightened of authority. The main aim of the video is to get basic information across to encourage homeworkers to keep records of hours worked, and to contact Inland Revenue or local community group if they are concerned about possible underpayment. We are working with a number of community organisations in developing this product and discussing with them how best to market the product.

SCOTTISH AFFAIRS COMMITTEE RECOMMENDATIONS

1. The DTI status review must address the issue of employment classification as a matter of priority (paragraph 15).

As part of its review of employment status in relation to statutory employment rights, the DTI consulted last year to identify whether there are any problems with the present arrangements. The DTI will consider the issues regarding employment status raised by the Committee as part of the review. The consultation document published as part of the review invited views on whether there should be a broader review of employment status and tax law.

The consultation also sought views about the case for and against extending the coverage of statutory employment rights. Responses to the consultation are being analysed and the Government intends to publish a response later this year summarising

findings and outlining any action proposed. Any regulatory changes would be subject to further consultation.

Case law on employment status suggests that many homeworkers will be employees under existing employment law and so will already qualify for employment rights. The national minimum wage specifically covers homeworkers who are not in business on their own account.

However, the Government is keen to ensure that homeworkers and their employers have information on employment rights and status. Some employers may incorrectly believe that homeworkers who are self-employed for tax and national insurance purposes are therefore self-employed under employment law – and hence not entitled to the minimum wage. Where a Revenue inspector advises on the employment status of a person for tax and national insurance, the minimum wage is explicitly excluded from the scope of the ruling. We will ensure that the Revenue inspectors continue to draw employers' attention to this point. We will also consider the scope for addressing this in any publicity targeted at homeworkers and homeworker employers later this year.

2. The DTI should, so far as is possible, ensure that guidance about where responsibility lies when sub-contracting arrangements for homeworkers is in place (paragraph 18).

The Government will discuss with the NGH what steps can to be taken in this area. We would add that that the Inland Revenue minimum wage virtual homeworking team retains details of all cases worked. This database will be used to develop understanding of such businesses and to disseminate information about homeworking and the minimum wage. The virtual homeworking team, which works closely with the NGH, is designed to identifying areas of difficulty encountered by compliance officers and develop best practice techniques.

3. We recommend that the DTI and the Inland Revenue should jointly take immediate steps towards ensuring the provision of a more detailed, accurate and

universally accepted range of data concerning homeworkers in the UK (paragraph 39).

The Government accepts that there is a discrepancy between the official data and figures put forward by the NGH in this area. To this end, discussions are due to take place between the DTI, the Office for National Statistics and the NGH.

4. It is essential that the Scottish Helpline has a secure and long-term future. The Government should ensure that funding for this essential service to Scottish workers who operate around the minimum wage earning levels should not be in doubt (paragraph 55).

The helpline was set up in February 2003 with the aim of raising awareness of the minimum wage among low paid workers in Scotland and encouraging complaints where the minimum wage is not being paid. It is too soon to judge whether the helpline has been a success. However, the Revenue is monitoring the performance of the helpline and will be evaluating its success in achieving those aims when deciding whether funding should continue.

5. In pursuit of good quality statistics and an improvement in the terms of employment of homeworkers throughout Scotland, the Government should ensure that adequate provision is made (paragraph 62).

We will be happy to meet the NGH/Scottish Homeworking Group to discuss this issue, but the answer given to recommendation 3 is the key way forward with regard to gathering good quality statistics.

6. It is hard to see how 100% protection can be offered to industrial homeworkers who rightfully complain about non-payment of the minimum wage. But every effort should be made to do as much as possible. This will involve follow-up work, including action against vengeful employers whenever that is appropriate.

It may well be that employment legislation could be amended in order to support complainants in these circumstances (paragraph 65).

The Government agrees that this is a key issue which needs to be addressed and will be considering this carefully, especially in light of the fair piece rate proposal. There is already protection for workers who complain about non-payments of the minimum wage. Sections 23 to 26 of the Minimum Wage Act 1998 make it clear that workers – and, of course, this term includes homeworkers - who suffer a detriment (including being sacked) as a result of the minimum wage can take their claim to a tribunal. We are discussing the possibility of preparing a factsheet for all complainants setting out their employment rights.

7. We recommend that there should be regular follow-up inspections of employers who have been found to be in breach of the terms of the National Minimum Wage Act. The Inland Revenue compliance teams in Scotland should also include spot checks of as one of their objectives (paragraph 69).

The Revenue already carries out a number of ‘closed case reviews’ of employers who have failed to pay the minimum wage. Existing legislation gives compliance officers the authority to visit any business to determine whether they are paying the minimum wage. The teams do not only act in response to worker complaints, which are the drivers for only around a third of investigations. One third of cases are investigated as ‘spot checks’ because they are thought to be at risk of non-compliance, and a further third are investigated because of information from other Revenue sources, principally tax credit applications.

8. In future, we recommend that appropriate follow-up action is taken to oblige employers who, for one reason or another, have contravened the terms of the National Minimum Wage Act to part with the necessary back pay as soon as possible (paragraph 70).

All minimum wage compliance teams check with workers after an investigation that they have received the pay arrears due to them. Where arrears are not paid the Revenue considers further enforcement action (issue of enforcement notice, penalty notice or pursuit through tribunal and Sheriff Court). However, our experience is that further action is only needed in around 1-2% of cases.

9. We believe that the enforcement apparatus would be strengthened if dubious employers knew that they were liable to the sanction of significant financial penalty which would be collected (paragraph 79).

The Revenue's priority will always be to try and get workers any money they are owed. The existing legislation already includes the power to issue penalty notices on employers who refuse to pay their workers the minimum wage. In practice, these are required in only about 1% of cases.

10. We recommend that employers who deliberately avoid paying the minimum wage should be identified. If this were the case it would enable potential industrial homeworkers as well as the monitoring bodies and relevant voluntary agencies to know who the bad employers are; and ensure that employees of those companies knew about it (paragraph 80).

We will consider this point. The Revenue has a duty of confidentiality in respect of information relating to tax matters and has adopted a similar approach in relation to minimum wage information.