



FAIR WORK
CONVENTION



Building Fair Work in the Construction Industry

Fair Work Convention Construction
Inquiry Report 2022

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Foreword

This Inquiry is rooted in our acknowledgement of the importance of the construction industry to the Scottish economy and Scottish society and our concerns about the nature of some construction employment and work in Scotland. The industry is responsible for building our homes, schools, hospitals and workplaces and the quality of the built environment impacts on us all. It creates highly skilled and labour intensive jobs in the private and public sectors, employing 130,000 workers in 2020 and generating 11% of Scotland's economic outputs in 2019.



The core issue under investigation in this Inquiry is the experience of fair work by the construction workforce and how fair work practice can be improved, with an emphasis on the role of public sector procurement.

Fair work is fundamental to the future growth of the construction industry and its ability to meet the challenges of automation and climate change. Recent research has shown that construction work can be insecure, lacking the contractual and income security and stability that workers need. We are aware that direct employment is declining in the industry and that the use of subcontracting, agencies and umbrella companies creates uncertainties in the supply chain that impact on how construction work is overseen as well as on health and safety and the provision of training and upskilling. Effective oversight of construction works requires a workforce with an effective voice, yet the use of collective agreements in the industry is less robust than in the past, with negative consequences for worker voice, especially for those on non-standard contracts. There is also evidence of concerns over how problems and disputes are resolved. The industry has an ageing workforce with implications for skill supply. We know also that more needs to be done to improve diversity in the industry in order to combat the challenges of skill shortages particularly in the context of the transition to a net zero carbon economy and the likely impact of automation in construction.

Addressing fair work in construction now is crucial to how the industry develops to face future challenges. Skill shortages are both a challenge and an opportunity to bring new talent into the industry. The need to transition to a net zero carbon economy and undertake large scale retrofitting on existing building stock raises significant new challenges around skills and investment but also offers an opportunity to transform ways of working and offer high quality work to a greater range of people across Scotland and beyond. Existing and well-developed structures of collective bargaining in the industry work well in addressing standards, skills formation and terms and conditions and provide key learning on how the multiple stakeholders in the industry can engage collectively to address the needs of all stakeholder groups.

Public sector procurement has the potential to play a key role in shaping the industry and is responsible for around 50% of construction spend in Scotland – hence our focus on public procurement practice. We have investigated and made specific

recommendations regarding the role and potential of public procurement in driving better fair work practice in construction.

The construction industry recognises its challenges and opportunities and has developed some strategic responses. We note in particular the establishment of the Construction Leadership Forum and the inclusion of aspects of fair work in its action plan alongside its social partnership approach and the engagement of employers, unions and policymakers to address the particular challenges of the pandemic. Structures of this kind have huge potential beyond the immediacy of the pandemic. At a UK level, the Construction Leadership Council Report into Future Skills calls for higher levels of direct employment, recognising the relationship between providing fair work and realising the future ambitions of the industry.

Conducting this Inquiry was a significant task undertaken over two years by the Construction Industry Inquiry Group (CIIG), made up of a range of stakeholders from construction businesses, trade bodies, trade unions, local authorities and the Fair Work Convention. The CIIG gave generously of their time, expertise, insight and ideas. They were individually and collectively constructive in their engagement with a range of difficult issues, and all members have been a huge support to the understanding of the Fair Work Convention and the Inquiry Co-Chairs in particular. We are immensely grateful for their participation and contribution.

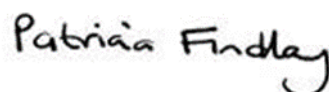
This Report calls for action from The Scottish Government and other public agencies in procurement, skills and investment strategies to align their activities to the provision of fair work in construction. A crucial part of this is clearly signalling commitment to social dialogue and constructive engagement across key stakeholders, including through the expansion of industry agreements. Government in particular has a crucial role in creating the conditions and structures for better collaborative working in construction.

The construction industry has an important role to play in our future economy and society, particularly in delivering a net zero carbon future. Wider adoption of fair work can underpin a high quality, high value, responsive construction industry, adept at facing known challenges such as modernisation and automation and other as yet unknown challenges. Our collective priority is to ensure that the construction workforce benefits from these and other developments and that fair work becomes a more common experience for employees and workers. The Fair Work Convention and its Construction Industry Inquiry Group urges all relevant stakeholders to adopt our recommendations.



Mary Alexander

Co-Chair, Deputy Regional Secretary for
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Convention Co-Chair



Executive Summary

The Fair Work Convention

The Fair Work Convention brings together employers, trade unions and academic expertise to promote and advocate for fair work across the economy and to advise Scottish Ministers on fair work. The Convention's vision is that Scotland will be a leading Fair Work Nation by 2025 where fair work drives success, wellbeing and prosperity for individuals, businesses and society.

The Construction Industry Inquiry Group (CIIG)

The Inquiry was undertaken by the Construction Industry Inquiry Group (CIIG) made up of a range of stakeholders from construction businesses, trade bodies, trade unions, local authorities and the Fair Work Convention to look at the key challenges to delivering fair work in the construction industry in Scotland.

The Inquiry focused on the experience of fair work by the workforce and how fair work practices can be improved.

Why Construction?

The construction industry is important to the Scottish economy providing 5.1% of the jobs in Scotland.¹ These jobs exist in every community and construction plays a fundamental role in communities and society by building schools, homes, hospitals, offices and other vital infrastructure, supporting every sector of the economy.

The construction industry in Scotland is worth around £7 billion. The public sector is a significant customer with an annual spend of more than £4 billion on building or civil engineering works.² While emissions from the built environment and construction currently account for around 40% of total national emissions, construction is also at the forefront of the transition to a net zero carbon economy.³ In the coming years significant investment to decarbonise the built environment will be needed and the construction workforce will need to expand to support retrofit activities. This is a key moment to drive transformational change in the construction industry, supporting fair work and creating positive outcomes for employers and workers, and delivering Scotland's wider social and economic ambitions.

¹ ONS (2020), Business Register and Employment Survey (BRES)

² Scottish Government (2021), [Public sector procurement: Construction procurement](#)

³ CITB (2021), [Building Skills for Net Zero in Scotland](#)

Fair Work in Construction – The Current Picture

Compared to other industries, construction is heavily labour-intensive and characterised by long and complex supply chains. Large contractors operate a hollowed-out model, employing relatively small numbers of people directly and instead act as procurement or contract managers and rely on a range of sub-contractors. Sub-contractors are usually smaller, often specialist, businesses who play a key role in employment and training, providing apprenticeships and routes into the industry.

Agency workers and workers employed by umbrella companies provide additional labour to supplement a declining directly employed workforce. These workers support construction companies to manage spikes in work, late changes in contract scope, weather slippages, and holiday and sickness cover. Agency workers are an important part of the labour force and the quality of agency employers is increasingly relevant to the overall fair work picture. Umbrella companies are associated with agency work but represent a further lengthening of the employment relationship and deploy a business model that can present specific problems for workers.

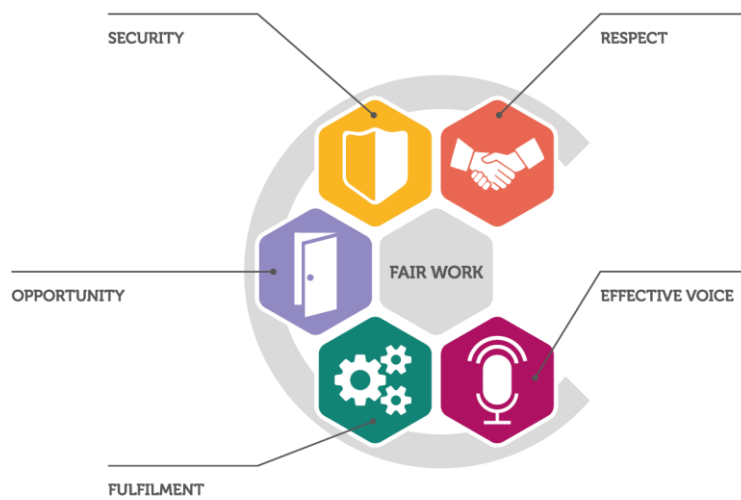
Construction has an ageing workforce, with an estimated 50,000 workers likely to retire in the next 10 years.⁴ It is heavily male-dominated, with work that is often project-based, temporary and seasonal. Perceptions of the industry can be negative but there are many examples of good practice of fair work in construction. It is also an industry that must attract large numbers of workers in the coming years and CITB has estimated that an extra 26,250 new workers are needed by 2025.⁵

The Inquiry recognises that there is a range of practice in the industry and that many employers have already taken steps to embed fair work in their businesses. This Inquiry aims to identify areas where fair work can be strengthened, along with positive practice that can be built upon. Ultimately the purpose of the Inquiry is to identify practical and tangible actions that can be taken to support positive outcomes for the workforce that will in turn impact on the performance of the industry and the quality of what it delivers.

Improving fair work in all parts of the construction supply chain and supporting recruitment, retraining and upskilling will be key to delivering positive outcomes for workers and employers in construction and meeting the challenges of coming years.

⁴ Skills Development Scotland (2020), [Climate Emergency Skills Action Plan 2020-2025: Key Issues and Priority Actions](#)

⁵ CITB (2021), [Building Skills for Net Zero in Scotland](#)



Security

Security at work in the construction industry in Scotland is limited for a significant minority of workers by insecure contracts, lower pay and income variation alongside concerns over future employability.⁶ The experience of agency workers, umbrella company workers or the self-employed is commonly worse than for those in direct employment but there is also some evidence of deteriorating experiences for directly employed workers.⁷

Self-employment makes up 23.5% of the construction workforce⁸ and can at times be 'bogus' to lower tax bills and/or to reduce costs for the employer by depriving the worker of basic employment rights. Construction workers can also be employed by umbrella companies or payroll companies which can be associated with greater insecurity and low wages with more likelihood of variable income due to deductions and late payments. Umbrella company workers can struggle to access basic employment rights like holiday pay and sick pay, despite having employee status. While no specific data is available on the prevalence of umbrella companies, the Inquiry noted that many construction businesses have policies in place to avoid their use, recognising the specific harms that they can cause workers.

More positively, construction workers enjoy higher than average rates of pay. Median pay for full-time employees in the construction industry is £29,055, compared to £26,007 across all sectors.⁹ Despite this, there is widespread concern from both workers and unions in the industry about real wage decline over time. This may in part arise from greater exposure to other expenses/costs (travel, accommodation and subsistence) compared to workers in other sectors.¹⁰ Wages for younger workers can often be low, with average apprenticeship wages in construction below the real living wage.¹¹

⁶ SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

⁷ SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

⁸ ONS (2021), Annual Population Survey Jan-Dec 2020

⁹ ONS (2021), [Annual survey of hours and earnings: 2021](#)

¹⁰ SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

¹¹ BEIS (2020), [Apprenticeship Pay Survey 2018/19: Scotland report](#)



Opportunity

Construction is a male-dominated industry. In 2020, 85% of the construction workforce were men and 15% were women.¹² The gender split in construction has remained largely unchanged since 2009. People from a minority ethnic background make up only 1.6% of the workforce in construction compared to 4.3% for the workforce as a whole.¹³ 5.9% of workers in the construction industry were non-UK nationals in 2020, compared with 9.2% for Scotland as a whole.¹⁴ The proportion of workers with a disability in the construction sector (10.5%) is less than the proportion across all sectors (13.4%).¹⁵ 8.1% of workers in construction worked part-time, compared with 26.2% of all workers in Scotland.¹⁶ There is a long hours culture in construction with limited access to flexible working.

There are complex questions when considering how to improve equality within the industry with both perceptions of the industry and genuine constraints around the nature of work and how it is organised acting as barriers to achieving a more diverse workforce. Yet, construction is in need of workers and increasing diversity of the workforce and supporting effective pathways into, and through, the industry will be essential in the next ten years.



Fulfilment

Opportunities to train can be limited within construction. Only 52% of construction employers reported offering training in the previous 12 months¹⁷ and fewer than 20% of construction workers reported being offered opportunities to train.¹⁸ Added to this, 23.5% of the workforce are self-employed and many more work through agency or umbrella contracts.¹⁹ Workers on such contracts will need to source and pay for their own training and face a loss of income while attending courses, potentially impacting the uptake of training opportunities. Collective agreements can be used to support training in the sector. For example, the National Agreement for the Engineering Construction Industry (NAECI) places requirements on employers to ensure employees' skills are updated.

¹² ONS (2021), Annual Population Survey, Jan-Dec 2020

¹³ ONS (2021), Annual Population Survey, Jan-Dec 2020

¹⁴ ONS (2021), Annual Population Survey, Jan-Dec 2020

¹⁵ ONS (2021), Annual Population Survey, Jan-Dec 2020

¹⁶ ONS (2021), Annual Population Survey, Jan-Dec 2020

¹⁷ Scottish Government (2020), Employers Perceptions Survey, 2019

¹⁸ ONS (2020), Annual Population Survey, 2019

¹⁹ ONS (2021), Annual Population Survey Jan-Dec 2020

Opportunities to advance within careers and move into senior roles often appear limited to workers within the construction industry.²⁰ With an increase in graduate entry to senior roles in construction pathways for advancement for the existing workforce may feel more limited, even where those opportunities exist.

The workforce implications of the transition to net zero mean that effective training, upskilling and continued professional development is essential and the workers in all parts of the industry will need to be supported effectively to access training and reskilling opportunities.



Respect

While a common perception of the construction industry is that work is relatively strenuous and dangerous, health and safety on sites is an area where significant progress has been made in recent years. The rate of self-reported illness caused or made worse by work (3,520 per 100,000 workers) is similar to the average across all industries (3,400 per 100,000 workers) and has been relatively stable since 2004 (when data collection began). The leading type of self-reported illness in the construction industry in 2019/20 was musculoskeletal disorders, accounting for 47% of all working days lost due to work-related illness. Despite this in 2019/20, there were 40 fatal injuries to workers in the construction industry in Great Britain. Over the past five years, on average 47% of deaths were due to falls from height, suggesting that more progress still needs to be made.²¹

While respect for physical wellbeing has improved, there is evidence of verbal abuse, bullying and harassment in the industry with some workers reporting that their employers did not deal with this issue effectively.²² Trade unions highlighted that workers were often fearful of raising bullying and harassment concerns. There is also a growing awareness of mental ill-health in the industry much of which is associated with workplace cultures and the absence of aspects of fair work. A recent report by CITB found that the risk of suicide among some site-based male construction workers was three times the national average and among skilled finishing trades, such as painters and plasterers, was twice the national average. The report also found that key triggers of poor mental health in construction were:

- working away from home and frequent travelling.
- occupational stressors.
- heavy workloads and long working hours.
- job insecurity.²³

Improving fair work outcomes within the industry should therefore support more positive mental health outcomes for workers in construction.

²⁰ SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

²¹ HSE (2021), [Construction statistics in Great Britain: 2021](#)

²² SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

²³ CITB (2021), [Mental Health and Construction: A Coordinated Approach](#)



Effective Voice

The Labour Force Survey estimates that unions are present in around a third of workplaces and that 17.6% of construction employees in Scotland are currently trade union members. Construction has a range of sectoral agreements that are used to set terms and conditions and to support standards. Collective bargaining agreements in construction are estimated by the Labour Research Department to cover around 85,000 workers or around 62% of the employed workforce.²⁴

Many of the agreements have existed for decades and were born out of a need to prevent walk-offs, to provide certainty around costs for large-scale projects and to manage competition for labour due to wage differentials between sites. They continue to renew themselves, being renegotiated on an agreed schedule to meet the changing needs to the industry. While the biggest of the agreements – the Construction Industry Joint Council (CIJC) – appears to be in decline,²⁵ the structure and potential for collaborative working remains and, if effectively supported, could play a key role in supporting the industry to meet future challenges and fully embed fair work.

The legacy of blacklisting in the industry continues to impact relationships. Construction workers report a reluctance to be seen to consult with unions for fear of blacklisting and the loss of future employment. Progress has been made on the confidence of the workforce to raise health and safety issues but there appears to be a hesitancy to raise other issues on sites such as bullying and harassment.

Dealing with the legacy of blacklisting, improving confidence among the workforce and improving relations between unions and employers is a requirement to build better fair work outcomes in the construction industry.

²⁴ Labour Research Department (2021), [Scotland's Collective Bargaining 2021](#)

²⁵ Labour Research Department (2021), [Scotland's Collective Bargaining 2021](#)



Creating Change: Procurement

How public procurement is undertaken has the potential to impact the nature and the shape of the industry by incentivising or mandating fair work outcomes, supporting skills and maintaining standards. It is a key tool for driving better outcomes given that public procurement represents around 50% of all construction spend in Scotland. Significant action has already been taken to build fair work criteria into contracts but approaches vary. The Inquiry found that:

- the balance between price and quality in procurement contracts is important, with a strong industry perception that low price bids have been necessary to win tenders.
- no single system for scoring or assessing fair work within procurements has developed.
- fair work weightings can be as low as 2% with the average in our study being around 5%.
- there is limited evidence of monitoring, audit or follow-up by contracting authorities to ensure that any commitments made by contractors as part of the tendering process are implemented in practice.
- there are examples of fair work clauses having meaningful impact on outcomes for workers where they are monitored and enforced. However community benefit clauses were more likely to be effectively monitored than general fair work commitments.
- despite well-written fair work guidance, evidence to the Inquiry suggests that understanding of fair work by project commissioners and managers was inconsistent, particularly with reference to the specific context of the construction industry.
- there are a range of mechanisms to promote fair work through procurement- fair work weightings are only one element. Clearer connections between fair work, community benefit and mandatory and discretionary exclusions could support better outcomes.
- there is currently a strong focus on the Real Living Wage (RLW) within fair work guidance. In the context of construction the RLW tends to represent a pay rate that is lower than collectively agreed rates and 92% of the workforce already earns above it.²⁶ Promoting collectively agreed rates is therefore more important than promoting the RLW within construction.
- legal advice to this Inquiry has found that in a post-Brexit context there is no legal impediment to including collectively bargained rates or the RLW as a contract condition within procurement. The Scottish Government has already announced that companies bidding to win Scottish Government contracts will have to pay the RLW. Similar mechanisms can therefore be included for collectively bargained rates in construction.

²⁶ ONS (2021), [Annual survey of hours and earnings: 2021](#)

- there is a need for fair work to be implemented throughout the supply chain and a strong desire for mechanisms that are consistently applied and that create a level playing field for contractors.

The Inquiry Group makes the following recommendations:

Procurement			
	Recommendation	Owner	Timeframe
1	All contracting authorities should seek to maximise quality weightings and fair work criteria should be given a robust weighting within the quality dimension. Fair work weightings should not be lower than 10% of the contract and it must be possible for low scores on fair work to impact whether a tender is won or lost.	All Contracting Authorities	Within each tender and reviewing frameworks as they arise
2	Training in fair work should be mandatory for all project commissioners and managers overseeing construction contracts. Training should be provided by those who have demonstrable expertise on fair work and support an understanding of what constitutes positive and stretching fair work commitments by contractors.	All Contracting Authorities	All staff should be trained by Jan 2024.
3	Guidance should be reviewed to ensure it supports the use of collectively bargained rates within procurement contracts and short best practice guidance should be developed for construction procurement that highlights positive examples of fair work practice in the construction industry. Current wording around avoiding the use of umbrella companies should be retained.	The Scottish Government	As soon as possible and before Dec 2022
4	Contracting authorities should set an expectation that trade unions have access to workplaces on all public construction contracts in line with the aspiration of the HS2 approach. Access should be facilitated throughout the supply chain.	All Contracting Authorities Lead Contractors Trade Unions	With each procurement
5	Guidance should be updated to make clearer the connections between fair work, sustainable procurement duties, community benefits and discretionary and mandatory exclusions. The guidance should support more use of discretionary	The Scottish Government	Immediate

	exclusions when a contractor or sub-contractor has breached its labour law obligations.		
6	All contracting authorities should include adherence to relevant collectively bargained pay rates as a condition of contract. Introducing this as a clause within industry standard form contracts is an efficient, proportionate and transparent way to implement this and to ensure that it is applied throughout the supply chain.	All Contracting Authorities	Immediate
7	In every contract in which fair work questions were asked at the framework stage, tender stage or both, effective contract management by the contracting authority must take place to ensure that the response provided by the contractor is delivered in practice.	All Contracting Authorities	Immediate
8	All contracting authorities should be signatories to a Fair Work Charter collectively agreed with employers and trade unions. The Scottish Government should also facilitate the appropriate industry leadership group/forum, in negotiation with trade unions, to develop a single charter that sets out principles for advancing fair work in the industry. The single Fair Work Charter should then be used as a pass/fail condition within all construction procurement exercises in Scotland to ensure appropriate fair work standards are applied throughout the supply chain.	All Contracting Authorities An Industry Leadership Group / Forum Trade Unions	Each Contracting Authority to have an agreed charter by Jan 2023 A single charter should be agreed by 2024



Creating Change: Strengthening Effective Voice

Effective voice is key to delivering all other dimensions of fair work. Leadership structures that support social dialogue have an important role to play in ensuring positive relationships and supporting positive outcomes for workers and employers. Organisational structures, collective agreements and voluntary agreements all have a vital role to play in encouraging positive practice in workplaces and creating the working environment necessary for all workers to enjoy fair work outcomes. The Inquiry found as follows.

- Construction Scotland and the Construction Leadership Forum both appear to act as leadership groups for the industry facilitated or supported by the Scottish Government but they do not all reflect the diversity of stakeholders in the industry. The Construction Leadership Forum is an example of more inclusive practice that should be built upon.
- Effective industry leadership requires participation of all relevant stakeholder groups. Government has a crucial role in creating such architecture where unions, employers' organisations and businesses of different sizes and experiences have a voice.
- There is a range of sectoral collective bargaining agreements in construction covering an estimated 85,000 workers or 62% of the employed workforce.²⁷ Together these agreements create a set of minimum standards that could be applied across the industry.
- Collective agreements are the most effective voluntary method to support minimum standards in the industry, because once they are agreed and adopted they provide legally enforceable rights and obligations for the workforce and the employer.
- The legacy of blacklisting remains within the industry and active steps will need to be taken to change workers' perceptions that contacting their union or raising concerns with their employer will put their future income at risk. Employers and unions need to work together and government, contracting authorities and other public bodies should support and facilitate this change.

²⁷ Labour Research Department (2021), [Scotland's Collective Bargaining 2021](#)

The Inquiry Group therefore makes the following recommendations:

Strengthening Effective Voice			
	Recommendation	Owner	Timeframe
9	All existing industry level groups including Construction Scotland and the Construction Leadership Forum should include balanced membership from a range of stakeholders including trade associations, professional bodies, federations and smaller employers. All such groups should also include balanced representation from trade unions.	The Scottish Government Construction Scotland	Immediate
10	The relationship between each of the industry leadership groups should be clarified and the Scottish Government's interaction with each group clearly articulated.	The Scottish Government	Immediate
11	All industry leadership groups should seek opportunities to support, through voluntary agreement, collaborative working, and mandatory approaches where possible including: <ul style="list-style-type: none"> • greater use of collective agreements; • trade union access to workplaces; • the use of fair work charters; • the use of collective dispute resolution procedures on large-scale complex projects giving faster remedy to the workforce. 	All Industry Leadership Groups and Forums	Immediate and ongoing
12	The issue of disputes resolution should be considered in all large-scale public contracts before work begins on-site. The contracting authority, lead contractor and relevant trade union should work together to agree an appropriate and mandatory dispute resolution process that all parties on-site must adhere to. This could be through existing collective agreements or through a standalone procedure, for example a procedure backstopped by ACAS.	All Contracting Authorities Lead Contractors Trade Unions	With each large-scale project



The Future of Construction

The construction industry is at a moment of change. In the next ten years it faces an ageing workforce and skills shortages and must meet the challenges associated with delivering a net zero carbon economy. Skills Development Scotland (SDS) estimates that an additional 79,100 workers will be needed in construction by 2029²⁸ and extensive upskilling and retraining of the existing workforce will be required to support the decarbonisation of the built environment. This is also an opportunity to transform the workforce, creating higher-skilled roles, more diversity and equality and building in modern methods of construction, and new ways of working. The Inquiry found that:

- skills and training in construction are demand-led and there is currently little demand for low carbon technologies, meaning few construction workers currently have the skills to support the transition to net zero.
- certainty of funding from the Scottish Government will support the industry to undertake effective skills and workforce planning.
- new ways of working and modern methods of construction have the potential to transform the industry and offer new opportunities to the workforce but currently modernisation is, at times, associated with deskilling in the industry.
- collective agreements may need to be updated to effectively support new ways of working and improved equality and diversity.
- changes to apprenticeships in 2017 and the removal of registration with federations are undermining collective agreements, reducing apprenticeship pay, and are associated with deskilling in the industry.
- apprenticeships should continue to prepare workers for careers in construction and employers should be supported to take on apprentices. Good practice examples show that it is possible to support employers to take on apprentices and offer high quality training even when they offer narrower more specialised job roles.
- there are low numbers of women, ethnic minorities and disabled workers.
- there is an issue around mental wellbeing for the current workforce. The drivers of mental ill-health for the current workforce include factors relating to unfair working practices.
- evidence to this Inquiry suggests that bullying and harassment are currently under-reported within the industry.
- unions have a key role to play in supporting diverse workers in construction, reducing isolation and supporting workers in addressing any concerns they may raise.
- Glasgow City Building and Royal Strathclyde Blindcraft Industries demonstrate that better equality outcomes are possible where inclusive recruitment practice and ongoing support for apprentices is prioritised.

²⁸ Skills Development Scotland (2020), [Climate Emergency Skills Action Plan 2020-2025: Key Issues and Priority Actions](#)

- apprentice recruitment practice is often informal and only small numbers of construction apprenticeships are advertised on www.apprenticeships.scot
- the construction industry in Scotland needs to be proactive in creating a positive environment where modern slavery cannot take root, including engagement with unions and sharing intelligence between employers.

The Inquiry Group therefore makes the following recommendations:

The Future of Construction			
	Recommendation	Owner	Timeframe
13	Employers should better engage with existing collective agreements, and unions and trade associations should be prepared to work together to ensure collective agreements support new ways of working and equality, covering elements like flexible working, mental health and maternity issues. The Scottish Government should facilitate unions, employers and trade associations to work together to support effective modernisation within the industry through the collective bargaining structures that already exist.	Employers Unions Trade Associations/ Federations / Professional Bodies The Scottish Government	By 2023
14	The Construction Leadership Forum should support development of an effective workforce strategy to facilitate the transition to net zero carbon economy. Workforce planning must consider how to support workers through peaks and troughs in demand.	Construction Leadership Forum	By 2023
15	All public funding supporting the transition to net zero should include fair work conditionality and drive fair work in the industry.	The Scottish Government All public bodies	With each funding stream
16	Public sector bodies and construction employers at all parts of the supply chain should increase their use of direct employment and support upskilling and retraining to support high quality careers in the industry and improve attraction and retention. Support for direct employment should also reinforce a commitment never to use umbrella companies.	Construction Employers of all sizes All public bodies	Immediate
Apprenticeships			
17	The Scottish Government should work with SDS, SQA and CITB to reinstate the need to register with trade associations / federations and employers should be required to pay collectively bargained rates as part of the apprenticeship agreement, as was the case prior to 2017.	The Scottish Government	Immediate

18	<p>SDS should take action to support apprenticeship pay including by:</p> <ul style="list-style-type: none"> conducting a review of current apprenticeship pay in construction and publishing the findings; reviewing all documentation to ensure that it promotes and encourages collectively bargained rates or, where these are absent, the real living wage and consistent messages are offered to both apprentices and employers. 	SDS	By September 2022
19	Continued funding and support should be provided for the Fair Work Apprenticeship Coordinator role, which has been valuable for supporting the Effective Voice of apprentices.	The Scottish Government	Ongoing
20	SDS should ensure there is full and consistent partnership working between SDS, SQA, CITB, trade unions, employers and trade associations/federations in agreeing apprenticeship frameworks, with an aim to see all construction apprentices trained to SVQ level 3 (SCQF Level 6) or above.	SDS	Immediate
21	SDS to work with CITB, employers, trade associations/ federations and trade unions to develop principles for taking forward a shared apprenticeship scheme successfully and in line with fair work principles.	SDS	By Dec 2022
Equality, Diversity and Inclusion			
22	<p>Scottish Government, through the Construction Leadership Forum, should convene a working group that includes employers, trade associations/federations, trade unions, SDS and CITB to address skills and labour shortages and future labour needs in the industry and to promote the opportunities that exist within the industry. This group should aim to:</p> <ul style="list-style-type: none"> work with employers to identify a pipeline of vacancies and future skills needs; define clear skills pathways required to support the transition to a net zero economy, including for workers who are changing careers; work to ensure clear recruitment processes and platforms are available to employers and support employers to access them; create dedicated advertising campaigns encouraging young people and older workers to consider careers in the industry; 	<p>The Scottish Government</p> <p>Construction Leadership Forum</p>	Advertising Campaign to launch in 2023

	<ul style="list-style-type: none"> take action to improve diversity in the industry building on good practice examples such as at Glasgow City Building and Royal Strathclyde Blindcraft Industries. 		
23	<p>Employers should support a zero tolerance approach to bullying and harassment at the workplace protecting workers from adverse treatment and employers from potential liability. Embedding a safe culture for reporting must come from the top of the organisation. Employers of all sizes must focus on:</p> <ul style="list-style-type: none"> their internal procedures by providing clear and transparent reporting mechanisms, processes for investigation and management training to identify and take seriously issues of bullying and harassment. encouraging and supporting workers to raise any concerns, without fear of retribution. ensuring that no detriment arises for workers who raise concerns. highlighting external support mechanisms like collective agreements or dispute mechanisms. 	Construction Employers of all sizes	Immediate
24	<p>Unions should provide support mechanisms and dedicated networks for under-represented groups in construction to combat the isolation that workers can feel at work or on training schemes. Employers, trade associations and other relevant actors should signpost to these networks and any dedicated officers who can offer support.</p>	Trade Unions	Immediate
25	<p>Contracting authorities should require participation in the Gangmasters & Labour Abuse Authority's construction protocol within large-scale procurement projects.</p>	All Contracting Authorities	With each large-scale procurement

Conclusion

It is crucial that the actions of Scottish Government and other public bodies and agencies – either in procurement, in skills or in investment – support fair work outcomes. The construction industry faces many challenges but encouragingly the building blocks for collaborative working and supporting skills, standards and fair work in the industry all still exist.

To make fair work a reality for all in the industry, government and other public agencies must support the existing collective agreements and promote their use and effective implementation. Recognising, valuing and using these agreements and collaborative and inclusive ways of working in the industry will help us support fair work and modernisation within construction and also achieve Scotland's net zero carbon targets.

The Convention will work with public authorities, employers, trade associations and trade unions to monitor, on an ongoing basis, the adoption and implementation of all of the recommendations within this report.

The Inquiry Group also makes one final recommendation:

Monitoring Outcomes for Workers			
	Recommendation	Owner	Timeframe
26	The Fair Work Convention should return to this Inquiry after five years to examine how well recommendations have been adopted and evaluate the industry against the fair work outcomes within this report.	Fair Work Convention	2027



Introduction

The Convention's remit is to promote and advocate fair work across the economy and to advise Scottish Ministers on fair work. Our vision is that Scotland will be a leading Fair Work Nation by 2025 where fair work drives success, wellbeing and prosperity for individuals, businesses and society. The Fair Work Convention began its Inquiry into the construction industry in March 2020. Construction was selected due to the importance of the industry to the Scottish economy, the role it plays in developing critical social and economic infrastructure and a range of concerns around fair work.

The Fair Work Convention established a Construction Industry Inquiry Group (CIIG) to lead the inquiry. The CIIG brings together a range of stakeholders from construction businesses, trade bodies, trade unions, local authorities and the Fair Work Convention.

Objectives of the Construction Inquiry

The Inquiry proceeded over two years with the following key objectives:

- (1) to consider the current worker experience and identify key issues and actions required to ensure that fair work is delivered.
- (2) to examine the commissioning and procurement process in relation to public sector construction projects and how these can support fair work in the industry.
- (3) to strengthen effective voice and to identify effective dispute resolution mechanisms.
- (4) to develop recommendations for Ministers, public sector bodies and other industry actors to strengthen fair work.

A key starting point for the inquiry was research on workers' experience in construction undertaken by the Scottish Centre for Employment Research and the Fraser of Allander Institute at the University of Strathclyde. During the inquiry the CIIG also heard evidence from a range of businesses and public, private and third sector organisations with an interest in the construction industry. The inquiry held a range of themed meetings on procurement, skills, equality, Brexit, modernisation of the industry, and rural issues.

The purpose of the inquiry is to identify what can be done to strengthen fair work in the construction industry. Supporting and enhancing fair work will have positive outcomes for the workforce but is also critical to businesses in better delivering effective modernisation and reaching the wider social and economic ambitions of the industry.



1. Construction: The Current Picture

The construction industry is important to the Scottish economy, providing work in every community and plays a vital role supporting communities and society by building schools, homes, hospitals, offices and other vital infrastructure, supporting every sector of the economy. Understanding, supporting and transforming the construction industry in Scotland will be essential to meet Scotland's economic and social ambitions, including the transition to a net zero economy and becoming a Fair Work Nation by 2025.

1.1 The Economic Contribution of the Construction Industry in Scotland²⁹

The construction industry is very valuable for the Scottish economy. Prior to the COVID-19 pandemic, in 2019 the construction industry generated 11% of Scotland's economic output.³⁰ Research commissioned by Construction Scotland in 2020 estimates that for every £1 spent on construction output a further £2.94 is generated in the economy while construction exports were worth £125 million, 0.4% of Scotland's total international exports.³¹

The industry is diverse with a range of sub-sectors, but splits mainly into the construction and repair of buildings, civil engineering and specialised construction activities. Building construction has the highest turnover, while specialised activities accounts for the greatest share of employment.³²

Comparing the structure of the construction industry in Scotland to the UK highlights that infrastructure spending is particularly important within Scotland, accounting for over a fifth of work, compared to a UK figure of 14%. Scotland also has a higher level of public housing output (7%) compared to the UK (3%).³³ These figures highlight the importance of public spending and the role it can play in shaping the industry in Scotland.

In 2020, total employment in construction in Scotland was 130,000 (5.1% of all jobs).³⁴ By comparison, construction accounts for 4.9% of all jobs across Great Britain. This figure includes all workers paid directly from the businesses' payroll(s), and does not include any agency workers paid directly from an agency payroll.

23.5% of people working in the construction industry were self-employed, compared with 11.6% for Scotland as a whole. 76.5% of people working in construction were employees.³⁵ These figures are derived from the Annual Population Survey and the

²⁹ Figures presented in this section are taken from a number of sources in order to give as full a picture as possible of work in the sector. Note that in some cases figures do not sum across sources, or cannot be directly compared.

³⁰ Scottish Government (2021), [Scottish Annual Business Statistics 2019](#)

³¹ Scottish Government (2021), [Export statistics Scotland: 2019](#)

³² Scottish Government (2021), [Scottish Annual Business Statistics 2019](#)

³³ CITB (2020), [Construction Skills Network: Labour Market Intelligence Report](#)

³⁴ ONS (2020), Business Register and Employment Survey (BRES)

³⁵ ONS (2021), Annual Population Survey: Jan-Dec 2020

split between employees and self-employed is based on the survey respondent's own assessment of their employment status.

The volatile nature of the industry and instability in the supply chain has led to insolvency for some large main contractors, the consequences of which have been catastrophic, with widespread job loss and a negative economic impact on businesses further down the supply chain³⁶. Construction leads the top 10 UK industries in terms of number of insolvencies, with 3,202 in 2018.³⁷

A key feature of the construction industry is long and complex supply chains. The industry is marked by large contractors who operate a hollowed-out model, employing relatively small numbers of people directly, instead acting as procurement or contract managers and relying on a range of subcontractors. Subcontractors are usually smaller, often specialist, businesses, and play a key role in the industry in terms of employment and training. Agency workers and workers employed by umbrella companies provide additional labour to supplement a declining directly employed workforce. Improving fair work in all parts of this supply chain will be key to delivering positive outcomes for workers in the industry.

1.1.1 Characteristics of the Industry

In the construction industry in Scotland in 2020:

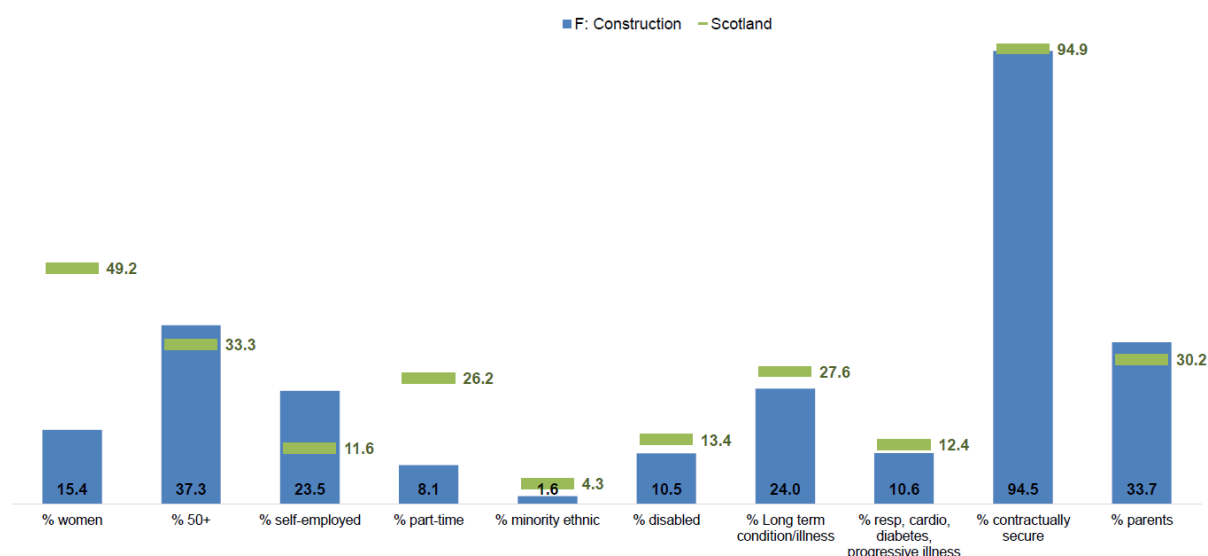
- 84.6% of workers were men and 15.4% were women.
- 37.3% of workers were over 50 years old compared with 33.3% for Scotland as a whole.
- 67.7% of the construction workforce were 35 years old or older; which was older than Scotland's workforce overall, where 65.1% of the workforce are in this age range.
- 1.6% of workers in the construction industry were from a minority ethnic background compared with 4.3% of minority ethnic workers in Scotland as a whole.
- 10.5% of workers in the construction industry were disabled compared with 13.4% for Scotland as a whole.
- 33.7% of workers in the construction industry were parents of children aged 16 or younger, compared with 30.2% for Scotland as a whole.
- 6.0% of employees in the construction industry were women with dependent children (aged 0-16), compared with 15.4% for Scotland as a whole.
- 5.9% of workers in the construction industry were non-UK nationals compared with 9.2% for Scotland as a whole.
- 94.5% of employees in construction aged 18+ had a permanent contract, lower than for Scotland overall (94.9%).
- 8.1% of those working in the construction industry worked part-time, compared with 26.2% for Scotland as a whole.³⁸

³⁶ BCTG Construct (2018), [Supervisory Skills Gaps within the UK Construction Industry](#)

³⁷ ONS (2018), [Construction statistics, Great Britain](#)

³⁸ ONS (2021), Annual Population Survey: Jan-Dec 2020

Chart 1 - Proportion of People in Employment by Key Measure (%), F: Construction and Scotland

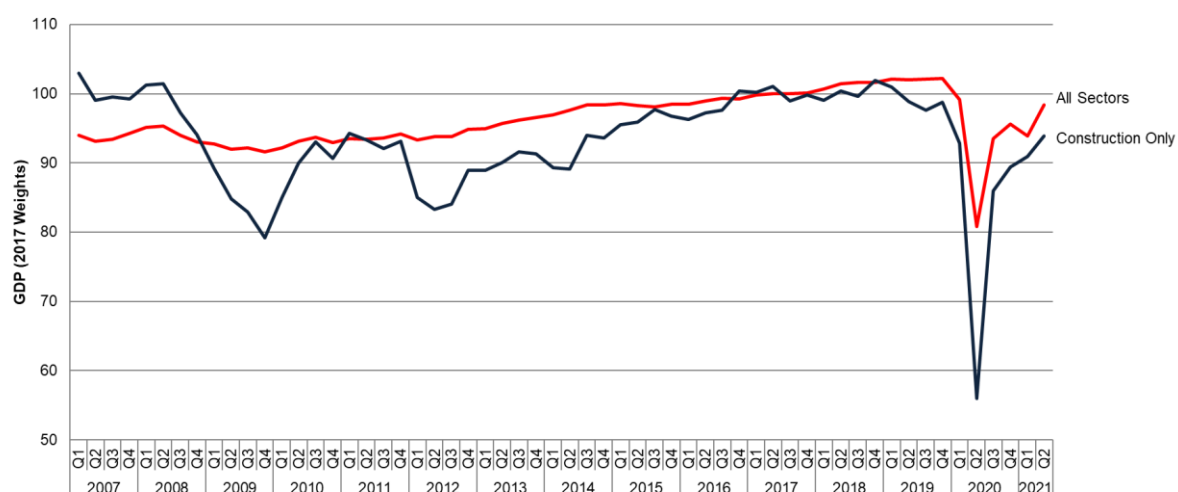


Source: ONS, Annual Population Survey: Jan-Dec 2020.

1.1.2 Impact of COVID-19

The construction industry has faced a range of challenges as a result of the COVID-19 pandemic - in the second quarter of 2020 construction was largely shut down in Scotland for all but essential projects. The industry now shows signs of recovery.

Chart 2 - Scottish Quarterly GDP Index (2017=100)



Source: Scottish Government

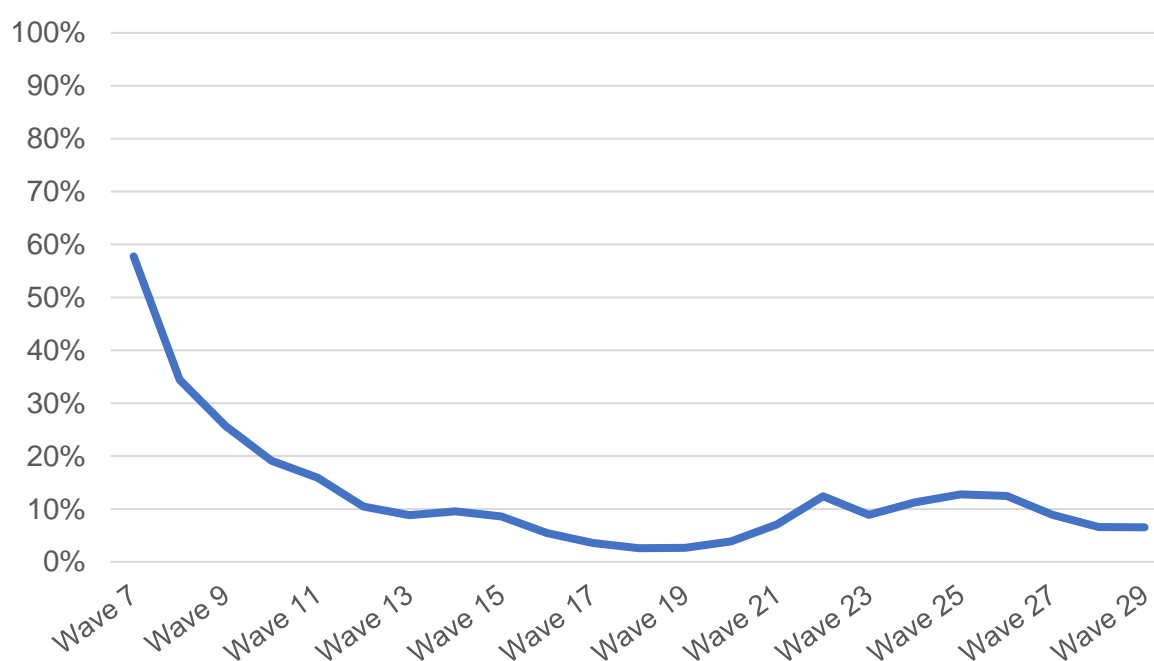
Output in Scotland's construction sector expanded by 3.3% in 2021 Q2 compared to the previous quarter. On an annual basis, output in the construction sector expanded by 67.8% comparing the latest quarter (2021 Q2) with the same quarter a year

previously (2020 Q2) – note that this significant increase reflects the impact of the COVID-19 pandemic and the ensuing national lockdown in Spring 2020.³⁹

In 2021 Q2, the output of the Scottish economy as a whole expanded by 4.7% compared with the previous quarter (2021 Q1). On an annual basis, comparing the latest quarter (2021 Q2) with the same quarter a year previously (2020 Q2), the economy expanded by 21.7%.⁴⁰

In the early stages of the pandemic, a significant proportion of workers in the construction industry in Scotland were on furlough – almost 60% of workers in June 2020 (Wave 7). Following this period, and as restrictions were relaxed, the proportion of workers on furlough leave fell considerably. There was a spike in December 2020 (Waves 21 and 22) and moving into the first quarter of 2021 (when approximately 10% of workers were on furlough), with levels subsequently falling once more.⁴¹ The construction industry also accounts for the highest numbers of claims under the Self-Employment Income Support Scheme. A quarter of all claims made under the scheme to June 2021 came from self-employed workers in construction in Scotland, significantly higher than the next highest industry, transport and storage (12%).⁴²

Chart 3 - Proportion of Workforce on Furlough in the Construction Sector



Source: ONS - BICS, Scotland Estimates

³⁹ Scottish Government (2022), [Estimates of Quarterly GDP](#)

⁴⁰ Scottish Government (2022), [Estimates of Quarterly GDP](#)

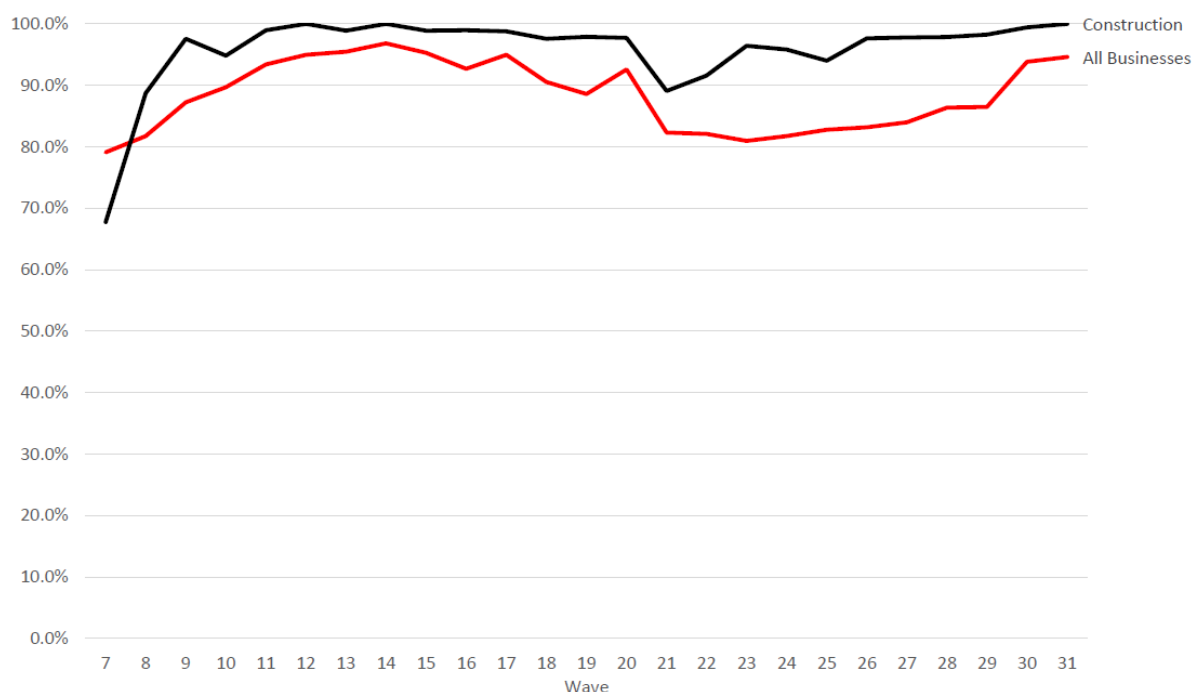
⁴¹ ONS (2022), Business Insights and Conditions Survey (BICS), Scotland Estimates

The Business Insights and Conditions Survey (BICS) is a UK-wide fortnightly business survey, published by the Office for National Statistics (ONS), that captures businesses' responses on how their turnover, workforce, prices, trade and business resilience have been affected by the COVID-19 pandemic over two week reference periods. The results in this note relates to data up to and including wave 47 of the survey. Wave 47 covers the 2 week period 29th December 2021 to 9th January 2022.

⁴² HMRC (2021), [Self-Employment Income Support Scheme statistics: July 2021](#)

At the height of the pandemic, many construction businesses in Scotland were unable to trade.

Chart 4 – Share of Businesses that are Currently Trading Over Time (waves of BICS)

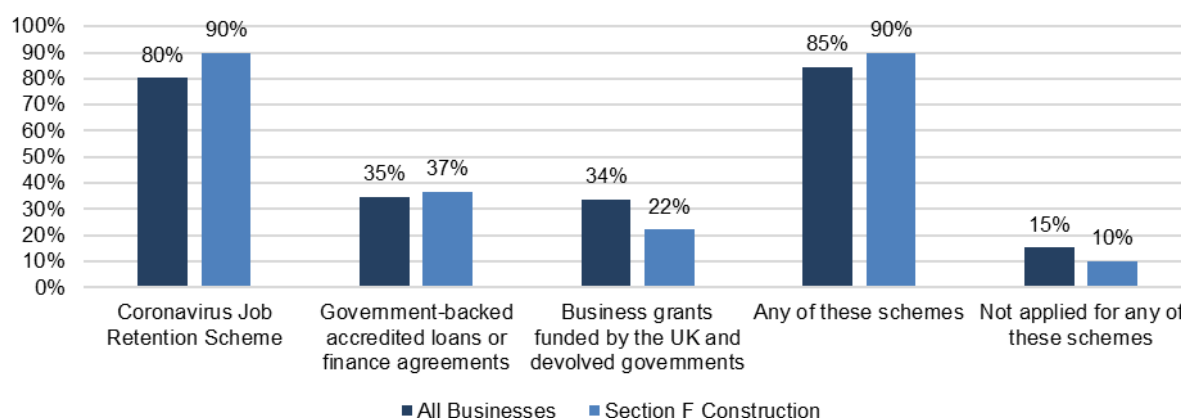


Source: ONS - BICS, Scotland Estimates

In June 2020, when initial lockdown measures were still in place, 68% of construction firms with a presence in Scotland were trading, below the average for all sectors (79%). This was the lowest point of activity for the construction sector as relaxation of restrictions commenced. As a result businesses in the construction sector were more likely to continue to trade across all waves of the survey compared to all businesses in Scotland. Almost all (99.4%) of construction firms surveyed were trading in the most recent wave (29th December 2021 to 9th January 2022) of the survey.

Chart 5 shows that at Wave 16 (covering the period 19 October to 01 November 2020), most (90%) businesses in the construction sector had applied to the Coronavirus Job Retention Scheme (CJRS), higher than the average for all sectors (80%). 22% of construction firms applied to business grants funded by the UK and devolved governments, below the average for all sectors (34%).

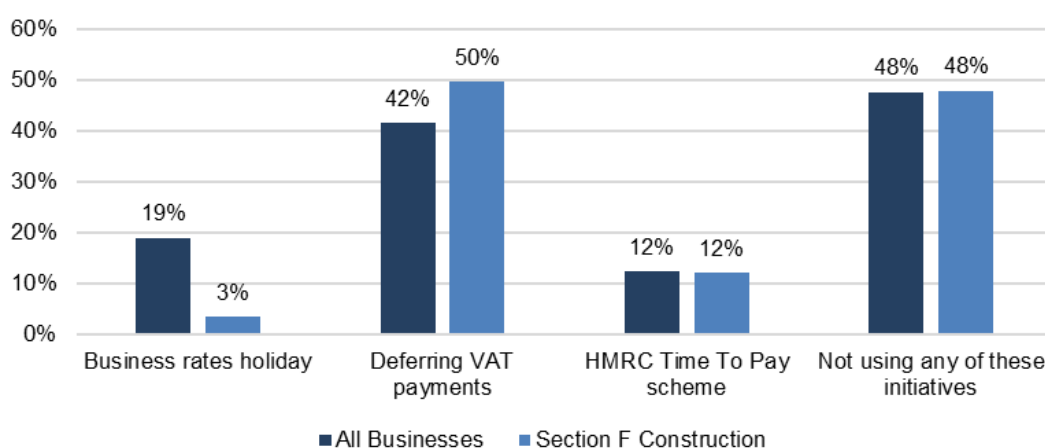
Chart 5 - Businesses Applied for COVID-19 Support Schemes, Oct-Nov 2020



Source: ONS - BICS, Scotland Estimates (Wave 16)

As Chart 6 highlights, 50% of construction businesses deferred VAT payments compared to 42% of all businesses with a presence in Scotland. Fewer construction firms than average benefited from the business rates holiday initiative.

Chart 6 - Businesses Using COVID-19 Initiatives, Oct-Nov 2020



Source: ONS BICS, Scotland Estimates (Wave 16)

Generally, the construction industry felt severe impacts at the onset of the pandemic; however, since easing of restrictions in Summer 2020 it has recovered to a greater degree than many of the worst affected industries. More recent restrictions have not impacted the industry to the same degree as in, for example, accommodation and Food, or Arts, Entertainment and Recreation. Nonetheless, the COVID-19 pandemic has exposed a range of challenges facing the industry. Health and safety concerns, support for apprenticeships and early career entrants and shortages around skills, labour supply and building materials are creating ongoing pressures.

1.2 Previous Reviews and Inquiries in Scotland

There have been three major inquiries into the construction industry in Scotland in the last 10 years. These are: an inquiry led by Robin Crawford into public sector procurement⁴³ for the Scottish Government which reported in October 2013; an inquiry by the Economy, Energy and Fair Work Committee of the Scottish Parliament⁴⁴ in 2019 which considered the future of the construction industry; and a Report of the Review Panel on Building Standards Compliance and Enforcement led by Professor John Cole⁴⁵ which was made in June 2018. Additionally, there was an earlier inquiry by Professor Cole into the construction of Edinburgh schools which reported in 2017.⁴⁶

These key reports have all sought to examine specific issues within the industry and, while each has taken a different focus, there are a range of complementary themes and recommendations including those on procurement, leadership building standards and diversity within the industry. Yet progress on these agendas has been limited, and many of the issues dealt with in these earlier reports remain ongoing concerns.

The 2013 Crawford Review on public sector procurement made a range of recommendations on how procurement could be improved including calling for a post of ‘Chief Construction Advisor’ who would champion a public procurement reform process, work with industry and the public sector and act as a conduit between industry and ministers.⁴⁷ In addition, the Crawford Review also made a series of recommendations around procurement, community benefit clauses and late payment and identified several issues for the industry itself to consider including around ‘suicide bidding’, supporting shared apprentices and wider training and embracing new technologies and modern methods of construction.

The Scottish Parliament Economy, Energy and Fair Work Committee’s 2019 Inquiry considered the progress made in the industry following the Crawford Review and ongoing issues that would need to be addressed in order to support the future of the industry. The inquiry was wide-ranging and considered issues from access to finance, to procurement, to skills development and career pathways, to infrastructure and land management. The inquiry made a range of detailed recommendations including restating the need for a ‘Chief Construction Advisor’ and ultimately concluded that better leadership in the industry was important for making progress across the range of issues identified.

‘There are long-standing challenges within the industry and these have been highlighted by the Committee. We believe it is time for industry to embed best practice and take ownership for driving change. We have heard that there is innovative work being undertaken around off-site manufacture and new skills frameworks, but industry-wide more leadership is needed on collaboration and coordination. Without such leadership, enduring challenges around procurement,

⁴³ Scottish Government (2013), [Review of Scottish public sector procurement in construction](#)

⁴⁴ Scottish Parliament (2019), [Under Construction: Building the future of the sector in Scotland](#)

⁴⁵ Scottish Government (2018), [Building standards compliance and enforcement review: Report](#)

⁴⁶ CIOB (2017), [Report of the Independent Inquiry into the Construction of Edinburgh Schools](#)

⁴⁷ Scottish Government (2013), [Review of Scottish public sector procurement in construction](#)

*access to finance, innovation and the sector's cultural image continue to act as barriers to progress.'*⁴⁸

The 2017 Cole Report looked at the construction of Edinburgh schools, in light of the collapse at Oxfords primary school. The report made a range of detailed recommendations for a variety of actors but it also made explicit links between construction failings and the absence of fair work practices. This report noted:

*'Another issue raised in discussion about the quality assurance of sub-contractors was the influence of the way in which individual bricklayers were paid. It has become commonplace over recent years, with the increasing demise of bricklayers being permanent employees of main contractors, that payment is on the basis of the number of bricks laid or square metres of wall completed in a day. The bricklayer is not normally paid anything extra for the incorporation of wall ties, corner ties, bed joint reinforcement or head restraints. The more complicated and numerous the accessories to be fitted the longer it takes and the less bricks are laid, reducing the earnings for that day.'*⁴⁹

The Cole Report went on to recommend:

'The Inquiry is of the view that, given the widespread nature of similar defective construction across the 17 PPP1 projects, undertaken by bricklayers from different sub-contracting companies, and from different squads within these companies, there is clear evidence of a problem in ensuring the appropriate quality in this fundamental area of construction. It is therefore recommended that the construction industry should re-examine its approach to recruitment, training, selection and appointment of brick-laying subcontractors, means of remuneration, vetting of qualifications and competence, supervision and quality assurance of bricklayers.'

The Review Panel on Compliance and Enforcement undertook a further inquiry into building standards in 2018 in light of significant numbers of newly constructed public buildings in Scotland having defects in the construction of masonry walls and fire stopping. This was complemented by a second inquiry at the same time led by Dr Paul Stollard on fire safety in light of the tragedy in Grenfell Tower. The Review Panel on Compliance and Enforcement in Scotland concluded that greater emphasis needed to be placed in building standards systems on the verification of practice rather than solely the design of new buildings. The review ultimately concluded that:

*'There is a need for a culture change within the Building Standards system, which requires both verifiers and applicants to fully understand and deliver on their responsibilities. Culture change can be achieved through education and training of individuals that enables them to do their work effectively, but it is also necessary to have corporate commitment to change. A common goal of compliance with the Building Standards should be a requisite of any project.'*⁵⁰

⁴⁸ Scottish Parliament (2019), [Under Construction: Building the future of the sector in Scotland](#)

⁴⁹ CIOB (2017), [Report of the Independent Inquiry into the Construction of Edinburgh Schools](#)

⁵⁰ Scottish Government (2018), [Report of the Review Panel on Building Standards Compliance and Enforcement](#)

From these reports and inquiries a picture emerges of a range of long-standing concerns within the industry around procurement, late payment, access to finance, perceptions of the construction industry, health and safety and building standards.

Concerns around fair work are deeply bound with the challenges identified in these earlier reports and inquiries and by taking a fair work approach it is possible to make progress on the range of long-standing issues in the industry. The subject of industry leadership and the need for culture change was raised to a greater or lesser degree in each of these reports and was considered throughout this Inquiry.

It should be noted that both Construction Scotland and the Construction Leadership Council in the UK have recognised the need for change in the industry. Construction Scotland developed an industry strategy from 2019-22 and in response to the pandemic the Construction Leadership Forum developed a Recovery Plan incorporating actions from the Construction Scotland strategy including actions around fair work.

The Construction Leadership Council's Report into Future Skills of the Industry in the UK recognises the relationship between realising the future ambitions of the industry and the need for fair work and higher levels of direct employment. It calls for, *'clients to agree to a code of employment where those who contribute to a project are directly employed, thereby ensuring that it is in the employer's best interest to train their staff and benefit from their improved productivity'*.⁵¹

It also goes on to acknowledge the urgency with which change is needed.

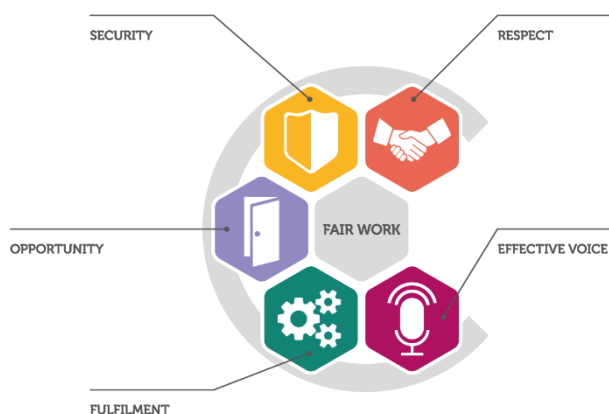
'The mandate for change for the UK construction sector is clear, with the industry facing an acknowledged skills crisis, a shortage of traditional trades, and an unfavourable demographic profile, (with circa 30% of the UK construction contracting workforce estimated to retire in the next decade), making the current labour-intensive traditional business model unsustainable.'

This Inquiry builds on these earlier reports by considering fair work issues and the perspective of the workforce, along with levers for change within the industry.

⁵¹ Construction Leadership Council (2019), [Future Skills Report](#)

1.3 Fair Work in the Construction Industry

In January 2020, the Scottish Centre for Employment Research (SCER) and the Fraser of Allander Institute (FAI) at the University of Strathclyde, commissioned by the Scottish Trades Union Congress (STUC), published a research report analysing fair work outcomes across the construction industry. The SCER & FAI report has formed a key piece of evidence for this Inquiry into Construction. The research incorporated industry level analysis and experience at the workplace level through primary and secondary data collection. This research comprised three stages: an evidence review, union focus groups and interviews; and a workforce survey that explored the experience of working in construction. The purpose of the research was to profile the economic contribution of the construction industry to the Scottish economy and identify key sectoral trends; to analyse the employment and work experience of workers; and to review and evaluate fair work in the industry using the Fair Work Framework.⁵²



While the small sample size and the over-representation of union members within the sample mean that the findings are not wholly representative, the research offers valuable insight into and analysis of the industry. The findings and general trends align with many of the views and experiences of CIIG members and the CIIG noted that the survey took evidence from trades people, a key group who are often difficult to reach. Using the SCER & FAI research alongside other key research reports and reflecting on evidence received throughout this Inquiry, it is possible to paint the following picture of fair work within the construction industry.

1.3.1 Security

Security of employment, work and income are important foundations of a successful life. The construction industry faces a range of issues associated with security including levels of self-employment and other non-standard employment and the transitory and sessional nature of work within the industry.

Security at work in the construction industry in Scotland is therefore limited for a significant minority of workers who face insecure contracts; lower pay; income variation, and; job insecurity, alongside concerns over future employability.⁵³ The SCER & FAI research identified that the experience of those workers not directly employed is commonly worse, raising concerns as to how any increase in self-employment or other non-standard forms of working, such as agency and umbrella contracts, may further reduce fair work in the industry. This research also indicated some deteriorating experiences for directly employed workers.

⁵² SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

⁵³ SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

Agency Work and Umbrella Companies

There is a high reliance on agency work within the construction industry. These workers support construction companies to manage spikes in work, late changes in contract scope, weather slippages, and holiday and sickness cover. Agency workers are an important part of the labour force and quality of agency employers is increasingly relevant to the overall fair work picture. At present, relevant survey data sample sizes are not sufficient to provide robust estimates of agency work.

The use of umbrella companies also known as payroll companies, is related to agency work and has expanded within construction in recent years driven primarily by changes in protections for agency workers and changes to tax law. It is difficult to quantify the scale of the use of umbrella companies as they do not appear as a distinct organisational grouping in official statistics and workers who work through umbrella companies are considered either directly employed as they are employees of the umbrella company or self-employed under the Construction Industry Scheme (CIS).

'I wait for a text every Friday to say if I will be working the following week. If I book a holiday and go away with my family there's a real chance that my place at work will be taken by another worker and I'll have no work. If I take a day off I might be replaced, if I call in sick I might be replaced, if I don't work every shift I'm offered, no matter how short noticed, I might be replaced.'

I pay an umbrella company up to £100 a week to get my own wages. I have no holiday pay, no sick pay, no unpaid holiday pay. I can't work anywhere else if there's no work for a few weeks. In the rail industry I can only have 1 sponsor. My 'holiday pay' is actually a % of my net income that's taken off, then when I get it back it's at gross, so is taxed twice. I also pay both employers and employees NI contributions.'

Unite member describing working for an umbrella company

Source: Unite the Union

Recent research from the Low Incomes Tax Reform Group of the Chartered Institute of Taxation considered the scale of the use of umbrella companies across the UK and estimated that around 600,000 workers are currently employed using this model and that 50% of all agency workers in the UK are now employed by umbrella companies.⁵⁴

According to Chartered Institute of Taxation umbrella companies became common in the construction industry in 2014 when rules around 'substitution clauses' in self-employment contracts were tightened which meant that agencies were no longer able to avoid PAYE obligations for workers on construction sites who had previously been deemed 'self-employed agency workers'. As a consequence of this change

⁵⁴ Low Incomes Tax Reform Group (2021), [Labour Market Intermediaries](#)

many agency workers in the construction sector found themselves transferred as a mass to umbrella companies as their agency did not run PAYE systems. Many umbrella companies now offer both PAYE and CIS systems for workers in the construction industry.⁵⁵

While the worker is an employee of the umbrella company, the umbrella company does not offer them any work. The role of finding work either falls to the individual worker or to an agency. The umbrella company will be paid by the client or the agency the 'umbrella company rate' which allows them to pay the worker their gross pay rate while also covering the employers' national insurance contributions, holiday pay, auto enrolment costs, the apprenticeship levy (where this applies) and the umbrella company's margin (which averages £5-£15 per worker per week but can be much higher).⁵⁶

Many issues arising from the umbrella company model are related to the setting or communication of the 'umbrella company rate'. At times workers believe the advertised 'umbrella rate' will be their rate of pay and then feel exploited by the level of reductions that are subsequently made to this rate.

In April 2020 it became a legal requirement for all umbrella companies to provide Key Information Documents that clearly set out all deductions and their impact on take home pay but the TUC notes that a large proportion of umbrella company employees do not receive these documents.⁵⁷ There are also examples of the 'agency rate' and the 'umbrella rate' being identical, raising questions around the legitimacy of deductions to the workers' pay slip. HMRC rules are clear that the worker cannot face deductions from their gross pay in order to cover the employer's National Insurance contributions.⁵⁸

Agencies can direct workers towards an umbrella company but they cannot oblige workers to agree to work for the umbrella company. In practice, however, the element of choice within the system may be limited for the worker and they may feel obliged to accept employment from the umbrella company in order to access work. Workers may also need to change between different umbrella companies as opportunities for work arise with different agencies, reducing in practice the stability in employment that this approach appears to offer.

Unions involved in the Inquiry highlighted concerns that workers in agencies or umbrella companies were often unable to access holiday or sick pay, at times this was associated with a fear of losing work while for others it was associated with limited support for longer term illnesses which led to dismissal for the worker even after long service. Unions also noted that agency and umbrella workers were less likely to receive collectively bargained rates of pay.

⁵⁵ Low Incomes Tax Reform Group (2021), [Labour Market Intermediaries](#)

⁵⁶ Temple, C. on Contractor UK. (Dec 2020), [Agency kickbacks: when contractors use their recruiter's PSL umbrella company](#)

⁵⁷ TUC (2021), [Umbrella companies: Why agencies and employers should be banned from using them](#)

⁵⁸ GOV.UK (2021), [Working through an umbrella company](#)

This aligns with evidence from a recent report from the TUC that considered the role of umbrella companies and highlighted the following concerns.

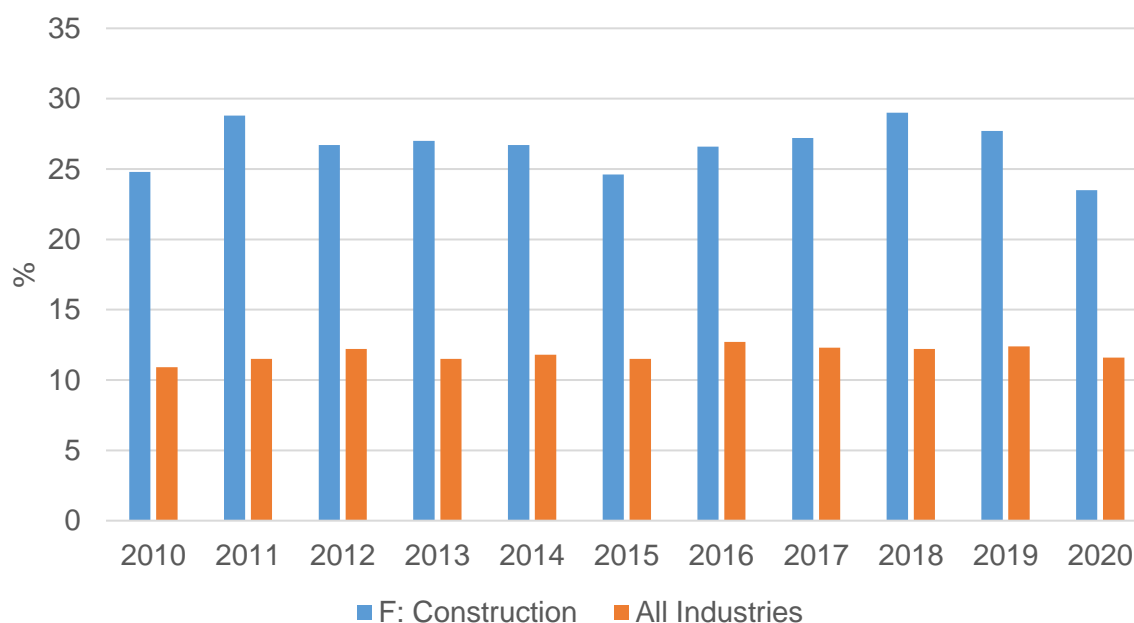
- Umbrella companies cause a multitude of problems for workers, ranging from confusion and misunderstanding about who the worker's employer is, to unwittingly embroiling workers in tax avoidance schemes.
- There is a lack of effective regulation in the sector. There are a few voluntary regulatory umbrella associations but there is no independent, regulatory authority setting, monitoring or enforcing standards.
- Potential benefits for workers are largely theoretical. Despite many workers being employees of the umbrella company, they didn't experience any of the 'employee' entitlements such as maternity leave and pay, redundancy pay, unfair dismissal protections and pay between assignments.⁵⁹

The Inquiry noted that many construction businesses have policies in place to avoid their use, recognising the specific harms they can cause workers.

Self-Employment

Self-employment plays a significant role in construction. As shown in Chart 7, self-employment now accounts for more than 23.5% of the construction workforce in Scotland, but this is the lowest level of self-employment recorded in the industry in the last ten years, with self-employment more typically sitting between 25%-29%.⁶⁰

Chart 7 – Self-Employment (16+) by Industry, 2010 to 2020, Scotland



Source: ONS, Annual Population Survey, Jan-Dec datasets

⁵⁹ TUC (2021), [Umbrella companies: Why agencies and employers should be banned from using them](#)

⁶⁰ ONS (2021), Annual Population Survey Jan-Dec 2020

Employment status in the Labour Force Survey, and therefore also in the Annual Population Survey⁶¹, is self-reported, with respondents classifying themselves as being either an employee or self-employed. Labour market flow estimates show that the recent increases in the number of employees and decreases in the number of self-employed people have been driven in part, by a movement of people from self-employed to employee status. Of those who move from self-employed to employee status, the number who had changed jobs has only increased slightly from normal levels. Consequently, some of the fall in self-employment comes from an increase in the number of people who have changed to classifying themselves as an employee, even though they have not changed jobs.⁶² To summarise: levels of self-employment have fallen from pre-pandemic levels, but these changes have been in part attributed to instances of self-employed people reporting that they are employees in order to access the Coronavirus Job Retention Scheme (CJRS) - which is affecting the continuity of the data.

There have been concerns for many years over ‘bogus self-employment’ in construction. This practice involves workers being incorrectly designated as ‘self-employed’, often to save money for major contractors in terms of tax and employment costs. It is made possible by the structure of UK employment law and widespread confusion amongst workers – and at times employers – regarding employment status, with many wrongly believing that self-employment can be designated by the employer or chosen by the worker rather than being a legally defined description of the employment relationship.

The key driver of bogus self-employment is tax law which reduces tax liabilities for both the employer and the worker. A self-employed worker also has no access to employment rights, like payment of the National Minimum Wage, access to sick-pay or annual leave. The Review of Modern Working Practices by Matthew Taylor recognised this issue and made recommendations to the UK Government on the need to support better understanding of employment status and to make the taxation of labour more consistent across employment forms while at the same time improving the rights and entitlements of self-employed people.⁶³

The Construction Industry Scheme (CIS) was originally devised by HMRC in the early 1970s as a reaction to tax being lost from self-employed workers in construction.⁶⁴ Under the Construction Industry Scheme (CIS), contractors deduct money from a subcontractor’s payments and pass it to HMRC. The deductions count as advance payments towards the subcontractor’s tax and National Insurance.⁶⁵

While the CIS supports HMRC to recover greater levels of tax revenue from the construction industry it does not deal with the issue of bogus self-employment, and may at times confuse the employment relationship further with self-employed workers under CIS receiving ‘pay slips’ noting the ‘employer’s tax reference’ from the contractor and receiving some tax deductions at source.⁶⁶ Confusion around self-

⁶¹ Note: Annual Population Survey data is derived from the quarterly Labour Force Survey

⁶² ONS (2021), [Employment in the UK: April 2021](#)

⁶³ GOV.UK (2017), [Good work: the Taylor review of modern working practices](#)

⁶⁴ Low Incomes Tax Reform Group (2021), [Labour Market Intermediaries](#)

⁶⁵ GOV.UK (2021), [Construction Industry Scheme \(CIS\)](#)

⁶⁶ Low Incomes Tax Reform Group (2021), [Labour Market Intermediaries](#)

employment was exposed during the COVID-19 crisis with reports of workers in construction unaware that they were self-employed until they were unable to be furloughed.

Zero Hours Contracts

The use of zero hour contracts is limited in construction with latest official statistics for July-September 2021 suggesting that 0.9% of the UK's construction workforce are on zero hours contracts, compared to 3.1% across all sectors⁶⁷. However, many umbrella company workers effectively find themselves on zero hour or very short hour contracts with no obligation on their employer, the umbrella company, to provide them with work.

Pay

Median pay for full-time employees in the construction industry is £29,055, compared to £26,007 across all sectors⁶⁸ - one of the positive areas for the industry in fair work terms. As Chart 8 notes, however, pay rates for young workers in the industry can be quite low, with average apprenticeship wages in construction below the Real Living Wage (RLW).⁶⁹ 92% of employees aged 18 or more in the construction industry in Scotland were estimated to be earning at least the RLW (£9.50 per hour) in 2021, compared to 85.6% across all sectors.⁷⁰

Intelligence from unions suggests that low-skilled labourers, umbrella and agency workers, along with apprentices are the employees most likely to earn below the RLW. It should also be noted that full-time working of 35 hours predominates in the industry and levels of part-time work and underemployment have been comparatively low.

'Pay rates with my employer are not the best. Was clearing more money 10 years ago. Morale among workers is low. Bit higher than average hourly rate but no bonus, travelling time and time and a half only kicks in after 10 hours work instead of 8. Also no paid breaks. All in all shocking'

Worker

Source: SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

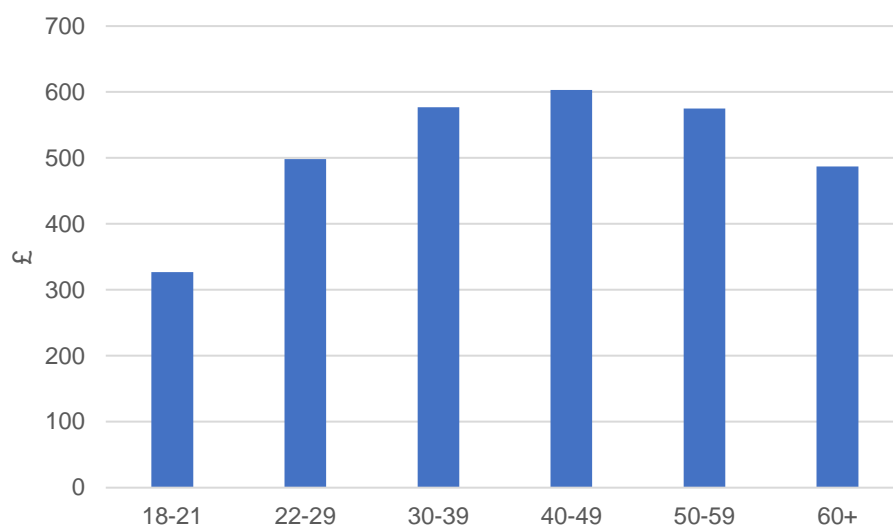
⁶⁷ ONS (2021), [Labour market overview, UK: January 2022](#)

⁶⁸ ONS (2021), Annual Survey for Hours and Earnings (ASHE)

⁶⁹ BEIS (2020), [Apprenticeship Pay Survey 2018/19: Scotland report](#)

⁷⁰ ONS (2021), [Annual survey of hours and earnings: 2021](#)

Chart 8 - Weekly Pay in the Construction Sector by Age, UK, 2020



Source: ONS, Annual Survey of Hours and Earnings (ASHE)

The SCER & FAI research noted that there was widespread concern from both workers in the industry and unions of real wage decline over time. Construction workers surveyed were more likely to report difficulties in making ends meet than comparable UK survey respondents. This may in part arise from greater exposure to other expenses/costs (travel, accommodation and subsistence) compared to workers in other sectors.

The SCER & FAI research also found that those respondents not in direct employment (including self-employed workers, agency workers and those working through payroll companies / umbrella companies) were significantly worse off than their directly employed counterparts in a variety of ways. The first related to the nature of their contracts. They faced more contractual variation, shorter tenures, and greater exposure to redundancy or dismissal; they reported greater perceived and possible job insecurity, and were more worried about their own job security. The second related to their earnings. They faced more earnings variation; were less likely to be paid on time; were less likely to have access to sufficient hours of work; were less likely to have sick pay or holiday pay; more likely to feel financially insecure if they became ill; and were less likely to have travel, accommodation and subsistence expenses covered by their employer or contractor. The third related to their perceptions of the industry, specifically that developments in the industry were reducing job security and stability.⁷¹

Security of work impacts on all other dimensions of fair work. Workers who have secure permanent work are more likely to report greater access to training, have higher levels of safety and be more able to raise concerns, having effective voice on sites.

⁷¹ SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

1.3.2 Opportunity

The opportunity dimension of fair work refers to the ability to access and progress in work. The construction industry faces a range of demographic pressures and skills shortages which mean attracting workers to the industry is essential in the coming years. 37.3% of the construction workforce in Scotland is aged 50+, compared to 33.3% across all sectors.⁷² Skills Development Scotland (SDS) also estimate that around 50,000 construction workers will retire by 2029.⁷³ Added to this there are a range of long-standing skills shortages in the industry. The Scottish Building Federation currently report shortages of plumbers, heating engineers, plasterers and other key workers in the industry.⁷⁴ Vacancy rates in construction have also risen by 45% on pre-pandemic levels.⁷⁵

Construction is predominantly male-dominated with high levels of occupational segregation. In 2020/21, 84.1% of the workforce in construction were men and 15.9% were women.⁷⁶ The gender split in the construction industry has remained largely unchanged since 2009.

While the proportion of the Scottish workforce who are from a minority ethnic background has been increasing from 3% in 2011 to 4.3% in 2020, those from a minority ethnic background make up only 1.6% of the workforce in the construction industry. 5.9% of workers in the construction industry were non-UK nationals in 2020, compared with 9.2% for Scotland as a whole.⁷⁷ In 2018, the ONS carried out analysis of the construction industry between 2014 and 2016 and found that 9,000 workers in Scotland (4% of the industry) were non-UK-born. Of these 39% were EU8-born, 24% were EU15-born (excluding the UK) and 35% were from the rest of the world.⁷⁸

The same study noted that a higher proportion of non-UK nationals in the construction industry (56% or 120,000) across the UK were self-employed when compared with UK nationals (39% or 791,000).

⁷² ONS (2021), Annual Population Survey, Jan-Dec 2020

⁷³ Skills Development Scotland (2020), [Climate Emergency Skills Action Plan 2020-2025: Key Issues and Priority Actions](#)

⁷⁴ The National (2021), [Brexit shortages put Scotland's climate target at risk](#)

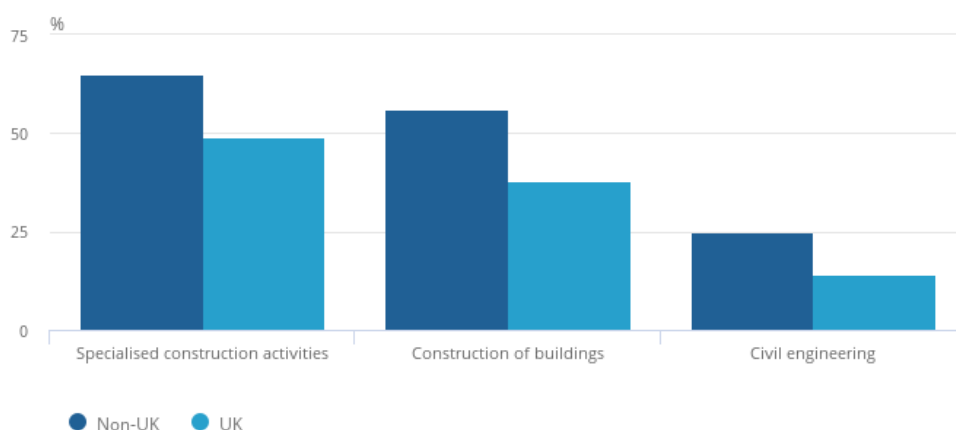
⁷⁵ ONS (2021), [Vacancies and jobs in the UK: August 2021](#)

⁷⁶ ONS (2021), Annual Population Survey, Jan-Dec 2020

⁷⁷ ONS (2021), Annual Population Survey, Jan-Dec 2020

⁷⁸ ONS (2018), [Migrant labour force within the UK's construction industry: August 2018](#)

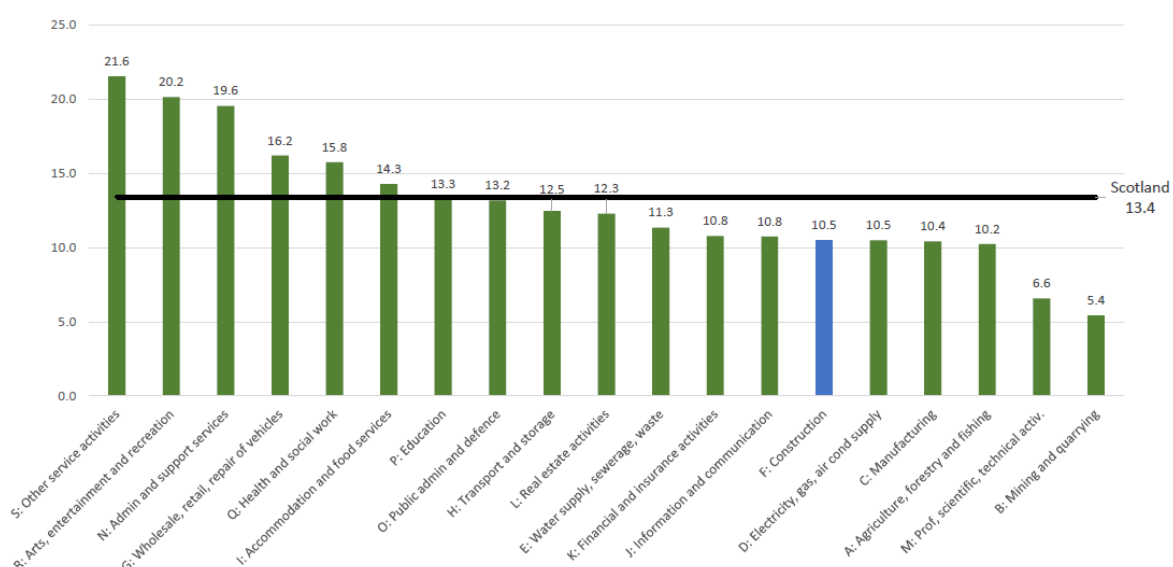
Chart 9 - Self-Employment by Sub-Sector and Nationality, UK and Non-UK, 2014-2016



Source: ONS, Annual Population Survey (APS) (three year pooled data set)

The proportion of workers with a disability in the construction industry (10.5%) is less than the proportion across all sectors (13.4%).⁷⁹ There is scope for the construction industry to become more accessible for disabled workers.

Chart 10 - Proportion of all in Employment in Sector who are Disabled (%), Scotland

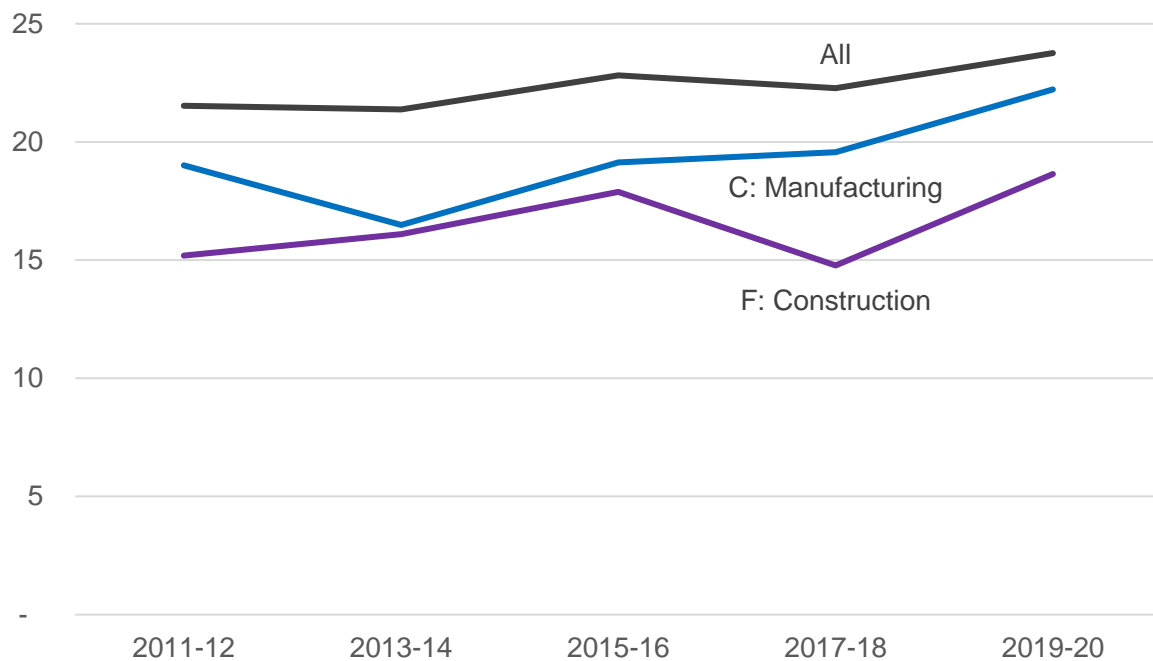


Source: ONS, Annual Population Survey (APS)

As Chart 11 shows, data around access to flexible working suggests that some flexibility is on offer. However, only 19% of workers report access to any form of flexibility. It should also be noted that this figure includes the use of annualised hours which is a practice that the Fair Work Convention is concerned is open to abuse and can leave the worker with insecure income on a month-by-month basis.

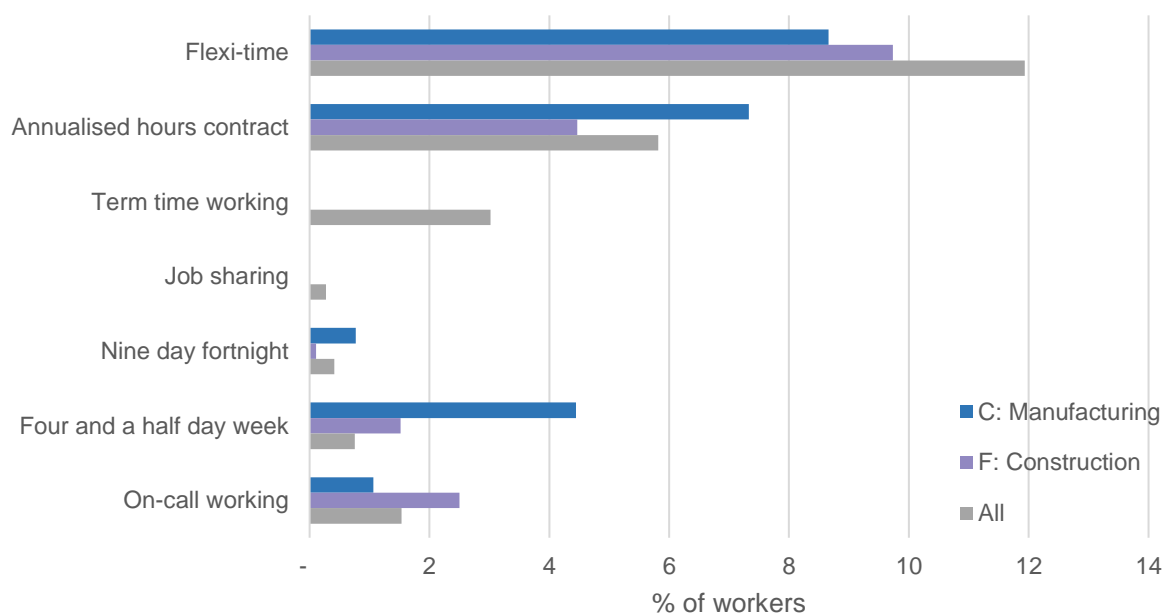
⁷⁹ ONS (2021), Annual Population Survey: Jan-Dec 2020

Chart 11 - Has Access to Flexible Working Arrangements (excl ZHC), Scotland, 2011-2020



Source: ONS, Labour Force Survey

Chart 12 - Type of Flexible Working Arrangements, Scotland, 2019-20



Source: ONS, Labour Force Survey

The construction industry is in need of workers and increasing diversity of the workforce and supporting effective pathways into and through the industry will be increasingly essential in the next ten years.

1.3.3 Fulfilment

All types of work at every level can be fulfilling where the tasks, work environment and employment conditions taken together are well aligned to the skills, talents and aspirations of the people who carry it out.

There are long-standing and well-recognised issues within construction around skills, skills accreditation and skills shortages. It should be acknowledged that the construction industry is a skilled industry and apprenticeships in Scotland are generally regarded as offering training to a high standard. Despite this there are concerns around deskilling, some of which is linked to the creation of lower-level qualifications to support narrower less skilled job roles, and some of which links to a lack of ongoing professional development and support for the maintenance of skills.

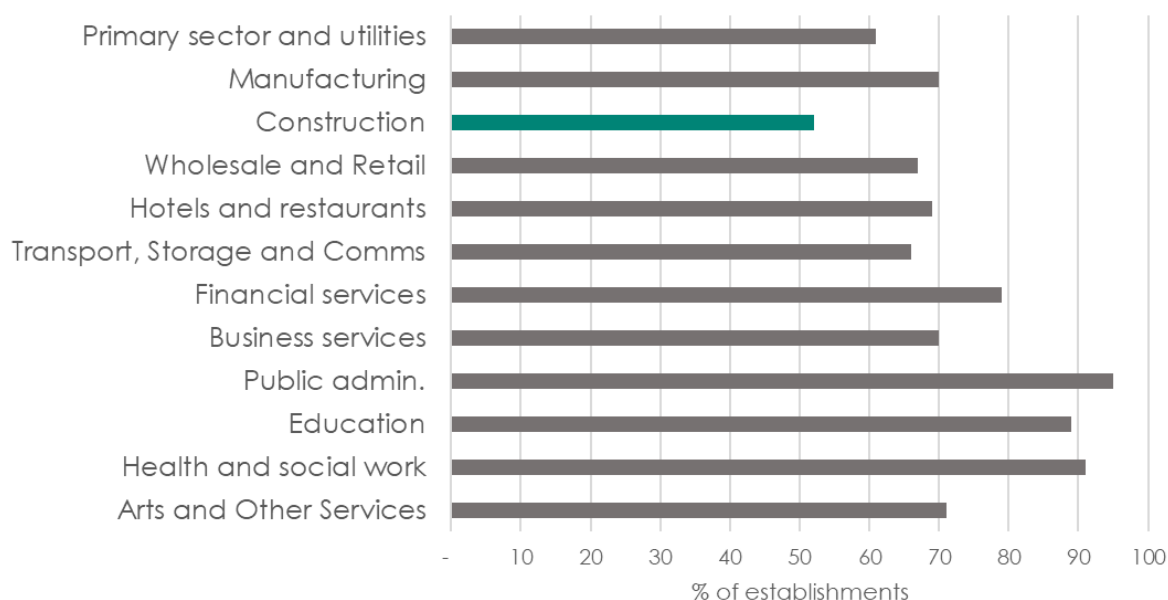
Chart 13 and Chart 14 below show that while 52% of construction employers reported offering training in the previous 12 months (both internal and external training), less than 20% of construction workers report being offered opportunities to train.

‘...very big problem with training. Fourteen years’ experience with one company I have just one training, cost from my own pocket. Lack of control over the fact that companies help employees in their personal development’

Worker

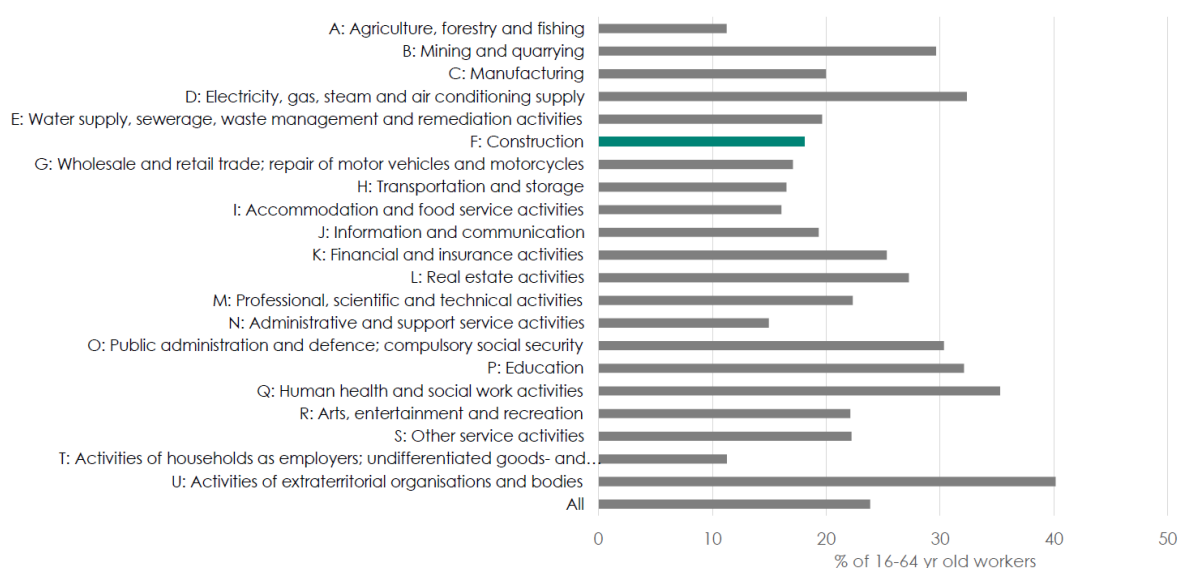
Source: SCER & FAI (2019), The construction industry in Scotland

Chart 13 – Employer-Provided Training, Scotland, 2019



Source: Scottish Government, Scottish Employer Perspectives Survey

Chart 14 - Workplace Learning, Scotland, 2019



Source: ONS, Annual Population Survey

The SCER & FAI research also notes that workers perceived a lack of progression opportunities within the industry and difficulties accessing training.⁸⁰ Equally the use of non-direct contracts limits training and ongoing professional development, with workers on these contracts required to source and pay for their own training and facing a loss of income when attending courses. With 23.5% of the workforce self-employed and many more working through agency or umbrella contracts, the impact of these forms of working on the uptake of any upskilling and reskilling opportunities is potentially significant. Collective agreements can be used to support training in the sector. For example, the NAEI places requirements on employers to ensure employees skills are updated.

To workers in the construction industry, opportunities to advance within their careers and move into senior roles often appear limited to workers within the construction industry. The SCER & FAI research noted that most workers did not have their performance formally appraised at work to support their career development and that while career opportunities into management did exist and supervisory roles, the perception of unions and the workforce was that these opportunities were rare.⁸¹ With an increase in graduate entry to senior roles in construction pathways for advancement for the existing workforce may feel more limited, even where those opportunities exist.

The workforce implications of the transition to net zero means that effective training, upskilling and continued professional development is essential. However, the evidence suggests that opportunities for continued training are becoming increasingly limited for the workforce.

⁸⁰ SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

⁸¹ SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

1.3.4 Respect

At its most basic, the respect dimension of fair work involves ensuring the health, safety and wellbeing of everyone. The respect dimension also considers issues around dignity at work and bullying and harassment but also goes beyond this to include dignified treatment, social support and the development of trusting relationships.

'In my 30 years in construction I have seen lots of changes, mostly positive especially regarding health and safety'

Worker

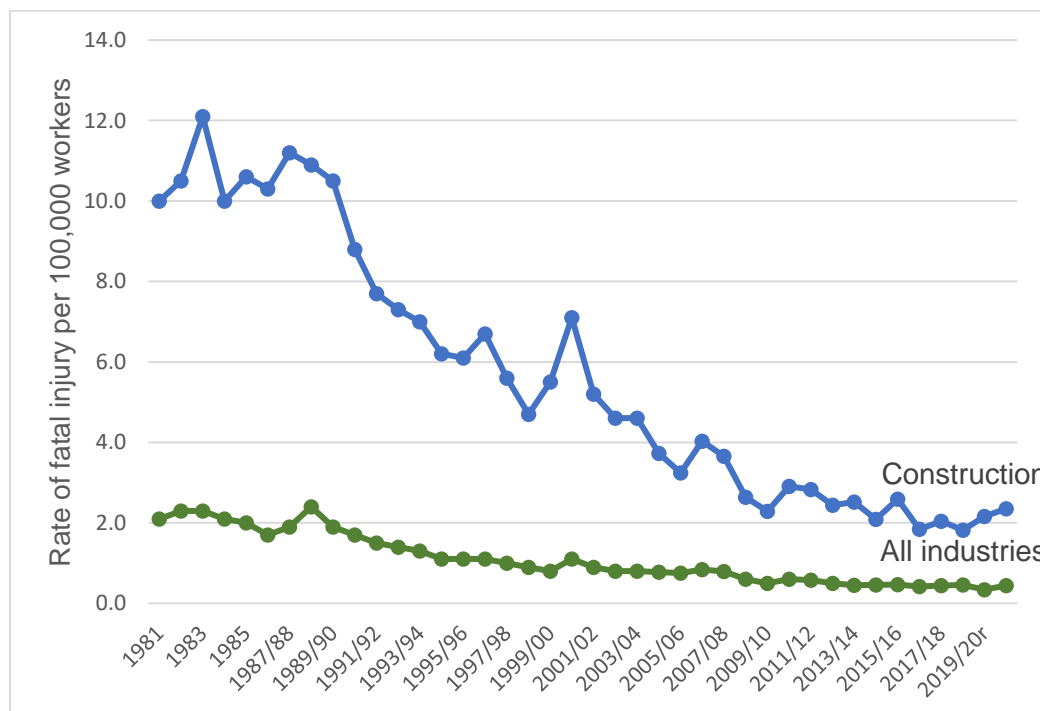
Source: SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

The perception of the construction industry is that the work is relatively strenuous and dangerous; yet health and safety on sites is an area where the construction industry has made significant progress in recent years.

As Chart 15 shows there has been a significant decline in fatal industries within construction. The rate of fatal injury in construction in 2020 was 1.64 per 100,000 workers. This was much lower than agriculture, forestry and fishing (7.73 per 100,000 workers) and water supply (4.18 per 100,000 worker) but it was still four times higher than average across all industries (0.42 per 100,000 workers).⁸²

In 2019/20, there were 40 fatal injuries to workers in construction in Great Britain. Over the past five years, on average 47% of deaths were due to falls from height, suggesting that more progress still needs to be made.

Chart 15 - Rate of Fatal Injuries in Construction



Source: RIDDOR, 1981 to 2019/20

⁸² HSE (2021), [Construction statistics in Great Britain: 2021](#)

The rate of self-reported illness caused or made worse by work (3,520 per 100,000 workers) is similar to the average across all industries (3,400 per 100,000 workers) and has been relatively stable since 2004 (when data collection began). The leading type of self-reported illness in construction in 2019/20 was musculoskeletal disorders, accounting for 47% of all working days lost due to work-related illness.⁸³

Despite the progress made there continues to be significant issues of concern within the respect dimension, particularly with regard to bullying and harassment. Respondents to the SCER & FAI research reported high incidents of verbal abuse, bullying and harassment, and humiliating treatment and behaviours compared to wider survey evidence, on the grounds of age, religion and nationality. A large minority reported that employers did not deal with this effectively, and workers subjected to these forms of treatment had a higher intention to quit the industry. Worryingly unions also reported that workers are reluctant to raise any concerns over bullying and harassment as they are fearful that it may affect their employment prospects.

Yet there is also a growing awareness of mental ill-health in the industry much of which is associated with fair work issues and cultures at the workplace. Addressing mental ill-health will require greater attention to eliminating bullying and harassment, and making progress on respect has a fundamental role to play in ensuring that the construction industry is a positive place to work and is seen as a desirable career option.

1.3.5 Effective Voice

Effective voice requires a safe environment where dialogue and challenge are dealt with constructively and where workers views are sought out, listened to and can make a difference. Effective voice underpins the other dimensions of fair work, and trade unions and collective bargaining structures are the strongest route of achieving effective voice.

The Labour Force Survey estimates that unions are present in around a third of workplaces and that 17.6% of employees in construction in Scotland are currently trade union members.⁸⁴

Construction has a range of sectoral agreements that are used to set terms and conditions and to support standards. Collective bargaining agreements in construction are estimated by the Labour Research Department to cover around 85,000 workers or around 62% of the employed workforce.⁸⁵

Many of the agreements have existed for decades and were born out of a need to prevent walk-offs, to provide certainty around costs for large-scale projects and to manage competition for labour due to wage differentials between different sites. They continue to renew themselves being renegotiated on an agreed schedule to meet the changing needs to the industry.

⁸³ HSE (2021), [Construction statistics in Great Britain: 2021](#)

⁸⁴ ONS (2021), Labour Force Survey, [Trade Union Statistics](#)

⁸⁵ Labour Research Department (2021), [Scotland's Collective Bargaining 2021](#)

The agreements therefore come from the industry and reflect its particular needs and pressures over time. While the biggest of the agreements the Construction Industry Joint Council (CIJC) appears to be in decline,⁸⁶ the structure and potential for collaborative working remains and if effectively supported could play a key role in supporting the industry to meet future challenges and fully embed fair work.

Blacklisting

In 2009 the Information Commissioner discovered a secret blacklist maintained by the Consulting Association, naming over 3,200 construction workers, overwhelmingly trade unionists. The information, built up over decades, was used by 44 of the largest construction employers in the UK to deny employment to those named.⁸⁷ These companies made significant financial investment in maintaining and accessing this blacklist and supplied information to keep it updated.

Blacklisting is illegal under a range of statutes, including the European Convention on Human Rights and subsequent anti-blacklisting legislation was passed at both a UK and a Scottish level in the wake of the scandal in construction.

In total construction firms have been forced to pay compensation of around £55 million to more than 1,200 blacklisted workers (when legal costs are included) and £230,000 as a contribution to a fund used to retrain trade unionists.⁸⁸

However, the impact of blacklisting still impacts on relationships within the construction industry. Construction workers continue to report a reluctance to be seen to consult with unions, for fear of blacklisting and the loss of future employment. While progress has been made on the confidence of the workforce to raise health and safety issues, there appears to be a hesitancy to raise other issues on sites like bullying and harassment.

Dealing with the legacy of blacklisting, improving confidence among the workforce and improving relations between unions and employers is a requirement to build better fair work outcomes in the construction industry.

From a fair work perspective there is significant and well-developed infrastructure that supports positive outcomes in the industry including a range of sectoral agreements. These are industry-designed and industry-led and support positive outcomes in the unique context that exists within construction. In many ways these mechanisms were created to take account of the fragmentation of the industry, the nature of seasonal work and the often transitory workforce, and were designed to ensure high skill levels and consistent standards across employers.

⁸⁶ Labour Research Department (2021), [Scotland's Collective Bargaining 2021](#)

⁸⁷ Labour Research Department (2021), Law at Work

⁸⁸ Labour Research Department (2021), Law at Work

[illegible]

strong skills pipeline will need to be increased and maintained. There is also a growing acceptance that these outcomes cannot be achieved without greater levels of direct employment, as noted within the recent Construction Leadership Council report.⁹¹ While the organisational landscape is complex and at times fractured, there are a range of key sectoral collective bargaining agreements which are already supporting positive outcomes in the industry which can be built upon to improve the overall picture.

The Inquiry also recognises that a range of practice exists in the industry and that many employers have already taken steps to embed fair work in their businesses. This Inquiry aims to identify areas where fair work can be strengthened, along with positive practice that can be built upon. Ultimately the purpose of the Inquiry is to identify practical and tangible actions that can be taken to support positive outcomes for the workforce. Improving fair work in all parts of the construction supply chain and supporting recruitment retraining and upskilling will be key to delivering positive outcomes for workers and employers in construction and meeting the challenges of coming years.



⁹¹ Construction Leadership Council (2019), [Future Skills Report](#)



2. Creating Change

The terms of reference for the Inquiry identified the procurement relationship as the main lever for the public sector to create or support change in the industry. The CIIG considered procurement in detail, undertaking two dedicated evidence gathering sessions and commissioning a mapping exercise to explore the practice carried out by contracting authorities and its real world impact. The CIIG also considered the impact of Brexit on the underpinning legislation and the scope that now exists for more stretching practice within procurement, taking specific legal advice on these questions. Section 4.1 considers current practice on fair work in procurement and how this can be strengthened. This section focuses on contractual mechanisms that place obligations on contractors which can be monitored and enforced by the contracting authority.

The CIIG also identified that in addition to procurement the public sector, and the Scottish Government in particular, can also facilitate change through voluntary measures encouraging and supporting improved relations and collegiate working within the industry. The fair work approach encourages social dialogue, voluntary agreement and the application of effective voice mechanisms, including collective bargaining agreements. Section 4.2 considers how these can be strengthened and how voluntary agreements between unions and employers, encouraged and supported through public sector practice can also make meaningful change in the industry.

The CIIG believes that both mandatory and voluntary mechanisms will be necessary to create change in the construction industry and that each approach can and should support and reinforce the other.

2.1 Procurement



2.1.1 The Importance of Procurement

The construction industry in Scotland is worth around £7 billion. The public sector is a significant customer with an annual spend of more than £4 billion on building or civil engineering works.⁹² How public procurement is undertaken has the potential to impact the nature and the shape of the industry by incentivising or mandating fair work outcomes, supporting skills and maintaining standards. It is therefore a key tool to support fair work outcomes.

The role and importance of procurement is well recognised. In 2018 Construction Scotland published a strategy for the construction industry. Within this they point to the central role that procurement policy can play in shifting the approach of the industry.

⁹² Scottish Government (2021), [Public sector procurement: Construction procurement](#)

‘Our vision for the industry is that, by improving the way we do business together, we become better equipped to respond to future demands efficiently and effectively. To achieve this transformation will, we believe, require a major shift in procurement approaches, towards long-term and collaborative relationships at all levels of the supply chain and ending the drive to lowest tender price. Such a change will enable all industry participants to have the resources (of information, time, skilled people, cashflow, tools and supply chain) to consistently deliver urgently required infrastructure to the required quality, on programme and within budget, whilst paying all its suppliers on time and its people appropriately. It will better enable the industry to make a reasonable return, appropriate to the risk of the work undertaken, and thus allow it to remain resilient and to invest in innovation and new technology, (including the digitisation of construction processes, modern methods of construction and offsite fabrication), whilst still being able to look after and maintain the fabric of our predominantly traditional building and infrastructure assets.’⁹³

The focus on ‘collaborative relationships’ and ‘ending lowest price tendering’ speaks to a core issue within the construction industry, many of the fair work issues identified in the previous chapter flow from the perception amongst contractors that they must reduce costs to facilitate low price tendering. The problems associated with this approach are well recognised with highly aggressive tendering causing not only a lack of investment in the workforce through outsourcing and the creation of complex employment relationships, but also a push down on building standards and an increase in other problematic practices for the supply chain like late payments or contract disputes. In this way price reductions have been achieved through price cutting rather than cost reduction.⁹⁴ The need to consistently win tenders in order to maintain cash flow and keep the business afloat drives a culture of lowest price tendering or even ‘suicide bids’ – where the contractor bids below the cost of the work – in an ultimately self-defeating cycle.

Evidence given to the 2019 Scottish Parliament Inquiry by Bruce Dickson, BAM Ltd on the collapse of Carillion, underlines both the structural weaknesses within this approach and the need for reform within procurement that despite multiple reviews continues to present challenges for the industry:

‘We have learned absolutely nothing from Carillion. It is interesting that you mentioned the procurement review, because I sat on the consultation committee from 2013. I then chaired the implementation group for industry, working with the Scottish Government and Scottish Futures Trust for another two years, and nothing changed. In relation to Carillion, I have spent probably the past 10 years waiting for a major UK contractor to go bust, to prove that the model is broken.’⁹⁵

⁹³ Construction Scotland Innovation Centre (2019), [The Scottish Construction Industry Strategy 2019 - 2022](#)

⁹⁴ UK Government’s Department for Business, Innovation and Skills (2013), [Supply chain analysis into the construction industry: report for the construction Industrial Strategy](#)

⁹⁵ Scottish Parliament (2019), [Under Construction: Building the future of the sector in Scotland](#)

Yet action has already been taken to prevent the award of contracts on the basis of lowest-price tendering and contracts in Scotland cannot be awarded on the basis of price alone. Significant steps have also been taken to identify abnormally low tenders and to ensure that contracts are not awarded on this basis. These issues were given significant focus in previous reviews along with the issue of late payment and support for smaller contractors within the supply chain.

Despite this, the view of the industry continues to be that most contracts are awarded primarily on price which incentivises a focus on lowest-price bids and aggressive competition between construction companies. The need to encourage more positive and collaborative relationships within the industry is well recognised and while business models are undoubtedly driven by decisions made within contractors, it is important to consider how procurement practices can be further enhanced to support and incentivise positive practice in the industry.

2.1.2 Current Statutory Requirements and Guidance Underpinning Fair Work in Procurement

The current framework for public procurement in Scotland is laid out in a range of key legislation including the Public Contracts Regulations 2015 (**the 2015 Regulations**); the Utilities Contracts (Scotland) Regulations 2016; the Concessions Contracts (Scotland) Regulations 2016; the Procurement Reform (Scotland) Act 2014 (**the 2014 Act**) and; the Procurement (Scotland) Regulations 2016.

The 2015 Regulations at Regulation 19⁹⁶ sets out the core underlying principles of procurement: equal treatment, non-discrimination, transparency and proportionality. These core principles are important when considering the scope for expanding fair work provisions within procurement. Another key principle at Regulation 67⁹⁷ provides that the award of public contracts by a contracting authority must be based on the most economically advantageous tender (MEAT) assessed from the point of view of the contracting authority; and cannot be awarded on price or cost alone.

Regulation 19 also states that:

‘A contracting authority must include in each public contract or framework agreement such conditions relating to the performance of the contract or framework as meet the requirements mentioned in paragraph (5) and are reasonably necessary to ensure that the economic operator complies with environmental, social and employment law, including any relevant collective agreements.’

While Regulation 70⁹⁸ builds on this and makes clear that a contracting authority may lay down special conditions relating to the performance of a contract, provided that they are linked to the subject-matter of the contract, and provided that they are indicated in the call for competition or in the procurement documents and specifically

⁹⁶ Available at: [The Public Contracts \(Scotland\) Regulations 2015, Scottish Statutory Instruments, Regulation 19](#)

⁹⁷ Available at: [The Public Contracts \(Scotland\) Regulations 2015, Scottish Statutory Instruments, Regulation 67](#)

⁹⁸ Available at: [The Public Contracts \(Scotland\) Regulations 2015, Scottish Statutory Instruments, Regulation 70](#)

sets out that those conditions may include ‘social or employment-related’ considerations.

The 2014 Act also sets out obligations to:

- comply with the **Sustainable Procurement Duty** (Section 9 of the Act⁹⁹) – that is, before carrying out any Regulated Procurement, an authority must consider how the procurement process can improve the economic, social and environmental wellbeing of the authority’s area, facilitate the involvement of small and medium enterprises, third sector bodies and supported businesses, and promote innovation – all subject to relevance to the subject matter of the procurement and what is proportionate.
- consider whether to impose **Community Benefit Requirements** (Sections 24 to 26 of the Act¹⁰⁰) as part of any major Regulated Procurement, with estimated value over £4 million. A Community Benefit Requirement can be a subset of the Sustainable Procurement Duty and relate to training and recruitment, or the availability of sub-contracting opportunities, or is otherwise intended to improve the economic, social or environmental wellbeing of the authority’s area in a way additional to the main purpose of the contract.

This legislation is then supported by a range of key guidance including:

- Procurement Reform (Scotland) Act 2014: Statutory Guidance (updated June 2021) – **Updated Statutory Guidance**;
- Statutory Guidance on the Selection of Tenderers and Award of Contracts: Addressing Fair Work Practices, including the Living Wage, in Procurement (October 2015) – **Statutory Fair Work Guidance**;
- Best Practice Guidance on Addressing Fair Work Practices, including the Real Living Wage, in Procurement (July 2018) – **Best Practice Guidance**;
- Fair Work First Guidance: Supporting the implementation of Fair Work First in workplaces across Scotland (September 2021) – **Fair Work First Guidance**.

Updated Statutory Guidance

This statutory guidance was originally published on 17 March 2016. It was updated in June 2021 to reflect changes that have occurred as a result of Brexit. A link to the Statutory Guidance on Fair Work is provided within the introduction to this document and the guidance gives a clear overview of how contracting authorities should apply fair work criteria. It then goes on to give further guidance on the Sustainable Procurement Duty at Chapter 3¹⁰¹, setting out how contracting authorities can seek to ensure procurements improve economic and social wellbeing. The commentary on wellbeing includes a reference to the availability of suitable and high quality jobs, but there is no link made to the Statutory Guidance on Fair Work within this section.

⁹⁹ Available at: [Procurement Reform \(Scotland\) Act 2014, Section 9](#)

¹⁰⁰ Available at: [Procurement Reform \(Scotland\) Act 2014, Community benefit requirements](#)

¹⁰¹ Available at: [Procurement Reform \(Scotland\) Act 2014, Statutory Guidance, Section 3](#)

Chapter 4¹⁰² sets out guidance on community benefit clauses which includes issues on training, skills and apprenticeships, yet it does not make clear how this might relate to wider requirements around fair work. Equally at Chapter 5¹⁰³ it sets out the basis of mandatory and discretionary exclusions, noting that blacklisting is a requirement for mandatory exclusion and breach of economic and labour laws are grounds for discretionary exclusion, where the contractor cannot show effective remedial action has already been taken.

In this regard there are several provisions that could be relied upon to advance fair work and a number of ways for these to be included within procurement contracts.

Statutory Fair Work Guidance

In October 2015, the Scottish Government published its Statutory Fair Work Guidance on addressing fair work practices in procurement. All public bodies must have due regard to this short guidance document.

The guidance requires Contracting Authorities to evaluate fair work as part of the procurement exercise where it is relevant to the quality of service or goods or the delivery or performance of the contract. Contracting authorities are directed to consider both the workforce that will perform the contract and the sub-contracting chain. The statutory guidance also offers some examples of when fair work practices are likely to be relevant including when any one of the following criteria apply:

- *‘there is any previous experience of poor work practices, including pay and conditions, impacting on the quality of the contract to be delivered;*
- *there is any history of low pay or unequal pay in that sector;*
- *there is a risk that staff working on the contract might be subject to exploitative practices, e.g. through the inappropriate use of zero-hours contracts, through unnecessary distancing of the employer-worker relationship e.g. by use of an “umbrella company” and through pay and hours arrangements that deny workers stability of employment or hours of work, e.g. by failing to pay wages for travel time within the working day, such as in the care at home sector;*
- *there is evidence that working conditions are making recruitment and retention problematic;*
- *contractors are seeking to cut their costs through driving down staff terms and conditions, including pay.’¹⁰⁴*

Given the number of these criteria that directly relate to the construction workforce, the guidance sets a clear expectation that fair work criteria be included within the procurement of construction contracts and this Inquiry found that most contracting authorities were regularly including fair work questions within their construction procurements.

The guidance makes a range of references to what constitutes fair work practice, throughout the document and includes elements that would be highly relevant within

¹⁰² Available at: [Procurement Reform \(Scotland\) Act 2014, Statutory Guidance, Section 4](#)

¹⁰³ Available at: [Procurement Reform \(Scotland\) Act 2014, Statutory Guidance, Section 5](#)

¹⁰⁴ Scottish Government (2015), [Fair work practices and the award of public contracts: Statutory Guidance](#)

the construction industry, including the encouragement of direct employment and discouragement of the inappropriate use of umbrella companies, the need for access to trade unions, respect for collective bargaining agreements and the need for effective voice. It also requires that where contracting authorities have to prepare a procurement strategy that they must include a statement on *‘the authority’s general policy on the payment of a living wage to persons involved in producing, providing or constructing the subject matter of its regulated procurements’*.¹⁰⁵

The Statutory Fair Work Guidance also emphasises the need to adhere to employment law and all relevant collective agreements:

*‘International labour standards, set both by the European Union and the International Labour Organisation, should be respected by those who deliver public contracts, including sub-contractors. They should be able to demonstrate that they are good employers who have adopted policies which comply with relevant employment, equality and health and safety law, human rights standards and adhere to relevant collective agreements, and describe how they adopt fair work practices for all workers engaged on delivering the contract.’*¹⁰⁶

While this guidance is statutory, and therefore compulsory, it does not require specific fair work questions to be asked; instead it requires contracting authorities to give consideration to fair work on a case-by-case basis proportionate to and consistent with the context of the contract. Contracting authorities are not required to ask about, or specify, payment of the living wage and the guidance says, *‘whilst failure to pay the Living Wage would be a strong negative indicator it does not mean that the employer’s approach automatically fails to meet fair work standards.’*

The guidance is clear that follow-up and monitoring work is required:

*‘Effective contract management and monitoring should be undertaken to ensure that fair work practices continue to be applied throughout the duration of the contract, e.g. by requesting information on the pay, terms and conditions of workers involved in the delivery of the contract.’*¹⁰⁷

At Annex A the guidance includes a template question to ask on fair work. It outlines a range of elements that represent fair work practices. These include:

- A fair and equal pay policy that includes a commitment to supporting the living wage, including, for example being a Living Wage Accredited Employer;
- Clear managerial responsibility to nurture talent and help individuals fulfil their potential, including for example, a strong commitment to modern apprenticeships and the development of Scotland's young workforce;

¹⁰⁵ Scottish Government (2015), [Fair work practices and the award of public contracts: Statutory Guidance](#)

¹⁰⁶ Scottish Government (2015), [Fair work practices and the award of public contracts: Statutory Guidance](#)

¹⁰⁷ Scottish Government (2015), [Fair work practices and the award of public contracts: Statutory Guidance](#)

- Promoting equality of opportunity and developing a workforce which reflects the population of Scotland in terms of characteristics such as age, gender, religion or belief, race, sexual orientation and disability;
- Support for learning and development;
- Stability of employment and hours of work, and avoiding exploitative employment practices, including for example no inappropriate use of zero-hours contracts;
- Flexible working (including for example practices such as flexi-time and career breaks) and support for family friendly working and wider work life balance;
- Support progressive workforce engagement, for example trade union recognition and representation where possible, otherwise alternative arrangements to give staff an effective voice.¹⁰⁸

The sample question below is also included:

Fair Work Practices (xx%)

'Q - Please describe how you will commit to fair work practices for workers (including any agency or sub-contractor workers) engaged in the delivery of this contract.'

The Best Practice Guidance

In July 2018 the Scottish Government published Best Practice Guidance on addressing fair work in procurement. This is not compulsory and is designed to help public bodies in following the Statutory Guidance in practice, stating, *'The Scottish Government strongly believes that all public bodies should be exemplars of Fair Work and that they should be able to demonstrate practices which cover each of the five dimensions of the Fair Work Framework.'*¹⁰⁹

The Best Practice Guidance gives a route-map for contracting authorities to enable them to ensure they are taking into account all of the issues required in the Statutory Guidance, in a way that best contributes to outcomes sought by the Scottish Government, explaining each of the steps in the process and how to give due consideration to fair work. The Best Practice Guidance makes no reference to collective agreements but notes that breaches of employment law are discretionary exclusion grounds while blacklisting is a mandatory exclusion ground.

Alongside this there is a Fair Work Practices in Procurement toolkit made up of information sheets, checklists, flowcharts and examples to assist public bodies in including a Fair Work practices criterion in their contracts.¹¹⁰

¹⁰⁸ Scottish Government (2015), [Fair work practices and the award of public contracts : Statutory Guidance, Annex A](#)

¹⁰⁹ Scottish Government (2018), [Addressing fair work practices, including the real living wage, in procurement: best practice](#)

¹¹⁰ Scottish Government (2018), [Fair work practices in procurement: toolkit](#)

In September 2021 the Scottish Government issued a new Scottish Procurement Policy Note (SPPN) on Fair Work First.¹¹¹ Fair Work First asks businesses bidding for a public contract to commit to adopting the following:

- appropriate channels for effective voice, such as trade union recognition;
- Investment in workforce development;
- no inappropriate use of zero hours contracts;
- Action to tackle the gender pay gap and create a more diverse and inclusive workplace;
- providing fair pay for workers (for example, payment of the real living wage)
- offering flexible and family friendly working practices for all workers from day one of employment, and;
- opposing the use of fire and re-hire practices.

Annex A of this Guidance gives detailed examples of what each of these criteria mean and also proposes an updated fair work question:

Fair Work First (xx%)

‘Q - Please describe and demonstrate how you will commit to adopting [Fair Work First](#) for workers (including any agency or sub-contractor workers) engaged in the delivery of this contract. This should include current and planned actions that show how you will embed these practices during the lifetime of this contract. Answers should include tangible and measurable examples and should also describe how you will report on, and demonstrate progress, to the contracting authority during the lifetime of the contract.’

‘Good answers will reassure evaluators that your company is committed to adopting Fair Work First and to progressing towards wider fair work practices set out in the [Fair Work Framework](#) for the workers engaged in the delivery of this contract and those in the supply chain working on this contract.’¹¹²

This guidance supersedes the guidance and the question at Annex A in the Statutory Fair Work Guidance cited above. It also introduces a requirement for organisations delivering public contracts where Fair Work First has been applied to include a short statement on their own website highlighting their commitment to advancing the Fair Work First criteria. The statement should be agreed jointly by the employer and an appropriate workplace representative which should be from the relevant trade union where one is present, or workers representative(s) where there is no union present. This policy note also states that the statutory guidance and Statutory Fair Work Guidance and Best Practice Guidance and accompanying toolkit are in the process of being updated to include Fair Work First.

¹¹¹ Scottish Government (2021), [Fair Work First implementation - Scottish public procurement update: SPPN 6/2021](#)

¹¹² Scottish Government (2021), [Fair Work First implementation - Scottish public procurement update: SPPN 6/2021](#)

Construction Procurement Handbook

The Scottish Government's Construction Procurement Handbook makes reference to the sustainable procurement duty and links the associated guidance and while there is still an expectation to apply fair work in construction procurement, there is no reference to fair work within the handbook itself. The handbook provides detailed worked through guidance on how contracting authorities should calculate both price and quality scores, making the absence of advice on fair work weightings and other community benefit clauses notable. It also, at Appendix B, provides guidance on discretionary and mandatory exclusion grounds within contracts and notes that a '*breach of environmental, social and labour laws*' is grounds for discretionary exclusion.¹¹³ In the course of this Inquiry, the Scottish Government has indicated that a specific chapter on fair work will be added to this guidance.

Scottish Public Procurement Notes

Further guidance is issued to contracting authorities through Scottish Public Procurement Notes (SPPNs)¹¹⁴, which are sent *ad hoc* on specific issues. Recent policy notes have been issued on Fair Work First. There are also Construction Policy Procurement Notes¹¹⁵ which, to date, have not looked at specific fair work issues but which have considered issues related to fair work such as sustainable tendering, dispute resolution (with regard to contractual dispute between suppliers) and quality assurance and workmanship in light of staffing and material shortages, and which includes guidance on the role and appointment of clerk of works.

2.1.3 Fair Work Procurement Practice Across the Public Sector

There is significant guidance for contracting authorities on fair work and there are a range of approaches that can be used to build fair work into contracts. The CIIG commissioned a mapping exercise to explore in detail the practice carried out by contracting authorities with regard to fair work scoring within procurements, either at contract or at framework stage, and its real world impact. It should be noted that at the time of the Inquiry Fair Work First guidance had not yet been published. For this reason the Inquiry has collected evidence on the implementation of fair work using the Statutory Fair Work Guidance, the Best Practice Guidance and Toolkit as it is outlined above.

Mapping Fair Work in Construction Procurement

Eight contracting authorities responded to our questionnaire about their practices for including fair work questions and conditions in their construction procurement, and how these are handled. While this only represents a small number of contracting authorities, it covers central government, local government, NHS, government agencies and higher education. Together the respondents were responsible for about £1.5 billion of public sector spend.

¹¹³ Scottish Government (2018), [Construction Procurement Handbook](#)

¹¹⁴ Available at: [Scottish Procurement Policy Notes](#)

¹¹⁵ Available at: [Construction policy notes](#)

The exercise looked at four stages of construction procurement:

- the arrangements in advance of any procurement, such as the information made available to potential contractors and any charter to which the contracting authority has signed;
- the framework stage, when contractors are approved for a list that will be held for a period of time, enabling them to bid for specific contracts but not assuring them of any;
- the tender stage, when contracts for work are agreed (including price); and,
- auditing work during and after the contract, to ensure that what was agreed was in fact carried out.

Key Findings

There was considerable variation in approaches across the public sector. The weighting of fair work questions across respondents ranged from 2% to 15% of the total contract with most contractors scoring around 5%. In the wording of their fair work questions some stayed quite close to the template provided in the Statutory Fair Work Guidance, while others deviated substantially from it. Some placed greater emphasis on the framework stage while others focused more on the tendering stage. Some asked specific and detailed questions about fair work, which gave a clear indication to potential contractors of the types of activities sought, while others simply asked contractors to state what they did about fair work. Some included a scoring matrix that explained specifically how fair work actions would be scored, while others used a matrix generic to all questions.

There were no obvious patterns to these variations. Contracting authorities who had taken a light-touch on one aspect were often more forthright on others. As a result, it is difficult to avoid the conclusion that the differences in approach were mostly due to local circumstances and personnel within each organisation, and that no consistent approach has been developed. There may be sound operational justifications across and within contracting authorities for these differences and the guidance allows, and indeed demands, local consideration of relevance and proportionality. However, there does not appear to be variance in construction work of a scale and nature to explain the variation in approaches taken by contracting authorities and a more consistent approach could lead to better fair work outcomes.

It should also be noted that contracting authorities use a range of framework agreements in order to deliver procurements. Where frameworks originate from outside Scotland, for example, the Crown Estate, fair work obligations will not be built in at framework stage which limits the scope for fair work elements to be applied. This adds to the complexity of the picture and creates a level of variation in procurement approaches even within a single contracting authority.

The Real Living Wage, Collective Bargaining and Other Aspects of Fair Work

There was no consistent approach to fair work across the respondents. Some contracting authorities reported having champions for procurement, fair work, real living wage or other aspects such as modern slavery; others reported having specific policies, their own Construction Charter or having signed up to a general Construction Charter. Some had no internal promotion of fair work, while Transport Scotland reported that it had recently appointed someone with a role to embed fair work.

It was notable that there was a strong emphasis placed on the Real Living Wage (RLW) by both contracting authorities and the Scottish Government. This was as much a consequence of what was monitored centrally and it was clear that contracting authorities were also covering other elements within their fair work assessments.

Yet it was also noted by the CIIG that the focus on the real living wage in construction as the key fair work focus was unhelpful. In the context of construction the RLW tends to represent a pay rate that is lower than collectively agreed rates and most workers already earn above it. Therefore a focus on the living wage alone is not sufficient to deal with the range of fair work issues that exist in construction and a focus on the payment of collectively agreed rates would be more appropriate. Despite the existence of a number of collective agreements in the industry which set expectations around terms and conditions, working conditions and dispute resolution, these were not prominent in procurement as a method to improve standards and outcomes for people working in the construction industry.

Contracting Management and Audit

The CIIG noted that while a great deal of effort was placed on including fair work requirements within documentation (and to consider this at award stage), there was little understanding of what might constitute a genuine and stretching commitment to fair work on the part of the contractor. There was also little information collected on whether requirements went beyond Tier 1 contractors and further into the supply chain where the majority of people work. In this respect training for contract managers and commissioners rooted in the specific context of the construction industry is essential. There may also be merit in providing short supplementary guidance to the Best Practice Guidance which outlines specific examples for the construction industry.

The mapping study also showed that there was a wide range of practice in respect of monitoring or auditing contractors' responses. NHS National Services Scotland had a number of fair work related key performance indicators (KPIs) for contractors on the Framework Agreements which were monitored across the lifetime of contracts. At the other end, some contracting authorities reported that they did not actively monitor the implementation of fair work at all.

It was notable that KPIs were more likely to be applied to actions taken under community benefit clauses rather than the specific fair work elements of the guidance, and were therefore more likely to relate to requirements around

apprenticeships and training. This is likely to reflect that community benefit clauses are a more established mechanism and therefore more embedded into the contracting authority's approach. Clearer connections within the guidance between fair work, the sustainable procurement duty, community benefits and discretionary and mandatory exclusions would be useful to ensure commissioners and contract managers are clear about all the ways in which they can advance fair work within procurements and this may promote a more consistent approach to monitoring or audit. The CIIG noted that where outcomes were specified as mandatory conditions within contracts and where monitoring took place, meaningful impact was felt at the workplace level.

Quality v Cost

The Inquiry heard evidence of a widespread policy debate around altering the balance between quality and cost in construction procurement. In this context 'quality' means all non-cost aspects of the contract, including build quality, sustainability, community benefits and fair work. Until very recently common practice had been to weight contracts with a higher price than quality rating (usually around 30% quality and 70% price). The Inquiry heard evidence that there was a desire, particularly from industry, to change the balance in this area and have tenders which are assessed more heavily on quality (70%) than on price (30%). It should be noted that the quality / price ratio is entirely at the discretion of the contracting authority and the NHS already makes use of 70% quality ratings.

The Scottish Government has considered this issue and is proposing a move to 70% quality and 30% price ratings within a new civil engineering framework agreement. This approach is welcome and offers an opportunity to build high quality fair work requirements into the framework agreement at the outset which would support contracting authorities to deliver meaningful fair work outcomes through their procurements.

2.1.4 Further Embedding Fair Work Requirements in a Post-Brexit Context

The CIIG was keen to understand the options available to further embed standards within contracts particularly given the post-Brexit context. Prior to the UK's withdrawal from the EU the Posted Workers Directive (the PWD) placed a broad prohibition on requiring rates of pay above legally enforceable minimums. Whilst bidders were permitted to voluntarily pay wages that exceeded the statutory minimum wage, it was not permitted for contracting authorities to compel bidders to pay a living wage that was not prescribed in legislation or by collective agreement.

However, the PWD is no longer applicable in the United Kingdom and has not been replicated in any of the international obligations that apply to the procurement regime between the UK and EU Member States. So while procurement conditions must still comply with the requirements regarding equal treatment and therefore must still be connected to the subject matter of the contract, proportionate and transparently stated in the procurement documents, there is now nothing in the international agreements which would prevent contracting authorities from requiring bidders to include fair work conditions such as the payment of a real living wage in excess of a statutory minimum wage.

In light of this, the Scottish Government has now announced that companies bidding to win Scottish Government contracts will have to pay the real living wage.¹¹⁶ It is still the case that procurement tenders will have to comply with the core principles cited above of equal treatment, non-discrimination, transparency and proportionality but it is now possible to require the specific wage rates as a condition of contract. This change will require updated guidance, particularly the statutory fair work guidance to reflect the change in the law.

There has long been an ability to mandate the use of collective agreements as noted in the 2015 regulations. However, European case law in this area was clear that where the obligation to pay wages was by reference to a collective agreement which related to only a part of a sector (for example, if it only applied to part of the construction industry), then the collective agreement would not fall within the scope of what was possible under the PWD, as it was not considered universally applicable. Given the structure of collective agreements in the UK, this had a significant limiting impact and may explain why contracting authorities have not considered making use of the provision within the 2015 regulations within construction to date.

However, the PWD no longer applies post-Brexit and the CIIG has taken legal advice which suggests that it is now permissible for contracting authorities to require wage conditions that align to collective agreements even if the collective agreement only relates to part of a specific sector. In this way contracting authorities can require payment of collectively agreed rates (subject to the overarching requirement for such conditions to remain proportionate and relevant to the subject matter of the contract) – for example, collectively agreed wage conditions for electricians could be required in a contract for electrical repairs/installations, but could not be applied to a gas servicing contract.

When considering the issue of **proportionality** the Polish case II GSK 1127/15 while no longer binding, gives a useful and persuasive steer:

‘A contracting authority may specify certain standards as long as they do not restrict fair competition. This means that it must be feasible for an average economic operator to meet those standards.’¹¹⁷

Thus proposing industry-recognised standards which are already adopted by a high proportion of contractors within the industry would be proportionate. As 62% of employed workers in construction are likely to receive collectively agreed rates or higher¹¹⁸, it is feasible for the average economic operator to meet this standard.

Construction contracts are often entered into using industry standard form contracts (e.g. SBCC contracts, PPC 2000, NEC, etc.). Many procurements will stipulate the form of contract that will be entered into with the contractor(s). It would seem a useful approach for contracting authorities to use a standard form contract, and bespoke drafting in the schedule of amendments to the standard form building contract would fully incorporate any wage conditions in the contract. That is to say, it

¹¹⁶ Scottish Government (2021), [Supporting fair work practices](#)

¹¹⁷ Evidence submitted directly to the Inquiry

¹¹⁸ Labour Research Department (2021), [Scotland's Collective Bargaining 2021](#)

would make it an express term of the main contract that the contractor, and any sub-contractors, comply with the conditions relating to wages, whether that be living wage or collectively bargained wages. Such a schedule of amendments can form part of the procurement documentation, ensuring **transparency** of the condition as it will apply to any contractor and sub-contractor during the procurement process.

Imposing a wage condition does not prevent a contracting authority also asking for information about a bidder's wider fair work practices, in the manner already articulated in detail in the Statutory Fair Work Guidance.

A discretionary exclusion ground also exists when an economic operator has breached its obligations in regard to labour laws. It would be useful for the guidance to highlight the value of this where any wage or employment conditions are intended to be a condition of the contract, as in this context it would be important to understand contractors' and sub-contractors' past history in this regard and would support effective monitoring of provisions over time.

Effective contract management and monitoring are essential and should be undertaken to ensure that fair work practices are applied throughout the duration of the contract. In order to have significant real world impact it is important that these approaches also reach down into the supply chain where most people work.



Case Study

HS2 Ltd and TUC Agreement Facilitating Union Access to Workplaces

In September 2021, Unite the Union secured an access agreement with the joint venture company 'Align' (comprising Bouygues, Travaux Publics, Sir Robert McAlpine and Volker Fitzpatrick) which is responsible for the tunnelling and track laying on the section of HS2 from the north of London and through the Chiltern Hills. A similar agreement had already been made between the unions Unite and GMB and the Mace/Dragados joint venture company which is undertaking the construction of the new Euston Station as part of HS2.

Access agreements secure the right of trade union representatives to:

- visit the project's inductions
- visit the welfare facilities to talk to all the workers on the site during their breaks.

Ultimately this aims to allow a union to support workers with any concerns, to support effective voice and to ensure resolution is achieved.

These access agreements were supported and facilitated by an 'Initial Framework Agreement' signed in 2016 between HS2 Ltd (a non-departmental public body wholly funded by the Secretary of State for Transport and sponsored by the department of transport) and the Trades Union Congress (TUC), which aimed to 'set the environment for subsequent work package agreements, to be agreed directly between the appropriate unions and contractors, with the support of HS2 Ltd and the TUC'.

The IFA was intended to create the high-level mechanism to discuss strategic issues including employment, union access, apprenticeships, staff training and development, equality, diversity and inclusion, health, safety and wellbeing, and payment of the real living wage. Not all of the contractors have enabled meaningful engagement with the unions. However, the agreement also supports positive and visible relations between employers and unions and has led to access agreements in some cases.

Source: UK Government (2016), [High Speed Two Limited and the Trades Union Congress Initial Framework Agreement \(IFA\)](#)

This case study shows that it is possible to encourage more positive relations and to actively and meaningfully support effective voice through trade union access on sites. This is particularly important as it creates visible examples of large companies working constructively with unions and provides support for the workforce to access their rights. The role of the public sector in laying the foundation for these agreements and facilitating and encouraging their use is notable with the overarching agreement between HS2 Ltd and the TUC being the catalyst for improved relations. Building trade union access into procurement complements wider monitoring

systems in the procurement contract and supports tangible implementation of fair work, encouraging consistent standards across workplaces.

The Inquiry observed that many contracting authorities have also signed up to and used Fair Work Charters to promote and support fair work outcomes. This approach seems positive, particularly where charters have been negotiated and agreed by trade unions and support trade union access. It was notable that there were several different charters available and currently used within procurement and the CIIG saw potential benefits in a single charter creating consistency of approach and expectation across all contracts.

The Scottish Government should facilitate employers and unions to agree a single Fair Work Charter which could be achieved through current industry leadership group or forum structures. Once developed the single Fair Work Charter should then be used as a pass/fail condition within all construction procurement exercises in Scotland to ensure appropriate fair work standards are applied throughout the supply chain. Fundamentally there is a need for fair work to be implemented throughout the supply chain and a strong desire for mechanisms that are consistently applied and create a level playing field for contractors. A clear and consistent message of what fair work entails in construction that is known, consistently upheld and effectively monitored will help to drive consistent standards and behaviours which overtime become embedded as sectoral norms.

2.1.5 Recommendations Related to Procurement

How public procurement is undertaken has the potential to impact the nature and the shape of the industry by incentivising or mandating fair work outcomes, supporting skills and maintaining standards. It is a key tool for driving better outcomes given that public procurement represents around 50% of all construction spend¹¹⁹ in Scotland. Significant action has already been taken to build fair work criteria into contracts but approaches vary. The Inquiry found that:

- the balance between price and quality in procurement contracts is important, with a strong industry perception that low price bids have been necessary to win tenders.
- no single system for scoring or assessing fair work within procurements has developed.
- fair work weightings can be as low as 2% with the average in our study being around 5%.
- there is limited evidence of monitoring, audit or follow-up by contracting authorities to ensure that any commitments made by contractors as part of the tendering process are implemented in practice.
- there are examples of fair work clauses having meaningful impact on outcomes for workers where they are monitored and enforced, and community benefit clauses were more likely to be effectively monitored than general fair work commitments.

¹¹⁹ Scottish Construction Leadership Forum (2020), [Scottish Construction Industry: Approved Recovery Action Plan](#)

- despite well written fair work guidance, evidence to the Inquiry suggests that understanding of fair work by project commissioners and managers was inconsistent, particularly with reference to the specific context of the construction industry.
- there are a range of mechanisms to promote fair work through procurement -- fair work weightings are only one element -- while clearer connections between fair work, community benefit and mandatory and discretionary exclusions could support better outcomes.
- there is currently a strong focus on the Real Living Wage (RLW) within fair work guidance. In the context of construction the RLW tends to represent a pay rate that is lower than collectively agreed rates and 92% of the workforce already earns above it.¹²⁰ Promoting collectively agreed rates is therefore more important than promoting the RLW within construction.
- legal advice to this Inquiry has found that in a post Brexit context there is no legal impediment to including collectively bargained rates or the RLW as a contract condition within procurement. The Scottish Government has already announced that companies bidding to win Scottish Government contracts will have to pay the RLW. Similar mechanisms can therefore be included for collectively bargained rates in construction.
- there is a need for fair work to be implemented throughout the supply chain and a strong desire for mechanisms that are consistently applied to create a level playing field for contractors.



¹²⁰ Scottish Government (2021), [Annual survey of hours and earnings: 2021](#)

The Inquiry Group makes the following recommendations:

Procurement			
	Recommendation	Owner	Timeframe
1	All contracting authorities should seek to maximise quality weightings and fair work criteria should be given a robust weighting within the quality dimension. Fair work weightings should not be lower than 10% of the contract and it must be possible for low scores on fair work to impact whether a tender is won or lost.	All Contracting Authorities	Within each tender and reviewing frameworks as they arise
2	Training in fair work should be mandatory for all project commissioners and managers overseeing construction contracts. Training should be provided by those who have demonstrable expertise on fair work and support an understanding of what constitutes positive and stretching fair work commitments by contractors.	All Contracting Authorities	All staff should be trained by Jan 2024.
3	Guidance should be reviewed to ensure it supports the use of collectively bargained rates within procurement contracts and short best practice guidance should be developed for construction procurement that highlights positive examples of fair work practice in the construction industry. Current wording around avoiding the use of umbrella companies should be retained.	The Scottish Government	As soon as possible and before Dec 2022
4	Contracting authorities should set an expectation that trade unions have access to workplaces on all public construction contracts in line with the aspiration of the HS2 approach. Access should be facilitated throughout the supply chain.	All Contracting Authorities Lead Contractors Trade Unions	With each procurement
5	Guidance should be updated to make clearer the connections between fair work, sustainable procurement duties, community benefits and discretionary and mandatory exclusions. The guidance should support more use of discretionary exclusions when a contractor or sub-contractor has breached its labour law obligations.	The Scottish Government	Immediate

6	All contracting authorities should include adherence to relevant collectively bargained pay rates as a condition of contract. Introducing this as clause within industry standard form contracts is an efficient, proportionate and transparent way to implement this and to ensure that it is applied throughout the supply chain.	All Contracting Authorities	Immediate
7	In every contract in which fair work questions were asked at the framework stage, tender stage or both, effective contract management by the contracting authority must take place to ensure that the response provided by the contractor is delivered in practice.	All Contracting Authorities	Immediate
8	All contracting authorities should be signatories to a Fair Work Charter collectively agreed with employers and trade unions. The Scottish Government should also facilitate the appropriate industry leadership group/forum, in negotiation with trade unions, to develop a single charter that sets out principles for advancing fair work in the industry. The single Fair Work Charter should then be used as a pass/fail condition within all construction procurement exercises in Scotland to ensure appropriate fair work standards are applied throughout the supply chain.	All Contracting Authorities An Industry Leadership Group / Forum Trade Unions	Each Contracting Authority to have an agreed charter by Jan 2023 A single charter should be agreed by 2024

2.2 Strengthening Effective Voice



Effective voice is key to delivering all other dimensions of fair work.

Effective voice in workplaces requires a safe environment where dialogue and challenge are dealt with constructively and where workers views are sought out, listened to and can make a difference.

It is important to acknowledge the ongoing legacy of blacklisting and the impact that it continues to have on the workforce. For any voice mechanism to be effective the workforce must feel safe to raise issues, and they must feel able to seek help from unions – two activities that were directly and systematically discouraged through blacklisting for more than twenty years.

Leadership structures that support social dialogue also have an important role to play in ensuring positive relationships and supporting positive outcomes for workers and employers. Organisational structures, collective agreements and voluntary agreements such as charters and dispute resolution procedures all have a vital role to play in encouraging positive practice in workplaces and creating the working environment necessary for all workers to enjoy fair work outcomes.

Considering how collective bargaining agreements, voluntary agreements and social dialogue structures can be strengthened in the industry is key to supporting improved outcomes and will complement and reinforce the action taken through procurement.

2.2.1 Leadership, Trade Bodies and the Organisational Landscape

The organisational landscape in construction reveals a mixed picture. Repeated studies have pointed to the fragmented nature of structures within the industry with 120 trade bodies and a range of leadership organisations.¹²¹ Yet many of these bodies play a vital role in supporting positive outcomes for the industry and facilitate a range of fair work structures where unions and employer organisations come together to negotiate standards and terms and conditions for workers.

The Construction Industry Training Board (CITB) is one of the few UK training boards still in existence and is an executive, non-departmental public body, sponsored by the UK Government's Department for Education, but almost wholly funded by its levy. In addition to the UK Government's apprenticeship levy, CITB is also empowered to impose a levy on employers operating in the construction industry. The amount paid is based on the total wage bill of the business.¹²²

The Construction Scotland Innovation Centre (CSIC) was launched in October 2014 and is one of eight 'industry-led and demand-driven' Innovation Centres. It is supported by Scottish Funding Council (SFC), Scottish Enterprise, Highlands & Islands Enterprise and fourteen Scottish university partners. CSIC has a 35,000 sq. ft innovation factory designed to support construction related businesses to collaborate and innovate. The role of the CSIC is to support innovation and the development of modern methods of construction and automation, supporting the skills needed to achieve these aims.¹²³

The construction industry is also one of nine industries in Scotland with an Industry Leadership Group.¹²⁴ **Construction Scotland's** governance document sets out a range of specific categories of members with numbers of seats allocated by category allowing for a maximum of fifteen members.¹²⁵ At present the Industry Leadership Group consists of seven members, primarily large construction companies, and it is notable that it does not include representation from the workforce or trade unions. Currently only one member of the Industry Leadership Group – the Civil Engineering Contractors Association – is involved in setting collective agreements or industry standards. The primary role and remit of Construction Scotland ILG is to:

- provide leadership and effective representation of the industry.
- develop and lead the implementation of the Scottish Construction Industry Strategy.

¹²¹ Scottish Parliament (2019), [Under Construction: Building the future of the sector in Scotland](#)

¹²² Scottish Parliament (2019), [Under Construction: Building the future of the sector in Scotland](#)

¹²³ Construction Scotland Innovation Centre (2022), [About Us](#)

¹²⁴ Scottish Government (2020), [Industry Leadership Groups Review](#)

¹²⁵ Construction Scotland Innovation Centre (2018), [Roles, Remit and Governance](#)

- ensure effective communication and engagement across the sector and with Government and the industry's customers.

The **Construction Leadership Forum** was set up as a collaborative initiative of Construction Scotland and the Scottish Government. It was established in March 2019 to develop and implement an action plan of improvement initiatives aligned with government policies and the Construction Scotland Industry Strategy.¹²⁶ The Forum is chaired by the Minister for Business, Trade, Tourism and Enterprise and has a broader membership than the Industry Leadership Group also including a greater representation from trade associations, professional bodies and federations involved in collective bargaining. As a response to the pandemic the membership of this forum was expanded to include a trade union representative for the first time and the forum has a workforce issues sub-group that brings together many of the key stakeholder organisations.

It is welcome to see the broader membership of this leadership forum and the wide range of bodies included within the sub-groups. This is as an example of positive practice that developed within the industry in response to the pandemic.

Also as a response to the pandemic, the Construction Industry Collective Voice (CICV) was created bringing together a number of construction trade and professional bodies to gather intelligence, share advice and speak directly with the Scottish Government on issues affecting the industry. The CICV includes representatives from 28 professional bodies and aims to represent the interests of Scotland's diverse construction supply chain with one consistent voice.¹²⁷

The CICV was set up to help trade and professional bodies in the construction industry participate effectively within the Construction Forum. It is both positive and instructive that a wider and more inclusive leadership structure run by the Scottish Government has prompted a greater level of organisation and joint working across trade associations which is a valuable innovation that begins to address the fragmented nature of the industry.

The Scottish Government is now also setting up a **Construction Accord** to look at a range of key issues within the industry including procurement practice and the transition to net zero. The Construction Accord is a high-level agreement between the industry and the public sector and will be agreed by the Construction Leadership Forum in the coming months. This Inquiry believes that a key principle of work between the public sector and industry is an inclusive approach. All actions should support inclusive ways of working and should include balanced membership from a range of stakeholders including trade associations, professional bodies, federations and smaller employers. All approaches should also include balanced representation from trade unions and support social dialogue.

Scottish Government should also take action to support and maintain the social dialogue approach present in other parts of the industry by ensuring that all leadership groups build in representation from a range of union and employer

¹²⁶ Scottish Construction Leadership Forum (2022), [Home](#)

¹²⁷ CICV (2022), [About Us](#)

stakeholders, ensuring representation that more accurately reflects the complexity of the industry. This would help build relationships and ensure that the perspectives of key institutions and standard setters, the workforce and smaller companies further down the supply chain are included within all leadership group structures. Their inclusion would also support the reach of decisions made at the strategic level back into the industry, making the groups more effective in delivering their core function.

It is also notable that the relationship between each leadership structure is not clear, nor is precise role that the, as yet unpublished, Construction Accord will play within the industry. Regardless of the reasons behind creating new approaches or supporting a range of structures, the principles of inclusion and social dialogue which place a value on collaboration and dialogue between all stakeholders should be at the heart of all structures designed, supported and facilitated by the Government.

2.2.2 Collective Bargaining

Often the view of collective bargaining is that it takes place within large workplace and covers only employees. At first glance the construction industry, with its project based working, high number of small employers and high levels of self-employment does not seem to lend itself to collective bargaining structures. Yet sectoral bargaining agreements have been deployed for decades as a way to maintain standards, promote stable and safe working practices, facilitate training and upskilling and maintain terms and conditions for workers.

The Labour Research Department (LRD) conducted a study into the prevalence of collective bargaining in Scotland and identified 24 collective agreements within the construction industry with a further 101 subsidiary agreements derived from these principal agreements.¹²⁸ Through this study, they estimate that around 85,000 workers in Scotland are currently covered by collectively agreed terms and conditions. This represents around 45% of the total workforce, and 62% of the employed workforce when self-employment is excluded.¹²⁹

The LRD figure was calculated by considering the prevalence and use of collective agreements and through discussion with employer and union stakeholders involved in collective bargaining. The ONS also calculates two separate figures for the collective bargaining coverage, one through the Labour Force Survey (LFS) which asks employees if their pay and terms and conditions have been set by collective agreement, and the other through the Annual Survey of Hours and Earnings (ASHE) which asks employers if pay has been set with reference to collective agreements. In the LFS survey, 25% of employees across the UK said their pay and terms and conditions were affected by collective agreement, while 20% of employers taking part in the ASHE survey at Scottish level stated that their employee's pay was set with reference to a collective agreement.

¹²⁸ Labour Research Department (2021), [Scotland's Collective Bargaining 2021](#)

¹²⁹ This assumes a total workforce figure of 185,000 in line with the Labour Force Survey.

Differences between the LFS and ASHE figures for collective bargaining coverage are to be expected reflecting that different questions are asked of different people.¹³⁰ The ONS recognises that the LFS figure is likely to be an underestimate as employees may be unaware that collective bargaining has taken place, while in general employers are more likely to be involved in the bargaining arrangement. This is borne out at an economy level where the LFS estimates that the overall collective bargaining coverage in Scotland is 38% while the ASHE figures suggest that 51.6% of the total Scottish workforce is covered. Yet the ASHE figures for construction seem to be out of step with this trend. This could reflect the employer's understanding of the question and/or the fact that in construction – due to collective agreements being sectoral agreements – individual employers are not involved in bargaining directly.

On balance, the LRD's research in this area is likely to be the most accurate measure as it considers in detail the application of existing agreements. Using this research, the table below outlines the coverage of the most significant sectoral agreements with the greatest level of coverage of the workforce. The table highlights that extensive collective bargaining is happening within the sector and illustrates a well-developed industrial relations infrastructure covering employers of different sizes and specialisms across all parts of the industry. The agreements are focused on different trades and together make up a set of basic standards that can be applied. However, the differences in figures between the LRD and the ONS sources might also point to piece-meal application of agreements, where employers adopt pay rates or other elements but do not apply the agreement in full. As noted below it might also point to some employers setting pay locally above the rate of the agreement but relying on the agreement for other terms and conditions.

Sectoral Collective Agreements		
Agreement	Estimated Number of Workers in Scotland Covered	Parties
Construction Industry Joint Council (CIJC)	50,000	Scottish Building Federation Build UK National Federation of Builders House Builders Federation Painting and Decorating Association National Access and Scaffolding Confederation Civil Engineering Contractors Association National Federation of Roofing Contractors Unite the Union GMB

¹³⁰ UK Government's Department for Business, Innovation and Skills (2013), [Measuring Bias in the LFS for Trade Union Membership Statistics](#)

Building and Allied Trades Joint Industrial Council (BATJIC)	2,500 (FMB estimate of workforce covered based on 350 Scottish members. 20% of FMB members are sole traders and 50% employ 1-2 people)	Federation of Master Builders Unite
Electrical Contracting (Scotland) SJIB	10,200	SELECT Unite
Engineering Construction (NAECI) NJC	1,600	SELECT Engineering Construction Industry Association Thermal Insulation Contractors Associate GMB Unite
Plumbing (Scotland & Northern Ireland) Joint Industry Board	3,000	SNIPF Unite
Scottish Painting Council (Scottish Decorators' Federation)	4,500	Scottish Decorators' Federation Unite
Local Authorities (craft) (Scotland)	3,112	COSLA CSEU GMB Unite
Scottish Painting and Decorating Apprenticeships Council (SPADAC)	Not Available	Scottish Decorators Federation Unite
Scottish Building Apprenticeship and Training Council (SBATC)	500	Scottish Building Federation Unite

*This represents the number of apprentices registered with the federation and a significant reduction from around 6,000 apprentices in 2017 when registration was compulsory.

Construction Industry Joint Council (CIJC) and the Building and Allied Trades Joint Industrial Council (BATJIC)

The Construction Industry Joint Council (CIJC) agreement is the most widely used agreement in the construction industry and its terms and conditions have come to be regarded as ‘the norm’¹³¹ with elements of the collective agreement like holiday entitlement, working time arrangements and overtime schedules now standard practice in the industry. It is not necessary for an employer to be a member of a trade association to utilise the agreement. The 61-page CIJC agreement – ‘the Pink Book’ – is very explicit, leaving little flexibility to be altered, although employers can, and often do, choose to pay more than the negotiated rates. Employees can expect to receive a short two-page contract or statement of particulars that would refer to the much more detailed CIJC agreement.

The UK-wide Building and Allied Trades Joint Industrial Council (BATJIC) agreement is often used by smaller firms. BATJIC operates side-by-side with the CIJC agreement, with construction companies including the Federation of Master Builders (FMB) members able to compare them, following BATJIC exactly, combining aspects of both BATJIC and CIJC, or ignoring both. The FMB has noted that this agreement sets the standard in many small companies and therefore its reach is much wider than simply the formal membership of the federation recorded above.

The Scottish Builders Federation (SBF), the largest Scottish signatory to the CIJC, now mainly recruits new members on the strength of its business support services rather than its role in collective bargaining, although this still remains an important aspect of their offering to industry. SBF also does not enforce application of the CIJC and allows members to apply the agreed rates and terms or to develop their own. The SBF believes that CIJC coverage is declining, a trend thought to reflect attitudinal changes and a decline in collaboration in the industry.¹³² More positively they also point to market rates for building trades in Scotland often being above that of collective agreement.

Scottish Joint Industry Board (SJIB) and the National Agreement for the Engineering Construction Industry (NAECI)

SELECT is the trade association for the electrical contracting industry in Scotland. Founded in 1900 as the ‘Electrical Contractors’ Association of Scotland, it was the first trade association in the world to serve the electrical industry.

SELECT believes that that Scottish Joint Industry Board (SJIB) agreement is influential beyond its own membership and notes that 40% of the apprentices trained by SECTT are employed by non-member companies who apply the industry agreement. The SJIB handbook is open access and SELECT believes that most electrical employers follow the SJIB rates and handbook even when not in membership.

¹³¹ Construction Industry Joint Council (2018), [Employers Guide to the Construction Industry Joint Council Workers Rule Agreement](#)

¹³² Labour Research Department (2021), [Scotland's Collective Bargaining 2021](#)

SELECT supports high quality apprenticeships and career pathways through the industry supporting workers into management roles and to own their own businesses. It is well respected as it maintains high standards of training and supports safe working practices across the industry. Unlike the CIJC there is no evidence to suggest that use of the agreement is declining and SELECT is well regarded within the industry.

The National Agreement for the Engineering Construction Industry ('the NAECI' or 'The Blue book') sets the terms and conditions of employment for the hourly paid engineering construction workforce. The NAECI is managed by the National Joint Council and is applied to engineering construction projects including on new-build projects and long-term repair and maintenance on sites throughout the UK. It is a national-level Working Rule Agreement, derived through the process of collective bargaining between the parties listed above. The NAECI promotes direct employment and is particularly valued for its dispute resolution procedure.

The NAECI was set up in 1981 as a direct response to rising costs for large-scale engineering projects due to walk-offs, industrial disputes and increasing competition for labour due to wage differentials between different sites. The NAECI agreement has a clearly defined structure and framework which has a proven track record in ensuring contractors can access and retain skilled labour, creating positive industrial relations and safe working practices and reducing the number of industrial disputes. It is, therefore, still widely used and the NAECI is the core agreement used in chemicals and petrochemical plants at Grangemouth and the Fife ethylene plant at Mossmorran but may also be applied to other engineering construction workforces. Where the NAECI has not been formally adopted for all engineering construction activities on a particular site, an individual contractor can, via the process of NAECI Registration, record their workforce numbers with NJC and then use the NAECI.

The Value of Collective Bargaining Agreements

All of the collective agreements noted above are entered into voluntarily by employers and unions. In this way there is no requirement for employers to abide by the terms of the collective agreements but once they choose to apply these standards they can thereafter be legally enforceable. This approach is often valued by both employers and unions as it creates certainty around costs, consistency of standards and a level playing field between operators.

The agreements are supported by organisational structures, trade bodies or professional associations. This provides support to employers to apply standards effectively and to resolve disputes that arise both informally and formally. The workforce is supported through trade unions who can rely on the structures within the agreement to raise and resolve issues.

Many of the agreements have existed for decades and continue to renew themselves being renegotiated on an agreed schedule to meet the changing needs to the industry. The agreements therefore come from the industry and reflect its particular needs and pressures over time. While the biggest of the agreements the CIJC appears to be in decline, the structure and potential for collaborative working

remains and if effectively supported could play a key role in supporting the industry to meet future challenges and fully embed fair work.

2.2.3 Trade Unions, The Legacy of Blacklisting and Effective Dispute Resolution

In 2009 the blacklisting scandal in construction was exposed. Forty-four large construction companies were named as blacklisters including: Balfour Beatty, BAM, Sir Robert McAlpine, Laing O'Rourke and Galiford Try.¹³³ It should be recognised that many of these companies have now paid compensation to workers who were blacklisted and there are now laws in place in Scotland to exclude any company from winning public contracts who are still involved in blacklisting. Despite this the shadow of blacklisting in the industry remains.

Blacklisting was raised throughout this Inquiry as a contributing factor for the failure of a range of voice mechanisms within workplaces, particularly when run by large employers directly, in contrast to dispute mechanisms that were underpinned by collective agreements such as NAECI. Yet even when using collectively agreed mechanisms unions reported that workers often felt nervous raising issues and could worry about the consequences for their future earnings if they were seen to raise concerns or turn to unions for support.

The issue was also clearly seen in the early stages of the Inquiry when safety guidance was being prepared to support the construction industry through the COVID-19 pandemic. Unlike in other industries, construction leadership groups were slow to involve unions in the preparation of this guidance and the relationships between unions and in the Industry Leadership Group at the outset were clearly strained. However, it was also notable that progress was made in this period to improve relations and there were several examples of good practice emerging that could be built upon. It was particularly positive that a union seat was included within the Construction Leadership Forum and that social dialogue was improved and strengthened.

It is important for the construction industry as a whole to acknowledge the ongoing legacy of blacklisting and the impact that it continues to have on the workforce. For any voice mechanism to be effective, the workforce must feel safe to raise issues, and seek help from unions – two activities that were directly and systematically discouraged through blacklisting for more than twenty years. Ending blacklisting is therefore not sufficient to correct the impact of this practice and active steps will need to be taken – by the largest employers in particular – to demonstrate that this practice is in the past and that they now have positive relations with unions, they respond positively to issues raised by their workforce and ultimately there is a renewed culture of fair work in the industry.

Dispute Resolution

The issue of dispute resolution was particularly important for the CIIG as it supports effective voice and positive resolution of issues on sites to the benefit of workers and

¹³³ UK Parliament (2013), [Scottish Affairs Committee - Ninth Report - Blacklisting in Employment: Interim Report](#)

employers. Dispute resolution is a valuable feature of most industry agreements, supporting the maintenance of positive relationships on sites and providing an effective voice mechanism for workers. It was noted that the NAECI has a particularly valuable dispute resolution element that facilitates speedy resolution for workers and employers.

Case Study

Dispute Resolution and the NAECI

Central to the success of the NAECI is a highly effective, widely respected procedure for the prevention and resolution of issues at site level. Both formal and informal resolution is supported.

An informal 'facilitation' service is available from National Joint Council (NJC) staff that aims to resolve issues. Where both parties to the grievance agree that they want to use it, and where they have indicated that there is common ground that may help them move to a resolution, then an NJC facilitation meeting can take place. This happens in parallel to the timescale of the formal process which continues to its original timescales, unless resolution is achieved. Where NJC facilitation has been jointly requested and undertaken, there is a 60-70% success rate of resolution.

Where informal resolution is not achieved, there is swift recourse to national level for a final and binding decision. All parties who have signed up to the NAECI agreement accept to be bound by the decisions at Stage 4. The use of the Stage 4 procedure includes both dispute resolution and dismissal arbitration which applies to all workers who have passed their probation period and does not require two years of service.

Lead contractors choose to apply the NAECI agreement on sites and include this as a requirement for sub-contractors within their own contracting procedures or that of their managing agent. Where a site has fully adopted the NAECI agreement it will be registered with the NJC.

The use of the NAECI Procedures has increased significantly since the pandemic and is valued by both employers and unions. The NAECI requires that all work must continue while NAECI processes are running, so therefore limits industrial disputes and walk-offs but also provides swift and effective resolution of issues for workers.

Source: Submissions from the Nation Joint Council of the NAECI to the Inquiry

The NAECI agreement is only used on engineering construction sites and while other agreements have effective dispute resolution procedures there may be times when the complexity of projects means that issues can still arise on sites. There is therefore a benefit for contracting authorities to consider the process of dispute resolution and how this will be achieved on large public sector contracts. The aim of dispute resolution is to assist in resolving conflict as early as possible, to avoid negative impacts on organisational effectiveness and efficiency, as well as reducing the impact on the individual worker.

Case Study

Forth Replacement Crossing – ACAS Mandatory Dispute Resolution Procedure

An initial dispute resolution processes was put in place for 2011, when the construction phase of the Forth Replacement Crossing was just underway.^a However, this proved ineffective, particularly given the multiple layers of contracting and sub-contracting which made ‘chains of responsibility’ difficult to uphold. Serious health and safety concerns were not being addressed and ‘wildcat’ industrial action went ahead.

Ultimately, Scottish Government ministers requested that the Advisory, Conciliation and Arbitration Service (ACAS) become involved in 2017.^b ACAS set up a new, mandatory collective disputes procedure to address the frictions that existed between the various employment relationships and the absence of worker voice. The process centres on employment relation dispute issues that are raised collectively, rather than by a single individual. Importantly, the process is designed not to interfere with any industry agreement already in place. Early resolution of issues aims to avoid the possibility of delays/disruption to the successful completion of the contract.

The process set out by ACAS includes six stages – with maximum timescales for each. This begins with the recognised trade union raising the issue with the direct employer/contractor in an effort to reach agreement. If the direct employer/contractor does not address the issue, it is raised up to the main contractor. After this point ACAS conciliation is requested by the trade union and arranged with the direct employer/contractor. Non-cooperation by the direct employer/contractor is again raised to the main contractor who should reinforce to the direct employer/contractor the importance of adhering to the disputes procedure. The main contractor may, at that point, become involved in the conciliation where there is a breach of the relevant agreement or non-compliance with the contract. If, at this point, an agreement is not reached, ACAS will contact the client to discuss the impasse and the potential implications. These stages should be completed within 42 days.^c

Sources:

a. Transport Scotland (2020), [Lessons Learned from the Forth Replacement Crossing Project: 2007 to 2017](#)

b. Scottish Construction Now (2016), [Acas brought in over Queensferry Crossing low pay claims](#)

c. ACAS submission to this Inquiry

The case study of the Forth Replacement Crossing highlights an important example of good practice where ACAS created and ran a mandatory dispute resolution procedure. The CIIG believes that there is merit in greater use of mandatory dispute resolution procedures particularly on large-scale and complex contracts.

The benefits of introducing a collective disputes procedure are that it:

- ensures effective voice in resolving collective issues
- ensures that companies without collective disputes procedures deploy this mechanism for resolving issues.
- ensures consistency of approach in dispute resolution.
- ensures that disputes are resolved timeously.
- enhances employee wellbeing in the knowledge that fair treatment is applied.
- allows for focus on productivity.
- provides managers, who are key to positive relationships, with a clear formal procedure to follow.

The CIIG believes that the issue of dispute resolution should be considered in all large-scale public contracts before work begins onsite. The contracting authority, lead contractor and relevant trade union should work together to agree an appropriate and mandatory dispute resolution process that all parties onsite must adhere to. This could be through existing collective agreements or through a standalone procedure as noted in the case study above. Ultimately an approach should be agreed and communicated to all workers and employers on site to support fair work outcomes. Just as with the NAECl, the lead contractor should require its use through its own contracting procedures or that of the managing agent.

2.2.4 Recommendations Related to Strengthening Effective Voice

Effective voice is key to delivering all other dimensions of fair work. Leadership structures that support social dialogue have an important role to play in ensuring positive relationships and supporting positive outcomes for workers and employers. Organisational structures, collective agreements and voluntary agreements all have a vital role to play in encouraging positive practice in workplaces and creating the working environment necessary for all workers to enjoy fair work outcomes. The Inquiry found that:

- Construction Scotland and the Construction Leadership Forum both appear to act as leadership groups for the industry facilitated or supported by the Scottish Government but they do not all reflect the diversity of stakeholders in the industry. The Scottish Construction Leadership Forum is an example of more inclusive practice that should be built upon.
- Effective industry leadership requires participation of all relevant stakeholder groups. Government has a crucial role in creating such architecture where unions, employers' organisations and businesses of different sizes and experiences have a voice.
- There is a range of sectoral collective bargaining agreements in construction covering an estimated 85,000 workers or 62% of the employed workforce.¹³⁴ Together these agreements create a set of minimum standards that can be applied across the industry.
- Collective agreements are the most effective voluntary method to support minimum standards in the industry, because once they are agreed and adopted they provide legally enforceable rights and obligations for the workforce and the employer.

¹³⁴ Labour Research Department (2021), [Scotland's Collective Bargaining 2021](#)

- The legacy of blacklisting remains within the industry and active steps will need to be taken to change workers' perceptions that contacting their union or raising concerns will put their future income at risk. Employers and unions need to work together and Government, contracting authorities and other public bodies should support and facilitate this change.

The Inquiry Group therefore makes the following recommendations:

Strengthening Effective Voice			
	Recommendation	Owner	Timeframe
9	All existing industry level groups including Construction Scotland and the Construction Leadership Forum should include balanced membership from a range of stakeholders including trade associations, professional bodies, federations and smaller employers. All such groups should also include balanced representation from trade unions.	The Scottish Government Construction Scotland	Immediate
10	The relationship between each of the industry leadership groups should be clarified and the Scottish Government's interaction with each group clearly articulated.	The Scottish Government	Immediate
11	All industry leadership groups should seek opportunities to support, through voluntary agreement, collaborative working and mandatory approaches where possible including: <ul style="list-style-type: none"> • greater use of collective agreements; • trade union access to workplaces; • the use of fair work charters; • the use of collective dispute resolution procedures on large-scale complex projects giving faster remedy to the workforce. 	All Industry Leadership Groups and Forums	Immediate and ongoing
12	The issue of disputes resolution should be considered in all large-scale public contracts before work begins on-site. The contracting authority, lead contractor and relevant trade union should work together to agree an appropriate and mandatory dispute resolution process that all parties on-site must adhere to. This could be through existing collective agreements or through a standalone procedure, for example a procedure backstopped by ACAS.	All Contracting Authorities Lead Contractors Trade Unions	With each large-scale project



3. The Future of Construction

The construction industry, like many other industries, is at a moment of change. The need to transition to a net zero carbon economy and undertake large-scale retrofitting on existing building stock raises significant new challenges around skills and workforce planning. Added to this, construction is facing immediate skills shortages due to the impact of Brexit alongside an ageing workforce with around a third of the workforce over 50 and an estimated 50,000 workers likely to retire in the next ten years¹³⁵. Repeated inquiries have also pointed to perceptions of construction as a poor place to work with young people, particularly young women, unlikely to choose to work in the industry.

These challenges will need to be addressed and workforce growth will be required in key areas in order to meet Scotland's low carbon targets. While the workforce challenges are significant this is also a key moment for investment and modernisation of the industry. The transition to net zero carbon technologies, if pursued in a just and fair way, offers an opportunity to transform ways of working and provide high quality work to a greater range of people across Scotland and beyond.



3.1 The Transition to a Zero Carbon Economy

Scotland has committed to become a net zero carbon economy by 2045 and set a statutory target to reduce carbon emissions by 75% by 2030.¹³⁶ Reaching this target will require a transformation in how the economy and society functions with a range of industries facing significant challenges. In this context the construction industry has a large role to play and emissions from the built environment and construction account for around 40% of total national emissions.¹³⁷

The Scottish Government has set a target that by 2030 at least 30% of Scotland's building stock will be heated using zero emissions systems. The Climate Emergency Skills Action Plan (CESAP) notes that to achieve this buildings decarbonisation target, the industry needs to adapt building design, construction methods and materials for new and existing buildings, improve thermal efficiency and move to zero emissions heating systems. Decarbonising heating involves improvements to thermal efficiency, for example improved insulation and the use of low carbon heating sources such as heat pumps and heat networks.¹³⁸

Across the UK the investment required for retrofit is significant. The total cost of net-zero retrofit of the built environment across the UK is expected to be in the region of £1 trillion, or around £35 billion a year.¹³⁹ The Scottish Government estimates that a

¹³⁵ Skills Development Scotland (2020), [Climate Emergency Skills Action Plan 2020-2025: Key Issues and Priority Actions](#)

¹³⁶ Scottish Government (2019), [News: Scotland to become a net-zero society](#)

¹³⁷ CITB (2021), [Building Skills for Net Zero in Scotland](#)

¹³⁸ Skills Development Scotland (2020), [Climate Emergency Skills Action Plan 2020-2025: Key Issues and Priority Actions](#)

¹³⁹ CITB (2021), [Building Skills for Net Zero in Scotland](#)

total of £33 billion will be required to retrofit all domestic and non-domestic buildings in Scotland and has committed £1.8 billion for upgrading heat systems in Scotland across the lifetime of this Parliament.¹⁴⁰ The Heat and Buildings Strategy commits that by 2030 over one million homes and the equivalent of 50,000 non-domestic buildings in Scotland will be converted to zero emissions heat.

The CESAP outlines the skills implications that reaching the buildings decarbonisation target will have in construction, noting the need for focused upskilling and the development of specialist knowledge and skills around retrofit, zero emissions heating systems and heat networks for professional, technical and craft roles, as well as data and smart systems skills for delivering energy management in buildings services. This will require upskilling of existing roles and adaptation of training will be needed across new build and retrofit to embed best practice and ensure performance gaps are addressed. It notes that the college network is currently developing additional provision to meet anticipated demand for upskilling.¹⁴¹

The Green Skills Taskforce at UK level notes that specific low carbon training is required across all roles, with a focus on systems design and implementation, inter-trade issues, and competence and quality. This includes every part of the construction supply chain - from planners, architects, engineers, construction workers, supervisors and auditors, to occupiers.¹⁴²

The CIIG identified a significant challenge for the industry when considering upskilling and the need to build green skills noting that supply and demand for new skills currently do not align. The example of plumbing was explored, which will play a key role in the installation of heat pumps. There was a sense that few customers are currently interested in new technologies or approaches with the effect that businesses are not incentivised to invest in skills and upskilling.

This is reflected in current figures where in recent years around 3,000 renewable heating systems have been installed in Scotland's homes annually. As set out in the 2021 Programme for Government, to maintain progress towards the statutory emission reduction targets, zero emissions heat installations must scale up to provide a total of at least 124,000 systems installed between 2021 and 2026. The installation rate will need to peak at over 200,000 new systems per annum in the late-2020s.¹⁴³

A CITB report considering the skills needs to transition to net zero in construction made a similar observation to that of the CIIG:

'Skills development in the construction sector is demand-led but there is currently little demand for decarbonisation, so little incentive to develop the skills required. If demand is created without planning for skills development, there will be a lag in the

¹⁴⁰ Scottish Government (2021), [Heat in Buildings Strategy - achieving net zero emissions in Scotland's buildings](#)

¹⁴¹ Skills Development Scotland (2020), [Climate Emergency Skills Action Plan 2020-2025](#)

¹⁴² Green Jobs Taskforce (2021), [Green Jobs Taskforce Report](#)

¹⁴³ Scottish Government (2021), [Heat in Buildings Strategy - achieving net zero emissions in Scotland's buildings](#)

*supply of skilled workers which will cause a delay to net-zero implementation that we cannot afford.'*¹⁴⁴

The CITB, supporting the CESAP work, also conducted specific assessments on the skills needs for Scotland. This report notes that by 2028 Scotland will need an additional 22,500 people working in construction in order to carry out retrofit activities. This will include:

- an additional 4,300 plumbers and HVAC workers, primarily in the installation of heat pumps.
- 4,600 project managers, including specific roles like Retrofit Coordinator.
- 1,900 Building Envelope Specialists (which includes insulation installers).¹⁴⁵

Significant upskilling is also required to support the adoption of low carbon technologies. Widespread heat pump deployment will require the upskilling of the current workforce with an estimated 40 hours of training. The biggest barriers to decarbonisation upskilling were seen as lack of training opportunities, lack of funding for training, regulation changes and a lack of clear training standards or accreditation. Cost was generally seen as most important barrier for smaller businesses. External funding to cover some or all of the cost of training and a recognised accredited qualification were seen as the key ways that Government could support and facilitate upskilling within the industry.¹⁴⁶

Careful workforce planning will be essential to support the move to net zero and there is a clear need for strong leadership from the public sector to set the direction of travel.

The creation of demand is essential to create a successful skills pipeline but there is equally a danger of peaks and troughs in terms of the skills needs or the need for certain trades, which could ultimately increase uncertainty and precarity for the workforce in the industry. Care must therefore be taken to trace out the skills needs required, to identify appropriate mechanisms that allow for the spikes in demand for certain activities (for example insulating buildings or fitting heat pumps), and to ensure that workers are sufficiently trained and skilled that they can maintain their employment throughout the decarbonising agenda and have a future in the industry.

¹⁴⁴ CITB (2021), [Building Skills for Net Zero in Scotland](#)

¹⁴⁵ CITB (2021), [Building Skills for Net Zero in Scotland](#)

¹⁴⁶ CITB (2021), [Building Skills for Net Zero in Scotland](#)

The Case Study below outlines the work of the Construction Scotland Innovation Centre which has been working to support the develop of green skills within the industry.

Case Study

Construction Scotland Innovation Centre (CSIC)

In 2012, the Scottish Funding Council launched an Innovation Centre programme to support collaboration between universities and businesses. One of the seven centres is the Construction Scotland Innovation Centre (CSIC), which is hosted by Edinburgh Napier University and based at the Innovation Factory at Hamilton International Technology Park in Lanarkshire, central Scotland.

In September 2021, the CSIC announced the launch of its new £450,000 Low Carbon Learning programme. This training course is supported by funding from the Scottish Government and Scottish Funding Council through the National Transition Training Fund, which was introduced in 2020 as a response to the economic impact of Covid-19. The Low Carbon Learning programme follows the successful 'Passivhaus in Practice initiative' run by CSIC, which included a mix of online, augmented reality (AR) and hands-on training modules. The new Low Carbon Learning programme will equip construction workers with the skills to retrofit buildings for a low carbon future; an important contribution to the national mission to 'create new jobs, good jobs and green jobs'. It is expected that initially 200 workers will undertake face-to-face training at CSIC's Innovation Factory, while 500 more will train online. The training programme will support construction workers who are out of work or are facing the prospect of redundancy, offering a route back into the sector with new skills and knowledge aligned with the future demands of the sector.

Source: Scotland Construction Now (2021), [CSIC to deliver Passivhaus in Practice programme for Scottish construction workers](#)

The CSIC Low Carbon Learning programme is an example of positive practice and the focus on construction skills and pathways within the CESAP is welcome. However, the speed and scale of the change required to meet Scotland's emissions targets is unprecedented and a step change is needed in the scale of interventions if decarbonising targets are to be met.

Off-Site and Modern Methods of Construction

Construction has a range of ways to modernise, by building in new working practices, new building materials, higher levels of automation and higher levels of offsite manufacturing. Off-site and modern methods of construction (MMC) are commonly used for smaller buildings, such as housing, as significant elements of each building are still small enough to transport. In off-site construction, components such as floor, wall and roof sections are manufactured in the controlled conditions of a factory, then transferred to site for assembly. The process has now developed to the point where entire sections, including internal and external cladding, services and

utilities can be manufactured off-site, reducing the time spent on-site and the skills required significantly.¹⁴⁷

Manufacturing and off-site approaches are likely to play a large role in the industry going forwards, as modular builds reduce costs, support energy efficiency and offer a speedy route to new build housing projects, particularly in the context of large-scale retrofitting programmes that have significant workforce requirements.

Off-site construction has the potential to offer high quality employment opportunities to communities and to support more settled and less transitory working environments for construction workers. Yet, the CIIG group noted that factory work is potentially more repetitive and a less skilled role for individuals and there is a need to ensure that the employment offered is both skilled and fulfilling.

The CIIG felt that automation and multi-skilling, if used appropriately, could support an increase in both efficiency and safety in this context. Within a manufacturing setting for example, single-skilled workers rely on a constant stream of the same work whereas multi-skilled workers could work across areas. They noted that having an awareness of work within the factory as a whole can provide opportunities for progression and support better career outcomes for the workforce.

Within construction it is important to note that multi-skilling has too often been used as a deskilling agenda or a way to undermine collective agreements. Modernisation and the creation of new ways of working must be an upskilling agenda and must continue to support high standards and high quality work within the industry. It may also be necessary to consider how well existing collective agreements support workers engaged in Modern Methods of Construction. It is important that this approach maintains high standards and provides positive outcomes for the workforce and parties involved in collective agreements should consider how they can be renewed and updated to support workers in these areas.

3.2 Apprenticeships and Skills



3.2.1 Construction Apprenticeships

A third of construction workers are aged over 50 and an estimated 50,000 construction workers will retire by 2029. The industry already faces labour shortages and the decarbonising agenda will require additional workers. Skills Development Scotland (SDS) estimates that these pressure combine to require an additional 79,100 construction workers by 2029.¹⁴⁸ For many of these roles the main entry route is through apprenticeships. Construction is the single biggest discipline in apprenticeships in Scotland with over 11,600 construction Modern Apprenticeships in 2020/21. One third of all apprentices in Scotland work in construction.¹⁴⁹

CITB has estimated that the annual recruitment requirement within construction in Scotland is 2.3% per year which means an extra 26,250 new workers are needed

¹⁴⁷ CITB (2021), [Building Skills for Net Zero in Scotland](#)

¹⁴⁸ Skills Development Scotland (2020), [Climate Emergency Skills Action Plan 2020-2025](#)

¹⁴⁹ Skills Development Scotland (2021), [Modern Apprenticeship Statistics, Quarter 3, 2020-21](#)

between the end of 2020 and 2025 alone. CITB notes that this translates into a need to recruit 5,250 workers per year and that the following occupations have some of the strongest recruitment requirement levels:

- other construction professionals and technical staff (850 per year)
- construction process managers (850 per year)
- electrical trades (800 per year).

There is also pressure on civil engineers, architects, labourers and logistics staff where demand is high compared to their workforce level.¹⁵⁰

Evidence to this Inquiry also pointed to a variety of pressures on current apprentices, with an overall fall in apprenticeship numbers in 2020. A survey undertaken by the Fair Work Apprenticeship Coordinator also identified that approximately 1200 fourth year apprentices were awaiting their final skills test. This was partly a result of COVID-19, with many having problems completing the required portfolio of evidence and issues with access to the skills tests, but also reflects changes in the structure of apprentices with this the first cohort of apprentices post the 2017 reform of the construction building apprenticeships framework. An Apprenticeship Task Force group including CITB, Trade Federations, SDS, Scottish Government and Colleges Scotland was set up to develop and implement plans to ensure the backlog was tackled and that no apprentice would be penalised by the delay.¹⁵¹ Importantly this group guaranteed the apprentice's skills test if they were made redundant.

This action is important as it seeks to maintain apprenticeship numbers within the system. This is essential given the pressures the industry faces in terms of recruitment. However, taken in the round there is evidence of significant and growing pressures around skills and recruitment in the industry.

Changes to the Scottish Apprenticeship System

There is much to value in the construction apprenticeship approach in Scotland, which has continued to emphasise quality and apprenticeships in construction are often four year qualifications and train the apprentice to a high level, preparing them for a career in construction. All apprentices in Scotland (excluding foundation apprentices) are employed. SDS provided evidence to this Inquiry that construction apprentices score the quality of their experience very highly, at 8.8 to 9 out of 10 depending on the trade, and 93% to 98% would recommend their apprenticeship to others.

Deregistration and Deskilling

Through the course of the Inquiry there were a number of significant areas of concern raised relating to apprenticeships. The two main issues identified were deregistration and deskilling. In many ways these are related issues and point to a change in 2017 in how building construction apprenticeships were designed, agreed and monitored within Scotland. This change partly relates to external pressures resulting from the interaction with the apprenticeship system in the rest of the UK.

¹⁵⁰ CITB (2020), [Construction Skills Network: Labour Market Intelligence Report](#)

¹⁵¹ CITB (2021), [NVQs & SVQs \(Standards & Frameworks\) - CITB](#)

It should be noted that in other parts of the UK apprenticeships are often narrower and shorter with limited support for the apprentice who is not always employed. The role of federations and trade associations is also weaker. The issues also relate to employer views and the changing nature of work in the industry, with employers in housebuilding in particular expressing a desire to change how apprentices are designed to more closely match job roles.

The approach of construction apprenticeships in Scotland had previously emphasised the preparation of an apprentice for a career in construction rather than an individual job role with a single employer and apprenticeship frameworks could therefore require skills that were not routinely used in the apprentices day to day work. In this way it had been common for apprentices to be skilled beyond the needs of their employer and to undertake modules and simulations of work at colleges in order to complete their apprenticeship and ensure that they had the skills needed for their trade.

A move to more workplace-based assessment in the construction building apprentice framework sought to align apprenticeships more closely to specific job roles and reduce the need for simulations or training that was conducted off the job.

Apprenticeship frameworks at SVQ Level 2 (SCQF Level 5) are now offered for a range of roles in construction. The creation of lower level qualifications is related to issues around modern methods of construction where simpler installation techniques can reduce the skills needs of specific jobs – for examples for roofers or for timber frame erection – with a large number of businesses specialising in high volume, lower skilled work.

‘The national minimum wage and the SNIPEF wage as my boss is with SNIPEF but does not go by there wage recommendations which he is entitled to do but as I have bill too pay I think my union and SNIPEF should work together to look into getting an apprentices recommended wage and the minimum wage more fair. For example my unit of pay hourly is 4.9 but SNIPEF say for a second year apprentice it should be 5.3. This is a lot of money I have lost and losing that I find unfair’

Apprentice

Source: SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

It should be noted that SVQ Level 3 (SCQF Level 6) frameworks are also offered, and SDS highlights that these provide clear progression routes for workers to improve their skills and to support career development. The expectation therefore is that workers will undertake multiple shorter apprenticeships across their career, in line with the needs of their current employer. In training terms this progression pathway is clear, however, apprenticeship wage structures may act as a barrier for workers engaging in this approach in practical terms.

A key part of the change in the industry in 2017 was the removal of the requirement to register construction apprentices with their relevant trade body. Up to this point trade federations had been responsible for monitoring and regulating the working conditions, wages, recruitment and training of apprentices working in the Scottish

construction industry. Employers taking on an apprentice signed an apprenticeship agreement that required the application of collectively agreed terms and conditions. These contracts also contained a clearly defined dispute resolution system that could be used by both the apprentice and employer. The registration process also ensured that all craft apprentices were employed on the same terms and conditions throughout Scotland.

Since 2017 apprentice's terms and conditions are left to individual employers, CITB now advises employers that registration with SBATC or SPADAC (covering bricklayers, carpenters, plasterers, painters and decorators) is optional, and that the required rate for the job is the National Minimum Wage which is £4.30 for all apprentices in their 1st year, rising to that National Minimum Wage for their age group if they are over 19 years of age and compliance with this is tracked by both SDS and CITB.

It should be noted that SDS's modern apprenticeship framework template for apprenticeships which forms the guidance for Sector Skills Councils, including CITB, is silent on the issue of sectoral agreed rates for apprentices. However, SDS do write to each apprentice setting out that their rate of pay may be covered by collective agreement and provides them with contact details for trade union officials in construction. While this is a welcome intervention, it would be more valuable to create a clear expectation to CITB and to construction employers that the collectively agreed rates for the construction industry should be applied through mandatory requirements within the relevant craft apprenticeship frameworks and re-establishing registration conditionality on apprenticeship grant funding arrangements.

Case Study

Fair Work Apprentice Coordinator

Since September 2018, Unite the Union has employed a Fair Work Apprentice Coordinator (FWAC), funded by and reporting directly to the Scottish Government. The role of the FWAC is principally to visit apprentices and adult trainees in colleges and workplaces to promote fair work and to support individuals to understand how fair work is relevant to their apprenticeship. The FWAC also supports apprentices with issues at work that can include disciplinary actions, redundancy risks or where they have a grievance with their employer. Originally the visits to apprentices were in-person, but these moved online meetings in line with public health restrictions during the pandemic.

The FWAC found that apprentice's terms and conditions are now generally set by employers, with the majority only paying the National Minimum Wage. The existence of the FWAC goes some way to mitigate the damage caused by the removal of registration structures. However, the FWAC notes that issues often arise when apprentices instruct him not to contact their employer for fear that this may cause them more problems at work. Moreover, some employers refuse to communicate with the FWAC, which normally results in an escalation of issues and a reliance on legal enforcement action through Unite.

Related to the issue of registration, the need to uphold the quality of the qualifications and prevent a deskilling agenda was also identified by the Inquiry Group. Previously, trade associations or employer federations and the CITB were joint awarding partners with Scottish Qualification Authority (SQA), which meant any changes to qualifications had to be agreed by the joint partners, including the registration bodies the Scottish Building Federation (SBATC) and the Scottish Decorators Federation (SPADAC). The demise of the partnership means that apprenticeship standards are determined without formal agreement with federations.

‘There are far too many apprentices and mates who through no fault of their own [do not] get the proper on the job training due to lack of time to train them on site. A serious lack of quality tradesmen and boys qualifying as tradesmen have nowhere near the knowledge or skills to lead the future of the trade, I dread to think what the future holds unless we invest in our people and provide the necessary skills’

Worker

Source: SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry

The partnership has been replaced with a Technical Expert Group (TEGs) process, which will gradually replace existing apprenticeship frameworks with a new system of apprenticeship programmes and qualifications linked to occupational standards set at a national level.¹⁵² TEG is a short-life working group which develops apprenticeships through the expertise of the people involved. SDS describes a TEG as being made up of 10-to-15 people from: employers; industry and professional bodies; qualification and education experts; and social partners, such as trade unions. The group involves people who have experience at operational manager level and volunteers must commit to a minimum of four half-day meetings over a six-month period.¹⁵³ The TEG process also includes a period of formal consultation with apprentices, employers and others.

Inquiry members were concerned about the rise in apprenticeship frameworks in construction at SVQ Level 2 (SCQF Level 5). There was a strong belief in the group that apprenticeships should provide young people with a skills base to support them in their careers and this is typically achieved through the provision of apprenticeship frameworks at SVQ Level 3 (SCQF Level 6) or above. The growth of apprenticeships at lower levels were seen as narrower less robust qualifications and were therefore seen as a part of the wider deskilling agenda within the construction industry, and often had the impact of putting roles beyond the collective agreement.

The Inquiry Group was also clear that reducing the quality of the qualifications or narrowing the skills packages offered would not help to attract young people into the industry or deal with skills shortages. The Inquiry notes the debate around changes to the design of apprentices but notes that the TEG process seems to offer a useful approach to partnership working as long as formal group membership incorporates a

¹⁵² OECD (2020), [Strengthening Skills in Scotland](#)

¹⁵³ SDS (2021), [Apprenticeships | Technical Expert Group](#)

role for all industry stakeholders. It is important that this approach consistently supports employers, employer federations, professional bodies and trade unions within its structures, and where this is done successfully it should support apprenticeships that are positive for the apprentice and support long-term industry need rather than short-term needs of a single employer.

Ultimately maintaining standards and promoting fair work outcomes is more likely to produce the results that the industry needs. There is already evidence that falling wages, limited training support and poorer career pathways is impacting young people's career choices. The example of bricklayers was provided to the Inquiry which, as the Cole Report notes, is an increasingly outsourced profession. There is now a significant shortage of bricklayers in the industry and an issue around their skills levels, impacting build quality and safety on sites. Greater use of direct employment across all employers in the industry and maintaining high standards within apprenticeships has a key role to play in supporting skills, delivering fair work and transitioning the industry to net zero.

Supporting Employers to Support Apprentices

Electricians and Plumbers are covered by national agreements through the SJIB and Scottish and Northern Ireland Joint Industry Board for the Plumbing Industry (SNIJIB). These organisations continue to play a leading role in offering training and supporting apprentices within the industry. These areas have not been impacted by deregistration issues and both organisations also directly provide apprenticeships.

The case study below considers SJIB's Apprentice programme which enjoys widespread support amongst employers for a number of reasons. Firstly, most electricians are members of SELECT and were, themselves, trained by SJIB. They, therefore, recognise the high-quality training for apprentices. Additionally, employers are supported throughout the programme for example, if a company specialises in a particular field and cannot provide all aspects needed for the apprentice's training, SJIB's Training Officers can often support informal 'swaps' or will ensure additional training is carried out in the college setting. This makes it easier for the employer to participate in the programme while also supporting high quality learning for the apprentice.

Case Study

SELECT

SELECT - the trade association for the electrical contracting industry in Scotland – founded the Scottish Joint Industry Board (SJIB) along with Unite the Union in 1969. The SJIB develops and delivers apprentice and adult training schemes for electrical installation. Management of its training schemes is delegated to the Scottish Electrical Charitable Training Trust (SECTT) – a Trust established by SELECT and Unite the Union. SECTT is one of two organisations contracted to deliver modern apprentice Electrical Installation programmes with funding from Skills Development Scotland (SDS).

SJIB and SECTT are well regarded for delivering high-quality apprenticeship training. SECTT recruited 738 new apprentices in 2021. Apprentices attend one of 20 approved colleges to work towards gaining an SCQF Level 7 in Electrical Installation and passing their Final Integrated Competence Assessment (FICA). Colleges are provided with guidance from SJIB on what should be taught at each stage. It is important that apprentices, wherever they are in Scotland, are trained to, and work at, the same standards. The FICA has almost become an informal industry standard.

Each apprentice is assigned a local training office. Training officers can support the apprentice on a range of issues throughout their training, and also liaises with employers. Throughout the pandemic, this structure allowed for personalised and proactive assistance. For instance, all apprentices were provided with access to a laptop to ensure their learning could continue from home. Beyond this, SJIB can step in with any employment issues and broader support is also made available through the Electrical Industries Charity. The extent of the support for apprentices not only has an immediate benefit for them, but also helps to build the apprentices' sense of belonging to their companies and to the sector, raising productivity and retention rates.

The SJIB Wage Rates for Apprentices are negotiated and agreed by the SJIB National Board. They vary by whether the apprentice is 'at work' or 'at college' and by their stage (Stage 1, 2, 3 and 3 FICA), rising from £4.83 for a Stage 1 apprentice at college to £11.05 for a Stage 3 FICA-eligible apprentice at work. The SJIB contractual rates apply to all Apprentices, regardless of age during the first 12 months of the apprenticeship. After the first 12 months, when the National Minimum Wage/National Living Wage is higher than the negotiated rates, the National Minimum Wage/National Living Wage will take precedence, depending on the age of the Apprentice. In addition to wage rates, sick pay and welfare benefits are also agreed.

While SELECT is a membership-based trade association, training is open to all, including non-members. However, all apprentices are employed under SJIB rules.

Source: SJIB (2022), [SJIB National Rates & Allowances 2022-23](#)

Recognising issues identified in previous inquiries, steps have also been taken within the industry to create a shared apprenticeship programme. The purpose of this is to support small construction businesses to participate in apprenticeships even where they may not be able to sustain a 4 year apprenticeship or offer the variety of work necessary for the apprentice to develop the range of required skills.

Case Study

Scottish Apprenticeship Ltd

Apprentices are registered through Dundee and Angus College and are employed by Scottish Apprenticeship Ltd for the duration of the 4 year apprenticeship in the following trades: joinery, brickwork, painting/decoration, roofing/slating and electrical. Scottish Apprenticeship Ltd then places the apprentice with construction host employers.

Shared Apprentice Ltd. is a not-for-profit company and the main employer covering all wages when apprentices are in the college, annual leave, sickness and maternity/paternity pay. Host employers are invoiced for the time the apprentice worked with them plus 20%. The apprentices' wages align with Scottish Building Apprenticeship and Training Council (SBATC) and Scottish Joint Industry Board (SJIB) wage rates. The host company is asked to support apprentices for a minimum of three months at any time, although placements can last longer.

Scottish Apprenticeship Ltd¹⁵⁴ is unique in that it has successfully delivered a shared apprenticeship model for the first time. However, SDS has identified some issues with the model including, around the length of time individuals remain with the same employer, feedback from apprentices around moving between employers and the size of employers involved. A full evaluation has not yet been undertaken so it is difficult to gain a clear picture of the merits of the programme.

The role of a shared apprenticeship scheme is important within the construction industry as much of the current training provision is taken forward by small and medium-sized employers, with large numbers of smaller employers in the industry particularly in rural areas. A range of trade federations and employers have expressed interest in the shared apprenticeship approach. The CIIG believes a positive step forward would be for SDS to work with CITB, employers, trade federations, professional bodies and trade unions to develop principles for taking forward a shared apprenticeship scheme successfully and in line with fair work principles. This may also help with the inherent tensions in supporting employers to engage with apprenticeships while offering narrower more specialised roles. If delivered successfully this scheme along with 'swaps' and other arrangements could prevent the deskilling of construction trades as it incorporates more modern methods of construction at scale.

¹⁵⁴ Shared Apprentice Ltd (2020), [The Shared Apprentice Programme](#)



Equality, Diversity and Inclusion

There has been significant focus placed on the issue of equality within construction with a range of schemes and programmes designed to encourage a different workforce profile. Despite this equality, diversity and inclusion issues within the industry remain largely unchanged over the last decade.

The evidence shows that construction industry faces significant challenges with regard to equality, diversity and inclusion. This is illustrated by:

- low numbers of women working in the industry (15.4% female workforce falling to 2% within craft roles¹⁵⁵ and only 67 women starting apprentices in construction in Q2 2021/22¹⁵⁶).
- low numbers of ethnic minority workers in the industry (only 1.6% of the workforce).¹⁵⁷
- low numbers of disabled workers in the industry (10% of the workforce¹⁵⁸).
- reduction in EU nationals working in the industry due to Brexit.

With an ageing workforce and growing skills shortages tackling negative perceptions of construction and encouraging a wider more diverse workforce is key to strengthening the industry and meeting future challenges.

3.2.2 Improving Equality, Diversity and Inclusion in Construction

Evidence suggests that when women do work in construction they work in more technical roles or in backroom functions like human resources or administration. The SCER & FAI research also noted evidence from unions that when women work within craft trades they are more likely to progress and to access senior positions than their male counterparts. There is, therefore, reason to suggest that working within construction can and does offer fulfilling roles to women, yet, there is also the reality that many women are not attracted to the industry.

'Female apprentices they tend to go up the scale pretty quickly, they tend to be off the tools pretty quickly, and into work based positions or site based positions ...a lot of supervisors within the painting occupation are women'

Union Officer

Source: SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

The Inquiry considered both perceptions of the industry and genuine constraints to work practices that could act as disincentives to women. There is a widely held perception that outdoor working is unattractive to women and therefore the nature of construction work is, in and of itself, a barrier. The Inquiry found no compelling

¹⁵⁵ Equate Scotland (2020), [Inclusive Value Report for the Construction Sector](#)

¹⁵⁶ Skills Development Scotland (2022), [Modern Apprenticeship Statistics](#)

¹⁵⁷ ONS (2021), Annual Population Survey, Jan-Dec 2020

¹⁵⁸ ONS (2021), Annual Population Survey, Jan-Dec 2020

evidence that this is the case, but noted limited studies examining men or women's preferences with regard to outdoor working.

There are, however, other issues within the nature of how construction works that might act as barriers to women. Firstly evidence suggests that women have a stronger preference for roles which offer flexible working options. While some roles within construction may support flexible working practices, there are significant barriers for construction site based working and trades in this regard. The Inquiry noted that Local Authority regulations often stated that work can only take place 8am-6pm, placing a clear limit on the working day. Equally the seasonal and transitory nature of many of the jobs in the industry is difficult to overcome, as is the pressure from clients and the intensity of the work which often drives a long hours culture.



Case Study

Timewise Flexible Working Pilots.

Flexible working pilots were designed and trailed by Timewise and Build UK, with support from Barclays LifeSkills programme and CITB. These pilots set out to test whether improved access to flexible working for site-based teams in construction, could address some of the long hours, cultural issues and demanding working patterns.

The initial phase of the pilots identified structural barriers that relate to how work is organised which place genuine operational constraints to flexible working in frontline construction roles. These included the interdependency of roles, constraints on site operating times, workers' long travel times to reach site, the challenge of decoupling time and output in situations where people were hourly paid, client expectations, and the differing pay methods and interests of the multiple layers of directly employed, self-employed and subcontracted workers.

The second phase of the pilot was to trial specific working patterns. These varied between sites to match the individual operating constraints and included:

- a team-based approach to flexible working, involving a collaborative method of setting shifts that took workers' personal preferences into account alongside the need to deliver business outputs.
- an output based approach designed to allow workers to start earlier and leave when that day's work was complete, rather than remaining on site for their contracted hours.
- staggered start and finish times, alternating between teams, so that all workers got the pattern they wanted every other week.
- a flexi-day approach in which workers could accumulate additional hours in exchange for one day off each month.
- Home-working for desk-based roles was trialled across all the pilots, and in the event was accelerated by the Covid pandemic.

These pilots found that:

- Flexible working can be implemented on construction sites, with no adverse impact on budgets or timelines.
- flexible working increased workers' sense of wellbeing and work-life balance.
- the team-based approach to giving workers greater control of their working patterns energised the teams – people reported they felt more motivated.
- the culture became more positive around acceptance and understanding of flexible workers.

However, Timewise notes that because of a number of complex operational barriers, a systemic roadmap for change is needed, to ensure that any new approaches meet business drivers as well as benefiting workers' wellbeing. Timewise therefore also recommends that all firms carefully trial their plans to increase flexible working, on one or two sites, before rolling out.

Source: Timewise (2021), [Making Construction a Great Place to Work: Can Flexible Working Help?](#)

These pilots provide a useful starting point to consider how working practices can be adapted and modernised to encourage a more diverse workforce within construction. The need to make construction an attractive place to work and to tackle negative perceptions of the industry is clear.

There are also elements of the culture of work within construction where attention is also required. Construction is a male- dominated industry which creates a sense of isolation that can act as a deterrent for women and other under-represented groups.

‘Pregnancy is a very big issue in construction trade unions don’t help with this situation’

Worker

Source: SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

The SCER & FAI research also presented a worrying picture of some of the workplace cultures. Respondents to the research reported high incidents of verbal abuse, bullying and harassment, and humiliating treatment and behaviours compared to wider survey evidence, on the grounds of age, religion and nationality. A large minority reported that employers did not deal with this effectively, and workers subjected to these forms of treatment had a higher intention to quit the industry. Worryingly unions also reported that workers are fearful of raising any concerns over bullying and harassment as it may affect their employment prospects.

It is important for the industry to face up to the experience of its workforce and to recognise that bullying, harassment, racism, homophobia, sexism and religious discrimination need to be tackled in all parts of the industry, and standards must be high throughout the supply chain. While progress on these issues has been made, particularly within larger employers, there is a need to ensure that the perception and indeed, at times, the reality of the industry as an unsafe working environment for certain groups is tackled. This starts with clear and straightforward policies for dealing with issues within an agreed timescale. Clear communications and leadership from the top of organisations about these policies and a culture of respect and intolerance to bad behaviours and discrimination is key to making meaningful change.

Research from CITB on the perceptions young people have of the industry suggests that concern about discrimination remain which includes a sense that construction is an environment where sexism is common and racism and homophobia still exist.¹⁵⁹ Go Construct¹⁶⁰ was developed by CITB to breakdown the stereotypes around careers in the construction industry. It is an important resource as it emphasises what a career in construction offers, as well as how to join, train and progress through the industry.¹⁶¹ Evidence to this Inquiry from CITB and SDS suggests that young people’s awareness and use of the Go Construct website is particularly low in Scotland.

¹⁵⁹ CITB (2022), [Rethinking Recruitment: Constructing a more attractive industry](#)

¹⁶⁰ Go Construct (2022), [Home](#)

¹⁶¹ CITB (2022), [Rethinking Recruitment: Constructing a more attractive industry](#)

It was also clear from evidence to the Inquiry and from the SCER & FAI research that mental ill-health is a significant issue on construction sites which is given insufficient attention within the industry. The SCER & FAI research found that:

‘Stress and mental health issues were experienced by 13% of survey respondents but when analysing this by employment type, 15% of those directly employed had been absent due to stress and mental health compared to 5% of those in non-standard work reporting absence from work due to stress and none absent for mental health reasons. By definition, this latter group will have more limited access to sick pay, which may explain in part the differences in findings.’¹⁶²

A recent report by CITB also looked at the issue of mental health within the construction industry. The report found that the risk of suicide among some site based male construction workers was three times the national average and skilled finishing trades, such as painters and plasterers, were twice the national average. The report also found that key triggers of poor mental health in construction were:

- working away from home and frequent travelling.
- occupational stressors.
- heavy workloads and long working hours.
- job insecurity.¹⁶³

It is notable how many of these issues relate to fair work within the industry. Improving fair work outcomes within the industry should therefore support more positive mental health outcomes for workers in construction.

The Inquiry Group pointed to the need to offer greater mental health support on sites and to recognise that the physical pressures of the job and the insecure nature of work within the industry could place high burdens on mental health. Part of supporting change and improving diversity in the industry will need to consider the issue of improving mental health for workers.

‘Long term health/disability issues are not addressed and provisions are not made for peeps who have developed these during their employment with the management more likely to make things difficult so the individual will leave thinking it's their fault’

Worker

Source: SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

Existing collective agreements in the industry do not always consider issues that may support improved diversity. It is important to consider how existing collective agreements can better support issues like mental wellbeing, maternity and flexible working and how they can encourage better outcomes for workers.

¹⁶² SCER & FAI (2020), Facing the future constructively? The experience of work in the construction industry in Scotland

¹⁶³ CITB (2021), [Mental Health and Construction: A Coordinated Approach](#)

3.2.3 Recruitment Practice

The Inquiry heard evidence that recruitment within the construction industry could often be on the basis of word of mouth and that many roles are not advertised.

Evidence was found in a range of areas:

- SDS gave evidence that recruitment tends to be informal, through word of mouth. The central website www.apprenticeships.scot is not widely used by construction employers to advertise apprenticeship vacancies, meaning that each vacancy on the site drew a high number of applications.
- A medium sized employer gave evidence to the Inquiry that their recruitment was by word of mouth and personal recommendations.
- SELECT noted that they did not advertise as their apprenticeship scheme was heavily oversubscribed but they did hold careers fairs and larger employers had their own recruitment systems.

The CIIG recognised that attracting workers to the industry is a key priority. It is notable that when most roles in the industry are advertised they are oversubscribed, suggesting that perceptions of the industry may already be more positive than is currently perceived.

While in some respects it is a strength of the construction industry is that it recruits locally and it creates a variety of entry routes, it is also important that employers are able to use more formal recruitment channels, particularly if they perceive a skills or labour shortage in their area. It is also likely to be detrimental for equality and diversity if only a small number of roles are advertised and this method of recruitment is therefore the most competitive.

A recent report by CITB noted that construction workers are more likely to have found a job through their personal network and word of mouth rather than through competitive application. If workers without the right personal contacts don't get a chance to apply, industry misses their talent.¹⁶⁴ CITB have also developed a new toolkit for employers to support them to take on apprentices. This will be launched in apprenticeship week.¹⁶⁵

While the construction industry as a whole lacks diversity it is striking that Glasgow City Building and Royal Strathclyde Blindcraft Industries have a higher level of diversity within their business than is usually seen within the industry. As the two case studies below highlight, a clear business choice has been taken to promote and support diversity. Interventions have been made to support a more diverse workforce, including ongoing support for the apprentice throughout the apprenticeship programme. This offers a model of good practice that could be adopted more widely in the industry to support improved diversity outcomes.

¹⁶⁴ CITB (2022), [Rethinking Recruitment: Constructing a more attractive industry](#)

¹⁶⁵ CITB (2022), [Recruit an apprentice in Scotland](#)

Case Study

City Building

City Building is one of Scotland's largest construction businesses. It comprises two organisations:

- 1) City Building (Glasgow) LLP (CBG) which has operated as a 50/50 joint venture between Glasgow City Council and the Wheatley Housing Group since 2017, and
- 2) City Building (Contracts) LLP (CBC), which is a wholly owned Arm's Length External Organisation (ALEO) of Glasgow City Council (GCC).

A strong social ethos underpins their operations. Recruitment strategies, for instance, target those furthest away from the job market including young people and people with disabilities. A 2018 commissioned review of equality and diversity within the business found that almost a quarter of staff – 24% – were from the most impoverished postcodes (Scottish Index of Multiple Deprivation 1) and 54% of apprentices were living in the two most deprived data zone areas.^a

City Building employs around 250 craft apprenticeship, equivalent to around 13% of its overall workforce. This makes up 4% of all craft apprentices in Scotland, including 20% of all female craft apprentices in Scotland. In 2020 alone, 60 new trade apprentices joined the business. This included 3.3% who identify as BAME (black and minority ethnic) and 7% women^b. City Building undertake all repair work for Wheatley's social landlords in the west of Scotland including Glasgow Housing Association (GHA) and targets are also set for providing training to care leavers and people living in Wheatley Group homes. The business's commitment to apprenticeship has been further demonstrated by an investment in a New Craft Apprenticeship Training College, which aims to deliver 2,000 new craft apprenticeships over the next 30 years.

City Building reports one of the highest qualification rates in the industry, with around 94% of apprentices becoming time-served compared with an industry average of around 75%. A Fraser of Allander Report suggests their success is due to factors including: the method of recruitment that guarantees all applicants an interview/assessment and places more emphasis on work ethic and commitment than formal qualifications; passionate instructors; wrap-around support and support for 'softer skills' (e.g. social awareness, financial wellbeing, drug and alcohol awareness, social media and counselling services).^c

The strong collective agreement with Unite covering 2,200 of City Buildings workers, including their craft apprentices, further supports the ambitions of the business.

Source:

a. City Building Glasgow (2018), [City Building discloses diversity performance in landmark report](#)

b. City Building Glasgow (2020), [City Building recruits 60 new apprentices](#)

c. Fraser of Allander (2021), [The economic, social and environmental benefits of stimulating repairs and improvements to the Scottish built environment to aid a green recovery from Covid-19](#)

Case Study

Royal Strathclyde Blindcraft Industries

Royal Strathclyde Blindcraft Industries (RSBi) is the manufacturing division of City Building. It is a 'supported business', defined as an enterprise where over 50% of their workforce have a disability and these individuals are assisted to get and keep paid jobs. These jobs are, however, also available in the open labour market as opposed to 'sheltered employment' where jobs are not available in the open labour market.

A survey in 2018 found that 51% of RSBi employees had a disability, 13% were women and 2% were from ethnic minorities. The workforce's average age was 44 and average length of service was 14 years. Most disabled employees come to RSBi via their local Jobcentre Plus. In 2018, 42% of RSBi employees were supported by the 'Work Choice' scheme - a programme run by the DWP with the specific aim of supporting people with disabilities who want to work, which is accessed from Jobcentre Plus. From 2019, temporary TESC funding, provided by Access to Work, replaced Work Choice for 109 RSBi employees for a period of two years. Workers at RSBi are able to access a range of support through the business's onsite Learning Centre (including courses to develop core skills such as numeracy, IT and literacy as well as life skills). Good progression opportunities exist for all staff.

There are a small number of similar supported businesses in the construction sector. Dovetail Enterprises (Dundee) and Highland BlindCraft (Inverness), for instance, are both suppliers to Lot 1 (furniture and associated products) on the Scottish Government's "multi-lot, multi-supplier framework for the provision of commodities reserved for supported businesses". However, many other long-standing businesses following a similar model have been forced to close including Blindcraft Edinburgh, which shut in 2011 after more than 200 years in operation. RSBi has been a highly adaptive and proactive business – seeking new commercial opportunities as they arise in the sector, while also producing high-quality products. However, financially, it can be costly to run a business which offers the levels of support to employees that RSBi does. The involvement of City Building and security of core housing contracts have proven to be important to safeguard the business and what it offers disabled workers.

Source: GenAnalytics (2019), [Building greater diversity and inclusion in the construction sector](#)

Construction will need to recruit large numbers of workers in the next few years to deal with the changes in the workplace and to support the transition to a zero carbon economy. This provides a key opportunity to consider how to strengthen recruitment practice on an industry wide basis with a high-profile recruitment campaign which builds in strong diversity messages. The role of supported businesses could also be strengthened in the industry particularly when expanding the use of off-site construction or modern methods of construction.

3.2.4 Modern Slavery

Construction has been identified by the Gangmasters & Labour Abuse Authority (GLAA) as at high risk for modern slavery practices, with the complexity of the supply chain highlighted as the key driver of exploitation. Modern slavery is clandestine, involving unskilled labourers and cash-in hand working and often relates to gangmasters or agency work. The GLAA identifies that the workers most likely to be victims of modern slavery in construction are Romanian or Albanian men under 45 years of age, with limited English language skills. These workers are often unskilled and in possession of fake CSCS cards and as a result can cause safety issues on sites.

Trafficked workers are subject to significant labour abuses including wages below the National Minimum Wage at around £10-£50 per day, or wages withheld completely or coming in the form of food and accommodation. The GLAA have limited intelligence of the level of risk associated with the construction industry in Scotland with much of the identified poor practice reported in the South East of England.¹⁶⁶

The GLAA has developed a construction protocol which encourages large construction companies to monitor practice within their own supply chains, to be aware of who is working on sites and to have clear processes in place for everyone on sites to raise concerns.¹⁶⁷ This approach aligns well with wider fair work practice, particularly the emphasis on voice mechanisms to raise concerns.

When dealing with fair work issues it is important that the issue of trafficked workers is not forgotten. Given that construction is a high-risk industry and given that the construction protocol now exists, contracting authorities should be setting an expectation that larger companies participate in the construction protocol and monitor their own supply chains.

3.3 Recommendations on the Future of Construction

The construction industry is at a moment of change. In the next ten years it faces an ageing workforce and skills shortages and must meet the challenges associated with delivering a net zero carbon economy. Skills Development Scotland (SDS) estimates that an additional 79,100 workers will be needed in construction by 2029¹⁶⁸ and extensive upskilling and retraining of the existing workforce will be required to support the decarbonisation of the built environment. This is also an opportunity to transform the workforce, creating higher-skilled roles, more diversity and equality, and building in modern methods of construction and new ways of working. The Inquiry found that:

- skills and training in construction are demand-led and there is currently little demand for low carbon technologies, meaning few construction workers currently have the skills to support the transition to net zero.

¹⁶⁶ GLAA (2020), [Construction Industry Protocol - Induction Pack](#)

¹⁶⁷ GLAA (2020), [The Construction Protocol](#)

¹⁶⁸ Skills Development Scotland (2020), [Climate Emergency Skills Action Plan 2020-2025](#)

- certainty of funding from the Scottish Government will support the industry to undertake effective skills and workforce planning.
- new ways of working and modern methods of construction have the potential to transform the industry and offer new opportunities to the workforce but currently modernisation is at times associated with deskilling in the industry.
- collective agreements may need to be updated to effectively support new ways of working and improved equality and diversity.
- changes to apprenticeships in 2017 and the removal of registration with federations are undermining collective agreements, reducing apprenticeship pay and are associated with deskilling in the industry.
- apprenticeships should continue to prepare workers for careers in construction and employers should be supported to take on apprentices. Good practice examples show that it is possible to support employers to take on apprentices and offer high quality training even when they offer narrower more specialised job roles.
- there are low numbers of women, ethnic minorities and disabled workers in construction.
- there is an issue around mental wellbeing for the current workforce. The drivers of mental ill-health for the current workforce relate to unfair working practices.
- evidence to this Inquiry suggests that bullying and harassment are currently under-reported within the industry.
- unions have a key role to play in supporting diverse workers in construction, reducing isolation and supporting workers in addressing any concerns they may raise.
- Glasgow City Building and Royal Strathclyde Blindcraft Industries demonstrate that better equality outcomes are possible where inclusive recruitment practice and ongoing support for apprentices is prioritised.
- apprentice recruitment practice is often informal and only small numbers of construction apprenticeships are advertised on www.apprenticeships.scot
- the construction industry in Scotland needs to be proactive in creating a positive environment where modern slavery cannot take root, including engagement with unions and sharing intelligence between employers.

The Inquiry Group therefore makes the following recommendations:

The Future of Construction			
	Recommendation	Owner	Timeframe
13	Employers should better engage with existing collective agreements, and unions and trade associations should be prepared to work together to ensure collective agreements support new ways of working and equality, covering elements like flexible working, mental health and maternity issues. The Scottish Government should facilitate unions, employers and trade associations to work together to support effective modernisation within the industry through the collective bargaining structures that already exist.	Employers Unions Trade Associations / Federations / Professional Bodies The Scottish Government	By 2023
14	The Construction Leadership Forum should support development of an effective workforce strategy to facilitate the transition to net zero carbon economy. Workforce planning must consider how to support workers through peaks and troughs in demand.	Construction Leadership Forum	By 2023
15	All public funding supporting the transition to net zero should include fair work conditionality and drive fair work in the industry.	The Scottish Government All public bodies	With each funding stream
16	Public sector bodies and construction employers at all parts of the supply chain should increase their use of direct employment and support upskilling and retraining to support high quality careers in the industry and improve attraction and retention. Support for direct employment should also reinforce a commitment never to use umbrella companies.	Construction Employers of all sizes All public bodies	Immediate
Apprenticeships			
17	The Scottish Government should work with SDS, SQA and CITB to reinstate the need to register with trade associations / federations and employers should be required to pay collectively bargained rates as part of the apprenticeship agreement, as was the case prior to 2017.	The Scottish Government	Immediate
18	SDS should take action to support apprenticeship pay including by: <ul style="list-style-type: none"> conducting a review of current apprenticeship pay in construction and publishing its findings; 	SDS	By September 2022

	<ul style="list-style-type: none"> reviewing all documentation to ensure that it promotes and encourages collectively bargained rates or, where these are absent, the real living wage and consistent messages are offered to both apprentices and employers. 		
19	Continued funding and support should be provided for the Fair Work Apprenticeship Coordinator role, which has been valuable for supporting the Effective Voice of apprentices.	The Scottish Government	Ongoing
20	SDS should ensure there is full and consistent partnership working between SDS, SQA, CITB, trade unions, employers and trade associations/federations in agreeing apprenticeship frameworks, with an aim to see all construction apprentices trained to SVQ level 3 (SCQF Level 6) or above.	SDS	Immediate
21	SDS to work with CITB, employers, trade associations/federations and trade unions to develop principles for taking forward a shared apprenticeship scheme successfully and in line with fair work principles.	SDS	By Dec 2022
Equality, Diversity and Inclusion			
22	<p>Scottish Government through the Construction Leadership Forum should convene a working group that includes employers, trade associations/federations, trade unions, SDS and CITB to address skills and labour shortages and future labour needs in the industry and to promote the opportunities that exist within the industry. This group should aim to:</p> <ul style="list-style-type: none"> work with employers to identify a pipeline of vacancies and future skills needs; define clear skills pathways required to support the transition to a net zero economy, including for workers who are changing careers; work to ensure clear recruitment processes and platforms are available to employers and support employers to access them; create dedicated advertising campaigns encouraging young people and older workers to consider careers in the industry; take action to improve diversity in the industry building on good practice examples such as at Glasgow City Building and Royal Strathclyde Blindcraft Industries. 	<p>The Scottish Government</p> <p>Construction Leadership Forum</p>	Advertising Campaign to launch in 2023

23	<p>Employers should support a zero tolerance approach to bullying and harassment at the workplace protecting workers from adverse treatment and employers from potential liability. Embedding a safe culture for reporting must come from the top of the organisation. Employers of all sizes must focus on:</p> <ul style="list-style-type: none"> • their internal procedures by providing clear and transparent reporting mechanisms, processes for investigation and management training to identify and take seriously issues of bullying and harassment. • encouraging and supporting workers to raise any concerns, without fear of retribution. • ensuring that no detriment arises for workers who raise concerns. • highlighting external support mechanisms like collective agreements or dispute mechanisms. 	Construction employers of all sizes	Immediate
24	<p>Unions should provide support mechanisms and dedicated networks for under-represented groups in construction to combat the isolation that workers can feel at work or on training schemes. Employers, trade associations and other relevant actors should signpost to these networks and any dedicated officers who can offer support.</p>	Trade Unions	Immediate
25	<p>Contracting authorities should require participation in the Gangmasters & Labour Abuse Authority's construction protocol within large-scale procurement projects.</p>	All Contracting Authorities	With each large-scale procurement





4. Recommendations and Outcomes

4.1 Recommendations

Procurement			
	Recommendation	Owner	Timeframe
1	All contracting authorities should seek to maximise quality weightings and fair work criteria should be given a robust weighting within the quality dimension. Fair work weightings should not be lower than 10% of the contract and it must be possible for low scores on fair work to impact whether a tender is won or lost.	All Contracting Authorities	Within each tender and reviewing frameworks as they arise
2	Training in fair work should be mandatory for all project commissioners and managers overseeing construction contracts. Training should be provided by those who have demonstrable expertise on fair work and support an understanding of what constitutes positive and stretching fair work commitments by contractors.	All Contracting Authorities	All staff should be trained by Jan 2024.
3	Guidance should be reviewed to ensure it supports the use of collectively bargained rates within procurement contracts and short best practice guidance should be developed for construction procurement that highlights positive examples of practice in the construction industry. Current wording around avoiding the use of umbrella companies should be retained.	The Scottish Government	As soon as possible and before Dec 2022
4	Contracting authorities should set an expectation that trade unions have access to workplaces on all public construction contracts in line with the aspiration of the HS2 approach. Access should be facilitated throughout the supply chain.	All Contracting Authorities Lead Contractors Trade Unions	With each procurement
5	Guidance should be updated to make clearer the connections between fair work, sustainable procurement duties, community benefits and discretionary and mandatory exclusions. The guidance should support more use of discretionary	The Scottish Government	Immediate

	exclusions when a contractor or sub-contractor has breached its labour law obligations.		
6	All contracting authorities should include adherence to relevant collectively bargained pay rates as a condition of contract. Introducing this clause within industry standard form contracts is an efficient, proportionate and transparent way to implement this and to ensure that it is applied throughout the supply chain.	All Contracting Authorities	Immediate
7	In every contract in which fair work questions were asked at the framework stage, tender stage or both, effective contract management by the contracting authority must take place to ensure that the response provided by the contractor is delivered in practice.	All Contracting Authorities	Immediate
8	All contracting authorities should be signatories to a Fair Work Charter collectively agreed with employers and trade unions. The Scottish Government should also facilitate the appropriate industry leadership group/forum, in negotiation with trade unions, to develop a single charter that sets out principles for advancing fair work in the industry. The single Fair Work Charter should then be used as a pass/fail condition within all construction procurement exercises in Scotland to ensure appropriate fair work standards are applied throughout the supply chain.	All Contracting Authorities An Industry Leadership Group / Forum Trade Unions	Each Contracting Authority to have an agreed charter by Jan 2023 A single charter should be agreed by 2024

Strengthening Effective Voice

	Recommendation	Owner	Timeframe
9	All existing industry-level groups including Construction Scotland and the Construction Leadership Forum should include balanced membership from a range of stakeholders including trade associations, professional bodies, federations and smaller employers. All such groups should also include balanced representation from trade unions.	Scottish Government	Immediate
10	The relationship between each of the industry leadership groups should be	Scottish Government	Immediate

	clarified and the Scottish Government's interaction with each group clearly articulated.		
11	<p>All industry leadership groups should seek opportunities to support, through voluntary agreement, collaborative working and mandatory approaches where possible:</p> <ul style="list-style-type: none"> • greater use of collective agreements; • trade union access to workplaces; • the use of fair work charters; • the use of collective dispute resolution procedures on large-scale complex projects giving faster remedy to the workforce. 	All Industry Leadership Groups and Forums	Immediate and ongoing
12	The issue of disputes resolution should be considered in all large-scale public contracts before work begins on-site. The contracting authority, lead contractor and relevant trade union should work together to agree an appropriate and mandatory dispute resolution process that all parties on-site must adhere to. This could be through existing collective agreements or through a standalone procedure, for example a procedure backstopped by ACAS.	<p>All Contracting Authorities</p> <p>Lead Contractors</p> <p>Trade Unions</p>	With each large-scale project

The Future of Construction

	Recommendation	Owner	Timeframe
13	Employers should better engage with existing collective agreements, and unions and trade associations should be prepared to work together to ensure collective agreements support new ways of working and equality, covering elements like flexible working, mental health and maternity issues. The Scottish Government should facilitate unions, employers and trade associations to work together to support effective modernisation within the industry through the collective bargaining structures that already exist.	<p>Employers</p> <p>Unions</p> <p>Trade Associations/ Federations / Professional Bodies</p> <p>The Scottish Government</p>	By 2023
14	The Construction Leadership Forum should support development of an effective workforce strategy to facilitate the transition to net zero carbon economy. Workforce planning must consider how to support workers through peaks and troughs in demand.	Construction Leadership Forum	By 2023

15	All public funding supporting the transition to net zero should include fair work conditionality and drive fair work in the industry.	The Scottish Government All public bodies	With each funding stream
16	Public sector bodies and construction employers at all parts of the supply chain should increase their use of direct employment and support upskilling and retraining to support high quality careers in the industry and improve attraction and retention. Support for direct employment should also reinforce a commitment never to use umbrella companies.	Construction Employers of all sizes All public bodies	Immediate
Apprenticeships			
17	The Scottish Government should work with SDS, SQA and CITB to reinstate the need to register with trade associations/federations and employers should be required to pay collectively bargained rates as part of the apprenticeship agreement, as was the case prior to 2017.	The Scottish Government	Immediate
18	SDS should take action to support apprenticeship pay including by: <ul style="list-style-type: none"> conducting a review of current apprenticeship pay in construction and publishing the findings; reviewing all documentation to ensure that it promotes and encourages collectively bargained rates or, where these are absent, the real living wage and consistent messages are offered to both apprentices and employers. 	SDS	By September 2022
19	Continued funding and support should be provided for the Fair Work Apprenticeship Coordinator role, which has been valuable for supporting the Effective Voice of apprentices.	The Scottish Government	Ongoing
20	SDS should ensure there is full and consistent partnership working between SDS, SQA, CITB, trade unions, employers and trade associations/federations in agreeing apprenticeship frameworks, with an aim to see all construction apprentices trained to SVQ level 3 (SCQF Level 6) or above.	SDS	Immediate
21	SDS to work with CITB, employers, trade associations/federations and trade unions to develop principles for taking forward a shared apprenticeship scheme successfully and in line with fair work principles.	SDS	By Dec 2022

Equality, Diversity and Inclusion

22	<p>Scottish Government, through the Construction Leadership Forum, should convene a working group that includes employers, trade associations/federations, trade unions, SDS and CITB to address skills and labour shortages and future labour needs in the industry and to promote the opportunities that exist within the industry. This group should aim to:</p> <ul style="list-style-type: none"> • work with employers to identify a pipeline of vacancies and future skills needs; • define clear skills pathways required to support the transition to a net zero economy, including workers who are changing careers; • work to ensure clear recruitment processes and platforms are available to employers and support employers to access them; • create dedicated advertising campaigns encouraging young people and older workers to consider careers in the industry; • take action to improve diversity in the industry building on good practice examples such as at Glasgow City Building and Royal Strathclyde Blindcraft Industries. 	<p>The Scottish Government</p> <p>Construction Leadership Forum</p>	<p>Advertising campaign to launch in 2023</p>
23	<p>Employers should support a zero tolerance approach to bullying and harassment at the workplace protecting workers from adverse treatment and employers from potential liability. Embedding a safe culture for reporting must come from the top of the organisation. Employers of all sizes must focus on:</p> <ul style="list-style-type: none"> • their internal procedures by providing clear and transparent reporting mechanisms, processes for investigation and management training to identify and take seriously issues of bullying and harassment. • encouraging and supporting workers to raise any concerns, without fear of retribution. • ensuring that no detriment arises for workers who raise concerns. • highlighting external support mechanisms like collective agreements or dispute mechanisms. 	<p>Construction Employers of all sizes</p>	<p>Immediate</p>
24	<p>Unions should provide support mechanisms and dedicated networks for under-represented groups in construction to combat the isolation that workers can feel at work or on training schemes. Employers, trade associations and other relevant</p>	<p>Trade Unions</p>	<p>Immediate</p>

	actors should signpost to these networks and any dedicated officers who can offer support.		
25	Contracting authorities should require participation in the Gangmasters & Labour Abuse Authority's construction protocol within large-scale procurement projects.	All Contracting Authorities	With each large-scale procurement

Monitoring Outcomes for Workers

26	The Fair Work Convention should return to this Inquiry after five years to examine how well recommendations have been adopted and evaluate the industry against the fair work outcomes within this report.	Fair Work Convention	2027
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4.2 Outcomes

The final recommendation notes that the Fair Work Convention should return to this Inquiry after five years to examine how well recommendations have been adopted and evaluate the industry against fair work outcomes.

The Convention will work with public authorities, employers, trade associations, trade unions and workers to monitor, on an ongoing basis, the adoption and implementation of all of the recommendations within this report.

After five years, the Convention will then consider the impact that the adoption of these practices is having on the experience of fair work by the workforce. The Fair Work Convention will also consider how well social dialogue has been maintained and built upon within the industry. It will further seek to monitor the outcomes presented in this section for workers in the industry which the Convention sees as key measures of how fair work is being strengthened.

For many of the suggested measures listed in this section, existing statistics and publications will allow for tracking over time. However, there are some data gaps and challenges – in particular where data is not currently available at a sector level. Where data is not available, the Convention will seek to carry out research to fill data gaps - through surveys with construction workers and apprentices, for instance. It is recognised that once research is fully scoped, it may be that certain data gaps cannot be feasibly filled or that alternative measures would be more effective and efficient. Nonetheless, the Convention will seek to present a full picture of the extent to which recommendations have been adopted and the subsequent impact on fair work in the sector.

It is therefore proposed that the Evaluation of the sector following this Inquiry be conducted in two phases:

- Stage 1: Baseline Evaluation. This will seek to fill data gaps where existing sources are insufficient, to enhance understanding of the state of Fair Work in the sector.
- Stage 2: Full Evaluation. Following on from the Baseline Evaluation, this research will seek to examine the extent to which key measures have changed since the Inquiry, and the impact on Fair Work in the sector. It is proposed that this be carried out approximately 5 years after the conclusion of the Inquiry.

Proposed measures to be considered are as follows:



Security

- Levels of direct employment, self-employment and employment via an umbrella company.
- The proportion of workers who have access to a pension, paid sick leave and paid annual leave.

- The proportion of apprentices who gain secure employment, paid at the collectively agreed rate for their trade within six months of their apprenticeship.
- The proportion of workers earning at least the living wage.



Opportunity

- The levels of women, ethnic minority workers and disabled workers in craft roles and in the industry as a whole.
- The levels of women, ethnic minority workers and disabled workers undertaking apprenticeships in the industry.
- The levels of women, ethnic minority workers and disabled workers within senior positions in the construction industry.
- The level of workers with protected characteristics reporting that they have access to dedicated support networks.



Fulfilment

- The proportion of employers reporting they have provided training to their staff in the preceding year.
- The proportion of employees reporting they were offered training by their employer in the past three months.
- The proportion of employees reporting receiving job-related training in the past three months.
- The proportion of apprentices undertaking industry recognised qualifications at SVQ Level 3.
- The proportion of workers in construction with 'green skills' as defined by the green skills action plan.
- The proportion of establishments with at least one employee with skills and qualifications more advanced than required for their current job role.
- The proportion of establishments reporting at least one skills shortage vacancy.



Respect

- The level of self-reported illness caused or made worse by work.
- The number of working days lost to work-related ill-health.
- The level of fatal accidents within construction.

- Proportion of adults who report stress, depression or anxiety was caused or made worse by their job.
- The proportion of workers expressing confidence that they can raise concerns about health and safety, bullying and harassment or other issues at work.



Effective Voice

- Trade union density in the industry, proportion of employees who are trade union members and proportion of employees where trade unions are present in their workplace.
- The proportion of workers in the construction industry whose pay and terms and conditions has been set by collectively agreement.
- The proportion of apprentices whose pay and terms and conditions has been set by collective agreement.
- The proportion of public contracts where collectively bargained rates are included as a condition of contract.
- The proportion of public contracts where collective dispute resolution procedures are available to be used by workers on that contract.
- The proportion of workers expressing confidence that they or their union representative will be involved in decision making at the workplace.
- The proportion of apprentices with access to a dedicated support officer throughout their apprenticeship.

5. Annex A: Membership and Contributors

Construction Industry Inquiry Group Members

Mary Alexander	Co-Chair, Deputy Regional Secretary for Unite the Union Scotland and Fair Work Convention Member
Patricia Findlay	Co-Chair, Director of the Scottish Centre for Employment Research and Fair Work Convention Co-Chair.
Frank Blair/ Terry Fitzpatrick	Advisory, Conciliation and Arbitration Service
Kevin Dickson	Robertson Construction
Roz Foyer	Scottish Trades Union Congress
Fiona Harper	Scottish Joint Industry Board
Billie Mitchell	Fife Council
Paul Mooney	Unite Union
Darren Pike	Brookfield Multiplex
Ricky Quinn	National Joint Council for the Engineering Construction Industry
Lynette Robertson	City of Edinburgh Council
Julie Welsh / Billy Murray	Scotland Excel

Contributions and evidence to the Inquiry were given by:

Frank Blair	ACAS
Tommy Breslin	STUC
Emma Dickson	Arcadis
John Docherty	Transport Scotland
Jane Duffy	Scottish Government
Eli Dutton	University of Strathclyde/SCER
Elaine Ellis	SDS
Samantha Findlay	SDS
Fiona Harper	SJIB
Jamie Kennedy	Transport Scotland
Tam Kirby	Unite the Union
Lesley Laird	Equate Scotland
Stephanie Lowe	SNIPeF
Debra MacLeod	Transport Scotland
Fergus McMillan	SDS
Archie Meikle	Ashwood Scotland
Sharon Miller	Scottish Government
Mark Milne	Construction Scotland Innovation Centre
Douglas Morrison	Construction Scotland Innovation Centre
Billy Murray	Scotland Excel
Catriona Peden	West Lothian Council
Lauren Pennycook	CITB
Mark Pillans	Scottish Futures Trust
Grahame Porteous	Scottish Government
Ricky Quinn	NAECI
Steven Sanzone	NHS
Elisabeth Stark	Scottish Government
Gordon Thomson-McLean	Scottish Government

Additional meetings were held with:

Robin Crawford, Chair of the Review of Scottish Public Sector Procurement in Construction, 2013

Clerks of the Economy, Energy and Fair Work Committee

Ken Gillespie, Construction Scotland





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**FAIR WORK
CONVENTION**