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Fair Work Guidance

RFO Implementation 2024-25

Dear colleague,

I am writing to let you know you that Creative Scotland contracts for RFO funding for the financial year 2024-25 will be dependent on organisations meeting the conditions of the Scottish Government’s Fair Work guidance.

Fair Work First is the Scottish Government's policy for driving high quality and fair work, across the labour market in Scotland. Since 2021, Fair Work has been one of Creative Scotland’s four Strategic Priorities and is now one of our six Fund Criteria which guide our funding programmes.

From 1st July 2023 all funding awards of Scottish Government Grant-in-Aid funds have been required to meet the conditions of Scottish Government guidance, [available on the Scottish Government website](https://www.gov.scot/publications/fair-work-first-guidance-2/). The guidance stipulates that:

* In general, a grant recipient must demonstrate it is paying at least the Real Living Wage before it can access a grant. This applies to:

- All UK-based staff aged 16 and over, including apprentices, who are directly employed by the grant recipient

- Any UK-based workers who are not directly employed but are directly engaged in delivering the grant-funded activity, whether they be sub-contractors or agency staff

 More details about the Real Living Wage can be found [on the Living Wage Scotland website](https://scottishlivingwage.org/).

* All organisations with a workforce must be able to demonstrate, before they can access a grant, that all workers employed within that organisation have access to effective voice channels. Effective voice can include approaches to trade union recognition and collective bargaining as well as communication and consultation arrangements and procedures that allow individuals and groups to air their views, be listened to and influence outcomes.

**Appendix 1** sets out more detail on how funded organisations can demonstrate that they meet these two conditions.

In line with this guidance, we will need to ask RFOs to confirm that both payment of the Real Living Wage and Effective Voice are in place in your organisation. We will require you to complete a short pro forma and return this by the end of March 2024. This is included at **Appendix 2,** and we will be in touch nearer the time to request completion.

The Scottish Government also ask that grant recipients include a ‘short joint statement on their website’ highlighting their commitment to advancing the Fair Work First criteria, including the real Living Wage and Effective Voice conditions. [Read Creative Scotland's own statement](https://www.creativescotland.com/resources-publications/publications/policies/creative-scotland-fair-work-statement#:~:text=Creative%20Scotland%20is%20committed%20to%20the%20Scottish%20Government%E2%80%99s,Scotland%20a%20flexible%20and%20dynamic%20place%20to%20work.).

We've gathered a range of tools and resources on our website to support progress on all aspects of Fair Work First. We have published [The Illustrated Fair Work Guide for the Creative and Cultural Sectors in Scotland](https://www.creativescotland.com/resources-publications/guides-toolkits/the-illustrated-fair-work-employer-guide) and specific guides for areas such as [Fairer Recruitment](https://www.creativescotland.com/about/strategy/fair-work/fairer-recruitment-guide) and [Freelance Working](https://www.creativescotland.com/resources-publications/guides-toolkits/the-illustrated-freelancers-guide).

We are very aware that these changes come at a time of significant financial challenges in the creative and cultural sectors. While we will do all we can to assist you in meeting the Scottish Government requirements, we will need to ensure that they are met by all RFOs prior to contracting for 2024-25 funding. Please do get in touch, either directly or by e-mailing fairwork@creativescotland.com if you need any clarification or envisage difficulties with meeting these conditions.

**Alastair Evans**

**Director, Strategy and Planning**

**November 2023**

**Appendix 1: Scottish Government Fair Work Conditions (extract)**

The Scottish Government guidance stipulates that:

‘Grant recipients should provide the most appropriate evidence for their organisation from the list below. They may need to provide more than one source of evidence depending on the make-up of their workforce and whether contractors/agency workers are employed to directly support delivery of the funded project/activity’.

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**Evidence of appropriate channels for effective workers' voice**

‘Although it is to be encouraged in all organisations, the collective element of voice does not have to be evidenced by organisations with fewer than 21 workers. This aligns with conditions for application for statutory union recognition and is therefore considered as a benchmark in terms of the size of workforce where collective representation would be expected. In all other cases, evidence must be provided to show that voice exists at both an individual and collective level in the organisation. The table below explains how the different channels of voice can be evidenced, the expectation being that at least one channel at both levels (individual and collective) is evidenced.’





**Appendix 2: Creative Scotland Monitoring Form – Fair Work**

This pro-forma will be issued to all RFOs in early 2024 for return prior to contracting for 2024-25 awards.

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**Targeted Form – Fair Work**

Fair Work First is the Scottish Government's flagship policy for driving high quality and fair work across the labour market in Scotland. This is through applying fair work criteria to grants, other funding and contracts being awarded by and across the public sector, where it is relevant to do so.

Through this approach the Scottish Government is asking employers to adopt fair working practices, specifically:

* 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
* payment of the Real Living Wage
* offering flexible and family friendly working practices for all workers from day one of employment
* opposing the use of fire and rehire practices.

You can learn more about Fair Work and find useful Creative Scotland resources [here](https://www.creativescotland.com/about/strategy/fair-work).

You can access Creative Scotland’s[Privacy Notice](https://www.creativescotland.com/privacy-policy)here which will provide details of how we handle and use the data we collect from you.

**Please complete these questions and send to** **fairwork@creativescotland.com****, together with relevant documentation.**

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| **Question 1** |
| In line with [Scottish Government guidance,](https://www.gov.scot/publications/fair-work-first-guidance-2/) please confirm that you will pay the Real Living Wage to directly employed staff, apprentices, 16-17 year-old workers and contracted and agency staff, from the start of the funded period?*Please note that we will not be able to progress contracting if you have answered ‘no’ to this question. Please indicate the reasons why you are unable to pay the Real Living Wage to these groups, and we will be in touch to discuss this with you.* |
| **Response:**Choose an item. |

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| **Question 2** |
| **For applications for award of over £100,000**Do you have relevant documentation to evidence payment of the Real Living Wage in line with [Scottish Government guidance](https://www.gov.scot/publications/fair-work-first-guidance-2/)?*See Annex B of the* [*Scottish Government Fair Work implementation guidance*](https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2023/03/fair-work-first-guidance-2/documents/fair-work-first-guidance-supporting-implementation-fair-work-first-workplaces-scotland/fair-work-first-guidance-supporting-implementation-fair-work-first-workplaces-scotland/govscot%3Adocument/fair-work-first-guidance-supporting-implementation-fair-work-first-workplaces-scotland.pdf) *for information on documentation.* |
| **Response:**Choose an item. |

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| **Question 3** |
| In line with [Scottish Government guidance,](https://www.gov.scot/publications/fair-work-first-guidance-2/) please confirm that Effective Voice for workers is in place in your organisation? *This can be aspects of ‘Individual’ voice (for organisations of fewer than 21 workers) and aspects of ‘Collective’ voice (for those with 21 workers or more).**Please note that we will not be able to progress contracting if you have answered no to this question. Please indicate the reasons why you are unable to provide Effective Voice in your organisation, and we will be in touch to discuss this with you.* |
| **Response:**Choose an item. |

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| **Question 4** |
| **IF YOU RESPONDED WITH ‘NO’ TO QUESTION 3, GO STRAIGHT TO QUESTION 5**. **IF YOU RESPONDED WITH ‘YES’ TO QUESTION 3, ANSWER THE FOLLOWING QUESTION:**In line with [Scottish Government guidance,](https://www.gov.scot/publications/fair-work-first-guidance-2/) please confirm that your workforce representative has agreed that all workers employed within that organisation have access to effective voice channel? |
| **Response:**Choose an item. |

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| **Question 5** |
| Does your organisation use zero-hours contracts for any workers? |
| **Response:**Choose an item. |
| **IF YES,** please explain why the use of zero-hours contracts is appropriate for your organisation: |

**Please note that the above responses and evidence will form part of your funding agreement and, if subsequently found to be materially incorrect, could result in a breach of this agreement.**