



Response to the Scottish Government Consultation on Becoming a Fair Work Nation

December 2021

1. Introduction

Close the Gap is Scotland's policy advocacy organisation working on women's labour market participation. We have been working with policymakers, employers and employees for 20 years to influence and enable action that will address the causes of women's labour market inequality.

Close the Gap welcomes the opportunity to respond to this consultation on becoming a fair work nation. Scottish Government's continued focus on fair work in Scotland remains pivotal, particularly in the current economic context. However, fair work must also mean fair work for women. Despite the Government's ambitions on around fair work in Scotland, we remain some distance from realising fair work for women.

The gender pay gap, the key indicator of women's labour market equality, represents the divergent experiences men and women have not only in employment but also in education, training, care and other domestic labour. It is a persistent feature of Scotland's labour market, with Scotland's gender pay gap remaining stubbornly high at 10%.¹ Women's labour market experience continues to be characterised by low pay, discrimination, insufficient working hours and precarious work. This is particularly true for specific groups of women including young, disabled and Black and minoritised women.

This demonstrated that fair work policy development must be better gendered if it is to create change for women in Scotland. Generic approaches to labour market policymaking will not address women's labour market inequality. The current fair work policy framework and supporting tools do not afford sufficient attention to women's experiences of employment and there is a lack of specific actions designed to achieve fair work for women. Fair work policy is also not intersectional, and therefore fails to meet the needs of marginalised women. As a result, the current policy framework is unlikely to promote transformational change for women, or

¹ Close the Gap (2021) *Gender Pay Gap Statistics* available at: <https://www.closesthegap.org.uk/content/resources/Working-Paper-22---Gender-Pay-Gap-Statistics-2021.pdf>

enable employers to operationalise fair work for women. Despite the clear business case to advance gender equality at work, employer complacency remains a critical challenge to addressing women's labour market equality.

This consultation is an important opportunity for Scottish Government to reassess how gender equality and women's labour market experiences can be better integrated into fair work policymaking. Ensuring that Scottish Government's approach to fair work promotes gender equality is particularly important in the current context. Covid-19 has exacerbated women's pre-existing labour market inequality. Without mitigating action, wider labour market shifts such as Brexit, automation and the drive for green jobs are also likely to disproportionately impact women's employment. The current context therefore creates additional barriers to addressing women's labour market inequality.

Our response outlines the challenges and opportunities that exist with regards to realising fair work for women. We also outline a number of specific actions that employers, Scottish Government and its delivery agencies should take to address women's labour market inequality. In line with Close the Gap's expertise, we have only answered questions which are relevant to women's experiences of Scotland's labour market.

2. Answers to specific questions

FAIR WORK IN THE CURRENT ECONOMIC CONTEXT

6. What do you believe are the barriers to delivering fair work given the current economic challenges in Scotland?

There are significantly increased challenges for gender equality at work, but the barriers to fair work for women predate Scotland's current economic context. Although Close the Gap has broadly welcomed Scottish Government's ambition to deliver fair work for all, fair work policy development must be better gendered if it is to create change for women in Scotland. Generic approaches to the labour market policy development will not realise fair work for women, and will instead sustain women's labour market inequality.

Women's labour market inequality

The gender pay gap is the key indicator of women's labour market equality, and represents the divergent experiences men and women have not only in employment but also in education, skills acquisition, care and other domestic labour, and violence against women. The causes of the pay gap are well-rehearsed, and include a range of

societal and economic factors which inter-relate in complex ways². Gender norms and stereotypes based on assumptions about girls' and boys', and women's and men's capabilities, skills and interests result in gender segregation in subject choice and patterns of acute and chronic occupational segregation in the labour market. Women are concentrated in female-dominated, low-paid, undervalued jobs such as admin, care and retail, while men are more likely to work in higher paid, technical roles. Women remain disproportionately responsible for care for children, older people and disabled people, and a lack of quality part-time and other types of flexible working to enable them to balance work with family life means that many women are working below their skill level³. There is also widespread discrimination embedded in the design of pay and grading systems which results in many women being paid less than men for equal work.

Women are not a homogenous group, and their experiences are shaped by their multiple, intersecting identities. While there are commonalities experienced by all women at work, Black and minoritised women⁴, disabled women⁵, single parents⁶ - 91% of whom are women, lesbian, bisexual and trans women⁷, young women⁸, older women⁹ and refugee women¹⁰ experience different barriers to participation in the labour market, and to progression within their occupation. For example, disabled women and some groups of Black and minoritised women are more likely to be underemployed in terms of skills, to report higher levels of discrimination, bullying and harassment, and experience higher pay gaps.¹¹ Research by Close the Gap found that almost three-quarters of Black and minoritised women have experienced racism, discrimination, racial prejudice and/or bias in the workplace.¹² An intersectional approach is therefore necessary so that fair work policy development

² Close the Gap (2018) *The Gender Penalty: Exploring the causes and solutions to the Scotland's gender pay gap*, available at: <https://www.closesthegap.org.uk/content/resources/The-Gender-Penalty-Feb-2018.pdf>

³ Close the Gap (2016) *Gender Equality Pays: The economic case for addressing women's labour market equality*, available at: <https://www.closesthegap.org.uk/content/resources/Gender-Equality-Pays.pdf>

⁴ Close the Gap (2019) *Still Not Visible: Black and Minority Ethnic Women's Experiences of Employment in Scotland*, available at: https://www.closesthegap.org.uk/content/resources/1557499847_Still-Not-Visible.pdf

⁵ Close the Gap (2018) *Response to the Scottish Government Consultation on Increasing the Employment of Disabled People in the Public Sector*, available at: <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-Response-to-Consultation-on-Increasing-Employment-of-Disabled-People.pdf>

⁶ JRF Scotland (2021) *Freeing low income single parents from in-work poverty's grip* available at <https://www.jrf.org.uk/report/freeing-low-income-single-parents-work-povertys-grip>

⁷ Stonewall (2014) *The Double-Glazed Glass Ceiling: Lesbians in the workplace* and House of Commons Women and Equalities Committee (December 2015) *Transgender equality*

⁸ YWCA Scotland (2016) *Status of Young Women in Scotland*

⁹ Scottish Commission on Older Women (2015) *Older Women and Work: Looking to the future*

¹⁰ Scottish Refugee Council (2014) *One Step Closer*

¹¹ Close the Gap (2018) *The Gender Penalty: Exploring the Causes and Solutions to Scotland's Gender Pay Gap* available at <https://www.closesthegap.org.uk/content/resources/The-Gender-Penalty-Feb-2018.pdf>

¹² Close the Gap (2019) *Still Not Visible: Research on BME women's experiences of employment in Scotland* available at https://www.closesthegap.org.uk/content/resources/1557499847_Still-Not-Visible.pdf

meets the needs of marginalised women. However, fair work policy is not well gendered, and it is not intersectional. This presents a considerable barrier to delivering fair work for different groups of women. Building intersectional gender competence in Scottish Government, its delivery agencies, and in public bodies must therefore be prioritised if ambitions to deliver fair work for all are to be realised.

Covid-19

It is difficult to overstate the extent to which Covid-19 has disproportionately negatively affected women's employment and their lives. Women's unequal position in the labour market was evident before Covid-19, and the effect of the pandemic has been to exacerbate the inequalities that women face. UN Women estimates that the pandemic risks setting women's equality back 25 years¹³.

Analyses by Close the Gap¹⁴ have charted the ways in which Covid-19 has disrupted women's employment:

- Women, particularly young women and Black and minoritised women, are more likely to work in a sector which has been shut down or affected by physical distancing, such as hospitality and retail. Women's concentration in sectors most at risk of economic contraction means that they are most at risk of redundancy.
- Over the course of the pandemic, women were more likely to have been furloughed, and furloughed for longer periods of time. Women were also more likely to have been furloughed on reduced pay.
- Women in low-paid work have been particularly affected by Covid-19 job disruption, and women's poverty and therefore child poverty, will increase as a result.
- Women have shouldered the burden of the increase in childcare and care for adults, making it more difficult to combine caring with paid work. The closure of schools and nurseries magnified gendered patterns of care, as women did the bulk of childcare and supervision of home learning, while also having to do their job at the same time often with minimal or no flexibility.
- Women are 79% of Scotland's key workers but are undervalued, underpaid and under-protected. Many of these female-dominated key worker jobs, such

¹³ UN Women (2020) *Whose Time to Care? Unpaid care and domestic work during Covid-19* available at <https://data.unwomen.org/publications/whose-time-care-unpaid-care-and-domestic-work-during-covid-19>

¹⁴ Close the Gap (2021) *One Year On: How Covid-19 is impacting women's labour market equality*, available at: <https://www.closesthegap.org.uk/content/resources/One-Year-On---How-COVID-19-is-impacting-womens-employment-in-Scotland.pdf> and (2020) *Disproportionate Disruption: The impact of Covid-19 on women's labour market equality*, available at: <https://www.closesthegap.org.uk/content/resources/Disproportionate-Disruption---The-impact-of-COVID-19-on-womens-labour-market-equality.pdf>

as those in social care, childcare and retail, are characterised by low pay, and poor terms and conditions.

The invisibility of women in Covid-19 policy responses

Despite the starkly gendered impact of Covid on the labour market, gender and women's needs have been largely invisible in Scottish Government policy responses. Gender mainstreaming is a requirement of the public sector equality duty, as is doing equality impact assessment. However, the response to the pandemic has been characterised by a lack of gender mainstreaming, and a marked deterioration in the quality of equality impact assessment. Post-hoc or "partial" equality impact assessment has become increasingly common, along with a divergence from the stated methodology.¹⁵

Scottish Government's joint statement on fair work with the STUC in response to Covid-19 is not well-gendered, and neither are the refreshed fair work principles. The refreshed fair work principles do not acknowledge the gendered nature of care, make no reference to pregnancy and maternity rights, and provide insufficient detail on support for women with caring roles. There are a small number of examples of sector guidance for employers where women are explicitly mentioned, and some of the barriers they face, such as their caring roles, referenced. But largely, employer guidance produced by Scottish Government is not gendered. As employers do not have sufficient competence to apply a gender lens to generic guidance it is therefore unclear how they are expected to operationalise fair work for women in their response to Covid-19.

The lack of gender mainstreaming in Covid-19 policy responses is a barrier to realising fair work for women. It has shown that Scottish Government's ambitions on gender equality have been deprioritised and are considered secondary to what is perceived to be the more urgent work of business recovery and planning, rather than seeing gender equality and economic recovery as inherently inter-related.

The undervaluation of women's work

Work that is seen as "women's work", such as cleaning, care and retail, is systematically undervalued in the labour market because this work is done by women. The concept of undervaluation underpins gendered experiences of low pay, occupational segregation and the gender pay gap.¹⁶ In economics, the undervaluation of "women's work" means there is evidence of lower returns to

¹⁵ Close the Gap (2021) *Response to the consultation on the child poverty delivery plan 2022-2026* available at <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-Response-to-Scottish-Governments-Consultation-on-Child-Poverty-Delivery-Plan---September-2021-.pdf>

¹⁶ Grimshaw, Damien and Jill Rubery (2007) *Undervaluing Women's Work*, Equal Opportunities Commission

women's productive characteristics.¹⁷ Practically, this means that women will receive lower pay from investing in education or from their own work experience.

Covid-19 has illuminated the critical role "women's work" in sectors such as care, childcare, nursing and retail play in Scotland's economy. Although these workers are essential to a successful pandemic response, they are undervalued, underpaid, and under-protected.¹⁸ For example, the designation of care as low-skilled contributes to the economy-wide undervaluation of care work more broadly. The undervaluation of the social care workforce is sustained by stereotypes around gender roles and assumptions relating to women's and men's capabilities and interests.¹⁹ The idea that women are intrinsically more caring is used to justify the low pay attached to care work in the labour market, with perceived job satisfaction a substitute for fair pay.

Close the Gap welcomes the prioritisation of paying the living wage in fair work policy. The extension of living wage coverage in undervalued female-dominated jobs and sectors is an important starting point for ensuring women are appropriately remunerated for their skills. However, the living wage is not a panacea for undervaluation as it does not address the crux of the low pay problem, which is that this work is undervalued because it is predominantly women who do the work. Increasing the pay of undervalued work alone will be insufficient to better recognise the status and skills of the women working in female-dominated jobs.

While undervaluation of women's work in Scotland is recognised in *A Fairer Scotland for Women*,²⁰ the Plan contains no actions to address it. Scottish Government has recently published research²¹ it commissioned on international mechanisms to revalue women's low-paid work in sectors such as social care, early learning and childcare, retail, and cleaning. The research makes a number of recommendations on job evaluation, collective bargaining, public procurement and gender pay gap reporting. Fair work policy development should take account of these

¹⁷ Ibid.

¹⁸ Close the Gap and Engender (2020) *Gender and Economic Recovery*, available at: <https://www.closesthegap.org.uk/content/resources/Gender--Economic-Recovery--Engender-and-Close-the-Gap.pdf>

¹⁹ Close the Gap (2020) *Close the Gap submission to the Independent Review of Adult Social Care* available at: <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-Independent-Review-of-Adult-Social-Care.pdf>

²⁰ Scottish Government (2020) *A Fairer Scotland for Women: Gender pay gap action plan*, available at: <https://www.gov.scot/publications/fairer-scotland-women-gender-pay-gap-action-plan/>

²¹ Scottish Government (2021) *International Mechanisms to Revalue Women's Work: Research exploring and evaluating international mechanisms that aim to revalue or result in the revaluation of women's work*, available at: <https://www.gov.scot/publications/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work/>

recommendations so that tackling undervaluation is integrated, and Scottish Government ambitions to deliver fair work do not leave women behind.

The increasing precarity of women's employment

Women's employment was increasingly precarious before Covid-19, and the pandemic has exacerbated this trend. Women are more likely to be in insecure work such as zero hours and temporary contracts, and account for two-thirds of workers earning less than the real living wage.²² Black and minoritised women are over-represented in precarious work, and are more likely to be on zero hours contracts. Women's concentration in low-paid and precarious work drives women's higher levels of in-work poverty, and women are more likely to be underemployed than men.²³ The rise in women's self-employment has also coincided with a rise in low-paid self-employment.

Insufficient and unreliable hours and earnings are a feature of women's labour market participation. Three-quarters of part-time workers are women and just under half of employed women (41%) work part-time, compared to just 13% of men.²⁴ Part-time work is negatively correlated with progression out of low-paid work²⁵ and part-time jobs are more than three times as likely to pay below the Living Wage than full-time roles.²⁶

Policy focus on the gig economy tends to be directed at the types of gig work that men do such as delivery driving and taxis driving/ride-sharing. Women engage with the gig economy in different ways to men, and are concentrated in stereotypically female, undervalued work such as care and cleaning. Three-quarters of women in the gig economy earn less than the taxable threshold, and two-thirds of women in the gig economy are also in other work.²⁷ Women working in the gig economy also usually have more than one job, juggling multiple, low-paid, "micro-jobs" to make ends meet. Securing a reliable number of working hours which fit with school hours and available childcare provision is a particular challenge for single parents, 91% of whom are women, especially as single parents are more likely to be concentrated in

²² Close the Gap (2021) *Gender Pay Gap Statistics* available at <https://www.closesthegap.org.uk/content/resources/Working-Paper-22---Gender-Pay-Gap-Statistics-2021.pdf>

²³ Close the Gap (2018) *Women, Work and Poverty* available at: <https://www.closesthegap.org.uk/content/resources/1---Women-work-and-poverty-what-you-need-to-know.pdf>

²⁴ Close the Gap (2021) *Gender Pay Gap Statistics* available at <https://www.closesthegap.org.uk/content/resources/Working-Paper-22---Gender-Pay-Gap-Statistics-2021.pdf>

²⁵ In-Work Progression Commission (2021) *Supporting Progression Out of Low-paid Work*

²⁶ Jones, Gareth (2019) 'Women benefit from living wage expansion', *Third Force News*, available at <https://tfn.scot/news/women-benefit-from-living-wage-expansion>

²⁷ RSA (2017) *Good Gigs: A fairer future for the UK's gig economy*

sectors such as retail which are characterised by precarious and insecure work. These barriers contribute to women's concentration in poor quality work.

Women in insecure work are often not entitled to basic employment rights including maternity/paternity pay, the right to return to their job after maternity, paternity or adoption leave, access to sick pay, and the right to request flexible working. A lack of employment rights makes it difficult for women to request a change in hours or working pattern, or to resist an imposed change. Workers who are unable to accept shifts because of their caring role report that they are not offered as many, or for sometimes any, shifts in future²⁸. Insecure work creates a conducive context for sexual harassment. Young women in particular are over-represented in insecure work, and are also more likely to experience sexual harassment.²⁹ Women who are reliant on shift allocation are more likely to be exploited by perpetrators and less likely to report sexual harassment.³⁰

Agency/casual workers may be required to work a variety of different shifts at short notice, which presents a particular problem for women who are parents and carers as childcare is not flexible enough to support irregular patterns of work, and alternative care is difficult to arrange. Variation in income also makes it harder to afford or retain childcare, more difficult to manage household budgets for which women usually have control, and can also result in disruption to social security payments.

Women who become self-employed because they have been forced out of the labour market by discrimination face reduced state support for childcare. Those who are self-employed as a sole trader are not eligible for tax-free childcare voucher scheme because they are not classified as an employer. This is a critical detriment to women, who are already low earners.

Research by Equality and Human Rights Commission³¹ found that mothers on agency, casual or zero hours contracts were more likely than the average for all mothers at work to have negative and potentially discriminatory experiences. They were significantly less likely than average to say their employer initiated discussions on work-related risks and were more likely to report experiencing a risk or impact to

²⁸ Working Families (2015) *Rigid flexibility: the work of the Working Families Legal Advice Service in 2014*

²⁹ House of Commons Women and Equalities Committee (2018) *Sexual Harassment in the Workplace*, available at <https://publications.parliament.uk/pa/cm201719/cmselect/cmwomeq/725/725.pdf>

³⁰ TUC (2016) *Still Just a Bit of Banter?* Available at: <https://www.tuc.org.uk/research-analysis/reports/still-just-bit-banter>

³¹ Equality and Human Rights Commission (2016) *Pregnancy and Maternity Related Discrimination and Disadvantage: Summary of key findings* <https://www.equalityhumanrights.com/en/managing-pregnancy-and-maternity-workplace/pregnancy-and-maternity-discrimination-research-findings>

their health or welfare; that their employer was unhappy about them taking maternity leave; and that they felt less valued by their employer than they did before telling their employer they were pregnant. Close the Gap is very concerned that insecure contracts are being used to erode employee rights rather than to enable workforce flexibility, and are creating an inequality of bargaining between employers and women workers. The increasing and disproportionate precarity that characterises women's labour market participation underscores the need for fair work to be gendered.

Gender-blind employment practice

A significant barrier to creating fair work for women is the lack of intersectional gender-sensitive employment practice. Although some employers are increasingly adopting the language of intersectionality, there is a lack of intersectional gender competence and a notable lack of action to address the inequalities that marginalised women face at work. It is accurate to say that there is a widespread sense of complacency about gender equality at work from employers. This is compounded by a regulatory context which does not drive action on the causes of women's inequality in the workplace.

Covid-19 dramatically disrupted women's employment, rolling back progress on women's equality. In spite of the overwhelming evidence on the gender impact of the pandemic, Scottish and UK Government responses did not take account of gender or women's needs. Sector guidance for employers published by Scottish Government is largely ungendered. Communications from the Cabinet Secretary about returning to work also did not mention women, or the gendered impact of Covid-19³². In 2020, UK Government announced that the enforcement of gender pay gap reporting would be suspended. These actions by Scottish Government and UK Government signalled to employers that in times of economic crisis gender equality is not important. This deprioritisation is despite the fact there is a clear business case to advance gender equality. Employers are able to recruit from a wider talent pool, address skills gaps, and see their businesses become more productive, more innovative, and more profitable. Effective utilisation of women's skills and talents is also a catalyst for economic growth, worth up to £17bn to Scotland's economy.³³

The challenge of employer complacency is particularly acute around equal pay, and existing employer attitudes create a critical challenge to reducing the pay gap and realising fair work for women. The equal pay review is the methodology by which employers can review their pay systems and practice to check for discrimination, and

³² Letter to business from Cabinet Secretary for Finance Kate Forbes, 20 January 2021

³³ Close the Gap (2016) *Gender Equality Pays: The economic case for addressing women's labour market inequality*

the only way employers can be sure that they are providing equal pay.³⁴ Research by Close the Gap on employer action on the pay gap found that while 94% of employers surveyed had an equal pay policy, less than a third had undertaken an equal pay review, and only 3% had taken any action to address pay gaps³⁵. This undue complacency among employers is also evidenced in UK Government Equalities Office research³⁶ on reporting of gender pay gap data where the majority of employers surveyed (62%) had no current, past or planned future involvement in pay reviews because they considered that they already provided equal pay.

The problem of equal pay is most keenly exemplified by the protracted implementation of Single Status³⁷ in local government. When the most recent round of litigation concludes the total cost will be around £1 billion.³⁸ There are nearly 27,000 live local government equal pay claims, and workers could potentially make new claims against councils.³⁹ In 2019, 14,000 low-paid women working in homecare, schools, nurseries and catering services won their equal pay claims against Glasgow City Council. This followed the biggest equal pay strike by 8000 women in the UK. It is estimated that the cost for Glasgow City Council could reach more than £500 million.⁴⁰ The systematic undervaluing of stereotypically female roles in local government serves as a sharp example of the financial and reputational risk to employers of not taking action on equal pay.

High profile equal pay challenges are also now emerging in the private sector as women shopfloor workers in supermarkets are currently pursuing equal pay claims, comparing themselves to male warehouse staff. This demonstrates the problems arising from the absence of job evaluation based on equal value principles and their consolidation into pay structures. Pay in the retail sector is determined by collective bargaining in larger retailers and the statutory National Living Wage. However, potentially the most important impact on the gender pay gap in retail are the equal pay cases currently being pursued by women checkout workers against Asda, the biggest-ever equal pay claim in the private sector in the UK, with parallel claims in

³⁴ The equal pay review was developed by the then Equal Opportunities Commission, and enhanced by the Equality and Human Rights Commission. See <https://www.equalityhumanrights.com/en/advice-and-guidance/how-implement-equal-pay> last accessed 26 September 2018

³⁵ Close the Gap (2013) *Missing Out on the Benefits: Summary of research on the reporting of the gender pay gap in Scotland* <http://www.closesthegap.org.uk/content/resources/Missingoutonthebenefits-CTG.pdf>

³⁶ Winterbotham et al (2014) *Company Reporting: gender pay gap data*, Government Equalities Office: London

³⁷ The Single Status Agreement is a UK-wide agreement to unify the pay structures of different groups of council employees. By harmonising employment terms and conditions, and grading all jobs on the same pay scale the agreement sought to address the systemic gendered pay inequality experienced by some groups of lower-paid female employees.

³⁸ UNISON (2017) *Submission to the Scottish Parliament Economy, Jobs and Fair Work Committee inquiry into the gender pay gap*

³⁹ Audit Scotland (2017) *Equal pay in Scottish Councils*

⁴⁰ <https://www.theguardian.com/society/2019/jan/17/glasgow-council-women-workers-win-12-year-equal-pay-battle>

other supermarket chains. It is reported that Asda could be facing backdated pay claims totalling £8 billion. Similar claims are currently being pursued by women workers at Tesco, Next, Sainsburys, Morrisons and Co-op.⁴¹

In spite of the high profile equal pay cases in retail, the UK gender pay gap reporting regulations have, however, generally had the perverse effect of making pay discrimination as a cause of the pay gap more invisible. In attempting to clarify the difference between the pay gap and equal pay, comms around pay gap reporting from UK Government and the regulator Equality and Human Rights Commission, implied that pay discrimination was not relevant to gender pay gap reporting. This is borne out in the findings of Close the Gap's assessment of employer pay gap reporting. Of 200 Scottish employers reports that Close the Gap assessed, only one mentioned an equal pay review, and one mentioned job evaluation.⁴² Pay discrimination is not the only cause of the gender pay gap, but it is an important driver that is increasingly dismissed.

Public sector employers are required to proactively take action to address the inequality and discrimination that women and other protected groups face in employment by reporting their gender pay gap, publishing an equal pay statement including information on occupational segregation, gather and use gender-disaggregated data, develop and report on equality outcomes, and do equality impact assessment. Performance of the duty has steadily deteriorated with an increasing number of employers not complying with reporting requirements. Importantly, there is little evidence of any meaningful change on women's equality at work.⁴³

The threat of Brexit to women's equality and rights at work

Close the Gap is very concerned about the threat that Brexit presents to women's equality and rights at work. Much of the legislation protecting equality and workplace rights that women benefit from originated in, or was strengthened

⁴¹ Scottish Government (2021) *International Mechanisms to Revalue Women's Work: Research exploring and evaluating international mechanisms that aim to revalue or result in the revaluation of women's work*, available at: <https://www.gov.scot/publications/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work/>

⁴² Close the Gap (2018) *The Road to Change? An assessment of Scottish employer reporting of the UK gender pay gap regulations*, available at: <https://www.closesthegap.org.uk/content/resources/The-Road-to-Change.pdf>

⁴³ Close the Gap (2021) <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-response-to-the-Scottish-Governments-call-for-views-on-the-review-into-the-effectiveness-of-the-Public-Sector-Equality-Duty-in-Scotland-Stage-2.pdf>

through, EU membership⁴⁴. This includes key advances in women's rights at work related to:

- Equal pay;
- Sex discrimination;
- Pregnancy and maternity rights;
- Rights for part-time and temporary workers, the majority of whom are women; and
- Working time rights.

However, because the withdrawal agreement does not include the protection of existing employment rights, a number of threats have emerged.

EU membership provided a guaranteed standard for employment rights, and there is no certainty that the UK will maintain alignment with EU standards. There are currently well-advanced plans to provide enhanced rights for carers in a new work-life balance directive to be implemented in the EU by June 2022. Brexit also creates significant changes in how case law determines employment rights, as the jurisdiction of the European Court of Justice is lost. UK courts can still take account of its judgements in decision-making, as part of international law, but there is now no obligation to, and new European Court of Justice case law will no longer be binding in the UK. The Court of Justice has been pivotal in progressing many of women's rights at work, such as equal pay, and the loss of this is very concerning.

There is consensus that Brexit presents a possible regression of rights. The UK Government decided not to maintain the EU Charter of Fundamental Rights, which provides a statutory backstop for UK equality and rights and minimum standards. The charter also has the potential to expand concepts such as equality and discrimination. The benefits of the Charter, and the influence it has, are therefore lost in the new Brexit context.

A further risk is around the amendment and/or repeal of existing legislation. The loss of the guaranteed minimum standards offered by EU membership will leave those areas of UK law which are currently provided for by regulations rather than Acts, for example, working time rights and some maternity protections, particularly vulnerable. This is because it is easier to amend or repeal regulations, as there is not the same level of parliamentary scrutiny that there is required for amending or repealing an Act. In January 2021, the UK Government announced that it would review how employment protections could be changed after Brexit, and it was

⁴⁴ Civil Society Brexit Project (2019) *Brexit and Women's Rights*, available at: <https://www.civilsocietybrexit.scot/wp-content/uploads/sites/49/2019/05/csbp-briefing-may-2019-womens-rights.pdf>

suggested that there was a specific focus on working time rights⁴⁵. It was soon after announced that this particular review would not go ahead, however, it raises critical concerns about the approach of UK Government to employment rights in the new context.

A core concern about the threat to women's equality and rights is around the development of trade deals. Evidence shows that trade agreements can have considerably different impacts on women and men because of gendered differences in caring roles, economic equality, and power⁴⁶. As there are very few guarantees on employment rights, this could result in a race to the bottom. The UK Government will now be negotiating trade deals with countries outwith the EU and which do not have the same EU-derived social standards and employment protections in place such as those for temporary and part-time workers, which Black and minoritised women disproportionately benefit from because of their concentration in part-time and precarious work. There is a distinct possibility that the drive to be competitive in negotiating trade deals will result in a deterioration of employment rights.

The threats to women's equality and rights as a result of Brexit, have become clearer after the Minister for Women and Equalities, Liz Truss, set out the UK Government's new approach to equality in December 2020⁴⁷. Truss asserts that there has been *"too much on race, gender and sexuality issues at the expense of geographic inequality and class"* and that the focus on protected characteristics, laid out in the 2010 Equality Act, *"has led to a narrowing of the equality debate that overlooks socio-economic status and geographic inequality"*. This new approach, which signals a move away from addressing the structural inequality experienced by women and other protected groups, is extremely alarming. It underscores the need for fair work policy to be gendered, so fair work for women is realised and protected to a greater degree in the Brexit context.

7. What do you believe are the opportunities for delivering fair work in the current economic climate in Scotland?

Covid-19 has resulted in a rapid and unprecedented shift in the economy which has exacerbated women's labour market, economic and social inequality. While new challenges have emerged, this also presents an opportunity for bold action to tackle gendered inequalities in the labour market and realise fair work for women.

⁴⁵ <https://www.theguardian.com/politics/2021/jan/27/review-of-uk-workers-rights-post-brex-it-is-axed-in-sudden-u-turn>

⁴⁶ Staveren, I.P. van; Elson, D.; Grown, C.; Cagatay, N. (ed.) (2007) *The Feminist Economics of Trade*, Routledge, London

⁴⁷ <https://www.gov.uk/government/news/fight-for-fairness-speech-to-set-out-governments-new-approach-to-equality>

Realising fair work for women in economic recovery

Scottish Government has consulted on a ten year national strategy for economic transformation to drive the transition to the net zero economy. In our joint response with Engender, Close the Gap highlighted the urgent need to integrate gender perspectives and women's needs into response measures and wider labour market policymaking, a focus that has been notably absent from pandemic-related measures.⁴⁸ The strategy will not be transformational unless it is gendered and intersectional. Close the Gap and Engender published *Gender and Economic Recovery* which sets out principles for a gender-sensitive economic recovery.⁴⁹ The principles describe features of an economy that works for women as well as men, and develops Scotland's existing commitment to inclusive growth so that women are not left behind. The nine principles are a set of ideas, challenges, and calls that are rooted in evidence. These principles will enable the delivery of fair work for women, and include:

- Women's work in care, cleaning, catering, retail, and clerical roles has for too long been undervalued, underpaid, and under-protected. State and public body wage-setting powers should be used to increase pay in these sectors and improve their conditions of work.
- Inclusive growth means investing in a care economy. Care is as essential to our economy as bricks, steel, and fibre optic cable. Investment in childcare and care for disabled people and older people should be considered as necessary infrastructure for a sustainable wellbeing economy and a good society.
- Unpaid domestic and care work needs to be recognised, reduced, and redistributed from the household to the state by an increase of accessible, good quality childcare and social care.
- Scotland's economy should be governed by gender-balanced, gender-competent leaders, making decisions based on intersectional gender-sensitive sex-disaggregated data. A healthy economy is one that provides equality for all, including between all groups of women and men. Black and minority ethnic, disabled, LGBT, and older and younger women must have power to participate in decision-making about their economy.

There are increasing calls for the reorientation of the economy towards the wellbeing of citizens, focused on the equitable distribution of wealth, health and wellbeing and the protection of the planet.⁵⁰ However, gender equality has not yet

⁴⁸ Close the Gap and Engender (2021) *Submission to the Advisory Council: Development of the National Strategy on Economic Transformation*, available at <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-and-Engender---Evidence-for-the-Advisory-Council-on-Economic-Transformation-August-2021.pdf>

⁴⁹ Close the Gap and Engender (2020) *Gender and Economic Recovery*

⁵⁰ Wellbeing Economy Alliance (2019) *What is a wellbeing economy?*

formed a central part of conceptualisations of the wellbeing economy. *Gender and Economic Recovery*⁵¹ highlights that economic success should not only be measured by GVA or GDP but by an increase in wellbeing of the people of Scotland. Fair work is central to women's wellbeing.

The principles will create better jobs, better decision-making, and a more adequate standard of living for everyone. These principles and accompanying analysis provide an important starting point for economic recovery policymaking and will assist in ensuring that the national strategy is gender-sensitive with actions that enable fair work for women, and women's wider labour market equality.

Just Transition

Green job creation and increasing green skills are central to Scottish Government's efforts to transition to a net zero economy. However, there has been little consideration of the potential impact of the growth in green jobs on women's labour market equality in a just transition. This is despite evidence that "men's jobs" will disproportionately benefit from further investment in green jobs and sectors. While there is not a single agreed definition of green jobs, the Climate Emergency Skills Action Plan⁵² identifies five broad areas of economic activity that are core to the net zero economy. The sectors are heavily male-dominated such as energy, transport, construction, agriculture, and manufacturing. Analysis by Close the Gap found that women account for less than a quarter (22%) of people employed in these priority green sectors in Scotland. More specifically, men account for 84% of those employed in construction, and 77% of those employed in transport and storage, while women account for 11% of engineering professions, and 16% of the engineering workforce.⁵³

Increased focus on, and investment in, these male-dominated sectors, without action to tackle occupational segregation, will disbenefit women, worsen women's unemployment, widen the gender pay gap, and also risks exacerbating women's poverty. It is therefore essential that interventions, such as gender-sensitive upskilling and reskilling, are delivered to address the under-representation of women in the priority sectors. This will contribute to the realisation of fair work for women, but there are also wider economic gains. Occupational segregation is correlated with

⁵¹ Close the Gap and Engender (2020) *Gender and Economic Recovery*, available at: <https://www.closesthegap.org.uk/content/resources/Gender--Economic-Recovery---Engender-and-Close-the-Gap.pdf>

⁵² Skills Development Scotland (2020) *Climate Emergency Skills Action Plan 2020-2025*, available at: <https://www.skillsdevelopmentscotland.co.uk/media/47336/climate-emergency-skills-action-plan-2020-2025.pdf>

⁵³ Close the Gap (2021) *Making sure a green economy also works for women*, available at: <https://www.closesthegap.org.uk/news/blog/making-sure-a-green-economy-also-works-for-women/>

sector skills shortages⁵⁴, and increasing the number of women entering these sectors is necessary to meet demand for labour.

The priority sectors highlight that green infrastructure continues to be understood by Scottish Government in traditional terms, focused on physical infrastructure such as transport and housing. Caring jobs are low carbon jobs, and work by Dr Jerome De Henau and Professor Sue Himmelweit for Women's Budget Group⁵⁵ suggests that investment in the care industry is 30% less polluting than the equivalent investment in construction, and would also produce 2.7 times as many jobs. As yet, however, there has been little consideration of the importance of, and opportunities around, implementing large scale investment in all forms of green social infrastructure, including childcare and social care.

The realignment of investment in education and training towards green jobs should be coupled with action to ensure that skills policy is informed by evidence on women's access to skills acquisition, and in-work training and development. Gender-blind skills initiatives entrench the occupational segregation that characterises Scotland's education and skills pipeline, funnelling women into low-paid, undervalued jobs and sectors. The Climate Emergency Skills Action Plan includes actions on tackling occupational segregation as a core aim of skills and training programmes, promoting inclusive workplace practices, including flexible working, in target sectors, and developing upskilling and reskilling measures informed by barriers faced by under-represented groups, including women⁵⁶. These actions should be prioritised in implementation if women are to benefit from this investment. However, it is unclear to what extent, if at all, these actions have been progressed.

The Covid recovery strategy⁵⁷ enumerates the initiatives that are intended to create good, green jobs and fair work. This includes the Green Jobs Workforce Academy, Flexible Workforce Development Fund, Individual Training Accounts, National Transition Training Fund. These initiatives are characterised by a lack of gender mainstreaming. They are not gendered and do not take into account the gendered barriers to training, learning and development. Furthermore, insufficient gender-

⁵⁴ Close the Gap (2016) *Gender Equality Pays: The economic case for addressing women's labour market equality in Scotland* available at: <https://www.closesthegap.org.uk/content/resources/Gender-Equality-Pays.pdf>

⁵⁵ Women's Budget Group (2020) *A Care-led Recovery from Coronavirus: The case for investment in care as a better post-pandemic economic stimulus than investment in construction*, available at: <https://wbg.org.uk/wp-content/uploads/2020/06/Care-led-recovery-final.pdf>

⁵⁶ Skills Development Scotland (2020) *Climate Emergency Skills Action Plan 2020-2025*, available at: <https://www.skillsdevelopmentscotland.co.uk/media/47336/climate-emergency-skills-action-plan-2020-2025.pdf>

⁵⁷ Scottish Government (2021) *Covid Recovery Strategy* available at: <https://www.gov.scot/publications/covid-recovery-strategy-fairer-future/f>

sensitive sex-disaggregated data is gathered on these interventions to identify whether women are benefitting to the same extent as men.

The just transition presents an opportunity to support women into better quality jobs. However the current gender-blind approach is very likely to leave women behind in the green jobs revolution. If women are also to benefit from the just transition, policy development needs to integrate gender, and pay attention to women's experiences of occupational segregation, education and training, and their caring roles. Without this focus, just transition policy will prevent fair work for women being delivered.

Fair work first

Fair work first aims to improve employment practice by applying fair work criteria to grants, other funding and contracts being awarded by and across the public sector "where it is relevant to do so". Fair Work First holds potential to create fair work for women, but the current criterion which asks for action on the gender pay gap has been weakened by an addendum to take action to "tackle the gender pay gap and create a more diverse and inclusive workplace". The melding of a specific requirement on the pay gap with a more generic ask on a diverse and inclusive workplace diminishes the effectiveness of the criterion. It dilutes the original intention of the requirement to take action on the pay gap, and will very likely confuse employers. In Close the Gap's experience, employers respond to specificity not generic asks on diversity and inclusion. The causes of the inequalities women and other protected groups face are distinct, as are the solutions, and by not providing a sufficient focus on either, it is very unlikely to result in meaningful change for women or any other protected group. The Fair Work First guidance also lacks the detail that is needed to enable employers to take action on women's equality at work.

The fair work first guidance⁵⁸ is for both public sector grant makers and/or buyers and organisations that are grant applicants/recipients and/or bidders/suppliers. It is intended to evaluate the commitment of applicants/bidders/suppliers to fair work first, and also monitor the progress towards delivering fair work by grant recipients/suppliers. The guidance signposts to Close the Gap's *Close Your Pay Gap* tool, which is welcome. However, this does rely on users clicking through to the website to use the tool. This would not necessarily present a challenge in itself, however, none of the good practice examples in the section on addressing the pay gap are gendered. There are 13 examples provided and none mention women or describe how to apply a gender lens to key areas of employment practice. This is particularly concerning because the good practice examples are intended to be used

⁵⁸ Scottish Government (2021) *Fair Work First Guidance: Supporting the implementation of Fair Work First in workplaces across Scotland*

to evaluate an employer's commitment to tackling the pay gap, and monitor progress on taking action. There is therefore a high risk that under the monitoring and evaluation arrangements described in the guidance, employer activity on addressing the gender pay gap is incorrectly identified as effective when it is not.

Scottish Government announced that it will consult on a requirement for fair work conditions to be applied to the scoring criteria for all public sector grants, where it is proportionate and relevant to do so. Close the Gap would strongly welcome increased conditionality attached to public sector grants. Scottish Government and public bodies should also make better use of public procurement to lever improved employment practice, specifically taking action on the gender pay gap. In particular, the current review of the public sector equality duty needs to recognise that the procurement duty has resulted in no meaningful change in women's equality at work. The recasting of the Scottish specific duties should include a more effective way to use public procurement powers to advance women's workplace equality. The Social Renewal Advisory Board made a similar call for Scottish Government, and the wider public sector to attach fair work criteria to all grants, contracts and funding as standard, unless it can be specifically demonstrated that there is a reason not to do so.⁵⁹

Fair Work First does hold potential to create fair work for women, but the criterion on the pay gap should be refocused to be directing action to tackle the causes of the pay gap, rather than diluted to a more general, non-specific ask on equality. To lever action from employers that will increase fair work for different groups of women, the fair work first guidance needs to be improved so that it is gender competent and intersectional. It is also not clear from available information how the gender pay gap criterion of Fair Work First will be evaluated. The evaluation framework needs to be gender competent, and be informed by evidence of what works in reducing the gender pay gap.

PSED reform

Scottish Government has recently published its consultation on its review of the public sector equality duty (PSED). The Scottish specific duties are intended to support public bodies to respond to the general duty and to integrate the use of evidence into policymaking and equality outcome-setting. However, successive assessments by Close the Gap⁶⁰, other equality organisations, and the Equality and

⁵⁹ Social Renewal Advisory Board (2021) *If not now, when? Social Renewal Advisory Board* <https://www.gov.scot/publications/not-now-social-renewal-advisory-board-report-january-2021/documents/>

⁶⁰ Close the Gap (unpublished) Internal PSED assessment 2017; Close the Gap (2015) *Making Progress? An assessment of public sector employer performance of the public sector equality duty*; Close the Gap (2014) *Monitoring Scottish public bodies' compliance with the public sector equality duty*

Human Rights Commission⁶¹, have highlighted that this has not been achieved. While PSED has created a framework for action on women's inequality and discrimination, there has been a persistent failure by public bodies to take effective action or deliver change. Covid-19 has particularly exposed the ineffectiveness of the duties as public sector employers have failed to adequately respond to the differential impact on women workers⁶².

The review of the PSED is an important opportunity to strengthen the duties to enable improved gender-sensitive employment practice from public bodies that will create fair work for women. Listed public bodies are currently required to publish their gender pay gap. Work by Close the Gap to assess public body compliance with the duty identifies a steady deterioration in meeting the gender and employment requirements.⁶³ In 2017, 80% of public bodies published their pay gap and by 2021, the proportion of public bodies reporting their pay gap fell to just 67%.⁶⁴ Since the duties were introduced in 2012, there is little evidence of the pay gap reporting duty resulting in meaningful change for women workers.

The lack of action from public bodies on the pay gap aligns with existing evidence on employer motivations for delivering work on gender equality. Research by Close the Gap⁶⁵ and UK Government Equalities Office⁶⁶ shows that most employers are unlikely to take substantive action to advance women's equality unless they are legally required to do so. A central weakness of the current gender pay gap reporting duty is that it requires only reporting; there is no obligation to take action to tackle the causes. Similar findings have emerged from Close the Gap's assessment work of Scottish employer compliance with the UK gender pay gap reporting. Large private and third sector organisations are required to report a range of gender pay gap information.⁶⁷ Close the Gap's 2019 assessment found that less than a third of employers had published any actions to tackle their pay gap, and those which had

⁶¹ Equality and Human Rights Commission's *Measuring Up?* Programme. Available at <https://www.equalityhumanrights.com/en/public-sector-equality-duty-scotland/scotland-public-sector-equality-duty-projects/measuring>

⁶² Close the Gap (2021) Response to the Scottish Government's call for views on the review into the effectiveness of the Public Sector Equality Duty in Scotland (Stage 2), available at: <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-response-to-the-Scottish-Governments-call-for-views-on-the-review-into-the-effectiveness-of-the-Public-Sector-Equality-Duty-in-Scotland-Stage-2.pdf>

⁶³ Close the Gap's assessments of PSED compliance included a cross-sectoral sample of 45 listed public bodies.

⁶⁴ Close the Gap (2021) *Response to the Scottish Government's call for views on the review into the effectiveness of the Public Sector Equality Duty in Scotland (Stage 2)*, available at: <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-response-to-the-Scottish-Governments-call-for-views-on-the-review-into-the-effectiveness-of-the-Public-Sector-Equality-Duty-in-Scotland-Stage-2.pdf>

⁶⁵ Close the Gap (2013) *Missing Out on the Benefits: Summary of research on the reporting of the gender pay gap in Scotland* <http://www.closesthegap.org.uk/content/resources/Missingoutonthebenefits-CTG.pdf>

⁶⁶ Winterbotham et al (2014) *Company Reporting: gender pay gap data*, Government Equalities Office: London

⁶⁷ <https://www.gov.uk/government/collections/gender-pay-gap-reporting>

bee published were largely unmeasurable and unlikely to result in positive change for women.⁶⁸

The review of PSED is an critical opportunity to strengthen gender pay gap reporting to lever action from public sector employers that will create fair work for women. A reformed duty should require public bodies to report their gender pay gap and publish an action plan which sets out how the causes will be addressed.

Automation

Artificial intelligence (AI) and data driven technologies undoubtedly create opportunities for Scotland's labour market. However, these technologies also present a number of key challenges around women's labour market equality, built-in discrimination and bias, and future skills demand. Technology is expected to play an increasing role in Scotland's future economy, with implications for jobs and the nature of work. While it is currently unclear to what extent Covid-19 has accelerated this trend in Scotland's economy, there are a number of reasons to suspect that the pace of automation will increase as a result of the pandemic.

Evidence from 2008 found that routine jobs that could easily be automated disappeared with the financial crisis, and did not return during the recovery phase, contributing to a "jobless recovery". Evidence from the three recessions in the past 30 years found that 88% of job losses took place in highly automatable occupations, with automation being viewed as accounting for "essentially all" of the jobs lost in the crises.⁶⁹ Research shows that automation tends to happen in bursts, often concentrated in the wake of economic shocks when labour becomes relatively more expensive as firms' revenues rapidly decline.⁷⁰ Moreover, Covid-19 may change consumer behaviour as a result of social distancing and fear of contracting the virus, leading to consumers preferring automated services to face-to-face interactions in sectors such as hospitality and retail for the foreseeable future, adding further incentives to businesses to automate their services.⁷¹

If automation and the adoption of new technologies does accelerate in response to Covid-19, this would further compound women's disproportionate risk of unemployment, reduced hours, and underemployment. Many of women's jobs at

⁶⁸ Close the Gap (2019) *One Year On and Little Change: An assessment of Scottish employer gender pay gap reporting*, available at: <https://www.closesthegap.org.uk/content/resources/One-year-on-and-little-change---An-assessment-of-Scottish-employer-gender-pay-gap-reporting.pdf>

⁶⁹ Jaimovich, Nir and Siu, Henry (2012) *Job Polarisation and Jobless Recoveries*

⁷⁰ Muro, Mark (2020) 'Will the covid-19 pandemic accelerate automation?', *The Economist*, April 22 2020, available at <https://eiperspectives.economist.com/technology-innovation/will-covid-19-pandemic-accelerate-automation>

⁷¹ Benedikt Frey, Carl (2020) 'COVID-19 will only increase automation anxiety', *Financial Times*, April 21 2020, available at <https://www.ft.com/content/817228a2-82e1-11ea-b6e9-a94cfd1d9bf>

risk of automation are the same jobs which are at risk of Covid-related job disruption. Furthermore, job disruption as a result of automation and new technologies is also expected to have a gendered impact.⁷² The ONS finds that women account for 70% of employees in jobs at high risk of automation, and 43% of employees in jobs at low risk of automation. Part-time workers, three-quarters of whom are women, comprise 70% of all employees in jobs at high risk. This compares with just 11% of jobs at low risk of automation being held by part-time positions.⁷³

Women workers are concentrated at the extreme ends of the automation spectrum, with women over-represented in jobs that are at the highest risk of automation, such as retail or secretarial roles, and under-represented in the sectors where job growth is likely as a result of automation, such as STEM.⁷⁴ Occupations most at risk of automation for men have the lowest earnings, whereas there is considerable risk to “women’s jobs” in better paid occupations, which has the potential to reverse gender equality gains.

In general, there is less policy focus on realising fair work for women working in female-dominated sectors. For example, automation is having a serious impact on retail, with women disproportionately affected because of their concentration in the sector, particularly in customer facing roles. Covid-19 has accelerated many aspects of automation in retail, such as the move to increased online retail which again disproportionately affects women because of they are more likely to work in shops while men are more likely to work in warehouse and distribution. There have been increases in online retail sales while in-store retail has continued to decline, evidenced by the permanent closure of prominent high street stores resulting in mass job losses across the UK⁷⁵.

Generic skills interventions, which do not consider the gendered barriers to skills acquisition and employment reinforce and sustain occupational segregation and the gender pay gap. Skills interventions need to integrate gender, and be designed to take account of, for example, women’s greater propensity to have caring roles, gender stereotyping, and should challenge occupational segregation as a central aim.

The gender pay gap action plan commits Scottish Government to ensure that addressing the causes of the gender pay gap are central to policies on automation

⁷² World Economic Forum (2018) *The Global Gender Gap Report 2018*

⁷³ ONS (2019) ‘Which occupations are at high risk of being automated’ available at <https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/employmentandemployeetypes/article/s/whichoccupationsareathighestriskofbeingautomated/2019-03-25>

⁷⁴ Close the Gap (2020) *Response to the Scottish Government’s Consultation on Developing Scotland’s Artificial Intelligence Strategy*

⁷⁵ Close the Gap (2021) *One Year On: How Covid-19 is impacting women’s labour market equality*, available at: <https://www.closesthegap.org.uk/content/resources/One-Year-On---How-COVID-19-is-impacting-womens-employment-in-Scotland.pdf>

and artificial intelligence.⁷⁶ Despite this, work delivered to date around automation has been characterised by a lack of gender analysis and very limited use of gender-disaggregated data. Scotland's AI strategy⁷⁷ is not gendered. While it acknowledges the need to “address the real risks and concerns of bias arising from inadequate data or design or a lack of transparency of decision-making”, there is no mention of women or gender. It also notes the importance of a “diverse workforce” but does not mention women's vast under-representation in AI, nor set out any actions as to how more women will be enabled to work in AI.

The national strategy on economic transformation is likely to have a focus on the “fourth industrial revolution”. It is critical that Scotland's response to new technologies does not exacerbate gender inequalities. Tackling occupational segregation, addressing the gender pay gap and advancing women's wider economic equality must be at the centre of Scotland's policy response to automation and AI. This means mainstreaming gender in policy development and gathering intersectional gender-sensitive sex-disaggregated data on the changing labour market. Additionally, targeted skills programmes should be developed to support groups of women most at risk of automation and to tackle occupational segregation in the tech sector. This will support the delivery of fair work for women.

Addressing the undervaluation of social care work through the National Care Service

The undervaluation of work traditionally done by women drives women's low pay and the gender pay gap, and is a barrier to realising fair work for women that must be tackled. The creation of a National Care Service provides an important opportunity to not only improve the quality of care services in Scotland but also improve job quality and raise the status of paid care work. Care is profoundly gendered. Women do the bulk of unpaid and informal care and comprise 85% of the social care workforce in Scotland.⁷⁸ Social care is essential to women's lives, as workers and as service users, and to the functioning of Scotland's economy. Investment in the workforce is core to providing high quality personalised care. Despite this, the social care workforce is underpaid, undervalued and under-protected.⁷⁹

In its inquiry into social care, the Fair Work Convention acknowledged that the undervaluation of social care work is “to a significant extent, linked to the

⁷⁶ Scottish Government (2019) *A Fairer Scotland for Women: gender pay gap action plan*, available at: <https://www.gov.scot/publications/fairer-scotland-women-gender-pay-gap-action-plan/>

⁷⁷ Scottish Government (2021) *Scotland's AI Strategy*, available at: <https://www.scotlandaistrategy.com/>

⁷⁸ Scottish Social Services Council (2019) *Scottish Social Service Sector: Report on 2018 Workforce Data*

⁷⁹ Close the Gap and Engender (2020) *Gender and Economic Recovery*, available at: <https://www.closesthegap.org.uk/content/resources/Gender--Economic-Recovery--Engender-and-Close-the-Gap.pdf>

predominance of women workers in the sector”⁸⁰ and made recommendations to tackle the low pay and poor terms and conditions of this work.

The recruitment and retention challenges in the sector are primarily driven by the pay and conditions of social care work. Care workers cite the low pay and poor conditions of the work as a primary reason for leaving their jobs.⁸¹ The average hourly pay in the wider social care sector is just £9.79⁸², with 43% of the Scottish social care workforce being paid less than the real living wage.⁸³ Many social care workers report not being paid for travel time between appointments or for overnight stays⁸⁴, effectively reducing their hourly pay rate, alongside highly compressed appointment times.⁸⁵ Evidence shows that social care workers frequently do not have enough time to deliver high quality care to service users.⁸⁶ This has a detrimental impact on service users, but also on workers’ mental health and wellbeing because they cannot deliver the standard of dignified and compassionate care they would wish to. This is a significant issue in homecare settings but is also evident in care homes due to understaffing.⁸⁷

In our submission to the Independent Review of Adult Social Care⁸⁸, Close the Gap advocated for a sector-wide analytical job evaluation exercise to tackle the undervaluation of social care work, and for the development of gender competent minimum standards of employment⁸⁹. The final report of the Independent Review of Adult Social Care supported the call to address the undervaluation of social care work and recommended “a national job evaluation exercise for work in social care,

⁸⁰ Fair Work Convention (2019) *Fair Work in Scotland’s Social Care Sector 2019*, available at:

<https://www.fairworkconvention.scot/our-report-on-fair-work-in-social-care/>

⁸¹ Implementing the Scottish Living Wage in adult social care: An evaluation of the experiences of social care partners, and usefulness of Joint Guidance – CCPS and University of Strathclyde (2018)

<http://www.ccpscotland.org/wpcontent/uploads/2018/11/Univ-of-Strathclyde-Living-Wage-implementation-research-November-2018.pdf> and Ekosgen (2019) *The Implications of National and Local Labour Markets for the Social Care Workforce: Final Report for Scottish Government and COSLA*

⁸² Fair Work Convention (2019) *Fair Work in Scotland’s Social Care Sector 2019*

⁸³ Williams, Martin (2010) ‘Half of Scotland’s care workers paid less than Real Living Wage’, *The Herald*, 2 May 2020, available at <https://www.heraldscotland.com/news/18421934.half-scotlands-care-workers-paid-less-real-living-wage/>

⁸⁴ Briefing for care and support providers: Holiday Pay and Overtime Sleepovers and National Minimum Wage – CCPS (2015)

<http://www.ccpscotland.org/wpcontent/uploads/2015/03/CCPSsleepoverbriefing.pdf>

⁸⁵ Rubery, J. et al (2011) *The Recruitment and Retention of a Care Workforce for Older People*

⁸⁶ GMB Scotland (2020) Show You Care: Voices from the Frontline of Scotland’s Broken Social Care Sector

⁸⁷ Ibid

⁸⁸ Close the Gap (2020) *Submission to the Independent Review of Adult Social Care*, available at:

<https://www.closesthegap.org.uk/content/resources/Close-the-Gap-submission-to-the-Independent-Review-of-Adult-Social-Care.pdf>

⁸⁹ Close the Gap (2020) *Supplementary submission to the Independent Review of Adult Social Care*, available at: <https://www.closesthegap.org.uk/content/resources/Supplementary-submission-to-the-Independent-Review-of-Adult-Social-Care.pdf>

to establish a fair and equitable assessment of terms and conditions for different roles which takes account of skills, qualifications, responsibilities and contribution” [recommendation 43]⁹⁰.

Despite the starkly gendered nature of care, Scottish Government’s consultation on the National Care Service is largely gender-blind. The undervaluation of the predominantly female workforce, and women’s experiences as the majority of unpaid carers are not taken into account. The consultation does not mention job evaluation, and is weak on how the National Care Service will create fair work for the social care workforce. There is also no equality impact assessment of the proposals.

Addressing the undervaluation of social care work is an important step towards realising fair work for women. It would signal that Scottish Government is committed to gendering fair work, and would align with its ambitions to reduce the gender pay gap. Scottish Government commissioned the Centre for Research in Employment and Work at University of Greenwich to undertake research⁹¹ on the practical mechanisms and approaches used internationally to address the undervaluation of women’s work, and evaluate their effectiveness in, and applicability to, the Scottish context. The report recommends that Scottish Government:

- Establish a national forum comprised of workforce and employer representatives, integration joint boards and Scottish Government which could advise the National Care Service on workforce priorities and lead on creating national sector level collective bargaining of terms and conditions, as recommended by the Independent Review of Adult Social Care; and
- Ensures that changes to collective bargaining for the predominantly female social care workforce, any move towards sectoral bargaining, and a customised job evaluation are based on alignment with other public sector agreements and designed to deliver equal pay for work of equal value with other public sector jobs, with adequate funding to enable this.

The creation of the National Care Service presents a opportunity for Scotland to be a leader on tackling the undervaluation of women’s work. If the undervaluation of social care work is not addressed, Scottish Government’s ambitions on fair work will be undermined, and the inequalities faced by women working in social care will be entrenched.

⁹⁰ Scottish Government (2021) *Independent Review of Adult Social Care in Scotland*, available at: <https://www.gov.scot/publications/independent-review-adult-social-care-scotland/documents/>

⁹¹ Scottish Government (2021) *International Mechanisms to Revalue Women’s Work: Research exploring and evaluating international mechanisms that aim to revalue or result in the revaluation of women’s work*, available at: <https://www.gov.scot/publications/international-mechanisms-revalue-womens-work-research-exploring-evaluating-international-mechanisms-aim-revalue-result-revaluation-womens-work/>

Tackling child poverty by addressing women's low pay

Close the Gap has welcomed Scottish Government's child poverty delivery plan 2018-2022. It is gender competent, and recognises that women's poverty is inextricably linked to child poverty. Women's incomes remain a critical factor in child poverty; evidence shows that where women's disposable income is reduced, spending on children decreases.⁹² The current action plan has a strong focus on the need to advance women's labour market equality by engaging with sectors, such as tourism and hospitality, in which women's low pay is a concern; tackling the gender pay gap; and enabling more flexible working. In our response to the consultation on the new child poverty delivery plan, Close the Gap has strongly advocated that the centring of women's poverty in alleviating child poverty must be maintained. Covid has had a devastating impact on women's lives, and women who were already struggling are now under enormous financial pressure, being pushed into further and deeper poverty.

Enabling fair work for women therefore needs to be central to Scottish Government's action to tackle child poverty. Actions which will contribute to this include better gendering fair work policy, addressing the undervaluation of women's work, developing gender-competent employability support, extending the real living wage to female-dominated sectors.

FURTHER ACTIONS TO DELIVER FAIR WORK

8. Please set out any further actions you think Scottish Government should take to deliver fair work for everyone. This may include for example any further support you think is needed.

If fair work is to be delivered for women, fair work policy must be better gendered. Close the Gap has welcomed the inclusion of tackling the gender pay gap in Fair Work First, as we did when it was added to the Scottish Business Pledge. The specificity of the gender pay gap element in the Business Pledge substantively strengthens the initiative, and makes it more likely to result in change for women working for Business Pledge signatories. The broadening out of the Fair Work First pay gap criterion to include a more a general ask on equality and diversity that dilutes the focus, and risks stymieing good quality action on the pay gap.

Scottish Government describes the Fair Work Convention's fair work framework as setting out the strategic ambitions for Scotland becoming a fair work nation⁹³. In response to the framework, Scottish Government developed its fair work action plan.

⁹² CPAG (2012) *Ending child poverty by 2020*, available at https://cpag.org.uk/sites/default/files/CPAG-Ending-child-poverty-by-2020-progress-made-lessons-learned-0612_0.pdf

⁹³ Scottish Government (2021) *Fair Work Action Plan*, available at: <https://www.gov.scot/publications/fair-work-action-plan/>

The fair work framework does not consider women's labour market inequality. There are marginal references to need to balance work and family life, and women's propensity to have a caring role. The gender pay gap is mentioned once, and discrimination is not mentioned at all. There is also no mention of horizontal segregation, and the framework fails to engage with economy-wide inequalities such as the undervaluation of work, as well as specific issues such as sexual harassment. It therefore follows from this inadequate analysis that the recommendations on equality are generic and lack specificity. Employers are encouraged to "*investigate and interrogate the workforce profile...and identify where any barriers to opportunity arise and address these creatively*". It is difficult to see how this will enable employers to operationalise fair work for women in Scotland.

It again follows that the fair work action plan, which is intended to implement the framework, is also ungendered. The section on unpaid carers does not mention women, or that care is profoundly gendered. While links are made to Scottish Government's gender pay gap action plan, gender is not mentioned in the actions. The pay gap is mentioned in relation to fair work first, and other references are made to commitments in the gender pay gap action plan. The plan mentions the establishment of a fair work and gender equality ministerial working group, which will "drive a strategic approach to embedding and mainstreaming Fair Work across Ministerial portfolios" and "provide a challenge function to the action being taken". It is not clear how gender equality is integrated into this role.

The invisibility of gendered labour market experiences also plays out in the Fair Work Convention's Fair Work in Scotland report⁹⁴ which presents the Convention's fair work measurement framework that is intended to monitor Scotland's progress towards being a fair work nation. There are 39 indicators including the gender pay gap, gender economic inactivity gap, and horizontal and vertical segregation. The pay gap indicator is for full-time employees only, which excludes more than 40% of working women and those who are most likely to be in poor quality work. The gender inactivity gap is not a good measure of women's inequality in the labour market because the vast majority of women are in work, and this masks other systemic inequalities. Women are more likely to be economically "inactive" because they are looking after family/home although the description of the reasons for economic activity includes no gender-disaggregated data and no gender analysis. There is very little data disaggregated by gender in the report, including on highly gendered practices such as flexible working. Women's labour market experiences, and their experiences of fair work are therefore largely absent.

⁹⁴ Fair Work Convention (2020) *Fair Work in Scotland*, available at: <https://www.fairworkconvention.scot/wp-content/uploads/2020/12/Fair-Work-in-Scotland-Report.pdf>

A fair work employer support tool⁹⁵ has been developed, and as it is based on the fair work framework, it also does not engage with women's labour market equality. It guides users through a series of questions to measure the extent to which their employment practice delivers fair work. There is one question on having a transparent pay policy and on carrying out "any assessment of pay gaps (for example, by gender, ethnicity, disability)" but women are not mentioned, or in any of the other questions. On completion, users are then directed to a list of 69 resources for each dimension of fair work. Close the Gap undertook an exercise to identify which resources were identified for employers that deliver different levels of fair work. When responses indicated a low level of fair work, it was found that the resources did not mention women, their specific experiences, or the gender pay gap. There was one link to an equality policy template, and another signposting to an equality toolkit produced by Skills Development Scotland. When the responses aligned with a high level of fair work there were links to one of Close the Gap's Think Business, Think equality resources on pay and reward; the UK Government gender pay gap reporting portal; and a 40 page speech by the chief economist of the Bank of England. It is clear that there are critical and substantive gaps in the employer tool around fair work for women, not only in the measurement but also in the resources employers are signposted to. It is difficult to see how the tool will enable employers to develop the intersectional gender-sensitive employment practice that is required to deliver fair work for women.

The absence of women's experiences from fair work policy, measurement tools, and employer resources will mean that fair work is not delivered for women. The solution is to build intersectional gender competence among those developing and delivering fair work policy and programmes. The articulation of fair work should also be refreshed so that gender is integrated, and employer understand precisely the action they should take to deliver fair work for both women and men.

9. Please set out any other actions you think are required to deliver fair work for everyone, including who should take this action.

Close the Gap has developed a range of guidance, tools and resources to enable different employers to develop gender-sensitive employment practice. This includes:

- The Close Your Pay Gap online tool⁹⁶ which supports larger employers to report on and tackle their gender pay gap;

⁹⁵ <https://fairworktool.scot/home>

⁹⁶ <https://www.closeyourpaygap.org.uk/>

- The Think Business, Think Equality online self-assessment tool⁹⁷ for SME employers which enable them to address the causes of women’s inequality at work;
- Guidance for public sector employers⁹⁸ on meeting the gender and employment requirements of the public sector equality duty.

Employers engaging with these resources will be able to develop improved practice and deliver fair work for women. Other employers resources that aim to enable fair work should also engage with Close the Gap’s expertise if fair work is to mean fair work for women as well.

FAIR WORK AND EMPLOYMENT POWERS

10. If Scotland had full control over employment law, which issues would you like to see addressed as a priority in order to deliver fairer work in Scotland?

Current employment law contributes to the persistence women’s labour market equality. However, it is also important to note that many of the causes of women’s inequality at work are not unlawful, and instead can be tackled by gendering policy responses for which Scottish Government has responsibility.

In section, we set out the changes in employment law that would contribute to advancing fair work for women. This list is not exhaustive, and instead focuses on key priorities in the current context.

Insecure work

As set out in our answer to question 6, women are more likely to be in insecure work such as on zero hours and temporary contracts. The precarity of women’s employment often denies them basic employment rights such as sick pay and annual leave, as well as gendered employment rights such as access to maternity pay, the right to return to work after maternity leave, and the right to request flexible working. Unreliable hours make it particularly difficult for women to manage work with the caring roles, while also increasing their financial security, and worsening women’s and children’s poverty.

Changes to employment law should include:

- All workers including agency workers, zero hours contract workers and casual workers to be entitled to the same floor of rights currently enjoyed by employees.

⁹⁷ <https://www.thinkbusinessthinkequality.org.uk/>

⁹⁸ Close the Gap (2016) *Guidance for reporting on gender and employment, equal pay and occupational segregation*, available at: <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-PSED-guidance-on-gender-and-employment-2016.pdf>

- Giving workers the right to a contract that reflects their regular hours, at least four weeks' notice of shifts, and compensation for cancelled shifts.
- A right for workers to challenge their parent employer over minimum wage, sick pay and holiday pay abuses.
- A right to bring a claim for unpaid wages, holiday pay and sick pay against any contractor in the supply chain above them.

Equal pay

Equal pay law has been in place for more than 50 years, yet pay discrimination remains a feature of Scotland's labour market. There is also a chronic sense of undue complacency among employers around equal pay. The undervaluation of stereotypically female work drives women's low pay, women and children's poverty, and the gender pay gap. It is also a barrier to realising fair work for women. Current provisions for equal pay, including restrictions around who a claimant can use as a comparator, are particularly inadequate to realise pay equality for women working in undervalued, female-dominated jobs and sectors⁹⁹.

Changes to employment law should include:

- The right to use a hypothetical comparator when making an equal pay claim.
- A right to identify a comparator outwith the same employment when making an equal pay claim, for example, where their employment has been contracted to an arms' length external organisation.
- Require organisations with more than 20 employees to undertake regular equal pay reviews.

Pay

Women are the majority of low-paid workers, and comprise two-thirds of those earning below the real living wage. Women are often denied sick pay because they are in insecure work and not entitled, or because they do not earn enough to qualify. 70% of workers who do not earn enough to qualify for statutory sick pay are women¹⁰⁰, and 16% of all women in paid work in the UK are not eligible for statutory sick pay¹⁰¹. A recent CIPD survey¹⁰² found that nearly two thirds (62%) of employers agree that the statutory sick pay rate is too low and should be increased.

⁹⁹ Hayes, L.B.J. (2017) *Stories of Care: A labour of law – gender and class at work*, Palgrave: London

¹⁰⁰ TUC (2021) "TUC accuses government of abandoning low-paid workers after it ditches sick pay reforms", press release available at: <https://www.tuc.org.uk/news/tuc-accuses-government-abandoning-low-paid-workers-after-it-ditches-sick-pay-reforms>

¹⁰¹ Women's Budget Group(2020) *Response to the Winter Economic Plan*, available at: <https://wbg.org.uk/analysis/response-to-the-winter-economic-plan/>

¹⁰² CIPD (2021) *What should an effective sick pay system look like?* Available at: <https://www.cipd.co.uk/about/media/press/141221statutory-sick-pay-low#gref>

The changes to employment law should include:

- Raising the national minimum wage to the rate of the real living wage for all age groups.
- Removing the lower earnings limit for statutory sick pay.
- Increase the rate of statutory sick pay to at least the rate of the real living wage.

Flexible working

Flexible working is a core element of fair work. The lack of flexible working drives women's low pay, women's and children's poverty, the gender pay gap and is a barrier to realising fair work for women. Current legal provisions for flexible working lack teeth, and since the statutory right to request was extended to all employees in 2014, evidence shows there has been no meaningful increase in women's access to flexibility.

Changes to the employment law should include:

- A day one right to work flexibly, and all jobs to be advertised as flexible, unless there is a clear business reason why this is not possible.
- A requirement for organisations to report on the outcomes of flexible working requests.
- A requirement for employers to demonstrate that they have considered alternative working arrangements when making decision on flexible working requests.
- A right for workers to appeal flexible working request refusals.

Gender pay gap reporting

Gender pay gap reporting is a welcome step towards addressing the pay gap, but reporting alone does not create change or realise fair work for women. Most employers are unlikely to voluntarily take action on gender equality.

The changes to the gender pay gap reporting regulations should include

- Lowering the employee threshold for organisations reporting their pay gap to 20.
- Require organisations to publish an action plan and report on progress to tackle the causes of their pay gap.

Paid paternity leave

The division of unpaid childcare is profoundly gendered, resulting in women's propensity to be the primary carer of children in the home. Current provision for maternity, paternity and shared parental leave and pay reinforces gendered norms

around who does childcare in the home, and constrains women's access to the labour market, and fair work. The introduction of shared parental leave has not resulted in a redistribution of unpaid childcare from women to men. The low level of paternity pay is one reason for this, but many fathers are also ineligible for shared parental leave¹⁰³.

Changes to employment law should include:

- The creation of two "Daddy months" of use-it-or-lose-it paid paternity leave as a day one right.

¹⁰³ Close the Gap (2019) *Response to the UK Government consultation on the Good Work Plan: Proposals to support families – parental leave and pay*, available at: <https://www.closesthegap.org.uk/content/resources/Close-the-Gap-response-to-UK-Government-Good-Work-Plan---Parental-Leave-and-Pay.pdf>