



Living Wage (Scotland) Bill

A proposal for a Bill to:

- (a)** require private sector employees working on public sector contracts to be paid the Living Wage; and/or
- (b)** require the Scottish Ministers to prepare and report to the Parliament on a strategic plan to promote the Living Wage.



A consultation by
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Foreword

In-work poverty is a problem that affects thousands of families across Scotland. It is estimated that 6 out of 10 poor children live in families that suffer from in-work poverty. The current climate of economic uncertainty is impacting on these families and underlines why it is vitally important that workers are paid sufficiently to meet the increasing pressure on household and family budgets. The Scottish Government has recognised this by ensuring that those directly employed by the Scottish Government and the NHS are paid at the very least a Living Wage. While this step is welcome there are still many thousands of workers who are not benefiting from a Living Wage.

The Scottish Campaign for a Living Wage has been driven by grassroots anti-poverty activists, trade unionists, faith-based groups, voluntary organisations, migrants groups, students and low-paid workers. It continues to encourage employers to support a living wage and has been successful in securing the support of Glasgow City Council, Scottish Enterprise and Employers in Voluntary Housing (EVH).

Across Scotland, many of the 32 Councils have either implemented the Living Wage or are committed to introducing it.

The Scottish Living Wage Campaign estimates that around 15,000 workers in the public sector have benefited from the payment of the Living Wage.

Whilst private sector employers (who carry out work for the public sector) must comply with the National Minimum Wage, they are not currently required to pay the Living Wage. The following proposal aims to address low pay amongst these employers by using contractual arrangements within public sector procurement so that businesses that benefit from public sector contracts would be obliged to pay the Living Wage to employees engaged in the relevant contract. It would also put a general duty on Scottish Ministers to promote the Living Wage to all employers, requiring them to set out a promotional strategy and report on progress being made on the uptake of the Living Wage.

It is crucial that an important proposal such as this is consulted on as widely as possible. I'm keen to gather views regarding the practical implications of this proposal for procurement processes, employers and most importantly low-paid workers. I hope you will be able to respond to this consultation and I would of course be happy to meet with organisations or individuals who have a particular interest in low pay.

John Park MSP

ACKNOWLEDGEMENT

John Park MSP acknowledges the support of The Scottish Living Wage Campaign in working towards the introduction of a Living Wage Member's Bill in the Scottish Parliament.

Key contributors include Save the Children, Glasgow City Council, KPMG, The London Living Wage Campaign.





How the Consultation Process Works

1. This consultation is being launched in connection with a draft proposal which I have lodged as the first stage in the process of introducing a Member's Bill. The process is governed by Chapter 9, Rule 9.14, of the Parliament's Standing Orders and can be found on the Parliament's website at:

<http://www.scottish.parliament.uk/parliamentarybusiness/17797.aspx>
2. A minimum 12 week consultation period is required, following which responses will be analysed. Thereafter, I would expect to lodge a final proposal in the Parliament along with a summary of the consultation responses. If that final proposal secures the support of at least 18 other MSPs from two or more political parties, and the Scottish Government does not indicate that it intends to legislate in the area in question, I will then have the right to introduce a Member's Bill. A Member's Bill follows a 3-stage scrutiny process, during which it may be amended or rejected outright. If it is passed at the end of the process, it becomes an Act.
3. At this stage, therefore, there is no Bill, only a draft proposal for the legislation.
4. The purpose of this consultation is to provide a range of views on the subject matter of the proposed Bill, highlighting potential problems, identifying equalities issues, suggesting improvements, considering financial implications and, in general, assisting in ensuring that the resulting legislation is fit for purpose.
5. The consultation process is being supported by the Scottish Parliament's Non-Government Bills Unit (NGBU) and will therefore comply with the Unit's good practice criteria. The Non-Government Bills Unit may also analyse and provide an impartial summary of the responses received.
6. Details on how to respond to this consultation are provided at the end of the document.
7. Additional copies of the paper can be requested by contacting me at **MG.15, The Scottish Parliament, Edinburgh, EH99 1SP; telephoning 0131 348 6753; or by emailing john.park.msp@scottish.parliament.uk**. Enquiries about obtaining the consultation document in any language other than English or in alternative formats should also be sent to me. An on-line copy is available on the Scottish Parliament's website under Parliamentary Business/Bills/Proposals for Members' Bills/Session 4 Proposals

<http://www.scottish.parliament.uk/parliamentarybusiness/Bills/12419.aspx>

Background

What is the Living Wage?

8. The Living Wage is not to be confused with the National Minimum Wage.
9. The Scottish Living Wage Campaign¹ was established by the Poverty Alliance following a national conference in 2007. The Poverty Alliance provides administrative and logistical support. The Campaign Steering Group also has members from the Child Poverty Action Group, trade unions and faith bodies. It aims to establish a robust evidence base that demonstrates the benefits of the Living Wage, engage with government bodies, and work with private sector employers to help implement the Living Wage.
10. The Scottish Living Wage Campaign has defined the current level of a living wage in Scotland as £7.20 per hour. This was updated in August 2011 from the previous rate of £7.15. This is 18% above the current National Minimum Wage for adults aged 21 or over (£6.08) and 45% above the National Minimum Wage for young people aged 18-20 (£4.98).
11. The Living Wage Foundation² is a national body that recognises and celebrates the leadership shown by Living Wage employers across the UK. It offers accreditation to Living Wage employers, provides advice and support on implementation of the Living Wage, and provides a forum for employers to back the Living Wage.
12. A detailed outline of how the Living Wage is calculated can be found in the Living Wage Foundation's paper, *The Living Wage in the United Kingdom: Building on Success*.³ It is a complex calculation which considers the costs of a range of goods and services which represent the Minimum Income Standard for people in different household types across the UK. These household types' costs are then added to costs such as rent, Council Tax and childcare costs. The required wage to meet these costs for each household type is then calculated (assuming full time work and claiming all relevant benefits or tax credits). The Joseph Rowntree Foundation's annually updated reports on the Minimum Income Standard based on what members of the public think people need for an acceptable standard of living are also worth reading for further background information.⁴
13. The Living Wage at its most simple is an important tool in tackling in-work poverty and thereby helps to achieve social justice.

Why is the Living Wage necessary?

14. Campaigners for the Living Wage point out that poverty is not just restricted to those without work. Save the Children's 2011 Report on Severe Child Poverty in Scotland stated:

"Although worklessness is a major risk factor of severe poverty, work isn't always enough to escape deep poverty. Around 25,000 children in Scotland are in severe poverty and in households where at least one adult works. The research findings send a stark message to Scottish Government and its partners that more must be done to tackle in work poverty and low wages."⁵



¹ <http://povertyalliance.org/sl-w-home.asp>

² <http://www.livingwage.org.uk/home>

³ <http://www.citizensuk.org/wp-content/uploads/2011/06/The-Living-Wage-in-the-United-Kingdom-May-2011.pdf> (p. 8)

⁴ <http://www.jrf.org.uk/sites/files/jrf/minimum-income-standard-2011-full.pdf>

⁵ http://www.savethechildren.org.uk/sites/default/files/docs/Severe_Child_Poverty_In_Scotland_February2011.pdf (p. 1)



15. The Scottish Parliament's Local Government and Regeneration Committee's Report on the Living Wage in Scotland estimates "that around 550,000 employees on adult rates in Scotland are paid earnings below the living wage."⁶
16. Rising costs of living are also having a detrimental impact on the quality of life of thousands of workers and their families in Scotland. Current pressure on incomes being felt by many working people is made worse at the bottom end of the income scale. Research by the Joseph Rowntree Foundation into the 'Minimum Income Standard' for the UK has found that:

"... people on lower incomes are feeling the squeeze caused by a combination of sluggish income growth, relatively rapid price increases, and tax and benefit changes."⁷

17. A report, published jointly by the Living Wage Foundation, Citizens UK and Centre for Research in Social Policy (CRSP) states:

"The principle underlying the Living Wage is simple and powerful: that work should bring dignity and should pay enough to provide families the essentials of life."⁸

18. The Living Wage is essentially part of preserving human dignity in the workplace. Work should enable people to achieve a decent standard of living – not just enough to survive (the minimum standard) but to be paid enough to have a basic level of freedom, enjoyment and choice in their daily lives. This why I believe my bill proposal is necessary to help those people in Scotland who work but are still living in poverty.

Political support for the Living Wage

19. In the 2011 Scottish Parliament elections, there was political support from a number of parties for the introduction of a Living Wage in the public sector. The Scottish Green Party⁹, the Scottish Labour Party¹⁰ and the Scottish National Party¹¹ all had manifesto commitments to deliver the Living Wage for public sector employees.

Benefits of adopting the Living Wage

20. Save the Children believes implementing the Scottish Living Wage as part of a package of measures to tackle in-work poverty can play an important role in tackling child poverty in Scotland. The case study provided by Save the Children and outlined in full in Annex A states:

"The Living Wage can have a real impact on family finances for those currently earning below £7.20 an hour. Research by the Scottish Government has shown that implementing the Living Wage would increase the net income of a single parent with one child by 5%, while a married couple with one child would see their income increase by 11%."¹²



⁶ [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_\(2\).pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_(2).pdf) (p. 6)

⁷ <http://www.jrf.org.uk/sites/files/jrf/minimum-income-standard-2011-full.pdf> (p. 1)

⁸ <http://www.citizensuk.org/wp-content/uploads/2011/06/The-Living-Wage-in-the-United-Kingdom-May-2011.pdf> (p. 4)

⁹ <http://scot.gr/w/GreenHolyrood2011.pdf> (p. 9)

¹⁰ <http://www.scottishlabour.org.uk/uploads/84613091-e7ae-5ce4-7dff-39f1789cf681.pdf> (p. 11)

¹¹ http://votesnp.com/campaigns/SNP_Manifesto_2011_lowRes.pdf (p. 10)

¹² Scottish Government (2010) Low pay and income inequality in Scotland



"Low pay and 'in-work' poverty afflicts many parts of Scotland and contributes to the fact that one in four children in this country grow up in poverty. Research by the Joseph Rowntree Foundation has cited the steady increase of 'in work' poverty since 2003/04 as a major obstacle to meeting the statutory target of eradicating child poverty by 2020.¹³ For children in Scotland, having a parent in employment is by no means an insurance against growing up poor. In fact, nearly half of all children who are in poverty live in households where at least one parent works."¹⁴

21. KPMG¹⁵ provides an illustration of the benefits to employers of introducing the Living Wage in its Case Study outlined in full in Annex C. In particular, they have experienced improvements in their facilities staff team and report that *"turnover amongst our cleaning staff has more than halved, whilst morale amongst teams has been raised. Productivity has improved, as attitudes are more flexible and positive."*

22. The wider benefits of introducing the Living Wage are highlighted by the Local Government and Regeneration Committee's report which notes the evidence from Cabinet Secretary for Finance and Sustainable Growth, John Swinney MSP: *"The Cabinet Secretary also observed that if individuals receive higher remuneration, their disposable income would increase. As a consequence, they would have greater spending power, 'which must clearly benefit the local economy."¹⁶*

23. Glasgow City Council's case study of its experience of implementing the Living Wage (Annex D) recognises the local benefits which can be drawn from living wage policy. *"It is the view of Glasgow City Council that companies who benefit from public money demonstrate that they are putting something back into their communities and that procurement policy be used to raise standards of pay across the city."*

Current implementation of the Living Wage

24. In 2011, over 25% of those working in the private sector, and 3.9% of those working in the public sector earned less than the Living Wage.¹⁷

Scottish Government and the National Health Service

25. Currently, it is Scottish Government policy that directly-employed Scottish Government and NHS employees are paid the Living Wage.

Local Authorities

26. In December 2011, the Local Government and Regeneration Committee began a short Inquiry into a Living Wage in Scotland. The Committee's main focus was on the implications and potential for the implementation of the Living Wage by local authorities across Scotland. The Cabinet Secretary for Finance, Employment and Sustainable Growth told the Committee:

"... local authorities are independent, autonomous bodies and as such decide on their own terms and conditions of employment and set their own rates of pay. It is therefore wholly a matter for each local authority."



¹³ Joseph Rowntree Foundation (2009) Monitoring poverty and social exclusion 2009

¹⁴ Figures supplied by the Scottish Government Feb 2011

¹⁵ KPMG is a global network of professional services firms providing Audit, Tax and Advisory services

¹⁶ [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_\(2\).pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_(2).pdf) (p. 10)

¹⁷ [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_\(2\).pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_(2).pdf) (p. 6)

27. The Committee's Report has been extremely helpful in highlighting the issue of a Living Wage and in drawing together a range of evidence on the Living Wage. I acknowledge the hard work of the Committee Members and those who participated in the Inquiry.

28. Debates in the Scottish Parliament have brought further focus to the Living Wage debate and, in particular, further information on the number of local authorities pursuing the Living Wage for their employees. At my member's debate on 8th March 2012, the Minister for Local Government and Planning advised that:

"... seven councils have introduced the living wage, five have agreed to implement it in 2012-13, four have indicated an intention to introduce it."¹⁸

29. A Parliamentary Written Answer on 3rd May 2012¹⁹ noted that twenty local authorities in Scotland did pay or had committed to paying the Living Wage. Following the local elections, it is expected this number will increase. Progress is clearly being made but it is important to note that many of these commitments were to a specific rate of £7.20 per hour – this will be out of date as soon as the Living Wage is updated and any progress may be short-lived.

Private Sector

30. In many areas of employment, national agreements are in place and sectoral bargaining has ensured a standard of pay above the proposed level of the Living Wage in sectors such as construction. The Local Government and Regeneration Committee Report noted that in Scotland however, the percentage of employees in the public sector earning less than £7.20 an hour in 2011 was just 3.9% compared to employees in the private sector at 28.1%.²⁰ Therefore action must be taken to drive forward the payment of the Living Wage in the private sector.

31. Written evidence from the Olympic Delivery Authority (ODA) on the London Living Wage (LLW) to the Local Government and Regeneration Committee's Inquiry highlighted such issues with private sector pay. It noted the Living Wage was being delivered through agreement, though the ODA foresaw enforcement difficulties in the future, thus highlighting the need for the Living Wage to be underpinned by contractual provisions:

"In recent years, construction sector earnings have tended to stagnate or decline, while the London Living Wage (LLW) has continued to increase. In 2011, with a further rise to £8.30, the LLW overtook the lowest minimum hourly rate payable under the CIJC [Construction Industry Joint Council] Working Rule Agreement (£7.87) significantly for the first time. While this has not caused particular difficulties to this point, if this trend continues other major projects in London could struggle to enforce LLW compliance without stronger contractual provisions in place to support the policy."²¹

32. The London Living Wage Campaign provides a useful case study in Annex B of the support gathered in London for the living wage in the public and private sectors.



¹⁸ <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6908&mode=pdf> (Col 7163)

¹⁹ Parliamentary Question S4W-06853, lodged by John Mason MSP 23 April 2012 and answered by Derek Mackay MSP on 3 May 2012.

²⁰ [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_\(2\).pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_(2).pdf) (p. 6)

²¹ http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Olympic_Delivery_Authority.pdf



Aims of the Proposed Bill

The main objective of the proposed legislation

33. The main objective of the Bill is to increase the number of workers in Scotland who are paid the Living Wage. This consultation seeks views on two approaches which could be pursued independently, in their own right, or together as a package, namely delivering the Living Wage through the public sector procurement processes, and/or by promoting the Living Wage so as to encourage employers, in all sectors, into paying their lowest paid workers the Living Wage.

Delivering the Living Wage through public sector procurement

34. As has been shown in the earlier section of this consultation paper, the adoption of the Living Wage has already made some progress in Scotland in relation to public sector employees. Workers directly employed by the Scottish Government and the NHS already benefit from the Living Wage and there is a move by some local authorities to pay the Living Wage. It is a logical next step that those workers employed by the private sector, who work on contracts from public sector spend, are also paid a living wage.

35. The public sector as a whole spends £9bn²² through procurement with the private sector, and this is directed in particular at categories of business that include a higher than average proportion of low-paid workers, for example in Scotland, sales and customer service occupations and elementary occupations (e.g. labourers, cleaners, kitchen and catering assistants) had the largest percentage of employees earning less than £7.20 per hour in 2011.²³ Therefore, a Living Wage condition in public procurement should bring Living Wage benefits to a significant number of private sector workers.

36. Using procurement effectively could also support economic growth or deliver environmental or social change. The Jimmy Reid Foundation Report *"Using our Buying Power to Benefit Scotland"* notes procurement is being under used for the promotion of social change:

"We have a system, designed largely from the perspective of big business, which is treating almost a third of the entire Scottish budget as if it should have no policy role in growing the economy or improving our society."²⁴

37. My proposed Bill seeks to deliver the Living Wage for private sector employees contracted to work on public sector contracts, by ensuring that within the public procurement process, contract performance clauses stipulate that successful bidders pay the Living Wage to their employees working on that contract. This should ensure that many more workers have their basic human right to a living wage protected. Although my proposal will not impact on all of the estimated 500,000 people currently earning less than the Living Wage in Scotland, it is a significant starting point.

Promotion of the Living Wage

38. The benefits to employers of adopting the Living Wage have already been outlined earlier in this paper, but some employers do not opt to pay the Living Wage. The Scottish Government has already shown its commitment by ensuring its employees are paid the Living Wage but more commitment and focus are required if we are to improve the incomes of those 500,000 people who do not currently earn the Living Wage.



²² <http://www.scotland.gov.uk/Resource/Doc/919/0109340.pdf>

²³ [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_\(2\).pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_(2).pdf) (p. 6)

²⁴ <http://reidfoundation.org/portfolio/using-our-buying-power-to-benefit-scotland-the-case-for-change/> (p. 1)



39. It is therefore necessary to have a co-ordinated and sustained strategy to promote the Living Wage to all employers in Scotland. By taking a lead at government level, promotion of the Living Wage will help to tackle in-work poverty. In the current economic circumstances, it is important to increase wage rates across all sectors and thereby support local economies too. This is why it is vital a duty is placed on Scottish Ministers to drive forward the promotion of the Living Wage and to provide the Scottish Parliament with an opportunity to scrutinise the effectiveness of the Government's strategy through the production of a report which should clearly set out action taken and progress made. A formal requirement is the only way to ensure that the Living Wage remains high in the Government priorities and is not pushed aside by other policies or continued economic pressure.
40. My proposed Bill will provide new impetus across all sectors to work towards the introduction of the Living Wage because the Living Wage is recognised as a key driver in tackling in-work poverty and also in increasing productivity.

Q1: Do you support the general aims of the proposed Bill (as outlined in paragraphs 32 to 39 above)? Please indicate "yes/no/undecided" and explain the reasons for your response.

Current Legislative Framework

41. There is currently no legislation existing in Scotland which relates to the promotion of the Living Wage. There is however a complex legislative framework which relates to public procurement in Scotland. For those who are interested further in this aspect Annex E sets out this framework in detail.

Legal complexities of using contract performance clauses to deliver the Living Wage

42. The Local Government and Regeneration Committee's Report on the Living Wage in Scotland highlighted some of the issues surrounding procurement. These mainly relate to interpretation of European legislation and guidance and the utilisation of contract performance clauses.
43. A European Court of Justice Case, Ruffert²⁵, is often cited as a barrier in this context. However, evidence submitted by Thompsons Solicitors to the Living Wage Inquiry explores the legal issues arising from the possible inclusion of a contract performance clause in public procurement contracts. It concludes that:

"It would be possible...to incorporate payment of the living wage as a contract performance clause in all public procurement contracts in Scotland, subject to certain conditions."²⁶



²⁵ Case C-346/06, Ruffert v Land Niedersachsen, 3 April 2008.

²⁶ http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Thompsons.pdf



44. The Local Government and Regeneration Committee Report refers to Ruffert and notes it appears to suggest *“some potentially serious challenges in relation to any attempt to include the living wage as a condition of the award of local government contracts.”*²⁷ It is my opinion that the proposals of this Bill are different to those challenged by the Ruffert case, which focussed on the universal applicability of a collective agreement.

45. The Scottish Government wrote to the European Commissioner for Internal Market and Services to seek the Commission’s view on the payment of a Living Wage through public procurement processes. The Scottish Government have indicated their belief, based on the reply from the European Commissioner to the questions raised their letter, which did not cover the proposals outlined in this consultation document, that it is not possible to mandate payment of the living wage through procurement activity. I consider this interpretation by the Scottish Government not relevant to my proposals and I will seek the advice of the Commission on the content of my Bill once it has been drafted. Furthermore, as my consultation covers wider issues relating to the living wage, I intend to continue with the consultation as there are other aspects to my proposal which require public consideration.

46. At an evidence session on 21st December 2011 of the Local Government and Regeneration Committee Inquiry into the Living Wage, the Cabinet Secretary for Finance and Sustainable Growth (John Swinney) stated:

*“I support the living wage and believe that it should be applied if it can be deployed in a sustainable way. There is undoubtedly a legislative vehicle that could be used to require contractors who are responsible for undertaking public sector contracts to pay a living wage. We would have to be confident, however, that, in terms of the scrutiny of procurement activity by the European Union, that approach would be deemed to be consistent with our EU procurement obligations.”*²⁸



²⁷ [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_\(2\).pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_(2).pdf) (p. 26)

²⁸ <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6727&mode=pdf> (Col. 495)

Detail of the Proposed Bill

47. While acknowledging the policy and legislative complexities relating to my proposal and having considered the objective of my proposal, I now wish to seek views on the detail of the proposed Bill.

48. There are two distinct, but complementary, approaches to delivering the Living Wage. These have the flexibility to be pursued independently or together. The first approach targets private sector employers, while the second is aimed at public sector, private sector and third sector employers:

- Requiring all relevant public bodies to include a Living Wage condition in their contract performance clauses when carrying out any public procurement exercise.
- Placing a duty on Scottish Ministers to promote the Living Wage, to prepare a strategic plan setting out how they propose to fulfil this duty, and to report to the Scottish Parliament on progress.

Delivering the Living Wage through the public procurement process

49. As has been outlined, the public procurement process is complex and is subject to EU legislation. There are various stages in the public procurement process as set out in the directives. The selection criteria for the bidders and the criteria for the award of the contract have fairly strict parameters and could not include any criteria relating to payment of the Living Wage.

50. It is considered that the stage at which payment of the Living Wage could be introduced is in the contract performance clauses. These are obligations setting out how the contract is to be performed and must be accepted by the successful bidder. These clauses must be related to the performance of the contract, meaning that a condition could stipulate that all workers on the contract be paid a Living Wage. The clause would also have to be set out clearly in the call for tenders and comply with EU law generally.

51. The purpose of my Bill is to amend the Scottish rules on public procurement, not employment rights and duties which are reserved matters.

52. It would impose a contractual obligation on the successful tenderer to pay the living wage to workers employed on the contract. The obligation would be owed by the tenderer to the contracting authority and any breach would only be remediable by the contracting authority raising an action for breach of contract against the successful tenderer. There would be no individual right for workers on public procurement contracts under the employment tribunal system to raise an action for non-payment of the Living Wage.

53. Evidence to the Local Government and Regeneration Committee from the Greater London Authority, including Transport for London (TfL), outlines their approach:

"TfL has not adopted a blanket approach to implementing LLW [London Living Wage] in all contracts. At the outset of a procurement process the service is assessed to determine whether the LLW should be applied. Issues considered include the prevalence of low pay in the sector, whether staff will be working full time on TfL contracts, and based in London. This approach ensures that the LLW is only applied where it is relevant and proportional, which supports TfL in meeting the requirements of the EU Procurement Directives. TfL's approach has been to then include the LLW as a contract performance condition requiring compliance, with the LLW requirement clearly set out in the invitation to tender documents and in the terms and conditions of relevant contracts."²⁹

54. It is also important to note the European Commission has stated that:



²⁹ http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Greater_London_Authority.pdf



“Combining economic competitiveness and social justice in this way [the decent work agenda as outlined by the International Labour Organisation] is at the heart of the European model of development. Playing an active part in promoting decent work forms an integral part of the European Social Agenda and of the EU’s efforts to promote its values and share its experience and its integrated model of integrated economic and social development.”³⁰

55. My proposed bill differs from the approach taken by Transport for London as it will require all relevant public bodies to include a Living Wage condition in their contract performance clauses when carrying out any public procurement exercise as I am seeking to maximise the impact of this bill.

Q2: Do you envisage any issues for public sector bodies when including the Living Wage as a contract performance condition of a contract? Please explain the reasons for your answer.

Impact on businesses and employment

56. The Federation of Small Businesses expressed concerns to the Local Government and Regeneration Committee’s Inquiry about the potential impact the inclusion of the Living Wage as a contract performance clause would have on the ability of small to medium sized enterprises (SMEs) to bid for public sector procurement contracts, citing issues such as low margins, wages as a high percentage cost for SMEs and the knock-on effects to supply-chain customers.

57. It is difficult to calculate the costs to businesses because of the variation in contracts offered and the businesses delivering them. However, it is worth returning to the evidence offered by KPMG in Annex C that suggests there are cost savings in staff turnover and absenteeism.

58. The Coalition of Care and Support Providers in Scotland also noted the potentially beneficial impact of the Living Wage on staff in the voluntary sector who frequently provide services for public sector bodies through outsourced contracts:

“It is our contention that this deterioration in pay and conditions for voluntary sector care and support staff is likely to have consequences for recruitment and retention, workforce development standards and, ultimately, the quality of care and support; and that therefore government support for the Living Wage should not be limited to those workers employed by the public sector but extended to the whole public services workforce. This will require some significant changes to commissioning practice and public procurement regulations.”³¹

59. In the context of the introduction of a Living Wage by local authorities, some employer organisations have argued that “requiring local government contractors to pay the Living Wage would undermine efforts to maintain employment.”³² It was also suggested that any benefits to the local economy in increased wages would be lost as tight margins could lead to a reduction of hours for employees.

³⁰ COM(2006) 249, 24 May 2006 <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0249:FIN:EN:PDF> (p. 2)

³¹ http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/General%20Documents/Coalition_of_care_and_support.pdf

³² [http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_\(2\).pdf](http://www.scottish.parliament.uk/S4_LocalGovernmentandRegenerationCommittee/Reports/Report-12-02w_(2).pdf) (p. 17)



60. I disagree with this view and consider the potential impact of the Living Wage on employers was made clear by Peter Kelly of the Scottish Living Wage Campaign when he advised the Local Government and Regeneration Committee that: *“The living wage is about increasing pay for workers on the bottom rungs of the pay ladder, in organisations in which employers can reprioritise resources to ensure that the people at the bottom benefit.”*³³

Q3: What do you consider will be the advantages or disadvantages for employers and employees if public sector performance clauses stipulate the payment of the Living Wage?

Identifying public sector bodies that fall within the scope of the proposed Bill

61. In order to legislate for public sector bodies to incorporate the Living Wage into their contract performance clauses, the public bodies have to first be identified.

62. Public bodies come in various forms and fall into one of the following classifications depending on their functions and relationship with Scottish Ministers and/or the Scottish Parliament:

- Executive Agencies, e.g. Scottish Prison Service, Education Scotland and Transport Scotland;
- Executive Non-Departmental Public Bodies (NDPBs) e.g. Creative Scotland and Scottish Enterprise;
- Advisory NDPBs;
- Tribunals;
- Public Corporations e.g. Scottish Water and Scottish Futures Trust;
- NHS bodies;
- Non-Ministerial Departments;
- Commissioners & Ombudsmen e.g. Scottish Public Services Ombudsman and Scotland’s Commissioner for Children and Young People;
- Others - there are a range of other significant national organisations including inspectorates with Chief Inspectors appointed by the Crown e.g. the Scottish Parliamentary Corporate Body and Audit Scotland.

63. The Scottish Government itself is a public body. A fuller description of the different types of public bodies can be found on the Scottish Government website³⁴ and also a list of the individual bodies.³⁵

64. A number of other public bodies engage with the Scottish Government’s Procurement and Commercial Directorate.³⁶ I suggest these bodies should also fall within the scope of the proposed Bill.

- Scottish Police Service
- Fire and Rescue Services
- Local Authorities, including arms-length bodies (e.g. Glasgow Life)
- Universities and Colleges

65. To inform the consultation I have set out above an indication of the bodies which could be “relevant public sector bodies” for the purposes of my proposed legislation. However, by specifying particular bodies there is a risk not all relevant bodies will be included. Also any legislation would very quickly need updated to reflect newly established or amalgamated public bodies. As such, my preferred route is to include a general description of a relevant public sector body as I would like to see a consistent approach across the whole public sector and to maximise the impact of my proposed bill, I would seek to use as broad a definition of public sector bodies as possible. I am therefore interested in your views on which particular bodies should be included to develop my description of “relevant public sector bodies”.

³³ <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6720&mode=pdf> (Col. 412)

³⁴ <http://www.scotland.gov.uk/Topics/Government/public-bodies/about>

³⁵ <http://www.scotland.gov.uk/Topics/Government/public-bodies/about/Bodies>

³⁶ The Scottish Government has a Scottish Procurement and Commercial Directorate which “is responsible for developing and advising on a range of procurement activity, including implementing policy and setting up contracts and framework agreements for itself and the wider public sector in Scotland” <http://www.scotland.gov.uk/Topics/Government/Procurement/about>



Q4: Which public sector bodies should use contract performance clauses to deliver the Living Wage? Please include the reasons for your choice.

Duty on Scottish Ministers to promote the Living Wage

66. The general duty on Scottish Ministers to promote the Living Wage will be essential in providing the momentum needed to increase the number of people being paid the Living Wage. Currently around half a million people in Scotland are not in receipt of the Living Wage and, as the Scottish Government cannot set wage rates for all jobs currently below the Living Wage, it is necessary to actively promote the Living Wage across all sectors. Scottish Ministers will be the focal point for encouraging employers to adopt the Living Wage and promote awareness and understanding of the benefits of the Living Wage.

Strategic Plan

67. In addition to their general duty, Scottish Ministers would also be required to lay a strategic plan before the Scottish Parliament once every Parliamentary session detailing their proposals for meeting their general duty to promote the Living Wage.

68. One of the key reasons why there is a need for a strategic plan is to develop an approach to the Living Wage which is cross-cutting and takes account of various strategies already developed. Peter Kelly from the Scottish Living Wage Campaign made this point when he gave evidence to the Local Government and Regeneration Committee's Inquiry which stated:

"In the four areas identified for action in the Scottish Government's anti-poverty framework – "Achieving Our Potential" – the first is tackling income inequality. There is the solidarity target. The first area of action within that priority is making work pay-tackling in-work poverty. As I think that the Scottish Government would admit, it is difficult for it to deliver on that commitment, even though that strategy is about three and a half years old."³⁷

69. A strategic plan will have advantages for the Scottish Government as it would help the Government to deliver that part of its continuing commitment to the "Achieving Our Potential" framework and contribute to wider UK goals such as eradicating child poverty by 2020. These are just two examples but there will be others given the Living Wage's positive impact on inequality, the economy and for employers generally.

70. The plan must set out Scottish Ministers' objectives and priorities and be laid before the Parliament within the first year of the Parliamentary session. It must also provide details of any activities relating to their general duty, alongside a timetable for these activities. To ensure the strategic plan is as inclusive as possible in advance of laying the strategic plan before the Parliament, there should be a requirement to consult on the strategy. Draft copies of the plan should be provided to key stakeholders to invite them to submit comments. My preference is that certain stakeholders should be mandatory consultees. The benefit of having mandatory consultees is to ensure that these stakeholders can share their views in advance of publication and perhaps influence the contents of the strategy.

71. Mandatory organisations to be consulted could include the STUC, employer and business organisations such as CBI Scotland or FSB Scotland. I would also be keen to ensure third sector involvement by including the Scottish Living Wage Campaign for example. This would maximise stakeholder engagement.

72. However, I am also conscious that by prescribing consultees in legislation it could restrict the Scottish Government's flexibility to consider what organisations to consult and could mean further legislation would be necessary to update the legislation.



³⁷ <http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=6720&mode=pdf> (Col. 416)

Q5: Which bodies should be mandatory consultees? Please include the reasons for your choice.

73. There are a number of activities which Scottish Ministers could undertake to promote awareness of the Living Wage. These activities could include the publishing or dissemination of information relevant to the Living Wage and provision of advice or guidance. For example, publishing information leaflets, providing internet resources, making presentations at conferences, setting up awareness-raising campaigns, or conducting relevant research, including mapping of low pay across Scotland. These activities could be targeted at specific sectors, such as local authorities, to encourage those authorities which have not made a commitment to the Living Wage to consider more fully the benefits to their organisation or for those that have adopted the Living Wage to maintain the level in line with the recommended increments.
74. A strategic plan and associated promotional activities would provide a co-ordinated, cross-cutting approach helping to concentrate Scottish Government agencies' activities. For example, Skills Development Scotland, Scottish Enterprise and Highlands and Islands Enterprise could promote the Living Wage to their key stakeholders which would facilitate the roll out of the Living Wage more widely across the Scottish economy.

Reports to Parliament

75. It is important that progress of the activities undertaken as a result of the strategic plan and any wider changes that impact on the Living Wage are monitored and reported. That is the reason why Scottish Ministers should report periodically to the Scottish Parliament.
76. In order to allow time for work to progress on the activities included in the strategic plan, Ministers should report at least once during the period of the strategic plan. This would capture progress being made on implementing the activities contained in the strategic plan. This approach gives time for the Scottish Parliament to scrutinise the report and make any recommendations which could then be

implemented by the Scottish Ministers either in the remaining time or with a view to being taken account of when preparing the next strategic plan, depending on the nature of the recommendations and the stage in the Parliamentary session.

77. It is envisaged that any report to the Parliament would include, as a minimum, information on:
- a) low-pay mapping of Scotland and any conclusions (including type of industry; equality groups and work sectors i.e. private sector);
 - b) statistics showing the delivery of the Living Wage and any conclusions (in the public sector, private sector and third sector);
 - c) details of any promotional activity undertaken to increase the number of employers paying the Living Wage and outcomes; and
 - d) any other activities as set out in the strategic plan and whether these were delivered on time and achieved their objectives.

Q6: What information must be included in the Scottish Ministers' report to the Scottish Parliament? Please explain the reasons for your answer.

Anticipated costs of implementing the proposed Bill

78. The proposals within this Bill would have a small financial impact upon the Scottish Government. It is expected the duty to promote, underpinned by the strategic plan and reporting mechanism could be supported from existing staff within the Scottish Government.
79. The annual costs of promoting the Living Wage would vary depending on the type of activity but would be expected to be in line with budgets for similar activities. For example, the Financial Memorandum for the Scottish Commissioner for Human Rights Bill (now known as the Scottish Commission for Human Rights Act 2006) explains the overarching role of the Commissioner will be to promote and raise awareness of human rights. It was therefore expected that the Commissioner would undertake a wide range of promotional and





awareness raising activities. These might include commissioning or producing guidance publications for public authorities and members of the public; arranging events such as conferences, seminars or workshops; and raising awareness of particular issues through marketing campaigns. On this basis the Government assumed an annual budget of between £150,000 and £200,000³⁸ for such events.

80. The Financial memorandum for the Bill also noted the cost of commissioning research can vary widely. In the Government's experience small projects can cost in the region of £10,000 to £15,000 each, while large projects, involving labour intensive surveys or complex analysis, can cost between £30,000 to £35,000.³⁹

81. It is likely that the role envisaged for promoting the Living Wage would not be greater than that outlined above and could be substantially less given the subject matter.

Costs on other bodies, individuals, and businesses

82. Due to the variation in contracts and businesses involved in tendering for public sector contracts, it is difficult to estimate a standard cost on bodies, individuals or businesses for implementation of the Living Wage.

Q7: What is your assessment of the likely financial implications of the proposed Bill to you or your organisation; if possible please provide evidence to support your view? What (if any) other significant financial implications are likely to arise?

Equalities issues (Race, Gender, Disability, and Age)

83. Currently, people from black and minority ethnic communities are twice as likely to live in low income households as white people.⁴⁰ Also, Eastern European and other migrant workers are more likely to be working in low-paid jobs and in sectors which pay less than the Living Wage, including retail, hospitality and catering.⁴¹

84. According to the Fawcett Society, women are paid less than men in the UK based on average hourly earnings and are more likely to be in low-paid work in certain industries such as caring and retail etc.⁴² There are also a higher number of women who work part time in the labour market because of family, childcare and other caring commitments. Disabled people are also currently more likely to be represented in low-paid jobs.⁴³ Young people are generally paid significantly less than those over the age of 19.

85. I believe my proposal will have a beneficial effect on these inequalities. Those employed by employers who adopt the Living Wage will see their standard of living improved. Legislation to provide for the delivery of the Living Wage through public sector procurement and the duty on Ministers to promote the Living Wage will see the number of employers paying the Living Wage grow, reducing the inequality these groups face in employment by enabling them to have a better standard of living.

Q8: Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?

Q9: Do you have any other comments on or suggestions relevant to the proposal?



³⁸ http://www.scottish.parliament.uk/S2_Bills/Scottish%20Commission%20for%20Human%20Rights%20Bill/b48s2-introd-en.pdf (para 124)

³⁹ http://www.scottish.parliament.uk/S2_Bills/Scottish%20Commission%20for%20Human%20Rights%20Bill/b48s2-introd-en.pdf (para 126)

⁴⁰ <http://www.poverty.org.uk/06/index.shtml>

⁴¹ http://www.equalityhumanrights.com/uploaded_files/new_europeans.pdf

⁴² <http://www.fawcettsociety.org.uk/index.asp?PageID=321>

⁴³ <http://www.poverty.org.uk/06/index.shtml>



Summary of Questions

- QUESTION 1:** Do you support the general aims of the proposed Bill? (as outlined in paragraphs 32 to 39 above). Please indicate “yes/no/undecided” and explain the reasons for your response.
- QUESTION 2:** Do you envisage any issues for public sector bodies when including the Living Wage as a contract performance condition of a contract? Please explain the reasons for your answer.
- QUESTION 3:** What do you consider will be the advantages or disadvantages for employers and employees if public sector performance clauses stipulate the payment of the Living Wage?
- QUESTION 4:** Which public sector bodies should use contract performance clauses to deliver the Living Wage? Please include the reasons for your choice.
- QUESTION 5:** Which bodies should be mandatory consultees? Please include the reasons for your choice.
- QUESTION 6:** What information must be included in the Scottish Ministers’ report to the Scottish Parliament? Please explain the reasons for your answer.
- QUESTION 7:** What is your assessment of the likely financial implications of the proposed Bill to you or your organisation; if possible please provide evidence to support your view? What (if any) other significant financial implications are likely to arise?
- QUESTION 8:** Is the proposed Bill likely to have any substantial positive or negative implications for equality? If it is likely to have a substantial negative implication, how might this be minimised or avoided?
- QUESTION 9:** Do you have any other comments on or suggestions relevant to the proposal?





How to Respond to This Consultation

86. You are invited to respond to this consultation by answering the questions in the consultation and by adding any other comments that you consider appropriate.
87. Responses, should be submitted by 03rd December 2012 and sent to:
- John Park MSP
MG.15
Scottish Parliament
Edinburgh
EH99 1SP
- Tel: 0131 348 6753
Fax: 0131 348 6755
- E-mail: john.park.msp@scottish.parliament.uk
88. Please indicate whether you are a private individual or an organisation.
89. Respondents are also encouraged to begin their submission with a short paragraph outlining briefly who they are, and who they represent (which may include, for example, an explanation of how the view expressed was consulted on with their members).
90. To help inform debate on the matters covered by this consultation and in the interests of openness, please be aware that the normal practice is to make responses public – by posting them on my website www.johnparkmsp.org and in hard copy in the Scottish Parliament's Information Centre (SPICe).
91. Therefore, if you wish your response, or any part of it, to be treated as anonymous, please state this clearly along with the reasons for this. If I accept the reasons, I will publish it as "anonymous response". If I do not accept the reasons, I will let you know and give you the option of withdrawing it or submitting it on the normal attributable basis. If your response is accepted as anonymous, it is your responsibility to ensure that the content of does not allow you to be identified.
92. If you wish your response, or any part of it, to be treated as **confidential**, please state this clearly and give reasons. If I accept the reasons, I will not publish it (or publish only the non-confidential parts). However, I am obliged to provide a (full) copy of the response to the Parliament's Non-Government Bills Unit when lodging my final proposal. As the Parliament is subject to the Freedom of Information (Scotland) Act (FOISA), it is possible that requests may be made to see your response (or the confidential parts of it) and the Parliament may be legally obliged to release that information. Further details of the FOISA are provided below.
93. NGBU may be responsible for summarising and analysing the results of this consultation and will normally aim to reflect the general content of any confidential response in that summary, but in such a way as to preserve the confidentiality involved. You should also note that members of the committee which considers the proposal and subsequent Bill may have access to the full text of your response even if it has not been published in full.
94. There are a few situations where not all responses will be published. This may be for practical reasons: for example, where the number of submissions we receive does not make this possible or where a large number of submissions are in very similar terms. In the latter case, only a list of the names of people and one response who have submitted such responses would normally be published.
95. In addition, there may be a few situations where I may not choose to publish your evidence or have to edit it before publication for legal reasons. This will include any submission which contains defamatory statements or material. If I think your response potentially contains such material, usually, this will be returned to you with an invitation to substantiate the comments or remove them. In these circumstances, if the response is returned to me and it still contains material which I consider may be defamatory, it may not be considered and it may have to be destroyed.



Data Protection Act 1998

96. As an MSP, I must comply with the requirements of the Data Protection Act 1998 which places certain obligations on me when I process personal data. Normally I will publish all the information you provide (including your name) in line with Parliamentary practice unless you indicate otherwise. However, I will not publish your signature or personal contact information (including, for example, your home telephone number and home address details, or any other information which could identify you and be defined as personal data).

97. I may also edit any information which I think could identify any third parties unless that person has provided consent for me to publish it. If you specifically wish me to publish information involving third parties you must obtain their consent first and this should be included in writing with your submission.

98. If you consider that your response may raise any other issues concerning the Data Protection Act and wish to discuss this further, please contact me before you submit your response.

99. Further information about the Data Protection Act can be found at:

www.ico.gov.uk

Freedom of Information (Scotland) Act 2002

100. As indicated above, once your response is received by NGBU or is placed in the Scottish Parliament Information Centre (SPICe) or is made available to committees, it is considered to be held by the Parliament and is subject to the requirements of the Freedom of Information (Scotland) Act 2002. So if the information you send me is requested by third parties the Parliament is obliged to consider the request and provide the information unless the information falls within one of the exemptions set out in the Act, even if I have agreed to treat all or part of the information in confidence and to publish it anonymously. I cannot therefore guarantee that any other information you send me will not be made public should it be requested under FOI.

101. Further information about Freedom of Information can be found at:

www.itspublicknowledge.info



Annexes A-D: Living Wage Case Studies

Annex A: Save the Children - The Scottish Living Wage and Child Poverty

At Save the Children we believe that implementing the Scottish Living Wage as part of a package of measures to tackle in-work poverty can play an important role in tackling child poverty in Scotland.

The Living Wage can have a real impact on family finances for those currently earning below £7.20 an hour. Research by the Scottish Government has shown that implementing the Living Wage would increase the net income of a single parent with one child by 5%, while a married couple with one child would see their income increase by 11%.⁴⁴

Low pay and 'in-work' poverty afflicts many parts of Scotland and contributes to the fact that one in four children in this country grow up in poverty. Research by the Joseph Rowntree Foundation has cited the steady increase of 'in work' poverty since 2003/04 as a major obstacle to meeting the statutory target of eradicating child poverty by 2020.⁴⁵ For children in Scotland, having a parent in employment is by no means an insurance against growing up poor. In fact, nearly half of all children who are in poverty live in households where at least one parent works.⁴⁶

This is a particular issue for women. Low pay afflicts significantly more women than men, mainly due to the fact that women are more likely than men to work part time. Over two fifths of workers earning less than £7 an hour are women in part time jobs. Overall, two thirds of all low paid workers are female.⁴⁷ As most single parent, low income households are headed by women, the prevalence of low pay amongst the female workforce is a major factor in child poverty. Female employment and child poverty are inextricably linked, and so to tackle child poverty we must address low pay amongst women workers.

Save the Children supports the implementation of the Living Wage in both the private and public sector. It is worth noting, however, that paying the Living Wage in the public sector where more women are employed will be of particular benefit to low paid female workers. For instance, in some of the Local Authorities where the Living Wage has already been introduced almost 9 out of 10 of the beneficiaries have been female.⁴⁸

There has been welcome progress made in implementing the Living Wage at local government level in Scotland, with the Scottish Government revealing recently that as of April this year 17 out of 32 Local Authorities will be paying their staff a minimum of £7.20 an hour. There is still a lot of work to do however. First of all, we must work to ensure that all Local Authorities are paying the Living Wage. Second, and crucially, the Living Wage must be paid not only to directly employed staff but also to those who are in-directly employed by Councils, whether that be through contract work or employment at arms length companies.

Finally, it must be stressed that the Living Wage will only be effective in helping to address child poverty if it is part of a wider strategy to tackle low pay and in work poverty. For instance, it must be supported by more flexible, affordable and high quality childcare as well as other measures to help parents, particularly women, into well paid and sustainable employment.

Annex B: The London Living Wage Campaign

In the ten years since its launch, the Living Wage campaign has become a powerful force for change in London. Initially dismissed as impossible, it is now recognised as a compelling cause which offers benefits to workers, employers and to wider society.

Professor Jane Wills of Queen Mary, University of London estimates that over 10,300 families have been lifted out of working poverty as a direct result of the campaign. This means a transfer of over £96 million to some of the poorest workers in London.

In total, over 140 employers from every sector have adopted the Living Wage. There is now prominent support for the Living Wage from businesses including KPMG, Barclays and Linklaters.

In the public sector, eleven local authorities are committed to paying the Living Wage, four hospitals, one central government department, fourteen Universities, all members of the Greater London Authority family, and we have the world's first Living Wage Olympics.

⁴⁴ Scottish Government (2010) Low pay and income inequality in Scotland

⁴⁵ Joseph Rowntree Foundation (2009) Monitoring poverty and social exclusion 2009

⁴⁶ Figures supplied by the Scottish Government Feb 2011

⁴⁷ The Poverty Alliance (2010) Low Pay in Scotland: a Poverty Alliance briefing

⁴⁸ Local Government and Regeneration Committee (2012) Report on the Living Wage in Scotland





International charities including UNICEF and Save the Children have recently lent their support to the campaign.

Crucially, each of these employers ensures that the Living Wage is paid not only to directly employed staff, but also to subcontracted cleaners, catering and security staff.

Building a culture of responsible procurement has been one of the great successes of the campaign.

Annex C: KPMG

KPMG's decision to pay the Living Wage has its roots in sound economic management, as well as our commitment to all people who work in KPMG offices. KPMG employs 700 in-house and outsourced Facilities staff in our UK offices, many of whom are directly serving our clients. So, the calibre, motivation and loyalty of this team are extremely important to us.

Paying the Living Wage and improving other benefits, like holidays, sick pay and insurance have contributed significantly to our success. For one, turnover amongst our cleaning staff has more than halved, whilst morale amongst the teams has been raised. Productivity has improved, as attitudes are more flexible and positive. We have been able to track that service has improved, as our help desk receives fewer complaints. We have also found that despite improved sick pay, potential abuse has not materialised. We introduced this at a time of economic challenge, but by reviewing how we delivered the services, we found that we could pay the Living Wage without suffering an increase in costs.

In implementing our decision to pay the Living Wage we worked from the outset with our existing supplier base, and when tendering services we explain to prospective suppliers why KPMG pays the Living Wage. Our suppliers have been very positive, as KPMG provides them with a test case to take to other large businesses, which shows that paying the Living Wage does not mean that contract costs have to increase. Our cleaning and catering suppliers have also benefitted from reduced training and other overhead costs as employee loyalty has grown.

Paying the Living Wage is also an integrated part of our Corporate Social Responsibility strategy, and our commitment to our communities – which is why we are so pleased that Living Wage employers can now be

accredited. Research suggests that most people want to work for a company whose values are consistent with their own and that a majority of young people believe in the power of responsible business practice to improve long term sustainable profitability. Thus corporate responsibility is increasingly a key factor in attracting and retaining a talented and diverse workforce. It is possible to behave ethically, and pay the Living Wage, while working to earn a profit. It makes sense as a business strategy since it creates goodwill among customers, employees and the community. At KPMG we are proud to have been the first organisation to be accredited as a National Living Wage Employer, in recognition of our commitment.

Annex D: Glasgow City Council

The Glasgow Living Wage was launched by Glasgow City Council in March 2009. At the time, it set a new guaranteed minimum standard of income for all Council workers, set at £7 an hour. In taking this decision, the Council raised the salaries of 700 of its lowest paid staff.

Since the Glasgow Living Wage was established in 2009, the hourly rate has been increased on two occasions in line with the Scottish Living Wage Campaign. The hourly rate will increase to £7.20 per hour from the 1 April 2012.

In addition to all Council staff, employers in the city who pay all of their staff at or above the Glasgow Living Wage Level have been recognised by the Council with the status of "Glasgow Living Wage Employer". These businesses are listed on the Glasgow Living Wage website and are able to display the Glasgow Living Wage logo on their own marketing materials.

Currently, 167 public and private sector employers within the city have achieved 'Glasgow Living Wage Employer' status by committing to pay their staff a minimum of £7.20 per hour from 1 April 2012. These employers have over 50,000 staff.

Glasgow City Council, keen to widen the impact of the policy, has worked within the current legislative framework to encourage contractors to pay the Living Wage. It is the view of Glasgow City Council that companies who benefit from public money demonstrate that they are putting something back into their communities and that procurement policy be used to raise standards of pay across the city.

Annex E: Public procurement in Scotland

The Public Contracts (Scotland) Regulations 2012 (“the 2012 Regulations”), which came into force on 1 May 2012, consolidating the Public Contracts (Scotland) Regulations 2006 and all subsequent amendments implement, for Scotland, various European Directives relating to public works contracts. These are (a) Directive 2004/18/EC of the European Parliament and Council of 31 March 2004 on the co-ordination of procedures for the award of public works contracts, public supply contracts and public services contracts (b) Council Directive 89/665/EEC on the co-ordination of the laws, regulations and administrative provisions relating to the application of review procedures to the award of public supply and public works contracts as amended and (c) Directive 2007/66/EEC of the European Parliament and Council of 11 December 2007 amending Council Directives 89/665/EEC and 92/13/EEC with regard to improving the effectiveness of review procedures concerning the award of public works contracts. The 2012 Regulations specify the procedures to be followed in relation to the award of public works contracts, public supply contracts and public services contracts by public bodies called contracting authorities. The 2012 Regulations generally apply when three main pre-conditions are met:

- The procuring body is a “contracting authority” as defined in the regulations. The definition is wide and includes central government, local authorities, associations formed by one or more contracting authorities and other “bodies governed by public law” (e.g. fire authorities).
- The contract is a public works, services or supplies contract. Sometimes the contract will be a mixed contract (e.g. for the supply and maintenance of computers).
- The estimated value of the contract (net of VAT) equals or exceeds the relevant financial threshold. The regulations expressly prohibit deliberately splitting contracts to bring them below the thresholds. Where these three pre-conditions are satisfied a contracting authority must normally advertise the contract in the EU’s Official Journal and follow the procedural rules set down in the Regulations.

Possible changes to procurement law

The European Commission announced that it will, on the basis of wide consultations, make legislative proposals by end 2011, for a revised and modernised public procurement legislative framework so as to make the award of contracts more flexible and enable public contracts to be put to better use in support of other policies. The consultation was opened by the publication of the Green Paper on the modernisation of EU public procurement policy towards a more efficient European Procurement Market⁴⁹ on 27 January 2011. The consultation period ended on 18 April 2011.

This Green Paper proposes reform of the current generation of public procurement Directives, including Directive 2004/18/EC. The paper draws up two possible ways to modify the current rules to allow the consideration of other policy objectives such as environmental or social goals when contracting out.

Work on revising the procurement rules is currently being undertaken by the Committee on Internal and Consumer Protection. The new proposals will create a system where the Most Economically Advantageous Tender is introduced instead of the ‘lowest price’ criterion. This intends to allow authorities the ability to take in to account the impact on local and regional production, and the social implications for local employees if they do not win a contract. Companies will also have to state at the bid stage how much of the work is going to be sub-contracted. It is expected the vote on this will take place in December 2012.

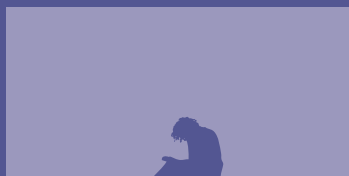
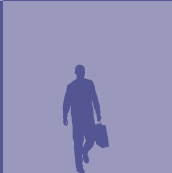
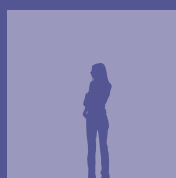
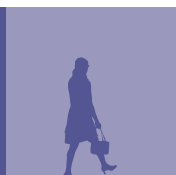
Procurement Reform Bill - Scottish Government

The Scottish Government have launched a Consultation on a proposed Procurement Reform Bill⁵⁰. Annex A of the Scottish Government’s consultation document addresses the living wage through procurement but there is no proposal to bring forward legislation on this issue.



⁴⁹ http://ec.europa.eu/internal_market/consultations/2011/public_procurement_en.htm

⁵⁰ <http://www.scotland.gov.uk/Publications/2012/08/3295>



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