

# Extending the Scottish Living Wage through procurement - updated

## Introduction

The Scottish Living Wage is now paid to almost all public sector workers in Scotland. However, that still leaves members in the community and private sectors, who deliver public services, yet don't receive a living wage – particularly in social care.

This briefing updates our July 2014 briefing and Feb 2015 E Brief, following new Scottish Government Statutory Guidance under the Procurement Reform (Scotland) Act 2014.

The guidance sets out how contractors who deliver public services can be required to pay the Scottish Living Wage. With a civil society coalition behind '10 Asks' on the legislation, we had called for the Living Wage to be mandatory for all those working on public contracts. The guidance does not go that far, but is an improvement. It sets out how public bodies can legally ensure that the Living Wage and other employment matters, such as trade union recognition and representation and no "inappropriate" use of zero hours contracts, are included. It is vital to progress this in social care, not least because the sector is facing a growing staffing crisis.

## Scottish Living Wage – & the so-called 'National LW'

The Scottish Living Wage was updated this month to £8.25 per hour. It's a voluntary level for over 18s, higher than the current statutory National Minimum Wage of £6.70 per hour for over 21s. It is an independent calculation of what is required to cover the basic cost of living.

In his July 2015 Budget, Chancellor George Osborne set a new 'National Living Wage' from April 2016 at £7.20 per hour for over 25s. While the increased legal minimum is welcome, it is in effect a higher NMW, not a Living Wage. It is nothing like enough to compensate for cuts to tax credits. The Institute for Fiscal Studies has shown that among households with someone in paid work, those eligible for benefits and tax credits will on average be £550 per year worse off after changes to taxes, tax credits and benefits. Households where no-one is working – who will be hit hard by the tax and benefit changes – will not benefit from the new NLW. IPPR Scotland said for low and middle income Scottish families the impact is "vastly outweighed" by the cuts.

The new Statutory Guidance will be very useful where employers have proved reluctant to include the living wage in contracts. The Scottish Government is actively promoting it. Infrastructure Secretary Keith Brown said that employers "must now recognise that they cannot adopt exploitative practices in relation to their workers and expect ... lucrative public contracts." There are more than 380 accredited Living Wage employers in Scotland. Energy giant SSE has extended the Living Wage to its supply chain, another 800 workers on top of its 158 staff. In 2014/15 its supply chain workers had an average £1,030 rise.

## KEY POINTS:

- **The Scottish Living Wage should be extended to all delivering public services.**
- **Social care is a key priority.**
- **Statutory Guidance sets out how Procurement Reform (Scotland) Act 2014 enables all public bodies to spread the benefits through procurement.**
- **Previous legal objections no longer apply.**
- **S52 Guidance requires local authorities to ensure there is no two-tier workforce. That now means the Living Wage.**
- **Branches should instigate negotiations with their employers to ensure that procurement policies are updated to take account of the new statutory guidance.**



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## Procurement Reform (Scotland) Act 2014

S.15(5)(b) requires public bodies to set out their general policy on the living wage in their procurement strategy. This means that public bodies can evaluate bids against that policy and confirm in the contract. This will then become an enforceable performance clause.

For contracts with a strong workforce element, like social care, there can be a significant weighting in the evaluation for workforce matters. The Scottish Government recently awarded a catering contract, including the Living Wage, where 10% of the total score for quality aspects of the bids was allocated to workforce matters. In social care that weighting should be much higher.

S.29 (2)(b) refers to the statutory guidance, which can include the recruitment, remuneration (including payment of a living wage) and other terms of engagement of persons involved in a regulated procurement, and employee representation including trade union recognition. This all means that there is no longer any legal impediment, real or imagined, to extending the living wage through procurement.

Further Statutory Guidance later in 2015 will cover areas including the Sustainable Procurement Duty, fair trade and tax dodging. There is separate guidance on blacklisting. UNISON still believes that EU law would allow the Living Wage to be set as a contract condition. Advocate General Mengozzi's [opinion](#), given on 9 September 2015 in RegioPost GmbH v Stadt Landau (C-115/14), was that EU law did not prevent contracting authorities setting conditions relating to the payment of minimum wages.

## S52 Guidance

The Local Government in Scotland Act 2003, Section 52 guidance, issued in 2006, had the primary aim of ensuring "that the terms and conditions of service of new employees appointed by contractors to their workforces post-transfer, should be such as to eliminate the scope for the creation of so-called 'two-tier' workforces". While this wasn't intended to deliver the Scottish Living Wage, its provisions now have that effect.

The s52 guidance is not well known or well understood, but local authorities must specify its provisions in contracts. It applies not only in the rare circumstances when staff transfer, but also when an existing outsourced contract changes. While s52 only applies to local authorities, equivalent provisions in the PPP Protocol cover Public Private Partnerships in all services.

## Social care

The Scottish Government, COSLA and care providers are currently discussing options for how they might invest together to drive up pay in the care at home/housing support sector, recognising the links between pay, quality of care, retention and recruitment etc. There is likely to be some kind of interim funding deal for the second half of 2015/16, whether supporting backdated pay rises, or perhaps improvements to working conditions. Work would continue on a more robust proposal for 2016/17, alongside analysis of the full financial impact of the NLW 2016 to 2020 announcement and the overall cost of residential and non-residential social care.

UNISON wants to see the Living Wage included in all contracts and will also press our Ethical Care Charter. However, we accept that this has to be fully funded. We welcome the Scottish Labour party's proposal to pay the Living Wage in all workers in social care.

## Action for Branches: Study the guidance in detail and ensure public bodies:

1. Revise their procurement strategy to include the Scottish Living Wage.
2. Specify compliance with the s52 guidance in procurement documents and the consequences for the Scottish Living Wage.
3. Revise their tender evaluation procedures to take account of the Scottish Living Wage and other employment and 'fair work' standards.
4. Other employment standards could include no zero or nominal-hours contracts, trade union recognition and the Ethical Care Charter. [www.unison-scotland.org.uk/socialwork/Final%20Ethical%20Care%20Charter%20PDF.pdf](http://www.unison-scotland.org.uk/socialwork/Final%20Ethical%20Care%20Charter%20PDF.pdf)

## Further information

Statutory Guidance on Fair Work Practices, incl the Living Wage  
[www.gov.scot/Resource/0048/00486741.pdf](http://www.gov.scot/Resource/0048/00486741.pdf)

STUC on UK Gov 'Living Wage'  
[www.stuc.org.uk/news/1175/stuc-statement-on-conservative-living-wage-and-employment](http://www.stuc.org.uk/news/1175/stuc-statement-on-conservative-living-wage-and-employment)

EBrief LW Procurement Feb 15  
[www.unison-scotland.org.uk/briefings/e-briefing-LivingWageProcurement-Feb2015.pdf](http://www.unison-scotland.org.uk/briefings/e-briefing-LivingWageProcurement-Feb2015.pdf)

Briefing July 14 Extending LW  
[www.unison-scotland.org.uk/briefings/b056-BargainingBrief-ExtendingLivingWage-July2014.pdf](http://www.unison-scotland.org.uk/briefings/b056-BargainingBrief-ExtendingLivingWage-July2014.pdf)

Scottish LW Accreditation  
[www.scottishlivingwage.org](http://www.scottishlivingwage.org)

s52 Guidance  
<http://www.unison-scotland.org.uk/briefings/s52%20guidance.pdf>

Briefing 191 on s52 Guidance  
<http://www.unison-scotland.org.uk/briefings/s52guidancebrief.html>

UNISON guide to PPP Protocol  
<http://www.unison-scotland.org.uk/briefings/pppprotocol.html>

SPPN on Blacklisting  
[www.gov.scot/resource/0043/00438311.pdf](http://www.gov.scot/resource/0043/00438311.pdf)

Updated '10 Asks' [www.unison-scotland.org.uk/publicworks/Procurement-10asks-regs+guidance-Apr2015.pdf](http://www.unison-scotland.org.uk/publicworks/Procurement-10asks-regs+guidance-Apr2015.pdf)

UNISON Procurement Guide  
[www.unison.org.uk/content/uploads/2013/06/On-line-Catalogue178083.pdf](http://www.unison.org.uk/content/uploads/2013/06/On-line-Catalogue178083.pdf)



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