



Close the Gap briefing for the second reading of the National Minimum Wage Bill

January 2021

Close the Gap is Scotland's expert policy advocacy organisation working on women's labour market participation. We have been working with policymakers, employers and trade unions since 2001 to influence and enable action to address the causes of women's inequality at work.

1. Introduction

Close the Gap welcomes the second reading of the National Minimum Wage Bill, introduced by Paula Barker MP. This Bill will improve the effectiveness of pre-existing legislation relating to payment of the national minimum wage (NMW). The Bill proposes regulations to ensure that employers keep detailed records to guarantee wage obligations are met and improves individual pay transparency for employees on the NMW. We understand that section 2 of the proposed Bill, relating to duties of local authorities to ensure health and social care contractors pay the NMW, does not apply in Scotland. If passed, these changes would be a useful framework and catalyst for enacting similar reform in the Scottish context. Nevertheless, the sections of the Bill which apply to the Scottish context can strengthen existing regulations and improve pay transparency for low paid women. Close the Gap therefore urges Scottish MPs to support this Bill.

2. Women are more likely to be paid below the NMW and will therefore benefit from increased transparency

The Low Pay Commission recommended in their 2020 Non-compliance Report that regulations be reviewed and key minimum requirements for adequate record-keeping be set out.¹ This Director of Labour Market Enforcement has also highlighted concerns around the lack of detail in current regulations.² These problems with current regulations are particularly concerning for **women who are more likely to be paid below the NMW than men.**³ The **Low Pay Commission note that most underpaid workers are concentrated in the largest low-paying occupations of retail, hospitality and cleaning. These sectors are female-dominated, thus heightening women's risk of underpayment.** The Commission also highlights that underpayment is also rising substantially within the childcare sector. In Scotland, women comprise 97% of the early learning and childcare workforce,⁴ meaning

¹ Low Pay Commission (2020) *Non-compliance and enforcement of the National Minimum Wage*

² Director of Labour Market Enforcement (2020) *United Kingdom Labour Market Enforcement Strategy 2019/20*

³ Low Pay Commission (2020) *Non-compliance and enforcement of the National Minimum Wage*

⁴ Skills Development Scotland (2018) Skills investment plan for Scotland's early learning and childcare sector

that the number of women being paid below than the NMW is likely to continue to rise.

Many of the sectors where underpayment is most common, as identified by the Low Pay Commission, are sectors which are on the frontline of the pandemic response. Indeed, the majority of the key worker jobs identified by the Scottish and UK Governments are undervalued female-dominated occupations including nurses, carers, early learning and childcare workers and supermarket workers. Many of these keyworker jobs, such as those in adult social care, childcare and retail, are characterised by low pay, and poor terms and conditions. The undervaluation of “women’s work” results in the low pay associated with those jobs and sectors and has lifelong impacts for women such as having less access to resources and assets, including occupational pensions, and a higher risk of in-work poverty.⁵ Increasing attention has been afforded to working conditions and pay in key worker roles, such as retail, social care and childcare. The ongoing crisis has given rise to public debates around the low wages associated with women’s frontline work with roles which were previously branded “unskilled” labour now being branded as essential. Consequently, addressing the undervaluation of “women’s work”, including in social care and childcare, should be core to labour market and economic recovery policymaking in response to COVID-19. Addressing underpayment in these sectors is an important aspect of this work.

The Bill also requires employers to record the hourly rate paid to employees. While section 2 of the Bill, relating to social care commissioning, does not apply to Scotland the monitoring requirements established by the Bill can still have a positive impact for women in the social care sector in Scotland. **85% of the social care workforce in Scotland are women,⁶ and women account for the vast majority of the home care sector where issues of underpayment are particularly pertinent.⁷**

The Fair Work in Scotland’s Social Care Sector report⁸ concluded that fair work is not being delivered in the social care sector and highlights the undervaluation of women’s work as a key theme. The sector continues to be characterised by low pay, and increasingly precarious forms of employment. Issues of low baseline pay are compounded by some workers not being reimbursed for mileage, or not being paid for travel time between visits to service users. **Homecare employers across the UK have acknowledged that 19% of workers recorded working time is unpaid spent travelling between visits.**⁹ As a result, when the requirements of the minimum wage legislation are applied to the actual tasks and duties of the job, including travel time and waiting time, the rate of pay can frequently fall below compliance levels.

Access to high quality social care which centres choice, power and control with service users is critical to ensuring that people in need of care are treated with dignity and respect. However, there is a clear tension between the implementation of self-directed support and

⁵ Close the Gap (2020) *Disproportionate Disruption: The impact of COVID-19 on women’s labour market equality*

⁶ Scottish Social Services Council (2019) Scottish Social Service Sector: Report on 2018 Workforce Data available at <https://data.sssc.uk.com/images/WDR/WDR2018.pdf>

⁷ Scottish Social Services Council ‘Adults services workforce in Scotland Tables’ available at <https://data.sssc.uk.com/data-publications/225-adults-services-workforce-in-scotland-tables>

⁸ Fair Work Convention (2019) *Fair Work in Scotland’s Social Care Sector 2019*

⁹ Hayes, L.B.J. (2017) *Stories of Care: A labour of law – gender and class at work*, Palgrave: London

the working conditions of the workforce.¹⁰ The introduction of self-directed support has thus contributed to the precarity of work in the sector with use of split shifts and fragmentation of work increasingly common.¹¹ These factors, coupled with issues of travel time mentioned above, make it difficult for individuals in the sector to monitor their wages in practice. Requiring employers to set out the true hourly rate paid and how it has been calculated would be a critical step forward in achieving pay transparency. This is important as a key driver of pay discrimination is a continued lack of pay transparency.

The requirements proposed in the Bill mirrors existing requirements on employers, as established by current minimum wage regulations. This means that the Bill merely provides clarity and uniformity to existing record-keeping requirements, rather than placing substantial new requirements on employers.

3. Women are more likely to be experiencing in-work poverty as a result of low-pay

Women's experience of the labour market is ultimately linked to women's experience of poverty. In Scotland, women are more likely to be in poverty than men; are more likely to experience in-work poverty; find it harder to escape poverty and are more likely to experience persistent poverty than men.¹² In line with the multiple labour market barriers experienced by different groups of women, the risk of poverty is even greater for black and minority ethnic, disabled and refugee and asylum-seeking women. **Women account for the majority of low-paid workers, and two-thirds of workers earning less than the living wage in Scotland are women.**¹³

The Scottish Government have recognised the inextricable links between gender and poverty, and women's poverty and child poverty in a number of key policy documents including Scotland's gender pay gap action plan, and the child poverty delivery plan. These plans are clear that tackling women's low pay is essential to overcoming women's higher rates of in-work poverty, and child poverty in Scotland. Improving compliance with NMW regulations can increase the pay of low-paid women's pay, thus assist in addressing child poverty, too.

4. Conclusion

In Scotland, this Bill will make national minimum wage regulations more effective by clarifying the existing obligations placed on employers. While the Bill does not address the core causes of women's low pay, including the continued economic undervaluation of women's work, it does provide a step towards pay transparency which can address the underpayment of women in sectors such as retail, social care, childcare and hospitality. This

¹⁰ Close the Gap (2020) Submission to the Health and Sport Committee inquiry into social care <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-Health-and-Sport-Committee-inquiry-into-social-care.pdf>

¹¹ Close the Gap (2020) Response to Scottish Labour's consultation on the National Care service

¹² Close the Gap (2018) Women, work and poverty in Scotland: What you need to know

¹³ Close the Gap (2020) 'The Living Wage is key if we are to tackle women's in-work poverty' available at <https://www.closesthegap.org.uk/news/blog/the-living-wage-is-key-if-we-are-to-tackle-womens-in-work-poverty/>

change can therefore contribute to the tackling of women's poverty. Close the Gap therefore urges Scottish MPs to support this Bill.

Of course, ensuring that women in sectors such as care, retail and hospitality are paid the NMW should only be viewed a starting point, rather than the end point of reform. In the aftermath of the pandemic, addressing the undervaluation of women's work in these critical sectors must be a core aspect of economic recovery policymaking. We urge Scottish MPs to push for further measures which can address women's low pay and tackle women's in-work poverty.