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Llywodraeth Cymru  
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Welsh Government  
Consultation – summary of responses

# A More Equal Wales: Strengthening Social Partnership

April 2020

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



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## Glossary

<b>Acronym/Key word</b>	<b>Definition</b>
ASPBs	Assembly Sponsored Public Bodies
CfED	Council for Economic Development
NHS	National Health Service
PSB	Public Service Board
PSED	Public Sector Equality Duty
RPB	Regional Partnership Board
SPC	Social Partnership Council
SME	Small to Medium sized Enterprises
VAWDASV	Violence Against Women, Domestic Abuse and Sexual Violence Act
WGSB	Welsh Government Sponsored Bodies
WPC	Workforce Partnership Council
WSED	Welsh Equality Duties
WTUC	Wales Trade Union Congress

## **Executive Summary**

In November 2019, the Welsh Government launched a consultation to seek 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.

OB3 Research was commissioned by the Welsh Government to synthesise the responses received as part of this consultation exercise. The analysis draws upon the views conveyed in 55 consultation responses.

The key findings are set out below:

### **The need for legislation**

- Around half of respondents welcomed the proposals to strengthen social partnership legislation as it would strengthen the existing ethos within the public sector in Wales and improve fair working practices
- A further third agreed with the principle but raised various concerns or issues that required further clarity in terms of a clearer rationale as to what would be achieved through new legislation that couldn't be achieved within current arrangements
- Respondents also queried how the proposals would work alongside existing regulations and legislation, particularly the Wellbeing of Future Generations (Wales) Act 2015 and the Equality Act 2010
- Establishment of a Social Partnership Council was generally welcomed. Most comments relating to the Social Partnership Council related to its membership, with the lack of third and voluntary sector representation being the main issue raised.

### **Supporting Welsh Government to deliver a more equal Wales**

- Most respondents were of the view that strengthening social partnership arrangements would support Welsh Government ambitions to deliver a more equal Wales
- A strong view was held that proposals needed to give greater consideration to (i) social partnership approaches being as inclusive as possible (ii) protected groups and those who are most likely to be disadvantaged in employment and (iii) the third sector, and the voluntary workforce, who are less likely to be supported by trade unions

- Respondents broadly welcomed proposals to place a duty on public bodies to have due regard to social partnership and to use the power of the public purse to promote social partnership.

### **Legislation to enforce compliance**

- Just over half of respondents either did not agree that legislation to enforce decisions was needed or raised concerns about how it would work in practice and requested further information and more development work on this aspect of the legislation before they could support it
- Respondents felt that enforcement went against the core principles of partnership and preferred an approach which incentivised compliance
- Respondents were also concerned about the potential for unintended consequences from compliance enforcement, including penalties, particularly where public services could be impacted negatively, and smaller organisations would bear too heavy a burden
- Where respondents agreed with the need for legislation to enforce compliance, they wished it to be proportionate and reasonable, with penalties forming part of a wider toolkit of enforcement mechanisms and only utilised as a last resort.

### **Areas for legislation**

- Almost two thirds of respondents felt that the right areas were being considered for legislation
- Greater clarity about the role, scope and membership of the Social Partnership Council is required
- Respondents generally agreed with the proposed Social Partnership principles and the duty on public bodies to work in social partnership and promote fair work goals
- Most of the respondents who agreed with the duty for social procurement felt that as long as it was robust and not too rigid, it had the potential to support Welsh communities and provide opportunities for businesses (particularly SMEs) in Wales.

### **Associated costs**

- Respondents identified several additional organisational functions such as procurement, administration, monitoring and reporting which would need to be resourced
- Additional staff will need to be employed and trained to undertake co-ordination and representation tasks, to allow all social partner organisations to engage with the agenda

- The implementation of the Real Living Wage will generate additional costs for organisations, particularly providers of health and social care
- Respondents held the view that these additional costs should be funded by the Welsh Government.

### **Welsh Language**

- Respondents thought that the proposals could have a positive, rather than negative, impact upon the Welsh language and several possible opportunities were identified
- A call was made for the Welsh language to be explicitly reflected within social partnership legislation
- Social partnership procurement should specify what would be required in terms of Welsh language provision and services.

# 1. Introduction

- 1.1 In November 2019, the Welsh Government launched a consultation to seek 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. The proposed measures would create statutory foundations for social partnership as part of the Government's wider response to the Fair Work Commission which set out recommendations on how to encourage fair work practices across Wales. The proposed Social Partnership Bill aims to strengthen arrangements and support Welsh Government's ambition for a more equal Wales by:
- establishing a Social Partnership Council
  - placing a duty on public bodies to work in social partnership and promote fair work goals, and
  - requiring specified public bodies to produce a procurement strategy in line with statutory guidance.
- 1.2 The Welsh Government invited stakeholders and other interested parties to share their views on the proposed legislative paper in a white paper entitled 'A more Equal Wales: Strengthening Social Partnership'. The consultation process closed on 9th January 2020<sup>1</sup>. Contributors were given the opportunity to respond via a set of 5 consultation questions.
- 1.3 OB3 Research was commissioned by the Welsh Government to synthesise the responses received as part of this consultation exercise. This report offers an independent analysis of the responses received and will be used to inform the work of the Welsh Government and its partners.

## Methodology and analysis

- 1.4 The analysis draws upon the views conveyed in 55 consultation responses:
- 40 responses were submitted as written submissions
  - 15 responses were received via an on-line survey.
- 1.5 The profile of those who responded to the consultation exercise is set out at Table 1.1, based on categorisation by OB3 Research.
- 1.6 Each response has been given equal weighting within this analysis, regardless of the response method adopted or the extent to which a submission represents the views of a single individual, organisation or wider membership group. It is also worth noting that some

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<sup>1</sup> The original closing date for consultation responses was 2 January 2020 but this was extended because of the Christmas/New Year period.

responses, such as membership-based organisations, partnerships and some third sector submissions, represent the view of a larger number of organisations or members although it is not possible to identify the degree of variance of views within that membership.

*Table 1.1: Profile of consultation respondents*

Sector	Number of responses
<b>Public sector</b>	<b>18</b>
Welsh Government Sponsored Body	5
Local Authority	6
Health Board or Trust	2
Other public sector	5
<b>Third sector</b>	<b>15</b>
Charity or not for profit	6
Membership organisation	9
<b>Other</b>	<b>22</b>
Trade Union/Professional Body	11
Individual	6
Not known / Other	5
<b>Total</b>	<b>55</b>

#### 1.7 In terms of the format of responses received:

- 49 of the responses provided specific answers to the main consultation questions. 44 answered all five questions, two answered four of the questions, one answered three questions, one answered two questions and one answered one consultation question
- twenty-one responses were provided to the specific questions relating to the Welsh language
- six written submissions did not respond directly to the consultation document questions. These broad submissions have been coded and considered by researchers against the most relevant questions set out in the consultation document
- 15 responses provided additional information relevant to the consultation
- the length of each written submission varied from a few sentences to 28 pages in length.

#### **Structure of the report**

1.8 This report synthesises the key points made by respondents. It has been structured to correspond to the five core questions. A further section considers responses in relation to a

specific question about the impact on the Welsh language and a final section considers any themes or comments raised that did not correspond directly with any of the consultation questions. The report is therefore set out as follows:

- chapter 2 considers the proposals to strengthen social partnership by putting them on a statutory footing in legislation (*Consultation Question 1*)
- chapter 3 discusses how strengthening social partnership arrangements might support Welsh Government ambitions to deliver a more equal Wales (*Consultation Question 2*)
- chapter 4 analyses views on whether legislation is required to enforce decisions reached in social partnership (*Consultation Question 3*)
- chapter 5 looks at whether the legislation covers the right areas to strengthen social partnership and embed fair work principles across Wales (*Consultation Question 4*)
- chapter 6 analyses any costs associated with the proposals that were raised (*Consultation Question 5*)
- chapter 7 considers any effects the policy decisions might have on the Welsh language
- chapter 8 includes analysis of any themes or issues raised that were outside the direct remit of the consultation questions.

## 2. Strengthening social partnership by statutory legislation

### Key findings

- Around half of respondents welcomed the proposals to strengthen social partnership legislation as it would strengthen the existing ethos within the public sector in Wales and improve fair working practices
- A further third agreed with the principle but raised various concerns or issues that required further clarity in terms of a clearer rationale as to what would be achieved through legislation that couldn't be achieved within current arrangements
- Respondents also queried how the proposals would work alongside existing regulations and legislation, particularly the Wellbeing of Future Generations (Wales) Act 2015 and the Equality Act
- Establishment of a Social Partnership Council was generally welcomed. Most comments relating to the Social Partnership Council related to its membership, with the lack of third and voluntary sector representation being the main issue raised.

- 2.1 This chapter considers consultation responses received for Question 1 in the consultation document: *'Do you agree with proposals to strengthen social partnership by putting them on a statutory footing in legislation?'* It specifically covers the benefits and concerns raised about placing social partnership duties in legislation. It also discusses comments made in relation to, the clarity and purpose of the proposed legislation, how social partnership can be strengthened, the perceived benefits of social partnership and what can be achieved through legislation.
- 2.2 Table 2.1 shows that around half of respondents were happy to see the proposals of the White Paper being placed in legislation and provided a definitive, positive answer in this respect. A further 16 were generally happy with the principles of social partnership outlined in the white paper but raised certain concerns regarding the need for statutory legislation to achieve the aims.

Table 2.1: Respondents who wished to proposals to strengthen social partnership placed on a statutory footing in legislation

Do you agree with proposals to strengthen social partnership by putting them on a statutory footing in legislation?	Number of respondents
Yes	28
No	8
Unclear / no definitive answer	16
No response	3
Total	55

2.3 Setting a statutory basis for social partnership was considered a positive proposal by many respondents. Several reasons were given as to why this was the case including:

- strengthening the **‘well-established ethos of social partnership** already in place across the Welsh public sector’
- removing ‘any discretion to implement or ignore fair working practices’ and delivering ‘improved consistency’ for all workers in the Welsh economy
- providing ‘greater social equity’ and **‘tackling inequality in workplaces’** as it is ‘only through legislation that employers change practice’
- protecting ‘the work undertaken thus far in underpinning a social partnership model’ and ‘moving the agenda forward’ by **strengthening and expanding the existing arrangements**
- driving ‘the organisational culture changes needed within public institutions in Wales’ including those organisations that are less ‘cooperative’ in partnership work
- ensuring **‘more implementation and progress** rather than encouraging voluntary adoption of basic minimum standards or the lowest common denominator’.

2.4 Respondents also mentioned how this legislation was needed now to respond to social and economic challenges facing Wales from ongoing austerity, automation and to mitigate against the **impact of Brexit** both in terms securing workers’ rights that were protected under EU regulations and the wider potential impacts on jobs and livelihoods.

## **Existing provisions are effective and adequate**

2.5 Of those who clearly disagreed with the need for statutory legislation, the main reason given was that it was not needed and that existing provisions were already effective and adequate. Comments included:

- 'this is already embedded in practice with no need for a separate, specific statutory duty to do so'
- 'what we have done and are doing now has worked well without need for legislation'
- 'the necessity is questionable given the already successful approach to social partnership by Welsh Government'.

2.6 Some respondents felt that they could not agree with the proposals due to lack of clarity around the definition of social partnership:

- 'social partnership is not actually defined in the White Paper'
- 'can't pin down what is meant by social partnership in this context'.

## **Need for clear rationale and outcomes**

2.7 Other respondents did not think that the White Paper set out a clear rationale as to why statutory legislation was required and thought that the outcomes could be achieved by non-statutory methods:

- there is 'not enough information about the proposal to definitely offer our support to the forthcoming bill'
- the 'White paper has not conclusively made the case for legislating for a change in the Social Partnership structure. Not enough evidence as to whether the existing voluntary mechanisms are working or not'
- the 'White paper highlights all that has been achieved in Wales through Social Partnership then suggest encapsulating this in legislation without making any kind of case for why it is necessary'
- 'not clear what problem the proposed legislation is seeking to solve and why legislation for structure is needed'
- 'it is unclear whether legislation will strengthen the existing frameworks and whether this could be achieved in other, more outcome focused ways'.

2.8 Many respondents, whilst keen to point out that they agreed strongly with the principles of social partnership, wished to raise specific issues about aspects of the proposed legislation

that needed to be further considered or strengthened before they felt able to definitively support a legislative framework.

### **Fit with existing statutory requirements and partnership arrangements**

2.9 Respondents queried how the proposed legislation would work alongside existing legislation and were keen to ensure that it could add value rather than dilute existing powers and responsibilities. Some raised concerns about adding additional unnecessary legislation to an already crowded area of delivery. Specific mention was made of the:

- **Wellbeing of Future Generations (Wales) Act 2015** – there was perceived overlap with the wellbeing goals, and particularly with the provisions in the Act around procurement and the use of community benefits
- **Social Services and Wellbeing (Wales) Act 2016** as it was deemed to have elements of overlap with the proposed Social Partnership Bill ‘around social equality and improving public services’
- **Equality Act 2010** – in particular the potential duplication of elements included in the socio-economic duty within Part 1 of the Equality Act and the need for better alignment and integration with existing duties including the Welsh Equality Duties (WSED) and the Violence Against Women, Domestic Abuse and Sexual Violence Act (VAWDASV).

2.10 Adoption of the **Living Wage, The Code of Practice on Ethical Employment and Transparency in the Supply Chain** and involvement in UK-wide Pay Frameworks such as Agenda for Change were also cited as relevant whilst existing requirements on certain public bodies to develop a Modern Slavery Strategy, Economic Strategy and Strategic Equality Plan all had elements which potentially overlapped with the requirements proposed under the Social Partnership Bill.

### **Introduction of a new Social Partnership Council**

2.11 Some ten respondents specifically expressed their support for the introduction a new Social Partnership Council. Only one respondent specifically disagreed, arguing instead for the expansion of existing foras such as the Workforce Partnership Council (WPC) or Council for Economic Development (CfED) rather than for the establishment of a new identity. In terms of the new Social Partnership Council’s responsibility, suggestions for its remit included overseeing implementation, providing challenge and maintaining the focus on social value cross-sector.

2.12 Three respondents argued that the proposals failed to acknowledge and reference how the new Social Partnership Council would **relate to existing structures** such as Regional

Partnership Boards (RPBs), adding their concern that such bodies ‘currently have no trade union representation’. This respondent called for the legislation to address this issue. Another recognised the ‘known challenges involved with inter-body partnership working’ as highlighted in the Review of Public Service Boards, and suggested that the Social Partnership Bill, if pursued would need to be very clear on the scope of the partnership principle duties and how it differs from existing duties.

- 2.13 The main points raised by respondents in relation to the proposed new Social Partnership Council related to its composition and membership. A strong argument was conveyed for it to be as inclusive as possible and **representative of all groups and sectors**. It was suggested that a wider remit would strengthen current arrangements and ‘could achieve better informed and more nuanced decisions and wider buy in’. A further request was made for it not to be ‘overly bureaucratic and complex’.
- 2.14 A concern was raised that the amalgamation of existing structures could reduce the ‘overall existing tripartite industrial relations space’. Another respondent felt that the role of non-TUC unions is not considered fully. Similarly, another respondent felt that in the absence of trade unions other established forums for the collective voice of the workforce should be recognised and included in any new social partnership structures.
- 2.15 In amalgamating the work of the CfED and the WPC under the auspices of a new Social Partnership Council, a strong argument was conveyed for the third sector to be represented. A strong view was expressed in at least six responses in relation to the absence of third sector/voluntary sector representation in the scope of membership outlined for the Social Partnership Council, particularly as it is a sector in which employment is less likely to be represented by trade unions.
- 2.16 Two respondents specifically called for **social businesses, the third sector and voluntary organisations** to be represented on the Social Partnership Council adding that:  
‘these sectors should be included in discussions and decisions regarding fair work if we are to have a real impact and reach every part of Wales’.
- 2.17 Respondents from the **private sector** felt that the Welsh Government would need to be confident that the social partnership model outlined in the White Paper ‘will benefit a significant proportion of private sector’. They also raised the need for mechanisms such as a forum to enable them to ‘engage directly on the development of measures to support the economy and communities and provide intelligence on trends, challenges and opportunities’ given that the Council for Economic Development would no longer exist to serve this function.

- 2.18 One respondent thought that engagement with the business community has to date 'been limited and we are concerned about the risks that this may cause to such a policy and its acceptance at industry level'. Another respondent felt that areas of economic and business development continued to be more suitable for bilateral rather than tripartite relations and that Welsh Government should convene 'a business forum for direct engagement' between the business community and ministers, alongside any new arrangements. One respondent did not feel that a lack of legislation underpinning it had held the CED back in any way, and that under any new system the retention of a reformed and smaller CED would still be needed 'to maintain a forum for biannual dialogue between business and government' on issues such as business rates and environmental regulations, which would not be suitable in a wide Social Partnership Council meeting.
- 2.19 It was suggested that consideration needed to be given to how a **gender balanced** Social Partnership Council could be achieved particularly as women will not be well-represented amongst senior figures within Government, employers or trade unions, and because women 'dominate in industries characterised by low pay, poor quality work' and are more likely to be affected by progress to achieve fair work in Wales.
- 2.20 One respondent also called for the community and town council sector to be represented within the Social Partnership Council. Two other respondents wished to ensure that Higher Education (HE) and Further Education (FE) could be full and active members of the Social Partnership Council.

### 3. Supporting Welsh Government ambitions to deliver a more equal Wales

#### Key findings

- Three-quarters of respondents were of the view that strengthening social partnership arrangements would support Welsh Government ambitions to deliver a more equal Wales
- A strong view was held that proposals needed to give greater consideration to (i) social partnership approaches being as inclusive as possible (ii) protected groups and those who are most likely to be disadvantaged in employment (iii) the third sector, and the voluntary workforce, who are less likely to be supported by trade unions
- Respondents broadly welcomed proposals to place a duty on public bodies to have due regard to social partnership and to use the power of the public purse to promote social partnership.

3.1 This chapter considers consultation responses received for Question 2 in the consultation document: *'Do you agree that strengthening social partnership arrangements will support Welsh Government ambitions to deliver a more equal Wales?'* It discusses the arguments for and against respondents' views as well as feedback on existing social partnership mechanisms and the proposals for establishing a new Social Partnership Council before then considering feedback on using the public purse to promote social partnership.

3.2 Table 3.1 shows that three-quarters of respondents were supportive of this question: 41 responses specifically stated that they agreed that strengthening social partnership arrangements would support Welsh Government ambitions to deliver a more equal Wales. Two respondents disagreed and the remaining 12 either did not provide an explicit opinion or did not respond to this question.

*Table 3.1: Respondents who agreed that strengthening social partnership arrangements will support Welsh Government ambitions to deliver a more equal Wales*

Do you agree that strengthening social partnership arrangements will support Welsh Government ambitions to deliver a more equal Wales?	Number of respondents
Yes	41
No	2
Unclear / no definitive answer	9
No response	3
Total	55

3.3 Respondents who agreed with this question argued that social partnerships is an important conduit for achieving greater equality across Wales, particularly in terms of addressing inequalities within the workplace and driving fair and equal pay. It was broadly thought that the proposals would build upon the approaches already adopted across public sector organisations. Another respondent highlighted how good, stable labour relations and a productive workforce were critical in any sustainable social partnership model.

3.4 Respondents also argued that the proposals presented an opportunity to develop ethical employment practices and eliminate employment practices which ‘create vulnerability and uncertainty’ which were considered to have no place in public bodies. There was also a strong suggestion that the proposals would support ‘a shared understanding of all perspectives built on social partnership’ which would be a key mechanism for ensuring a more equal Wales.

3.5 The few respondents who disagreed with this question suggested that there is already a ‘significant body of legislation for collaborative working’ in place and that ‘statutory arrangements are not necessarily the only – or best – means to do so’.

### **An inclusive approach to social partnership**

3.6 One main consideration raised by respondents for this question related to the need for the **social partnership approaches to be as inclusive as possible**. For instance, one such respondent commented that:

‘the ambition to deliver a more equal Wales through partnership working will be dependent upon the precise nature, structure and composition of the partnership arrangements. These arrangements themselves must be as inclusive as possible’.

3.7 A strong call was made for increasing the focus on **protected groups and those who faced persistent and widespread inequalities** within the legislation. For instance, one respondent

argued that the consultation paper did not 'address the needs and issues that specifically relate to Equalities other than the proposed commencement of the Socio-Economic Duty'. This respondent argued that social partnerships could address the disadvantages faced by 'the Protected Characteristics of the Equality Act' and specifically requested that consideration be given to the difference which the proposals could make to those who are 'most disadvantaged in employment'. These were considered to include groups such as:

- disabled people who are more likely to work in lower paid jobs
- young people who are more likely to be in insecure employment
- women who are more likely to be in low paid occupations across the care, leisure and other service occupations
- ethnic minorities who are under-represented in apprenticeships.

3.8 A further key theme to be raised by respondents related to the lack of reference to the **third sector, and the voluntary workforce** in particular. One such respondent argued that the proposals did not address or protect 'the particular needs of employees working in the voluntary sector' as the emphasis was upon employers, government and trade unions.

3.9 At least three respondents were eager to stress that the third sector plays an increasingly important role in the delivery of public services, particularly across social care services, but that the proposals failed to adequately consider their position given that the sector is characterised by low trade union membership. One such respondent argued that given that some eight per cent of the working age population in Wales work in the voluntary sector, and the emphasis within the proposals on working via trade union representation would mean that this workforce would not be well represented within the social partnership approaches.

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

3.10 Respondents broadly welcomed the proposal to place a **duty on public bodies** to have due regard to social partnership principles and to promote the objective of fair work. One respondent added that they welcomed the opportunity the proposals offered to develop 'a common approach across Wales' as this would make things easier for bidding organisations when responding to delivery opportunities.

3.11 Whilst welcoming the proposals, some respondents, particularly those representing the private sector and service providers, cautioned that using community benefits when procuring services favoured larger businesses who unlike SMEs 'have the man-power and financial power to support community projects.' One respondent suggested that greater equality could

be achieved as part of procurement e.g. 'if contracts stipulated specific tasks or undertakings' so as to secure a more level playing field for bidders.

- 3.12 One respondent expressed concern that placing a legislative duty upon public bodies could constrain them and undermine current effective approaches within their sector:

'We would be concerned if the proposals undermined the current arrangements with the concern being that if social partnership agreements are legislated for these may potentially constrain or delay appropriate approaches which work well for health and which can be seen to be working effectively at present. Our current collective agreements are built on trust and shared perspectives and at times these can be pragmatic and agreed in the knowledge that if flexibility and adjustment is required, that this can easily be achieved with the minimum of bureaucracy.'

- 3.13 Others thought that the introduction of a social procurement duty offered an opportunity to tackle persistent and widespread inequalities, provided it included leverage to:

'tackle low wages in the health and social care sector; increase participation of under-represented groups in apprenticeships; [and] address insecure employment in public service areas such as education, health and social care'.

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

- 3.14 Respondents were broadly supportive of the proposals to use the power of the public purse to promote social partnership and fair work objectives, particularly given the view that there are only a few effective examples where social outcomes are meaningfully considered as part of public procurement exercises at present.

- 3.15 One respondent thought that any requirements under such a duty 'should be proportionate to the capacity, nature of operations and the likely impact of these bodies.'

- 3.16 In relation to the use of the public purse to promote social partnership, some pertinent points were offered in relation to Welsh Government funding. These included the need for the Welsh Government to lead by example and resolve the challenges placed upon the third and voluntary sector as a result of current short-term funding. It was argued that short-term funding for the third sector created challenges in terms of staff retention as well as unsecure employment contracts. Respondents also highlighted that wages tended to be low across the charity sector.

## 4. Legislation to enforce compliance

### Key findings

- Over half of respondents either did not agree that legislation to enforce decisions was needed or raised concerns about how it would work in practice and requested further information and more development work on this aspect of the legislation before they could support it
- Respondents felt that enforcement went against the core principles of partnership and preferred an approach which incentivised compliance
- Respondents were also concerned about the potential for unintended consequences from compliance enforcement, and penalties in particular, where public services could be impacted negatively, and smaller organisations would bear too heavy a burden
- Where respondents agreed with the need for legislation to enforce compliance, they wished it to be proportionate and reasonable, with penalties forming part of a wider toolkit of enforcement mechanisms and only utilised as a last resort

4.1 This chapter considers the consultation responses to Question 3: *‘Do you think that we should legislate to enforce decisions reached in social partnership and what form might that enforcement take?’*

4.2 Table 4.1 shows that more than half of respondents either disagreed with the need to legislate to enforce decisions or raised several issues in terms of how this would work in practice. Just under a third (17 of 55) of respondents thought that legislation was required to enforce decisions.

*Table 4.1: Respondents who agreed that Welsh Government should legislate to enforce decisions reached in social partnership*

<b>Do you think that we should legislate to enforce decisions reached in social partnership and what form might that enforcement take?</b>	<b>Number of respondents</b>
Yes	17
No	22
Unclear / no definitive answer	11
No response	5
Total	55

- 4.3 Of those who responded in clear agreement with the proposals to legislate to enforce decisions, the reasons cited included that it would protect employees and ‘influence the way in which Welsh Government allocates public spending and the way that goods and services are procured’. Similarly, another respondent felt that if achieving fairness could not be ensured voluntarily, then this was ‘the only way that social partnerships could protect the wellbeing and rights of workers.’
- 4.4 Other respondents felt that enshrining enforcement processes in legislation was **essential and necessary** to deliver meaningful change and achieve the desired impact and ‘sends a clear message’ that social partnership is a key priority for Welsh Government. One of these respondents also felt that lack of enforcement creates an inequitable situation across Wales and that public bodies need to be held to account.
- 4.5 Many of those who categorically agreed with the need to legislate for enforcement also added that this needed to be ‘**proportionate**’ and ‘**reasonable**’, with any investigations conducted in an ‘open and transparent manner’. It was also considered important that public bodies were adequately resourced to implement their duties ‘in terms of expertise, skills, time, capacity, guidance and financial resource’.

#### **Contrary to the underlying principles of partnership**

- 4.6 Some eight respondents who felt that legislation to enforce was not needed requested much more detail about what enforcement would mean in practice. A further four respondents felt that no reasoned case had been made, that it was not desirable or feasible to enforce and that legislating to enforce compliance would ‘undermine existing relationships, add unnecessary bureaucracy and stifle creativity and innovation’.
- 4.7 Respondents, particularly local authorities, stressed that their procurement practices already considered social values and questioned the need for enforcement. Several respondents reported that they adopted the Code of Practice on Ethical Employment in Supply Chains and had procurement programmes already in place.
- 4.8 Six respondents felt that a **voluntary, collaborative approach should be attempted first**, with the introduction of the Social Partnership Council underpinned by clear aims and objectives, and if that did not work as intended, that legislating to enforce compliance should be considered and developed at a later date, as a last resort if it ultimately was found to be necessary.
- 4.9 Some six respondents were of the view that enforcement was ‘**contrary to the spirit of working in partnership**’ and that ‘true partnership does not involve enforcement’. Two

respondents suggested that the legislation should be based on the principle of rewarding and incentivising rather than ‘punishing bad behaviour’.

### **Enforcement penalties**

- 4.10 There was not much appetite for enforcement approaches such as financial penalties: ‘we do not agree that a financial penalty for non-compliance is a necessary tool. It could be counter-productive.’
- 4.11 Several respondents raised concerns that rather than ‘incentivise compliance’, the use of sanctions would instead ‘penalise public services and the communities they serve’ rather than change behaviour or organisational culture which is the ultimate aim of social partnerships.
- 4.12 Indeed, **concerns about the ‘unintended consequences’** of enforcing penalties were raised in several responses, in that they could:
- impact on the use of zero hours contracts, in the health and social care sector, even when the ‘flexibility of such working conditions provide flexibility for workers with childcare and caring responsibilities, which allows them to combine employment and maximise their income’ or could ‘put more strain on what is a very fragile social care market’
  - ‘make people cautious and nervous about the impact of reaching agreements’ and ‘feel too constrained...to trying out new things’
  - generate ‘genuine fear’ in being penalised which would then make public bodies less likely to seek collaborative partnership and become much more prescriptive in what they expect from procurement requirements
  - have a detrimental effect on service delivery or budget cuts in services
  - be a ‘blunt regulatory regime that would provide a disincentive for many SMEs to engage’ and that they would need to take account of differences across sectors and the size of organisations and businesses
  - end up with a situation where ‘only larger companies with HR departments will be able to compete for public contracts’.
- 4.13 Some respondents cautiously welcomed the idea of enforcement penalties and thought that it may have a place as **‘a key tool in the enforcement armoury’** where organisations did not meet their social partnership obligations. However, respondents also warned that it could be seen as ‘a blunt instrument’ and that there was much work to do to get the

compliance/enforcement aspects of the Act 'fit for purpose'. Many such responses argued that enforcement penalties would work as long as:

- there were 'sound arrangements for monitoring of compliance'
- both private and public organisations were held equally accountable or that it should be part of a range of sanctions, for both public bodies and non-public bodies in receipt of public support or delivering public contracts
- there was appropriate support or sufficient capacity provided to facilitate compliance, particularly for smaller organisations
- the enforcement framework had flexibility to reflect local and sectoral conditions.

4.14 Where fines were raised, two respondents suggested that the moneys be used to 'mitigate' against the unintended consequences or be used to support functioning social partnerships enhance their services. Another respondent suggested that rather than fines, a judicial review might be a better approach as it involves reputational damage and is therefore a more powerful tool.

## 5. Areas for legislation

### Key findings

- Almost two thirds of respondents felt that the right areas were being considered for legislation
- Greater clarity about the role, scope and membership of the Social Partnership Council is required
- Respondents generally agreed with the proposed Social Partnership principles and the duty on public bodies to work in social partnership and promote fair work goals
- Most of the respondents who agreed with the duty for social procurement felt that as long as it was robust and not too rigid, it had the potential to support Welsh communities and provide opportunities for businesses (particularly SMEs) in Wales.

5.1 This chapter considers the consultation responses to 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?’*

5.2 The areas for legislation are summarised in the consultation document as:

- establish a Social Partnership Council
- develop ‘Social Partnership principles’
- introduce a duty on public bodies to work in social partnership and to promote the goals of fair work
- impose a duty on public bodies to practice (where practicable) social procurement.

5.3 Table 5.1 shows that almost two thirds of respondents felt that these were the right areas for legislation being discussed in the White Paper, although some of these respondents did highlight that whilst they were in agreement with the areas they had some provisos or amendments that they would wish to see before they could fully support the legislation. Some of those who disagreed mentioned that the right areas were being considered but that there was no need to legislate to achieve the aims.

Table 5.1: Respondents who agreed that the right areas for legislation are proposed in the White Paper

Are these the right areas for legislation to deliver our proposals to strengthen social partnership arrangements and embed fair work principles across Wales?	Number of respondents
Yes	33
No	9
Unclear / no definitive answer	8
No response	5
Total	55

5.4 Several respondents who definitively agreed with the question continued to highlight the need for the Bill to be ‘proportionate’, ‘add value’, avoid ‘unnecessary administrative burden and complexity’ and have ‘suitable monitoring, reporting and compliance mechanisms in place’.

5.5 One respondent agreed with the areas for legislation but felt that ‘fairly traditional solutions’ were being suggested and would like to see a space created where organisations could go further by innovating and coproducing new solutions. Another respondent felt that lessons could be learnt from the implementation of Welsh Language Standards that could be applied to the legislation and enforcement process.

5.6 One respondent suggested that the process of undertaking the equality assessment duty, would provide the essential intelligence as to whether these were the right areas for legislation.

### **Social Partnership Council**

5.7 In terms of agreeing with the need to establish a Social Partnership Council, respondents to Question 4 again reiterated many points that have already been raised previously namely that:

- the Bill would provide an opportunity to ‘streamline’ the social partnership arrangements that already exist and to assess their value
- more detail on how the Social Partnership Council would carry out or merge the previous functions of the CfED and the WPC was needed

- more clarity about the scope, role and composition of the Social Partnership Council including the number of seats on the proposed Council, tenure of members and rules of appointment/election was required.

5.8 One respondent felt that the wording about the Social Partnership Council should go beyond 'supporting and encouraging best practice' and that it should include a role in 'implementing' best practice (under section 89).

### **Social Partnership principles and a duty on public bodies to promote fair work**

5.9 Respondents generally agreed with the social partnership principles outlined for the proposed legislation and believed them to be rational. One respondent suggested that fair work principles could be applied directly into the registration and inspection of health and social care providers.

5.10 In terms of the duty on public bodies some issues were raised including:

- the public sector duty needs to be clear that other forms of support such as grants or tax rebates, should also deliver fair work outcomes
- some lack of clarity about the scope of partnership duties with the list of public bodies in Appendix A currently including NHS and local government bodies but excluding police, joint committees, corporate joint committees and Welsh Ministers
- that public bodies already have statutory responsibilities under the Equality Act 2010 and the proposed socio-economic duty currently being consulted on.

### **A duty on public bodies to practice social procurement**

5.11 Most of the comments made about the social procurement duty agreed that as long as it was 'robust and challenging' it provided a fantastic opportunity to mainstream existing good practice in procurement in a way that could increase economic and social value, make tangible differences to communities across Wales, help SMEs prosper and link with the emerging foundational economy agenda. Three respondents warned that procurement should not be seen as the panacea for delivering fair work and that the duty should not be too rigid as to generate hurdles that would discourage or prevent Welsh businesses from being able to compete, particularly small businesses.

5.12 Three responses felt that the wording needed to be strengthened with the 'where practicable' clause removed.

## 6. Costs associated with the proposals

### Key findings

- Additional organisational functions such as procurement, administration, monitoring and reporting will need to be resourced
- Additional staff will need to be employed and trained to undertake co-ordination and representation tasks, to allow all social partner organisations to engage with the agenda
- The implementation of the Real Living Wage will generate additional costs for organisations, particularly providers of health and social care
- A view that these additional costs should be funded by the Welsh Government.

6.1 This chapter considers the responses received for Question 5 of the consultation document: *'are there any particular or additional costs associated with the proposals you wish to raise?'* As set out at Table 6.1, two fifths of respondents (22 of 55) identified specific costs which would be associated with the proposals set out in the consultation document and in most cases, these related to costs which would be incurred by their own organisation. Very few (seven in all) did not believe that any costs would be generated. The remaining respondents either did not respond directly to this question or provided no definitive answer.

*Table 6.1: Respondents who identified any particular or additional costs associated with the proposals raised*

<b>Are there any particular or additional costs associated with the proposals you wish to raise?</b>	<b>Number of respondents</b>
Yes	22
No	7
Unclear / no definitive answer	10
No response	16
Total	55

6.2 In responding to this question, respondents concentrated on the nature of additional costs and whilst very little data was offered on the scale of costs which would be incurred, some suggested that it would be significant. One respondent argued that trying to quantify costs would be impossible given the lack of detail offered at this stage of the process.

6.3 A broad call was made by respondents for any additional costs to be funded appropriately by the Welsh Government. For instance, one such respondent argued that:

‘some of the fair work suggestions in this document are likely to involve additional expenditure/resources and this would need to be matched by funding support’.

6.4 It was anticipated that significant additional costs would be incurred by local authorities and in the event of no additional Welsh Government funding, some LAs were particularly concerned that the legislation would require them having to divert:

‘already stretched resources away from genuine social partnership activity and towards compliance and administrative infrastructure’.

6.5 In this respect, the call for legislation and guidance to be ‘proportionate’ to the remit and scale of public bodies in order to keep costs manageable was again re-iterated.

6.6 The nature of the additional costs identified for **public sector organisations** included:

- those associated with procurement, identified by four respondents, such as resourcing procurement functions including ‘developing guidance, increased contract management, supporting and advising supply chain contracts’ as well as developing procurement strategies
- those associated with undertaking back office, administrative tasks which organisations would incur, particularly given that these resources have been streamlined in light of financial austerity cuts of late
- monitoring and reporting tasks, including the costs associated with preparing annual reports on implementation
- translation costs which would be associated with procurement activities.

6.7 Two respondents suggested that the costs associated with procurement could however be reduced if a common procurement strategy and mechanism was developed rather than all public bodies each developing their own mechanisms.

6.8 Some five respondents stated that the implementation of initiatives such as the **Real Living Wage** would generate additional costs for their own or other organisations. One of these respondents anticipated that their suppliers would increase their fees when tendering for work in order to meet the conditions imposed by the procuring organisation around the Living Wage, and that this would lead to increased costs for the public sector organisation.

6.9 The implementation of the Real Living Wage was raised as a pertinent issue for providers contracted by the health and social care sector and a call was made for the Welsh Government to fund the health and social care sector to allow this to be implemented. Although no specific costs were offered by these three respondents, one suggested that the

costs estimated to implement the Foundation Living wage across the private and third sector workforce a few years ago was £30m, but that these would have since increased. Another respondent commented upon the affordability of implementing the proposals across third and community settings who provide services to the public sector:

‘Although this won’t have direct impact on us in the NHS what it is likely to mean is, that more care providers will be pushed to insolvency trying to keep up with the requirements which will negatively impact the system in the longer term.’

- 6.10 Another theme raised in response to this question related to the implications of **funding additional roles and upskilling/training postholders** to undertake these duties. In all some five responses discussed this theme. They noted that the implementation of the duties would require the creation of new, additional roles within organisations, such as ‘co-ordinator posts’ within local authorities. Other responses identified additional costs relating to supporting and training of staff, as well as providing time off for trade union stewards although it was hoped that this investment would be beneficial.
- 6.11 Two responses reported that social partner organisations had different levels of capacity to engage with social partnership activity and that some might not have the staffing resources to engage with the process, which could lead to their disengagement. A call was made ‘to help resource the capacity of the collective employer and union organisations to co-ordinate and support involvement in a strengthened social partnership model’.
- 6.12 In a similar manner, one respondent thought that consideration ought to be given to the capacity of employers more broadly to engage with this social partnership agenda. This respondent argued for the funding for this the role of employers to:
- ‘seek a consensus on the way forward within and between sectors and to subsequently work together to develop a shared understanding of issues and perspectives. This is a significant task which would require investment and coordination on behalf of employers.’
- 6.13 One respondent argued that additional costs might be incurred if public sector organisations were required to **move away from using staff on zero-hour contracts**. This respondent reported that these workers were choosing to pursue this type of contract on a voluntary basis with their organisation and argued that:
- ‘in reality we are heavily reliant in the NHS on a temporarily deployed workforce. If principles set by legislature look to mandate the protections and benefits for workers, this could mean there is too much tape for us to manage this effectively in the timescales we would require to ensure safe delivery of patient care’.

6.14 Very little feedback was offered by those respondents who did not think that any additional costs would be incurred as a result of the proposals. One of these, an NHS organisation, noted that because they were already meeting best practice employment policies such as the providing the national living wage, higher inflationary pay rises at times for those in lower paid bands and enhanced terms and conditions for those in lower paid bands, they did 'not anticipate additional costs arising from the proposals'. Another business representative group noted that they did 'not foresee any additional costs to business' although in this case did caution that 'opportunity costs in terms of local community wealth and employment if the criteria is too rigid' could be incurred.

## 7. Effects on the Welsh Language

### Key findings

- Proposals could have a positive, rather than negative, impact upon the Welsh language and several possible opportunities are identified
- There is a need for Welsh language to be explicitly reflected within social partnership legislation
- Social partnership procurement should specify what would be required in terms of Welsh language provision and services.

7.1 Under the requirements of the Welsh Language (Wales) Measure 2011, Welsh Government is under a duty to consider the effects of its policy decisions on the Welsh Language.

7.2 This chapter considers responses to two questions set out in the consultation document:

- 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 favourably than English. What effects do you think there would be? How could positive effects be increased, or negative effects be mitigated?
- 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 favourably 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 favourably than the English language.

7.3 In all, 21 responses were offered for the first question and 11 for the second question. Of these, three respondents specifically noted that they could not comment either way and another two respondents stated that the proposals would not have any impact on the Welsh language.

### Possible effects on the Welsh Language

7.4 Most of the remaining 16 respondents who commented upon either question thought that the **proposals could have a positive impact upon the Welsh language.**

- 7.5 A strong call was made for the **Welsh language to be explicitly reflected within social partnership legislation** as it had a critical role to play in contributing to fair work and social equality. Two respondents noted that:
- ‘the duties on public sector bodies of fair work and social procurement should contain a commitment to support the development and use of the Welsh language as an explicit part of the legislation’.
- ‘the inclusion of Welsh language considerations is an explicit requirement of any effective collaboration and partnership working undertaken as part of the implementation.’
- 7.6 The **existence of current legislation** was a key theme raised by respondents and it was noted that the proposals would not have a negative impact upon the Welsh language due to the fact that public bodies were already bound by other legislation, such as the Welsh Language (Measures) Act. One respondent for instance, noted that individual employees’ rights, under their existing respective Standards, were already protected.
- 7.7 One respondent called for the existing legislative duties to be protected as a result of the proposals:
- ‘The introduction of the Welsh Language (Measures) Act imposed a number of requirements on Welsh public bodies to promote and facilitate the use of Welsh in its workplace amongst employees and in its external activities through the introduction of Standards, enforceable through individual Compliance Notices. We must ensure that, as a minimum, these existing arrangements are protected.’
- 7.8 However, it was recognised that the **Welsh Language Standards do not apply to all organisations in Wales** and one respondent therefore suggested that ‘as part of the Social Partnership framework, a similar but more informal, tailored approach could be introduced for the organisations not currently subject to the Welsh Language (Measures) Act’. Respondents also observed that where they do exist, the compliance notices in respect of the Welsh Language Standards have been tailored for individual organisations in dialogue with the Welsh Language Commissioner hence their approaches may differ somewhat.
- 7.9 Across the health and social care sector, reference was made to the ‘Active Offer’ being implemented by organisations as part of the **More than Just Words strategy**. One respondent observed that:
- ‘It will be important that organisations support their staff in developing their Welsh language skills when engaging with Welsh speaking patients and in offering services wherever possible in the language of choice, without the need for the patient to make a specific request for it.

This is called making an ‘active offer’ of Welsh and is a key component of the Welsh Government Strategic Framework: More than just words.’

- 7.10 Another respondent also took the view that it would be important for social partnerships to understand and identify the linguistic profile of the communities which they serve and ‘put in place interventions that safeguard the linguistic nature and heritage of that community’.

### **Increasing possible positive effects**

- 7.11 The key opportunities identified by respondents for increasing the possible positive effects on the Welsh language as a result of the proposes included:

- greater opportunities for staff to engage with their employers, colleagues and their customers/service users in Welsh
- greater opportunities for using Welsh in social partnership collaboration and partnership working e.g. opportunities to contribute to Social Partnership Council meetings in the language of choice, be that Welsh or English
- ensuring that any services commissioned via the social partnership approach provide opportunities for Welsh speakers to use their language when accessing that service
- opportunities to stimulate the creation of employment in areas which have been in long-term economic decline and where Welsh contributes to be spoken widely
- opportunities to create secure and fairly paid bilingual job opportunities, particularly for young people
- opportunities to contribute towards the Wellbeing of Future Generations goal of creating ‘A Wales of vibrant culture and thriving Welsh language’.

- 7.12 Two respondents stressed the importance for **social partnership procurement to specify what would be required in terms of Welsh language provision and services**. They stated:

‘Where the procurement in question is for a service where Welsh-medium provision is required (e.g. to ensure compliance with Welsh language standards), it must be ensured that it is clearly outlined, and in appropriate phraseology in the initial procurement documents. It must also ensure that it secures fully reliable evidence of the ability of the competing companies to meet the Welsh language requirement.’

‘The requirements of bilingualism must be placed within all public procurement - often the cheapest price is received from England, but where the provider is unable to provide the service in Welsh.’

Two respondents noted that in doing so, there was a need to acknowledge **increased procurement costs**. In one case this was interpreted as including additional translation costs e.g. translating Welsh tender documents into English. In the other it was interpreted as increased costs due to the proposals to assess value for money on the basis of criteria other than lowest price, including the use and promotion of the Welsh language:

‘The consultation document refers to the need to "do more to explain that there is more to value for money than to get things for the lowest price". We agree entirely with that. Achieving a more localised focus is likely to have positive knock-on effects on local businesses and the local economy, thereby in the percentage of cases of companies that use and promote the use of Welsh.’

## 8. Additional themes not covered by consultation questions

8.1 This section includes an analysis of any responses which raised issues or themes which fall outside the consultation questions themselves, but which might provide useful information for consideration.

8.2 At least three respondents raised queries about the term 'social partnership'. One of these noted that there was no clear definition of social partnership included in the White paper and that it was a difficult concept to define and suggested a possible working definition of:

'social partners are groups that co-operate in working relationships to achieve social equality for workers across the Welsh economy'.

8.3 Another suggested that a 'Fair Work Bill' would be clearer and better understood for the wider public and would better convey the main aims to be achieved by the proposed Bill.

8.4 Other issues raised by individual respondents included:

- a query about how the vision for Wales would align to the UK Government's Good Work plan
- a desire for any strengthening arrangements for social partnership to equally drive for an improved approach to mental health in the workplace, alongside pay and other terms and conditions
- a need for associated guidance to be introduced alongside the legislative framework outlining what is expected of organisations delivering on this duty
- a need to consider more carefully the list of public authorities, and specifically WGSBs to be covered by this proposed Bill
- a request that the functions carried out by the Wales Social Partnership Unit (WSPU) to be enlarged and modernised under any new system
- a suggestion that the social partnership system operating in the Irish model should be looked at to learn from the experience

8.5 In terms of more practical issues raised in relation to the consultation process itself, individual respondent comments included:

- a consideration in terms of timing and a suggestion that 'engaging with the sector over the Christmas and New Year period is very difficult' and should be avoided in future, or that the consultation window be made longer to provide extra time for engagement

- a request for further / on-going engagement in working up the proposed social partnership principles and to discuss the proposals with wider stakeholders including the NHS Partnership Forum and non-TUC affiliated social partners and trade unions
- a query as to why the Welsh language questions were formatted as supplementary rather than embedded in the consultation itself and whether this suggested a lack of policy read-across with the Welsh language not considered as an essential part of the policy formation process.

## Appendix A – List of respondent organisations

Amgueddfa Cymru – Museum Wales
Arts Council of Wales
British Medical Association Cymru Wales
Builders Merchants Federation
Caerphilly County Borough Council
Caerphilly Unison
Cardiff Council
Confederation of British Industry (CBI)
Centre for Progressive Policy
Ceredigion Council
Children in Wales
Chwarae Teg
Construction Industry Training Board (CITB)
Commerce Cymru
Conwy Council
Co-production Network
Cyngor Llyfrau Cymru / Welsh Books Council
Equality and Human Rights Commission
Federation of Small Businesses
Flintshire Council
Hywel Dda University Health Board

Institute of Chartered Accountants in England and Wales (ICAEW) Wales
Llyfrgell Genedlaethol Cymru / National Library of Wales
Local Democracy and Boundary Commission Wales
Mid and West Wales Fire and Rescue Service
Mind Cymru
Mirus
National Association of Schoolmasters/Union of Women Teachers (NASUWT)
Natural Resources Wales
One Voice Wales
Public and Commercial Services (PCS) Union
Public Services Ombudsman for Wales
Rail, Maritime and Transport Workers (RMT)
Royal College of Nursing Wales
Social Care Wales
South and Mid Wales Chamber of Commerce
Transparency in Supply Chains (TISC)
Undeb Cenedlaethol Athrawon Cymru (UCAC)
Unison Wales
University and College Union (UCU) Wales
Universities Wales
Wales Audit Office

Wales Cooperative Centre
Wales Institute of Social and Economic Research, Data & Methods (WISERD)
Wales Trade Union Congress (WTUC)
Welsh Ambulance Services NHS Trust
Welsh Council for Voluntary Action (WCVA)
Welsh Local Government Association (WLGA)
Welsh NHS Confederation

6 individual responses were also received.