

Draft Social Partnership and Public Procurement (Wales) Bill

Bevan Foundation Consultation Response

As a charity whose mission is to eradicate poverty and inequality in Wales, we welcome the Welsh Government's commitment to improve fairness at work. Poor terms and conditions at work are one of the biggest causes of low income, limited life chances and ill-health. Any action to improve working lives is valuable.

However, we are concerned that the proposed social partnership bill is overly focused on creating new structures and imposing new duties on public bodies, at the expense of practical action to improve the pay and conditions of the 1 in 5 workers who do not earn enough to live on. We appreciate that the Welsh Government's competence is constrained, but have reservations about the ability of legislation on social partnership alone to achieve the desired outcomes.

Why the Bill is required

The consultation paper sets out the need to improve a wide range of terms and conditions at work well. It also makes the case that social partnership is an effective way of improving employee conditions. The case for social partnership improving public services is less strong.

However, we would urge the Welsh Government to recognise that there are other factors that determine 'fair work' including the nature and supply of other jobs in the local labour market, the skills and qualifications of the workforce, the UK regulatory context, and the ownership and business models of employers. We consider that the social partnership bill will not achieve its full potential unless the Welsh Government also addresses the wider labour market context in which it will operate.

Social partnership

We have concerns about the duty as set out in the draft Bill. The growing number of duties on public bodies create potential conflicts and it is unclear how a body should balance different requirements associated with different duties. There is very limited evidence that the imposition of duties on public bodies results in material improvements (c.f. the public sector equality duties) – at worst it encourages a tick-box approach with limited regard paid to achieving better outcomes.

However our biggest concern is that by focusing on public bodies, the Bill overlooks the economic sectors with the worst terms and conditions e.g. retail, accommodation and food service and arts and culture sectors.

Rather than imposing duties on a narrow range of bodies, we have called for social partnership conditions to be attached to receipt of all public funds. This would widen the list of public bodies included and bring private and third sector employers who benefit from public funding (of any kind) into scope.

We have concern about the approach being based on specified bodies. Given that, in our view the list of bodies should be much wider, and include all public sector employers including registered social landlords, colleges of further education, bodies funded by HEFCW, bodies funded by Arts Council of Wales and by Sport Wales, all Welsh Government arms-length bodies such as the offices of the Older People's Commissioner, Children's Commissioner, Future Generations Commissioner, Development Bank for Wales, Public Services Ombudsman, Transport for Wales etc. This is not only

a matter of parity (in that they are all employers) but it would help to embed a culture of social partnership more widely within the public sector.

Fair work

The proposed duties and process seem very cumbersome and in our experience annual reports on an issue (e.g. child poverty) paint a positive picture and are rarely used to hold Ministers to account for their achievements (or otherwise). There is a risk that the process consumes too much resource that could be better deployed achieving change on the ground.

We would also urge that there is independent evaluation and assessment of compliance and impact rather than self-reporting. There may be a role for Audit Wales here.

We agree with the broad definition of fair work in the Fair Work Commission's report. Within that, we would prioritise:

- Increasing health and safety at work – nobody should be killed, injured or harmed by doing their job.
- Increasing the number of people paid at or above the real Living Wage, and enforcing the payment of statutory minimum wages – nobody should work yet still not have enough to live on.
- Improving job security and stability – we have found that zero- or variable hours contracts damage workers' health, personal finances and daily lives, as well as giving managers additional tools with which to penalise or reward selected employees.

We cannot offer a legal definition but we do consider that the Welsh Government has competence in respect of the health of workers (because of their public health competence), in the development of all aspects of the economy (because of their economic development competence), in workers' skills (because of their education competence) and in socio-economic and other equality (via the Equality Act 2010). Improving employee terms and conditions is fundamental to achieving good outcomes in the areas that are within competence.

There are many levers that the Welsh Government could and in our view should utilise. These will complement the provisions of the proposed act, and are especially important in reaching sectors that the proposed act will not. The other levers are:

- Increasing the number and range of employment opportunities available, which creates competition for labour which helps to drive up pay and improve conditions;
- Increasing the qualifications and skills of workers, so that they are able to enter higher-level jobs. This does not in itself improve conditions at the bottom of the labour market but it increases competition for labour (as above) and also means workers are better informed about their rights;
- Establishing a non-statutory 'fair work' benchmark, that translates the key features of the definition of fair work in to practical terms that employers and employees can understand (e.g. pays the real Living Wage, recognises a trade union)
- Imposing conditions on recipients of all public funds, grants and allowances including businesses in the private sector to meet the fair work benchmark. This should be much broader than the current Economic Contract and include DBW loans, small business rate relief, grants to tourism operators, arts and sports organisations and charities etc.
- Investing in a significant business led campaign to increase take up of the real Living Wage.

- Establishing effective dialogue with the sectors with the poorest terms and conditions (including retail, arts and culture, and hospitality) to understand the drivers of change.
- A major public education programme to ensure all workers, and especially young workers, understand their rights at work and the role of trades unions. This should be mandatory for participants in apprenticeships and traineeships. It could also be delivered through adult and community learning providers, online and via the Welsh Bacc curriculum.
- Easy access to informed advice about how workers can exercise their rights.
- Enhanced enforcement of existing legislation.

Socially responsible public procurement

We agree that all procurement should be socially responsible. However we are concerned that the focus on procurement to deliver fair work will not achieve the desired outcomes. This is because only a proportion of public procurement expenditure is on employment-related goods and services – of the expenditure identified in the consultation paper, 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. 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. 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.

1. Public procurement does not reach into large parts of the economy because the public sector buys few goods and services from them. For example, accommodation and food services accounts for 7.3% of the workforce yet only around 1.3% of public sector expenditure is on food and accommodation services. 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.
2. UK-wide or EU businesses may not be responsive to demands for fair work practices if Welsh public sector contracts are a small element of their turnover. Indeed the Welsh public sector could end up paying a premium.
3. 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.

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

We are disappointed that the paper does not address the issue of developing supply chains with Welsh suppliers. If the proposed act is to have fullest impact, businesses that supply Welsh public bodies should as far as possible be located in Wales. Positioning a major supply chain initiative in tandem with the act would ensure it has the greatest possible effect on worker conditions.

We are disappointed that the proposed membership is relatively large and yet comprises vested interests – there is no independent voice for example of labour market or industrial relations experts. We wonder where any challenge to the status quo will come from.