



Welsh Government
White Paper

A More Equal Wales: Strengthening Social Partnership

A consultation on a legislative framework for strengthening social partnership arrangements in Wales and proposals to deliver a more equal Wales.

Date of issue: 7 November 2019

Action required: Responses by 9 January 2020

Mae'r ddogfen yma hefyd ar gael yn Gymraeg.
This document is also available in Welsh.

Overview

How to respond

This consultation seeks views on social partnership legislation. Responses to this consultation should be e-mailed/posted to the address below by **9 January 2020** at the latest.

Further information and related documents

Large print, Braille and alternative language versions of this document are available on request.

Contact details

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In order to show that the consultation was carried out properly, the Welsh Government intends to publish a summary of the responses to this document. We may also publish responses in full. Normally, the name and address (or part of the address) of the person or organisation who sent the response are published with the response. If you do not want your name or address published, please tell us this in writing when you send your response. We will then redact them before publishing. You should also be aware of our responsibilities under Freedom of Information legislation.

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Data Protection Officer:

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The contact details for the Information Commissioner's Office are:

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Contents

Ministerial Foreword

1. Summary	page 1
2. What we want to achieve	page 2
3. Strengthening social partnership	page 4
4. The benefits of social partnership	page 5
5. A common purpose	page 7
6. The need for change	page 9
7. Legislating for change	page 10
8. Proposals for a Social Partnership Bill	page 12
9. Conclusion	page 16

Annex 1: Summary of the impacts

Annex 2: Questions summary

Annex 3: Consultation response form

Ministerial Foreword

From the outset, the First Minister has been clear that an inclusive Welsh economy in which everyone can thrive and no-one is left behind is fundamental to our vision for Wales as a modern, compassionate, more equal nation.

One of his first commitments was to outline proposals to strengthen our social partnership arrangements to deliver a renewed, more ambitious agenda for greater social equality that would be informed by the findings of the Fair Work Commission which reported earlier this year.

We are clear that our workforce is our greatest economic asset in Wales, essential to driving our economy forward in a competitive global market-place on the one hand and delivering essential public and voluntary services on the other. Our workforce has sustained our nation through economic crisis and continues to deliver improvements in public services against a decade of UK government austerity policies. Equally, there are many good employers in Wales who fairly reward their workers, value their staff, properly engage the workforce in decision-making, and invest in their development. We want this to be the experience of work for every worker in Wales.

Despite strong employment levels the gap between the rich and poor continues to widen, in-work poverty is deepening, the gender pay gap persists and modern precarious employment practices, like compulsory zero-hour contracts have become a feature in some parts of the labour market, leaving people vulnerable and without any certainty in their day to day income. In addition emerging global technological changes in the form of automation and artificial intelligence add to the opportunities and challenges businesses and workers face in the years ahead.

This White Paper sets out proposals to underpin our commitment to deliver a more equal Wales. It proposes legislation to create statutory social partnership arrangements in Wales with associated provisions that create a framework for driving social equality forward, building on the principles of partnership and collaboration.

We look forward to receiving your responses.



Julie James AM

Minister for Housing and Local Government

Summary

1. This consultation seeks views on proposals for a Social Partnership Bill to strengthen social partnership arrangements in Wales and provide a framework to consider and deliver greater social equality for Welsh workers across the Welsh economy.
2. The purpose of these proposed measures is to create statutory foundations for social partnership as part of the response to findings of the Fair Work Commission, which made a series of recommendations about how the Welsh Government should encourage fair work practices across Wales. The proposals are part of our wider ambitions to drive greater social equality and inclusive economic growth.
3. Our overarching goal in promoting social partnership is to enhance the well-being of the people of Wales by improving public services and adopting more balanced means to develop the Welsh economy. It is an integral part of our broader aim to reduce inequality. It complements steps we are taking to ensure everyone has the same strong learning opportunities regardless of their socio-economic status, preventable illness is avoided and measures designed to ease the pressure on household finances.
4. The Bill will invigorate our social partnership arrangements, providing certainty and structure in a more complex, integrated, collaborative landscape of public service delivery and regional economic partnerships.
5. Simpler, stronger social partnership arrangements supported with clear new provisions for Welsh Ministers, will be expected to deliver our ambition for better, consistent, more equal outcomes ensuring Welsh workers across all sectors of the economy share in economic growth.
6. Social partnership refers both to a transactional way of working and more generally to an idea; a value that should underpin all we do. It can encourage collaboration in delivering public services and is a means of promoting economic growth and improvements in well-being. Social partnership brings together government, employers and trade unions in areas of mutual interest, to design and implement better solutions. The report of the Fair Work Commission advocates this approach to enhance the quality of employment in Wales. In a wider context it is part of a broader response to social and economic inequality and contributing to the well-being goals that set the framework for the future of our essential public services.
7. We are, therefore, proposing a Bill to strengthen our social partnership arrangements and support our ambition for a more equal Wales that will:
 - establish a Social Partnership Council;
 - place a duty on public bodies to work in social partnership and promote fair work goals; and
 - require specified public bodies to produce a procurement strategy in line with statutory guidance.

What we want to achieve

8. The Welsh Government has a long-standing commitment to address social inequality in Wales - we have set ourselves a well-being objective of tackling regional inequality and promoting fair work. Over two decades of devolution we have aimed to support the poorest in our society through changing economic circumstances and to mitigate the greatest ever post-war squeeze on public finances and a decade of UK Government austerity policies.
9. Our emphasis has been on achieving improvements over the long term. Improvements that we know will improve the life chances of everyone. We are committed to delivering an inclusive education system, which reflects our conviction that everyone should have the same high quality learning opportunities, regardless of where they start. We deliver programmes aimed to give every child the best start in life, with additional support for those who need it most. We are committed to a health prevention agenda, stopping avoidable illness wherever possible and committed to a Welsh NHS that can treat everyone effectively when illness does arise. An educated, healthier population is better placed to take advantage of the job opportunities we are helping businesses create in Wales.
10. Whilst work remains the best route out of poverty, more and more people in work are struggling to make ends meet. In spite of strong levels of employment, the gap between the richest and the poorest continues to rise. For many, wage growth has fallen short of cost of living increases and the nature of employment arrangements have become more precarious, and less secure. The benefits of consistent economic growth are not evenly spread and people are being left behind as in-work poverty rates rise.
11. We have taken action to help incomes go further with policies moulded in the concept of a social wage which guarantee that everyone is supported to weather difficult circumstances and is able to benefit from opportunities for a better future. Through policies such as free prescriptions for all, free travel for older people, the continuation of the Education Maintenance Allowance, free school breakfasts, childcare for working families and the Council Tax Reduction Scheme, we are making sure that people have more money in their pockets and we are easing the financial pressures of everyday life.
12. We cannot accept that rising inequality is inevitable. 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. A vibrant, socially-just economy is the engine which provides for quality public services, available to all.
13. The issues that are at play are complex - they relate to how we train people in Wales, how we support the health of people of Wales, how we deliver the environment that supports businesses to flourish and how businesses reward those people in their employment. We believe that a strong economy and fair work go hand in hand; that they are critical elements of sustainable growth and economic resilience. Fair work is more than an end in and of itself, fair

work will help us achieve a stronger, modernised, more inclusive economy. It means a more productive, happier workforce, greater levels of commitment and engagement, less absenteeism and lower staff turnover.

14. Our economic action plan has tackling inequality at its heart, and our economic contract has introduced the principle that our financial support is provided on a 'something for something' basis. Businesses support this approach, which ensures that responsible businesses are rewarded with a level playing field. We are using every lever available to us to incentivise and reward the highest standards of behaviour. In congruence with our proposals for social partnership, we will shortly consult on the commencement of provisions in the Equality Act (2010) that will put a duty on public bodies to consider the socio-economic impact of their key decisions.
15. In 2017 the Welsh Government set out a clear ambition to make Wales a fair work nation - a nation in which our economy grows, but where the benefits are widely and more equally shared. We convened an independent Fair Work Commission, tasked to make recommendations on how the Welsh Government can promote and encourage fair work in Wales.
16. Our proposed response to the recommendations of the Fair Work Commission sit within a broader framework of activity to deliver a more equal Wales. For example economic independence for women was one key conclusion of the Gender Equality Review which reported earlier this year.
17. Our proposals to develop and embed social partnership stem from a desire to ensure that we reduce social and economic inequality whilst supporting economic growth. Better partnership between employers, employees and the state should be a catalyst for achieving a prosperous Wales. It is clear that we can only make progress against this ambitious agenda if we work with our partners in the public and private sector and trade unions.
18. Social partnership is a mechanism to support the development of conditions in which the economy can flourish and for promoting measures that could be encompassed as 'fair work'¹, including:
 - 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.
19. Our dedicated public service workforce is our greatest public service asset. Nurtured properly, with the shared commitment of our social partners, social partnership primarily supports the workforce to improve the quality of our

¹ As defined in 'Fair Work Wales' - the Report of the Fair Work Commission published in March 2019: <https://gov.wales/sites/default/files/publications/2019-05/fair-work-wales.pdf>

devolved public services. It delivers more focused, happier, motivated staff equipped to deliver against ever increasing public service demands.

20. At this same time a more consistent approach across the public sector drives shared public service values and better services – flexible, dedicated and responsive. Fair work principles and social partnership in the public sector are not distinct from public service delivery, they are integral to the public service improvements we are working towards.
21. Our proposals strengthen our current arrangements and ensure we create the infrastructure to manage our economy and our public spending in a way that delivers for everyone; for better public services, for businesses in Wales and for all of the Welsh workforce. In addition to legislating, we will be exploring how Welsh Government policy and our funding levers can better deliver fair work as a package with the legislation.

Strengthening social partnership

22. Our partnership with trade unions and employers is crucial to the way that we work as a Government. By coming together to discuss and collaborate, we can solve problems and find solutions to the social and economic challenges currently facing Wales.
23. Since devolution, the Welsh Government has led progressive change with a distinct set of values, delivering public service improvements and developing our economy through this partnership model rooted in the principles of integrity, openness, authenticity and trust. The underpinning ethic has been collaboration and our belief in the Welsh way being one that is characterised by partnership, shared ownership of the problems and a shared commitment to joint solutions. These principles that are embedded in our flagship legislation, the Wellbeing of Future Generations Act 2015 that requires bodies to think about the long-term impact of their decisions.
24. At its core, our social partnership is anchored in a strong and enduring infrastructure where difficult discussions and policy decisions are made in an environment of mutual respect and institutionalised co-operation.
25. There are many established social partnership arrangements between individual organisations, sector wide representative groups and recognised trade unions in Wales, some of which pre-date devolution, all of which contribute to a collective cultural common practice that define social partnership in Wales. We are not proposing that all these existing effective arrangements should be replaced.
26. We want to ensure the principle strategic structures that have been established by the Welsh Government to facilitate social partnership across the economy and public services are strengthened. These are currently the Council for Economic Development (the CfED) and the Social Partners Strategy Group in the business sector, the Workforce Partnership Council (WPC) and its Joint Executive Committee across public services in Wales,

and more recently a smaller Social Partners Reference Group which includes members from both the CfED and the WPC.

27. The development of social partnership structures has not emerged in isolation, but within a broader framework which emphasises collaboration to deliver better public services and economic opportunities. For example, Public Service Boards bring together key public bodies at a regional level across Wales to deliver better and more integrated services for citizens, and local authorities are working together on a regional footprint to maximise the economic benefits of City Deal status for key areas across Wales. Health boards and trusts are working together to deliver better, more effective healthcare to patients.
28. In part, these changes are an outcome of the Well-being of Future Generations Act 2015 which requires public bodies in Wales to think about the long-term impact of their decisions, and to prevent persistent problems such as poverty, health inequalities and climate change. But they also more deeply reflect a Welsh Government approach characterised by inclusive, collaborative working.
29. We are committed to working collaboratively to reach agreement with social partners in contentious areas, in the belief that creative dialogue can bring fresh perspectives and innovative solutions to stubborn workplace problems and help us develop our wider approach to addressing social and economic inequality.

The benefits of social partnership

30. Social partnership was part of the approach of successive UK Governments during the post-war consensus and it is the standard way of working in many countries across Europe, in Germany, Belgium, Spain, Ireland, Italy, Greece, Finland and Portugal. The widespread application of social partnership by progressive countries reinforces the legitimacy of this way of working and provides examples that could be explored in legislating for arrangements in Wales.
31. Our proposals to embed social partnership draw on evidence of the impact that social partnership, with collective bargaining and representative trade unions at its root, can have on delivering a more equal society. The International Labour Organisation (ILO) has demonstrated that countries with highly coordinated collective bargaining tend to have less inequality in wages, lower and less persistent unemployment, and fewer and shorter strikes than countries where collective bargaining is less established. Collective bargaining brings benefits for workers and employers, ensuring that both have equal voice and are able to reach agreements that are fair and equitable. The principle of collective bargaining and freedom of association are firmly embedded in our working history, and our model of social partnership is only strengthened by the extension of collective bargaining arrangements across Wales.

32. Social partnership has made a significant difference to our economic fortunes over the last twenty years. Flagship Welsh Government policies to support, in particular, the manufacturing sector through the downturn precipitated by the 2008 financial crash, were developed in social partnership at a series of economic summits. As a result of those discussions, a multi-million pound programme of training opportunities was deployed to support manufacturing that could be taken advantage of whilst demand in the economy was depressed. The programme, called ProAct, upskilled the workforce at a time when demand was low; preparing those businesses to take maximum advantage of recovery whilst protecting jobs. It was based on a common objective of helping people and businesses to weather the economic storm.
33. In public services too, we have developed key solutions to the difficult financial challenges caused principally by the UK Government's austerity agenda in social partnership through the Workforce Partnership Council. We have agreed a cross-public sector protocol for processes managing organisational change and guidance and protected social partnership arrangements through the Trade Union (Wales) Act 2017. We have promoted fair work principles for our public service workforce with cross sector agreements on a range of public service workforce matters for example on the use of zero-hours contracts in devolved public services. We have retained a two-tier workforce code in Wales (previously withdrawn by the UK Government) protecting outsourced staff and new staff working on public service contracts.
34. Through the WPC we have promoted better pay working in social partnership and the Real Living Wage has been adopted across the Welsh NHS, in several local authorities, in national parks, in Welsh Government Sponsored Bodies, and in further and higher education. In the private sector our economic contract promotes and supports responsible business and employment practices including raising awareness of the benefits of the Real Living Wage. We also promote the Real Living Wage in our Code of Practice on Ethical Employment in Supply Chains.
35. Through social partnership, we have avoided some of the strike action that has been taken in England - on firefighters' pensions, junior doctors' contracts, NHS pay and teachers' workload. In responding to the equal pay agenda in local authorities, agreement between unions and employers was reached in Wales. This helped to avoid the proliferation of claims made through no win no fee lawyers in England and the substantial costs associated with litigation, which stayed in our public services. This is not inevitable, it is the result of working relationships between partners built on trust and a common commitment to resolve workforce matters collectively, in a structured environment. This approach means that we are not distracted from our shared goal to deliver effective public services in Wales.
36. Our intention is to create a stronger infrastructure for government, unions and employers to work together to deliver more of these benefits. Whilst we have a strong track record of working in social partnership, structures have developed on an ad hoc basis and we are seeking to place them on a firmer,

more consistent, footing, providing a permanent basis for us to come together across the public and private sectors to address areas of common interest.

37. Our proposals for a Social Partnership Bill will codify our social partnership arrangements in law and provide a firm foundation to intensify activity in the delivery of fair work. We are strengthening our social partnership infrastructure to bear a more ambitious agenda setting direction for the public service and progressive economic values we want to embed in an inclusive society where everyone benefits.

QUESTION 1: Do you agree with proposals to strengthen social partnership arrangements by putting them on a statutory footing in legislation?

A common purpose

38. Social partnership works best when partners are working towards a clearly defined and shared objective. We all stand to benefit from a vibrant economy. We have been clear that our objective of achieving economic growth whilst reducing inequalities is something that we cannot achieve on our own, but that by working together we can make inroads that benefit all partners.
39. Work has a fundamental impact on every aspect of the lives of Welsh workers and citizens, it can shape how they live their lives and how they interact with those around them. Fair, rewarding work or the absence of it affects our mental well-being, our family life and our physical health, our ability to meet everyday bills, support our dependents or to access the recreational and cultural activities that enrich our lives. Our working lives touch every aspect of our lives outside of work, and fair work or the absence of it can have a transformative effect on the lives of Welsh citizens. Our Government programmes and our public services support people across all aspects of life and ensuring that work is fair is a universal benefit paramount to the well-being of people of Wales.
40. We recognise that the choices Welsh Government makes influences all our working lives - from our education and training priorities to the accessibility and reliability of public transport and everything in-between. We also shape the economic infrastructure in which Welsh businesses operate.
41. Businesses determine how they operate and how they interact with and reward their workers. The vast majority of businesses take their responsibilities seriously, they provide decent salaries, opportunities for workers to progress and value structured staff engagement. However, we are concerned that on occasion, irresponsible businesses could undercut their competitors by cutting corners. We are keen to understand where this happens and to ensure that it is not encouraged by government policy or approaches to procurement.
42. Whilst specific employment law and industrial relations are not devolved, we will use every opportunity available to us within our devolution settlement to improve the quality of people's working and everyday lives. For example we

determine the conditions attached to our spending power and we intend to decide following discussions with our social partners, how we ensure a fair and level playing field.

43. Our approach to social partnership reflects a common understanding in Wales; that trade unions are more integral to workplace and community culture in Wales than in the UK. Our partnership arrangements have their roots in the historic close-working industrial communities that were the cradle of trade union and collective community activism. The model of social partnership adopted by the Welsh Government works within this cultural framework to improve public service and economic outcomes, maintaining strong workforce relations.
44. At its core, our social partnership is anchored in a strong and enduring infrastructure where difficult discussions and policy decisions are made in an environment of mutual respect and institutionalised co-operation.
45. This is a system that works in Wales because although low by historical standards, trade union membership in Wales remains amongst the highest of any UK nation or region, with 30.5% of the workforce in a trade union, amounting to nearly 390,000 members. Wales has more employees who have a trade union presence in the workplace and, generally, has more employees that are covered by collective agreements when compared with the UK. This means that social partnership is a good base for an ongoing and structured engagement with workers and employers.
46. Where employers, government and unions are in agreement there is scope to make significant improvements in employment practices. The Workforce Partnership Council has secured improvements across Welsh public services which achieve mutual gains. There can be challenges in achieving equitable outcomes and we need to consider how we might better work across the public sector.
47. Our experience of the Fair Work Commission has shown that these are issues where employers, unions and government want to work together to deliver shared objectives. We are proposing that jointly addressing the issues that shape people's ability to engage and prosper in the work place and the ability of businesses to prosper should form the basis for our social partnership structures and will assist us in our response to the Fair Work Commission.

QUESTION 2: Do you agree that strengthening social partnership arrangements will support Welsh Government ambitions to deliver a more equal Wales?

The need for change

48. The modern era of our social partnership arrangements has been dominated, and shaped by our response to economic crisis and the challenges of chronic UK public sector austerity. We have achieved higher employment rates, but Wales still faces severe long term economic and public service challenges, exacerbated by the current uncertainty associated with EU Transition.
49. Despite these challenges, we have strengthened the foundations of the Welsh economy. Our labour market performance is strong. The number of people in employment has increased by nearly 150,000 since early 2010, whilst the number of people who are unemployed has decreased by 73,000. Compared with the position just before devolution, the gap in the employment rate and the inactivity rate between Wales and the UK has decreased. Today the rate of unemployment in Wales is only slightly above the UK rate. We have a record number of active businesses in Wales, and the number of new business births is the highest for over a decade. Our exports and levels of Foreign Direct Investment (FDI) continue to impress, demonstrating global confidence in the quality of Welsh business, products and services.
50. We believe that the focus and co-operation that weathered the impact of the economic crisis and mitigated UK Government austerity is now needed consistently if we are to improve fair work outcomes for people across Wales.
51. The labour market has changed significantly in a short time and we need the infrastructure to address increasing social inequality and make sure work is benefitting everyone equally.
52. Between 2015-16 and 2017-18, 24% of people in Wales were living in relative income poverty, higher than the rate for England, Scotland and Northern Ireland. The most recent data suggests that the average annual earnings in Wales were 90% of earnings in the UK as a whole, reflecting a higher concentrations of workers in lower paid sectors.
53. There are also employment practices that are of concern, for example, whilst there are situations in which zero hour contracts work for both employers and workers, there are many instances where they create vulnerability and uncertainty in income. Estimates from official data suggest that in 2018 2.5% of the workforce in Wales were employed on a zero hour contract, which are particularly prevalent in social care, accommodation, the food sector and across the 'gig' economy.
54. Wales continues to suffer from productivity issues, with output per hour worked in Wales being one of the lowest of all UK nations and regions. Qualification levels in Wales are lower than in the UK as a whole, with further regional variation in formal qualification levels, which in turn impact on the proportion of high quality jobs in Wales.
55. These are complex and stubborn issues, to which no one person or partner has the answer. In the Economic Action Plan, we make the commitment to

work in partnership to engage these issues head on and gear our support and policies to people, business and places that need it to survive and thrive. Our experience with the Council for Economic Development and the Workforce Partnership Council is that when Government, trade unions and employers work together, we can find innovative solutions to problems, based on our common purpose, supporting a prosperous economy, where businesses and individuals share the benefits. Social partnership is built on the distinct contribution that each partner can make.

Legislating for change

56. We intend to strengthen this framework with a statutory underpinning to make our expectations clearer and to establish the structures and framework to deliver the ambitious agenda to deliver a more equal Wales.

The legislative framework

57. There is a significant body of legislation that provides a strategic framework for collaborative working which complement proposals to codify our social partnership arrangements and provide a platform for the delivery of a more equal Wales.

The Government of Wales Act 2006

58. The Government of Wales Act 2006 (section 75) requires Welsh Ministers to make a scheme setting out how they propose in the exercise of their functions to take account of the interests of business. The Council for Economic Development was established as a national body that provides advice to inform economic and business policies. Membership includes Ministers, Welsh Government, Wales TUC and Commerce Cymru.

The Well-being of Future Generations (Wales) Act 2015

59. The Well-being of Future Generations (Wales) Act aims to improve the social, economic, environmental and cultural well-being of Wales, through ensuring public bodies take a long-term view to planning, work better with people and communities and each other, look to prevent problems and take a more joined-up approach.

60. The Act imposes a well-being duty on public bodies, meaning that they must work towards seven well-being goals (which outline a vision of Wales the Act intends to achieve) through the principle of sustainable development. A public body must set “well-being objectives” designed to maximise its contribution to achieving each of the well-being goals.

61. Within the principle of sustainable development are five ways of working which combine to assist public bodies to work together better, avoid repeating past mistakes and tackle some of the long-term challenges facing Wales.

Trade Union (Wales) Act 2017

62. In 2017, the Welsh Government passed the Trade Union (Wales) Act in response to the UK government's Trade Union Act 2016.

63. The Welsh Act dis-applied elements of the UK Government's Trade Union Act (as far as they fell into legislative competence) which sought to limit union activity in the public sector through changing arrangements regarding:

- how union subscriptions are collected (check-off);
- time allowed within the workday for union activity; and
- balloting for industrial action, such as minimum thresholds for industrial action.

64. The Welsh Government identified these provisions as being detrimental to relationships between unions and employers and to social partnership arrangements in Wales.

Equality Act 2010 (Part 1: Socio-economic duty)

65. The Welsh Government has committed to commence Part 1 of the Equality Act 2010, the socio-economic duty. This states:

66. *“An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage”.*

67. This means that the public sector in Wales would have a duty to have due regard for the socio-economic impact of its key decisions, which may benefit from greater engagement with unions and employers.

68. The duty will require key public bodies in Wales to demonstrate how they have understood, and taken account of socio-economic inequalities in their strategic decisions, helping to tackle inequality of outcomes caused by social-economic disadvantage.

Proposals for a Social Partnership Bill

69. In light of our policy objectives, we are proposing to legislate to formalise and improve the effectiveness of the existing social partnership mechanisms; to make social partnership principles and the pursuit of fair work part of the governance of public bodies with a public sector duty; and require public bodies to use the power of the public purse as a lever to promote social outcomes, including, fair work and other social partnership principles.

Formalising and improving the effectiveness of existing social partnership mechanisms

70. Social partnership in Wales is well established. It is credited with helping to maintain employment levels in the face of the financial crisis in 2008, has helped with policy development and service transformation and has contributed to consistently positive relations between workers and public sector employers. However, to date, social partnership mechanisms have been largely sector based and have grown up on an ad hoc basis. In order to make this the norm for working in Wales and to deliver consistent approaches, we are proposing to establish structures through legislation.

71. We are proposing to establish a Social Partnership Council, with membership drawn from the representatives of key public and private employers, trade unions and government. The Council will be chaired by the First Minister and its role will be to:

- Reach agreements on workforce issues within the devolved public sector for the purpose of improving public services;
- Reach agreements on what is expected of organisations and businesses receiving public support in so far as workforce issues are concerned;
- Consider generally how social partnership and fair work can improve efficiency and effectiveness so as to achieve a prosperous Wales and improve people's well-being;
- Consider how government policy, expenditure and legislation can best contribute to a prosperous Wales and improve people's well-being.

72. We envisage that the Social Partnership Council will amalgamate the work of the Council for Economic Development and the Workforce Partnership Council and will develop a single work programme. We are committed to reviewing existing social partnership structures and this work to streamline structures will feed into the establishment of sub groups.

73. There have been concerns that agreements reached through existing mechanisms are not always uniformly implemented, especially in relation to workforce issues that are intended to improve the performance of devolved public services. There is a widely held view that with the UK's imminent departure from the EU, these mechanisms will be increasingly important in protecting and promoting workers' rights and ensuring an even playing field for businesses. Partly in response to a potential no deal Brexit, therefore, there is a need to strengthen these mechanisms.

74. It is a fundamental principle of social partnership that expertise is shared in a joint commitment to continuous improvement, and that agreed outcomes are consistently implemented. In order to promote and achieve universal implementation of agreed outcomes it is proposed that the Welsh Government may issue cross-sector guidance on the matter.

Establish social partnership working across the public sector and promote fair work goals

75. We have experienced the benefits of social partnership and our proposals will align it more closely to other partnership arrangements, establishing greater coherence with the progressive ways of working as established by the Well-being of Future Generations Act. Fair work is intrinsic to delivering the national goal of a prosperous Wales and our well-being objective of tackling regional inequality.
76. To provide support to the public sector to make progress towards these objectives, we are proposing to place a duty on public bodies to have regard to social partnership principles and to promote the objective of fair work. This would require public sector bodies to take steps to establish their own social partnership mechanisms and to consider whether strategic decisions that they are taking are forwarding the objective of a fair work nation. Such a duty would complement and give greater focus to section 1 of the Equality Act.

Use of the power of the public purse to promote social partnership and fair work

77. Each year the Welsh public sector procures products and services worth £6.3 billion. When we enter into these contracts, we are not just buying the things that public services need, we are investing in the economy and supporting people in Wales.
78. We have a well-established community benefits policy, which sets our expectations about the benefits that we want to see delivered by procurement spend and applies to procurement contracts of £2 million and over.
79. In 2017, we supplemented that with the *Code of Practice on Ethical Employment in Supply Chains*. We encouraged organisations to sign up to the twelve commitments *which* will help to eradicate unlawful and unethical employment practices and to ensure all workers at every stage of the supply chain are treated fairly. Over 200 organisations have signed up to the code.
80. We think that we can do more to clarify that value for money is not just about achieving the lowest price, especially where the cheapest price passes costs onto those who can least afford it or onto the state in other ways. Value for money is about also delivering social outcomes. Whilst we do not want to remove existing flexibility, we do want to ensure that all parts of the public sector are pulling in the same direction.

81. Our commitment to fair work and inclusive economic growth reflects the fact that with record levels of employment in Wales, we cannot support jobs at any price - we want decent employment that reflects our commitment to fair work. The employment focus of the community benefits policy has been on helping people back into work. We are proposing to change it to better reflect the objectives of fair work.
82. We are proposing to legislate to introduce a system of public sector procurement with fair work at its centre. Rather than asking contracting authorities to consider community benefits on a contract by contract basis, we would require public bodies to produce a procurement strategy. The Welsh Government would issue statutory guidance to which public bodies must have regard in producing their procurement strategy. Having a strategy would allow public bodies to be flexible and proportionate in how they deliver the Welsh Government's priorities, whilst being accountable to us for doing so. We would require each authority to produce an annual report which sets out how it has implemented the strategy and envisage the Social Partnership Council would review the returns.

Enforcement

83. Our goal is to create and support effective partnerships. These are built on a foundation of trust and develop and mature over time and through experience. There is no replacement for allowing relationships to organically grow, to develop their own worth and for partners to grow together and therefore we need to give them the time and opportunity to flourish. Our legislative proposals are about providing the foundations for this evolution – they establish structures and frameworks to make it easier for partners to work together, to normalise and systemise something that has already been shown to be beneficial to all partners.
84. However, we are aware how damaging it can be to relationships when one partner withdraws its support or when one partner does not deliver on commitments they have made. We are therefore seeking views on whether our legislation should include specific measures to strengthen decisions reached by these structures.
85. In the first instance, we see a role for the Social Partnership Council itself. It will consider instances when a public body has not met the commitments made on its behalf, it will seek explanations of why this was the case and seek commitment from the body to implement the decision.
86. The forthcoming Local Government and Elections Bill will establish a performance and governance approach based on self-assessment and periodic peer led panel assessment. Our statutory guidance will make it clear that how Councils implement social partnership practices and policy outcomes is a key consideration of whether a Council is exercising its functions effectively and using its resources efficiently. We already have the ability to require local health boards to implement decisions reached and can attach conditions to the grants of Welsh Government sponsored bodies.

87. Compliance measures could also go further and, for example, apply a financial penalty on public bodies that do not adhere to agreements reached at the Social Partnership Council, or who do not let their procurement contracts in line with their procurement strategy.

88. The scope for this to incentivise compliance needs to be balanced against the potential impact on public service delivery, and any financial penalty would need to be proportionate to the contravention.

Question 3: Do you think that we should legislate to enforce decisions reached in social partnership and what form might that enforcement take?

89. In summary, we are proposing to:

- establish a Social Partnership Council - involving the Government, representatives of the public and private sector employers and trade unions to provide advice on improving public services and furthering Wales' economic and social development (including by reducing inequalities);
- develop "Social Partnership principles" to form the basis for developing a single cohesive and unified way of working in social partnership across the Welsh public sector, with the Social Partnership Council having a role in supporting and encouraging best practice;
- introduce a duty on public bodies to work in social partnership and to promote the goals of fair work in their decision making; and
- impose a duty on public bodies to practice (where practicable) social procurement.

90. This would establish a framework to deliver achievable social procurement. .

QUESTION 4: Are these the right areas for legislation to deliver our proposals to strengthen social partnership arrangements and embed fair work principles across Wales?

Conclusion

91. We are grateful to our partners for their continued commitment to social partnership. Together we have strengthened the Welsh Government policy response and delivered policies at pace to address the risks posed by the financial crisis and a decade of UK Government austerity, protecting jobs and improving public services.
92. The proposals we have made are intended to strengthen those arrangements and prepare them for a new, ambitious agenda to deliver a more equal Wales partly in response to the recommendations to the Fair Work Commission.
93. We will continue to work with our social partners to ensure all aspects of the proposals are properly and openly explored.
94. Responses are welcome on the key proposals set out in this document along with any views on the benefits, risks and opportunities.

Next Steps

95. We want to hear your views about the proposals for a Social Partnership (Wales) Bill and about the broader proposals included in this White Paper. The consultation period runs until the 9 January. All consultation responses will be taken into consideration when considering next steps.
96. The consultation document and response form are available free to download. If you would like a copy of the consultation and/or response form in a different format (e.g. in hard copy, Braille, large print) please contact us at the addresses below.
97. A response form is attached at Annex 2, which you may find convenient to use. We welcome responses in both hard copy and by email:
Social Partnership and Fair Work Directorate
Welsh Government
Cathays Park
Cardiff
CF10 3NQ
SocialPartnership@gov.wales

Annex 1: Summary of the impacts

Policy objective

Our overarching goal in promoting social partnership is to enhance the well-being of the people of Wales by improving public services and adopting more balanced means to develop the Welsh economy by reducing inequality.

The purpose of these proposed measures is to create statutory foundations for social partnership as part of the response to findings of the Fair Work Commission, which made a series of recommendations about how the Welsh Government should encourage fair work practices across Wales. The proposals are part of our wider ambitions to drive greater equality and inclusive economic growth.

It is proposed that the legislation will:

1. establish a statutory Social Partnership Council;
2. place a duty on public bodies to work in social partnership and promote fair work goals; and
3. require specified public bodies to produce a procurement strategy in line with statutory guidance.

A comprehensive assessment of the impacts, including how a model of social partnership will improve socio economic outcomes and fair work practices will be completed following consultation.

This high level summary of the impacts sets out how some of the changes may impact the public, private and third sector organisations.

Background

Social partnership arrangements already exist across public services in Wales. The Workforce Partnership Council (WPC) brings together trade unions, public service employers and the Welsh Government to discuss public service workforce matters and there are supporting, and in some areas distinct, sectoral arrangements in health, education, local government and for Welsh Government Sponsored Bodies.

The Council for Economic Development and the Social Partners Strategy Group provide similar social partnership arrangements bringing together for the private sector, business organisations, trade unions and the Welsh Government.

Economic Considerations

Despite high levels of employment, the gap between the richest and the poorest continues to rise, for many wage growth has fallen short of cost of living increases and the nature of employment arrangements have become more precarious, and less secure.

In Wales average household incomes and wage levels continue to be below those in other parts of the UK. The benefits of consistent economic growth are not evenly spread and people are being left behind as in-work poverty rates continue to rise. In some sectors of the economy casualised, low paid and insecure forms of employment dominate.

Our ambition is that stronger social partnership arrangements will contribute to our ambition for a more equal economy, and maximise our social, environment and cultural well-being.

Impacts

Establish a statutory Social Partnership Council

Expected to consolidate the current social partnership arrangements that are outlined above creating stronger representation and plurality of views. Establishing our arrangements in law is expected to provide a stronger footing for the status of the council and the output of social partnership arrangements, needed for our more ambitious agenda for a more equal Wales. Although structures are proposed to change there is not expected to be a substantial overall change in membership or demands on the private, public and third sector than already exists.

Establish social partnership working across the public sector and promote fair work goals

Building on some of the principles of the Well-being of Future Generations Act 2015 this would provide a specific duty for public bodies to have regard to guidance issued by Welsh Ministers, with an associated statutory power for Welsh Ministers to issue the guidance within the legislation. Public bodies that could be the subject of guidance may include:

- A county borough or county council in Wales
- A town or community council
- National Park Authorities
- Fire and Rescue Authorities
- The Local Democracy and Boundary Commission for Wales
- Local Health Boards and NHS Trusts
- The governing body of a maintained school or federation
- The Higher Education Funding Council for Wales
- The Arts Council for Wales
- The National Library for Wales
- The National Museum of Wales
- The Royal Commission on Ancient and Historical Monuments of Wales
- The Sports Council for Wales
- Natural Resources Wales

It is envisaged that guidance would follow discussion and agreement at the Social Partnership Council about the specific issues of guidance to be issued. Examples of guidance issued following discussions in the current social partnership structures includes the cross-public sector two-tier workforce code (*formally the Code of*

Practice on Workforce Matters) and guidance on the use of zero-hour contracts in public services. The cost of producing guidance would be expected to be met from Welsh Government departmental budgets. Non-statutory guidance is already produced on the anticipated areas that would be subject to statutory guidance under the legislation, therefore, is anticipated to be neutral.

Examples of similar output of the Welsh Government in recent years includes:

- The two-tier code (*the Code*) addresses perceived disadvantages to outsourced public sector staff and to staff recruited to work alongside the transferred workforce, ensuring consistency in terms and conditions of employment. Public sector bodies make an annual report to the Workforce Partnership Council about the application of the Code. There could be an impact on the costs of the contract to the public body from the commitment to employ new staff on similar terms and conditions. Issues with increased costs have not been raised in the reporting since the Code was introduced.
- Principles and guidance on the use of non-guaranteed hours (zero-hour contracts) in public services was issued in 2016. The guidance provides a set out clear expectations on practices which all public sector employers should adopt in order to ensure non-guaranteed hour arrangements, are only used in clearly and narrowly defined circumstances and are intended to help organisations avoid the inappropriate use of non-guaranteed hour contracts within the Welsh public service.

There are not known to be particular costs, other than reporting costs, associated with the examples of guidance that are issued. We understand the reporting costs are generally included in Human Resources functions of public bodies.

It is envisaged that future discussions for guidance may focus on the recommendations of the Fair Work Commission or elements of their definition of 'fair work.'

Require specified public bodies to produce a procurement strategy in line with statutory guidance

Introducing a duty that requires public sector organisations to produce a procurement strategy provides a way for organisations to demonstrate their longer term commitment to the Welsh Government's fair work agenda and is expected to support economic growth and the long term sustainability of public services. Details of what the strategy should include would be expected to be set out in guidance that public bodies would have to have regard to. A procurement strategy is expected to leverage fair work outcomes on those who deliver services for public sector organisations, including the private sector and third sector to demonstrate how they contribute to the agenda. There will also be a cost to public bodies in producing and adhering to a procurement strategy that they will be expected to meet from existing budgets.

A requirement for a procurement strategy is intended to encourage economic growth, promote fair work practices and fair pay, but is not intended to prevent or

discourage engagement with our procurement processes. The application of the duty will need to be proportionate and sensitive to the steps organisations are taking and plan to take towards delivering the fair work agenda, for example through promoting the Living Wage, reducing the inappropriate use of zero hours contracts or investment in the training and development of their workforce. It is likely to impact directly on those organisations who do not intend to take steps to deliver the fair work agenda.

It is possible that some businesses may be discouraged from engaging in Welsh Government procurement opportunities and there are risks to those organisations in adopting particular terms and conditions for staff working on the contract. These will depend on the particular terms which are likely to have been considered by all sectors through the Social Partnership Council.

There are anticipated benefits from strengthening social partnership arrangements. Our proposals for a Social Partnership Bill will codify our social partnership arrangements in law and provide a firm foundation to intensify activity in the delivery of fair work. We are strengthening our social partnership infrastructure to bear a more ambitious agenda setting direction for the public service and progressive economic values we want to embed in an inclusive society where everyone benefits.

Through social partnership, we have avoided some of the strike action that has been taken in England - on firefighters' pensions, junior doctors' contracts, NHS pay and teachers' workload. In responding to the equal pay agenda in local authorities, agreement between unions and employers was reached in Wales. This helped to avoid the proliferation of claims made through no win no fee lawyers in England and the substantial costs associated with litigation, which stayed in our public services.

Key solutions to the difficult financial challenges caused principally by the UK Government's austerity agenda in social partnership through the Workforce Partnership Council. In addition to the examples already set out above, we have, for example agreed a cross-public sector protocol for processes managing organisational change and guidance, and promoted better pay working in social partnership and the Real Living Wage has been adopted across the Welsh NHS, in several local authorities, in national parks, in Welsh Government Sponsored Bodies, and in further and higher education.

QUESTION 5: Are there any particular or additional costs associated with the proposals you wish to raise?

Annex 2: Summary of Questions

Questions:

1. Do you agree with proposals to strengthen social partnership arrangements by putting them on a statutory footing in legislation?
2. Do you agree that strengthening social partnership arrangements will support Welsh Government ambitions to deliver a more equal Wales?
3. Do you think that we should legislate to enforce decisions reached in social partnership and what form might that enforcement take?
4. Are these the right areas for legislation to deliver our proposals to strengthen social partnership arrangements and embed fair work principles across Wales?
5. Are there any particular or additional costs associated with the proposals you wish to raise?

Annex 3: Consultation Response Form

Please send completed copies to:

Social Partnership and Fair Work Directorate
Welsh Government
Cathays Park 2
Cardiff
CF10 3NQ

SocialPartnership@gov.wales

The consultation is running until the 9 January, and responses are accepted up until that date. Responses are welcome in electronic or hard-copy.

**Consultation
Response Form**

Your name:

Organisation (if applicable):

Email / telephone number:

Your address:

Question 1: Do you agree with proposals to strengthen social partnership arrangements by putting them on a statutory footing in legislation?

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Question 2: Do you agree that strengthening social partnership arrangements will support Welsh Government ambitions to deliver a more equal Wales?

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Question 3. Do you think that we should legislate to enforce decisions reached in social partnership and what form might that enforcement take?

Question 4. Are these the right areas for legislation to deliver our proposals to strengthen social partnership arrangements and embed fair work principles across Wales?

Question 5: Are there any particular or additional costs associated with the proposals you wish to raise?

Responses to consultations may be made public – on the internet or in a report. If you would prefer your response to be kept confidential, please tick here:

We are under a duty to consider the effects of our policy decisions on the Welsh language, under the requirements of the Welsh Language (Wales) Measure 2011.

Question A: We would like to know your views on the effects that 'A More Equal Wales: Strengthening Social Partnership' would have on the Welsh language, specifically on opportunities for people to use Welsh and on treating the Welsh language no less favorably than English.

What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?

Question B: Please also explain how you believe the proposed policy in 'A More Equal Wales: Strengthening Social Partnership' could be formulated or changed so as to have positive effects or increased positive effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favorably than the English language, and no adverse effects on opportunities for people to use the Welsh language and on treating the Welsh language no less favorably than the English language.

Question C: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:

Please enter here:

Responses to consultations are likely to be made public, on the internet or in a report. If you would prefer your response to remain anonymous, please tick here:

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