Gender Pay Gap
Unite Scotland

Unite the Union Scotland represents around 152,000 working people and their families throughout Scotland. Unite is the UK's largest trade union with 1.4 million members in a range of industries including transport, construction, financial services, manufacturing, print and media, the voluntary and non-profit sectors, local government and the NHS.

Recommendations:

- Collective bargaining should be used as the best negotiating method to tackle the gender pay gap; it should be a pre-requisite of all procurement awards;
- Statutory rights for Equality Reps;
- Onus should be shifted from workers proving they have been discriminated against, to employers to show that they do not discriminate on grounds of gender in pay systems;
- Employment Tribunal fees should be removed;
- Equal pay audits should be carried out by all employers with 20 or more employees within the public and private sectors. The legislation should also include publication of an action plan to address the pay gap, including realistic timeframes for remedying gaps;
- UK Government should enhance the EHRC's powers to enable it to issue compliance notices and to enable them to be enforced through court orders;
- Statistics on equal pay should be included as a National Statistic and include gender, race and disability.

Introduction
The issue of equal pay is historic and complex and extends well beyond simply being an issue of equality. It raises moral and human rights questions as well as issues around women's perceptions of the value of the work they do within society, the impact on the economy of this undervaluing of women's work and the wider implications of the pay gap on Scotland's GDP.

When discussing issues around equal pay, it is important to recognise the role trade unions have had in challenging discrimination and advancing equality issues. Trade unions have been at the vanguard fighting for equal rights for women, including equal pay, for decades. Indeed trade union involvement on this issue goes further back than the 1970 Equal Pay Act. As far as we can tell the demand for equal pay first surfaced in the 1830's. In 1832, women who worked in Robert Owen's 'labour exchange' in Grays Inn, London were supported by male trade unionists fighting for an equal wage. Also in 1832 women card setters in Scholes and Highton demanded equal pay with men; and in 1833, in Glasgow, unionised women in the Women Power Loom Weavers Association struck for equal pay.¹

¹ http://www.unionhistory.info/equalpay/roaddisplay.php?irn=820
Collective bargaining

One route to tackle pay disparity that we know works is through collective bargaining. As stated previously the tradition for fighting discrimination and inequality is embedded in the trade union movement and one of the main routes in addressing equal pay is through collective agreements and negotiating with employers on pay which leads to more transparency and a narrowing of the pay gap.

The 2015 Department for Business Innovation and Skills (BIS) Statistical Bulletin on Trade Union Membership reported that female workers benefit from a significant trade union premium on their average hourly earnings. The research shows that women who are trade union members earn around £14.18 an hour on average. Women who aren’t in a union get just £11.38 an hour; that is female members of a trade union, including those covered by collective agreement, enjoying a pay enhancement of almost 25 per cent for being collectivised within a trade union.

Furthermore, research carried out in 2014 by the European Trade Union Confederation (ETUC) shows:

“…. that collective agreements have been the main mechanism promoted by unions to reduce pay inequalities, and in many cases they promote agenda setting roles for gender equality. The (ETUC) survey also shows that a strong and enabling legal framework on gender equality can provide an important incentive for negotiations, and particularly in convincing employers of the economic and social importance of equality bargaining.”

In Unite’s experience, in workplaces where we have collective bargaining, there is greater transparency and a greater commitment by employers to prevent and tackle the gender pay gap. Indeed the Equality and Human Rights Commission (EHRC) published a report Financial Services Inquiry: Sex discrimination and the gender pay gap that found that companies with more transparent pay information had lower pay gaps. This work could be promoted and monitored if we had statutory rights for trade union Equality Reps within the collective bargaining agenda.

Transparency

There is an emphasis in this inquiry, as with many other inquiries into pay discrimination for women to show evidence of a pay gap. However the general lack of transparency in pay systems across many sectors of the economy, and indeed the use of the disciplinary processes in some companies for discussing pay, indicate the difficulties for individuals in obtaining such information.

Unite would argue that the onus should be shifted from workers having to prove they have been discriminated against, to employers to show that they do not discriminate on grounds of gender in pay systems. After all it is employers that have access to all the information necessary to determine whether there is gender bias in the pay system within their organisation.

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Unite has previously raised concerns around the calculations required to determine a pay gap, including the part-time pay gap and the exclusion of overtime. For an accurate gender pay gap for part-time workers, part-time workers should be compared to full-time male workers. Employers should also publish their methodology when publishing both their mean and median pay gap, as well as the overall pay gap and the full-time and part-time figures. We believe that pay information should include the difference between basic pay and overall pay, pay scales, bonuses, targets performance related pay or over-time. Also, for the data to include all pay nuances mentioned here with clear and detailed commentary. Unite recognises that determining the level of pay inequality in some pay systems is a complex process due to various inter-related issues. However one rudimentary method is to take the mean figure for a role and to calculate how many women/men are earning above the mean and how many are earning below the mean.

If, after removing any nuances, the information produces a significant imbalance along gender lines, then this should be looked at for careful consideration and explanation. This analysis should be carried out with the involvement of trade union representatives.

**Access to justice**
The Equal Pay Act has existed for 47 years. In that time, despite the legislation, women continue to be denied equal pay. Few sanctions or enforcements are available to deter employers sufficiently from breaches other than taking a case to Employment Tribunal. For some employers the financial penalties imposed at an Employment Tribunal (ET) appear worth the risk. However since the introduction of fees for taking a case for equal pay to an ET was introduced, cases have dropped by 58 per cent.\(^5\) Accessing justice for employees has become unaffordable for many women especially those on low pay. Unite would urge the UK Government to remove all fees for taking a case to ET, including equal pay cases. There are provisions within the Scotland Act for devolving the jurisdiction over the Tribunal system in Scotland to the Scottish Parliament. The Scottish Government should therefore use their powers at the earliest opportunity, to remove all fees from the ET and Employment Appeals Tribunal (EAT) systems.

**UK Government proposals**
The UK Government’s plans, to require employers to publish pay audits for companies with 250 or more employees, is helpful in that it embeds equal pay within the regulatory reporting framework with the aim that it should increase transparency which in turn should put pressures on shareholders to initiate change to tackle pay disparity with the organisation. However despite being welcome, unequal pay is not limited to large firms employing in excess of 250 workers.

The European Commission has recommended a 50 or more employees threshold for all companies and Unite believes that this level would have been a bolder attempt by the UK Government at addressing equal pay.

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In Scotland, certain public bodies have had to publish pay gap (and other ‘equal pay’) information since 2013. This is due to the existence of devolved powers, within this sector, and the relevant reporting requirements contained within The Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012. Following this, the reporting limit was lowered in Scotland to 20 employees within certain public sector bodies. This is welcome. However, the Scottish Government should further seek to extend this requirement and place a similar reporting duty on private companies that are involved in public procurement projects.

Examples across Europe
Across Europe some countries have adopted more progressive measures to tackle the pay gap. In Portugal they have set out legislation which encourages private enterprises with more than 25 employees to conduct a wage analysis by gender and set out strategies to correct unjustified differences. In Sweden they have implemented an Act which requires employers to carry out a pay survey every three years in order to detect, remedy, and prevent unjustified differences between women and men’s pay, terms and conditions of employment, and draw up an equal pay action plan (if employing 25 or more workers).

In Belgium the law stipulates that every two years firms with over 50 workers should establish a comparative analysis of the wage structure of female and male employees.

In Estonia, an action plan to reduce the gender pay gap was approved in 2012 to improve the implementation of the existing Gender Equality Act (e.g. improvement of the collection of statistics, awareness raising, support of the work of the Gender Equality and Equal Treatment Commissioner etc.). It also aims to improve the family, work and private life balance; promote gender mainstreaming, especially in the field of education; reduce gender segregation; and to analyse the organizational practices and pay systems in the public sector.

Enforcement
Mandatory pay audits are a start. But as we can see, other countries across Europe are taking altogether more interventionists and fundamental measures to tackle the issue.

However we would not wish to undermine the proposals in their entirety. Unite has been calling for mandatory equal pay audits in the public, private and voluntary sectors as a way of tackling and avoiding unequal pay for many years. In our experience equal pay audits have been very effective in finding out if there is unequal pay between men and women in the workplace and assisting in identifying the reasons for the discrepancies.

However Unite has concerns that conducting a pay audit will not in itself, deliver equal pay. Taking action to address issues that are uncovered through a pay audit is perhaps the most important element for addressing unequal pay in the workplace, but there is no formal enforcement regime anticipated. Relying on voluntary action to address equal pay, with the possibility of significant cost implications for some

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employers, is unlikely to result in action to address the issue being treated as a priority by many employers. The legislation should therefore include the requirement of the publication of an action plan to address the issues together with realistic timeframes for addressing issues found.

It is also vital that there is a recognised authority to enforce and action plans as well as monitoring breaches. There must also be robust sanctions for employers who do not comply. Unite would suggest that the EHRC is well placed to carry out this duty. There may also be an opportunity for an enhanced role for the EHRC following Brexit to monitor and enforce equality protections that have previously fallen under the jurisdiction of the EU.

Instead of undermining the role of the EHRC as it is presently doing, the UK Government should enhance its powers to mirror the provision in s.32 of the Equality Act 2006 to enable it to issue compliance notices and to enforce them through court orders. Just as companies are held to task for breaches of the National Minimum Wage by HMRC, the UK Government should also give powers to the EHRC to issue vigorous fines to those who fail to comply with a notice. It should also provide adequate funding to the EHRC to carry out these duties. Employers should be directed to equal pay guidance provided by the EHRC and we should seek the reinstatement of the statutory equal pay questionnaire in s.138 of the Equality Act 2010.

Economic
The economic arguments for gender pay equality have so far been under-played in the debate. Research by PwC found that closing the gender pay gap in the UK could boost female earnings by about £85 billion a year or £6,100 on average per working woman.7

A report published by McKinsey in September 2016 also found that:

“Bridging the UK gender gap in work has the potential to create an extra £150 billion on top of business-as-usual GDP forecasts in 2025, and could translate into 840,000 additional female employees. In this scenario, every one of the United Kingdom’s 12 regions has the potential to gain 5–8 percent in GDP, with the largest opportunities in London, the North West, and South East.”8

These figures clearly show that the UK and Scottish Governments are doing British women and the economy a disservice by not taking stronger action on those organisations or public bodies that breach equality legislation and equally, by not enforcing equal pay within the pay systems that they have authority over within the public sector.

Precarious work
Women are particularly affected by insecure work practices. Unite believes casualised working arrangements including zero hours and precarious work, serves to hide a range of issues including unequal pay. According to the Office for National Statistics (ONS) it is estimated that around 1.7 million people, 6 per cent, across the

7 Reported in the FT 21/2/2017
8 The power of parity: Advancing women’s equality in the UK’, McKinsey Global Institute, September 2016
UK are employed on precarious contracts, including contracts that don’t guarantee minimum hours, across the UK.\textsuperscript{9} Across Scotland this equates to around 152,000 people employed on Zero Hours Contracts alone.

According to work produced jointly by Oxfam, the University of the West of Scotland and Warwick Institute for Employment Research, it was found that:

\begin{quote}
"Underemployment, zero-hour contracts, low-paid self-employment and increasingly insecure, low-paid and precarious work (all of which, other than self-employment, impact more on women than men)…." \textsuperscript{10}
\end{quote}

Around 1 in 3 people (31\%) on a “zero-hours contract” want more hours, with most wanting them in their current job, as opposed to a different job which offers more hours.\textsuperscript{11}

Therefore with a greater propensity of women engaged in this type of insecure working arrangements these factors combine to keep women’s pay down, undervalued and insecure. We need greater transparency on pay data published. This must include the publication of information on equal pay which includes data on these increasingly common forms of working. It would therefore be helpful to have statistics on equal pay by gender recorded as a National Statistic as this information is presently obtained by the ONS by collating information from various sources.\textsuperscript{12}

\textbf{Local government and public authorities}

Public authorities have a duty as employers, service providers and procurers of services to ensure that they do not discriminate and that their actions are consistent with the Equality Duty ethos. We believe that there should be an explicit requirement for public authorities to have responsibility for a supplier’s breach of discrimination law. Minimum equality standards are necessary which should be properly enforced and organisations should be banned from tendering for public contracts if they are in serious breach of discrimination law.

We have experience of the impact of privatisation when equalities considerations were specifically excluded from the tendering process under compulsory competitive tendering. This showed that disproportionately it was low paid women, black women and disabled workers that were affected, leading in our experience to the creation of the current equal pay cases and serious decline in the employment of disabled workers. This showed that serious problems occur when the impact of policies on equality is not taken into account.

\textsuperscript{9} https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeminimumnumberofhours/september2016

\textsuperscript{10} Decent Work for Scotland’s Low-Paid Workers: A job to be done. (Oxfam, 2016)

\textsuperscript{11} https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/articles/contractsthatdonotguaranteeminimumnumberofhours/september2016

\textsuperscript{12} http://www.equalpayportal.co.uk/statistics/
It is estimated that Scottish councils have spent around £80 million to settle equal pay claims. However Scottish local authorities continue to pay women and men unequally, which is in clear breach of their Equality Duty and their obligations under Equal Pay legislation.

As employers, local authorities have an obligation to ensure equal pay for work of equal value. However information obtained by Unite Scotland following a Freedom of Information (FOI) request in 2016 on 17 of the 32 Scottish Local Authorities, shows that a marked pattern in grades and pay in terms of gender difference remains. In general terms the lower-end of the pay scales has a much higher percentage of women in them. This levels out a little in the mid-level grades. However, in the highest grades, invariably the decision-making roles, the gender demographic flips and there is a higher percentage of male staff than female staff evident.

The FOI request found that 57 per cent of local authority workers are females earning less than the average salary in their local authority area, and 43 per cent of female part-time workers earning less than the average for their grade. There are also differences between local authorities. The highest differentials were 69.8 per cent earning below the average; the lowest was a still significant 42.9 per cent. The median from the 17 councils where information was obtained was 59 per cent of women earning below the average.

Unite accepts that the outcome of equal pay cases across local authorities may take time to filter through. However we will continue to monitor this and ensure suitable remedy for Unite members.

However equal pay is not just an issue for the public sector, which should lead by example. Unite has previously called for government action in the private sector. The public sector is increasingly outsourcing services and moving towards greater privatisation. While we do not approve of this generally, the obligation to ensure equal pay must be maintained throughout this process; in our experience, the outsourcing of public services adversely affects worker’ rights and their ability to bring equal pay cases to fruition. Both the UK and Scottish Governments should ensure that all employers in the chain, public and private are responsible and accountable for delivering equal pay.

**Procurement**

While legislation around some of the proposals put forward in this paper will require the will of the UK Government to implement, the role of the Scottish Government is crucial in driving the equal pay agenda through the procurement process into the public, private and voluntary sectors in Scotland.

Unite has continually supported the use of public sector procurement to achieve equality outcomes as stated in the Equality Act 2010. We believe that procurement is key to ensuring that poor practice in the private sector cannot be used to undermine good practice introduced in the public sector in response to the Equality Duty, and that equality should be taken into account in all public functions including outsourcing.

It is important that public sector procurement is used as a lever to promote equality
in the private and voluntary sectors. It is wrong for public money to be spent on organisations which have discriminatory policies and practices. Embedding equality in public procurement would have the advantage of ensuring high quality services, allowing all businesses to compete on an equal footing, spreads best practice on equality thus avoiding the race to the bottom.

Unite believes that it is also important to consider the effect of implementing equal pay regulations in the context of the impact austerity has had in the public sector namely, wage constraint and outsourcing of services. In our experience there is a hostile environment particularly in relation to the new Trade Union Act 2016 and the provision of facility time for our reps. This situation has made it difficult for trade unions to negotiate for equal pay. Additionally, considering the transfer of health services to local authorities, Unite also faces a challenging environment in relation to Job Evaluations and grading structures. The Scottish Government could lead by example and support the introduction of Equality Reps within the public sector and throughout the procurement process.

Race and disability
As previously mentioned black and Asian ethnic minority workers and disabled workers have been disproportionately affected by pay discrimination. According to a recent report from the Fawcett Society, women from almost every minority ethnic group experience a pay gap with White British men. That full-time pay gap can range from a reversed gender pay gap of -5.6% for Chinese women in Great Britain to 19.6% for Black African women.\(^\text{13}\)

To tackle significant pay gaps for these groups of workers, the Scottish and UK Government’s should encourage employers to gather information on these specific pay gaps as well as for younger and older workers. The ONS should calculate and release these figures on a regular basis alongside the gender pay gap data released in ASHE. Public bodies already collect this information. Employers should also be asked to consider actions for addressing these gaps.

Fair Work convention pillars
Delivering equal pay is an economic imperative. Unite would urge the Scottish Government to do more to fulfil the ambition contained within the Fair Work Convention pillars on Effective voice, Opportunity, Respect and Fulfilment which aim to reduce discrimination through the promotion of greater equality and fair remuneration in the workplace. These pillars and the principles behind them must be embedded in all aspects of public sector employment and the procurement process to provide practical examples that show that the Scottish Government is serious about engaging workers and delivering fair work and fair pay.

Human rights
As well as an obligation contained with the Equality Act 2010, equal pay is a right incorporated within the United Nations International Convention on Economic Social and Cultural Rights (ICESCR). The Scottish Government has an obligation,

incorporated within the Scotland Act to take action on issues which breach the Human Rights Act.

Article 7 of ICESCR states:  

“The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:
(a) Remuneration which provides all workers, as a minimum, with:
(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work.”

Moreover, according to Engender:

“In Scotland, there are specific duties on listed public authorities which oblige them to publish their gender pay gaps and information on occupational segregation, and set equality outcomes under the public sector equality duty. While these regulations are to be welcomed, the performance of public authorities in relation to publishing information on gender and employment has been poor, with few taking action to address women’s pay inequality.”

Unite would therefore challenge the Scottish Government that despite their duty under the Public Sector Equality Duty, their Human Rights obligations under ICESCR and their commitments on fair remuneration contained within the Fair Work Convention, women continue to be paid less than men in some sector of the economy in Scotland including the public sector. Undoubtedly, more needs to be done to address the pay gap across Scotland. The Scottish Government has a civil, moral and economic duty to do so; but importantly it also has the power and authority to do so.

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14 http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx