

MEMORANDUM OF UNDERSTANDING BETWEEN THE SCOTTISH GOVERNMENT AND THE FAIR WORK CONVENTION:

1. This document has been drawn up by the Fair Work Convention and the Scottish Government. It sets out the broad framework within which the Fair Work Convention will operate and defines key roles and responsibilities which underpin the relationship between the Fair Work Convention, as an independent body, and the Scottish Government.
2. While this document does not confer any legal powers or responsibilities, it forms a key part of the accountability and governance framework and should be reviewed and updated as necessary, at least every two years. This Memorandum must not be varied except with the written agreement of both parties.
3. References to the Fair Work Convention includes the Chair, Members and any Working Groups / Inquiry Groups formed by the Convention.

Function

4. The Fair Work Convention is an independent non-statutory body which brings together employers, trade unions and academic expertise.
5. The Fair Work Convention's remit is to:
 - provide advice to Scottish Ministers on fair work
 - promote and advocate fair work.
6. The Fair Work Convention defined fair work through the evidence based Fair Work Framework and is also tasked with monitoring progress on fair work against this Framework.
7. The advice function of the Fair Work Convention's remit will include direct advice to ministers in person and in writing, providing support and scrutiny on fair work policies and proposals, conducting inquiries and research on fair work issues and making formal recommendations to Scottish Ministers.
8. The promotion and advocacy function of the Fair Work Convention's remit will include working with employers, unions, key labour market institutions and strategic partners to ensure a good understanding of fair work and to better embed fair work practice across the economy.
9. The Fair Work Convention therefore plays a key role as a thought leader on fair work and an advisor on its effective implementation.

Independence

7. Independence from Government is secured by the agreement of a clear remit and terms of reference for the Fair Work Convention; by appointment of

independent Co-Chairs and Convention Members; by the provision of an independent Secretariat to be instructed solely by the Convention; and by the provision of support and funding managed by the secretariat.

8. The Scottish Government commit to engage with the Convention in a manner that respects the independence of the Convention and the Convention's Secretariat. Where liaison or communication between the Scottish Government and the Secretariat is required, the Scottish Government will at all times act in a manner that respects this independence while supporting the Convention and its Secretariat in delivering robust scrutiny and advice.

Fair Work Convention functionality and resourcing

9. The Fair Work Convention is functionally independent from the Scottish Government and it determines its own work plan. It is supported by a dedicated Secretariat which determines its own working arrangements and ways of working to deliver the Convention's work plan. However the Convention relies on the Scottish Government to facilitate and enable its operations.
10. The Scottish Government therefore commits to support the Fair Work Convention by:
 - Appointing two independent co-chairs.
 - Providing the Fair Work Convention with a resource budget and staff for a dedicated independent Secretariat drawn from civil servants working in the Scottish administration. The Scottish Government will make accommodation available to the Secretariat and provide the Secretariat with IT and office equipment as required. While working in the Secretariat, the civil servants will comply with the Civil Service Code. The Secretariat will support the Co-Chairs to appoint the wider membership of the Convention in line with the process detailed in the Terms of Reference
 - The Scottish Government will also provide the Convention with access to contracted services including, as reasonably required, digital and communications services, and design and delivery services. The contractors providing these services will be operationally accountable to the Secretariat for the delivery of contracts and for associated performance standards.
11. The Scottish Government remains the data controller, however, information is restricted to the Secretariat. Ultimately, the Scottish Government is answerable to the Scottish Parliament for the Convention's conduct, including

data processing, and the Convention will ensure that all requirements of the Data Protection Laws are fulfilled.¹

12. Through working effectively with its secretariat, the Fair Work Convention will:
- ensure its funding is used appropriately, with its budget managed by the Secretariat in line with the requirements of the Scottish Public Finance Manual;
 - ensure Scottish Government is informed of formal Fair Work Convention Inquiries prior to commencement;
 - allow time and opportunity for Scottish Government policy officials to review and comment on Fair Work Convention publications and reports before their publication; and
 - provide advance notification of any press or public commentary which may not align with the Scottish Government's action or policy position in relation to fair work.

Role of the Sponsor Unit

13. The Scottish Government sponsor unit for the Convention is the Fair Work Division. It is an initial point of contact and advice for the Convention in dealing with the Scottish Government and will ensure that the Convention has access to other parts of Government when required to support the Convention's work. The division, under the direction of the Deputy Director for Fair Work, is the primary source of advice to the Scottish Ministers on the discharge of their responsibilities in respect of the Convention.

14. The Sponsor Unit has specific responsibility to

- ensure that sponsorship is suitably flexible, proportionate and responsive to the needs of the Scottish Ministers and the Convention;
- work in a way that safeguards the independent operation of the Convention and its Secretariat;
- engage in proportionate monitoring of the Convention's activities through an adequate and timely flow of appropriate information, agreed with the Convention on performance, budgeting, control and risk management;
- address in a timely manner any significant problems arising in the Convention, alerting the responsible Minister, where considered appropriate; and

¹ ("Data Protection Laws" means any law, statute, subordinate legislation, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 2018 and any statutory modification or re-enactment thereof and the UK GDPR and "UK GDPR" means the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419).)

- ensure that the functions of the Convention and the risks to their fulfilment are properly and appropriately taken into account in the Scottish Government's risk assessment and management systems and frameworks for services.
15. The Sponsor Unit will keep the Secretariat informed as to when the Convention can expect to review policy proposals in development and advise on any changes to planned timescales to ensure minimal disruption to the Convention's work plan.

Requests for advice from Scottish Ministers

- 16 Scottish Ministers will advise the Convention of relevant planned government work that can help inform the development of the Convention's own work plan, while also recognising that the Fair Work Convention will develop its own work plan and will prioritise issues where it feels it can have the most impact.
- 17 The Scottish Government will ensure that all requests for advice are submitted to the Convention in writing. Requests should be submitted through the sponsor unit. Should further clarification be required, requests should be communicated through the sponsor unit who will coordinate responses as necessary.

Ensuring effective engagement, scrutiny and advice

18. The Fair Work Convention commits to:
- advocate and promote fair work across all sectors in Scotland;
 - add value to the development and implementation of Scottish Government policy relevant to the fair work agenda by drawing on the unique range of expertise and experience its members represent;
 - provide impartial advice to the Scottish Government on its policies, strategies, action plans and frameworks which support the fair work agenda;
 - provide Scottish Ministers with advice on wider Government policy relevant to fair work; and
 - monitor progress in advancing fair work across the economy.
19. To maintain a positive working relationship the Scottish Government commits to:
- seek early advice in relation to changes in policy, procedures and to strategic policy developments relevant to fair work;

- recognise the Fair Work Convention as an important partner and involve the Convention in ad hoc groups set up to review, develop or implement policy with relevance to fair work;
- bring any strategies, policy proposals, action plans, frameworks etc. with relevance to fair work to the Fair Work Convention's attention in good time to ensure there is an option for the Convention to provide timely and considered advice; and
- keep the Fair Work Convention informed of progress on frameworks, strategies, policies, action plans and other important documents with relevance to fair work and allowing time for the Convention to contribute to these.

Response to Convention advice / scrutiny from Scottish Ministers

20. The Scottish Government will aim to respond to publications, recommendations and advice from the Convention, where appropriate, in a manner and timeframe which is reasonably practical, to be agreed between the Convention and the Scottish Government during the development of the advice. Where this timescale will not be met, the Scottish Government should write to the Convention with information on the likely timescale within which a substantive response will be given.
21. The Scottish Government should aim to provide a response to routine Convention correspondence, where possible, within 20 working days. The Convention will also aim to adhere to this timescale.

Briefing and information sharing

- Scottish Government Ministers may request meetings with the Convention Co-Chairs to discuss or seek advice on specific areas relating to fair work.
- When the Convention requires information held by the Scottish Government to carry out its functions, the Scottish Government will make best efforts, so far as is compatible with the law, to provide access to relevant information within reasonable timescales for use by the Convention. Where additional explanation or assistance is required to interpret this information, the Scottish Government will provide such support.
- Where policy documents or data shared with the Convention is marked as sensitive, the members of the Fair Work Convention will respect the confidentiality of this material.

- Should the Scottish Government be aware of any changes or updates to relevant Scottish Government policy, the Scottish Government should seek to update the Convention in a timely manner.
- The Convention Secretariat will work effectively with Scottish Government officials to ensure Scottish Ministers are aware of the Convention's work, and regular engagement will be undertaken with Co-Chairs and Scottish Ministers to progress the Convention's recommendations around fair work. The Fair Work Convention Secretariat will also ensure that ministers are briefed on Fair Work Convention reports ahead of publication, However it is not the role of the Fair Work Secretariat to provide briefings to Ministers on fair work issues more generally, or to provide advice to Scottish Ministers in response to the Convention's reports and publications, or any other matter. This responsibility lies primarily with the Scottish Government Sponsor Unit.

Meetings

22. The Cabinet Secretary with responsibility for fair work will meet with the Fair Work Convention annually and will additionally meet with the Fair Work Convention Co-Chairs twice each year. In addition, either party may request an ad hoc meeting on a specific subject at any time.
23. The Director General with responsibility for fair work will meet with the Fair Work Convention Co-Chairs or the Convention twice each year.
24. The Deputy Director with responsibility for Fair Work will meet quarterly with the Fair Work Convention Co-Chairs.