

**‘QUICK NOTE’, APRIL 2016**

**The Fair Work Framework:**

**a critique**

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**Summary**

*The Scottish Government established the Fair Work Convention in order to engage in a limited form of social partnership with unions and employers. The Convention has published the framework document by which it hopes to facilitate this social partnership. Is this a good thing or a bad thing? And, what will come out of it? This critique of the framework document answers these questions.*

**Introduction**

Previous Scottish Governments – both the Labour-Liberal coalitions from 1999 to 2007 and the first SNP administration from 2007-2011 – signed Memorandums of Understanding with the union movement in Scotland through the STUC. These memorandums were attempts to treat the union movement as a social partner in line with the relationship also established with the ‘third sector’ of voluntary organisations. However, under Nicola Sturgeon as First Minister, the SNP Scottish Government established the Fair Work Convention (FWC) in 2015 after the Working Together Review of 2014 recommended taking such a step. The first output from the FWC is the Fair Work Framework. It has been developed after consulting with a wide range of organisations including unions. The FWC and its framework aim to go much further than the Memorandums by not merely providing guidance for how the relationship of the union movement and Scottish Government is framed but also how private sector and other public sector employers should treat their workforces.

The context of the FWC is the worldview of the SNP Scottish Government that the economy in Scotland needs to be more efficient and productive in order to generate more employment, private wealth, and the public tax revenues to pay for its social programme. In other words, the SNP has a social liberal approach to economy and society. Its approach is not entirely neo-liberal for the state in Scotland does seek to act to promote some elements of social justice and social equality - but it is not social democratic either for its does not seek to redistribute wealth or use the state to act to change market outcomes by way of public ownership, regulation and intervention. Being social liberal – and not neo-liberal or social democratic – is critical to understanding the SNP’s approach to employment, employers and unions. Unlike the Conservatives, the SNP finds a positive role for unions in its worldview but like ‘new’ Labour’s worldview, it is one where the only kind of unions favoured are those prepared to engage in partnership for a productivity and efficiency agenda. This then has crucial implications for the Fair Work Framework (FWF), where its hallmark is the complete absence of any statutory underpinning to its aspirations. Thus, in May 2015, the Scottish Government launched its Scottish Business Pledge, which it described as a ‘voluntary commitment by companies in Scotland to adopt fair and progressive business practices in support of our shared ambition to improve business competitiveness and productivity while tackling inequalities’.[[1]](#footnote-1) So as with the Scottish Business Pledge, the same is true with the FWF. Consequently, employers can only be cajoled not compelled to agree to or implement the recommendations of the FWF so that it and the FWC are toothless tigers.

**Fair Work Framework**

The FWF (p5) states its vision is that ‘by 2025, people in Scotland will have a world-leading working life where fair work drives success, wellbeing and prosperity for individuals, businesses, organisations and society’ with the fair work being defined as that which ‘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’. The FWC states of its FWF (p5): ‘Our aim is for this Framework to be used by everyone in the workplace to guide practice: to help improve understanding of fair work, benchmark existing practice and identify areas where improvement can be made. This requires real leadership in the workplace at the highest and at every level. For the many organisations and stakeholders beyond the workplace but involved in the wider work and employment landscape, we hope that this Framework will also be used to guide their activities in supporting the delivery of fair work in Scotland’. The FWF (p8) continues: ‘These [five] dimensions cover the scope of workers to ‘have a say’ and to influence and change practices, how people can access and progress in work, the employment conditions they experience, the work that people do and how people are treated at work’.

**Delivery and Outcomes**

So the FWF is relatively strong on aspiration but as the following section makes clear it is entirely woeful on the means of delivering these aspirations – in other words, attested outcomes. In its FWF (p25), the FWC says it ‘makes one overarching recommendation: that organisations deliver fair work in the dimensions outlined here, providing effective voice, opportunity, security, fulfilment and respect’ and then askes ‘How can this recommendation become a reality?’ and answers by stating (p25):

*First, we put workplace activity at the heart of fair work. Fair work must be located in the workplace and delivered by employers and workers and, where present, union representatives. We invite everyone involved in the workplace to assess critically whether their current practice supports our ambition and can help deliver fair work. To do this, it is important to think about how to apply the Framework in a particular business context; to benchmark policy, practice, behaviours and outcomes against our overarching ambition for fair work and what this means in each of its dimensions; to verify the evidence used to make such an assessment; and to assess and identify the appropriate actions and timescales necessary to make progress and to review and improve in response to changing circumstances. Second, while those directly involved in the workplace must own fair work at workplace level, other stakeholders also have an important role to play. There are a wide range of interested parties and organisations in the fair work landscape.*

As this quote makes clear, neither the FWC nor its FWF envisage using the levers of state power and compulsion (legislative, regulatory order, financial). Intriguingly, the FWF (p25) then states:

*Many of the workers and campaigning organisations who spoke to us pointed to legislation and regulation and wanted to see a strengthening of employment protection, easier access to remedies for breaches of rights, better access to employment tribunals without the barrier of high fees and better enforcement of employment tribunal awards’ and ‘some stakeholders expressed a desire for greater use of existing regulatory and enforcement powers to support fair work, for example, through more searching use of the public sector equality duty. Others focused on who could deter bad practice and how.*

But the FWF then proceeds to dismiss such views because the whole tenor of the perspective is that a voluntarily induced mutual gains agenda will lead capital and labour to adopt ‘best practice’. The FWF talks of role models and ambassadors, sharing information, learning, advice and support, awareness, and creating a ‘coalition of the willing’. Put bluntly, the argument is that market and competitive advantage will induce labour and capital to work together in a productivity coalition (see p25 on ‘incentivising good practice’). This ignores that an equally credible route to profits for capital is the ‘race to the bottom’ in terms of competing on low wages and labour to compensate for low skill and investment levels, and especially when economic growth is slow or non-existent. The unwillingness to use state levers even extends to not establishing an accreditation agency to verify whether employers have achieved or implemented ‘fair work’.

**Conclusion**

Now, of course, there is a limit to what the Scottish Government, if it so chooses, can do given that a number of the legislative powers relevant to the FWF are reserved to Westminster. But there is no evidence that even with those currently reserved powers as devolved powers that the SNP Scottish Government would use them to act in anything other than a social liberal way. For example, the FWF (p25) states that: ‘Procurement – by government and the public sector – is also an important lever. Crucially, public contracting can be creative in delivering good use of scarce public resources without sacrificing fair work in the process. Support from the public agencies – finance and expertise – can both encourage and reward fair work practices’. Despite acknowledging this, the FWF makes no pledges or promises to use this lever. And not even being willing to have an accreditation system (like the independent living wage system does) further highlights the abject refusal to create a regulatory system for fair work. Any regulatory system should also have periodic reviews built in to it as well as the establishment of robust criteria for conducting these reviews. Thus, neither the FWC not its FWF are social democratic in outlook or intention. This is again highlighted by there being no proposals to enforce sectoral collective bargaining even where the Scottish Government is ultimately the employer as it is the paymaster. This means that the warm words of the aspirations will never have force of law behind them. And, as such, they will never amount to much in the depth or extent of their presence (see by contrast the vision for workplace democracy outlined in a recent report for the Jimmy Reid Foundation which sets out eight proposals and which makes clear the need for statutory underpinning).

**Immediate recommendations**

* Given that the Scottish Government is intent upon pursuing a voluntarist approach to achieving ‘fair work’, it should at least commit to periodic assessments of its plan, i.e. well before 2025.
* Where the Scottish Government is the employer or awarder of contracts through procurement, it should specify a contract of rights for workers.
* Given that the Scottish Government has taken other steps towards ‘fair work’ out with the FWF (for example, the Scottish Business Pledge, opposition to the Trade Union Bill and on blacklisting), it should establish a National Performance Framework so that there is an overall institutional framework for this rather than a plethora of separate initiatives which lack integration.

**Longer-term recommendations**

* The Scottish Government undertakes to put on a statutory footing the mechanisms and institutional framework for achieving the aims of its FWF.
* It does so in consultation with the STUC and its affiliates.

**Relevant web links and documents**

<http://www.fairworkconvention.scot/index.html>

<http://www.fairworkconvention.scot/framework/FairWorkConventionFrameworkFull.pdf>

<http://www.fairworkconvention.scot/framework/FairWorkConventionFrameworkSummary.pdf>

<http://reidfoundation.org/2016/02/democracy-at-work-launch-of-jrf-report-on-economic-and-industrial-democracy/>

1. The pledge comprises of ‘paying the living wage’, ‘committing to an innovation programme’, ‘pursuing international business opportunities’, ‘not using exploitative zero hours contracts’, ‘supporting progressive workplace policies’, ‘supporting Invest in Youth’, ‘making progress on gender balance and diversity in the workforce and boardroom’, ‘playing an active role in the community’ and ‘paying suppliers promptly’. To sign the pledge means paying the living wage now and adopting two of the remaining components with a longer term commitment to implementing the other components. [↑](#footnote-ref-1)