

Refreshed Fair Work Action Plan and Anti-Racist Employment Strategy

Data Protection Impact Assessment

April 2023

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1. Introduction

1.1 Purpose

The Scottish Government has commissioned AECOM to undertake a series of impact assessments on the Refreshed Fair Work Action Plan (RAP)¹ and the Anti-Racist Employment Strategy (ARES)². These include the following:

- Equality Impact Assessment (EqIA);
- Child Rights and Wellbeing Impact Assessment (CRWIA);
- Fairer Scotland Duty Impact Assessment (FSDA);
- Island Communities Impact Assessment (ICIA);
- **Data Protection Impact Assessment (DPIA)**; and
- Business and Regulatory Impact Assessment (BRIA).

The RAP merges and updates the existing Fair Work Action Plan, A Fairer Scotland for Women: gender pay gap action plan and a Fairer Scotland for Disabled People: Employment Action Plan as well as incorporating actions from the ARES. The changes to public sector grant conditionality proposed in the Bute House Agreement are also assessed through actions from the RAP, despite being screened separately.

This report presents a full assessment of the data protection impacts of the actions within the RAP and ARES based on existing evidence and findings from stakeholder engagement. In taking a human rights-based approach, this report also identifies where there is a contribution or alignment to human rights legislation. This report has been updated and expanded from a screening report produced in October 2022.

To inform the impact assessments for the RAP and ARES, AECOM conducted a period of stakeholder engagement between October 2022 and January 2023. This included engagement with Short Life Working Groups on disability, gender and race, equality organisations and businesses through survey responses and one-to-one discussions.

The feedback and findings of this engagement has contributed towards completing a full DPIA on the RAP and ARES.

1.2 Refreshed Fair Work Action Plan 2022

Following the publication of the Fair Work Framework in 2016³, the Scottish Government published the Fair Work: Action Plan⁴ in 2019 setting out the strategic approach of the Scottish Government to help achieve the vision of becoming a Fair Work Nation by 2025.

¹ [Fair Work action plan: becoming a leading Fair Work nation by 2025 - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/fair-work-action-plan-2022/pages/introduction.aspx)

² [Anti-racist employment strategy - A Fairer Scotland for All - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/anti-racist-employment-strategy/pages/introduction.aspx)

³ Fair Work Convention (2016). Fair Work Framework 2016. [Fair-Work-Convention-Framework-PDF-Full-Version.pdf \(fairworkconvention.scot\)](https://www.fairworkconvention.scot/publications/fair-work-convention-framework-pdf-full-version.pdf)

⁴ Scottish Government (2019). Fair Work: Action Plan. [Fair Work: action plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/fair-work-action-plan-2019/pages/introduction.aspx)

The Fair Work Framework defines Fair Work as ‘work that offers effective voice, respect, security, opportunity and fulfilment; it balances the rights and responsibilities of employers and workers, and can generate benefits for individuals, organisations and society’.

The 2019 action plan covered three broad themes aiming to: support employers to adopt Fair Work practices; deliver Fair Work to a diverse and inclusive workforce; and embed Fair Work across the Scottish Government.

Informed by the 2021 consultation: 'Becoming a Fair Work Nation'⁵ and the analysis of the responses, the Scottish Government developed a refreshed, integrated Fair Work Action Plan (RAP) to set out its strategic approach to support Scotland becoming a Fair Work nation by 2025. It includes actions and commitments to reduce the gender pay gap, at least halve the disability employment gap by 2038, and progress a range of actions to deliver the new Anti-Racist Employment Strategy:

- Fair Work: action plan⁶;
- A Fairer Scotland for women: gender pay gap action plan (2019)⁷;
- A Fairer Scotland for Disabled People: Employment Action Plan (2018)⁸; and
- Actions supporting delivery of the strategy, A Fairer Scotland for All: An Anti-Racist Employment Strategy⁹.

The RAP will better enable the Scottish Government to align collective action across these agendas where there is clear synergy (e.g., real Living Wage, effective voice), addressing structural inequalities that perpetuate labour market inequalities through discrete actions.

A Fairer Scotland for Women (2019)¹⁰ aimed to tackle labour market inequalities faced by women, with the key objective to reduce the gender pay gap for employees in Scotland by the end of the parliamentary term (May 2021). The action plan recognised that disabled women, older women, racialised minority women, women from poorer socio-economic backgrounds and women with caring responsibilities are particularly at higher risk of experiencing labour market inequalities.

A Fairer Scotland for Disabled People (2016)¹¹ outlined five key ambitions as part of the Scottish Government's response to the United Nations Convention on the Rights of Persons with Disabilities, including 'Decent incomes and fairer working lives'. A key element of this was the commitment to at least halve the employment gap

⁵ Scottish Government (2021). Becoming a Fair Work nation: consultation. [Becoming a Fair Work nation: consultation - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/becoming-a-fair-work-nation-consultation/pages/1-10)

⁶ Scottish Government (2019). Fair Work: Action Plan. [Fair Work: action plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/fair-work-action-plan/pages/1-10)

⁷ Scottish Government (2018). A fairer Scotland for women: gender pay gap action plan. [https://www.gov.scot/publications/fairer-scotland-women-gender-pay-gap-action-plan/](https://www.gov.scot/publications/fairer-scotland-women-gender-pay-gap-action-plan/pages/1-10)

⁸ Scottish Government (2019). A Fairer Scotland for Disabled People: employment action plan. [https://www.gov.scot/publications/fairer-scotland-disabled-people-employment-action-plan/](https://www.gov.scot/publications/fairer-scotland-disabled-people-employment-action-plan/pages/1-10)

⁹ [Anti-racist employment strategy - A Fairer Scotland for All - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/anti-racist-employment-strategy/pages/1-10)

¹⁰ Scottish Government (2019). A Fairer Scotland for Women: gender pay gap action plan. Available at: [A fairer Scotland for women: gender pay gap action plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/fairer-scotland-women-gender-pay-gap-action-plan/pages/1-10)

¹¹ Scottish Government (2016). A Fairer Scotland for Disabled People: delivery plan. [Supporting documents - A Fairer Scotland for Disabled People: delivery plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/supporting-documents-fairer-scotland-disabled-people-delivery-plan/pages/1-10)

between disabled people and the rest of the working age population (the disability employment gap). Action to achieve this was outlined in A Fairer Scotland for Disabled People: Employment Action Plan (2018)¹².

The refreshed Fair Work Action Plan identifies the need for continual development in the approach to work and workplaces, especially in a dynamic society facing challenges such as the Covid-19 pandemic and cost of living crisis.

It promotes the underpinning principles of 'equity and equality of opportunity for all regardless of any individual or group characteristic' and takes an intersectional¹³ approach to workplace inequalities recognising that no inequality sits in isolation.

The key objectives of the RAP are to:

- Increase the number of people paid at least the real Living Wage and on stable contracts;
- Work with employers, workers and trade unions to strengthen effective voice, through a range of appropriate channels;
- Support employers to adopt flexible working practices;
- Reduce the gender pay gap in Scotland by the end of this parliamentary term (May 2026), and maintain, or where possible, improve our position relative to the UK as a whole and our international neighbours;
- At least halve the disability employment gap by 2038 (from 2016 baseline of 37.4 percentage points). The Disability employment gap in 2021 was 31.2 p.p. and the employment rate for disabled people was 49.6%. Interim milestones:
 - By 2023 to increase the employment rate for disabled people to 50%;
 - By 2030, to increase the employment rate for disabled people to 60%; and
- Improve labour market outcomes for racially minoritised¹⁴ people and increase the number and impact of actions taken forward by employers to address racial inequality.

The RAP sets out actions under four headline actions, which fall into the three broader themes below.

- Public sector leadership
- Our ask of employers and support available

¹² Scottish Government (2018). A Fairer Scotland for Disabled People: employment action plan. Available at: [A Fairer Scotland for Disabled People: employment action plan - gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/a-fairer-scotland-for-disabled-people-employment-action-plan/pages/1-10.aspx)

¹³ Intersectionality describes people who are in possession of a combination of equality characteristics, who may face multiple barriers and compounded discrimination in the labour market (for example, disabled women, or people from racialised minorities aged over 50)

¹⁴ The Scottish Government adopts the term 'racialised minorities' to show that it is systems and structures that do not work for those who are categorised on the basis of "race", and because of this are sometimes treated differently or disadvantaged. These terms are becoming more widely used across Scottish Government, in line with our acceptance that racism is a structural issue. We support everyone's right to self-identify according to the term they relate to or are most comfortable with. Terminology changes as societal and systemic understanding grows. It should be noted that in labour market data analysis, the term minority ethnic is used and in reserved legislation such as the Equality Act (2010), the term "race" is used. These terms are not helpful to understand how racialised inequity impacts on those who experience systemic, institutional or interpersonal racism.

- Support for people to prepare for, access and sustain fair work

A breakdown of the RAP is shown in Appendix A.

1.3 Anti-Racist Employment Strategy 2022

The Scottish Government developed an Anti-Racist Employment Strategy (ARES) in response to the persistent inequality experienced by racialised minorities in the labour market.

The strategy is a call to action and supports and encourages employers to take an anti-racist and intersectional approach to identifying the structural and systemic barriers of racism. An intersectional approach recognises individuals with two or more protected characteristics are likely to face multiple barriers in the labour market.

The term “racialised minorities” is adopted throughout to show that it is systems and structures that do not work for those who are categorised on the basis of ‘race’, and because of this, are sometimes treated differently or disadvantaged. The strategy defines racialisation as ‘the process by which groups of people are given racial identities and placed within the hierarchy based on their presumed superiority or inferiority to one another’.

The strategy has been developed alongside a refreshed Fair Work Action Plan (RAP) which sets out actions to support the implementation of the ARES under the themes of:

- Public sector and the role of leadership;
- Our ask of employers and support available; and
- Support for people to prepare for, access and sustain fair work.

To meet the key objective of the ARES as outlined in the RAP – ‘increasing action and impact of employer action to address racial inequality’ – the ARES seeks to achieve the following outcomes:

- The number of people entering the labour market and staying in and progressing in an organisation is closer to and representative of that organisation’s local population;
- The number of employers taking action to remove intersectional barriers in their workplaces has increased;
- The number of employers proactively creating safe, diverse and inclusive workplaces has increased; and
- The number of employers taking forward evidence-based actions to improve Fair Work conditions for workers from all backgrounds has increased.

The strategy actions are set out in Appendix B.

2. Approach

This chapter sets out the approach to assessing the potential impacts of the RAP and ARES. The assessment criteria consider how the actions could have both positive and negative impacts. In considering the impacts, this DPIA takes a 'worst case scenario'.

The approach for undertaking this DPIA and compiling this report follows a six-stage process:

1. Screening for impacts
 - An overview of guidance and requirements, key evidence and issues and initial screening for potential impacts including a framework for more detailed assessment.
2. Stakeholder engagement
 - Interviews with stakeholders from equality organisations representing a range of groups and businesses.
3. Impact Assessment Input Note
 - A technical note for the Scottish Government highlighting the key impacts identified through initial screening and stakeholder engagement for the purpose of finalising the draft RAP and ARES
4. Baseline evidence review
 - Review of relevant legislation and policies as well as evidence relating to the Fair Work agenda with regards to protected characteristic groups, deprivation, poverty and labour market statistics.
5. Assessment of potential impacts
 - Informed by a consideration of the policy context, reviewed evidence and feedback received through stakeholder engagement.
6. Recommendations and conclusions
 - Concluding on key positive and negative impacts as well as planned and recommended actions for minimising negative or uncertain impacts.

2.1 Screening for impacts

A series of screening reports, including a DPIA screening report, were produced for the Bute House Agreement grant conditionality commitment, RAP and ARES in October 2022.

These reports presented a screening of potential impacts for the six headline actions of the draft RAP and the eight key actions of the draft ARES provided by Scottish Government. The screening was prepared using publicly available data and evidence.

A screening report was also undertaken for a Strategic Environmental Assessment (SEA) which invited statutory consultees to comment through the Government

Gateway. This process concluded that there are no significant environmental impacts and a final impact assessment is not required.

2.2 Stakeholder engagement

Stakeholder engagement was undertaken to support the evidence outlined in the screening report and contribute to finalising the draft RAP and ARES documents. The views of equality organisations and businesses towards the RAP and ARES actions.

Scottish Government and AECOM identified 103 stakeholders for AECOM to engage with across all impact assessments. This included:

- The ARES Short Life Working Group;
- Disability Short Life Working Group;
- Sub Group of the Gender Pay Gap Ministerial Working Group;
- Protected characteristic groups;
- Island communities; and
- Businesses.

Stakeholders were invited to complete an online survey to submit their views on the two draft documents. Alternatively, one-to-one discussions were offered to stakeholders who required a more in-depth discussion of the initiatives. Alongside one-to-one discussions and the survey, the following stakeholder engagement activities took place:

- Organisations first contacted via email on 26th October 2022;
- Webinar to equality focused organisations on 31st October 2022;
- Business organisations contacted via Scottish Government's October 2022 bulletin; and
- Virtual business engagement session on 7th November 2022.

The Scottish Government provided an overview of the Bute House Agreement grant conditionality commitment, the RAP and the ARES to share with stakeholders via email and in one-to-one discussions.

Four stakeholders took part in one-to-one discussions, both on Microsoft Teams and in person, and four submitted survey responses between 26th October and 15th November which fed into the input note for the Scottish Government.

AECOM used the findings of the stakeholder engagement to develop an Impact Assessment Input Note which was submitted to the Scottish Government on the 15th of November 2022. This set out key issues, consideration and recommendations finalising the draft RAP and ARES documents.

Following this, AECOM continued stakeholder engagement between 15th November 2022 and 9th January 2023 to ensure that a wide range of voices contributed to the development of the impact assessments. An additional six stakeholders engaged in

one-to-one discussions and five submitted survey responses which fed into the final assessment of impacts.

2.3 Impact Assessment Input Note

An Input Note was submitted to the Scottish Government on 15th November. For each impact assessment, this highlighted the key impacts of the RAP and ARES as identified through the screening process and stakeholder engagement activities.

AECOM delivered a virtual presentation of the input note to the Scottish Government colleagues involved in the drafting process of the RAP and ARES.

The input note provided a final opportunity for external input into the two documents prior to the finalisation of actions.

2.4 Baseline evidence review

The baseline covers the following:

- Review of all relevant documentation and available information regarding the RAP and ARES including the Fair Work Framework (2016), Fair Work Action Plan (2019) and 'Becoming a Fair Work Nation' consultation documents;
- Review of relevant legislation and policies to develop context pertinent to the DPIA; and
- Evidence and key issues regarding potential data protection impacts as identified through secondary data and research provided by Scottish Government, stakeholders and desktop review.

2.5 Assessment of data protection impacts

This DPIA presents the review of each of the overarching actions in the RAP and ARES, as well as the impacts associated with the detailed actions sitting within where necessary.

The assessment and identification of potential impacts has been based on the evidence and key issues (as set out in Section 4 of this report), information provided through discussions with the Scottish Government and stakeholder engagement.

The scoring mechanism used for the assessment initially provides a score of the effect of the policy for each of the relevant groups as follows:

- **Major Positive Effect** - The action contributes significantly to the protection of data.
- **Minor Positive Effect** - The action contributes to the protection of data, but not significantly.
- **Neutral/Negligible Effect** - There is no clear relationship between the action and the protection of data, or the relationship is negligible.
- **Minor Negative Effect** - The action detracts from the protection of data, but not significantly
- **Major Negative Effect** - The action detracts significantly from the protection of data. Mitigation is therefore required

- **Uncertain Effect** - The action has an uncertain relationship to protection of data, or the relationship is dependent on the way in which the aspect is managed. In addition, insufficient information may be available to enable an assessment to be made and will be gathered through further consultation and/or research

2.6 Recommendations and conclusions

Sections 6 of this report sets out conclusions on the impacts of the RAP and ARES.

The final section of this report sets out recommendations for enhancing the benefits to those affected by the Fair Work initiatives as well as appropriate mitigation against adverse impacts

3. Relevant guidance, legislation and policy

3.1 Relevant guidance and legislation

The DPIA assesses the impacts of each of the actions within the RAP and ARES and will help to demonstrate the Scottish Government's compliance with specific legislation to which it has a legal duty to consider in the delivery of its policies, programmes and projects. This includes the General Data Protection Regulation (GDPR).

3.1.1 General Data Protection Regulation

The GDPR, which came into effect on 25 May 2018, covers the general data protection regulations as set out in the Data Protection Act 2018. The GDPR requires DPIAs to be carried out when using new technologies, and when the processing is likely to result in a high risk to the rights and freedoms of individuals.

Guidance from the Information Commissioner (Ref 3) also states that it is good practice to do a DPIA for any other major project which requires the processing of personal data and where there are plans to match data or combine datasets from different sources, or process data that might endanger the individual's physical health or safety in the event of a security breach.

'Personal data' can be defined as any information that relates to an identified or identifiable individual for example this could be a name, address and postcode, data of birth or IP address. 'Special category' data could be information relating to racial or ethnic origin, religion, trade union membership, biometric data, health and well-being and sexual orientation. 'Processing' is any operation carried out in respect of the personal data from its collection, storage, transfer, and deletion¹⁵. Under Section 35 of the GDPR, DPIAs are required to be carried out when there is large scale use of sensitive (special category) data.

A DPIA can help identify and minimise the data protection risks of a project and should:

- describe the nature, scope, context and purposes of the processing;
- assess necessity, proportionality and compliance measures;
- identify and assess risks to individuals; and
- identify any additional measures to mitigate those risks.

3.1.2 Guide to the General Data Protection Regulation (GDPR): Data Protection Impact Assessments¹⁶

As noted above, Article 35(1) of the GDPR states that a DPIA must be undertaken when a type of processing is likely to result in a high risk to the rights and freedoms

¹⁵ Scottish Government (2022). Data Protection Impact Assessment. Scotland Census 2022.

¹⁶ ICO (2022). Guide to the General Data Protection Regulation (GDPR): Data Protection Impact Assessments.

of individuals. Examples of processing include systematic and extensive profiling with significant effects, large scale use of sensitive data and public monitoring.

Article 29 of the Data Protection Working Party¹⁷ provides guidance about determining whether processing is “likely to result in a high risk”. They define criteria that may act as indicators of likely high-risk processing. These include:

- sensitive data or data of a highly personal nature;
- data processed on a large scale; and
- data concerning vulnerable data subject.

‘Large scale’ is subjective to the assessor and deciding whether processing is on a large scale should take into account:

- the number of individuals concerned;
- the volume of data; and
- the variety of data.

In addition, ‘vulnerable individual’ is defined within the guide as those whose circumstances may restrict their ability to freely consent or object to the processing of their personal data, or to understand its implications. It is important to note that even if an individual is not part of a group that may be automatically considered vulnerable, an imbalance of power in their relationship with the assessor can cause vulnerability for data protection purposes. For example, a group who may be considered vulnerable in this instance are employees. Article 29 explains why employees could be considered vulnerable data subjects where a power imbalance means they cannot easily consent or object to the processing of their data by an employer.

3.1.3 The Human Rights Act¹⁸

The Human Rights Act 1998 is an Act of Parliament of the United Kingdom introduced to incorporate the rights of the European Convention on Human Rights into UK law. Public authorities must respect and protect the human rights set out through the articles of the Act. Articles relevant to this Fair Work agenda include:

- Article 4: Freedom from slavery and forced labour
- Article 11: Freedom from assembly and association
- Article 14: Protection from discrimination in respect of these rights and freedoms

Human rights implications are also considered in the context of upcoming International Human Rights Covenants and Conventions, including the International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination Against Women; the Convention on the Rights of Persons with Disabilities; and the Convention on the Rights of the Child.

In assessing the impacts on human rights legislation, this report considers:

¹⁷ European Commission (2017). Guidelines on Data Protection Impact Assessment (DPIA).

¹⁸ Human Rights Act 1998. Available at: <https://www.legislation.gov.uk/ukpga/1998/42/contents>

- If there is any danger of someone's rights being infringed by the actions of the Fair Work agenda
- If the actions of the Fair Work agenda will strengthen people's ability to enjoy these rights

3.2 National policy

3.2.1 Fair Work Framework¹⁹

The Fair Work Convention published the Fair Work Framework in 2016. It sets out a vision that **'by 2025, people in Scotland will have a world-leading working life where fair work drives success, wellbeing and prosperity for individuals, businesses, organisations and society'**.

The framework defines Fair Work through the five dimensions: effective voice, opportunity, security, fulfilment, and respect.

3.2.2 National Strategy for Economic Transformation (NSET)²⁰

The National Strategy for Economic Transformation outlines an ambition for a successful and 'fairer' economy by 2032 driven by a vision to create a wellbeing economy.

The 'fairer and more equality society' programme of action seeks to 'Reorient our economy towards wellbeing and fair work, to deliver higher rates of employment and wage growth, to significantly reduce structural poverty, particularly child poverty, and improve health, cultural and social outcomes for disadvantaged families and communities.'

3.2.3 National Performance Framework (NPF)²¹

The National Performance Framework is Scotland's wellbeing framework setting out a vision for a more successful, sustainable, and inclusive Scotland.

The Fair Work and Business National Outcome measures progress towards Scotland's vision for 2025. Performance against this outcome is measured through indicators, including but not limited to: pay gap, employee voice, gender balance and payment of the real Living Wage.

3.2.4 Developing the Young Workforce: Scotland's Youth Employment Strategy²²

¹⁹ Fair Work Convention (2016). Fair Work Framework 2016. Available at: [Fair-Work-Convention-Framework-PDF-Full-Version.pdf \(fairworkconvention.scot\)](#)

²⁰ Scottish Government (2022). Scotland's National Strategy for Economic Transformation. Available at: [Scotland's National Strategy for Economic Transformation - gov.scot \(www.gov.scot\)](#)

²¹ Scottish Government (2018). National Performance Framework: Our Purpose, Values and National Outcomes. Available at: [NPF A2 Poster.pdf \(nationalperformance.gov.scot\)](#)

²² Scottish Government (2014). Developing the Young Workforce: Scotland's Youth Employment Strategy. Implementing the Recommendations of the Commission for Developing Scotland's Young Workforce. Available at: [Supporting documents - Developing the young workforce: Scotland's youth employment strategy - gov.scot \(www.gov.scot\)](#)

The Youth Employment Strategy sets out how the Scottish Government will implement recommendations from the Commission for Developing Scotland's Young Workforce with the ambition to improve youth employment levels beyond pre-2008 and prioritise equal access to work relevant educational experience for all young people, despite the barriers they may face.

3.2.5 Tackling Child Poverty Delivery Plan 2022-2026²³

The 'Best Start, Bright Futures' delivery plan sets out a vision for tackling child poverty in Scotland, following the foundations of the 'Every Child, Every Chance' publication in 2018.

To successfully tackle child poverty, the plan will support families with children through people-centred services to access financial, emotional, and practical assistance regardless of gender, race or status.

3.2.6 Covid Recovery Strategy²⁴

In response to the inequality and disadvantage both exacerbated and exposed by the Covid pandemic, the Scottish Government published the Covid Recovery Strategy.

The strategy prioritises the security and resilience of communities, businesses, society, and the economy by embedding fair work, skills and employability interventions.

Actions from this outcome include gender, ethnicity and disability employment action plans, an ethnicity pay gap strategy, real Living Wage commitments and other Fair Work standards.

3.2.7 Race Equality Framework for Scotland 2016 to 2030²⁵

This framework sets out the Scottish Government's approach to addressing racism and inequality between 2016 and 2030. Through showing leadership in advancing race equality and addressing barriers faced by racialised minorities, the Scottish Government will assist racialised minorities in realising their potential.

The Framework was created to prioritise the needs and experiences of Scotland's racialised minorities. It outlines how the Scottish Government will work in partnership with government agencies and key stakeholders to address opportunities for progress through six themed Visions.

²³ Scottish Government (2022). Best Start, Bright Futures: tackling child poverty delivery plan 2022-2026. Available at: [Supporting documents - Best Start, Bright Futures: tackling child poverty delivery plan 2022 to 2026 - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents/best-start-bright-futures-tackling-child-poverty-delivery-plan-2022-to-2026)

²⁴ Scottish Government (2021). Covid Recovery Strategy: For a fairer future. Available at: [Supporting documents - Covid Recovery Strategy: for a fairer future - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents/covid-recovery-strategy-for-a-fairer-future)

²⁵ Scottish Government (2016). Race equality framework for Scotland 2016 to 2030. Available at: [Race equality framework for Scotland 2016 to 2030 - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents/race-equality-framework-for-scotland-2016-to-2030)

3.3 Partnerships

3.3.1 No One Left Behind²⁶

No One Left Behind is a collective approach to delivering an employability system which is flexible, people-centred, and responsive.

Progress has been made through the Disability Employment Action Plan²⁷, Shared Measurement Framework²⁸, the Scottish Approach to Service Design²⁹ and Fair Start Scotland extension³⁰.

3.3.2 Fair Start Scotland³¹

Fair Start Scotland, a national employment support service, launched in April 2018 and has been supporting people with significant barriers towards and into sustainable work.

The service is entirely voluntary and offers personalised, one to one support, tailored to individual circumstances and has supported over 51,000 starts since launch in April 2018.

3.4 Other factors

Individuals and businesses face ever-changing burdens dependent on the cumulative impacts of socioeconomic crises. Those relevant to today's populations include Covid, EU Exit and the cost-of-living crisis.

3.4.1 Covid

Covid-19 has an impact on Scotland's health, economy and society and progress towards Scotland's National Outcomes from the NPF.³² Emerging and exacerbated labour market inequalities are likely to generate poverty and human right impacts relevant to the Fair Work and Business Outcome. For example, young people are increasingly faced with early unemployment, while older unemployed adults are experiencing more long-term unemployment and are less likely to participate in upskilling.

3.4.2 EU Exit

Consideration must be given to EU Exit undermining trading and collaborative relationship, which Scottish society and businesses have traditionally relied on as

²⁶ Employability in Scotland (2022). No One Left Behind. Available at: [No One Left Behind - Policy | Employability in Scotland](#)

²⁷ Scottish Government (2018). A Fairer Scotland for Disabled People: employment action plan. Available at: [A Fairer Scotland for Disabled People: employment action plan - gov.scot \(www.gov.scot\)](#)

²⁸ Scottish Government (2022). Employability Shared Measurement Framework. Available at: [Publications | Employability in Scotland](#)

²⁹ Establishment of a lived experience panel to facilitate the gathering of user views and influence future service delivery - October 2020

³⁰ Scottish Government (2018). Fair Start Scotland. Available at: [Fair Start Scotland - gov.scot \(www.gov.scot\)](#)

³¹ Fair Start Scotland (2023). Employability in Scotland. Available at: [Fair Start Scotland | Employability in Scotland](#)

³² Scottish Government (2020). Scotland's Wellbeing: The Impact of Covid-19. Available at: [Scotland's Wellbeing: The Impact of COVID-19 | National Performance Framework](#)

efforts are made to rebuild, restore, and identify new markets and potential trade relationships.

3.4.3 Cost-of-living crisis

The recent cost of living crisis, driven by a surge in inflation, has generated social, economic, and environmental vulnerabilities across Scottish households.

While all households in Scotland will be affected by the increased cost of living, Scottish Government identify that disproportionate impacts are likely across low-income households.³³ Low income households also include overrepresentations protected characteristic groups.

Household's increased chances of suffering acutely from the current inflation crisis heightens vulnerabilities to changing legislation, in both positive and negative capacities.

³³ Scottish Government (2022). The Cost of Living Crisis in Scotland: analytical report. Available at: [Supporting documents - The Cost of Living Crisis in Scotland: analytical report - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents/-/The-Cost-of-Living-Crisis-in-Scotland-analytical-report)

4. Assessment of Refreshed Fair Work Action Plan

Headline action 1: We will lead by example on the Fair Work Agenda, including sharing and learning of practice, by 2025. We will continue to embed Fair Work in all public sector organisations, setting out clear priorities in the roles and responsibilities of public bodies.

Under Action 1, the use of data is likely to involve undertaking equal pay audits, analysing existing pay gaps, and disseminating data related to Fair Work to help organisations to fulfil commitments such as the Public Sector Equality Duty, or to encourage others to adopt Fair Work measures voluntarily.

For this, it is expected that processing of personal data will be undertaken. Action 1.1 discusses the undertaking of an equal pay audit examining pay of employees for the specific purposes of pay gap reporting and informing Fair Work policy and practice. In addition, Action 1.5 details aims to disseminate and share findings from this and other data collections to inform stakeholders about the labour market and Fair Work. The type of data processed will include data on employee protected characteristics, pay and other sensitive data. Employees are considered vulnerable data subjects by the ICO¹⁶ due to the possibility of a power imbalance meaning they cannot easily consent or object to the processing of their data by an employer. Data originating from 'vulnerable individuals' is considered personal and highly sensitive.

It is also important to note that under Article 9 of the GDPR, processing of special category data is prohibited except in some circumstances. 'Special category' contains categories such as ethnicity and trade union membership. When processed, such data may create significant risks to employees' fundamental rights and freedoms, for example, resulting in unlawful discrimination. However, it should be noted that the risk is primarily in situations where GDPR and/or appropriate protocol is not followed. The GDPR is designed to protect individuals. The GDPR does not fully prevent the collection of this data, and exceptions can be made, for example, when the data subject has given explicit consent to the processing of this data for a specified purpose. It is important that organisations consider the GDPR requirements that must be addressed before starting such collection.

While data will be published, it is expected that this will not be personally disclosive, however more detail is required to understand safeguards and measures that will be put in place to ensure suitable levels of data security and privacy are maintained by public sector organisations and businesses. Qualitative insights into the workforce can be gathered through staff networks and focus groups, in line with GDPR requirements, where quantitative data reporting is not possible due to privacy concerns.

In addition, the ability of small organisations to collect and publish usable data in relation to the ethnicity pay gap without experiencing GDPR conflicts may delay the public sector in reaching their vision for 2025. This concern around usable data has already been seen by smaller public sector bodies in reporting information on occupational segregation by race and disability, where the desire to produce and

report usable data has been complicated by the need to anonymise data in tables and reports. During consultation, stakeholders expressed particular concerns regarding the anonymity of pay gap data when sharing intersectional analysis for groups with more than one protected characteristic, such as racialised minority women.

The provisional DPIA score for this headline action is neutral.

Headline action 2: We will continue to use conditionality to further embed Fair Work in all public sector investment wherever possible.

It is expected that the main use of data under headline action 2 will be to aid the decision making behind forms of financial support from the Scottish Government to organisations. This will consider how organisations comply with Fair Work such as the real Living Wage and providing channels for effective voice.

In regard to the type of data that will be processed, it is unlikely that the Scottish Government will require direct access to and use of quantitative data related to protected characteristics such as ethnicity, disability, religion and gender, and other sensitive data including earnings, hours and trade union membership to fulfil actions 2.1.1 and 2.2. While there are indirect impacts of employers themselves collecting and using this data in reporting to the Scottish Government, this action itself does not involve the processing of personal data.

Qualitative data will also potentially be collected such as case studies, staff testimonies, exit interviews and staff surveys. As noted under the assessment of headline action 1, data involving employees and protected groups is classed as sensitive and personal, with some groups being regarded as 'vulnerable data subjects'. More detail is required from the Scottish Government about how safeguards and measures will be put in place to ensure data privacy and security are maintained by employers when looking to meet criteria set by the Scottish Government.

Key risks involve obtaining appropriate consent for the collection, analysis and dissemination of potentially sensitive data, particularly in the case of data relating to vulnerable data subjects. In addition, care must be taken in processing and sharing potentially sensitive data on a large scale.

The provisional DPIA score for this headline action is neutral.

Headline action 3: We will support employers to utilise the resources and support available to embed Fair Work in their organisations. We will work collaboratively to develop these resources to support and build capability among employers, employability providers and partners.

Under headline action 3, it is likely that the main use of data will be to help organisations to embed Fair Work within their operations. This could involve disseminating knowledge and data related to pay, trade union membership, and protected characteristics within the workplace. However, most of this will be qualitative in nature and is unlikely to identify individuals as it is not expected that data will be attributed to specific organisations.

Where personal data will be collected, used, and disseminated in order to implement this action then privacy concerns should be taken into account throughout. For the purposes of actions involving measures such as pay gap reporting and informing Fair Work policy and practice, data used will mainly be related to employees who are classed as vulnerable data subjects by the ICO and therefore, this data is regarded as highly sensitive.

In regard to risks, personal data regarding ethnicity and trade union membership is classified as a special category of personal data under Article 9 of the GDPR. When processed in situations where GDPR and/or appropriate protocol is not followed, such data may create significant risks to employees' fundamental rights and freedoms, for example, resulting in unlawful discrimination. The GDPR is designed to protect individuals. The GDPR does not fully prevent the collection of data, however, it is important that organisations consider the GDPR requirements that must be addressed before starting such collection. Please refer to headline action 1 for more detail.

More general impacts and risks are expected to align with the assessment under headline actions 1 and 2.

Where improved practices in relation to workplace data collection and usage include improved awareness of personal and sensitive data best practice, this should bring positive impacts for data protection in organisations.

The provisional DPIA score for this headline action is neutral.

Headline action 4: We will work collaboratively to develop resources to support workers to access, remain and progress in fair work.

The main use of data under headline action 4 is expected to involve the use of personal data, particularly in relation to disabled people but also people from racialised minorities, women and people aged over 50. The purpose of this is to increase the number of workers accessing, remaining in, and progressing in Fair Work.

As discussed in the assessment under headline actions 1, 2, and 3, several actions here will involve the Scottish Government and private, public, and third sector organisations collecting, analysing and disseminating data regarding personal data. As discussed, data regarding 'vulnerable data subjects' and 'special categories' are likely to be involved in this which presents some risks if not handled in a careful and compliant way.

In particular, action 4.4.1 involves handling personal data regarding disability to improve labour market participation and achievement rates for disabled people. This, like data regarding other protected characteristics, presents a risk associated with the appropriate handling of the collection, analysis, and dissemination, and processing and sharing on a large scale. More detail is required from the Scottish Government to understand how measures will be implemented to ensure appropriate permission is obtained for the use and disclosure of any personal data associated with this action.

More general impacts and risks are expected to align with the assessment under headline actions 1, 2, and 3.

The provisional DPIA score for this headline action is minor negative.

5. Assessment of Anti-Racist Employment Strategy

A number of measures within the ARES will involve the processing of personal data. Full details of the measures are not yet known; however, it is expected that public and private sector employers will be encouraged to collect, analyse and disseminate data regarding employees for the purposes of ethnicity pay gap reporting or for using data to inform policy and practice.

The type of data processed will include data on employee protected characteristics, pay and other sensitive data. Sensitive data could take the form of qualitative data such as the experience of bullying and harassment within the workplace. The Information Commissioner's Office (ICO) regards employees as vulnerable individuals due to potential power imbalances meaning "they cannot easily consent or object to the processing of their data by an employer". Data originating from 'vulnerable individuals' is considered personal and highly sensitive.

The measures set out in the ARES refer to processing quantitative data metrics including protected characteristics such as ethnicity, disability, religion and gender, and other personal data including earnings and absence from work data. Qualitative data will also potentially be collected such as case studies, staff testimonies, exit interviews and staff surveys.

Personal data regarding ethnicity is classified as a special category of personal data under the GDPR. When processed, such data may create significant risks to employees' fundamental rights and freedoms, for example, resulting in unlawful discrimination. The GDPR is designed to protect individuals. The GDPR does not prevent the collection of ethnicity data, however, it is important organisations consider the GDPR requirements that must be addressed before starting such collection.

Therefore, there is potential for issues to arise when collecting, publishing, and disseminating data related to ethnicity and pay gaps, particularly for smaller organisations. During engagement, stakeholders expressed particular concerns regarding pay gap data, especially when sharing intersectional analysis for groups with one or more protected characteristics such as racialised minority women.

In addition, in the ARES, it is made clear that employers must comply with GDPR and seek support from the third sector or partners where necessary to support them with data management. Upcoming technical guidance from UKG and to other resources is also signposted that supports employers with data management.

The provisional DPIA score for the ARES is minor negative.

6. Conclusions

To conclude, this DPIA has identified potential data protection risks of the RAP and ARES based on the ICO guidance and information provided by the Scottish Government.

A number of measures within both the RAP and ARES will involve the processing of personal data and it is expected that this data will be collected, analysed, and disseminated regarding employees for the purposes of informing Fair Work policy and practice. The type of data processed will include data on employee protected characteristics, pay and other sensitive data. The ICO regards employees as 'vulnerable individuals' due to potential power imbalances meaning "they cannot easily consent or object to the processing of their data by an employer". In addition, special category data will also be handled. Article 9 of the GDPR regards ethnicity and trade union membership as 'special category'. Data originating from 'vulnerable individuals' or 'special categories' is considered personal and highly sensitive.

Quantitative data metrics including protected characteristics such as ethnicity, disability, religion and gender, and other sensitive data including earnings, hours and trade union membership will be used. Qualitative data will also potentially be collected such as case studies, staff testimonies, exit interviews, and staff surveys.

Key risks identified through this DPIA include: risks associated with the appropriate handling of the collection, analysis, dissemination and storage of potentially sensitive data; risks associated with obtaining appropriate consent for the collection, analysis and dissemination of potentially sensitive data, particularly in the case of data relating to vulnerable data subjects; and processing and sharing potentially sensitive data on a large scale.

However, it is clear that none of the requests from the Scottish Government are asking employers to carry out any actions which themselves breach GDPR. The risks exist where organisations do not have the knowledge or capacity to adhere to GDPR principles in carrying out the actions.

This DPIA concludes that there could potentially be a minor negative data protection impact arising from both the RAP and ARES due to possible detractions from the protection of data, but not significantly. To prevent this, the Scottish Government is encouraged to provide more detail to understand how measures will be implemented to ensure appropriate permission is obtained for the use and disclosure of any personal data associated with the RAP and ARES.

7. Recommendations

Through the findings of this DPIA, it is encouraged that the Scottish Government provide more detail about how measures in the RAP and ARES related to personal data will be implemented, considering how appropriate permission will be obtained from data subjects for use and disclosure of data and statistics.

It is recommended that the Scottish Government set out the nature of data processing that will be undertaken, such as how data will be collected, used, stored, and deleted if so. In addition, it should be stated whether the data will be shared, how much will be collected and how often, and how long it will be retained for.

Appendix A Refreshed Fair Work Action Plan actions

A.1 Theme 1: Public sector leadership

A.1.1 Headline action 1: We will lead by example on the Fair Work agenda, including sharing and learning of practice, by 2025. We will continue to embed Fair Work in all public sector organisations, setting out clear priorities in the roles and responsibilities of public bodies

Action 1.1: Scottish Government will undertake an equal pay audit examining pay gaps by gender, disability, race and age by March 2024. We will act on findings to review and refresh our recruitment and retention policies to address workplace inequalities by end of 2025.

Action 1.2: Work with equality organisations and public sector employers to co-deliver a series of engagements with the public sector by end of 2023 to support employers to address the recommendations of the Scottish Parliament's Equalities and Human Rights Committee's inquiry report into race equality, employment and skills which recommended employers assess their organisations' understanding of racism and structural barriers; employers subject to the Public Sector Equality Duty as a minimum, voluntarily record and publish their ethnicity pay gap and produce an action plan to deliver identified outcomes.

Action 1.3: The EHRC and Scottish Funding Council (SFC) to:

Action 1.3.1: Implement National Equality Outcomes across protected characteristics (including disability, ethnicity, sex) from Sept 2022 to Sept 2025, in order to:

- improve student success and retention rates;
- ensure access to and confidence in support for students and staff that fosters good relations and tackle prejudice and discrimination;
- increase diversity of staff in the workforce and on College Boards and University Courts.

Action 1.3.2: Develop a set of SFC annual thematic reviews to inform and direct improvement.

Action 1.4: Work with partners to establish senior leadership networks to build capability and understanding of racism and racial inequality in the workplace by the end of 2023.

Action 1.5: We will work with Scottish Government's analysts to run a series of official statistics dissemination sessions with interested stakeholders to help inform their understanding of the labour market landscape in relation to fair work. Where available data allows, this will include considering intersectionality

A.1.2 Headline action 2: We will continue to use conditionality to further embed Fair Work in all public sector investment wherever possible.

Action 2.1: As part of the Bute House agreement and NSET, and within the limits on devolved competence, we will:

Action 2.1.1: Extend Fair Work conditionality with clear standards and minimum requirements to cover all forms of Scottish Government support within the limits of devolved competence. We will use all levers at our disposal to deliver on this commitment – including the use of grants, reliefs and licencing provisions

Action 2.1.2: Consider how we can extend conditionality to the other Fair Work principles, including opportunity, security, respect and fulfilment by 2025.

Action 2.2: By 2023 update the Fair Work First criteria to better reflect priority action required to address labour market inequalities faced by women, people from racialised minorities, and disabled people, ensuring people can enter, remain and progress in work.

A.2 Theme 2: Our ask of employers and support available

A.2.1 Headline action 3: We will support employers to utilise the resources and support available to embed Fair Work in their organisations. We will work collaboratively to develop these resources to support and build capability among employers, employability providers and partners.

Action 3.1: By end 2023 we will work with partners to join up provision of advice and support for employers by establishing a central Fair Work resource, making it as simple and efficient as possible for employers to use. This would enhance and consolidate existing material to ensure employers have a clear route to access guidance, support and advice on Fair Work. It will involve:

- Advice and tools to promote the benefits of Fair Work and workplace equality
- Good practice case studies
- Advice on networking and establishing peer support groups
- Collaboration with existing trusted business support services and partners.

Action 3.2: Develop a communications strategy to highlight and promote the benefits of Fair work and a diverse workplace to employers including;

- adoption of payment of at least the real Living Wage;
- effective voice channels, tackling the gender pay gap; and
- recruiting, employing and supporting disabled people and workers from racialised minorities.

The strategy will be informed by sectoral and regional analysis and utilise a range of channels.

Action 3.3: Increase the number of people who have security of pay and contract by encouraging employers to seek real Living Wage and Living Hours accreditation. We

will achieve this through our continuing support of Living Wage Scotland to achieve an additional 5,000 workers uplifted annually to the real Living wage through increases in employer accreditation.

Action 3.4: By the end of 2025 we will review and disseminate learning and best practice from on the conclusion of the 2024 Workplace Equality Fund.

Action 3.5: We will develop and promote guidance to encourage more employers across all sectors to use positive action measures as per the Equality Act 2010 giving particular attention to sex, pregnancy, race, age and disability by end 2024.

Action 3.6: We will continue to promote existing and new advice and guidance on the benefits of flexible working to organisations across Scotland by working with public bodies to assess provision and highlight best practice throughout this parliamentary term (by 2026).

Action 3.7: Working with employers, equality stakeholders and training providers, develop and implement an intersectional and anti-racist training framework by 2025.

Action 3.8: We will work with employers and trade unions, in sectors where low pay and precarious work can be most prevalent, to develop sectoral Fair Work agreements that deliver improved employment outcomes such as payment of the real living wage, better security of work, and wider “Fair Work First” standards.

Action 3.9: We will work with employers, workers and trade unions to strengthen effective voice, through a range of appropriate channels. We will do this by supporting strong trade unions and, in line with our NPF employee voice indicator, will promote the benefits of collective bargaining (including sectoral agreements) and other forms of effective voice at individual and collective levels.

A.3 Theme 3: Support for people to prepare for, access and sustain fair work

A.3.1 Headline action 4: We will work collaboratively to develop resources to support workers to access, remain and progress in fair work.

Action 4.1: Work with enterprise agencies and Business Gateway to promote Fair Work and deliver wider conditionality, and:

Action 4.1.1: By end of 2023 undertake a review of the Business Gateway website, utilising analytical and tracking techniques to ensure that disabled people find the website accessible, and are able to utilise the advice given to overcome the barriers they face.

Action 4.2: SG Employability Delivery: we will continue to work with Fair Start Scotland providers, within the timescales of the current contract until March 2023, to implement a continuous improvement approach to enhance delivery and outcomes for disabled people and those furthest from the labour market, including racialised minorities and women. This will include drawing upon learning from Pathfinders/ test and learn projects being delivered by Disabled People’s Organisations and the pilot project on community engagement being delivered by CEMVO Enterprises CIC in 2022/23.

Action 4.3: Scottish Government to work with stakeholders to develop a Delivery Plan 2023-26, outlining the next phase development of No One Left Behind (NOLB) from April 2024. This will:

Action 4.3.1: Build Fair Work outcomes into the design of No One Left Behind by taking account of the lived experience and needs of disabled people, people from racialised minorities, women and the over 50s.

Action 4.3.2: Draw upon the findings and recommendations of the following:

- Health and Work Strategy Review (2019)
- Supported Employment Review (2022)
- Health and Work Support Pilot final evaluation (2022)
- Individual Placement and Support Review (2022 – forthcoming)

Action 4.4: Skills Development Scotland (SDS) and Scottish Funding Council (SFC) will, on an annual basis, review disaggregated management information including the newly disaggregated Learning Disability statistics and take action where required where poorer outcomes or underrepresented groups are identified. This will include:

Action 4.4.1: Review the equality incentives for disabled people in relation to Work Based Learning (WBL) and make recommendations by end March 2024 with regard to impact on participation and achievement rates for disabled people.

Action 4.4.2: Review learning from pilot projects for Foundation Apprenticeships for disabled pupils and mainstream lessons learned by October 2023.

Action 4.4.3: Use intelligence from training and learning providers and participants to develop and deliver disability equality-focused continuous professional development to build the capacity of learning providers to support disabled individuals and ensure a continuous development cycle is implemented by 2023.

Action 4.5: Skills Development Scotland (SDS) will:

Action 4.5.1: Implement Scotland's Career Review recommendations and develop a model to ensure future career services across sectors provide meaningful and accessible support for disabled people that is both tailored to their needs and available when they need it. The implementation phase of the Career Review is due to be completed by the end of 2022.

Action 4.5.2: Continue to implement the Principles of Good Transitions across our Career Information Advice and Guidance (CIAG), through targeted Continuous Professional Development for all customer-facing CIAG colleagues and managers by the end of March 2023.

Action 4.6: Aligning with the Scottish Government's Fairer and More Equal Society (FMES) Programme by December 2023, Public Health Scotland (PHS) to:

- Collaborate with NHS Boards to develop the NHS Scotland contribution to achieving fair and healthy work outcomes for people across Scotland; and
- Work with Scottish Government, Local Government and NHS Boards to define the health offer to enable those with health conditions to secure, sustain and progress in work.

Appendix B Anti-Racist Employment Strategy actions

B.1 Action 1: Establish a platform for exchanging learning and good operational practice among employers - practice that is anti-racist and intersectional in its approach

Theme in RAP: Our ask of employers and support available

Action 3.1 of the RAP: By the end of 2023 we will work with partners to join up provision of advice and support for employers by establishing a central Fair Work resource, making it as simple and efficient as possible for employers to use. This would enhance and consolidate existing material to ensure employers have a clear route to access guidance, support and advice on Fair Work. It will involve:

- Advice and tools to promote the benefits of Fair Work and workplace equality
- Good practice case studies
- Advice on networking and establishing peer support groups
- Collaboration with existing trusted business support services and partners

B.2 Action 2: Undertake evaluation of the 'Minority Ethnic Recruitment Toolkit' to ensure it remains fit for purpose (anti-racist and intersectional) and is applied across the public sector. Consider augmenting the toolkit to include other accessible support sources, including those for retention and progression.

Theme in RAP: Our ask of employers and support available

Action 3.1 of the RAP above.

B.3 Action 3: Promote and disseminate learning and practice that shows positive change in employers' end to end processes to increase representation of racialised minorities.

Theme in RAP: Our ask of employers and support available

Action 3.1 of the RAP above.

B.4 Action 4: Develop an intersectional and anti-racist training framework for public and private sector employers by which to assess their training needs and improve the quality of training offered in the organisation.

Theme in RAP: Our ask of employers and support available

Action 3.7 of the RAP: Working with employers, equality stakeholders and training providers, develop and implement an intersectional and anti-racist training framework by 2025.

B.5 Action 5: Produce guidance on positive action to support employers across the public sector and promote this guidance through a series of engagement sessions.

Theme in RAP: Our ask of employers and support available

Action 3.5 of the RAP: We will develop and promote good practice guidance for employers to showcase successful application of positive action measures as per the Equality Act 2010, giving particular attention to sex, pregnancy, race, age, and disability by end 2024.

B.6 Action 6: By the end of 2025 we will review and disseminate learning and best practice on the conclusion of the 2024 Workplace Equality Fund.

Theme in RAP: Our ask of employers and support available

Action 3.4 of the RAP: By the end of 2025 we will review and disseminate learning and best practice on the conclusion of the 2024 Workplace Equality Fund.

B.7 Action 7: Oversee pilot to improve engagement of employers and employability services with racialised minority communities. Includes work to support EQIA process among employers. To improve the quality of assessments and how the practice can be embedded at the start of a process or policy development.

Theme in RAP: Support for People to Access and Sustain Fair Work

Action 4.3 of the RAP: The Scottish Government's Employability Delivery will continue to work with Fair Start Scotland providers, within the timescales of the current contract until March 2023, to implement a continuous improvement approach to enhance delivery and outcomes for disabled people and those furthest from the labour market, including people from racialised minorities and women. This will include drawing upon learning from Pathfinders/test and learn projects being delivered by Disabled People's Organisations in 2022/23 and the pilot project on community engagement being delivered by CEMVO Enterprises CIC.

B.8 Action 8: We will work with Labour Market Analysis colleagues to run a series of dissemination sessions when labour market statistics on ethnicity are published to make employers (and stakeholders) aware of data that is available and to support them to use national data to help inform their practice.

Theme in RAP: Public sector leadership

Action 1.5 of the RAP: We will work with the Scottish Government's analysts to run a series of official statistics dissemination sessions with interested stakeholders to help inform their understanding of the labour market landscape in relation to fair work. Where available data allows, this will include considering intersectionality.

B.9 Action 9: We will continue to press the UK Government to mandate ethnicity pay gap reporting, legislate for the prohibition of caste discrimination under the Equality Act 2010.

Part of the aggregated action narrative – “We will also lobby the UK Parliament for key changes to reserved legislation to address racialised systemic inequity, including mandating employers to report their ethnicity pay gap.

B.10 Action 10: Work with partners to establish senior leadership networks to build capability and understanding of racism and racial inequality in the workplace by the end of 2023.

Theme in RAP: public sector leadership

Action 1.4 of the RAP: Work with partners to establish senior leadership networks to build capability and understanding of racism and racial inequality in the workplace by the end of 2023.

B.11 Action 11: Co-deliver a series of engagements with the public sector by end of 2023 to support employers to address the recommendations of the Scottish Parliament’s Equalities and Human Right’s Committee’s inquiry report into race equality, employment and skills which recommended employers assess their organisations’ understanding of racism and structural barriers; employers subject to the Public Sector Equality Duty as a minimum, voluntarily record and publish their ethnicity pay gap and produce an action plan to deliver identified outcomes.

Theme in RAP: public sector leadership

Action 1.2 of the RAP: Work with equality organisations and public sector employers to co-deliver a series of engagements with the public sector by end of 2023 to support employers to address the recommendations of the Scottish Parliament’s Equalities and Human Rights Committee’s inquiry report into race equality, employment and skills which recommended employers assess their organisations’ understanding of racism and structural barriers; employers subject to the Public Sector Equality Duty as a minimum, voluntarily record and publish their ethnicity pay gap and produce an action plan to deliver identified outcomes.

B.12 Action 12: Ensure messaging around anti-racism and intersectionality is taken account of in Fair Work First guidance as used in procurement and grand funding processes.

Theme in RAP: public sector leadership

Action 2.2 of the RAP: By 2023 update the Fair Work First criteria to better reflect priority action required to address labour market inequalities faced by women, racialised minorities, and disabled people, ensuring people can enter, remain and progress in work.

B.13 Action 13: The Scottish Government to undertake an equal pay audit examining pay gaps by gender, disability, race, and age by March 2024. We will act on findings to review and refresh our recruitment and retention policies to address workplace inequalities by end of 2025.

Theme in RAP: public sector leadership

Action 1.1 of the RAP: The Scottish Government to undertake an equal pay audit examining pay gaps by gender, disability, race, and age by March 2024. We will act on findings to review and refresh our recruitment and retention policies to address workplace inequalities by end of 2025.

Appendix C Relevant policy

C.1 National policy

C.1.1 Fair Work Framework³⁴

The Fair Work Convention published the Fair Work Framework in 2016. It sets out a vision that **'by 2025, people in Scotland will have a world-leading working life where fair work drives success, wellbeing and prosperity for individuals, businesses, organisations and society'**.

The framework defines Fair Work through five dimensions: effective voice, opportunity, security, fulfilment and respect. These dimensions support positive outcomes for employers, workers and society through balancing rights and responsibilities in the workplace. The reinforcing synergies within these five dimensions nurture a workplace where the benefits of productive and innovative work are shared, while society benefits from the potential transformation towards inclusive economic growth.

The five dimensions of Fair Work are as follows:

- **Effective voice:** Voice can improve the experience of work as well as improving organisational performance.
- **Opportunity:** Fair opportunity is, however, more than the chance to access work. Attitudes, behaviours, policies and practices within organisations – and, crucially, the outcomes of these produce – signal and reflect the value placed on fair opportunity.
- **Security:** Security of employment, work and income are important foundations of a successful life.
- **Fulfilment:** Workers who are fulfilled in their jobs are more likely to be engaged, committed and healthy.
- **Respect:** Fair work is work in which people are respected and treated respectfully, whatever their role and status. Respect at work is a two-way process between employers and workers.

C.1.2 National Strategy for Economic Transformation (NSET)³⁵

The National Strategy for Economic Transformation outlines an ambition for a successful economy by 2032.

Driving this transformation is a vision to create a wellbeing economy. This recognises that “every citizen holds Scotland's economic potential in their hands” and that not every citizen is currently afforded the same opportunities.

³⁴ Fair Work Convention (2016). Fair Work Framework 2016. Available at: [Fair-Work-Convention-Framework-PDF-Full-Version.pdf \(fairworkconvention.scot\)](https://www.fairworkconvention.scot/Fair-Work-Convention-Framework-PDF-Full-Version.pdf)

³⁵ Scottish Government (2022). Scotland's National Strategy for Economic Transformation. Available at: [Scotland's National Strategy for Economic Transformation - gov.scot \(www.gov.scot\)](https://www.gov.scot/Scotland's-National-Strategy-for-Economic-Transformation)

This vision identifies an ambition for Scotland's economy to be 'fairer' by 2032. Through 'ensuring that work pays for everyone through better wages and fair work, reducing poverty and improving life chances', the strategy seeks to not only grow the Scottish economy, but to enable equality of opportunity and reward, as well as celebrating quality of life.

To achieve the vision of a wellbeing economy, the strategy sets out five programmes of action, including 'a fairer and more equality society'. This seeks to:

- 'Reorient our economy towards wellbeing and fair work, to deliver higher rates of employment and wage growth, to significantly reduce structural poverty, particularly child poverty, and improve health, cultural and social outcomes for disadvantaged families and communities.'

This strategy is aligned with Scotland's National Performance Framework, Tackling Child Poverty, Covid Recovery Strategy and existing commitments within the five programme areas. Contributions to 'a fairer and more equality society' include:

- Gender Pay Gap Action Plan;
- Fair Work Nation;
- Fair Start Scotland;
- No One Left Behind;
- Culture Strategy for Scotland; and
- Community Wealth Building.

C.1.3 National Performance Framework (NPF)³⁶

The National Performance Framework is Scotland's wellbeing framework setting out a vision for a more successful, sustainable and inclusive Scotland.

Within the National Performance Framework, there are 11 National Outcomes aligned with the United Nations Sustainable Development Goals and reflect the aspiration of the Scottish population.

The Fair Work and Business National Outcome measures progress towards Scotland's vision for 2025. This outcome measures progress towards the Refreshed Fair Work Action Plan (RAP) vision and guides the development of necessary legislative and operational structures to achieve a just and fairer Scotland. Performance against this outcome is measured through indicators, including the following:

- Pay gap
- Contractually secure work
- Employee voice
- Gender balance in organisations

³⁶ Scottish Government (2018). National Performance Framework: Our Purpose, Values and National Outcomes. Available at: [NPF A2 Poster.pdf \(nationalperformance.gov.scot\)](#)

- Employees on the living wage
- The number of businesses
- High growth businesses

C.1.4 Developing the Young Workforce: Scotland's Youth Employment Strategy³⁷

The Youth Employment Strategy sets out how the Scottish Government will implement the recommendations from the Commission for Developing Scotland's Young Workforce with the ambition to improve youth employment levels beyond pre-2008 levels.

The strategy prioritises equal access to work relevant educational experience for all young people, despite the barriers they may face. The active role of employer's in shaping the education system to generate a talented pool of future employees is also recognised.

Scottish Government and Local Government implementation plans are set out for schools, colleges, apprenticeships and employers, demonstrating the importance of providing young people with the knowledge to make informed career choices throughout their school studies and beyond.

C.1.5 Tackling Child Poverty Delivery Plan 2022-2026³⁸

The 'Best Start, Bright Futures' delivery plan sets out a vision for tackling child poverty in Scotland, following the foundations of the 'Every Child, Every Chance' publication in 2018.

The plan recognises that an action cannot drive change in isolation, but cumulative impacts across sectors will bring about change for children and their families.

To successfully tackle child poverty, the plan will support families with children through holistic and people-centred services to access financial, emotional and practical assistance. All parents, regardless of gender, race or status, will be able to access high quality skills and ultimately good quality employment supported by childcare services.

The Plan sets out three parts, each of which contain key actions in achieving Scotland's offer to families.

Part A: Providing the opportunities and integrated support parents need to enter, sustain and progress in work

- A strengthened employment offer to parents
- Connectivity and childcare to enable access to employment
- Transforming our economy

³⁷ Scottish Government (2014). Developing the Young Workforce: Scotland's Youth Employment Strategy. Implementing the Recommendations of the Commission for Developing Scotland's Young Workforce. Available at: [Supporting documents - Developing the young workforce: Scotland's youth employment strategy - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2014/06/Supporting_documents_-_Developing_the_young_workforce:_Scotland's_youth_employment_strategy_-_gov.scot_(www.gov.scot))

³⁸ Scottish Government (2022). Best Start, Bright Futures: tackling child poverty delivery plan 2022-2026. Available at: [Supporting documents - Best Start, Bright Futures: tackling child poverty delivery plan 2022 to 2026 - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2022/06/Supporting_documents_-_Best_Start,_Bright_Futures:_tackling_child_poverty_delivery_plan_2022_to_2026_-_gov.scot_(www.gov.scot))

Part B: Maximising the support available for families to live dignified lives and meet their basic needs

- A transformational approach to people and place
- Enhanced support through social security
- Income maximisation
- Access to warm and affordable homes

Part C: Supporting the next generation to thrive

- Best start to life
- Supporting children to learn and grow
- Post school transitions

C.1.6 Covid Recovery Strategy³⁹

In response to the inequality and disadvantage both exacerbated and exposed by the Covid pandemic, the Scottish Government published the Covid Recovery Strategy.

The strategy prioritises the security and resilience of communities, businesses, society and the economy. It sets out a vision to:

1. Address the systemic inequalities made worse by Covid
2. Make progress towards a wellbeing economy
3. Accelerate inclusive person-centred public services

Accompanying this vision are the following outcomes:

- Financial security for low-income households
- Wellbeing of Children and Young People
- Good, green jobs and fair work

The 'good, green jobs and fair work' outcome recognises the persistent gender employment and pay gap, the disability employment gap and ethnic employment gaps, especially for minority ethnic⁴⁰ women.

By embedding fair work, skills and employability interventions, this outcome aims to increase productivity and enhance equality of opportunity for all to access and progress in work.

³⁹ Scottish Government (2021). Covid Recovery Strategy: For a fairer future. Available at: [Supporting documents - Covid Recovery Strategy: for a fairer future - gov.scot \(www.gov.scot\)](https://www.gov.scot/resources/documents/2021/06/Supporting_documents_-_Covid_Recovery_Strategy_for_a_fairer_future_-_gov.scot)

⁴⁰ The Scottish Government adopts the term 'racialised minorities' to show that it is systems and structures that do not work for those who are categorised on the basis of "race", and because of this are sometimes treated differently or disadvantaged. These terms are becoming more widely used across Scottish Government, in line with our acceptance that racism is a structural issue. We support everyone's right to self-identify according to the term they relate to or are most comfortable with. Terminology changes as societal and systemic understanding grows. It should be noted that in labour market data analysis, the term minority ethnic is used and in reserved legislation such as the Equality Act (2010), the term "race" is used. These terms are not helpful to understand how racialised inequity impacts on those who experience systemic, institutional or interpersonal racism.

Actions from this outcome include gender, ethnicity and disability employment action plans, an ethnicity pay gap strategy, real Living Wage commitments and other Fair Work standards.

C.1.7 Race Equality Framework for Scotland 2016 to 2030⁴¹

This framework sets out the Scottish Government's approach to addressing racism and inequality between 2016 and 2030. Through showing leadership in advancing race equality and addressing barriers faced by racialised minorities, the Scottish Government will assist racialised minorities in realising their potential.

The key principles underpinning this ambition involve:

1. Creating awareness of how race equality benefits the whole of society;
2. Developing a detailed understanding of racial inequality and racism;
3. Promoting policy and practice that is evidence based;
4. Complementing mainstreaming approaches with lawful positive action;
5. Valuing capabilities and capacities; and
6. Looking at race equality from intercultural and intersectional perspectives.

The Framework was created to prioritise the needs and experiences of Scotland's racialised minorities. It outlines how Scottish Government will work in partnership with government agencies and key stakeholders to address opportunities for progress through six themed Visions as follows.

- Overarching work: 'our Vision for a fairer Scotland is that by 2030 Scotland is a place where people are healthier, happier and treated with respect, and where opportunities, wealth and power are spread more equally. The Race Equality Framework aims to ensure that this vision is achieved equally for people from all ethnicities, helping to build a Scotland where we all share a common sense of purpose and belonging.'
- Community cohesion and safety: 'We build good race relations and community cohesion across all communities, and all minority ethnic individuals feel safe, protected and included, and experience less racism.'
- Participation and representation: 'Minority ethnic participation and representation is valued, effective, fair and proportionate at all levels of political, community and public life.'
- Education and lifelong learning: 'Everyone has the opportunity to learn in an inclusive environment without disadvantage in relation to racial inequality or racism.'
- Employability, employment and income: 'Minority ethnic people have equal, fair and proportionate access to employment and representation at all levels, grades and occupation types in Scotland's workforce and experience fewer labour market, workplace and income inequalities.'

⁴¹ Scottish Government (2016). Race equality framework for Scotland 2016 to 2030. Available at: [Race equality framework for Scotland 2016 to 2030 - gov.scot \(www.gov.scot\)](http://www.gov.scot/race-equality-framework-for-scotland-2016-to-2030)

- Health and income: 'Minority ethnic communities in Scotland have equality in physical and mental health as far as is achievable, have effective healthcare appropriate to their needs and experience fewer inequalities in housing and home life.'

The Scottish Government recognise the importance of monitoring and maintaining progress on the Framework and aligning the Framework to the National Performance Framework to further mainstream race equality.

C.2 Partnerships

C.2.1 No One Left Behind⁴²

No One Left Behind is a collective approach to delivering an employability system which is flexible, people-centred and responsive.

In 2018, the Scottish and Local Government agreed on a collaborative partnership for employability. This was followed by the publication of an Employability Action Plan setting out the framework to deliver 'No One Left Behind'.

The principles which underpin the No One Left Behind approach:

- Dignity and respect, fairness and equality and continuous improvement
- Provides flexible, and person-centred support
- Is straightforward for people to navigate
- Integrated and aligned with other services
- Provides pathways into sustainable and fair work
- Driven by evidence including data and experience of others
- Support more people to move into the right job, at the right time

Progress has been made through the Disability Employment Action Plan⁴³, Shared Measurement Framework⁴⁴, the Scottish Approach to Service Design⁴⁵ and Fair Start Scotland extension⁴⁶.

C.2.2 Fair Start Scotland⁴⁷

Fair Start Scotland, our national employment support service, launched in April 2018 and has been supporting people with significant barriers towards and into sustainable work.

The service is entirely voluntary and offers personalised, one to one support, tailored to individual circumstances. Pre-employment support can last up to 18 months

⁴² Employability in Scotland (2022). No One Left Behind. Available at: [No One Left Behind - Policy | Employability in Scotland](#)

⁴³ Ibid5

⁴⁴ Scottish Government (2022). Employability Shared Measurement Framework. Available at: [for-publication-shared-measurement-framework-updated-december-2022.pdf \(employabilityinscotland.com\)](#)

⁴⁵ Establishment of a lived experience panel to facilitate the gathering of user views and influence future service delivery - October 2020

⁴⁶ Scottish Government (2018). Fair Start Scotland. Available at: [Fair Start Scotland - gov.scot \(www.gov.scot\)](#)

⁴⁷ Fair Start Scotland (2023). Employability in Scotland. Available at: [Fair Start Scotland | Employability in Scotland](#)

depending on the specific needs of the individual and up to 12 months in-work support is also available to participants and employers to ensure people remain supported during employment.

The service has supported over 51,000 starts since launch in April 2018 and there have been over 17,500 job starts with high rates of sustained employment for those who started work. 63% of people receiving support on Fair Start Scotland reported a long-term health condition and 45% were disabled.

C.3 Other factors

Individuals and businesses face ever-changing burdens dependent on the cumulative impacts of socio-economic crises. Those relevant to today's populations include Covid, EU Exit and the cost-of-living crisis.

C.3.1 Covid

Covid-19 has an impact on Scotland's health, economy and society and progress towards Scotland's National Outcomes from the NPF.⁴⁸ Emerging and exacerbated labour market inequalities are likely to generate poverty and human rights impacts relevant to the Fair Work and Business outcome.

In particular, structural changes in the labour market disproportionately impact protected characteristic groups. For example, young people are increasingly faced with early unemployment while older unemployed adults are experiencing more long-term unemployment and are less likely to participate in upskilling.

The Covid Recovery Strategy (2021) further recognises the disproportionate impacts of the pandemic on the following vulnerable populations:

- Lower income households have been less able to save and have accumulated more debt;
- Young people are more likely to have been furloughed or lost their job;
- Women, disabled people and minority ethnic groups have faced persistent employment and pay gaps;
- Young people and low-income earners employed in customer facing businesses (such as retail, hospitality, tourism and the culture sector) have suffered through the longest Covid restrictions; and
- Lower income households faced challenges in home schooling through the financial impact of remote learning, especially in accessing digital technology.

C.3.2 EU Exit

Consideration must be given to EU Exit undermining trading and collaborative relationships which Scottish society and businesses have traditionally relied on as efforts are made to rebuild, restore and identify new markets and potential trade relationships.

⁴⁸ Scottish Government (2020). Scotland's Wellbeing: The Impact of COVID-19. Available at: [Scotland's Wellbeing: The Impact of COVID-19 | National Performance Framework](#)

C.3.3 Cost-of-living crisis

The recent cost of living crisis, driven by a surge in inflation, has generated social, economic and environmental vulnerabilities across Scottish households.

The Scottish Government published an analytical report of emerging evidence on the cost-of-living crisis, including public attitudes towards rising inflation and costs and households most affected.⁴⁹

The Open Society Foundations poll of 21,000 people recorded that 70% of British respondents named inflation and cost of living as one of the top-three challenging currently facing their family, community and country. Further, online polling by Ipsos MORI revealed that 54% of British respondents expected their disposable income to decrease over the next year.

While all households in Scotland will be affected by the increased cost of living, Scottish Government identify that disproportionate impacts are likely across low-income households. These households are likely to be entering the crisis in a position of financial vulnerability and have restricted flexibility in their household's budget to cope with price rises. Low-income households also include overrepresentations of the following groups: disabled people, lone parents, racialised minority households, child poverty priority groups, renters, young adults, unemployed adults and people with complex needs.

Further, the Joseph Rowntree Foundation published its annual 'Poverty in Scotland' report reflecting the results of a poll of 4,196 adults in Scotland undertaken between July and August 2022.

The report revealed that low-income households, single parents and households with one or more disabled people are most vulnerable to the cost-of-living crisis.

Feelings of financial insecurity, food insecurity, social isolation and worsening mental health are evidenced through the following results:

- One-third of households have less than £250 in savings.
- Almost half (47%) of households have at least one debt.
- 65% of households have already cut back on an essential item.
- Three in four households have cut back on the basics.
- 18% of low-income households have skipped meals or reduced meal sizes and not heated their homes.

Household's increased chances of suffering acutely from the current inflation crisis heightens vulnerabilities to changing legislation, in both positive and negative capacities. Consequently, the potential exacerbation of impacts attributed to the cost-of-living crisis will be considered when assessing the impacts of Fair Work policies.

⁴⁹ Scottish Government (2022). The Cost of Living Crisis in Scotland: analytical report. Available at: [Supporting documents - The Cost of Living Crisis in Scotland: analytical report - gov.scot \(www.gov.scot\)](https://www.gov.scot/supporting-documents-the-cost-of-living-crisis-in-scotland-analytical-report)



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