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### **Draft Social Partnership and Public Procurement (Wales) Bill**

#### **UNISON response April 2021**

UNISON is the UK's largest trade union organising and representing 1.3 million public sector workers UK wide, including 100,000 public sector workers across Wales.

Our members, 85% of whom are women, work in the delivery of public services through direct public sector provision, private and voluntary contractors providing public services, and in the essential utilities.

Our members include frontline staff and managers, working full or part-time in public administrations, local authorities, health and social care, the police and justice service, university, colleges and schools, the electricity, gas, environment and water industries, transport, and in the voluntary and community sectors.

UNISON Cymru/Wales welcomes the commitment in the Consultation Paper that appropriate weight will be given to our response having regard to our membership within the Public Sector. In the spirit of Social Partnership UNISON Cymru/Wales considers that this approach to weighting of responses should be extended to all Consultation processes within Welsh Government.

**Question one: Do you agree with the reasons set out regarding the need for the Bill? Do you have any comments concerning the case for change?**

**Social Partnership**

UNISON has long championed social partnership as a major tool to work towards fair work. UNISON has actively campaigned for this approach across the UK. The outbreak of the COVID 19 pandemic has highlighted the importance of social partnership and fair work in a national context, with the most basic aspect of Fair Work – to be protected at work from harm – requiring legislation from Welsh Government.

UNISON welcomes the intentions of the Draft Social Partnership and Public Procurement (Wales) Bill to provide a statutory underpinning to social partnership arrangements that have organically developed, and we agree it is right to respond to and develop our partnership model that suits Wales and how our services operate.

Whilst we broadly support the intentions of the Bill, we believe it is important to highlight that those involved in these social partnership structures are not necessarily on an equal footing.

It is essential to accept that whilst partnership arrangements are aimed at a more collaborative and cooperative approach to industrial relations, there will still be times when we do not and cannot agree. Trade unions must be able to reflect the worker voice in its' truest sense and this must not be hampered by the expectation of reaching consensus.

Social partnership is clearly the preferred option, but it does not detract from industrial strength. Where necessary, trade unions will still be able to formally dispute the action, or inaction, of an employer and this remains a fundamental right.

As we have worked through long-term austerity, and then experienced working through a pandemic, social partnership in Wales has rightly and understandably been primarily focussed on crisis management, and sometimes this has involved working through least-worse options. Overcoming adversity cannot always be the context – we hope to eventually be operating in different, more fertile circumstances and this will present opportunities to increase the pace of addressing inequality – it is essential that employers also sign up to this ethos.

### **Fair Work**

UNISON supports the Fair Work Commission's definition of fair work and believes specific reference should be made to this definition. It is also important that Fair Work is contextualised in the wider Fair Work Commission report. The individual elements of Fair Work cannot be isolated as it is only through a package of the measures that Fair Work can be achieved. In addition, UNISON would argue that fair work, in accordance with the fair work commission's definition, goes beyond a concept and is a fundamental right and it must be considered through this lens.

### **Socially Responsible Procurement**

UNISON's Public Procurement principles are based on the belief that all public service delivery should be devolved and public. The re-ownership of all publicly funded services is essential to the provision of quality sustainable public services.

Public procurement should adhere to a minimum of three key principles:

- The right to organise and deliver quality public services in the public interest, free from mandatory marketisation and outsourcing.
- The strategic use of public procurement to support jobs, training and apprenticeships and economic development at a national, regional, or local level.
- The use of social value procurement to promote and enforce corporate responsible governance in delivery and supply chains – including fair pay and collective agreements, TUPE, high quality employment, digital equality, environmental and human rights due diligence, and other International social and labour standards.

### **Why the Bill is required?**

The reasons set out regarding the need for the Bill places the pressures put on public services because of COVID at the front and centre. This is understandable – we are still amid the biggest public health crisis of our times, and both the demand and impact on public services has deepened.

However, UNISON believes it is important to recognise that this crisis has come off the back of over a decade of UK-government led austerity that has dramatically reduced the capacity of public services across the whole public sector, as well as to normalise the outsourcing of public services to managing budgets and pass on risk.

Even before we were aware of the existence of COVID19, services such as social care were operating on a knife edge with hundreds of providers operating across Wales leading to a highly fragmented sector which has damaged service delivery.

Taking social care as the example, there has been the quiet acceptance that the sector needs to be overhauled, but little will to truly grasp the nettle. Instead, care contracts continue to be put out to tender with the tender claiming to be able to deliver the organisation claiming to be able to deliver the service cheapest often being rewarded with the contract.

The practice of outsourcing, local government services in particular, has become a normalised way to help balance the books during this period of unprecedented financial constraint, and we have subsequently seen many leisure services outsourced.

Outsourcing has entrenched a culture whereby low pay for skilled work has become acceptable and where there is a lack of worker voice throughout the supply chain and beyond.

The need to launch a so-called Infection Control Fund to allow care workers to be able to take paid sick leave if they needed to self-isolate because of COVID infection, symptoms, or contact. It should never have been the case where workers, delivering essential frontline services in the middle of a pandemic, were expected to choose between social responsibility not to spread a potentially deadly virus and putting food on the table for their families.

Yet the portrayal of this fund was that it was gifted to workers, rather than being what should be a fundamental worker right. It also highlighted how poorly thought of these low paid but highly skilled workers truly are. Upon the announcement of the Infection Control Fund, there were concerns raised across the industry and amongst civil servants that this would lead to workers abusing the system and taking periods of unnecessary sickness absence – a grossly offensive insinuation but an indicator nonetheless of how these workers are perceived.

There is a stark comparison to make with the NHS, where partnership working and paid sickness absence are the cultural norm and would not even be in question.

Operating public services in such a way, whilst able to balance the books in the short-term, costs in the long term. The infection control fund made available was £1,146 million, not including any of the administrative costs associated with the fund. Many care providers were unable to meet the additional PPE requirements because budgets did not allow, so local authorities picked up the bill. The fragmented nature of the service has led to high staff turnover, and recruitment processes are costly. Not to mention the cost to the end user in terms of service delivery.

Whilst COVID continues to have an undeniable impact on public services and has brought many issues to the forefront, it is UNISON's view that it has served to exacerbate pre-existing issues, and we must consider this more complex context as this Bill is taken forward. It is only through this fuller prism that we can truly future-proof social partnership working and fully realise its benefits.

## **Question 2: What is your view on the social partnership duty set out in the draft Bill?**

UNISON welcomes the social partnership duty set out in the draft Bill. If the duties are properly enacted, then we can be confident that this will produce outcomes that are in line with the well-being goals outlined in the Well-being of Future Generations (Wales) Act.

UNISON is however disappointed that Welsh Government did not take the opportunity to expand the definition public bodies to include those identified in section 157A of the Government of Wales Act 2006 and services that are in receipt of public funding. It is felt that this is a missed opportunity to legislate in an area of competence and demonstrate a true commitment to working in partnership to deliver a green equality based COVID recovery.

The success of the social partnership duty will be determined by how well public bodies adhere to the duties and either the incentives to follow the duties, or the penalties if they are not compliant. It is therefore important that guidance is made on a statutory basis clear and that there is a clear enforcement framework in place to support the legislation.

In addition, this social partnership approach must be accompanied by additional facility time for trade union representatives in public bodies. The benefits of trade union facility time are well document and in-line with the aims of social partnership. Fair facility time

arrangements must be a basic expectation from public bodies and demonstrates a commitment to social partnership arrangements.

Furthermore, whilst we recognise the significance of a shared common purpose, as referred to in para.56, between the Bill and the Well-being of Future Generations (Wales) Act, it is important to note that 'fair work' does not feature under the duties or in the Act. Without the direct reference to 'fair work' in either the Bill or the Future Generations (Wales) Act it is difficult to see how it can be properly achieved. 'Fair work' must move beyond an aspirational concept and be rooted in our legislative frameworks.

**Question 3: What is your view on the social partnership principles listed and defined in the table in this section?**

As with anything labelled 'guidance,' it is open to interpretation and can lack the ability to enforce. Trade unions have shown continued readiness to engage in the process of social partnership, but this cannot always be said of public bodies.

However, the broad principles outlined in this section are useful but further detail and explanation must be provided.

In addition, it is important to note the following:

*Cooperation:* as previously discussed in this response, whilst cooperation and social partnership are the preferred options, it does not detract from industrial strength. Where necessary, trade unions will still be able to formally dispute the action, or inaction, of an employer and this remains a fundamental right.

*Trust:* the adequate provision of facility time is a key factor in establishing trust as it allows the union side the appropriate space to more effectively consider matters being consulted on and ensures there is a more level playing field. It also demonstrates the employer's genuine willingness to allow full participation in the social partnership process.

*Voice and Participation:* again, the adequate provision of facility time is an essential element of this principle. In addition, the importance of information sharing in a consultation process cannot be understated. The timely sharing of information is also a key determining factor in relation to trust. For the partnership relationship to be genuinely based on "integrity, authenticity, transparency, openness and selflessness" there must be timely and proactive sharing of information.

**Question 4: What is your view on the list of bodies that are subject to the social partnership duty in the draft Bill? Should the list of bodies be wider than those subject to the well-being duty in the Well-being of Future Generations (Wales) Act?**

UNISON would like to see the list of bodies subject to the social partnership duty extended as widely as possible, for example expanding the definition public bodies to

include those identified in section 157A of the Government of Wales Act 2006 and to include those services in receipt of public funding.

However, under the current proposal, UNISON believes the Welsh Ambulance Services NHS Trust should fall within the scope of this Act.

In addition, UNISON believes that the state education system- governing bodies of maintained schools within Wales and a governing body of an institution within the higher education sector (within the meaning of section 91(5) of the Further and Higher Education Act 1992) whose activities are carried on, or principally carried on, in Wales should be included in the list of bodies subject to the Act.

The duty must also apply fully to regional partnership boards and corporate joint committees, where trade unions must have full and meaningful participation.

If the list of bodies is to remain as identified, there needs to be clarity on social partnership duties where public bodies are operating in partnership, for example City Region Boards. In these circumstances UNISON would expect the duty of social partnership to be enshrined in operating principles and terms of reference.

**Question 5: What is your view on the proposed duties on Welsh Ministers concerning fair work objectives?**

UNISON welcomes the proposal to place a duty on Welsh Ministers to set fair work objectives and that these should be set in collaboration with the Social Partnership Council, as well as a duty to take steps to meet those objectives, and to then report on achievement and progress.

This approach gives a greater clarity of the importance of fair work at Welsh Government level and will help ensure it becomes embedded in government business and outcomes more broadly, as we have seen since the Wellbeing of Future Generations (Wales) Act was brought into legislation.

The agreement of these objectives with the Social Partnership Council underpins the importance of partnership working at a senior level and demonstrates the commitment to fair work.

The improved reporting arrangements will also aid transparency and the understanding of fair work across Wales, and we welcome the ability to have stronger scrutiny of the outcomes of social partnership working through the scrutiny of the annual Senedd report.

However, as well as developing and agreeing objectives through social partnership arrangements, it is also important to ensure the objectives are anchored in the definition of fair work and recommendations in the report of the Fair Work Commission. The definition of fair work within the report has been accepted by Welsh Government and has broad trade union consensus, and so helps provide clarity around the notion of a fair work nation so as a result UNISON considers that the definition of Fair Work as outlined in the Commission's report should be endorsed.

**Question 6: What is your view on key challenges and priority areas for pursuing and promoting fair work?**

Welsh Government is seeking to legislate and promote fair work in a context whereby employment law and industrial relations law are not devolved. With such limitations, this will undoubtedly lead to frustration.

However, fair work is a crucial factor in being able to meet many of the well-being goals outlined in the Well-being of Future Generations (Wales) Act. It will be impossible to achieve a prosperous Wales, a resilient Wales, a healthier Wales, or a more equal Wales without embedding fair work in Wales.

The principle of fair work cannot be viewed simply in the present but must be considered more broadly and must be future proofed. Whilst there may be current legislative limitations, we have definite cultural opportunities that must be fully exploited.

Collective bargaining must be utilised as a vehicle to progress a fair work agenda. Taking social care as an example, the outsourcing of social care has led to an overly complex and fragmented care market, where employers compete with one another to win contracts, often by driving down labour costs. This approach to the delivery of care has driven down wages, terms and conditions, and standards within the sector.

Government legislation, specifically employment law, seeks to protect the individual against the worst of these effects – for example, the national minimal wage (now national living wage) was implemented to ensure there is at least a minimum standard, and statutory sick pay to ensure workers have at least some income during a period of sickness, albeit after three consecutive days of sickness absence.

Collective bargaining within a sector such as social care has far more potential to be transformative. It is a better way to set minimum labour standards – they are more inclusive and democratic, they can be much more industry-specific than statutory rights, and can address short-term issues around pay and flexibility, as well as long-term issues such as productivity, training, recruitment, and pensions.<sup>2</sup>

Welsh Government and other public bodies can promote and help develop the understanding of trade unionism, employment rights, and the benefits of social partnership throughout their work – including through the Welsh curriculum and adult education programmes and skills agenda, as well as other opportunities that arise through the next programme of government.

**Question 7: Do you have a view on how to frame a legal definition of fair work which meets the limits of our legislative competence and progresses our ambition for a ‘Fair Work Wales’?**

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<sup>2</sup> Hayes. L; 8 Good Reasons Why Adult Social Care Needs Sectoral Collective Bargaining; Sept 2017.

UNISON believes the definition of 'fair work' should remain bold and ambitious, as outlined in the report of the Fair Work Commission, and should outline the direction of travel and the longer-term aims rather than be limited by different interpretations of legal competence.

The definition of 'fair work' cannot be changed dependent on a legal framework – the definition of 'fair work' is fixed upon what will deliver 'fair work' outcomes, even if these are currently goals and cannot be immediately achieved.

**Question 8: In addition to what is set out in the draft Bill, what other levers could be used by Welsh Ministers to promote and achieve fair work?**

In addition to the points already outlined under question 6, UNISON maintains that public services should be directly provided by the public sector and that this approach provides better service outcomes as well as better employment conditions for the workforce.

To illustrate this point, the test and trace system in Wales has been run in collaboration with Public Health Wales, Welsh Government and local authorities, whilst the test and trace system in England was largely outsourced to companies such as Serco. UNISON has been clear across the UK that profit should not have been a factor in such an important service, particularly when the service in England has operated in disarray<sup>3</sup>. The system in Wales has been more responsive, efficient and less costly. It has also remained genuinely accountable to the public, unlike outsourced services in England, which have been costly and numerous English local authorities have run the services because of system failures.<sup>4</sup>

Welsh Government has committed to ensuring the NHS in Wales is publicly delivered, and has brought services, such as cleaning and laundering services, back in-house to meet this commitment.

More could be done to bring services outside of the NHS back under public control. When contracts come up for renewal, there should be a duty to consider whether the services under contract could be better delivered in-house by a directly employed workforce.

Furthermore, the curriculum should provide full citizenship education which includes employment rights, fair work, and trade unionism including the principles of social partnership. These themes should thread throughout education and citizenship within the education sector.

Welsh Government should also seek to implement the recommendations of the report of the Fair Work Commission in full. (Provide more detail).

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<sup>3</sup> <https://www.unison.org.uk/news/press-release/2020/10/no-one-profiting-test-trace-failure-says-unison/>

<sup>4</sup> <https://www.unison.org.uk/news/article/2020/08/councils-forced-pick-pieces-failing-test-trace/>



**Question 9: What are your overall views concerning the provisions and thresholds set out regarding the socially responsible procurement duties, including the categories listed within the social public works clauses?**

UNISON's Public Procurement principles are based on the belief that all public service delivery should be devolved and public. The re-ownership of all publicly funded services are essential to the provision of quality sustainable public services.

Public procurement should adhere to a minimum of three key principles:

- The right to organise and deliver quality public services in the public interest, free from mandatory marketisation and outsourcing.
- The strategic use of public procurement to support jobs, training and apprenticeships and economic development at a national, regional or local level.
- The use of social value procurement to promote and enforce corporate responsible governance in delivery and supply chains – including fair pay and collective agreements, TUPE, high quality employment, digital equality, environmental and human rights due diligence, and other International social and labour standards.

UNISON welcomes the proposed socially responsible procurement duties and recognise the potential of procurement to be a key driver of change for the fair work agenda and to achieve the intentions of the Bill as outlined in the overview in section 7 of the consultation document.

However, we have some concerns over how this Bill will interact with other UK-wide legislation which may seek to further other priorities. UNISON has particular concerns over how the *Transforming Public Procurement* agenda is progressed at a UK level with the UK Government's goal being to: "speed up and simplify our procurement processes, place value for money at their heart, and unleash opportunities for small businesses, charities and social enterprises to innovate in public service delivery."<sup>5</sup> In addition, consideration must be paid to the *UK Internal Market Act* and how the Act may impact on the socially responsible public procurement elements of the Social Partnership and Public Procurement (Wales) Bill.

Therefore, whilst UNISON welcomes the intentions outlined in para.75 it is important to ensure these intentions are achievable in the context of UK legislation. However, linking socially responsible procurement duties to the well-being goals will allow the legislation to be anchored within Wales. Socially responsible public procurement can have a significant impact on a contracting authority's ability to achieve well-being and fair work goals.

Consideration should be paid to whether the Public Contracts Regulations 2015 threshold of £122,976, outlined in para.82, should be lowered. More detail is required over how this threshold figure is calculated – whether this is an aggregate contract

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<sup>5</sup> <https://www.gov.uk/government/consultations/green-paper-transforming-public-procurement>

value, or disaggregated on annual basis, or by the number of authorities participating in a joint contract, for example.

Numerous social care contracts across local authorities will not meet this threshold leaving the workers employed through such contracts exposed to poorer terms and conditions of employment, and the contract under less scrutiny. There is a risk of contract bids being kept under this threshold deliberately to avoid the duties associated with socially responsible public procurement. Lifetime cost of the contract must be accurately factored in, including maintenance costs, durability, and waste, for example.

Low value contracts are a critical means to gain access to local markets. They can provide an opportunity to build trust between a provider and contractor, as well as to develop a joint culture - for the fair work and well-being goals of socially responsible public procurement to be fully realised, they must apply at all levels, irrespective of the monetary value of an individual contract.

UNISON can see benefits of the streamlining of reporting requirements to operate in-line with the reporting requirements of the Well-being of Future Generations (Wales) Act – the two are intrinsically linked. It is important that reporting, if it is to be on an annual basis, is of value and supports the progress of social responsibility through procurement. It should not become a tick box exercise and consideration needs to be paid to how such a report will be of benefit. It is essential that social partnership model applies in full across each stage and so we would expect the Social Partnership Council to be involved at a Wales-level in the development of this report, as well as at a local level – this must include the engagement of and dialogue with the trade unions.

#### Contract Management Duties

UNISON welcomes the inclusion of additional contract management duties to bolster the overall impact of the Bill, but these duties are likely to prove difficult to maintain and oversee, particularly in the shorter term. The implementation of the contract management duties must adhere to social partnership working.

UNISON welcomes the intention of the Bill to place the Workforce Code of Practice on statutory footing.

#### **Question 10: What is your view of other potential measures outside of those outlined that could be taken in pursuit of ensuring socially responsible public procurement?**

UNISON believes that a tender must not be awarded on cost or price basis only. By prohibiting the use of price only or cost only as the sole are criterion contractors will be obliged to also consider other 'quality' criteria – labour, social, economic, environmental, equality commitments and outcomes.

In addition to the duties outlined, UNISON believes that contracting authorities should have a mandatory duty to regard the principle for '**In-house and in-sourced public services**' which sets out clearly the right for all public authorities to organise and deliver quality public services in the public interest, free from mandatory marketisation, privatisation and outsourcing.

When a contract is coming up for renewal or a new service is being considered for outsourcing there is usually a service review and/or an **options appraisal process** and as part of this it could be mandated that insourcing should be considered as the first option before looking at outsourcing.

The case for the in-sourcing of services is strong, particularly under the ongoing financial constraints. Insourcing is providing the means for local councils to look at services and how they contribute to much wider strategic aims; not just to save money on the often more expensive outsourced contracts but to be able to direct resources where they are needed, rather than the often rigid delivery apparatus used in an outsourced environment.

Moreover, insourcing has been found to be a new form of entrepreneurial and dynamic service. Insourcing reinstates the ability for elected local councillors to determine what resources should go to where. Outsourcing is found to detach the cable from the local lever. Insourcing restores the cable and puts control back into the local democratic institution delivery, often contributing to new forms of income for local councils.

Austerity has highlighted the failure of outsourcing to deliver on its perceived advantages, of efficiency, whilst insourcing is being driven by quality improvements, greater efficiencies, and reduced resource allocation, which is redefining value for money within local councils.<sup>6</sup>

Options appraisal should not just be left to the last minute but can be done anytime from up to two years before a contract ends and if insourcing is found to be the best way to deliver then preparation steps can begin to be taken.

Insourcing should be considered by public policy makers as a viable delivery option when appraising the future of outsourced contracts.

- Public bodies like local councils should have a rolling calendar review in advance of contract end dates or break clauses. This will ensure that adequate plans and arrangements can be put in place to ensure insourcing is a workable option.
- Insourcing should embrace the principles of good governance, transparency and accountability over locally provided services.
- Insourcing should be viewed as a form of innovation in both service delivery and resource allocation.
- Capacity to insource can be secured through the support of specialists such as interim managers, secondments from other councils and the returning workforce through the operation of TUPE.
- Insourcing can be used to support local economies and the local environment through jobs, skills, supply chain management and local spend.
- Trade union and workforce involvement in insourcing discussions are both essential and helpful and should be encouraged<sup>7</sup>.

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<sup>6</sup> [Q4b APSE - the case for insourcing - May 2019.pdf \(london.gov.uk\)](#)

<sup>7</sup> <https://gov.wales/sites/default/files/publications/2019-05/fair-work-wales.pdf>

- Getting the right people to drive insourcing is essential and a resilient project team will be critical to its success.<sup>8</sup>

If delivering fair work in Wales is to be central to the Draft Social Partnership and Public Procurement (Wales) Act then it must feature as a duty throughout the procurement process. Contracting authorities must be empowered to be able to award contracts with a duty to the principle of the **'Fair Treatment of Workers'**. These principles must include, but is not limited to:

- Recognition of trade unions and collective bargaining agreements in the UK and globally, and ensure workers are aware of their legal rights in this regard.
- Obligations to UK domestic and International labour and social laws, including digital, equality, environmental and human rights due diligence and other International social and labour standards.
- Fair rates of pay (at least the foundation living wage rate which currently stands at £9.50 outside of London<sup>9</sup>), terms and conditions of employment
- Enhanced terms and conditions above the statutory minimum where possible – including sick pay, maternity pay, paternity pay, holiday pay, good occupational pension.
- Transparent pay calculation and transparency in pay systems and distribution – fair and equal pay.
- Provision of understandable statement of contractual status, terms and conditions, and employment rights.
- Adequate notice of work schedules, variation in hours or working time.
- Remove 'zero-hour' abuses and gig economy platform insecure contracts.
- Guaranteed minimum hours with option for employee to accept or not.
- Adoption of best practice policy and procedures.
- Access to cost-free training for current job, for progression and for re-skilling.
- Safe, healthy and inclusive working environment
- Access to appropriate policies including grievance, dignity at work, whistle-blowing.
- Ensure that supply chains and subcontracted services and goods meet all of the above.

Further additional points are contained in the Report of the Fair Work Commission.

**Question 11: What is your view on the table of contracting authorities above concerning the socially responsible procurement and social public workforce (Two-tier Code) duties?**

UNISON believes the Two-tier Code should have as wide a reach as possible and should therefore apply to all those listed on the table of contracting authorities. Furthermore, the Two-tier Code duties should also apply across the further education and higher education sectors, as well as to housing associations. Further, if there is no acceptable reason for excluding these public bodies, and it is not a case of

<sup>8</sup> [Q4b APSE - the case for insourcing - May 2019.pdf \(london.gov.uk\)](#)

<sup>9</sup> <https://www.livingwage.org.uk/what-real-living-wage>

precedence, UNISON expects that the two-tier code should be extended to cover the full list of public bodies covered by the Code currently, including community councils, the governing bodies of maintained schools and the Local Democracy Boundary Commission for Wales.

While all kinds of workers in all kinds of jobs can find themselves part of a two-tier workforce, women and low-paid workers are two groups that are most frequently affected. In higher education, for example, there is the regular threat of outsourcing services such as cleaning services, on lesser terms and conditions of employment – most workers operating these services are low-paid women. Once outsourced, these workers often experience diminished terms and conditions over time and their access to trade unions becomes increasingly limited.

Higher education institutions are also able to establish arms-length organisations and employ their workforce through such entities – this is a vehicle to reduce costs through diminishing terms and conditions of employment. Cost savings are not made through hourly pay rate alone, but also through the other terms and conditions of employment such as sick pay and holiday pay.

We have very recently seen the consequences of this played out in the social care sector where an infection control fund had to be established to allow workers in the sector to take paid sick leave if they tested positive for COVID19 or had been contact traced. Prior to this, workers in the sector had been unfairly expected to balance social responsibility with their financial responsibilities.

We expect all contracting bodies, irrespective of size, to be subject to the same duties and responsibilities. Rather than small organisations being ‘unduly burdened’ by the proposals as claimed in para.78, small organisations should be supported and incentivised to deliver on the fair work agenda.

**Question 12: Should the current list of contracting authorities included within the Two-tier Workforce Code be retained or should this be brought in line with the rest of the procurement duties? Should any additional changes be made to the way in which the code operates?**

The Two-tier Workforce Code should be updated to bring it into line with the rest of the procurement duties and should be extended as outlined above.

The Code stipulates that: “complaints from transferred staff and new joiners in relation to the Code will be initially put to the service provider in the first instance” - these should be recorded and reported to through the social partnership mechanisms to ensure any issues can be identified.

The Code needs to be adjusted to bring it up to date with current ways of working and current mechanisms.

**Question 13: How can greater due diligence be achieved in construction supply chain management whilst keeping costs to a minimum, especially for smaller contractors in supply chains?**

**Question 14: What are your views on a potential future expansion of the contract management duty regarding the application, maintenance and monitoring through the supply chain of socially-responsible clauses to other sectors beyond construction (for example, social care)?**

UNISON supports the expansion of the contract management duty further across the public sector. UNISON believes in public sector solutions to public sector reform, and that publicly funded services should be publicly delivered. In the wake of the pandemic, it is now undeniable that public services are more flexible, more resilient, and more effective. UNISON's preferred option is for public services to be run directly by the public sector, and we believe there should be a duty on contracting authorities to consider this option.

Where this is not possible, UNISON believes socially responsible procurement duties should run throughout the supply chain to achieve the best quality and best value service possible.

UNISON is of the view that there would be immense value in introducing socially-responsible clauses through the supply chain in, for example, social care.

In 2012 UNISON's report<sup>10</sup> Time to Care exposed the prevalent poor practices in private care home delivery:

- Care workers were unable to provide quality service because they were rushed, with only being allowed to give 15 minutes per visit in their schedules.
- The precarious practice of zero-hour contracts was becoming the standard norm in the private employment practices of outsourced care.
- A substantial amount of care workers were not even being paid the minimum wage due to poor employment practices where care workers were not being paid for travel time.
- Low morale, lack of training and skilling, poor pay, and unsympathetic managed support of care workers jobs was fuelling a high turnover of staff.

In 2012 UNISON in response to its report launched a care charter and has since worker to engage local authorities to sign up to UNISON's 'Ethical Care Charter'.<sup>11</sup>

The Ethical Care Charter highlights the crucial link between the quality of care and the ways that care workers are treated. The charter calls on councils and other providers to pay the real Living Wage and sick pay and to provide proper training in work time. In doing so, we anticipate that high staff turnover would be reduced, workers would feel more valued, enjoy greater job satisfaction, and consequently deliver better standards of care.

UNISON's concerns about the state of social care are not new and unfortunately, many of these concerns have been borne out over the course of the pandemic. UNISON has long campaigned to return social care services to be publicly delivered

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<sup>10</sup> <https://www.unison.org.uk/content/uploads/2013/11/On-line-Catalogue220152.pdf>

<sup>11</sup> <https://www.unison.org.uk/content/uploads/2013/11/On-line-Catalogue220142.pdf>

and, where this is not possible, socially-responsible commissioning processes must be employed as a tool to address the systemic problems across the sector.

Opportunities to expand the use of socially-responsible clauses across other sectors must undoubtedly be considered if we are to fully embrace a fair work agenda across Wales.

**Question 15: What is your view on the provisions set out in the draft Bill concerning:**

- a. **Membership of the Social Partnership Council;**
- b. **The proposed nomination process?**

UNISON is supportive of the proposed membership of the Social Partnership Council and the nomination process as outlined in the consultation documentation. UNISON also agrees that additional stakeholders should be invited where this has been agreed by the members of the Social Partnership Council and that they attend in the capacity of guests and not additional voting members.

Given the links between the Social Partnership and Public Procurement (Wales) Bill and the Well-Being of Future Generations (Wales) Act 2015, UNISON believes it would be pertinent to recognise the Future Generations Commissioner as a key stakeholder across the social partnership agenda. We recognise this is a matter for the Social Partnership Council to consider.

In addition, given the scope of the work involved in the social partnership and public procurement agenda, and the wide reach of the concept of fair work, UNISON believes it would be practical to appoint a Minister with responsibility for fair work to provide coordination across government departments. This would also allow a consistency in chairing the Council if the First Minister is unable to chair.

**Question 16: What is your view on the proposals concerning the establishment and operations of the Social Partnership Council and its subgroups?**

UNISON welcomes the proposals to establish a Social Partnership Council - a tripartite statutory advisory body, a national cross-sector forum chaired by the First Minister. UNISON broadly welcomes the vision as outlined in Section 8 of the consultation document.

With reference to the objectives outlined in para.100, it is essential to accept that whilst partnership arrangements may seek to reach consensus on issues of mutual interest, this will not always be possible. As noted earlier in this response, there will still be times when we do not and cannot agree. Trade unions must be able to reflect the worker voice in its' truest sense and this must not be hampered by the expectation of always reaching consensus.

Social partnership is clearly the preferred option, but it does not detract from industrial strength. Where necessary, trade unions will still be able to formally dispute the action, or inaction, of an employer and this remains a fundamental right.

Para.106 refers to intended terms of reference, acknowledging that this is not to be laid out in the Bill. UNISON is of the view that the terms of reference should be agreed in partnership at through the Social Partnership Council and must consider expectations and how work is progressed between meetings. The Bill outlines there will be at least three meetings a year, but the meetings on their own will not achieve the desired outcomes and further thought must be given to how the machinery of social partnership operates to achieve the fair work goals across Wales.

Representation on the SPC should not only have regard to the diversity of the Welsh workforce, but also to those underrepresented groups within Welsh Society.

With reference to the Welsh Government membership, as outlined in para.112, given the scope of the work involved in the social partnership and public procurement agenda, and the wide reach of the concept of fair work, UNISON believes it would be practical to appoint a Minister with overall responsibility for fair work to provide coordination across government departments. This would also allow a consistency in chairing the Council if the First Minister is unable to chair. This is also consistent with the practice undertaken for the Well-Being of Future Generations (Wales) Act 2015.

All subgroups must reflect the principles of social partnership as determined by the Social Partnership Council. UNISON welcomes the proposal to establish a procurement sub-group and this must include procurement experts from within trade unions. UNISON's view is consistent with that of the of the Wales TUC, that is important for sub-group membership to be based on tripartite social partnership.

The Social Partnership Council and associated sub-groups cannot override any collective bargaining arrangements. Where collective bargaining or other sector specific social partnership arrangements are already in place, they must not be undermined and should not become sub-groups of the Social Partnership Council unless there is a specific request from the members of the bargaining unit. At this point consideration can be paid to the request.

Sub-groups of the Social Partnership Council could be an important mechanism for progressing specific identified work, but it would not be an appropriate arrangement for a new sectoral social partnership body, for example the fair work as recommended by the Fair Work Commission. The Social Partnership Council must not have the power to overturn arrangements and advice from the sectoral partnership bodies.

Commented [TB1]: needs some rewording

Any terms of reference for the Social Partnership Council should be developed in conjunction with social partners along with the practical arrangements for supporting the Council.

**Question 17: What is your view on the outlined social partnership system in Wales, including the system leadership roles of the Social Partnership Council and the links between different levels of social partnership?**

The model of Social Partnership in Wales has developed organically over time and is unique to the way Wales operates. Of course, the principles of social partnership are not a Welsh concept, but it is important that the way social partnership operates in response to what Wales needs.



Developing a culture of social partnership as the norm is more important than ensuring that the model of social partnership is consistent. Social partnership needs to be flexible enough to be able to adapt and respond to the needs of different sectors - a one-size fits all approach is not necessarily the right approach. We would expect adherence to the duties outlined in the Bill and for that to be the focus, rather than ensuring all social partnership looks the same.

Rather than the Social Partnership Council operating as overarching 'system leaders,' it would be preferable for the culture of social partnership to be built within the grassroots. This is not to say that the Social Partnership Council does not have a strong leadership role, because it clearly does, but too top-down an approach may hinder local, regional, or sectoral partnerships.

The Social Partnership Council can provide foundations to develop system leadership but cannot provide system leadership as indicated in para.130 of the consultation.

System leadership is about building relationships and connectivity across organisations and sectors to drive the improvement, innovation, and transformation of services.

Effective system leadership is:

- shared, participatory, diffused, and co-productive.
- relationship building, personal and person-centred.
- place-based and community-oriented.
- adaptive and solution-focused.
- capable of surfacing conflicts and consensus seeking.
- primarily accountable to people and communities.<sup>12</sup>

It would be counterproductive to place the entire responsibility of 'system leadership' on the Social Partnership Council. The building of relationships and connectivity across organisations cannot be 'provided' it must be developed.

Further, as previously indicated in this response, collective bargaining or other sector specific social partnership arrangements should not be undermined by these social partnership arrangements.

It is important for social partnership to be empowered at all levels. There is rightly an ability to escalate issues where necessary but where consensus can be achieved, particularly from a public sector perspective, it should be accountable to communities ahead of the Social Partnership Council. This is represented in the diagram of the social partnership system.

We would seek specific reference to public services boards, corporate joint committees, and economic development boards within the social partnership system.

**Question 18: Concerning the social partnership duty, should an improvement and compliance mechanism be developed to ensure that all bodies meet their**

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<sup>12</sup> <https://www.scie.org.uk/integrated-care/research-practice/enablers/system-leadership>

**duties and make a collective contribution to the delivery of the proposed outcomes? If yes, do you have any suggestions as to how this might work in practice?**

We undoubtedly need stronger improvement and compliance mechanisms to be developed to deliver on the proposed outcomes. Placing social partnership and socially responsible public procurement on a statutory footing will only work where it is complied with and this needs to be a mechanism in place to ensure compliance takes place.

We must guard against the Social Partnership Council becoming a talking shop for aspirational ideas or a tick box exercise without being able to deliver on the proposed outcomes. We must also work to be able to achieve genuine fair work that goes beyond accepting employers providing slightly more than the statutory minimum as a success. As well as legislation there must be support and incentive for employers to develop the fair work agenda.

However, it is important for the Social Partnership Council to be able to have a forward-looking focus and work to build a more equal Wales rather than be fixed on non-compliance and enforcement and so it may be necessary to establish a separate structure tasked with enforcement and compliance.

Enforcement, if it is to have teeth, should have a regulator to determine when breaches have occurred - a tripartite independent arrangement would be sensible, but we would need to guard against an independent body becoming a politicised one.

Further consideration needs to be paid on what compliance procedures will look like. It is UNISON's view, as outlined in our response to the *More Equal Wales* consultation, that any investigation and compliance process must be open and transparent. Compliance processes need to operate throughout the many levels of social partnership. It would seem logical to have named officers for partnership compliance in organisations. Compliance officers should be of a suitably senior position within the organisation, CEO or equivalent, for example.

Social partnership arrangements must be meaningful and understandable at local level and should form part of the senior management and leadership roles and responsibilities at local employer level. This responsibility must be accompanied with relevant and necessary training, development, and communication. It could also be discussed and measured within performance review structures.

A model performance review could be developed and coordinated from the Social Partnership Council with the aim of capturing consistent data on compliance, along with other relevant statistics. This allows progress to be measured fairly and allows the development of a mechanism to address any issues with senior management where social partnership agreements are not being adhered to.

Compliance criteria must be a condition when accessing Welsh Government grants.

Punitive action is the least preferable option, and we believe more can be achieved through incentivising positive action. UNISON has concerns about the use of financial penalties within the public sector. To be effective, any financial penalty would have to

outweigh the cost of proper compliance, but then such a penalty could lead to budget cuts in services and could have an impact on service delivery.

**Question 19: Should there be an adjudication mechanism at national Social Partnership Council level for the escalation of any failure to agree at sector level? If yes, do you have any suggestions as to how this might work in practice?**

As per the Wales TUC response, we believe an office which is partly responsible of supporting the implementation of the bill, improvement and enforcing it could have a mediation role similar to that which ACAS has had in relation to collective bargaining disputes. We are not sure if this should go as far as an adjudication function, or how a mandate could be established for it to apply to specific sectoral or workplace arrangements.

**Question 20: What are your views on the enforcement and compliance measures proposed in the draft Bill concerning socially responsible procurement and contract management? What other measures could be applied? Do you have any suggestions as to how any additional enforcement and compliance measures might work in practice?**

Public procurement has enormous potential to promote the fair work agenda in Wales and enforcement and compliance will play an important part. Transparency and scrutiny can help improve compliance.

The Scottish model has seen the real Living Wage applied throughout public procurement in Scotland, and this is obviously to its' credit. Fair work, however, goes beyond pay, and it is important that the lever of public procurement is fully utilised to achieve this.

Transparency and scrutiny are key so long as we can be clear on what we expect from socially responsible procurement and how this translates into contracts.

The fundamental right to make Freedom of Information requests must apply equally and legally to both public and private contractors in delivering public services. The use of private commercial sensitivity clauses to prevent public and FOI disclosure of contract information such as labour costs must be removed to allow for full transparency and ability to scrutinise.

UNISON supports a centrally managed debarment list which would provide details of the contractor, reasons for debarment, length of time for debarment, past record etc.

Contractors should only be taken off the debarment list once they have – within an agreed time limit – remedied and implemented satisfactorily all the agreed measures.