



Llywodraeth Cymru  
Welsh Government

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Welsh Government  
Consultation – summary of response

# **Consultation on the draft Public Services Outsourcing and Workforce Code under the Social Partnership and Public Procurement (Wales) Act 2023**

2 March 2026

Mae'r ddogfen hon ar gael yn Gymraeg hefyd / This document is also available in Welsh  
Rydym yn croesawu gohebiaeth a galwadau ffôn yn Gymraeg / We welcome correspondence and telephone calls in Welsh

## **Overview**

This document provides a summary of responses to the consultation on the Draft Public Services Outsourcing and Workforce Code under the Social Partnership and Public Procurement (Wales) Act 2023 and the Welsh Government's response.

## **Action Required**

This document is for information only.

## **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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## **Additional copies**

This summary of response and copies of all the consultation documentation are published in electronic form only and can be accessed on the Welsh Government's website.

Link to the consultation documentation: [The draft Public Services Outsourcing and Workforce Code | GOV.WALES](#)

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## **Introduction and Consultation Process**

The Social Partnership and Public Procurement (Wales) Act 2023 (“SPPP Act”) requires all public bodies listed in Schedule 1 (contracting authorities) to carry out public procurement in a way that improves economic, social, environmental, and cultural well-being.

The Draft Public Services Outsourcing and Workforce Code (“Workforce Code”) sets out requirements for contracting authorities when outsourcing public services or functions, with the aim of maintaining or improving service quality and embedding fair work principles.

The Code is intended to ensure that outsourcing decisions and contractual arrangements uphold workforce protections, promote equality, and support the well-being goals of the Act. It includes provisions on:

1. Transfer of staff
2. Other staff working on outsourced contracts
3. Pensions
4. Subcontracts
5. Monitoring implementation
6. Social Public Workforce Clauses

The consultation sought views on whether the new Workforce Code and the social public workforce clauses meet the requirements set out in the legislation. It also invited feedback on the potential impact on the Welsh language and opportunities to promote positive effects.

The Welsh Government received 30 responses to the consultation.

The Welsh Government welcomes the responses to the consultation and would like to thank those who responded.

## Consultation responses and Welsh Government response

The consultation was split into mandatory questions and follow up questions asking for additional information where the respondent had disagreed or strongly disagreed to each question. In addition, there were three questions relating to the Welsh language.

### 1. Transfer of staff (section 4 of the Workforce Code)

Q1a: To what extent do you agree or disagree that the Workforce Code's requirements on the transfer of staff will adequately ensure the quality of public services or other functions outsourced by contracting authorities is maintained or improved (S32 of SPPP Act)?

Q1b: If you answered disagree or strongly disagree to Question 1a, please explain why you do not believe the Workforce Code delivers the policy intent.

#### Summary of responses

Overall, the response was positive, with 15 of the 30 responses that strongly agree or agreed to the question.

Seven respondents disagreed or strongly disagreed.

Eight respondents neither agreed nor disagreed or left the answer blank.

16 comments were received.

The responses to question 1b revealed some concerns that while the Workforce Code's requirements on the transfer of staff offer important protections for workers, these requirements alone did not guarantee the maintenance or improvement of public service quality when outsourcing occurs. Some respondents noted that service quality depends on a combination of factors, including robust contract management, effective procurement, and the ongoing engagement of staff and trade unions. Several other respondents highlighted the importance of protecting the terms of transferring staff and other staff.

Concerns were raised about language which, in places, appears to allow contracting authorities to identify circumstances when they would neither be required to include the workforce clauses, nor notify Welsh Ministers that they will not be included. This includes concerns about the term "genuinely exceptional reasons" in paragraph 4.6 of the Code, which refers back to paragraph 2.2 of the Code where exceptional reasons are described using the phrase "could include but are not limited to..."

One respondent asked that, as well as having the right not to transfer to a new employer, workers should be offered a chance to be redeployed within the contracting authority.

Several responses to this question, and others below, use the term “clause” but then refer to paragraph numbers in the Code, indicating that not all respondents have been able to easily differentiate between the two sections of the document.

## **Welsh Government response**

Welsh Government agrees that protecting workforce terms and conditions does not automatically translate into improved service quality. However, the premise behind this Code, and the current Code of Practice on Workforce Matters, is that failing to protect the terms of transferring staff, or allowing a discrepancy between their terms and those of other workers brought in to carry out the service, is likely to undermine morale and reduce service quality over time. This connection between the wellbeing of the workforce and quality of service was explained in the [Explanatory Memorandum](#) to the Bill and was pointed out by several other respondents.

The Act does not provide for a right to redeployment for those staff that do not wish to transfer to a new employer. Including such a right would take the Code beyond its legal remit and could also create practical difficulties for contracting authorities. This is a matter for each contracting authority to consider in relation to its own employment procedures.

To avoid confusion between the Code and the clauses, attention will be paid to the layout of the published document to make the distinction clearer.

The words “could include but are not limited to” will be amended to circumscribe “exceptional circumstances” more precisely. This will mean that any other circumstances for not including the clauses, believed to be exceptional by a Contracting Authority, will need to be described in a notification to Welsh Ministers.

To align with the coming into force of other sections of Part 3 of the SPPP Act, paragraph 1.4 of the Code will be amended so that it will apply to any outsourcing services procurement in progress after the relevant section of the Act comes into force. The previous Code only applies where the public service or function was originally outsourced under the previous Code.

## **2. Pensions (section 5 of the Workforce Code)**

Q2a: To what extent do you agree or disagree that the Workforce Code’s requirements on pensions will adequately ensure the quality of public services or other functions outsourced by contracting authorities is maintained or improved (S32 of SPPP Act)?

Q2b: If you answered disagree or strongly disagree to Question 2a, please explain why you do not believe the Workforce Code delivers the policy intent.

## **Summary of responses**

Overall, the response was positive, with 15 of the 30 responses that strongly agreed or agreed to the question.

Six respondents disagreed or strongly disagreed.

Nine respondents neither agreed nor disagreed or left the answer blank.

17 written comments were received, and many noted that there is no direct link between pensions and the quality of outsourced services. Several respondents also stated that there is a link between protecting pensions rights and fairness, stability and retention.

Concerns about the impact of these requirements on business, especially small businesses were raised, because of the relatively high cost of matching public pension benefits. Some respondents suggested that this could deter bidders, which may negatively impact on procurement outcomes.

Concerns were raised about the term “broadly comparable” in relation to pensions protections for bodies including local authorities (Section 5.2 of the Code and 3.3 of the clauses). Examples were provided where workers have been offered inducements to accept less favourable pension agreements or have gone back on an earlier indication that pensions would be protected. Some respondents called for the Code to extend the Fair Deal provisions to all transferring workers, to require contractors to commit to the same pension scheme for the duration of a contract, and to mandate the involvement of a trade union in these situations.

The difficulty in tracking and maintaining comparable pensions for second generation and second tier outsourcing was also noted.

### **Welsh Government response**

Welsh Government agrees that protecting workforce terms and conditions does not automatically translate into improved service quality. However, it is the Government’s view that protecting workforce pensions can help maintain morale and thus maintain service quality, a view shared with other respondents.

The wording in the Code and clauses must reflect the language used in the Act and other relevant legislation. Changing wording from “broadly comparable” to “the same or better” does not reflect the language used in the Act. It should also be noted that “broadly comparable” is the wording in The Welsh Authorities Staff Transfers (Pensions) Directions 2022.

Although it would seem reasonable to expect a contractor to commit to a pension scheme for the life of the contract, this could create practical problems, for example if pensions need to be transferred for unexpected reasons. However, the Code will be amended to highlight the requirement to ensure that pension protection is provided for the duration of any contract and in relation to any subsequent outsourcing services contract in accordance with the relevant legislation.

While some respondents feel these clauses go too far and others feel they do not go far enough in protecting the pensions of transferring workers, the Code strikes an appropriate balance and reflects the wording in the Act and the applicable legislation, which protects the pensions of staff who are outsourced. Subject to the minor

amendments outlined above, no further changes to the Code will be made in relation to pensions.

### **3. Other Staff (section 6 of the Workforce Code)**

Q3a: To what extent do you agree or disagree that the Workforce Code's provisions for Other Staff will adequately ensure the quality of public services or other functions outsourced by contracting authorities is maintained or improved (S32 of SPPP Act)?

Q3b: If you answered disagree or strongly disagree to Question 3a, please explain why you do not believe the Workforce Code delivers the policy intent.

#### **Summary of responses**

Overall, the response was positive, with 11 respondents agreeing or strongly agreeing.

Six respondents disagreed or strongly disagreed.

13 respondents neither agreed nor disagreed or left the answer blank.

16 written comments were received. There were calls for a clearer definition of "other staff" especially because workers, in some circumstances, may work for more than one outsourced service on different employment terms. There was also broad support for the principle that all staff working on the same contract should be treated equitably, with fair terms and pension arrangements to strengthen morale and cohesion. However, some respondents have noted that this could result in a two-tier workforce within the contractor organisation.

The terms "reasonable" and "no less favourable" were queried in relation to pensions for other staff, and there was a request to require access for other staff to public sector pension schemes.

Other respondents are concerned that the costs will be off-putting to bidders, especially larger ones that operate across multiple outsourced contracts. There are also concerns about small contractors and affordability of pensions and about the practical challenges of monitoring due to increasing complexity over time. Some respondents noted the practical difficulties in monitoring compliance with pensions agreements for second generation and second tier outsourcing.

There were also calls for a clearer role for Trade Unions in reaching agreement about the terms of the Other Staff.

#### **Welsh Government response**

It would be difficult to provide a clearer definition of "other staff", for example by specifying a proportion of a workers' time that should be dedicated to a contract for the "other staff" definition to apply. Practical problems include the fact that the proportion may vary, and this could add complexity. Setting a fixed cut-off could have unintended consequences such as incentivising fragmentation of an individual's working week to ensure that it remains below any cut-off, which is not likely to be

beneficial for the worker, the service, or those involved in monitoring the application of the Code through the contract. Not making these provisions in the Code and clauses means that contractors will need to find solutions that avoid two or more tiers of workers providing similar services. The Code encourages contractors to engage with Trade Unions to address challenges of this nature.

Requiring access to public sector pension schemes for Other Staff would extend the Code's remit beyond the duties in the Act and therefore the Code will not be amended.

#### **4. Sub-contracts (section 7 of the Workforce Code)**

Q4a: To what extent do you agree or disagree that the Workforce Code's provisions on sub-contracting will adequately ensure the quality of public services or other functions outsourced by contracting authorities is maintained or improved (S32 of SPPP Act)?

Q4b: If you answered disagree or strongly disagree to Question 4a, please explain why you do not believe the Workforce Code delivers the policy intent.

#### **Summary of responses**

Overall, the response was positive, with 16 respondents agreeing or strongly agreeing to the question.

Five disagreed or strongly disagreed.

9 respondents neither agreed nor disagreed or left the answer blank.

14 written comments were received. Many respondents expressed concern about the capacity of contracting authorities to carry out the monitoring required to oversee compliance after the contract is sub-contracted. There were also concerns about the scope for continued trade union engagement once subcontracts are in place, and a request to ensure continued union engagement.

It was suggested that that the word "should" at the start of section 7 of the Code is replaced with "must" to strengthen the obligation on contracting authorities to ensure that the Code's requirements continue when the contract is sub-contracted.

#### **Welsh Government response**

The start of section 7 of the Code will change to clarify that if a contracting authority is including the clauses, then it "must" (rather than "should") take reasonable steps. This is to align with wording in the Act. The Act, however, also refers to examples of steps that could be taken, and therefore the word "must" at the start of 7.2 will be amended to "should".

It is acknowledged that it will be more difficult to track compliance with the Code when a contract is sub-contracted. However, this requirement is stated in the Act and is not the subject of this consultation.

An obligation to ensure continued trade union involvement at the sub-contracting stage would go beyond the duties in the Act. The Code promotes continued trade union engagement, so subject to the minor amendments outlined above, no further changes to the Code will be made.

## **5. Monitoring implementation (section 8 of the Workforce Code)**

Q5a: To what extent do you agree or disagree that the Workforce Code's provisions regarding monitoring implementation will adequately ensure the quality of public services or other functions outsourced by contracting authorities is maintained or improved (S32 of SPPP Act)?

Q5b: If you answered disagree or strongly disagree to Question 5a, please explain why you do not believe the Workforce Code delivers the policy intent.

### **Summary of responses**

Overall, the response was positive, with 16 respondents agreeing or strongly agreeing to the question.

6 disagreed or strongly disagreed.

8 respondents neither agreed nor disagreed or left the answer blank.

15 written comments were received. Several respondents requested a standard reporting template to allow information to be collected and reported in a consistent manner. One respondent provided examples of cases where the Code's obligations were not monitored and enforced over time.

It was suggested that the Alternative Dispute Resolution (ADR) process that is included as an annex to the current Workforce Code should be included in the new Code to resolve disagreements about the Code's application. One respondent asked that financial penalties be imposed for non-compliance.

It was suggested that the list of matters to be subject to ongoing monitoring in section 6 of the clauses is extended to include whether there is continued trade union involvement in the outsourced service and monitoring of the workforce by protected characteristic.

It was noted that some of these suggested amendments would align with proposed changes resulting from the UK government's Employment Rights Act 2025.

### **Welsh Government response**

Welsh Government will consider whether it is possible to develop a contract management pro forma that could be used by contracting authorities.

The ADR process in the current Workforce Code was designed to address disagreements about whether and how the Code's clauses should be applied to an outsourcing contract. This was needed for the current version of the Code as there was no other method available for this purpose. The current Workforce Code will be

withdrawn once the Outsourcing and Workforce Code required under the Act comes into force. The new Code includes a notification process whereby it is for Welsh Ministers to decide whether they are satisfied with reasons provided for not including the clauses. Ministers have powers under the Act to direct contracting authorities to include the clauses if they are not satisfied with the reasons provided. Adding a further ADR step would introduce delay and duplication into the process.

The Act does not make provision for financial penalties for non-compliance with the clauses. That is a matter for each Contracting Authority which will depend on any contractual remedies / damages included in contracts with its contractors.

The Act does not require on-going engagement with trade unions, nor does it require data on protected characteristics as part of an outsourced contract. Making these changes would move the Code beyond the powers and obligations in the Act.

A Contracting Authority's existing social partnership arrangements may be strengthened to require on-going engagement with trade unions after outsourcing, if this is not already a requirement. However, this is a matter for each Contracting Authority and its trade unions.

No changes will be made to the Code.

## **6. Social Public Workforce Clauses (Appendix 1 to the Workforce Code)**

Q6a: To what extent do you agree or disagree that the Social Public Workforce Clauses meet the requirements under section 33 of the SPPP Act?

Q6b: If you answered disagree or strongly disagree to Question 6a, please explain why you do not believe the Social Public Workforce delivers the policy intent.

### **Summary of responses**

Overall, the response was positive, with 17 respondents agreeing or strongly agreeing.

Four disagreed or strongly disagreed.

Nine respondents neither agreed nor disagreed or left the answer blank.

11 written comments were received. Since the Code and clauses refer to each other, comments made in response to this question refer to both the Code, and the clauses.

Some respondents have identified areas where they believe that there is misalignment between language in the Code and the clauses. One respondent asked for a clarification of the reasons why sections 9 and 10 of the Code are not replicated in the clauses, however these require that additional provisions should be agreed only when they are beneficial and not detrimental to staff, and that trade unions should be consulted.

One respondent carried out a detailed comparison between the Code and the wording in the Act has identified some minor drafting inconsistencies.

A possible source of confusion was identified between the requirement to ensure that sub-contracts include the clauses and a provision on "informing the CA if the contractor intends to enter into a sub-contract which does not include the clauses".

One response included an example where outsourced staff had not been offered pay increases that they would have received had they still been employed by the public body. The respondent requests that Freedom of Information requirements are extended to include outsourced service providers and that monitoring information should extend to include demographic data on outsourced workers.

Another response asks whether these clauses might be adaptable by a contracting authority, and another provides a suggested evaluation approach that contracting authorities might embark upon to ensure that they are ready to comply with the Code.

### **Welsh Government response**

All the identified drafting inconsistencies will be addressed such as changing the word "inform" to "propose" in clause 5.2 in advance of entering into the contract to help clarify that subcontractors are expected to include the clauses.

The Act requires that clauses which are the same or substantially the same as those published by Welsh Ministers (these clauses) are included in contracts and sub-contracts etc. There is no provision for modifying the clauses. If there are reasons why a Contracting Authority listed in Schedule 1 decides it cannot include the clauses, other than in the exceptional cases listed in section 2.3 of the Code, a notification must be sent to Welsh Ministers.

The Code and clauses cannot place an obligation on a contractor to replicate all pay increases that are provided to staff retained within a public body subsequent to those agreed at the time of outsourcing. Discrepancies for this reason, and others, including restructuring, are likely to develop over time. Ongoing monitoring, which is covered in section 6 of the clauses, and ongoing trade union involvement, will help to resolve disputes between the contractor and workers that may arise for these types of reasons. However, changes cannot be made to the Code and clauses to extend its powers beyond that set out in the Act, or anticipate developments arising from the UK Employment Rights Act 2025. The Code will be reviewed and revised in line with any legislative changes in the future.

Welsh Government will consider the suggestions provided about ongoing monitoring of the clauses and the feasibility of publishing guidance that supports a standard approach to monitoring.

In addition to the changes identified above, minor changes to the definitions of Second Generation Outsourcing, Transfer, Transferred/Transferring Staff will be

made, as will an amendment to section 3.3 to ensure pension protection for the duration of the contract.

## **7. The Workforce Code**

Q7a: To what extent do you agree or disagree that the Workforce Code meets the requirements under section 32 of the SPPP Act (i.e. it will maintain or improve the quality of public services or other functions outsourced by contracting authorities)?

Q7b: If you answered disagree or strongly disagree to Question 7a, please explain why you do not believe this delivers the policy intent.?

### **Summary of responses**

Overall, the response was positive, with 14 respondents agreeing or strongly agreeing.

Four respondents disagreed or strongly disagreed.

12 respondents neither agreed nor disagreed or left the answer blank.

14 written comments were received. This question allowed for general comments to be made about the likely success of the Workforce Code and on the question of outsourcing more generally.

One response made several general and wider points, firstly questioning why governing bodies of maintained schools and community councils are not covered by the Code when they are included in the current Code of Practice on Workforce Matters 2014, and whether Local Authority Trading Companies (LATCos), Wholly-owned Subsidiaries (Subcos) and Shared Service Partnerships (SSPs) will be covered by the new Code's requirements. This response also requested that a presumption in favour of insourcing is included in the Code, and that provisions are made to ensure that Trade Union officials have sufficient time and information to engage in outsourcing processes effectively. The response requests a right for workers to make alternative proposals to avoid outsourcing, and mechanisms for protecting vulnerable workers, including those covered by equalities legislation. A further right for outsourced workers' terms and conditions to keep pace with staff remaining in the outsourcing body is requested.

Several other respondents note that, in their view, the Workforce Code meets the requirements set out in the Act and has the potential to embed fair work principles in outsourced contracts, if robust contract management is in place. Other respondents are concerned about the potential additional burden these requirements place on contracting authorities already struggling to implement recent changes to procurement legislation.

### **Welsh Government response**

Regarding maintained schools and community councils, organisations not included in Schedule 1 to the Act are not within the scope of the Act or this consultation, however the Welsh Government will be considering the position with respect to other organisations not included in Schedule 1. Wholly owned subsidiaries (LATCos and Subcos and SSPs) will be covered by the Code's requirements and this will require these bodies to include the clauses in any subcontracts.

Requiring a presumption in favour of insourcing, sanctions for non-compliance and provisions to facilitate union engagement in outsourcing decisions etc also lie outside of the scope of the Act and, consequently, of this Code.

Welsh Government will consider whether there is opportunity for Welsh Government to assist with implementation and monitoring, for example by developing any further guidance or monitoring forms.

## **8. Welsh Language**

Q8a: What, in your opinion, would be the likely effects of the Workforce Code on the Welsh language? We are particularly interested in any likely effects on opportunities to use the Welsh language and on not treating the Welsh language less favourably than English.

Do you think that there are opportunities to promote any positive effects?

Do you think that there are opportunities to mitigate any adverse effects?

Q8b: In your opinion, could the Workforce Code be formulated or changed so as to:

- have positive effects or more positive effects on using the Welsh language and on not treating the Welsh language less favourably than English; or
- mitigate any negative effects on using the Welsh language and on not treating the Welsh language less favourably than English?

Other Issues

Q8c: 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:

## **Summary of responses**

21 written comments were received. Respondents concluded that the Workforce Code and clauses have the potential to support the Welsh language, particularly by maintaining continuity when public functions are outsourced. However, the absence of explicit reference to the Welsh language in the Code is seen as a significant weakness, risking inconsistent provision and reduced opportunities for staff and service users to use Welsh. The Code's impact on the Welsh language was viewed

as dependent on clear requirements, robust monitoring, and proactive promotion of bilingualism.

It was also suggested that the Welsh language skills of outsourced staff might be recorded and monitored and the Code could be supported by further information requiring outsourced service providers to continue to promote the Welsh Language.

### **Welsh Government response**

The Welsh Language Standards (no. 1) 2015 Regulations note that the Welsh Language Standards continue to be relevant to any service or activity that is provided on behalf of contracting authorities via third parties. When third parties provide services or activities on behalf of contracting authorities, they must therefore comply with the requirements of the Standards that have been applied to contracting authorities. Welsh Government will refer to this in the Code.

Including Welsh Language skills monitoring as part of the monitoring of the Code would extend the Code's requirements beyond the duties in the Act. However, there may be scope to develop supplementary advice for outsourced service providers on promoting the Welsh Language in due course.

### **Next steps**

The Welsh Government is grateful to everyone who took the time to respond to this consultation. As a summary document, not all the issues raised in responses will have been reflected fully, but each response has been considered carefully. It is the intention to make some changes to the Workforce Code and clauses as indicated, and the final draft will be published on the Welsh Government website and laid before the Senedd, as specified in Section 32(4) of the SPPP Act.