



House of Commons  
Scottish Affairs Committee

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**Enforcement of the  
National Minimum  
Wage in Scotland:  
Government Response  
to the Committee's  
Sixth Report of Session  
2008–09**

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**Second Special Report of Session  
2009–10**

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## The Scottish Affairs Committee

The Scottish Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Scotland Office (including (i) relations with the Scottish Parliament and (ii) administration and expenditure of the offices of the Advocate General for Scotland (but excluding individual cases and advice given within government by the Advocate General)).

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### Publication

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee are on the Internet at [www.parliament.uk/scotaffcom](http://www.parliament.uk/scotaffcom).

### Committee staff

The current staff of the Committee are Nerys Welfoot (Clerk), Alison Groves (Second Clerk), Briony Potts (Committee Assistant), Becky Crew (Committee Assistant), Karen Watling (Committee Assistant) and Tes Stranger (Committee Support Assistant).

### Contacts

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## Second Special Report

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The Scottish Affairs Committee reported to the House on *Enforcement of the National Minimum Wage in Scotland* in its Sixth Report of Session 2008-09, published on 26 October 2009 as HC 380. The Government's response to the Report was received on 21 December 2009.

### Comments by the Committee on the Government response

We welcome the confirmation from the Government that HM Revenue and Customs (HMRC) has put procedures in place to ensure that select committees in future are provided with the most comprehensive information possible.

We remain firmly of the view that all employers who are found to be non-compliant with national minimum wage legislation should be named and shamed. We look forward to receiving in due course more information on HMRC's new case management system, which will be capable of collating age-related data of workers.

We welcome the development of a resource centre of awareness raising material for trade associations to disseminate to their members. We also welcome the proposed communications push directed at businesses across the tipping sectors to encourage businesses to adhere to the new Code of Best Practice on Service Charges, Tips, Gratuities and Cover Charges and we look forward to receiving more information on how the Department for Business, Innovation and Skills (BIS) will take the campaign forward. Finally, we look forward to receiving more information from HMRC on its evaluation of the success in Scottish areas of the 2009 and 2010 publicity campaigns, and also the targeted enforcement campaign in the hospitality industry planned for late 2010.

## Government response

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### Introduction

The Government welcomes the Scottish Affairs Committee's report *Enforcement of the National Minimum Wage in Scotland*, published on 26 October this year, which makes an important contribution to the issue of tackling the underpayment of the National Minimum Wage (NMW).

This year marks the 10<sup>th</sup> anniversary of the introduction of the NMW. It is widely agreed that the NMW has been successful since its introduction in 1999 and is now firmly established as a key element of UK labour market policy. However, we recognise that some vulnerable workers may well still be at risk of underpayment of the NMW and that the Department for Business, Innovation and Skills (BIS), as the Department responsible for NMW policy, and HM Revenue and Customs (HMRC), who enforce the NMW on behalf of BIS, need to continue to do all they can to tackle this.

For this reason, the Government introduced a stronger penalty regime in April 2009 and non-compliant employers now have to pay arrears that take into account the length of time that has elapsed since the underpayment and also face a penalty.

Looking forward, BIS and HMRC are reviewing the existing strategy to ensure we effectively use the tools, intelligence and resource available to improve compliance and enforcement.

In addition to this, the NMW is a major component of the work being led by the Government's Fair Employment Enforcement Board, including being part of the overall communications and publicity campaigns targeted at vulnerable workers, and the sharing of best practice and potential for greater joint working between the various enforcement agencies in the employment rights field.

## Response to Conclusions and Recommendations

### *Article in the Sunday Times*

**1. We recommend that Her Majesty's Revenue and Customs ensure that the proper procedures are put in place to ensure that select committees are provided with the most comprehensive information, within reason, that is available. We will bring this matter to the attention of the Chairman of the Liaison Committee. (Paragraph 14)**

The Government can confirm that HMRC has put procedures in place to ensure that select committees will in the future be provided with this information. Information managers have been appointed, where appropriate, in business units across HMRC including within the NMW team. The role of the Information Manager involves:

- Reviewing all requests for information that are made
- Confirming if information is available -either in a readily available format e.g. on a database or whether it can be gathered in a reasonable amount of time.
- Taking the decision whether the information requested can be published.

### *Investigations made by HMRC in Scotland*

**2. In its response to this Report, we invite the Government to update us on whether or not HM Revenue and Customs in future decides to collate information on the age of individual underpaid workers. (Paragraph 16)**

HMRC is developing a new case management system (known as "case flow"). The new system will be capable of routine collection of age-related data on workers whom we find, through investigation, are entitled to payment of arrears of national minimum wage. HMRC undertake to provide the Committee with a definitive overview of the new system

specifications once its testing programme is completed and the new system is confirmed ready for the planned 'go live' in 2012.

**3. In its response to this Report, we invite the Government to provide us with a breakdown of the number of cases of non-compliance between the businesses found within "other services" per year from 2002-03 to the present day. (Paragraph 21)**

Details are in the attachment to this report (Appendix 1).

### ***"Naming and shaming" non-compliant employers***

**4. The Government has made the right decision to accept the Low Pay Commission's recommendation to name and shame employers who wilfully disregard the national minimum wage. We recommend that this should apply to all employers who are found to be non-compliant with national minimum wage legislation. We further recommend that the Government clarify how it will implement this change and publish further guidance on how HMRC will judge whether an employer has "wilfully" disregarded the national minimum wage. (Paragraph 33)**

The Government agrees with the Low Pay Commission that action should be taken to expose those employers who show wilful disregard for the NMW. We believe that it is important to adopt an approach which recognises necessary safeguards for ensuring that the policy is fair and proportionate. BIS is currently developing, in collaboration with HMRC, and in consultation with the Ministry of Justice, the detail of the procedures for achieving greater transparency.

### ***Tipping***

**5. We invite the Government, in its response to this Report, to make clear how it will encourage businesses, particularly those not affiliated to a trade association, to sign up to the Code of Best Practice on Service Charges, Tips, Gratuities and Cover Charges. (Paragraph 38)**

The Government wants to see all businesses in tipping sectors operating in this way. We shall encourage businesses to adhere to the Code of Best Practice through a joint communication strategy with the key stakeholders, and using the media.

The new Code received positive press coverage when it was launched in October and the main trade associations - the British Hospitality Association, National Hairdressers Federation and Casino Operators Association - have all publicised the Code to their members and made it available through their websites. More needs to be done to positively encourage businesses to engage with the Code, and BIS are discussing with these organisations and with consumer and worker representatives the campaign going forward, including a communications push in early 2010 directed at businesses across the tipping sectors. We know that consumers want to see the tips they leave go to the staff so we will be encouraging customers to take the initiative and put pressure on businesses by asking the question when they leave tips about what happens to it.

### ***Information provided by trade associations to their members/targeted enforcement***

6. We conclude that HMRC should give consideration to targeting advice and assistance to trade associations in sectors where relatively high levels of non-compliance are identified. (Paragraph 42)

7. We urge trade associations in the sectors showing the highest levels of non-compliance to continue to provide guidance and advice to their members on the National Minimum Wage and to send the strong message that non-compliance is damaging to the reputation of the sector as a whole. (Paragraph 43)

9. It is difficult to assess to what extent the targeted enforcement campaigns have been successful in raising awareness of the national minimum wage, particularly as the hospitality industry enforcement campaign was not completed. The increasing figures for non-compliance in some sectors in Scotland suggest that the message is not getting through. The British Hospitality Association, National Hairdressers' Federation and National Day Nurseries Association told us that they would welcome further interaction with HM Revenue and Customs and the Department for Business, Innovation and Skills, and we recommend that the Government continue its dialogue with these industries to tackle the problem of non-compliance. (Paragraph 55)

10. In its response to this Report we invite the Government to provide an assessment of its targeted enforcement campaigns so far and include an update on what future campaigns are planned for the sectors with the highest levels of non-compliance. (Paragraph 56)

In view of the connection between conclusions 6, 7, 9 and 10, the Government is responding to these together.

Targeted advice and assistance for trade associations in sectors of identifiable non-compliance is part of the overall compliance and enforcement strategy for the NMW. Communication with, and through, trade associations is a key feature of our annual campaign to ensure high awareness of the NMW among employers and employees.

Although there was a positive response to elements of our enforcement work, e.g. the leaflets were welcomed as being clear and written in an accessible style, evidence suggested that the publicity part of the campaign was not reaching the workers and that employers felt they were receiving general guidance that they were already aware of. A particular concern was worker perceptions of the NMW helpline e.g. they did not realise that a complaint could be taken forward on their behalf as a result of a call to the helpline.

The lessons from the evaluation were fed into the development of the 2009 publicity campaign which is dealt with in more detail under point 8. A focus of that campaign is the new Pay and Work Rights Helpline where there is a clear "powerful friend" message for workers, reassuring them that their complaint can be taken forward on their behalf if there is a potential breach of the legislation. The Pay and Work Rights Helpline (0800 917 2368) is a new initiative which is part of the government's wide-ranging programme to boost support for vulnerable workers. It is one strand of a sustained government-led campaign to raise vulnerable worker awareness of basic employment rights including: National

Minimum Wage, Agricultural Minimum Wage and Working Time, and the specific regulations that apply to employment agencies and gangmasters. The Pay and Work Rights Helpline has brought together a number of separate helplines for each of these enforcement areas, to make it easier for workers to access information on their rights and report abuses. Employers will also be able to obtain advice on compliance, as well as report abuses.

The 2009 publicity campaign has adopted a 2 strand approach. Firstly, an umbrella message, allowing for a cross-sector approach with the promotion of core messages. This has enabled us to cascade a broad range of worker rights messages through national newspapers, women's magazines and the radio. This has been supplemented by face to face advertising in selected 'hot spot' areas (i.e. those parts of the country that have been identified as having significant populations of vulnerable workers), an on-line element and we have also been undertaking a specific black and ethnic minority campaign as part of this work. Secondly, we have been undertaking an enforcement agency/sector specific message, supplementing the umbrella approach, but tailored to individual sectors. We are planning a further publicity awareness campaign next year, which will build on the current campaign.

In addition we have developed a 'resource centre' of awareness raising material and are working with trade associations in low-paying sectors and with high proportions of vulnerable workers, like the BHA, to disseminate the material to their members.

While it is correct that the enforcement campaign for the hospitality sector was not completed, we always intended to return to the sector once the new penalty regime introduced by the Employment Act 2009 had come into effect along with the new rules on tips. As mentioned above, awareness raising activity in the hospitality sector is now underway to lay a foundation for a targeted enforcement effort in the second half of 2010.

On 9 July 2009, the Communities Secretary announced that support from the Migration Impacts Fund would be available to help protect existing workers through enforcing the NMW. HMRC has used funding from the Fund to set up a new team within the overall NMW enforcement resource to respond to geographical/trade sector 'hot spots' where there are indications of issues with payment of the NMW. A particular focus will be on low paying sectors including those with a high representation of migrants, such as the hospitality sector, and, where appropriate, this will include dialogue with trade associations.

As mentioned in the introduction, we take the view that the introduction of the new penalty regime is an appropriate time, in collaboration with HMRC, to take stock of the current compliance and enforcement strategy for NMW. We are currently reviewing existing strategy to ensure they effectively use the tools, intelligence and resource available to improve compliance and enforcement.

Plans for targeted activity with those sectors with high levels of non-compliance – including their trade associations - will be taken forward as part of this work.

The aim is to publish the strategy going forward early in 2010.

### ***The 2008 publicity campaign***

**8. We would welcome an update on the publicity campaign held in 2009, and in particular an assessment of the success of the outreach project in Scottish areas. (Paragraph 48)**

The priority groups targeted in the 2009 publicity campaign were workers and employers in low paying sectors, new and recent migrants, young workers (those between 16 and 21), home workers and employers and workers in tipping sectors.

A specific objective of the 2009 campaign was to increase awareness of the NMW amongst workers - particularly new entrants to the employment market; to inform workers and employers of the new rates; to increase awareness amongst homeworkers of the rules on fair piece rates and amongst employers and workers on the new rules on tips; and to remind employers about the changes to the enforcement regime which were coming in (in particular the new penalties and changes to the way arrears are calculated which are now in place).

The main elements of the campaign were:

- a direct mail out to 183,000 employers advising them on changes to the NMW;
- an online activity of search and display aimed at employers and workers;
- radio community messaging;
- an ATM campaign;
- a postcard and online campaign to increase awareness amongst homeworkers; and
- a school mail out to target school leavers.

There was also supporting NMW activity as part of BIS campaigns focussed on generic pay and work rights for vulnerable workers. This included experiential activity, radio adverts, press and magazine adverts which specifically mentioned NMW.

Analysis of the evaluation of the 2009 campaign will be undertaken in the New Year.

This year's campaign is running in conjunction with the vulnerable workers campaign, the objective of which is to promote to vulnerable workers both an awareness of their employment rights and the new Pay and Work Rights Helpline (a copy of the set of campaign posters is attached).<sup>1</sup> We believe that working together in this way will enable us to have a greater impact on the target audience and this is supported by the Fair Employment Enforcement Board chaired by Lord Young.

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<sup>1</sup> Not printed.

## Appendix 1

| Type of Business found within Other Service   | 2002-03 | 2003-04 | 2004-05 | 2005-06 | 2006-07 | 2007-08 | 2008-09 |
|---|---------|---------|---------|---------|---------|---------|---------|
| Agriculture and Horticulture not elsewhere specified (for example, tree surgeon)  | 0       | 0       | 0       | 0       | 1       | 0       | 0       |
| Architects  | 0       | 0       | 0       | 0       | 0       | 1       | 0       |
| Beauty Parlours   | 0       | 0       | 1       | 1       | 1       | 2       | 0       |
| Bookmakers  | 0       | 0       | 0       | 0       | 0       | 1       | 0       |
| Business Services not elsewhere specified (for example, property development)   | 2       | 0       | 0       | 0       | 1       | 1       | 2       |
| Carpet fitter or planner  | 0       | 0       | 0       | 0       | 0       | 1       | 0       |
| Catering Contractor   | 0       | 0       | 0       | 0       | 0       | 1       | 0       |
| Dentists  | 2       | 0       | 0       | 0       | 0       | 1       | 0       |
| Educational services not elsewhere specified (for example, creches and nursery schools)   | 2       | 1       | 0       | 0       | 0       | 3       | 3       |
| Employment Agencies   | 0       | 0       | 0       | 0       | 0       | 2       | 2       |
| Estate Agents   | 0       | 1       | 0       | 0       | 0       | 1       | 0       |
| Filling stations  | 0       | 0       | 0       | 0       | 0       | 0       | 0       |
| Licensed clubs (other than Night Clubs)   | 0       | 1       | 0       | 0       | 0       | 0       | 0       |
| Management Consultants  | 1       | 1       | 0       | 0       | 0       | 0       | 0       |
| Manicurist  | 0       | 0       | 0       | 0       | 0       | 1       | 0       |
| Motor vehicle parts and accessories - retail  | 0       | 1       | 0       | 0       | 1       | 0       | 0       |
| Motor vehicle repair and maintenance (including bodywork and electrical)  | 1       | 5       | 0       | 0       | 3       | 6       | 3       |
| Motor vehicles (domestic) - retail  | 0       | 0       | 0       | 0       | 1       | 1       | 0       |
| Recreational Services not elsewhere specified (for example, riding instructor)  | 1       | 1       | 0       | 0       | 0       | 1       | 1       |
| Social work and social services not elsewhere specified (for example, charitable projects)  | 0       | 1       | 0       | 0       | 0       | 1       | 1       |
| Solicitors and Writers to the Signet  | 0       | 0       | 0       | 0       | 0       | 1       | 0       |
| Sporting facilities, Clubs and Associations not elsewhere specified (for example, golf clubs and golf professionals or water sports associations) | 1       | 1       | 0       | 0       | 3       | 4       | 1       |
| Sportsmen - professional  | 0       | 0       | 0       | 0       | 0       | 0       | 0       |
| Theatres, concert halls etc   | 0       | 0       | 0       | 0       | 0       | 2       | 0       |
| Transport and Transport services not elsewhere specified (for example, general retail distribution)   | 0       | 0       | 0       | 0       | 0       | 1       | 0       |
| Breeding of Non-Food Producing Animals (including Horses)   | 2       | 1       |         |         |         |         |         |
| Agriculture and Horticulture not elsewhere specified  |         |         | 2       |         |         |         | 1       |
| Electricity   |         |         |         |         |         |         | 1       |
| Pharmaceutical chemicals and preparations   |         |         |         |         |         |         | 1       |
| Machinery for the Paper, Printing, Wood, Leather, Rubber, Glass and related Industries: Laundry and Dry Cleaning machinery                        |         |         | 1       |         |         |         |         |
| Slaughterhouses and Meat processing   |         |         |         |         |         |         | 1       |
| Printing and Publishing not elsewhere   |         |         | 1       |         |         |         |         |

|  |           |           |           |          |           |           |           |
|--|-----------|-----------|-----------|----------|-----------|-----------|-----------|
| specified  |           |           |           |          |           |           |           |
| Coal, Petroleum and Liquid fuels (within UK)   |           |           |           | 1        |           |           |           |
| Dairymen   | 1         |           |           |          |           |           |           |
| Specialised retail (not food, cards or motor fuel) not elsewhere specified (including pawn broker sales) |           | 1         |           |          |           |           |           |
| Transport and Transport services not elsewhere specified   |           |           |           |          |           |           | 1         |
| Solicitors and Writers to the Signet   |           | 1         |           |          |           |           |           |
| Management Consultants   |           |           |           |          |           |           |           |
| Photographic activities  | 1         |           | 1         |          |           |           |           |
| Business Services not elsewhere specified  |           |           | 1         |          |           |           |           |
| Hiring out Movables not elsewhere specified (except TV)  |           | 1         |           |          |           |           |           |
| Land and Estate Owners   |           |           | 2         |          |           |           |           |
| Schools - fee paying   |           |           | 1         |          |           |           |           |
| Religious bodies etc   | 1         | 2         |           |          |           |           |           |
| Community services not elsewhere specified   | 1         | 1         |           |          |           |           |           |
| Health and Beauty: Shops and related services  |           |           | 2         |          |           |           | 1         |
| Laundries, Laundrettes, Dry Cleaning and Allied  |           |           |           | 1        |           |           |           |
| Domestic services  | 1         |           |           |          |           |           |           |
| Domestic Service (employees - not own account)   | 2         |           |           |          |           |           |           |
| Unassigned   |           |           |           |          |           | 4         |           |
| <b>Total</b>   | <b>19</b> | <b>20</b> | <b>12</b> | <b>3</b> | <b>11</b> | <b>36</b> | <b>18</b> |