

## FAIR WORK AGREEMENT BETWEEN SCOTTISH MINISTERS AND THE RECOGNISED CIVIL SERVICE UNIONS

### Introduction

1. This Agreement sets out a range of principles agreed between Scottish Ministers and the recognised Civil Service Trade Unions on the conduct of employee and industrial relations in line with the principles of the Fair Work Convention's Framework. It is intended that this Agreement is used by the bodies listed in Annex A in local partnership, to embed the principles in local industrial relations with their recognised Trade Unions.

2. The Civil Service recognised Trade Unions are Public and Commercial Services Union ("PCS"), Prospect, First Division Association ("FDA"), and Prison Officers' Association (Scotland) ("POA Scotland") as defined at Annex B.

### Status and Coverage

3. Annex A sets out the bodies that are party to this Agreement. This Agreement is drafted on the basis of how Scottish Ministers expect employee and industrial relations to be carried out in these bodies. Notwithstanding the initial parties to the Agreement in Annex A, all bodies who form an integral part of the Scottish Government and/or bodies who are subject to relevant guidance issued by Scottish Ministers, such as the Scottish Public Finance Manual (SPFM) are expected to comply with the principles set out in this Agreement as a matter of consistency, fairness, equality and good practice and as such, Scottish Ministers would expect that, over time, further parties will be added to this Agreement as they sign up to its terms and that such bodies will take steps to embed the principles into their local industrial relations arrangements

### Overarching Principles

4. The Fair Work Convention aspires to make Scotland a world leading nation in fair work and the Framework states "We believe that fair work is work that offers **effective voice, opportunity, security, fulfilment and respect**; that balances the rights and responsibilities of employers and workers and that can generate benefits for individuals, organisations and society". It is recognised that the principles set out in this Framework have been agreed with the current Scottish Ministers and, in many respects, are a reflection of their political priorities and policies.

5. This Agreement recognises that Fair Work is a key driver of inclusive economic growth as well as an aspect of corporate social responsibility. For workers, fair work brings increased financial security, better physical health and greater psychological wellbeing. Employers will in turn see less absence, greater productivity and enjoy a good reputation as a fair employer.

6. This Agreement demonstrates Scottish Ministers commitment to ensuring that bodies in the Scottish Administration are Fair Work employers and continually strive to improve their practices and policies in that regard. This can best be achieved in partnership with recognised trade unions.

## **Effective Voice - Principles Agreed**

***“Effective voice is much more than just having a channel of communication available within organisations – though this is important. Effective voice requires a safe environment where dialogue and challenge are dealt with constructively and where employee views are sought out, listened to and can make a difference” (FW Framework 2016)***

## **Strategic Employee Relations Engagement at Sectoral level**

7. It is agreed that the Strategic Forum (consisting of SG officials and National Trade Union representatives) will be used to establish employee relations principles to apply across the bodies listed in Annex A (on the basis set out in Paragraph 3 above) on issues which reflect Scottish Ministers policies on such matters. Examples of this in practice are Scottish Ministers’ commitments to protection of facility time and check-off and not using Agency workers to backfill trade union members participating in industrial action. The Strategic Forum terms of reference will be updated to include this role.

8. As new principles emerge and are agreed, these will be jointly communicated by the Strategic Forum to the bodies listed in Annex A.

9. The recognised Trade Unions will continue to have the option to engage directly in correspondence with Scottish Ministers or through their annual meetings to make representations on issues of concern to them. Scottish Ministers pay policy will continue to be the platform through which most pay and reward related policy and guidance will be addressed for the sector. For example, Scottish Ministers commitment to pay progression being outwith pay policy metrics and the commitment to No Compulsory Redundancies etc are set out through the Pay Policy process and nothing in this agreement is intended to cut across this separate process except to acknowledge that the recognised Trade Unions will have a route to strategic engagement at sectoral level through meetings and correspondence with SG Finance Pay Policy and with the Cabinet Secretary for Finance, Economy and Fair work.

## **Trade Union Recognition and Collective Bargaining**

10. Scottish Ministers are committed to working in partnership with the Civil Service Trade Unions and as such all bodies covered in Annex A are required to have effective Trade Union recognition agreements and collective bargaining arrangements in place. It is expected that any contractual changes to terms and conditions of employment will be negotiated and agreed through collective bargaining between the relevant body and the recognised Trade Unions. Where agreement cannot be achieved, following attempts to resolve the matter, which may include, where appropriate, alternative dispute resolution, and a dispute persists, Scottish Ministers recognise the rights of Trade Unions and their members to undertake lawful industrial action and will not seek to interfere with the exercise of those rights when undertaken lawfully. This includes a commitment by Scottish Ministers not to engage Agency workers to replace employees who are taking part in lawful industrial action.

11. As staff terms and conditions will be determined by collective bargaining employers should encourage union membership and active involvement. This will include allowing recognised Trade Union representatives early access to new employees and to non-members on request, to explain the benefits of trade union membership.

### **Facility Time and Check-off**

11. While always being mindful of the responsibility to maximise the effective and efficient use of public money, Scottish Ministers recognise that the provision of facility time to accredited representatives of recognised Trade Unions and their members is an essential aspect to supporting effective voice and working in partnership. Scottish Ministers are therefore committed to protecting facility time across the sector against any political attempts to reduce or place limits on facility time that do not fit with the objectives of Scottish Ministers policies and priorities. Scottish Ministers through the bodies listed in Annex A will engage with the recognised Trade Unions in partnership to review existing facility time provision to ensure that it continues to meet Scottish Ministers policies and priorities and that it continues to be used effectively and efficiently. The recognised Trade Unions commit that they will use the facility time and facilities provided to them effectively and efficiently and will contribute timeously to employee relations issues that any body listed in Annex A wishes to take forward (i.e. policy reviews etc).

12. The Trade Union (Facility Time Publication Requirements) Regulations 2017<sup>1</sup> (“the Regulations”) require public sector employers to publish information relating to facility time taken by union representatives. These Regulations were laid following the enactment of the Trade Union Act 2016, which the Scottish Government strongly opposed throughout its passage. While all relevant bodies are expected to comply with law, the Scottish Government worked with the Scottish Trades Union Congress to develop guidance to all public sector employers in Scotland which outlined the Scottish Government’s support for trade unions and facility time; to help ease the burden of the reporting requirements on public bodies; and ensure that the facility time data is set in the context of the benefits that facility time bring to the workforce.

13. Scottish Ministers are committed to the protection and continuation of check-off arrangements where any recognised Trade Union wishes to continue to use the check-off mechanism for the collection of members subscription payments.

### **Local Partnership arrangements**

14. All bodies listed in Annex A are required to have a local Partnership Working agreement or equivalent agreement in place with their recognised trade unions which will include as a minimum a Partnership Board which meets regularly and is made up of local Board members and representatives of the recognised Trade Unions.

15. As a matter of good practice, bodies should also consider including a Trade Union representative role in other Corporate Boards or equivalent as a means to ensure Partnership Working is enshrined and supported from the top of the organisation.

### **Opportunity – Principles Agreed**

***“Fair opportunity allows people to access and progress in work and employment and is a crucial dimension of fair work. Meeting legal obligations in terms of ensuring equal access to work and equal opportunities in work sets a minimum floor for fair work. (Fair Work Framework 2016) ”***

### **Modern Apprentices and other Apprentices**

16. Scottish Ministers are committed to providing and developing opportunities for modern apprenticeships across the sector. A modern apprenticeship should be regarded as a route to permanent employment. Where a modern apprentice is employed to carry out the full duties of a role within any of the bodies listed in Annex A, they will be recruited through a fair, open and merit based recruitment process, paid at the recognised entry rate for the relevant grade the same as other employees recruited to that grade, with opportunity for permanence from the start of the modern apprenticeship subject to satisfactory completion of probation and relevant qualification(s). Recurring modern apprenticeships should not be used in lieu of filling a substantive post. It is recognised that bodies employing trade apprentices have different arrangements in place and this agreement is not intended to cut across those arrangements which will be agreed locally with bodies.

17. Modern Apprentices will be supported to complete transferable qualifications.

### **Flexible Working**

18. Scottish Ministers are committed to the principles of flexible working to support diversity and inclusion within the workplace and to support work/life balance. Flexible working includes the right to request a contractual variation to working pattern, which may include a request for the following:

- Part time working;
- Compressed hours working;
- Homeworking;
- Flexible location;
- Job sharing; and
- Part year or term time working.

19. Employers should have a set process for making such requests which is clear and transparent. Such process should have regard to business requirements and should set out clear reasons for decisions to refuse requests which will be clearly set out, in accordance with legislation (s.80G of the Employment Rights Act) and provided to the employee.

### **Equality and Diversity**

20. Scottish Ministers are committed to equality, diversity and inclusion and meeting statutory obligations under the Equality Act 2010 (Specific Duties) (Scotland) Regulations 2012 and the Fairer Scotland Duty. Bodies should:

- Develop effective diversity management policies and procedures, across all aspects of the employee lifecycle (recruitment and selection, promotion, progression and retention)
- Undertake regular equal pay monitoring and addressing pay gaps within bodies;
- Gather, analyse and effectively use employee equality information in recruitment and development of policy;
- Taking effective action to develop the attitudes and behaviours amongst employees which advance equality of opportunity.
- Take steps to eliminate discrimination, harassment and victimisation through development and implementation of appropriate policy and practice.

21. The Fair Work Convention is also explicit in its support for time off to be extended to trade union equalities reps. Trade Unions will actively encourage participation from under-represented groups.

### **Security – Principles Agreed**

***“Security of employment, work and income are important foundations of a successful life (Fair Work Framework 2016)”***

#### **Job Security**

22. Scottish Ministers recognise that security of employment, work and income are important foundations of a successful life. The continuation of a No Compulsory Redundancy commitment will be considered as part of Scottish Ministers Pay Policy.

23. While recognising that the use of agency workers, fixed term appointments and contractors/consultants will be necessary in certain circumstances, Scottish Ministers agree with the principle that wherever possible work should be carried out by permanent employees.

24. Zero hours contracts (that is, contracts which compel staff to make themselves available for work offered) will not be used by the bodies listed in Annex A

#### **Pay**

25. All employees should be paid at least the living wage as calculated by the living wage foundation.

#### **Pay of Agency Workers**

26. Where the employment of Agency workers is necessary, Scottish Ministers are committed to ensuring that Agency workers receive the same rate of pay as a permanent member of staff working in the same grade and that exemptions from the

right to equal treatment with regard to pay where an agency worker is given a permanent contract of employment and is paid between assignments (commonly known as a Swedish derogation) will not be used by bodies listed in Annex A.

### **TUPE and COSOP protections**

27. Where staff are transferred into the sector from a body outwith or between employers already in the sector, Scottish Ministers are committed to ensuring that where TUPE or COSOP apply, the principles agreed with the recognised Trade Unions to protect staff transferring in as a result of further devolution will continue.

### **Commitment to Government services being carried out by Civil and Public Servants**

28. Scottish Ministers are committed to publicly run, publicly delivered public services and are committed against the outsourcing of public services.

### **Redeployment policies and measures**

29. Bodies listed in Annex A are required to have clear redeployment policies and measures in place and agreed with the recognised Trade Unions in terms of steps that will be taken to mitigate redundancies etc.

### **Working Hours**

30. Wellbeing of staff is important and it is recognised that excessive additional hours should be avoided. For employees whose terms and conditions are delegated to Scottish Ministers, additional hours worked will be compensated by compensatory time off or overtime payments and this will be reflected in contracts of employment and/or employment policies by the **bodies** listed in Annex A.

### **Fair Work in Public Procurement**

31. The Scottish Government is committed to promoting Fair Work practices in all relevant procurement processes. The Scottish Government believes that contractors who go beyond minimum legal requirements by adopting Fair Work practices will increase innovation, improve workplace outcomes and business performance, and can positively impact on the delivery of a public contract. We expect all contractors who deliver public contracts to demonstrate fair work practices and to refer to our Statutory Guidance on Addressing Fair Work Practices, including the Living Wage, in Public Procurement.

### **Equality in Security**

32. Employers should have policies and mechanisms in place such as:

- Effective diversity monitoring of recruitment, dismissals, grievances and disciplinary action
- Regular equal pay monitoring to inform position on pay and addressing pay gaps within bodies;

- Whistleblowing policy which protects employees who bring protected disclosures

### **Fulfilment – Principles Agreed**

***“Access to work that is as fulfilling as it is capable of being is an important aspiration (Fair Work Framework 2016)”***

It is widely accepted that fulfilment is a key factor in both individual and organisational wellbeing. This includes the opportunity to use skills, to be able to influence work, to have some control and to have access to training and development.

### **Work Fulfilment**

33. Scottish Ministers are committed to the principle of providing jobs that are as fulfilling as they are capable of being and which enable employees to make a positive contribution to society in the delivery of public services. This should include:

- Clear job descriptions that are graded and job evaluated in accordance with appropriate guidance
- Employment policies and contractual arrangements that meet legislative requirements
- Transparent approach to appraisal including policy on performance management
- Access to vacancies and opportunity for promotion / progression

### **Fulfilment through learning and skills**

34. The provision of learning and development opportunities is recognised as a key area of fulfilment which helps enable employees to maximise their potential for progression within their career. A fair work employer provides workers with opportunities to use and develop their skills by:-

- Joint approach to workforce planning and development
- Investing in training, learning and skills development
- Creation of and use of learning / training plans and regular development reviews
- Commitment to, encouragement of and access to paid time off for training and development
- Access to time off for Scottish Union learning activities
- Shadowing, mentoring and secondment opportunities

### **Respect – Principles Agreed**

***“Fair Work in which people are respected and treated respectfully, whatever their role and status. Respect involves recognising others as dignified human***

***beings and recognising their standing and personal worth. At its most basic, respect involves ensuring the health, safety and well-being of others (Fair Work Framework 2016)''***

### **Safe and healthy working environment**

35. Scottish Ministers are committed to providing a safe, decent and healthy working environment that as a minimum meets all legislative requirements and supports wellbeing at work.

36. Strategy and relevant employment policies will be in place that ensure a positive approach to developing and monitoring wellbeing in the workplace including:

#### **General**

- A proactive, strategic and integrated approach to employee wellbeing
- Implementation of the Thriving at work report recommendations
- Adoption of TUC dying to work charter recommendations
- Promotion of physical and mental health in the workplace

#### **Health and Safety**

- Adherence to Health and Safety requirements including training and facilities and time off for union accredited H&S reps;
- Monitoring and acting upon data in relation to accidents and injuries at work, workplace stress etc

### **Fairness at Work**

37. Scottish Ministers are committed to providing fairness at work and will ensure effective policies are in place to deliver this including:

- Standards of behaviour and conduct;
- Grievance policy and procedure that gives access to mediation, early dispute resolution and makes provision for investigation of bullying and harassment cases;
- Undertaking people surveys and acting on results;
- Promotion of the role of Trade Unions and other support mechanisms in policy

### **Support and Training**

38. Throughout the processes above, Scottish Ministers are committed to ensuring that a respectful culture exists at all levels and that employees are supported and respected and are provided with:

- Provision of employee assistance services, occupational health services and counselling and wellbeing services
- Mental health awareness training.



## **Respect for Trade Unions as an organisational value**

39. As provided for in this agreement, Scottish Ministers are committed to working in partnership with trade unions and recognise the value that trade unions bring to the workplace. Involving the trade unions as partners contributes to our success and the well-being of our employees.

## **Respect and support for a positive right to strike as a fundamental principle**

40. Where agreement cannot be achieved and a dispute arises, Scottish Ministers recognise the rights of Trade Unions and their members to undertake lawful industrial action and will not seek to interfere with the exercise of those rights when undertaken lawfully.

41. Trade unions will seek to conclude “minimum service agreements” in the event of a strike which would impact on essential services (as defined by the ILO – international labour organisation to mean services “the interruption of which would endanger the life, personal safety or health of the whole or part of the population”

42. This includes a commitment by Scottish Ministers not to engage Agency workers to replace employees who are taking part in lawful industrial action.

**Review, Amendment and Termination**

43. The initial principles set out in this Agreement reflect the position as at the date of signing. It is expected that the Agreement will be reviewed on a regular basis and that any additional principles developed between Scottish Ministers and the recognised Civil Service Trade Unions will be incorporated into this Agreement as part of the review process and incorporated into local partnership arrangements in relevant bodies.

SIGNED for and on behalf of **THE SCOTTISH MINISTERS**

At **Edinburgh**

On 8<sup>th</sup> November 2018

By Derek MacKay  
Cabinet Secretary for Finance,  
Economy and Fair Work

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Signature of signatory

before this witness

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Print full name of witness

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Signature of Witness

Address

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SIGNED for and on behalf of **Public and Commercial Services Union**

At Edinburgh

On 8<sup>th</sup> November 2018

By Lynn Henderson

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before this witness

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**Fair Work Agreement - 08.11.2018**

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SIGNED for and on behalf of **PROSPECT**

At Edinburgh

On 8<sup>th</sup> November 2018

By Richard Hardy

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before this witness

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SIGNED for and on behalf of **FDA**

At Edinburgh

On 8<sup>th</sup> November 2018

By Allan Sampson

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**Fair Work Agreement - 08.11.2018**

SIGNED for and on behalf of **Prison Officers Association (Scotland)**

At Edinburgh

On 8<sup>th</sup> November 2018

By Andy Hogg

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Witness

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## **ANNEX A**

This covers

- Scottish Government

### **Executive Agencies forming part of the SG Main Pay Bargaining Unit, including:**

- Accountant in Bankruptcy
- Disclosure Scotland
- Education Scotland
- Social Security Scotland
- Scottish Public Pensions Agency
- Student Award Agency for Scotland
- Transport Scotland

### **Departments not forming part of the SG Main pay bargaining unit**

- Crown Office and Procurator Fiscal Service

### **Executive Agencies not forming part of the SG Main pay bargaining unit**

- Scottish Prison Service

### **Non ministerial departments independent of Ministers, but included in the SG Main pay bargaining unit:**

- Food Standards Scotland
- National Records of Scotland
- OSCR
- Revenue Scotland
- Scottish Fiscal Commission
- Scottish Housing Regulator

### **Non ministerial departments independent of ministers, not within the SG Main pay bargaining unit**

- Registers of Scotland

### **NDPBs who have signed up to the principles in this document:**

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**Annex B**

The civil service unions traditionally represent the following groups of staff:

<b>Constituent Union</b>	<b>Staff Represented</b>
FDA	Senior managers, staff in the civil service fast stream and Senior Civil Service staff
Prospect	Professional, Technical and Scientific Roles
PCS	All staff except staff in the civil service fast stream and Senior Civil Service and staff in professional, technical and scientific roles
POA (Scotland)	In Scottish Prison Service: All uniformed operational grades, Operational Middle Manger grade (F) and SPS Estates Staff (C-F)