

SCOTTISH PUBLIC SECTOR PAY POLICY 2021 TO 2022: EQUALITIES IMPACT ASSESSMENT



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EQUALITY IMPACT ASSESSMENT - RESULTS

Title of Policy	Public Sector Pay Policy 2021-22
Summary of aims and desired outcomes of Policy	<p>To set the 2021-22 pay policy for the Scottish Government and its Associated Departments; Executive Agencies; Non-Departmental Public Bodies; Public Corporations and NHS Scotland Executives and Senior Managers.</p> <p>The 2021-22 policy has been developed in the context of Scotland's response to the COVID-19 pandemic.</p> <p>The overarching aims of the 2021-22 pay policy is to set pay increases in a way that is fair, progressive, restorative and affordable, protects the lower paid and protects jobs and services. The policy also promotes the wellbeing of public sector workers.</p>
Directorate: Division: Team	Budget and Public Spending: Public Spending: Finance Pay Policy and Pension Team

Executive summary

The pay policy is designed to help deliver Ministerial objectives for a wealthier and fairer Scotland. It takes cognisance of the 2020-21 Programme for Government commitments on fairness, equality and helps mitigate the detrimental impact of the on-going health crisis. The 2020-21 Programme for Government acknowledges the impacts of the pandemic have not been felt equally. It is expected the on-going economic impact will be felt disproportionately by women as well as those from minority ethnic communities, disabled people and young people. There is a tangible risk that the current health crisis could increase both the gender employment gap and the gender pay gap in the short to medium term.

The primary purpose of the 2021-22 Public Sector Pay Policy is to set pay increases in a way which is fair, reflects the real life circumstances people face and promotes wellbeing while helping to sustain public sector jobs and protect public services within the challenges of responding to the health crisis and the tight financial position to ensure pay rises are affordable now and in the future.

The Equality Impact Assessment of the 2021-22 Public Sector Pay Policy proposals concludes that maintaining the commitment to supporting paying at least the real Living Wage and the £750 cash underpin will positively benefit lower paid staff and in particular those with one or more protected characteristic. From the data available, there is a higher proportion of women, disabled people, individuals from a minority ethnic group, younger employees or a combination of one or more of

these protected characteristics as well as part-time workers among lower paid employees. Therefore the measures proposed in the pay policy protect these employees from pay restraint and in many cases provide a positive benefit - underpinning Ministerial objectives for a wealthier and fairer Scotland.

The continued progressive approach proposed in the 2021-22 Pay Policy will also help to reduce overall income inequality. It may also help in positively working towards reducing the gender pay gap within the public sector as it should increase the overall base levels of pay for those at the lower end where women are overly concentrated. This is further supported by the continued restraint applied to higher earners, including senior appointments, where there are higher proportions of men.

The Equality Impact Assessment concludes that the risk of indirect discrimination, as a result of capping the pay for higher earners, can be justified by the overarching aims of the pay policy. It will still be necessary for individual employers to ensure that they do not introduce or perpetuate any direct or indirect discrimination for individuals in their application of the policy. Employers covered by the pay policy are also subject to the statutory public sector equality duty, and it is their responsibility to ensure their pay systems are fair and non-discriminatory and that they are expected to undertake their own assessment of their pay proposals prior to submitting them to the Scottish Government.

The introduction of the discretion for employers to consider work towards standardising to a 35 hour working week can be seen to provide a benefit to all impacted employees. It is possible there could be a greater benefit for part-time employees, particularly for the many who are lower paid and as such more likely to be a woman, a disabled person, an individual from a minority ethnic group, a younger employee or a combination of one or more of these protected characteristics.

The pay policy will set the overarching framework within which public bodies can make individual choices on the impact of the policy on their own circumstances. Public bodies have the flexibility to draw up their own pay proposals to take into account local pay issues such as recruitment and retention, equality and the impact of the lower pay measures on other staff. The pay policy actively encourages employers to take into account their own staffing profile, local evidence, views of staff and unions and equality issues in framing their pay proposals.

The continuation of the commitment to the No Compulsory Redundancy policy provides job protection for all employees covered by the pay policy. There is no evidence to suggest this creates any negative direct or indirect discrimination.

There is no evidence to suggest that the cap on increases for higher earners would adversely impact the take-up of Board Appointments among those with a protected characteristic as the level of daily fee rate may not be the key driver for taking up an appointment but rather to provide the opportunity to represent and raise awareness. The pay policy for Senior Appointments makes it explicit that the main objective of remunerating Board Members is to increase diversity but is not

intended to meet in full the market rate that the individual may otherwise expect/command.

The supporting Technical Guide to the pay policy will continue to remind public bodies of their duty to ensure their pay systems are fair and non-discriminatory and that they have due regard to their obligations under public sector equalities duties in considering their pay proposals.

Background

The 2021-22 Public Sector Pay Policy is driven by the Scottish Government's purpose:

“To focus on creating a more successful country with opportunities for all of Scotland to flourish through increased wellbeing, and sustainable and inclusive economic growth”.

In 2018-19 Ministers gave a commitment in their Programme for Government to lift the 1 per cent pay cap on base pay increases¹. To help deliver this and help work towards pay restoration, particularly for the lower earners who were most impacted by the years of pay freezes and pay constraint, the 2018-19 Public Sector Pay Policy provided a guaranteed 3 per cent base pay increase for those earning under £36,500. The policy for 2019-20 again provided for a guaranteed 3 per cent basic pay increase for those earning under £36,500. Furthermore to provide positive opportunity for employers to tackle overall income inequality, the policy provided the flexibility for employers to use paybill savings to address inequalities.

The 2018-19 threshold of £36,500 helped provide increases that reflected cost of living pressures and benefitted three-quarters of public sector employees. The same policy applied in 2019-20 but in addition employers were encouraged to use the flexibilities for addressing inequalities to top up the 3 per cent to provide a cash underpin of £750 for those earning under a full-time equivalent salary of £25,000. In 2020-21 the £36,500 threshold was removed but the policy prescribed the requirement to pay £750 cash underpin for all those earning below a full-time equivalent salary of £25,000.

The pay policy has continued to constrain pay for the highest earners and work towards reducing overall income inequality by setting a cap on increases for all those earning above an upper threshold based on a full-time equivalent salary of £80,000.

Decisions on setting these pay thresholds also took in to account the options for the Scottish Rate of Income Tax.

¹ The basic award increase or base pay increase is the inflation or cost of living element of the pay award.

It is proposed the policy for 2021-22 continues that journey and supports the 2020-21 Programme for Government² commitments on fairness and equality. The Programme for Government acknowledges the impacts of COVID-19 have not been felt equally and it is expected the on-going economic impact will be felt disproportionately by women, those from minority ethnic communities, disabled people and young people. There is a tangible risk that the current health crisis could increase both the gender employment gap and the gender pay gap in the short to medium term.

The Programme for Government sets out the commitment to ensuring everyone can access work that is fair and offers flexibility and opportunity for all. It also commits that resources are targeted as far as is possible at jobs with fair wages, including payment of the real Living Wage as a minimum.

In developing the 2021-22 pay policy, consideration was given to affordability for the public purse alongside protecting the lowest earners and pay restoration. Deliberation was also given to balancing the need for fairness and consistency across all public sector workforces against the value to individual bodies of the pay policy providing sufficient flexibility to negotiate changes in working practices that will support the delivery of high quality public services and increase productivity.

In line with the position Ministers have taken on income tax policy, it is proposed the pay policy will continue to be progressive and to provide the greatest protection to those on the lower rates of pay.

The public sector workforce plays a key part in delivering the Government's purpose and all of our National Outcomes. The public sector pay policy contributes towards this through the following National Outcomes:

- Economy - we have a globally competitive, entrepreneurial, inclusive and sustainable economy.
- Fair Work and Business - we have thriving and innovative businesses, with quality jobs and fair work for everyone.
- Human Rights - we respect, protect and fulfil human rights and live free from discrimination.
- Poverty - we tackle poverty by sharing opportunities, wealth and power more equally.

As highlighted in the Programme for Government, responding to the COVID-19 pandemic is having an impact across Scotland, including on progress towards the National Outcomes. Of the Four Harms of COVID³ the economy is core to the pay policy. "The economy is central to our wellbeing, whether through the provision of direct services and goods, provision of taxes to fund public services like health and welfare, or by providing opportunities for employment and income. These

² www.gov.scot/publications/protecting-scotland-renewing-scotland-governments-programme-scotland-2020-2021

³ <https://data.gov.scot/coronavirus-covid-19/>

have all been impacted by COVID-19. Some of the changes we've seen may stay with us for some time.”

The primary purpose of the pay policy is to set pay increases in a way which is fair, reflects the real life circumstances people face while helping to sustain public sector jobs and protect public services within the tight financial position resulting from the continuing real terms reduction in the Scottish Government's resource budget to ensure that pay rises are affordable now and in the future.

In developing the 2021-22 pay policy, we have taken account of the cost of living⁴ and continue to provide measures to protect the lower paid, while ensuring public sector budgets remain in balance. We have also taken in to account the Scottish Government's progressive approach to the Scottish Rate of Income Tax.

In light of continued economic uncertainty as a result of the pandemic, EU Exit, and the delayed UK Budget, the pay policy for 2021-22 will be a single-year policy. The 2021-22 pay policy is based on the following principles:

- To continue the journey to address pay restoration by providing increases for public sector pay settlements which take account of inflation within a tightly constrained financial climate; so that pay remains affordable and sustainable; and, through the targeting of resources, that value for money is secured. This will be delivered by:
 - continuing to protect the lowest paid through Ministers' commitment to setting a minimum hourly rate taking cognisance of the real Living Wage.
 - providing an above inflation increase to protect the lowest earners.
 - continuing to constrain increases for the highest earners.
- To deliver top-class public services, protect jobs and preserve pay progression in return for continuing constraint on overall paybill costs and flexibility to help ensure productivity improves.
- To continue to work towards making sure that pay is fair and non-discriminatory.
- To provide flexibility for public bodies to identify the use of paybill savings to submit pay proposals that address evidenced workforce and pay inequality issues.

The proposed key features of the policy for 2021-22 are:

- A single-year pay policy, although public bodies may make a case to submit multi-year proposals.
- Confirming the commitment to paying at least the real Living Wage.
- A cash underpin for those with a full-time equivalent salary of £25,000 or less.
- A percentage pay uplift for those with full-time equivalent salaries of between £25,000 and £80,000.
- A cap on the basic award increases for all staff with full-time equivalent salaries of £80,000 or more.

⁴ The CPI, which is the UK Government's preferred measure for wage growth, was 0.5 per cent as at September 2020 (compared with 1.7 per cent in September 2019). The September CPI is the UK Government's reference point for taking decisions on inflationary uplifts for pensions and benefits.

- Retention of the flexibility for employers to use savings, up to a fixed percentage of baseline paybill, where they propose to restructure existing pay systems to address evidenced workforce or equality issues – including addressing pay coherence or recruitment and retention.
- Provision to carry forward unused flexibility from 2020-21.
- Preserving the discretion for individual employers to reach their own decisions with staff and trade unions about pay progression.
- Retaining a cap on progression increases for senior appointments including Chief Executives and senior managers in the NHS Scotland.
- The costs of any low pay measures and paying progression remain outwith the standard remit elements.
- Continued suspension of non-consolidated performance payments (e.g. bonuses).
- Maintaining the commitment to No Compulsory Redundancy where possible, in return for continued and, where appropriate, additional workforce flexibilities.
- Introducing the discretion for individual employers to consider working towards standardising to a 35 hour working week.
- Continuing the expectation for a 10 per cent reduction in the remuneration package of new Chief Executive appointments.

Scope of the Equalities Impact Assessment

Pay forms a large part of public sector expenditure and accounts for up to 60 per cent of annual revenue across the public sector in Scotland; the total paybill for public bodies covered directly by the pay policy is around £2.0 billion and the policy applies to nearly 42,000 full-time equivalent employees. Due to continued public spending cuts, budgets remain under severe pressure and this has been compounded by the recent increases in employer's pension and National Insurance contributions.

The population for Scotland as at 30 June 2020 was 5.5 million (2019 mid-year population estimate) of which 3.5 million (64 per cent) are of working age. Of those working just over 1 in 5 (21 per cent) are employed in the public sector. The public sector pay policy directly impacts around 50,000 employees (around 42,000 full-time equivalent). As the pay policy acts as a reference point for all devolved public sector pay groups, it indirectly affects around 465,000⁵ employees, and is key in setting the context for these pay negotiations.

While over half⁶ of all Scottish employees earn under £25,000 there is a significant difference between private and public sector workers with the majority being in the private sector. The proportion in the public sector earning below £25,000 is less than 50 per cent compared with more than 50 per cent in the private sector. It is estimated around 3 per cent of the private sector and around 2 per cent of the public sector earn more than £80,000. The estimated proportion of those directly covered by the pay policy is lower, at less than 0.5 per cent. This

⁵ Public sector employment in Scotland: statistics for third quarter 2020.

⁶ Annual Gross pay for all employee jobs, Scotland, 2019, Annual Survey of Hours and Earnings, Office of National Statistics.

lower proportion is due to the Senior Civil Service cohort being reserved and therefore subject to UK Government pay policy. The position within those public bodies directly covered by the pay policy is broadly similar to the wider public sector.

It is noted that a higher proportion of part-time employees are among the lower paid staff and they are more likely to be women. While over 30 per cent of all public sector employees work part-time nearly 90 per cent are women. However the proportion of employees working part-time in bodies directly covered by the pay policy is lower than the wider public sector. Around 20 per cent (just under 1 in 5) of employees work part-time and of those part-time employees around three-quarters are women.

In developing the 2021-22 pay policy the Finance Pay Policy team consulted stakeholders on the 2020-21 pay policy and processes. The application of the pay thresholds was raised, in particular that the lower increase was the main issue identified in terms of equality. In addition some employers considered the current approach on No Compulsory Redundancies was a barrier to making reforms and savings that could be used to address inequalities.

The findings from this Equalities Impact Assessment support Ministerial decisions taken on the 2021-22 pay policy. In developing the 2021-22 pay policy, consideration is required to be given to affordability for the public purse and the public's expectations on public spending against protecting the lowest earners and pay restoration. To achieve this a number of options were considered on the application of different levels of increases and the setting of different thresholds to optimise the benefits of the policy within the current tight financial constraints. Consideration was also given to balancing the need for fairness and consistency across all public sector workforces against the value to individual bodies of the pay policy providing sufficient flexibility to negotiate changes in working practices that will support the delivery of high quality public services and increase productivity.

In relation to the three needs of the equality duty, public sector pay policy has due regard to the need to:

(1) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act

The key strategic aims of public sector pay policy are to:

- To invest in our public sector workforce which delivers top class public services for all, supports employment and the economy, while providing for sustainable public finances.
- To provide a distinctive, progressive pay policy which is fair, affordable, sustainable and, delivers value for money in exchange for workforce flexibilities.
- To reflect real life circumstances, protect those on lower incomes, continue the journey towards pay restoration and recognise recruitment and retention concerns.

(2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it

The measures proposed in the pay policy can be seen to continue to protect all lower paid workers from the worst effects of pay restraint and help reduce the impact of the consequential pay erosion. As there is a higher representation of women, disabled people, those from a minority ethnic group and those from the younger age group among the lower earners, the approach taken in the pay policy will help provide such individuals with a positive benefit as well as work towards reducing the gender pay gap and overall income inequality.

The policy sets the overarching framework for delivering Ministers' key priorities on pay. It is for public bodies to make individual choices on the impact of the policy on their own circumstance taking into account affordability, their own staffing profile and equality issues. Although the policy does provide a positive benefit for some individuals, on the basis that, for example, they are more highly represented among the lower paid, the policy framework is applied on the same basis to all staff regardless of gender, age, disability, ethnicity etc.

(3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it

While the policy provides the framework it is for public bodies to make individual choices on the impact of the policy on their own circumstance taking into account their own staffing profile and equality issues.

All employers are required to confirm they have considered their obligations under equalities legislation in developing their pay proposals. Furthermore, as part of the pay remit process public bodies are required to provide equality focussed information. This enables the Finance Pay Policy team to analyse the impact of the pay policy on individuals by gender, age, work pattern, disability and ethnicity. Gathering and analysing this information centrally, and sharing the results will aid other employers in developing their own pay proposals.

Key findings

The findings indicate that within the public sector there are higher proportions of women and older employees than within the private sector. Any action that protects employment will protect these groups.

In terms of our specific proposals, the continued commitment to support the payment of at least the real Living Wage will directly benefit younger employees. Furthermore, the analysis indicates there are higher proportions of women, those with a disability, from a minority ethnic background and younger employees earning under the lower pay threshold based on a full-time equivalent salary of £25,000. Therefore the proposed measures for lower earners will continue to protect these individuals and in many cases provide a positive benefit. The policy may also help in working towards reducing the gender pay gap within the public

sector as it should increase the overall base levels of pay for lower earners where traditionally women are overly concentrated. This is further supported by the continued restraint applied to higher earners including senior appointments, where there are higher proportions of men.

The targeted low pay increases proposed will help erode overall income inequality and positively impact on all public sector staff directly covered by this policy including those with a protected characteristic. In particular providing a cash underpin for those earning under a full-time equivalent salary of £25,000 will directly benefit just under 25 per cent of lower paid public sector employees, many of whom will have one or more protected characteristic. The pay policy will provide employers with the scope to propose higher increases, of up to £750, for staff who are currently on a base salary that is just over the proposed lower pay threshold of £25,000 to address any possible “leapfrogging” and to maintain the integrity of their current pay systems.

Furthermore the policy will continue to allow employers the flexibility to use paybill savings to address locally identified pay or grading inequalities including pay coherence.

From the information provided for the wider public sector, there is nothing to suggest that setting a cash underpin for those earning under a full-time equivalent salary of £25,000 will result in any staff being adversely affected, and in fact it will benefit nearly a third of public sector employees, many of whom will have one or more protected characteristic.

The pay policy allows some flexibility for employers, within an overall framework, to take their own decisions for pay and reward to take account of their own business needs, workforce issues and affordability whilst ensuring they meet their equality duties.

In addition to the set basic pay increases and to recognise issues identified by stakeholders, it is proposed that the pay policy will continue to provide employers with the flexibility subject to affordability to address evidenced workforce or structural pressures that create or maintain pay inequalities. It is proposed, reflecting the cash underpin is an intrinsic element of the policy and to provide fairness across public bodies, that the total amount of paybill savings to address pay inequalities be retained at 0.5 per cent for 2021-22.

However in recognition of the difficulties arising from responding to the pandemic, which meant that it was not possible for some public bodies and trade unions to conduct their usual pay negotiations in 2020-21, employers may carry forward any unused flexibility to be added to the 2021-22 provision. Furthermore for 2021-22, the scope of identified pay inequalities is extended to enable employers to use the flexibilities to deliver greater pay coherence. The Finance Pay Policy team will continue to encourage the use of the flexibilities in those public bodies identified as having the greatest risk of potential inequalities, such as longer than average journey times.

While the policy actively targets the lowest earners it does not prevent employers using paybill flexibilities to apply higher increases to address identified and evidenced inequalities. Therefore it is possible for employers across the public sector to vary the level of basic pay award beyond the guaranteed increases applied to different staff groups, different jobs, or grade structures to reflect their own priorities based on locally gathered evidence and assessment.

The policy continues to allow for individual employers to take decisions on the payment of progression. The cost of paying progression is outwith the limits set for basic pay increases. It is a matter for each public body to equality proof their own progression and pay arrangements taking into account affordability and performance. Therefore there is no direct discrimination as a consequence of the policy approach to progression.

Nor is there evidence to suggest that the continuation of suspending non-consolidated performance payments will adversely impact on individuals with a protected characteristic.

There is no evidence to suggest that the cap on increases for higher earners would adversely impact the take-up of Board Appointments among those with a protected characteristic as the level of daily fee rate may not be the key driver for taking up an appointment but rather to provide the opportunity to represent and raise awareness. The pay policy for Senior Appointments makes it explicit that the main objective of remunerating Board Members is to increase diversity but is not intended to meet in full the market rate that the individual may otherwise expect/command.

Nevertheless it remains the case that women are significantly under-represented among senior appointments and, although one of the key strategic aims of the pay policy is to continue to work towards making sure that pay is fair and non-discriminatory, the pay policy only focuses on levels of remuneration and not wider HR policies. The supporting Technical Guide will remind employers of their duty in this respect.

A fifth of employees covered by the pay policy work part-time and three out of every four of them is a woman. Part-time workers are more likely to be among the lower paid employees. Around one in five of those staff who work part-time have a full-time equivalent salary of more than £25,000 but, although their take-home pay is below a full-time equivalent salary of £25,000 they will not be eligible for the guaranteed cash underpin. However it is noted that their take-home hourly rate will be higher than the equivalent for a full-time employee on the same take-home pay. Although we do not have the information, it is likely that some of those working part-time are older employees and may do so to cover care duties. There may also be some who choose to reduce their hours for phased retirement or to pursue other life choices. We do not have information on full-time equivalent salaries or individual working patterns to determine the extent of any potential detriment. However the proposed approach to provide a guaranteed basic award for such employees reduces the impact.

The introduction of the discretion for employers to work towards standardising to a 35 hour working week can be seen to provide a benefit to all impacted employees. It is possible there could be a greater benefit for part-time employees, particularly for the many who are lower paid and as such more likely to be a woman, a disabled person, an individual from a minority ethnic group, a younger employee or a combination of one or more of these protected characteristics.

The continuation of the commitment to a No Compulsory Redundancy policy provides job protection for all employees covered by the pay policy. There is no evidence to suggest that this creates any negative direct or indirect discrimination.

It is recognised that, while we do have gaps in the information provided by public bodies directly subject to the pay policy on some of the protected characteristics, we are satisfied from the analyses undertaken there is no unlawful discrimination in the pay policy proposals. The proposed progressive approach for 2021-22 is targeted to benefit lower paid staff recognising that there is a higher proportion of staff in this group who have one or more protected characteristic.

Due to the higher proportion of women, disabled people, those from a minority ethnic group and younger employees among lower paid public sector workers, these individuals are more likely to benefit from the progressive pay measures. The cap on paybill increases for those earning above a full-time equivalent salary of £80,000 and the cap on pay progression (for those subject to the senior appointments pay policy) will not impact any protected group unduly. Any risk of individuals being adversely affected by the cap on progression (for those subject to senior appointments pay policy) and the reduced increases for those earning above a full-time equivalent salary of £80,000 is mitigated by the aim of the policy to work to reduce the gender pay gap and overall pay inequality. Furthermore the need, due to restricted budgets, to continue to set capped pay increases to ensure they are affordable and sustainable along with maintaining the No Compulsory Redundancy policy helps to protect public sector jobs.

Recommendations and conclusion

Pay forms a large part of public sector expenditure in Scotland. As a result of continued public spending cuts, budgets remain under severe pressure and this is compounded by the increases in employer's pension and National Insurance contributions. The primary aims of the Scottish Government's public sector pay policy are to set pay increases in a way that are fair, reflect the real life circumstances people face, help sustain public sector jobs and protect public services, while ensuring public sector budgets remain in balance and that pay rises are affordable now and in the future.

The aims of the pay policy also recognise that the impact of COVID-19 has not been felt equally. It is expected the on-going economic impact will be felt disproportionately by women as well as those from minority ethnic communities, disabled people and young people, and this could result in increasing unemployment and pay gaps in the short to medium term.

The pay policy is intended to help protect jobs. The cash underpin for those earning a full-time equivalent salary of £25,000 or less will help reverse the impact on the real incomes of those staff subject to the public sector pay policy. The above inflation basic award for those earning between full-time equivalent salaries of £25,000 and £80,000 will also continue to benefit employees, particularly those middle earners.

The Scottish Government's commitment for staff under its direct control to supporting payment of the real Living Wage, and the cash underpin for those earning a full-time equivalent salary of £25,000 or less, directly benefits those on the lowest incomes and will continue to provide protection to low earners in particular those individuals with a protected characteristic.

It is concluded from our assessment the measures proposed in the 2021-22 pay policy can be seen to positively benefit lower paid staff. From the data available there is a higher proportion of women, disabled people, individuals from a minority ethnic group, younger employees or a combination of one or more of these protected characteristics as well as part-time workers among lower paid employees. Therefore the measures proposed in the pay policy protect these employees from pay restraint and in many cases provide a positive benefit - underpinning Ministerial objectives for a wealthier and fairer Scotland as well as helping reduce the impact of COVID-19 on these individuals.

The progressive approach proposed for the pay policy will also help to reduce overall income inequality. It may also help in positively working towards reducing the gender pay gap within the public sector as it should increase the overall base levels of pay for those at the lower end where historically women are overly concentrated. This is further supported by the continued restraint applied to higher earners including senior appointments, where there are higher proportions of men.

While we are satisfied the risk of any indirect discrimination, as a result of capping the pay for higher earners, can be justified by the overarching aims of the pay policy, it will still be necessary for individual employers to ensure they do not introduce or perpetuate any direct or indirect discrimination for individuals in their application of the policy. Employers covered by this pay policy are also subject to the equality duties and are expected to undertake their own assessment of their pay proposals prior to submitting them to the Scottish Government.

To help employers work towards delivering the policy aim that pay is fair and non-discriminatory, the public sector pay policy continues to provide public bodies with the flexibility to use paybill savings to address evidenced equality issues.

The pay policy will set the overarching framework within which public bodies can make individual choices on the impact of the policy on their own circumstances. Public bodies have the flexibility to draw up their own pay proposals to take into account local pay issues such as recruitment and retention, equality and the impact of the lower pay measures on other staff. The pay policy actively encourages

employers to take into account their own staffing profile, local evidence, views of staff and unions and equality issues in framing their pay proposals.

The introduction of the discretion for employers to consider working towards standardising to a 35 hour working week can be seen to provide a benefit to all impacted employees. It is possible there could be a greater benefit for part-time employees, particularly for the many who are lower paid and as such more likely to be a woman, a disabled person, an individual from a minority ethnic group, a younger employee or a combination of one or more of these protected characteristics.

Continuation of the commitment to the No Compulsory Redundancy policy provides job protection for all employees covered by the pay policy. There is no evidence to suggest that this creates any negative direct or indirect discrimination.

There is no evidence to suggest that the cap on increases for higher earners would adversely impact the take-up of Board Appointments among those with a protected characteristic as the level of daily fee rate may not be the key driver for taking up an appointment but rather to provide the opportunity to represent and raise awareness. The pay policy for Senior Appointments makes it explicit that the main objective of remunerating Board Members is to increase diversity but is not intended to meet in full the market rate that the individual may otherwise expect/command.

The supporting Technical Guide to the pay policy will continue to remind public bodies of their duty to ensure their pay systems are fair and non-discriminatory and that they have due regard to its obligations under public sector equalities duties in considering their pay proposals.



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