

# Fair work through social partnership

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## Preface

The outbreak of coronavirus has, amongst many other things, highlighted the vital importance of social partnership and fair work.

Almost overnight, the most basic aspect of fair work - that someone should be safe and not exposed to risk of harm to their health at work - has become a headline topic. Measures to reduce risk such as appropriate personal protective equipment, a 2 metre rule in the workplace and access to handwashing have all been shown to be woefully lacking for too many employees.

The pandemic has also highlighted that many essential workers, from carers to delivery drivers to retail staff, have low pay and poor conditions. While they are valued for providing vital services, they receive poor economic rewards.

The Welsh Government has deferred its plans to introduce a social partnership bill, but social partnership is now more important than ever as employers and employees adapt to unprecedented circumstances.

We hope that this short report will contribute to dialogue about how improving employer – employee relationships, and to making work fair for all both now and in the future.

29<sup>th</sup> April 2020

## Summary

Work has been underway within governments across the UK to improve working conditions. The Welsh Government's approach is based on social partnership, which it proposes to take forward through legislation - a proposed Social Partnership Act. Its purpose is to create a framework for social partnership working, and to increase fair work practices.

The Welsh Government defines social partnership as an approach that brings together government, employers and trades unions to discuss areas of mutual interest. They design and implement solutions to common issues. The consultation on the proposed Bill outlines three core measures:

1. Establish a Social Partnership Council. This is intended to provide a clear and formal social partnership, bringing together Welsh Government, trades unions, and public and private sector employers. It would reach agreement on workforce issues, set expectations for working conditions for organisations receiving public money, and consider fair work and wider government policy.
2. Introduce a duty on public bodies to work in social partnership and promote fair work. This would require public sector bodies to establish their own social partnership systems.
3. Put social partnership at the centre of a new system of social procurement in the public sector. Public bodies would be required to produce a procurement strategy outlining how the benefits to local economies and working conditions will be maximised. A follow-up annual report would explain how this strategy has been delivered.

These proposals represent an important step in making work fairer. However, there are several considerations that the Welsh Government and others should take into account to ensure working conditions are being improved as much as possible:

- The Social Partnership Council's work should be broader than the Fair Work Commission's recommendations, covering all aspects of fair work.
- The fair work duty on public bodies needs to run in parallel to a wider case being made for improving terms and conditions for workers.
- There are limits to the role of public procurement in increasing fair work – other measures need to be included.
- Where public procurement is significant, businesses may not be responsive to demands for fair work practices and change may take time to realise.
- Public bodies may not have the capacity to increase the social impact of procurement. Additional support may be needed to improve fair work practices in businesses through the supply chain.
- New approaches to collective bargaining and negotiation training for both trades unions and employers will be key to ensuring the social partnership approach is successful.

- Welsh Government could increase compliance with existing UK legislation by increasing monitoring and enforcement.
- Welsh Government could explore whether devolved enforcement activity could be more joined up to the wider objective of protecting workers.
- Welsh Government could enhance the availability of advice on workers' rights to enable and encourage people to enforce them.
- Welsh Government and trades unions could together encourage recognition of good employers, through for example encouraging take-up of various 'quality marks'.

# 1. Introduction

The rise of zero-hours contracts and low paid work has fuelled concerns about the quality of jobs in the Welsh economy. Governments across the UK have been moving to consider the quality of jobs alongside the traditional aim of job creation.

The Welsh Government initially announced the creation of a Fair Work Board in early 2017, which was followed by the creation of an independent Fair Work Commission in 2018. This was charged with making recommendations to promote and encourage fair work in Wales. The Commission's report was published in May 2019. It defined fair work as a situation:

*"Where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected."*

The characteristics contained in this definition are listed: *"Fair reward; employee voice and collective representation; security and flexibility; opportunity for access, growth and progression; safe, healthy and inclusive working environment, legal rights respected and given substantive effect."*

The report gave a total of 42 recommendations, which included developing new standards outlining what fair work means, with organisations needing to meet these to receive public money. It also called for public sector bodies to be actively and visibly fair work employers.

Our response to the Commission's call for evidence argued that its focus should be on raising standards at work above the statutory minimum. We argued that fair work must always:

- have a rate of pay that is high enough to avoid poverty;
- offer a guaranteed minimum number of hours of work to provide income security to workers;
- include payment of sick pay and maternity pay above the statutory minimum.

We welcomed the Commission's final report, with its extensive recommendations reflecting what we believe are a crucial focus on raising standards at work above the statutory minimum.

The Welsh Government accepted all the Commission's recommendations in principle. As part of its approach to enhance fair work, First Minister Mark Drakeford announced the intention to introduce a Social Partnership Act. A white paper outlining the proposals was published in November 2019, with a public consultation running until January 2020.

This report starts by outlining the purpose of the proposed act and how its proposals are intended to achieve it. We recognise the significant benefits to working conditions that the proposed act will bring, but consider it could go further if it is to have maximum impact. These include aligning the provisions of a social partnership act with a wider push to improve terms and conditions for workers, and ensuring the capacity in organisations is sufficient to fully realise the potential of the new requirements.

## 2. The Social Partnership Bill

### 2.1. What are social partnerships?

The white paper states that social partnership refers both to a transactional way of working, and more generally to a principle defining relationships. A social partnership brings together government, employers and trades unions to discuss areas of mutual interest, in order to design and implement better solutions. Proponents argue it encourages joint working in delivering public services and promotes economic growth and well-being.

The white paper presents social partnerships as an accepted way of working, both internationally and in the UK. Successive post-1945 UK Governments of both parties used this approach until the late 1970s. While the depth of social partnership working differs between European countries, it remains the norm in western Europe<sup>1</sup>. Primary EU law refers to the concept of 'social partners' (EU-level employer organisations and trades unions engaged in European social dialogue) in Article 152 of the TFEU, stating:

*"The Union recognises and promotes the role of the social partners at its level, taking into account the diversity of national systems. It shall facilitate dialogue between the social partners, respecting their autonomy".<sup>2</sup>*

Collective bargaining is key to effective social partnership working and is also beneficial to workplaces. Among the benefits are that it ensures both workers and employers have an equal voice and are able to reach fair agreements. The white paper draws on evidence of the impact that social partnerships can have on delivering a more equal society. The International Labour Organisation has listed some of the benefits of collective bargaining, including reducing wage inequality, improving job security, and working time arrangements that balance the interests of workers and employers<sup>3</sup>.

The Welsh Government's approach to social partnerships reflects the prominent role that trades unions play in Wales in comparison to the rest of the UK. Collective bargaining and freedom of association are seen as fundamental to Wales' history and culture, with the model of social partnership advocated by the Welsh Government being seen to be within this framework.

The white paper highlights trades union membership statistics to explain why the social partnership model is particularly appropriate for Wales. Membership in Wales remains amongst the highest of any UK nation or region. Almost a third (30.5%) of the workforce has membership of a trades union, which equates to almost 390,000 members. In comparison with most of the rest of the UK, Wales has more employers who have a trades union presence in the workplace, and generally more employees that are covered by collective agreements.

The white paper sets out a range of benefits from the social partnership approach over the last 20 years:

- **'ProAct'** was used to support the manufacturing sector during the post-2008 economic downturn. This aimed to turn the low consumer demand into an advantage by using the time to upskill the workforce.
- **Solutions to financial challenges** have been developed through the Workforce Partnership Council. Fair work values were promoted for the public sector

workforce with cross-sector agreements being made on a range of public service workforce matters, such as the use of zero-hours contracts in public services. A two-tier workforce code in Wales was kept in place to protect outsourced staff and new staff working on public service contracts, while the UK Government had withdrawn this code.

- Several measures have been made to **improve wages**. Better pay has been promoted through the Workforce Partnership Council. The Council is recognised as the key forum for cross-public services workforce matters. It is not a forum for collective bargaining, although its agreements and other outputs can be adopted into collective bargaining arrangements. The real living wage, introduced through collective agreement, has been promoted by the Council throughout the devolved public sector. In the private sector, the Welsh Government's economic contract promotes responsible practice, including raising awareness of the benefits that come from adopting the real living wage. The code of practice on ethical employment in supply chains also promotes the real living wage.

## 2.2. Why legislate?

The purpose of the Bill will be to put into law the foundations for social partnership. It is part of the Welsh Government's wider ambitions for social equality and inclusive economic growth, including free prescriptions, free travel for older people, childcare for working families and the Council Tax Reduction Scheme.

The white paper reflects the findings of the Fair Work Commission report, stating that:

*"The most effective way out of poverty, the best route to fulfilled lives, and the impact on health and well-being, comes through the creation of worthwhile, properly rewarded employment."*

It goes on to argue that social partnerships are an effective way to promote measures that strengthen fair work. These measures include:

- fair reward;
- employee voice and collective representation;
- security and flexibility;
- opportunity for access, growth and progression;
- safe, healthy and inclusive working environments;
- legal rights being respected and given substantive effect.

## 2.3. Key measures

The white paper outlines three core proposals. This section looks at each of them and their proposed benefits in turn.

### 2.3.1. Establishing a Social Partnership Council

Creating a Social Partnership Council will combine current social partnership arrangements, including the Workforce Partnership Council and the Council for Economic Development. Doing so is argued to provide stronger representation and to allow for a consensus to be reached more easily. Establishing these arrangements in law would provide a stronger footing for the status and output of the proposed council.

Membership of the council would be made up of key public and private sector employers, trades unions, and Welsh Government, with the First Minister acting as chair. The council is not expected to bring a big increase on the demands currently put on these organisations.

The council's purpose would be to reach agreements on workforce issues within the devolved public sector. It will set clear expectations for working practices for those organisations and for businesses receiving public money. The body will review more generally how social partnership and fair work can improve efficiency. It will also be expected to consider how government policy can further prosperity and well-being.

Finally, it is noted that Welsh Government may issue cross-sector guidance in order to achieve universal implementation of agreed outcomes.

### 2.3.2. Placing a duty on public bodies

The main purpose of this duty is to establish social partnership working across the public sector and promote fair work goals. It would require public sector bodies to establish their own social partnership systems. These bodies would also need to consider whether the strategic decisions they are taking support fair work practices.

The duty is presented as building on previous legislation, complimenting Section 1 (the socio-economic duty) of the Equality Act. Guidance will ensure alignment between the two duties and will reflect agreements reached at the Social Partnership Council. Emphasising the 'business as usual' tone of the proposals, the white paper highlights current guidance that reflects existing social partnership arrangements including guidance on the use of zero-hour contracts in public services. It is also argued that future guidance would be unlikely to bring additional costs, other than reporting costs.

### 2.3.3. Public sector procurement strategies

The white paper aims to use the power of the public purse to promote both social partnership and fair work. Public bodies would be required to produce a procurement strategy outlining how they intend to maximise local benefits of procurement. This would break with the current practice, in which public bodies are asked to consider community benefits on a contract-by-contract basis. Guidance on producing these procurement strategies would be issued by Welsh Government.

Procurement strategies are seen as improving the accountability of public bodies to Welsh Government, while allowing these bodies to take a proportionate approach to delivering Welsh Government priorities. Each public body would then be required to produce an annual report detailing their implementation of the strategy. The Social Partnership Council is expected to act as the reviewing body of these reports.

The white paper recognises that social procurement is not a new policy area. The Welsh Government has an established community benefits policy, outlining expected benefits from contracts worth over £2m. There is also a code of practice on ethical employment in supply chains. This sets out twelve commitments aimed to ensure that workers at every stage of the supply chain are treated fairly. All organisations receiving public money are expected to sign up to the code. Organisations not in receipt of public money are encouraged to sign up. The white paper notes that over 200 organisations are now signatories to the code.

The white paper intends that procurement strategies influence those who deliver services for public organisations, including the private and third sector, to support fair work

practices. Flexibility is stressed to avoid any disengagement from procurement processes. Organisations could, for example, highlight work ranging from promotion of the real Living Wage, reducing the use of zero-hour contracts or investing in workforce training. The white paper envisages that these changes would have a positive knock-on effect through the supply chain.

It is recognised that some businesses may consider that there are additional burdens and be discouraged from tendering. There are also risks for some organisations who introduce specific terms and conditions for staff working on Welsh public sector contracts.

## 3. Opportunities and challenges

The Fair Work Commission and now the proposed social partnership bill are important steps in both putting fair work on the Welsh policy agenda and in taking active steps to achieve it. The proposed bill is all the more important as employment is a reserved matter, limiting the Welsh Government's options.

### 3.1. Opportunities for social partnership

There is powerful international evidence that social partnership boosts economic performance and productivity and reduces inequality – an enviable win-win.<sup>4</sup> These benefits occur whether partnership is at the state, sectoral, or firm level.

Social partnership is effective in facilitating collective bargaining. It provides workers with a voice via trades unions and creates forums for workers and employers to negotiate over a range of issues, including pay but also other employment matters.

The white paper envisages that the Social Partnership Council may consider other recommendations made by the Fair Work Commission. These include the recommendations to:

- develop a strategy to improve the effectiveness of existing rights enforcement;
- assist workers to enforce their rights to facilitate access to advice and support services;
- publicise existing evidence of the benefits of fair work, and commission research where there are gaps;
- enlist the support of employers to increase the desirability of fair work within business communities, such as identifying fair work ambassadors.

We suggest that in order to maximise its effectiveness, the Social Partnership Council's work should not be limited only to these recommendations – there are a wide range of other issues with which the Social Partnership could and indeed should engage, ranging from the overall development of the economy and labour market in Wales, to skills development to automation to gender inequality.

The matters that come within the remit of the Social Partnership Council should therefore be as broad as possible.

### 3.2. The statutory duties

The white paper adopts a similar approach to that of the Equality Act 2010, which requires public bodies to have regard to various aspects of inequality in making decisions. This step is intended to encourage public bodies to consider the consequences of their decisions for social partnership and fair work.

While 'duties' on public bodies have existed for some time, the evidence on their impact is mixed. An evaluation of the public sector equality duty undertaken two years after their introduction<sup>5</sup> found that the main benefits were to raise the profile of equality and diversity, to mainstream the issues, and to provide structure and focus. That all participating organisations could give at least one example of something they had done differently as a result of the duty was seen as good progress. Nine years on, there have been no further evaluations, but the persistence of inequality suggests that at best the

public sector equality duty has driven specific changes of decisions made by public bodies while at worst it has become a 'tick box' exercise.

If the fair work duty is to have any effect on the terms and conditions of people at work, it needs to run in parallel to a wider case being made for addressing poor terms and conditions. Simply focusing on changing the decision-making process seems unlikely to generate change at any scale.

### 3.3. The leverage of public procurement

The main lever of change in the proposed bill is public procurement. The white paper states that goods and services procured by the public sector are worth £6.3bn. Of this, more than half (£3.3bn) is spent by local authorities with a further fifth (£1.3bn) being spent by NHS bodies mostly on medical and healthcare supplies and equipment.<sup>6</sup>

In terms of the types of goods and services procured, by far the largest category of expenditure is on construction, facilities management and utilities which accounts for 28% of the total.<sup>7</sup> There is a wide range of other types of expenditure, from professional services to food and drink to laboratory services, with many being relatively modest in scale. There are three issues here.

First of all, public procurement simply does not reach into large parts of the economy because the public sector buys few goods and services from them. For example, in terms of employment, one of the largest private sector economic activities in Wales is accommodation and food services, accounting for 7.3% of the workforce<sup>8</sup>. Yet only around 1.3% of public sector expenditure is on food and accommodation services (£78 million out of £5,980 million). Other large economic sectors, such as wholesale and retail, have no identifiable public procurement. This is all the more important because some of the economic sectors with the lowest pay and poorest terms and conditions are in those sectors that public procurement is unlikely to reach.

Second, even if public sector expenditure is a substantial element in some sectors, UK-wide or international businesses may not be responsive to demands for fair work practices if Welsh public sector contracts are a small element of their turnover. For example, the Wales Audit Office estimated that the Welsh public sector spent £1.7 billion on construction, facilities management and utilities in 2015/16.<sup>9</sup> In 2016/17, the Institute for Government put the value of expenditure by government departments (a mix of UK and England-only) on works and facilities management at £51 billion.<sup>10</sup> While the two figures are not directly comparable, they nevertheless illustrate that Welsh public sector contracts are likely to be a very small proportion of a major suppliers' business. It is unclear if a potential contractor would be willing to adjust its business model and employee rewards to access Wales' relatively low value contracts.

Third, the impact of public procurement may take some time to realise. Some public bodies may be tied into long-term contracts, whether for social care or electricity supplies, while options for procuring some specialised products and services can be limited, not only locally but in the UK.<sup>11</sup>

We would stress that this is not to underestimate the potential impact of the proposed bill on sectors in which there is substantial procurement, such as construction and social care. However, its potential to affect the whole economy, including some in which unfair working practices are widespread, should not be overstated. For these sectors, different solutions may be required.

### 3.4. Public procurement capacity and impact

The white paper on social partnership is just one of several policy initiatives looking to public procurement to achieve change. There are also high expectations that public procurement can do everything from stimulating the local economy, lowering the carbon footprint, preventing human trafficking, to increasing efficiency, effectiveness, inclusivity, and equality.<sup>12</sup>

All these asks assume that public bodies have the capacity to increase the social impact of procurement. Yet as several reviews of procurement have concluded, this is far from the case. The Economy, Infrastructure and Skills Committee inquiry into procurement in the foundational economy concluded that the lack of skills and capacity, lack of leadership, and difficulty mainstreaming the drive for social value “*appear intractable*”.<sup>13</sup> It is unlikely that adding another set of expectations to the procurement process will help to address these clearly deep-seated challenges.

There will also be challenges in driving fair work through the supply chain. Evidence to the Committee’s inquiry made the powerful case that change will not happen without the development of and support for businesses, particularly local businesses, in the supply chain. There are sometimes voids in the supply chain, and some businesses are not ready to participate in public procurement processes.

### 3.5. Collective bargaining

If the social partnership approach is successful, many more businesses will need to engage in collective bargaining. This could be a challenge for trades unions and employers alike if their memberships and managements have not previously engaged in negotiation over terms and conditions. It is worth remembering that a significant number of workplaces do not have collective agreement coverage. For example, trades union membership in the manufacturing sector in Wales stands at 28.76%, and in construction at 18.47%.<sup>14</sup>

New sectors, new types of businesses, new groups of workers and new employers will all come to participate in collective bargaining. In some instances, this may be after many years of hostility to trades unions, bringing challenges to the management style of some businesses. In this context, new approaches to collective bargaining will be key, alongside basic training in effective organising and negotiation for both sides. Our current work on fair work in the foundational economy should provide valuable insights into new methods that could be adopted.

It is also important to recognise that there may sometimes be limits to collective bargaining. Other action to protect workers will continue to be needed. For example, this includes ensuring equality and prevent discrimination, to maintain legal minimums e.g. of pay or holiday, and to protect specific groups of people such as pregnant women. Legislation on employment matters is reserved to the UK Government, but there may be alternative action it could take.

First, the Welsh Government could increase compliance with existing UK legislation by increasing monitoring and enforcement, for example to eradicate pay below the legal minimum or to tackle pregnancy discrimination. It has already invested additional resources in the case of modern slavery, and could similarly increase monitoring and enforcement in other areas.

Second, the Welsh Government could explore whether devolved enforcement activity, for example of food hygiene or pollution, could be more joined up to the wider objective of protecting workers. Where sector-specific inspectors find that employers are found to be non-compliant in one area, this could inform further activity to determine if they are complying with employment rights.

Third, the Welsh Government could enhance further the availability of advice on workers' rights to enable and encourage people to enforce them. This should include sign-posting workers with possible grievances to a trades union able to represent them as well as providing information about workers' entitlements. It is important, however, that this route is not seen as a sufficient response in itself to addressing workforce issues but as complementing collective approaches, which are the most efficient means to enforce workers' rights.

Finally, the Welsh Government and trades unions together could encourage recognition of good employers, through for example encouraging take up of various 'quality marks' and their inclusion within a Fair Work standard. These would complement work done through wider collective bargaining arrangements. They might include increasing take up of living age employer accreditation, disability confident schemes, healthy working Wales awards or Investors in People. Each of these 'quality marks' need to include engagement with a union representative as an additional level of scrutiny over employers' compliance with employment rights.

## 4. Conclusion

Social partnership is an internationally recognised approach that can achieve significant benefits. The Welsh Government is bringing social partnership to the fore of employer-employee relations in Wales, through the proposals outlined in the white paper for a social partnership bill. This is a ground-breaking step that could put dialogue between employers and employees at the centre of employment in Wales.

There are however some constraints on the proposed approach, not least because of the current devolution settlement. The proposed reliance on duties on public bodies and on public procurement are potentially limiting, as both have relatively limited impact on the economic sectors in which poor working practices are found.

Alongside these specific proposals there will ultimately need to be a change in broader culture, in workplace relationships, and in the overall strength of the economy and labour market, if social partnership is to be an established part of working life and fair work is to be achieved.

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