

## **Scottish Women's Convention response to:**

### **The UK Government:**

## **Measures to Extend the Ban on Exclusivity Clauses in Contracts of Employment**

**February 2021**

### **Introduction**

The UK Government are seeking views on a specific proposal to extend the ban on exclusivity clauses beyond zero hours contracts, to contracts where the workers' guaranteed weekly income is less than the Lower Earnings Limit, currently £120 a week. The intention is to allow low-income workers who are not able to secure the number of hours they would like from their current employer to seek additional work elsewhere.

### **The Scottish Women's Convention (SWC)**

The Scottish Women's Convention (SWC) is funded to engage with women throughout Scotland in order that their views might influence public policy. The SWC uses the views of women to respond to a variety of Parliamentary, Governmental and organisational consultation papers at both a Scottish and UK level.

The Scottish Women's Convention engages with women using numerous communication channels including Roadshow events, Thematic Conferences and regional contact groups. This submission provides the views of women and reflects their opinions and experiences in a number of key areas relevant to women's equality.

The SWC is currently engaging with women through digital roadshows, online surveys, asking women to comment by email and by telephoning those who want to talk. We are also using our wide network to ask women to collate views in their local communities and forward these to us on a regular basis. We are continuing to review innovative ways of engaging with women throughout Scotland using whichever medium is appropriate to them.

**The Government is proposing extending the ban on exclusivity clauses to make them unenforceable in contracts where the guaranteed weekly income is below the Lower Earnings Limit, currently £120 a week and equivalent to 13.76 hours worked at the National Living Wage. Do you agree the ban of exclusivity clauses should be extended to low-income workers where the guaranteed weekly income is below the Lower Earnings Limit?**

Women in consultation with the SWC have continued to vocalise the need for mechanisms which seek to help workers on the lowest incomes. This should include strong regulatory and enforcement frameworks that can be used to the advantage of workers in relation to detrimental exclusivity clauses.

Whilst precarious and insecure contracts are nothing new, there is an ever more pressing need for regulation to protect workers in the lowest paid jobs due to the current COVID-19 pandemic. As government initiatives such as the UK Job Retention Scheme gradually wind down, other protocols must be put in place to aid workers on low incomes. Failure to do so will continue to have a disproportionate impact on women within these low-paying roles who have seen themselves face many of the worst economic effects of the pandemic for a number of reasons including:

- Redeployment of full-time workers during the pandemic, leaving women on lower or zero-hour contracts who relied on overtime seeing their hours drastically cut and facing financial penalties as a result.
- A lack of value placed on those working part time coupled with few statutory mechanisms to ensure employers adapt to flexible working for women.
- A decrease in collective bargaining and the rise in sectors where trade unionism is not traditionally high such as the service industry has meant less equal representation of workers at the bottom of the income scale, leading to fewer pay negotiations and collective bargaining.

**The Government is proposing to set the income threshold at the Lower Earnings Limit, as used for National Insurance. This is currently £120 a week and equivalent to 13.76 hours worked at the National Living Wage. Using the Lower Earnings Limit as a threshold will ensure the threshold remains relevant as it is set each tax year by the Government. Do you agree the Lower Earnings Limit is an appropriate threshold?**

Whilst setting the income threshold at the Lower Earnings Limit is sufficient to curtail some practices by employers, this still may miss a significant percentage of the population employed in low paying jobs. Specifically, women in sectors earning just above the Lower Earnings Limit in low paid and precarious work.

There is also a very real risk that chances of wage freezes as well as lower job retention and working hours will continue over the next few years as businesses seek to recover from the double impact of both Brexit and the pandemic. With this in mind, women have noted that thresholds which seek to protect the highest number of low-paid workers as possible should be adopted alongside other regulations to protect workers' rights.

**The existing ban on exclusivity clauses gives zero hours employees the right not to be unfairly dismissed and workers the right not to be subjected to a detriment for failing to comply with an exclusivity clause, and to claim compensation. Should these rights also be extended to employees/workers where the guaranteed weekly income is below the Lower Earnings Limit?**

As outlined above, where lower paid workers are subject to detrimental practices which keep them from earning a decent wage, this should be seen for how unfair and unequal that it is. Whilst a small number of women have spoken to the SWC about the positives of zero and low hour contracts – namely in terms of flexibility – for the vast majority, these are detrimental and offer little by way of a decent and secure wage. Extending the ban to cover more workers can only be viewed as positive.

There are, however, a number of concerns relating to how exactly regulations will be enforced around this. One of the biggest issues regarding unfair dismissal tends to come where workers do not know or are unaware of how to enforce their rights. For instance, workers in lower income positions are vastly under-represented within trade unions and cannot afford to take claims further where they have experienced such issues. With this in mind, other points to be addressed would include:

- Increased publicity around the use of exclusivity clauses alongside greater enforcement and financial penalties for employers found to be in breach.

- Government-funded employee advice services for women to know their statutory rights within the workplace.
- The recognition of additional obstacles for women accessing support.
- Committing to additional funding for agencies to ensure legal help to individuals regarding equality and employment rights.

### **How likely do you think it is that the impact of the Covid-19 pandemic will lead to greater numbers of workers having the guaranteed hours in their contracts reduced?**

Women have continued to voice to the SWC that the impact of COVID-19 and the subsequent economic recovery will damage many people's employment prospects. As certain businesses do what they can in an attempt to become profitable again, it will see resources for workers shrink further.

Whilst a reduction in contracted hours may be heavily dependent on sector, there is a high chance that much of the focus of this will be on parts of the economy where women tend to be over-represented and which have been hit hard by lockdown conditions. Sectors where home working is not an option for low paid workers, such as hospitality and retail, will more than likely see large numbers of workers faced with a reduction in guaranteed hours as compensation for keeping their job.

### **How helpful do you think extending the ban on exclusivity clauses would be for workers earning under the Lower Earnings limit?**

Whilst women on the whole agree with the nature of the proposal to extend the ban on exclusivity clauses further, this also depends on other government initiatives in relation to economy and employment as well as the availability of jobs. Women tend to find themselves over-represented in lower paying work which falls below the Lower Earnings Limit due to the sectors where they find themselves clustered – namely retail, hospitality or care work. These jobs oftentimes carry the extra burden of being low paid, insecure and offer little manoeuvre for collective bargaining. It is women in these roles who the focus should be on helping through regulatory mechanisms wherever possible.

## Conclusion

The SWC is grateful for the opportunity to respond to the UK Government's Consultation on Measures to Extend the Ban on Exclusivity Clauses in Contracts of Employment. As an organisation, we will continue to work with women from across Scotland to gather voices and experiences relating to equality at both a reserved and devolved level.

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