



House of Commons  
Scottish Affairs Committee

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# The future of working practices in Scotland

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**Second Report of Session 2017–19**

*Report, together with formal minutes relating to the report*

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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

Committee reports are published on the [Committee's website](#) and in print by Order of the House.

Evidence relating to this report is published on the [inquiry page](#) of the Committee's website.

### Committee staff

The current staff of the Committee are Ben Williams (Clerk), Laura-Jane Tiley (Second Clerk), Edward Faulkner (Committee Specialist), Pansy Barrett (Senior Committee Assistant), Chloe Freeman (Committee Assistant), and George Perry (Media Officer).

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# 1 Introduction

1. Technological developments, new business models and changes in consumer behaviour are bringing about huge changes to the ways in which people work, and their relationships with their employers. Many businesses now meet their labour needs in different ways—such as through flexible contracts and digital platforms which rely on self-employed workers. This has created new opportunities in Scotland and across the UK, but there are concerns that it has also led to an increase in low paid and insecure employment and has shifted the relationship between many businesses and their labour force.

2. In recognition of the challenges arising from changes to business models and the ways in which people work, the Government commissioned Matthew Taylor, Chief Executive of the Royal Society of Arts, to consider how employment practices needed to adapt to keep pace with modern business models. Following publication of the Taylor review's report, *Good work: the Taylor review of modern working practices*,<sup>1</sup> the Business, Energy and Industrial Strategy and Work and Pensions Committees considered its findings and produced a joint Report, *A framework for modern employment*,<sup>2</sup> which looked in detail at the issues considered, and recommendations put forward, by the review. The Government has since published its own response to the Taylor review,<sup>3</sup> which committed to implementing several of Matthew Taylor's recommendations, and launched consultations looking at how other recommendations could most effectively be taken forward.

3. This Report seeks to build on that work, and examines the particular needs of Scotland and how the devolution settlement affects the way in which the UK and Scottish Governments respond to these challenges; recognising that—while employment law is reserved to the UK Government—both the UK and Scottish Governments have powers which affect the availability and quality of employment opportunities in Scotland, as shown below.

## UK Government responsibilities and powers

- Employment rights and provisions for minimum wages.
- Industrial relations.
- Employment support programmes for those out of work in the short-term.
- Trade and industrial policy.

## Scottish Government responsibilities and powers

- Education and training, including the provision of apprenticeships.
- Employment support programmes for disabled people and those at risk of becoming long-term unemployed.
- Economic development.
- Business rates and income tax.<sup>4</sup>

1 Department for Business, Energy and Industrial Strategy, [Good work: the Taylor review of modern working practices](#), 11 July 2017

2 Work and Pensions and Business, Energy and Industrial Strategy Committees, [A framework for modern employment](#), Second Report of the Work and Pensions Committee and First Report of the Business, Energy and Industrial Strategy Committee of Session 2017–19, HC 352, November 2017

3 HM Government, [Good Work: A response to the Taylor Review of Modern Working Practices](#), February 2018

4 Cabinet Office, [Devolution settlement: Scotland](#), accessed January 2018, [Scotland Act 1998](#) (as amended)

## Our inquiry

4. In the last Parliament our predecessor Committee launched an inquiry into sustainable employment in Scotland, which looked at: how employment differed in Scotland compared to the rest of the UK; how well UK employment law meets the needs of Scotland; whether sustainable employment in Scotland was threatened by unfair employment practices and how these could be tackled, and what ambitions the UK Government should have for employment in Scotland.<sup>5</sup> That Committee was unable to complete its work before the snap 2017 General Election, so we decided to reopen the inquiry, focusing on what further action was necessary—following the recommendations of the Taylor review—to combat unfair employment practices in Scotland, ensure employment legislation reflects modern employment practices, and to look at how the UK and Scottish Governments can work together to improve employment opportunities and standards of employment in Scotland. Our Report focuses on:

- Employment status and modern employment practices;
- Unfair employment practices;
- Productivity and the UK's industrial strategy, and
- Devolution and employment support.

5. Across the two Parliaments there have been 10 oral evidence sessions with 48 witnesses—including academics, think tanks, unions, business and sectoral interests, and representatives from the UK and Scottish Governments, as well as Matthew Taylor—and dozens of written submissions have been received.<sup>6</sup> We are grateful to all those who have contributed to this inquiry, and helped inform the findings of this Report.

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5 The full terms of reference for the inquiry launched in the 2015 Parliament are available on the Committee's website here: [Sustainable employment in Scotland inquiry launched](#)

6 A full list of witnesses and written evidence is available on pages 32–36.

## 2 Employment status and modern employment practices

6. A person's entitlement to employment rights is determined by their employment status; under the current framework individuals fall into one of three categories:

- **Employees**, who are entitled to the full range of employment rights: the National Minimum and Living Wage, annual leave, rest breaks, maternity, paternity and adoption leave, the right not to be treated less favourably as a part-time worker or fixed-term employee, the right to request flexible working, protection from discrimination at work, minimum notice periods, collective redundancy consultation, statutory redundancy pay, protection from unfair dismissal and TUPE (protected rights for employee transfers).
- **Workers**, who are entitled to some but not all employment rights: the National Minimum and Living Wage, annual leave, rest breaks, the right not to be treated less favourably as a part-time worker, and protection from discrimination at work.
- **Self-employed** people, who have no entitlement to employment rights beyond basic health and safety and the anti-discrimination framework.<sup>7</sup>

The statutory definitions of employees and workers are set out in the Employment Rights Act 1996, but these are very brief and have been supplemented by case law. Employees are entitled to a written statement of the main terms and conditions of their employment within two months of starting work,<sup>8</sup> but workers and self-employed people are not, so it will not always be obvious to someone starting a job what their employment status should be, and whether their employer is according them the proper status.

7. There have been concerns that changes to the ways that companies meet their labour needs have put pressure on these statutory definitions. The rise of contractualised labour, the emergence of the “gig economy” and examples of “bogus self-employment” have all tested these definitions of what it is to be an employee, a worker, or self-employed, and how to determine which category someone falls into.

### Flexible working and bogus self-employment

8. Although employment rates in Scotland have recovered since the 2008 recession, Stephen Boyd, Assistant Secretary at the Scottish Trades Union Congress, told us that “the quality and security of work that has been generated through that period has been significantly less than employment that was generated prior to the financial crisis”,<sup>9</sup> and Bryan Simpson, a member of Unite's Executive Council, stated that in the last five years the situation had “got a lot worse in terms of low-paid jobs, precarious work, insecurity of contracts, and contractual instability”.<sup>10</sup> We have heard evidence that some businesses have been replacing what had been a secure job with a guaranteed salary by recruiting

7 Gov.uk, [Employment status](#), accessed December 2017

8 Gov.uk, [Employment contracts](#), accessed January 2018

9 Q10

10 Q268

new staff for an insecure job with worse terms and conditions,<sup>11</sup> and that there are many people who cannot find permanent employment in Scotland, with over 100,000 workers in Scotland—around 5% of all employees—on temporary contracts, 42,000 of whom were seeking permanent employment.<sup>12</sup>

### The gig economy

9. The “gig economy” refers to people working on a self-employed basis using mobile platforms to find individual jobs. Both the company which runs the platform and the worker receive payments for each job, but workers are not guaranteed an income. Some people use these apps as their main source of income,<sup>13</sup> while others use it as a means of topping up other income.<sup>14</sup> Our predecessor Committee took evidence from representatives of Deliveroo and Uber, who argued that this business model provides flexibility to the people using their apps,<sup>15</sup> which they said the vast majority of their drivers value above all else.<sup>16</sup> Uber also stated that self-employment was already prevalent in the courier and private hire sectors, and that their business model mirrored these pre-existing arrangements.<sup>17</sup>

10. Although companies such as Uber and Deliveroo have expanded rapidly in recent years, their business models and working practices have been the subject of criticism because of their employment models, the terms and conditions of their workers and the rights they are accorded. Bryan Simpson, a member of Unite’s Executive Council, told us that people working in the gig economy often earn less than minimum wage and have all of the disadvantages of self-employment without any of the advantages.<sup>18</sup> Mr Simpson argued that people using the apps are working as employees and should be afforded the employment rights that come with this status.<sup>19</sup>

11. In October 2016 an employment tribunal found that two Uber drivers were “employed” as “workers” by Uber within the meanings of the Employment Rights Act, Working Time Regulations and National Minimum Wage Act.<sup>20</sup> The tribunal took the view that Uber ran a transportation business using its drivers as employees, rather than simply operating an online platform which was used by self-employed drivers. Uber appealed this decision, but it was upheld by an Employment Appeal Tribunal in November 2017.<sup>21</sup> It has been reported that Uber is appealing this decision.<sup>22</sup> Bryan Simpson welcomed the employment tribunal’s judgement,<sup>23</sup> and said that in his view the working arrangements used by Uber constituted an employer-employee relationship, and should be recognised as such.

12. Deliveroo said that they would support employment status being clarified in a way which enabled them to offer their labour force some benefits while still being able to operate using self-employed workers, which it said wasn’t possible under the current

11 Q53

12 Fair Work Convention ([SE50013](#))

13 Q594 [Andrew Byrne]

14 Q593

15 Q604 [Dan Warne], Q607, Q608

16 Q633

17 Q604 [Andrew Byrne]

18 Q282

19 Q737

20 [Mr Y Aslam, Mr J Farrar and Others – V – Uber](#)

21 [Uber B.V. and Others v Mr Y Aslam and Others: UKEAT/0056/17/DA](#)

22 [Personnel Today, Uber application to send case straight to Supreme Court is refused](#), 5 December 2017

23 Q301



employment framework.<sup>24</sup> Andrew Byrne, Head of Public Policy for Uber, stated that if currently self-employed drivers had to be treated as employees, the biggest financial implication would be liability for National Insurance contributions, which would increase costs by around 30%.<sup>25</sup>

13. Matthew Taylor told us he believed that these ways of working provided flexibility for people who were studying, caring or over pension age, and did not want to commit to full-time work,<sup>26</sup> but the Taylor review also heard that this business model appeared to be incentivised by the prospect of “heavily reduced or no employer obligations” which then fell to individual workers.<sup>27</sup> Margot James MP, then Minister for Small Business, Consumers and Corporate Responsibility, argued that new ways of working had “provided great opportunities for people who want to work informally, flexibly, in many cases as a bolt-on to more permanent traditional employment”, and that this was “highly valued by many of the workers in that particular sector of the economy”.<sup>28</sup> The then Minister also noted that “the gig economy has revolutionised choice and opportunities for consumers in a way that I think will never be rolled back”.

### **Bogus self-employment**

14. Although it has most recently been raised in relation to the gig economy, we have been told that bogus self-employment—employers treating their staff as self-employed when this is not appropriate—is a problem in a range of sectors, particularly the construction sector.<sup>29</sup> Mr Taylor told us that “bogus self-employment” covered not just instances where—if a case were taken to court—a court would probably find that a person shouldn’t be classified as self-employed, but also covered cases where an employment relationship was different to what the public would understand self-employment to be.<sup>30</sup>

15. The legal tests used to determine whether someone is truly self-employed or should be treated as a worker rest on:

- whether there is a requirement for personal service, or whether the individual is able to appoint a substitute to carry out work on their behalf;
- the level of control by an employer over workers in determining matters such as how, when and where work is carried out;
- evidence or lack thereof of mutuality; an obligation for the employer to provide work (or pay if there is none), or for the worker to accept it if offered;
- whether the individual’s work is carried on as a business undertaking (this might include the extent to which the individual is responsible for their success or failure, or whether they have the power to negotiate and set rates of pay).<sup>31</sup>

24 Q607

25 Q615

26 Q945

27 Department for Business, Energy and Industrial Strategy, [Good work: the Taylor review of modern working practices](#), 11 July 2017

28 Q979

29 Q281

30 Q943

31 House of Commons Library, [Employment status](#), Commons Briefing papers CBP-8045, November 2017

16. Margot James, then Minister for Small Business, Consumers and Corporate Responsibility, acknowledged that bogus self-employment happened, but said that there were also grey areas where it wasn't always easy to define what was employment and what was self-employment.<sup>32</sup> She accepted that changes to the ways in which businesses engaged labour had resulted in employment law being tested, particularly in terms of the definition of employment versus self-employment versus worker status, and told us that it was in response to this that the Government had commissioned the Taylor Review.<sup>33</sup>

### **Contractualised labour**

17. Another area of particular concern is the increasing practice of workers being engaged on a self-employed basis as “contractualised labour” for work—such as in call centres and the transportation sector—which in the past would have been undertaken under a contract of employment. This means that, where previously a worker would have had a guaranteed wage, set hours and full employment rights, many workers doing effectively the same jobs are now self-employed and so are responsible for paying their own taxes and national insurance contributions and have no guarantees regarding their income or hours. Professor Mike Danson, Professor of Enterprise Policy at Heriot-Watt University, argued that this had resulted in the responsibilities of employment shifting from organisations to individuals,<sup>34</sup> and also raised concerns that the rise in self-employment had resulted in more people working low-paid jobs and experiencing in-work poverty.<sup>35</sup> The Government has recognised that “on average, self-employed people earn significantly less than people in work as employees”, and has stated that some self-employed people are “working long hours and earning less than the National Living Wage with little prospect of growing their earnings, trapping them in poverty and welfare dependency”.<sup>36</sup>

### **Clarifying employment status**

18. We have heard that some employers are falsely treating their workers as self-employed, but the lack of clarity in the current system can also cause businesses legitimate difficulties in determining someone's employment status. Matthew Taylor told us that the “lack of clarity” around employment status—and the rights which were linked to this—was one of the main issues his review sought to address.<sup>37</sup> He stated that it provided “scope for exploitation”, and that it was clear to him there was gaming going on within the system, with businesses “portraying people as self-employed when arguably it would be more rational to employ them as workers or more realistic to classify them as workers”.<sup>38</sup> The Taylor Review concluded that there was an “overwhelming case” to tackle the lack of clarity around employment status, and recommended that “the Government produce a clearer outline of the tests for employment status, setting out the key principles in primary legislation.” Mr Taylor said he did not “underestimate the complexity” of defining employment status more clearly, but said that he felt there “was a case ultimately for trying to better define in law the basis for employment status”.<sup>39</sup>

32 Q980

33 Q979

34 Jimmy Reid Foundation ([SE50008](#))

35 Heriot-Watt University, [In-work Poverty and Enterprise](#), 2016

36 Work and Pensions Committee, Second Special Report of Session 2017–19, Self-employment and the gig economy: Government Response to the Committee's Thirteenth Report of Session 2016–17, [HC 644](#)

37 Q939

38 Q939

39 Q942

19. The Taylor Review recommended that the three-tier employment system—with employees, workers and self-employed people—be retained, but that workers be renamed “independent contractors”, and a new test be introduced to determine whether someone is self-employed or an independent contractor. The review recommended that this test make “control” of particular importance, and suggested that this would result in “more people being protected by employment law”.

20. Providing greater clarity around employment status received wide support in our evidence. The Association of Independent Professionals and the Self-Employed has stated that a statutory definition of self-employment would “provide much-needed clarity around employment status and help tackle the false classification of individuals as self-employed”.<sup>40</sup> Bryan Simpson told us that “the best way legislatively to tackle this is to absolutely tighten up the definition of worker” and said that “it cannot be allowed to fly that workers who are absolutely, clearly employees of a company are allowed to be regarded as self-employed.”<sup>41</sup> Responding to the recommendations made by the Taylor Review, however, Unite stated that the review “does nothing to address the rampaging growth in forced self-employment”.<sup>42</sup>

21. The Business, Energy and Industrial Strategy and Work and Pensions Committees also concluded that clearer legislation on employment status could be valuable, and recommended that the Government legislate to introduce greater clarity on definitions of employment status. Those Committees argued that legislation should emphasise the importance of control and supervision by a company in distinguishing between workers and the genuinely self-employed.<sup>43</sup>

22. Reflecting the evidence we received that workers often didn’t know their employment status or what type of contract they were working under,<sup>44</sup> the Taylor review also recommended that the Government extend to all workers the right to a written statement of their terms and conditions.<sup>45</sup> At present only employees are entitled to such a statement. Mr Taylor told us that “the simple recommendation that every employee, every worker [...] gets a simple statement of terms and conditions on day one, any deductions they are going to suffer, would have an enormous impact”.<sup>46</sup> He stated that this change would “require employers to specify at the outset what people’s employment status was, which would require them to think about that and try to make sure they had it right”.<sup>47</sup> He also argued that the change should “make it easier for workers to understand their situation”.<sup>48</sup> In its response to the Taylor review, the Government accepted this recommendation and stated that it would “extend the right to written particulars to all workers”.

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40 [IPSE \(SES0030\)](#)

41 Q737

42 Unite, [Unite response to the Taylor review: Workers deserve better than inevitable insecurity](#), 11 July 2017

43 Work and Pensions and Business, Energy and Industrial Strategy Committees, Second Report of the Work and Pensions Committee and First Report of the Business, Energy and Industrial Strategy Committee of Session 2017–19, [A framework for modern employment](#), HC 352, para 10

44 Qq46, 48

45 Department for Business, Energy & Industrial Strategy, [Good work: the Taylor review of modern working practices](#), 11 July 2017

46 Q941

47 Q941

48 Q941

23. The Government's response to the Taylor review stated that it should be easier for individuals and businesses to determine whether someone is an employee, a worker, or self-employed, and stated that it was "committed to improving clarity and certainty in this area".<sup>49</sup> The response stated that the Government would "consult to explore the best way to improve clarity for those on the boundary between employment and self-employment, including options for legislative reform", with a view to helping to ensure that fewer workers find themselves fighting for protections that they should already have. The Government's consultation acknowledges that increasing clarity in the employment status framework is one of the major challenges for public policy, and states that the current lack of clarity can "lead to some people and businesses wasting time and energy trying to understand the rules" and also "allows unscrupulous employers and individuals to game the system in order to save on employment costs and taxes".<sup>50</sup> The Government is currently consulting on whether codification of the current case law would bring greater clarity and certainty, or whether alternative approaches—such as an improved test for determining employment status—would better achieve this. This consultation will close in June 2018.

24. The Taylor review also recommended that, when someone's employment status was challenged in an employment tribunal, the burden of proof should be reversed so that the employer has to prove that the individual is not entitled to the relevant employment rights. The Businesses, Energy and Industrial Strategy and Work and Pensions Committees agreed, suggesting that there be a model of "worker status by default", where the onus would be on the firm to prove self-employed status, when disputed, rather than on the worker to do so through the courts.<sup>51</sup> The Government's response to the Taylor review stated that it did not propose to "reverse the burden of proof at this time", but that it would return to this recommendation when it has reached decisions on possible changes to employment legislation, and created an online tool to help workers determine their employment status.<sup>52</sup>

**25. New employment practices and business models have challenged traditional understandings of employment status and made it increasingly difficult for workers and employers to be confident in their judgments of when a particular employment status applies. While the majority of employers treat their workers properly, it is clear that some inappropriately treat their workers as self-employed to reduce their own obligations. Definitions that were set out in law decades ago have been tested to breaking point by new relationships between companies and their labour force, and there is a clear need to review how employment status is defined, to ensure employees and workers are guaranteed the appropriate rights and protections. We welcome the Government's recognition of the problems resulting from the current lack of clarity, and its consultation on how best to achieve greater clarity in this area, including legislative change. We also welcome the Government's acceptance of the Taylor review's recommendation that the right to a written statement of terms and conditions be extended to all workers.**

49 HM Government, [Good Work: A response to the Taylor Review of Modern Working Practices](#), February 2018

50 Department for Business, Energy and Industrial Strategy, HM Treasury, HM Revenue and Customs, [Employment Status Consultation](#), February 2018

51 Work and Pensions and Business, Energy and Industrial Strategy Committees, Second Report of the Work and Pensions Committee and First Report of the Business, Energy and Industrial Strategy Committee of Session 2017–19, [A framework for modern employment](#), HC 352, para 15

52 HM Government, [Good Work: A response to the Taylor Review of Modern Working Practices](#), February 2018

26. *We welcome and endorse the recommendations the Taylor review made for clarifying employment status in primary legislation, as well as those of the Business, Energy and Industrial Strategy and Work and Pensions Committees, and call on the UK Government to bring forward legislation to clarify the employment status of workers. We also see the merit in shifting the burden of proof for demonstrating employment status—where this is challenged—to employers, so that it is easier for individuals to access employment rights. We note that the Government has said it will return to this recommendation when it has reached decisions on possible changes to employment legislation, and created an online tool to help workers determine their employment status, and recommend that the Government revisit this recommendation once it has completed these processes.*

## Zero hours contracts

27. Zero hours contracts are contracts of employment which do not guarantee workers a minimum number of hours, and mean that whether work is offered in any particular work-period is at the discretion of the employer. There are over 70,000 people in Scotland on zero hours contracts,<sup>53</sup> an increase of 20,000 since 2015, although the number fell between 2016 and 2017.<sup>54</sup>

### Zero hours contracts in Scotland, 2015–2017

	Number of people in employment on a zero hours contract	Percentage of people in employment on a zero hours contract
April–June 2015	51,000	1.9%
April–June 2016	78,000	3.0%
April–June 2017	71,000	2.7%

Source: [ONS, Labour Force Survey: Zero-hours contracts](#)

Zero hours contracts are most prevalent in industries such as accommodation, food and retail, education and health and social work.<sup>55</sup>

28. We have heard that, while these contracts can provide a flexibility which benefits workers and businesses,<sup>56</sup> the relationship between employers and workers on these contracts is often unbalanced, leaving the employer with all of the flexibility and few costs and the worker in fear of dismissal and denied access to basic rights of employment.<sup>57</sup> Citizens Advice Scotland told us that many of the examples of the poorest employment practices relate to workers on zero hours contracts,<sup>58</sup> and stated that they were concerned that these contracts can be used as a disciplinary tool to deny workers shifts without going through any sort of formal employment process.<sup>59</sup> Matthew Taylor argued that while “flexibility is broadly a good thing”,<sup>60</sup> and that about two-thirds to three-quarters of

53 ONS, [EMP17: People in employment on zero hours contracts](#), August 2017

54 ONS, [EMP17: People in employment on zero hours contracts](#), August 2017

55 ONS, [Contracts with No Guaranteed Hours: 2015](#), September 2015

56 Q777 [Colin Borland]

57 Q281 [Bryan Simpson]

58 Citizens Advice Scotland ([SES0015](#)), Citizens Advice Scotland, [Exposed: the dismal state of workers' rights in Scotland](#), February 2015

59 Q820

60 Q932



people on zero hours contracts say that is the way they choose to work, he believed there was a serious issue about people being kept on zero-hours work “for a lengthy period of time in environments where the only reason they are being asked to do zero-hours work or very low hours of work [...] is so that the enterprise or organisation can transfer risk on to the shoulders of that worker, rather than the organisation itself”.<sup>61</sup>

29. All of our witnesses agreed that zero hours contracts should not be used in a way which was exploitative, but few recommended that they should be completely banned. We were told that if zero hours contracts were banned they would likely be replaced with contracts which guaranteed an arbitrarily small number of hours,<sup>62</sup> meaning that banning them would probably have little effect.<sup>63</sup> Although Bryan Simpson, from Unite, argued that zero hours contracts should be banned, and said that contracts should guarantee a minimum number of hours, he suggested that employees should be able to opt-out of this if they chose,<sup>64</sup> which would mean that workers could still work under a contract which did not guarantee any hours.

30. The Taylor review recognised that providing the option for employers and workers to have flexible arrangements, while not allowing these arrangements to be open to exploitation, was “a complex issue” and that there were “potential adverse consequences to most interventions”. However, the review stated that the Government “must take steps to ensure that flexibility does not benefit the employer, at the unreasonable expense of the worker, and that flexibility is genuinely a mutually beneficial arrangement”. To achieve this, the Taylor review recommended that:

- The Government ask the Low Pay Commission to consider the design and impacts of the introduction of a higher National Minimum Wage rate for hours that are not guaranteed as part of the contract.
- The Government create a right to request a contract that guarantees hours which better reflect actual hours worked, for those on zero hour contracts who have been in post for 12 months.<sup>65</sup>

Mr Taylor told us he had “argued for a higher minimum wage for variable hours, to try to incentivise employers to guarantee more hours”,<sup>66</sup> and stated that payment of a higher minimum wage for variable hours was one of the recommendations closest to his heart,<sup>67</sup> saying that:

if the Government does not do that, although there are other measures in my review that would make a difference, it would then look as though the Government did not really get the fact that there is a genuine issue about zero hours and low-hours contracts being inappropriately used.

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61 Q945

62 Q276

63 Q789

64 Q759

65 Department for Business, Energy & Industrial Strategy, [Good work: the Taylor review of modern working practices](#), 11 July 2017

66 Q932

67 Q958

He stated that resolving this was “necessary to demonstrate a recognition that we have a problem about the overuse of non-guaranteed hours”. The Report by the Business, Energy and Industrial Strategy and Work and Pensions Committees also recommended that the Government work with the Low Pay Commission to pilot, for workers who work non-contracted hours, a higher National Minimum Wage and National Living Wage.<sup>68</sup>

31. The then Minister for Small Business, Consumers and Corporate Responsibility told us that she accepted that zero hours contracts “can expose workers to unfair practices and at times exploitative practices”, but that this did not always follow and that “the research that we have seen finds that quite a large number of people on zero-hour contracts welcome the flexibility.”<sup>69</sup> The Minister noted that Matthew Taylor found that in too many cases risk had been transferred, virtually in its entirety, to the employee, and that she thought this was “where the abuse really steps in”.<sup>70</sup> The Government’s response to the Taylor review accepted the recommendation that people on zero hours contracts be given the right to request a contract which better reflects actual hours worked, and stated that it would “create a right for all workers [ ... ] to request a more predictable contract where appropriate”, and would consult on how best to effectively implement this right to request. The Government’s response also accepted the review’s recommendation to ask the Low Pay Commission (LPC) to explore the impacts of introducing a higher minimum wage for hours that are not guaranteed as part of the contract, and stated that it would also investigate alternative means of tackling the issue, and ask the LPC to do the same and provide advice on the impacts of alternative options.<sup>71</sup>

**32. Contracts which support flexible working can provide benefits for both workers and employers, but it is important that these arrangements are mutually beneficial and do not provide the employer with all of the benefits, with workers carrying all of the risks. While many people on zero hours contracts are content with them there are clearly issues with employers who use them exploitatively. These issues need to be addressed without undermining the flexibility these contacts can offer, which many employers and employees find valuable. We endorse the recommendations made by the Taylor review that workers who have been on zero hours contracts for 12 months be able to request a contract which reflects actual hours worked, and that the Government should commission the Low Pay Commission to consider a higher minimum wage for hours which are not guaranteed. We welcome the Government’s acceptance of these recommendations, and urge the Government to implement them as soon as is practicable. These measures will ensure that workers cannot be kept on a zero hours contract indefinitely, where it does not reflect the reality of employment, and will also create an incentive for employers to ensure that they only use these contracts where there is a real need for them.**

68 Work and Pensions and Business, Energy and Industrial Strategy Committees, [A framework for modern employment](#), Second Report of the Work and Pensions Committee and First Report of the Business, Energy and Industrial Strategy Committee of Session 2017–19, HC 352, November 2017

69 Q965

70 Q965

71 HM Government, [Good Work: A response to the Taylor Review of Modern Working Practices](#), February 2018

### 3 Unfair employment practices

33. While the vast majority of employers respect the employment rights of their workers, we have received evidence from several witnesses about employers who perpetrate unfair or illegal employment practices.<sup>72</sup> Citizens Advice Scotland identified a wide range of abuses of employment rights in its most recent report on the rights of workers, with its bureaux giving advice on 46,540 new employment related cases over the course of 2013–14. Examples of unfair employment practices included:

- Clients being unfairly dismissed, including for being off sick, attempting to take holiday, or being informed of their dismissal by text message.
- Employees who were not paid at all by their employers, in one case for six months while working full-time.
- Employers paying considerably below the National Minimum Wage.
- Employers who failed to pay income tax and national insurance.
- Clients who were denied sick pay when seriously ill.
- Employers refusing to allow employees to take paid holiday.
- Women who were dismissed when they became pregnant.
- Instances of racist and sexist bullying at work.
- Migrant workers who were exploited and made to work excessive hours.<sup>73</sup>

Our predecessor Committee was told by the Scottish Trades Union Congress that “unfair and exploitative employment practices are widespread in Scotland” and could take many forms, including unfair management practices, low pay, anti-union practices and poor employee engagement”.<sup>74</sup>

34. The then Minister for Small Business, Consumers and Corporate Responsibility told us that the Taylor review had “exposed [...] some serious breaches, some serious abuses”,<sup>75</sup> and said that although the vast majority of employers “aspire to treat their employees fairly” there was “a significant minority of employers who, at best, play fast and loose with the law and at worst engage in illegal abuse.” Despite acknowledging that this was a significant problem, the Minister told us that the Government did not have “a truly quantifiable idea of the extent of the abhorrent practices”.

72 Oxfam Scotland ([SES0001](#)), STUC ([SES0009](#)), Citizens Advice Scotland ([SES0015](#))

73 Citizens Advice Scotland ([SES0015](#))

74 STUC ([SES0009](#))

75 Q963



35. We are deeply concerned by the unfair and illegal employment practices we have heard about during this inquiry. Although it appears that these issues affect only a small proportion of workers, it is not known how prevalent unfair employment practices are in Scotland. *We recommend that the Government commission a study to assess the extent of unfair employment practices in Scotland—to establish how many workers suffer from unfair or illegal employment practices, and whether there are particular issues in certain sectors. The Government should set out the work it is commissioning in its response to this Report.*

### Access to justice

36. Individual workers are responsible for enforcing the majority of their employment rights through employment tribunals, which adjudicate on disputes between employees and employers. Employment tribunals are currently operated on a UK-wide basis, but the Smith Commission recommended that all powers over the management and operation of all reserved tribunals be devolved to the Scottish Parliament.<sup>76</sup> The Scotland Act 2016 provided a mechanism for the transfer of functions from reserved tribunals to Scottish tribunals, but this has not yet been given effect. The Scottish Government held a consultation in 2016 on draft legislation effecting the above changes,<sup>77</sup> and in December 2017 stated that they were awaiting a further draft of the Order in Council from the UK Government before responding.<sup>78</sup> The UK Government has stated that it anticipates that employment tribunals will be transferred to the Scottish government by April 2020.<sup>79</sup> The devolution of responsibility for employment tribunals will only affect the operation of tribunals, with employment law itself remaining a reserved responsibility.

### Applying to an employment tribunal

37. In the last Parliament, our predecessor Committee heard that fees for taking a case to an employment tribunal posed a significant barrier to the ability of workers to access justice in relation to unfair employment practices.<sup>80</sup> That Committee launched its inquiry at a time when workers applying to an employment tribunal had to pay a fee—introduced by the Coalition Government in 2013—to take a case to a tribunal, and was told that employment tribunal applications fell by over 60% following the introduction of fees.<sup>81</sup> The Supreme Court has since ruled that the fees which were being charged were unlawful and that any fees paid in the past must be refunded.<sup>82</sup> The Government has introduced a scheme to refund employment tribunal fees which were paid.<sup>83</sup>

76 The Smith Commission, [Report of the Smith Commission for further devolution of powers to the Scottish Parliament](#), 27 November 2014

77 Scottish Government, [The Scotland Bill – Consultation on Draft Order in Council for: The Transfer of Specified Functions of the Employment Tribunal to the First-tier Tribunal for Scotland](#), January 2016

78 Scottish Government, [The Scotland Bill – Consultation on Draft Order in Council for: The Transfer of Specified Functions of the Employment Tribunal to the First-tier Tribunal for Scotland](#), accessed January 2018

79 Department for Business, Energy and Industrial Strategy, Ministry of Justice, [Good Work: The Taylor Review of modern working practices – Consultation on enforcement of employment rights recommendations](#), February 2018

80 Citizens Advice Scotland ([SES0015](#))

81 Q296 [Bryan Simpson], Scottish Government ([SES0012](#))

82 Supreme Court, [R \(on the application of UNISON\) \(Appellant\) v Lord Chancellor \(Respondent\)](#), 26 July 2017

83 Ministry of Justice, [Applications open for employment tribunal fee refunds as scheme rolls out](#), 15 November 2017

38. Announcing the refund scheme, the Government noted that the Supreme Court judgment said that “fees paid by litigants can, in principle, reasonably be considered to be a justifiable way of making resources available for the justice system and so securing access to justice”, but the court ruled that the Government had not set the fee at the right level to deliver that outcome. Speaking to the Justice Committee in October 2017, the Justice Secretary stated:

we need to [...] consider, in the light of the judgment, what our approach to fees should be overall. We still intend to charge fees; it is necessary as a contribution to costs. It is also necessary and sensible as a deterrent to frivolous or vexatious litigation, and that was something the court itself acknowledged in the Reed judgment.<sup>84</sup>

Asked about the possibility of fees being reintroduced in the future, the then Minister for Small Business, Consumers and Corporate Responsibility told us that she was sure the Ministry of Justice would “pay great attention to ensuring that it provides for real and proper access to justice”.<sup>85</sup> Keith Brown MSP suggested that “the Lord Chancellor learns from past mistakes and puts access to justice and the protection of workers at the heart of the tribunal system”, and said that once employment tribunals were devolved to Scotland there would be no “unfair fees”.<sup>86</sup>

**39. We note with concern the decrease in employment tribunal cases which were brought following the introduction of fees for applications to employment tribunals, and welcome their recent revocation, which in our view will increase access to justice for workers. Employees should not have to pay to enforce their rights.**

### ***Employment tribunal decisions and awards***

40. Even once an employee has taken a case to an employment tribunal and won, there is no guarantee of a positive outcome for the applicant, or reformed behaviour on the part of the employer. We have been told that workers often do not receive the compensation which has been awarded to them—research undertaken by the UK Government in 2013 found that almost half of employment tribunal awards made in Scotland had not been paid.<sup>87</sup> Our predecessor Committee also heard complaints that limits on the level of compensation claimable meant that workers weren’t always fully compensated. We have heard concerns that, because employers don’t face any significant penalty upon losing a case, the system doesn’t provide an adequate disincentive to poor practice.<sup>88</sup>

41. The Business, Energy and Industrial Strategy and Work and Pensions Committees considered the effectiveness of the employment tribunal system at ensuring good conduct by employers, and concluded that the absence of penalties for widespread abuses may incentivise employers to “wait and see” whether individuals are willing to risk pursuing their rights. Those committees recommended that the Government create an obligation on employment tribunals to consider the increased use of higher, punitive fines and costs orders if an employer has already lost a similar case.

84 Q9, Justice Committee, [Oral evidence taken on 25 October 2017](#), HC 418

85 Q970

86 Q895

87 Department for Business, Innovation and Skills, [Payment of tribunal awards: 2013 study](#), November 2013

88 Q296 [Bryan Simpson]

42. The Taylor Review made several recommendations on how the process of enforcing employment rights through an employment tribunal should be changed, including that:

- The Government should establish a naming and shaming scheme for those employers who do not pay employment tribunal awards within a reasonable time, and
- The Government should create an obligation on employment tribunals to consider the use of aggravated breach penalties and costs orders if an employer has already lost an employment status case on broadly comparable facts—punishing those employers who believe they can ignore the law.

43. The then Minister for Small Business, Consumers and Corporate Responsibility told us that she had been “absolutely astonished at the number of employee tribunal awards that go unpaid”,<sup>89</sup> and told us that the Government was “very sympathetic” to Matthew Taylor’s recommendation that employers who do not pay employment tribunal awards within a reasonable time be named and shamed.<sup>90</sup> The Government’s response agreed that “individuals who win their case at tribunal and receive an award should get what they are owed”, accepted the value of a naming scheme for those employers who do not pay tribunal awards within a reasonable time, and stated that it would consult on the best way to implement such a scheme.<sup>91</sup> The Government also accepted the need for strong punishments for those who ignore the law, and stated that it would consult on how to extend the use of sanctions. The Government has recognised that any reform of employment tribunals could have implications for the transfer of responsibility for tribunals to the Scottish Parliament, and stated that it will continue to work closely with the Scottish Government in light of decisions made following this consultation.

44. **It is deeply concerning that more than half of all employees who win a case at an employment tribunal do not receive the compensation they are due, and we also recognise the concerns raised by the Business, Energy and Industrial Strategy and Work and Pensions Committees that the absence of penalties for widespread abuses may incentivise employers to “wait and see” whether individuals are willing to risk pursuing their rights. We endorse Matthew Taylor’s recommendation that employers who fail to pay employment tribunal awards should be named and shamed, welcome the Government’s acceptance of this recommendation, and call for it to be implemented as soon as is practicable.**

45. **We concur with the conclusions and recommendations of the Taylor review and the Business, Energy and Industrial Strategy and Work and Pensions Committees, which called for the Government to create an obligation on employment tribunals to consider the increased use of higher, punitive fines and costs orders if an employer has already lost a similar case. We welcome the Government’s consultation on how best to implement this recommendation, and call on the Government to bring forward stronger and more deterrent penalties, including punitive fines, for repeat or serious breaches of employment legislation, and expand “naming and shaming” to all non-accidental breaches of employment rights. The planned transfer of responsibilities for**

89 Q964

90 Q989

91 HM Government, [Good Work: A response to the Taylor Review of Modern Working Practices](#), February 2018

*employment tribunals to the Scottish Parliament will mean that these measures will need to be discussed with the Scottish Government, and we welcome the UK Government's commitment to working closely with the Scottish Government in this regard.*

## Government enforcement agencies

46. While employees have to take positive action through the employment tribunal system to enforce most breaches of their employment rights, there are some areas where the Government has established dedicated agencies with responsibility for enforcing specific parts of employment law. These are:

- **HMRC's National Minimum Wage enforcement team (part of HMRC)**, which enforces the National Minimum Wage (NMW) and National Living Wage (NLW).
- **Employment Agency Standards Inspectorate (part of BEIS)**, which was established to ensure the effective enforcement of, and compliance with, the law on employment agencies and businesses.
- **Gangmasters and Labour Abuse Authority (Home Office agency)**, which runs the licensing scheme regulating businesses who provide workers to the fresh produce supply chain and horticulture industry, to make sure they meet the employment standards required by law.

The UK Government has stated that these agencies are intended to provide enforcement of a small number of employment laws “where we deem there is a higher risk of vulnerability and therefore more risk of people suffering exploitation”.<sup>92</sup>

47. To strengthen arrangements for enforcing employment law, in January 2017 the Government appointed Sir David Metcalf as the UK's first Director of Labour Market Enforcement, with responsibility for setting strategic priorities for these enforcement agencies to “stamp out exploitation”.<sup>93</sup> Announcing Sir David's appointment, the Government said that intelligence gathered on minimum wage violations, unscrupulous employment agencies and other labour market exploitation would be used to identify vulnerable sectors and regions and inform the most effective response. The then Minister for Small Business, Consumers and Corporate Responsibility said that “Sir David's extensive experience will be invaluable in this hugely important role to help stamp out workplace exploitation and ensure that when unscrupulous employment practices are found, justice is done for those affected.”

92 UK Government ([SES0002](#))

93 Home Office and Department for Business, Energy and Industrial Strategy, [Sir David Metcalf named as the first Director of Labour Market Enforcement](#), January 2017

### **Enforcement of minimum wage legislation**

48. The UK Government has established minimum wages for all employees and workers, and this is one of the few areas where the UK has a bespoke enforcement regime. However, we have been told that “insufficient resources” were put into policing the UK’s minimum wage framework.<sup>94</sup> Steve Dillon, from Unite, argued that there needed to be effective enforcement of minimum wage levels, and stated that the National Living Wage policy would not be effective if it wasn’t policed.<sup>95</sup> Bryan Simpson highlighted the low prosecution rate of employers found to be in breach of minimum wage legislation, and told us that of 700 employers across the UK who did not pay the minimum wage, or broke minimum wage legislation, only three were prosecuted.<sup>96</sup> Mr Simpson argued that employers who failed to pay the minimum wage should be fined, and that the fine should be “much more than what they took off staff”.<sup>97</sup> The Taylor review recommended that HMRC should take responsibility for enforcing the core pay rights that apply to all workers—including holiday and sick pay entitlements—and not be limited to pursuing cases involving minimum wages. The Business, Energy and Industrial Strategy and Work and Pensions Committees found that enforcement agencies such as HMRC’s National Minimum Wage enforcement team “urgently need more resources”, and recommended that the Government provides enforcement agencies with the resources necessary to undertake both reactive and proactive roles.<sup>98</sup>

49. The UK Government has stated that it “is committed to tackling non-compliance with minimum wage law and our clear policy is that anyone entitled to be paid the minimum wage should receive it”, and that “HMRC investigates every complaint it receives”.<sup>99</sup> The Government has stated that it doesn’t bring prosecution in all cases of non-payment of minimum wages as its priority is to ensure that workers receive the money they are owed as quickly as possible, and that for the majority of cases the civil route is the most efficient means of returning money owed to workers, with criminal prosecution being reserved for the most serious minimum wage offences.<sup>100</sup> The Government’s response to the Taylor review accepted the case for the state taking responsibility for enforcing pay rights on behalf of the most vulnerable workers, and stated that it would consult to gather detailed evidence of the scale and distribution of noncompliance with holiday pay and statutory sick pay obligations, and then evaluate the best way to target enforcement activity. It stated that, in doing so, it would remain mindful of “the need to minimise burdens on compliant businesses and ensure that enforcement activity is cost effective”.<sup>101</sup>

**50. We welcome the Government’s commitment to tackling non-compliance of minimum wage law, and the presence of a team within HMRC specifically tasked with this issue, but we share the concerns expressed by the Business, Energy and Industrial Strategy and Work and Pensions Committees about the resourcing and effectiveness of enforcement efforts.**

94 Q27

95 Q742

96 Q280

97 Q756

98 Work and Pensions and Business, Energy and Industrial Strategy Committees, [A framework for modern employment](#), Second Report of the Work and Pensions Committee and First Report of the Business, Energy and Industrial Strategy Committee of Session 2017–19, HC 352, November 2017, para 65

99 UK Government ([SES0002](#))

100 UK Government ([SES0002](#))

101 HM Government, [Good Work: A response to the Taylor Review of Modern Working Practices](#), February 2018



### ***New mechanisms for enforcing employment law***

51. For those areas of employment law which are not covered by a specific enforcement agency, we have been told that “the current legislative framework is not offering adequate protections for many workers”,<sup>102</sup> and that the UK Government is not proactive enough when it comes to enforcing employment law. Citizens Advice Scotland has raised concerns that there is no body responsible for ensuring that repeat offenders or rogue employers are targeted,<sup>103</sup> and the Scottish Trades Union Congress has stated that there should be “properly resourced monitoring and enforcement mechanisms” for all areas of employment law.<sup>104</sup>

52. Citizens Advice Scotland has called for the creation of an Employment Commission to “oversee the enforcement of employment law, with the legislative teeth to target rogue employers”.<sup>105</sup> Rob Gowans told us that this Commission could bring together reports from employment tribunals and be empowered—through an ability to impose fines—to take action against employers which were guilty of repeatedly breaking employment law.<sup>106</sup> Professor Patricia Findlay, a member of Scotland’s Fair Work Convention, also thought there was scope for “some kind of inspectorate that allows for investigation and response to certain kinds of employment practices”.<sup>107</sup>

53. **We welcome the appointment of a Director of Labour Market Enforcement to set strategic priorities for employment enforcement agencies to “stamp out exploitation”, but the UK Government has not yet put in place the mechanisms and resources which are necessary to tackle unfair employment practices. We recommend that the Government put in place new mechanisms—which could include the establishment of additional enforcement agencies—to proactively identify and combat all unfair employment practices. We note that HMRC already takes a proactive approach in identifying employers which do not pay the minimum wage, and recommend that similar mechanisms be used to tackle other unfair and illegal employment practices.**

### **Blacklisting**

54. Blacklisting is the practice of compiling information on individuals—often concerning their trade union membership and activities—with a view to that information being used by employers or employment agencies to discriminate in relation to recruitment or treatment. Although it has been unlawful since 1990 to refuse a person employment on the basis of trade union membership, it was only in 2010 that the compilation, use, sale or supply of blacklisting lists was made illegal.<sup>108</sup> In the 2010 Parliament our predecessor Committee investigated the extent of blacklisting in the past, focussing on the construction industry, and examined the remedies which have been pursued.<sup>109</sup> That Committee recommended that the Government hold a full public inquiry into blacklisting, but no such inquiry has been held to date.

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102 Fair Work Convention ([SES0013](#))

103 Q834

104 STUC ([SES0009](#))

105 Citizens Advice Scotland ([SES0015](#))

106 Q834

107 Q890

108 [The Employment Relations Act 1999 \(Blacklists\) Regulations 2010](#)

109 Scottish Affairs Committee, [Blacklisting in employment](#)

55. During this inquiry we have received mixed evidence about the current extent of blacklisting. In the last Parliament, our predecessor Committee heard that it was unlikely blacklisting was still being used on a widespread basis,<sup>110</sup> but that there were still issues around the treatment of people who raised concerns about health and safety in the workplace.<sup>111</sup> In 2015 the STUC stated that “there is a need to investigate the incidence of blacklisting in other sectors of the economy beyond construction”.<sup>112</sup> More recently, Steve Dillon, Regional Coordinating Officer at Unite, told us that blacklisting was still happening and was “as bad as it ever was”.<sup>113</sup>

56. The then Minister for Small Business, Consumers and Corporate Responsibility told us that the evidence of blacklisting which took place in the past was appalling, and said that there was absolutely no excuse for what happened, but stated that the evidence the Government had seen was historic.<sup>114</sup> The then Minister told us that since new legislation had been passed—to make it illegal to engage in blacklisting employees—there had been a reduction in the practice and she was “yet to see any hard evidence that it is a problem that would merit a public inquiry”. The then Minister accepted that blacklisting “will not have been eradicated altogether”, and told us that she would “encourage trade unions to bring their evidence forward”.

**57. We welcome the Minister’s evidence that there has been a reduction in blacklisting, but her acknowledgement that the practice “will not have been eradicated altogether” means there is still work to be done, and we note with concern the evidence from union representatives that blacklisting is “as bad as it ever was”. We recommend that the UK Government work with the trade unions to establish the current extent of blacklisting, and set out in response to this Report how it will do so. If blacklisting is found still to be in operation, the Government must publish any evidence of blacklisting it uncovers, and bring forward proposals to eradicate the practice and provide remedies for workers who have been blacklisted.**

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110 Q291

111 Q23, Q290

112 SUC ([WOC0052](#))

113 Qq763–4

114 Q966

## 4 Productivity and industrial strategy

58. The UK Government is responsible for setting employment law, which governs the rights employees and workers are entitled to, but the availability and quality of employment in Scotland is also dependent on wider policy decisions—by both the UK and Scottish Governments—which affect the Scottish economy. These include decisions about economic and industrial strategies, rates of tax, education and training, and support for businesses.

### Productivity and the UK's industrial strategy

59. The most successful economies are ones which have high levels of productivity, decent wages, and support sustainable employment opportunities. Promoting these conditions are central to economic success, and both the UK and Scottish Governments have set out plans to make progress in these areas.<sup>115</sup> Professor Mike Danson, representing the Jimmy Reid Foundation, told us that “Successful, innovative and sustainable economies have greater degrees of equality in work and incomes, higher levels of average wages, and greater skills utilisation and staff development”.<sup>116</sup> Professor Danson contrasted these with “societies with high and growing proportions of the workforce dependent on insecure and unstable employment, characterised by informal and agency labour, part-time and short term contracts, with many in self-employment”, which he stated were “lagging in international league tables of sustainable growth and prosperity”. Professor Danson stated that the UK was typical of this latter type of society. There is a clear link between productivity and wages, as Professor Bell told us: “From productivity flows the wage that you will get” and that if the economy is creating jobs which do not add a lot of value then wages will be relatively low.<sup>117</sup> We have heard that low productivity is one of the key factors behind the low levels of wage growth in recent years.<sup>118</sup>

60. Economic and industrial policy are the two main ways in which governments seek to create the conditions in which businesses and workers can thrive, and productivity be increased. We heard from several witnesses that the UK needs an industrial strategy which is directly focused at creating jobs and increasing productivity. The Common Weal's evidence argued that there was a need to “pursue an industrial policy which seeks to enable, promote and support the types of economic activity which are best at creating the best jobs”, stating that this meant focusing on more productive areas such as production and manufacturing and high-skill specialist services.<sup>119</sup> Professor Danson agreed, arguing that the UK needed an industrial and labour market policy which: created and sustained high wage, high quality jobs, produced socially useful goods and services, and created sustainable industry sectors which achieve these two goals.<sup>120</sup>

115 Scottish Government, [Scotland's Economic Strategy](#), March 2015, and HM Treasury, [Fixing the foundations: Creating a more prosperous nation](#), July 2015

116 Jimmy Reid Foundation ([SES0008](#))

117 Q105

118 Q49, Q91, Q160

119 Common Weal ([SES0004](#))

120 Jimmy Reid Foundation ([SES0008](#))



61. A key step in the UK Government's efforts to increase productivity was the publication, on 27 November 2017, of a new industrial strategy.<sup>121</sup> This set out four "Grand Challenges" to "put the United Kingdom at the forefront of the industries of the future", and five "foundations of productivity" which align to the UK Government's "vision for a transformed economy". This included commitments to additional funding for research and innovation, funds to increase productivity, and proposals for new sectoral deals which will be partnerships between government and industry aimed at increasing sector productivity. The industrial strategy also stated the Government's ambition for "good work", and said that the Business Secretary would "take on the role of promoting the delivery of better quality jobs in the British economy".

62. The UK Government has stated that the industrial strategy "will drive growth across Scotland, boosting skills and improving productivity and infrastructure", and the Secretary of State for Scotland has said that the strategy "will mean that Scottish businesses can continue to grow and thrive".<sup>122</sup> The strategy notes that many of the policies that can drive productivity are devolved responsibilities, and states that the strategy respects the devolution settlements of Scotland, Wales and Northern Ireland, and that the strategy brings the UK Government's work together with that of the devolved administrations so that all parties can work in partnership to get the best possible outcome for every part of the UK.<sup>123</sup> Margot James MP, the then Minister for Small Business, Consumers and Corporate Responsibility, told us that the industrial strategy was a strategy for the whole United Kingdom, and Scotland was hugely important to it.<sup>124</sup> Matthew Taylor welcomed the commitment in the industrial strategy to good work, and to ministerial accountability for the quality of work.<sup>125</sup>

**63. We note that both the UK and Scottish Governments hold powers which affect the economy and labour market in Scotland, and welcome the priority both governments have placed on improving productivity and wages in Scotland. This includes the UK Government's new industrial strategy, which covers areas of both reserved and devolved policy. Given the division of responsibilities between the UK and Scottish Governments, we ask the UK Government to—in its response to this Report—set out which areas of the industrial strategy will apply in Scotland. This should include details of what funding organisations in Scotland will be able to apply for directly, and what areas of funding will result in additional resources being transferred to the Scottish Government.**

### **Engagement with the devolved administrations on industrial policy**

64. The Government's consultation document on its new industrial strategy recognised the interaction of the UK Government's plans with areas of devolved responsibility in Scotland, Wales and Northern Ireland. In light of this interaction, the strategy proposed the establishment of "Ministerial Forums on Industrial Strategy" with each of the devolved administrations, to bring together all relevant UK Government departments and the devolved administrations to consider how the Industrial Strategy can best address key productivity barriers in Scotland, Wales and Northern Ireland.<sup>126</sup> The final industrial

121 HM Government, [Industrial Strategy: Building a Britain fit for the future](#), November 2017

122 Scotland Office, [Modern Industrial Strategy to boost business support for Scotland](#), 27 November 2017

123 HM Government, [Industrial Strategy: Building a Britain fit for the future](#), November 2017

124 Q1004

125 Q936

126 Department for Business, Energy and Industrial Strategy, [Building our Industrial Strategy](#), January 2017

strategy stated that this joint working “has proven valuable, and as we implement our long-term strategy we will recommit to that partnership, seeking to tackle our shared opportunities”.<sup>127</sup> The then Minister for Small Business, Consumers and Corporate Responsibility told us that “there is an overarching commitment within the Industrial Strategy to a forum between my Department and the Scottish Government”,<sup>128</sup> but said that how this would work would “evolve”.

65. The importance of meaningful engagement between the UK and Scottish Governments regarding the interaction of devolved and reserved policy areas was highlighted by several of our witnesses, particularly in relation to the new industrial strategy. Ewan Macdonald-Russell, from the Scottish Retail Consortium, told our predecessor Committee that they were keen to see closer co-operation between the UK and Scottish Governments on areas where devolved and reserved policy interacted.<sup>129</sup> David Watt from the Institute of Directors welcomed the industrial strategy, telling us that it was “a great innovation and a good idea”, and saying that he hoped that the Scottish Government could tie in with it so that there is a co-ordinated industrial strategy across the UK.<sup>130</sup> Alastair Sim, Director of Universities Scotland, told us that the UK and Scottish Governments are “both big economic actors in Scotland” and said he thought the Scottish Government needed to be involved in “setting the rules of the game and taking a view on what is going to produce economic benefit for Scotland from the various things that the industrial strategy could promote.”<sup>131</sup> Keith Brown MSP told us that it seemed plain to him that the Scottish Government should be heavily involved in some of the things that the industrial strategy seeks to take forward, and that in order to achieve these in Scotland the UK Government needed to consult the Scottish Government.<sup>132</sup>

66. The then Minister for Employment told us that there were a series of initiatives shared between the Scottish Government and the UK Government that complement economic growth and job creation, and that it was really important that the two governments work co-operatively together.<sup>133</sup> Mr Hinds told us that he celebrated the strength of the relationship he had with counterparts in the Scottish Government and “the opportunity to have ongoing collaborative work”.<sup>134</sup> The Scotland Office’s 2015–20 Departmental Plan also highlighted the importance of working with the Scottish Government in relation to the industrial strategy, stating:

To ensure Scotland benefits from improved productivity growth as part of the Industrial Strategy, we have committed to working collaboratively with the Scottish Government to maximise the impact of further support for businesses and communities in Scotland.<sup>135</sup>

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127 HM Government, [Industrial Strategy: Building a Britain fit for the future](#), November 2017

128 Q1005

129 Q323

130 Q482

131 Q1, My Scottish Affairs, Oral evidence on 16 October 2017, [HC 368](#)

132 Q898

133 Q995

134 Q995

135 Scotland Office, [Single Departmental Plan: 2015–2020](#), December 2017

67. Given the shared responsibility the UK and Scottish Governments have with regards to shaping policy which affects Scotland's economy and labour market, co-operation between the two governments is essential. We welcome the Government's commitment to establishing Ministerial Forums on Industrial Strategy with each of the devolved administrations, to bring together relevant UK departments and the devolved administrations to consider how the Industrial Strategy can best address key productivity barriers in Scotland. *We note the then Minister for Small Business, Consumers and Corporate Responsibility's statement that how these forums would work would "evolve", and call on the Government to, in their response to this Report, set out in detail how these will work in practice.*

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## 5 Devolution and employment support

68. In the past the UK Government has been responsible for all employment support services—which aim to help people who are not currently in work to find employment—but, following recommendations made by the Smith Commission,<sup>136</sup> the Scotland Act 2016 provided for the devolution of responsibility for the creation of employment schemes to assist those at risk of becoming long-term unemployed and help disabled people into work, including schemes which seek to help employers find suitable employees.<sup>137</sup>

69. As responsibility for these programmes has now been devolved the Scottish Government will receive an additional transfer of funds, based on what the UK Government spends on these services in England and Wales. In 2012/13—when it was agreed to devolved these responsibilities—spending on the programmes for which the Scottish Government is taking responsibility was approximately £53 million per annum,<sup>138</sup> but the 2015 Autumn Statement stated that the UK Government would be focusing more on early intervention and therefore funding for the programmes which were to be devolved to the Scottish Government was being decreased. The UK Government's new programme will have funding of around 20% of the programmes it is replacing,<sup>139</sup> and in 2015 the then Secretary of State for Work and Pensions wrote to the Scottish Government indicating that the transfer of funds for these services would be £7–13 million per annum.

70. The Scottish Government has raised concerns about the affect cuts made by the UK Government to employment support have had on the level of funding transferred to the Scottish Government in respect of these services, stating that this will put severe financial restrictions on the ability of the Scottish Government to bring forward new programmes in these areas.<sup>140</sup> The STUC and Disability Agenda Scotland have also raised concerns about the pressure funding for employment support programmes is under,<sup>141</sup> and called for funding to be set at a level which is “commensurate with the challenges faced by disabled people getting into employment, and the return on investment that this could create”.<sup>142</sup>

**71. Funding for employment support programmes is under significant pressure, and cuts to spending by the UK Government on programmes which have now been devolved to the Scottish Government have reduced the funds which have been transferred to the Scottish Government, which will have full responsibility in these areas. We recommend that, where the UK Government is planning to change spending in a way which will affect devolved funding, the Government engage with the devolved administrations at the earliest possible opportunity on implications for devolved policy. In the case of employment support programmes, we call on the UK Government to enter into discussions with the Scottish Government about whether there is a case for additional funds being transferred to Scotland to enable these programmes to be enhanced.**

136 The Smith Commission, [Report of the Smith Commission for further devolution of powers to the Scottish Parliament](#), 27 November 2014

137 Scotland Act 2016, [Part 3](#)

138 SPICe, [Devolution of Employment Programmes](#), January 2016

139 House of Commons Library, [Work and Health Programme](#), December 2016

140 Scottish Government, [Creating a fairer Scotland: A new future for employability support in Scotland](#), 24 March 2016

141 Q852, STUC ([SE50009](#))

142 Disability Agenda Scotland ([SE50024](#))

# Conclusions and recommendations

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## Employment status and modern employment practices

1. New employment practices and business models have challenged traditional understandings of employment status and made it increasingly difficult for workers and employers to be confident in their judgments of when a particular employment status applies. While the majority of employers treat their workers properly, it is clear that some inappropriately treat their workers as self-employed to reduce their own obligations. Definitions that were set out in law decades ago have been tested to breaking point by new relationships between companies and their labour force, and there is a clear need to review how employment status is defined, to ensure employees and workers are guaranteed the appropriate rights and protections. We welcome the Government's recognition of the problems resulting from the current lack of clarity, and its consultation on how best to achieve greater clarity in this area, including legislative change. We also welcome the Government's acceptance of the Taylor review's recommendation that the right to a written statement of terms and conditions be extended to all workers. (Paragraph 25)
2. *We welcome and endorse the recommendations the Taylor review made for clarifying employment status in primary legislation, as well as those of the Business, Energy and Industrial Strategy and Work and Pensions Committees, and call on the UK Government to bring forward legislation to clarify the employment status of workers. We also see the merit in shifting the burden of proof for demonstrating employment status—where this is challenged—to employers, so that it is easier for individuals to access employment rights. We note that the Government has said it will return to this recommendation when it has reached decisions on possible changes to employment legislation, and created an online tool to help workers determine their employment status, and recommend that the Government revisit this recommendation once it has completed these processes.* (Paragraph 26)
3. Contracts which support flexible working can provide benefits for both workers and employers, but it is important that these arrangements are mutually beneficial and do not provide the employer with all of the benefits, with workers carrying all of the risks. While many people on zero hours contracts are content with them there are clearly issues with employers who use them exploitatively. These issues need to be addressed without undermining the flexibility these contacts can offer, which many employers and employees find valuable. *We endorse the recommendations made by the Taylor review that workers who have been on zero hours contracts for 12 months be able to request a contract which reflects actual hours worked, and that the Government should commission the Low Pay Commission to consider a higher minimum wage for hours which are not guaranteed. We welcome the Government's acceptance of these recommendations, and urge the Government to implement them as soon as is practicable. These measures will ensure that workers cannot be kept on a zero hours contract indefinitely, where it does not reflect the reality of employment, and will also create an incentive for employers to ensure that they only use these contracts where there is a real need for them.* (Paragraph 32)



## Unfair employment practices

4. We are deeply concerned by the unfair and illegal employment practices we have heard about during this inquiry. Although it appears that these issues affect only a small proportion of workers, it is not known how prevalent unfair employment practices are in Scotland. *We recommend that the Government commission a study to assess the extent of unfair employment practices in Scotland—to establish how many workers suffer from unfair or illegal employment practices, and whether there are particular issues in certain sectors. The Government should set out the work it is commissioning in its response to this Report.* (Paragraph 35)
5. We note with concern the decrease in employment tribunal cases which were brought following the introduction of fees for applications to employment tribunals, and welcome their recent revocation, which in our view will increase access to justice for workers. Employees should not have to pay to enforce their rights. (Paragraph 39)
6. It is deeply concerning that more than half of all employees who win a case at an employment tribunal do not receive the compensation they are due, and we also recognise the concerns raised by the Business, Energy and Industrial Strategy and Work and Pensions Committees that the absence of penalties for widespread abuses may incentivise employers to “wait and see” whether individuals are willing to risk pursuing their rights. *We endorse Matthew Taylor’s recommendation that employers who fail to pay employment tribunal awards should be named and shamed, welcome the Government’s acceptance of this recommendation, and call for it to be implemented as soon as is practicable.* (Paragraph 44)
7. We concur with the conclusions and recommendations of the Taylor review and the Business, Energy and Industrial Strategy and Work and Pensions Committees, which called for the Government to create an obligation on employment tribunals to consider the increased use of higher, punitive fines and costs orders if an employer has already lost a similar case. *We welcome the Government’s consultation on how best to implement this recommendation, and call on the Government to bring forward stronger and more deterrent penalties, including punitive fines, for repeat or serious breaches of employment legislation, and expand “naming and shaming” to all non-accidental breaches of employment rights. The planned transfer of responsibilities for employment tribunals to the Scottish Parliament will mean that these measures will need to be discussed with the Scottish Government, and we welcome the UK Government’s commitment to working closely with the Scottish Government in this regard.* (Paragraph 45)
8. We welcome the Government’s commitment to tackling non-compliance of minimum wage law, and the presence of a team within HMRC specifically tasked with this issue, but we share the concerns expressed by the Business, Energy and Industrial Strategy and Work and Pensions Committees about the resourcing and effectiveness of enforcement efforts. (Paragraph 50)

9. We welcome the appointment of a Director of Labour Market Enforcement to set strategic priorities for employment enforcement agencies to “stamp out exploitation”, but the UK Government has not yet put in place the mechanisms and resources which are necessary to tackle unfair employment practices. *We recommend that the Government put in place new mechanisms—which could include the establishment of additional enforcement agencies—to proactively identify and combat all unfair employment practices. We note that HMRC already takes a proactive approach in identifying employers which do not pay the minimum wage, and recommend that similar mechanisms be used to tackle other unfair and illegal employment practices.* (Paragraph 53)
10. We welcome the Minister’s evidence that there has been a reduction in blacklisting, but her acknowledgement that the practice “will not have been eradicated altogether” means there is still work to be done, and we note with concern the evidence from union representatives that blacklisting is “as bad as it ever was”. *We recommend that the UK Government work with the trade unions to establish the current extent of blacklisting, and set out in response to this Report how it will do so. If blacklisting is found still to be in operation, the Government must publish any evidence of blacklisting it uncovers, and bring forward proposals to eradicate the practice and provide remedies for workers who have been blacklisted.* (Paragraph 57)

### Productivity and industrial strategy

11. We note that both the UK and Scottish Governments hold powers which affect the economy and labour market in Scotland, and welcome the priority both governments have placed on improving productivity and wages in Scotland. This includes the UK Government’s new industrial strategy, which covers areas of both reserved and devolved policy. *Given the division of responsibilities between the UK and Scottish Governments, we ask the UK Government to—in its response to this Report—set out which areas of the industrial strategy will apply in Scotland. This should include details of what funding organisations in Scotland will be able to apply for directly, and what areas of funding will result in additional resources being transferred to the Scottish Government.* (Paragraph 63)
12. Given the shared responsibility the UK and Scottish Governments have with regards to shaping policy which affects Scotland’s economy and labour market, co-operation between the two governments is essential. We welcome the Government’s commitment to establishing Ministerial Forums on Industrial Strategy with each of the devolved administrations, to bring together relevant UK departments and the devolved administrations to consider how the Industrial Strategy can best address key productivity barriers in Scotland. *We note the then Minister for Small Business, Consumers and Corporate Responsibility’s statement that how these forums would work would “evolve”, and call on the Government to, in their response to this Report, set out in detail how these will work in practice.* (Paragraph 67)

### Devolution and employment support

13. Funding for employment support programmes is under significant pressure, and cuts to spending by the UK Government on programmes which have now been devolved to the Scottish Government have reduced the funds which have been transferred to the Scottish Government, which will have full responsibility in these areas. *We recommend that, where the UK Government is planning to change spending in a way which will affect devolved funding, the Government engage with the devolved administrations at the earliest possible opportunity on implications for devolved policy. In the case of employment support programmes, we call on the UK Government to enter into discussions with the Scottish Government about whether there is a case for additional funds being transferred to Scotland to enable these programmes to be enhanced.* (Paragraph 71)

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# Formal minutes

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**Wednesday 28 February 2018**

Members present:

Pete Wishart, in the Chair

Deidre Brock	Danielle Rowley
Hugh Gaffney	Paul Masterton
Christine Jardine	Tommy Sheppard
Ged Killen	Ross Thomson
John Lamont	

Draft Report (*The future of working practices in Scotland*), proposed by the Chair, brought up and read.

*Ordered*, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 71 read and agreed to.

*Resolved*, That the Report be the Second Report of the Committee to the House.

*Ordered*, That the Chair make the Report to the House.

*Ordered*, That embargoed copies of the Report be made available (Standing Order No. 134).

[Adjourned till Tuesday 6 March at 9:30am.]

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# Witnesses

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## Session 2016–17

The following witnesses gave evidence in the 2016–17 session. Transcripts can be viewed on the [2016–17 inquiry publications page](#) of the Committee’s website.

### Wednesday 30 November 2016

Question number

**Stephen Boyd**, Assistant Secretary, Scottish Trades Union Congress

[Q1–43](#)

**Francis Stuart**, Research and Policy Adviser, Oxfam Scotland, **Dr Roger Cook**, Research Director, Scotland Institute

[Q44–88](#)

### Wednesday 11 January 2017

**Professor David Bell**, Professor of Economics, University of Stirling and **Professor Graeme Roy**, Director, Fraser of Allander Institute

[Q89–129](#)

**Robin McAlpine**, Director, Common Weal and **Professor Mike Danson**, Jimmy Reid Foundation

[Q130–166](#)

### Monday 16 January 2017

**Jack Clark**, Convener, Scottish Borders Chamber of Commerce; **Bruce Simpson**, Communications Director, Scottish Borders Chamber of Commerce; and **Brian Richardson**, Chief Executive, Dumfries and Galloway Chambers of Commerce

[Q167–220](#)

**Councillor Colin Smyth**, Chair, Economy, Environment and Infrastructure Committee, Dumfries and Galloway Council; **Councillor John Mitchell**, Depute Leader, Scottish Borders Council; **Alistair McKinnon**, Location Director for the South of Scotland, Scottish Enterprise; and **Linda Hanna**, Managing Director for Strategy and Sectors, Scottish Enterprise

[Q221–266](#)

### Wednesday 1 February 2017

**Gary Smith**, Scotland Secretary, GMB, and **Bryan Simpson**, Executive Council, Unite

[Q267–310](#)

**Vaughan Hart**, Managing Director, Scottish Building Federation, **Ewan MacDonald-Russell**, Head of Policy and External Affairs, Scottish Retail Consortium, and **Donald Macdonald**, Executive Chairman, Macdonald Hotels and Resorts

[Q311–360](#)

**Wednesday 20 February 2017**

Question number

**Mike Tholen**, Director of Upstream Policy, Oil and Gas UK, John McDonald, Interim Chief Executive, OPITO [Q361–415](#)

**Gordon Inglis**, Director and Principal Consultant, Accord Energy, **Fred Bowden**, Managing Director, Woollard and Henry, **Carole Leslie**, independent adviser [Q416–455](#)

**David Watt**, Executive Director, Institute of Directors Scotland, **Barry McCulloch**, Senior Policy Adviser, Federation of Small Businesses [Q456–491](#)

**Wednesday 1 March 2017**

**Siobhan Mathers**, Reform Scotland and **Professor Jeremy Peat OBE**, Fellow, Royal Society of Edinburgh [Q492–533](#)

**Gary Mitchell**, Vice President, NFU Scotland [Q534–585](#)

**Wednesday 29 March 2017**

**Lesley Smith**, Director of Public Policy, Amazon, **Andrew Byrne**, Head of Public Policy, Uber, and **Dan Warne**, Managing Director, UK and Ireland, Deliveroo [Q586–681](#)

**Willie Macleod**, Executive Director in Scotland, British Hospitality Association [Q682–725](#)

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## Session 2017–19

The following witnesses gave evidence in the 2017–19 session. Transcripts can be viewed on the [2017–19 inquiry publications page](#) of the Committee’s website.

### Tuesday 31 October 2017

Question number

**Bryan Simpson**, National Organiser, Better than Zero, and **Steven Dillon**, Regional Coordinating Officer, Unite

[Q726–776](#)

**Colin Borland**, Head of Devolved Nations, Federation of Small Businesses, and **Fraser Grieve**, Regional Director, Highlands and Islands, Scottish Council for Development and Industry

[Q777–818](#)

### Monday 6 November 2017

**Rob Gowans**, Policy Officer, Citizens Advice Scotland, and **Layla Theiner**, Director, Disability Agenda Scotland

[Q819–854](#)

**Professor Patricia Findlay**, Fair Work Convention, **Gordon McGuinness**, Director, Industry and Enterprise Networks, Skills Development Scotland, and **Kenny Richmond**, Head of Economics, Scottish Enterprise

[Q855–894](#)

**Keith Brown MSP**, Cabinet Secretary for Economy, Jobs and Fair Work, and **Hugh McAloon**, Deputy Director, Fair Work, Employability and Skills Directorate, Scottish Government

[Q895–931](#)

### Tuesday 5 December 2017

**Matthew Taylor**, Chief Executive, Royal Society for the encouragement of Arts, Manufactures and Commerce

[Q932–961](#)

**Margot James MP**, Minister for Small Business, Consumers and Corporate Responsibility, **Chris Thompson**, Director, Labour Market, Department for Business, Energy and Industrial Strategy, **Damian Hinds MP**, Minister of State for Employment, and **Phil Martin**, Deputy Director, Labour Market, Department for Work and Pensions

[Q962–1007](#)

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## Published written evidence

SES numbers are generated by the evidence processing system and so may not be complete.

### Session 2016–17

The following written evidence was received during the 2016–17 session and can be viewed on the [2016–17 inquiry publications page](#) of the Committee’s website.

- 1 Amazon UK ([SES0022](#))
- 2 British Hospitality Association ([SES0017](#))
- 3 British Hospitality Association ([SES0025](#))
- 4 Carole Leslie ([SES0020](#))
- 5 Citizens Advice Scotland ([SES0015](#))
- 6 Common Weal ([SES0005](#))
- 7 Co-operatives UK ([SES0007](#))
- 8 Deliveroo ([SES0021](#))
- 9 Disability Agenda Scotland ([SES0024](#))
- 10 Fair Work Convention ([SES0013](#))
- 11 Federation of Small Businesses ([SES0004](#))
- 12 Fraser of Allander Institute ([SES0014](#))
- 13 Jimmy Reid Foundation ([SES0008](#))
- 14 Oil and Gas Authority ([SES0016](#))
- 15 Oxfam Scotland ([SES0001](#))
- 16 Oxfam Scotland ([SES0003](#))
- 17 Scotland Institute ([SES0010](#))
- 18 Scottish Enterprise ([SES0026](#))
- 19 Scottish Government ([SES0012](#))
- 20 Scottish Retail Consortium ([SES0006](#))
- 21 STUC ([SES0009](#))
- 22 The Nuclear Decommissioning Authority ([SES0023](#))
- 23 Uber ([SES0019](#))
- 24 UK Government ([SES0002](#))
- 25 Unite the Union ([SES0018](#))

## Session 2017–19

The following written evidence was received and can be viewed on the [2017–19 inquiry publications page](#) of the Committee's website.

- 26 Business in the Community Scotland ([SES0031](#))
- 27 G1 Group ([SES0033](#))
- 28 ICAS ([SES0032](#))
- 29 IPSE ([SES0030](#))
- 30 Macdonlad Hotels ([SES0035](#))
- 31 Nuclear Decommissioning Authority ([SES0034](#))
- 32 Skills Development Scotland ([SES0037](#))
- 33 Transport Scotland ([SES0036](#))
- 34 Uber ([SES0029](#))

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# List of Reports from the Committee during the current Parliament

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All publications from the Committee are available on the [publications page](#) of the Committee's website.

## Session 2017–19

First Report	European Union (Withdrawal) Bill: Implications for devolution	HC 375
First Special Report	Jobcentre Plus closures in Scotland: Government Response to the Committee's Third Report of Session 2016–17	HC 432

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