

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

---

**A consultation response from  
The Institute of Employment Rights**

**K D Ewing, Lord Hendy QC,  
Carolyn Jones, and Geoff Shears**



The Institute of Employment Rights  
4<sup>TH</sup> Floor  
Jack Jones House  
1 Islington  
Liverpool  
L3 8EG  
0151 207 5265  
[www.ier.org.uk](http://www.ier.org.uk)

The Institute of Employment Rights is an independent charity established in 1989. We exist to inform the debate around trade union rights and labour law by providing information, critical analysis, and policy ideas through our network of academics, researchers and lawyers.

This IER response, kindly drafted by the experts named, reflects the views of the authors not the collective views of the Institute. The responsibility of the Institute is limited to approving its publications, briefings and responses as worthy of consideration.

**The Authors:**

**Keith Ewing** is Professor of Public Law at Kings College London and President of the IER

**John Hendy QC** is a barrister in Old Square Chambers and speaks on employment law issues in the House of Lords. He is Chair of IER

**Carolyn Jones** is Director of IER

**Geoff Shears** was a trade union lawyer with Thompsons where he was CEO and then Executive Chair. He is Treasurer of the IER.

**Carolyn Jones**

Director, Institute of Employment Rights,  
cad@ier.org.uk  
07941 076245

## **Introduction**

1 The Institute of Employment Rights (IER) welcomes this opportunity to take part in the consultations about the Welsh government's Draft Social Partnership and Public Procurement (Wales) Bill. The IER believes it to be an innovative and timely use of devolved powers, which has the potential to improve working conditions and enrich democratic foundations in Wales.

2 In making this submission, the IER is conscious of the Report of the Fair Work Commission, which reported in March 2019, and which appears to provide the policy framework for the Draft Bill. The IER believes the latter to be an admirable report which skillfully and persuasively explored practical solutions in a context of the devolution of limited statutory powers.

3 By way of introduction, the IER would also draw attention to the post Brexit settlement, the Trade and Co-operation Agreement negotiated between the EU and the United Kingdom, which provides that 'Each Party shall protect and promote social dialogue on labour matters among workers and employers, and their respective organisations, and with relevant government authorities' (Title XI, art 8.3.7).

## **The Draft Bill in Outline**

4 The Draft Social Partnership and Public Procurement (Wales) Bill includes four major proposals, which draw freely from the proposals of the Fair Work Commission:

- First, it will impose on public bodies a social partnership duty to consult recognised trade unions in relation to sustainable development as defined in Well-being of Future Generations (Wales) Act 2015, and will require the public bodies in question to report annually about their compliance with this duty (Part 1).
- Second, it will impose on Welsh ministers when carrying out sustainable development a duty to take steps to promote fair work goals, and to do so after consulting the Social Partnership Council for Wales. So far, it has not defined those fair work goals (Part 2).
- Third, it makes provision for socially responsible public procurement designed to promote fair work goals; providing for social public works clauses in major public works contracts, and social public workforce clauses for public services outsourcing contracts (Part 3).
- Fourth, it establishes a tripartite Social Partnership Council, an advisory and consultative body on which trade unions have equal representation with employers, and on which government representatives, to include the First Minister, will sit. The Council's role is limited to advising and consulting on social partnership duty, the publication of guidance to public bodies about consulting recognised trade unions, and the role of ministers in promoting fair work (Part 4).

In the following paragraphs we make a number of suggestions to strengthen what is an admirable initiative, with other self-explanatory matters dealt with in the summary of recommendations at the end of this document.

## Fair Work Goals

5 At the time of writing, there is no definition of the Fair Work Goals in the body of the Draft Bill. This is a matter that appears to be the subject of a very open consultation, with clause 4 of the Draft Bill being deliberately left blank. The IER makes two introductory observations. The first is that the fair work principle was defined by the Fair Work Commission:

Fair work is where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected.<sup>1</sup>

6 That definition was reinforced by a number of ‘characteristics within the definition’. These were said to be:

Fair reward; employee voice and collective representation; security and flexibility; opportunity for access, growth and progression; safe, healthy and inclusive working environment, legal rights respected and given substantive effect.<sup>2</sup>

It was stated expressly that ‘the promotion of equality and inclusion is integral to all six characteristics’.<sup>3</sup> However, Clause 5 of the Draft Bill, as currently written, proposes only to set out the characteristics of fair work, rather than to define fair work to which these characteristics relate.

7 The second preliminary point relates to one of the principal means by which Fair Work is to be advanced, which is through the Welsh ministers in carrying out their sustainable development duties in the Well-being of Future Generations (Wales) Act 2015. Under the latter, public bodies must carry out sustainable development and must do so by setting out, publishing and taking all reasonable steps to realise well-being objectives. The latter are to be designed to maximise the implementation of well-being goals.

8 The seven well-being goals are set out in the Well-being of Future Generations (Wales) Act 2015, section 4, as meaning

- a prosperous Wales;
- a resilient Wales;
- a healthier Wales;
- a more equal Wales;
- a Wales of more cohesive communities;
- a Wales of vibrant culture and thriving Welsh language;
- a globally responsible Wales.

The fair work principle would appear to relate to all of these well-being goals, for reasons which we would be pleased to develop and explain if invited to do so. But, for example, the Covid-19 pandemic has revealed clearly the links between poor employment standards and poor public health.

---

<sup>1</sup> Fair Work Wales, *Report of the Fair Work Commission* (2019), p 18.

<sup>2</sup> Ibid.

<sup>3</sup> Ibid, p 2.

9 A significant feature of the linking of the fair work principle to the well-being goals in the manner proposed in the Draft Bill is that the first of the well-being goals is described in the Well-being of Future Generations (Wales) Act 2015, section 4 to mean:

An innovative, productive and low carbon society which recognises the limits of the global environment and therefore uses resources efficiently and proportionately (including acting on climate change); and which develops a skilled and well-educated population in an economy which generates wealth and provides employment opportunities, allowing people to take advantage of the wealth generated through securing **decent work** (Emphasis added).

The last two words of that description are particularly striking. As pointed out by the Fair Work Commission, the term ‘decent work’ is not defined in the 2015 Act; but it is nevertheless a term used by the International Labour Organisation (ILO), whose fundamental principle – labour is not a commodity – the Fair Work Commission also acknowledged.<sup>4</sup>

10 The ILO’s Decent Work Agenda was initiated in 1999, and has since received widespread global approval. It was ‘institutionalised’ in the ILO *Declaration on Social Justice for a Fair Globalisation* in 2008, which set out four ‘equally important strategic objectives’ in relation to decent work. These were summarized as follows:

- (i) promoting employment by creating a sustainable institutional and economic environment
- (ii) developing and enhancing measures of social protection – social security and labour protection – which are sustainable and adapted to national circumstances,
- (iii) promoting social dialogue and tripartism
- (iv) respecting, promoting and realising the fundamental principles and rights at work, which are of particular significance, as both rights and enabling conditions that are necessary for the full realisation of all of the strategic objectives.<sup>5</sup>

11 These four strategic objectives are said to be ‘inseparable, interrelated and mutually supportive’, while ‘the failure to promote any one of them would harm progress towards the others’.<sup>6</sup> Each is more fully explained in the text of the Declaration of 2008, to which reference should be made.<sup>7</sup> The global commitment to decent work is re-affirmed in the ILO Centenary Declaration for the Future of Work (2019), where, amongst other things, the ILO commits itself to:

harnessing the fullest potential of technological progress and productivity growth, including through social dialogue, to achieve decent work and sustainable development, which ensure dignity, self-fulfillment and a just sharing of the benefits for all; ... developing effective policies aimed at generating full, productive and freely chosen employment and decent work opportunities for all, ... decent work is key to sustainable development, addressing income inequality and ending poverty, ... Safe and healthy working conditions are fundamental to decent work.<sup>8</sup>

---

<sup>4</sup> Fair Work Wales, *Report of the Fair Work Commission*, above, p 28.

<sup>5</sup> ILO *Declaration on Social Justice for a Fair Globalisation* (2008), Part IA(iv).

<sup>6</sup> Ibid, Preface.

<sup>7</sup> The text is available on the ILO website.

<sup>8</sup> ILO Centenary Declaration on the Future of Work (2019), Part II.

We point out, moreover, that the United Kingdom has re-affirmed its commitment to the ILO's Decent Work Agenda in the Trade and Cooperation Agreement (TCA) between the EU and the UK negotiated to govern post-Brexit relations. Thus, Title XI, Art 8.3.6 provides that:

6. Each Party shall continue to promote, through its laws and practices, the ILO Decent Work Agenda as set out in the 2008 ILO Declaration on Social Justice for a Fair Globalization (the "ILO Decent Work Agenda") and in accordance with relevant ILO Conventions, and other international commitments, in particular with regard to:

- (a) decent working conditions for all, with regard to, inter alia, wages and earnings, working hours, maternity leave and other conditions of work;
- (b) health and safety at work, including the prevention of occupational injury or illness and compensation in cases of such injury or illness; and
- (c) non-discrimination in respect of working conditions, including for migrant workers.

12 For completeness, it may be noted that Title XI, Art 8.3.7 of the TCA provides that 'each Party shall protect and promote social dialogue on labour matters among workers and employers, and their respective organisations, and with relevant government authorities'. It is against these commitments that the development of the fair work principle by the Fair Work Commission and in the Draft Bill should be assessed. There should be an alignment between

- (i) the principle of decent work as used in the Well-being of Future Generations (Wales) Act 2015;
- (ii) the principle of decent work as developed by the ILO in two key instruments (2008 and 2019) and now reinforced by the Trade and Cooperation Agreement between the EU and the UK; and
- (iii) the fair work goals and fair work duties in the Draft Bill.

### **Fair Work and Collective Bargaining**

13 A word search of the Fair Work Commission's Report generates 57 references to collective bargaining; a word search of the Draft Bill generates none. Not only is the Fair Work Commission replete with copious references to the importance of collective bargaining in promoting fair work, it also recommended expressly as follows:

- 25. We recommend Welsh Government take all measures possible within its sphere of competence to support and promote trade unions and collective bargaining.
- 26. We recommend that Welsh Government state a public policy commitment to promoting trade unions and collective bargaining.

These recommendations are based on the belief that 'recognition of a trade union for collective bargaining is both a route to, and a key indicator of, fair work', this and other factors being explored at length in Part 5 of the Fair Work Report. The omission of reference to collective bargaining in the Bill is surprising given the Senedd enacted the Agricultural Sector (Wales) Act 2014 effectively to substitute for the Agricultural Wages Council of England and Wales which the Westminster Parliament had abolished in 2013, thus ending collective bargaining in the agricultural sector.

14 It may be that the Welsh government is taking advantage of other opportunities to promote trade unions and collective bargaining outside the Bill. But if social partnership (a term not defined) is to be taken seriously, the IER considers that trade unions and collective bargaining should be actively promoted in the Draft Bill. Not only would this be consistent with core recommendations of the Fair Work Commission relating to the fair work principle, it would also accord with the ILO's Decent Work Agenda. This is clear from the ILO *Declaration on Social Justice for a Fair Globalisation*, where it is noted that 'the right to collective bargaining are particularly important to enable the attainment of the four strategic objectives'.<sup>9</sup>

15 According to the Department for Business, Energy and Industrial Strategy, collective bargaining density in Wales is generally higher than in England (but not Scotland or Northern Ireland).<sup>10</sup> Nevertheless, by the standards of a modern European democracy, at less than 35% the levels of coverage are lamentable. Why does it matter? Perhaps for two reasons. First, because the TCA commits the United Kingdom by Title XI, Art 8.3.2, as follows:

In accordance with the ILO Constitution and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted at Geneva on 18 June 1998 by the International Labour Conference at its 86th Session, each Party commits to respecting, promoting and effectively implementing the internationally recognised core labour standards, as defined in the fundamental ILO Conventions, which are: (a) freedom of association and *the effective recognition of the right to collective bargaining*; (b) the elimination of all forms of forced or compulsory labour; (c) the effective abolition of child labour; and (d) the elimination of discrimination in respect of employment and occupation. (Emphasis added).

16 Moreover, the TCA, Title XI, Art 8.3.5 reinforces the foregoing with a commitment to *implement* all the ILO Conventions that the United Kingdom has ratified (including ILO Convention 98), as well as 'the different provisions of the European Social Charter' that the United Kingdom has accepted. ILO Convention 98 provides that:

Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations, with a view to the regulation of terms and conditions of employment by means of collective agreements.<sup>11</sup>

With collective bargaining density levels at less than 35% (among the lowest in Europe by some distance), there can be no doubt about the need for government intervention to promote collective bargaining in Wales (as indeed there is a similar obligation on the part of the Westminster government to do the same on a United Kingdom-wide basis).

17 So far as the European Social Charter is concerned, it is to be emphasised that this is a Council of Europe document not an EU document. The United Kingdom remains a member of the Council of Europe post-Brexit, and bound by the European Social Charter, which is given an additional legal basis by the TCA, Title XI, Art 8.3.5, as outlined above. The United Kingdom has accepted articles 5 and 6 of the Social Charter. These deal with the right to organise and the right to bargain collectively respectively, article 6(3) imposing a duty to:

---

<sup>9</sup> ILO *Declaration on Social Justice for a Fair Globalisation*, above, Part IA(iv).

<sup>10</sup> Department for Business, Energy and Industrial Strategy, *Trade Union Statistics 2019* (27 May 2020), Figure 14 (available online).

<sup>11</sup> ILO Convention 98 (The Right to Organise and Collective Bargaining Convention, 1949), Art 4.

promote, where necessary and appropriate. Machinery for voluntary negotiations between employers or employers' organisations and workers' organisations, with a view to the terms and conditions of employment by means of collective agreements'.

18 But not only would a commitment to collective bargaining be consistent with the recommendations of the Fair Work Commission, the provisions of the ILO's Fair Work Agenda, and the international obligations of the United Kingdom both old and new,<sup>12</sup> such a commitment is also necessary to promote the objectives of the Draft Bill itself. There is good evidence now from multiple sources (including the OECD and others) that collective bargaining is one of the most effective ways of promoting social equality, with evidence of striking correlations between high levels of collective bargaining and lower levels of inequality.<sup>13</sup> Greater income equality makes economic sense: it increases consumption of goods and services, which creates employment, which increases tax revenues, which allows in turn for better public services.

19 It is important to note, however, that the commitment to the *principle* of collective bargaining needs to be met with an equally strong commitment to the *method* of collective bargaining. Otherwise, the benefits of collective bargaining - in contributing to greater equality, higher wages, better terms and conditions of employment, and industrial citizenship through participation in making and administering the rules governing the workplace - will not be fully realised, and indeed for the great bulk of workers may not be realised at all. Historical and comparative data show clearly that the most effective way of improving collective bargaining density is the level at which collective bargaining is conducted, that is to say on an industry or sector wide basis rather than enterprise by enterprise or workplace by workplace.

20 The IER believes that it is thus important that the Draft Bill should be amended to include at all strategic points a commitment to collective bargaining. Social partnership should be defined to include social dialogue, which in turn should be defined to include collective bargaining, which in turn should be defined to include principally sectoral collective bargaining. There is already UK legislation in place to facilitate enterprise based collective bargaining, but it imposes a number of barriers in the way of trade unions, such as to render it much less effective than it should be. In any event, there is no incompatibility between sector and enterprise based collective bargaining: the former should establish minimum standards for a sector as a whole; the latter should provide an opportunity to bargain beyond sectoral minimum standards, where efficiency, productivity and profitability permit.

---

<sup>12</sup> Note also that the right to bargain collectively is, the European court of Human Rights has held, an 'essential element' in the principle of freedom of association as protected by the European Convention on Human Rights, Art 11: *Demir and Baycara v Turkey* [2008] ECHR 1345.

<sup>13</sup> Apart from the Fair Work Agenda specifically, this of course is highly relevant in the context of the Equality Act 2010, s 1: 'An authority to which this section applies must, when making decisions of a strategic nature about how to exercise its functions, have due regard to the desirability of exercising them in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage'. See now Equality Act 2010 (Authorities subject to a duty regarding Socio-economic Inequalities) (Wales) Regulations 2021, WSI 2021 No 295. Apart from reinforcing the case for collective bargaining as an instrument of Fair Work policy development and implementation, s 1 directs the Welsh Ministers to the *method* of collective bargaining (as explained in para 19 of this text) if the full potential of collective bargaining as a key lever for reducing socio-economic inequalities is to be realised.



## Fair Work and Public Procurement

21 Apart from addressing the fair work principle, the IER believes that the Draft Bill could be improved in a number of other respects, relating generally to public procurement. It is to be noted here that the Welsh government is not alone in using public procurement as a way of improving working conditions. Thus the Draft EU Minimum Wage Directive published earlier in 2021 provides that:

Member States shall take appropriate measures to ensure that in the performance of public procurement or concession contracts economic operators **comply with the wages set out by collective agreements** for the relevant sector and geographical area and with the statutory minimum wages where they exist.

The draft Directive's reference to collective agreements as well as to statutory standards is to be noted.

22 The public procurement proposals in the Draft Bill are an impressive attempt to navigate the difficult waters of limited powers in an imaginative way. They appear designed to direct and encourage rather than coerce and penalise. To this end, the key provisions of the Draft Bill are as follows

- A contracting authority must seek to improve the economic, social, environmental and cultural well-being of its area by carrying out public procurement in a socially responsible way;
- A contracting authority carries out public procurement in a socially responsible way by taking action, in accordance with the sustainable development principle, aimed at contributing to the achievement of
  - (a) the well-being goals listed in section 4 of the Well-being of Future Generations (Wales) Act 2015, and
  - (b) the fair work goal as yet to be defined in the Draft Bill

23 Specific provision is made for **major construction contracts**, in relation to which the Welsh ministers must publish model clauses: **social public works clauses**. There are five categories proposed for such clauses, including category 3 which is defined as 'ensuring compliance with legal obligations in relation to employment rights (including the minimum and living wage), health and safety, and trade union representation. There is, however, no obligation to comply with collective agreements, or to take part in collective bargaining at enterprise or sectoral level. Nor is there any obligation to comply with the going rate of wages where this is higher than the statutory minimum or the minimum set out in collective agreements, whether sectoral or workplace. We believe that category three should be amended and defined as follows:

ensuring compliance with (a) legal obligations in relation to employment rights (including the minimum and living wage), health and safety, and trade union representation', (b) any collective agreements which are generally applicable in the trade, sector or locality in which the contract is being performed, whichever is the higher, and (c) the general level of terms and conditions of employment in the trade, sector or locality in which the contract is being performed, whichever is the higher.

24 An amendment of the kind proposed above would help to ensure that contracts are won not on the basis of wage costs and would help to take wages out of price competition, a competition which serves only to degrade wages. In any event, public procurement should be used not only to insist that employers comply with the bare minimum, but to impose an additional obligation on employers to do so. It is already unlawful to fail to pay the statutory minimum wage: public procurement and social public works clauses should aim higher than simply require employers to do what they are already legally required to do. Otherwise, they are simply decorative. Where there are collective agreements or otherwise a practice of paying wages higher than the minimum wage, it is the latter that should be required to be applied by contractors.

25 Specific provision is also made for **outsourcing service contracts**. First, the Welsh ministers must publish a code of practice (the **public services outsourcing and workforce code**) about employment and pensions matters related to outsourcing services contracts. The code must include **model social public workforce clauses**, which:

- (a) are designed to ensure that members of staff employed by contracting authorities in providing services, or undertaking functions, to be outsourced will, if they wish, become employed by the person providing those services, or undertaking those functions, when they are outsourced (“transferring staff”);
- (b) are designed to protect the terms and conditions and pensions arrangements of transferring staff;
- (c) are designed to ensure that the terms and conditions of other members of staff employed by the person providing the services, or undertaking the functions, who are involved in providing those services, or undertaking those functions, are no less favourable overall than those of transferring staff, and that the pensions arrangements of those other members of staff are reasonable;
- (d) make provision supplementary to the matters referred to in paragraphs (a) to (c).

Paragraphs (c) and (d) come close to saying/empowering the public authority to insist that a contractor comply with collective agreements and other more favourable terms and conditions than those otherwise observed by the contractor. We believe that this should be made explicit.

26 Apart from these innovative provisions for ‘social public works clauses’, ‘model social public workforce clauses’, and the ‘public services outsourcing and workforce code’, provision is also made for each contracting authority to (i) prepare a procurement strategy, (ii) prepare socially responsible procurement reports on an annual basis, (iii) publish a contracts register, and (iv) for the Welsh ministers to investigate how a contracting authority carries out public procurement. Notably, this last provision provides that ‘an investigation may relate to a specific public procurement carried out by a contracting authority or to its public procurement activities more generally’.

27 While the foregoing provides a sound basis for scrutiny by the Welsh ministers, we believe that the arrangements could be strengthened. First, the procurement strategy should make it clear that the contracting authority may use only an ‘approved contractor’. For this purpose, it will be necessary to establish a register of employers which commit to the Fair Work goals, as a precondition of being included on the register. Moreover, the provisions in the Draft Bill referring to value for money in the context of the procurement strategy should make it clear that value for money means value for money in a way which is consistent with the obligation to ensure that nothing is done to compromise the social responsibilities of the public authority and its contractors and sub-contractors.

28 Finally, consideration should be given to the possibility of a formal and independent process for monitoring compliance by contractors. Under the Draft Bill, it would presumably be possible for a complaint to be made to the Welsh ministers who may decide whether or not to conduct an investigation under clause 27(2) of the Draft Bill. An alternative, and we suggest, better arrangement would be to establish an independent panel to which complaints could be made by a social partner that a contractor was not complying with socially responsible contractual obligations. In the event of a complaint being upheld, the independent body would report to the Senedd and the Welsh ministers. It would be for the former to decide whether the issue raised matters of public concern to merit further inquiry; and for the latter to take appropriate steps under the contract.

## Conclusion

29 One final comment relates to the Social Partnership Council in Part 4 of the Draft Bill. This is a potentially important initiative, which along with the other provisions of the Draft Bill suitably modified as proposed above would set Wales on the way to become a progressive and modern social democracy. However, the jurisdiction of the Social Partnership Council is limited to matters arising under the Draft Bill, though no doubt wider functions would emerge on an informal ex-statutory basis. Nevertheless, it is not clear why the jurisdiction of the Social Partnership Council should be limited in the manner proposed, and why it should not be extended to include all macro-economic policy and all public service delivery.

30 We are reminded of Attlee's instruction to ministers on 30 January 1947 to follow the war-time advice of Churchill that 'they should arrange, wherever possible, for consultation and collaboration with the Trades Union Congress or individual Trades Unions *on all matters which are felt to concern them*' (emphasis added).<sup>14</sup> According to Attlee, such consultation 'if it is carried out properly, its results can be only beneficial'. We are reminded also of the Trade and Cooperation Agreement, referred to in paragraph 3 above, negotiated almost 75 years after the Attlee Memorandum, which provides that 'Each Party *shall protect and promote social dialogue on labour matters* among workers and employers, and their respective organisations, and *with relevant government authorities*' (Title XI, art 8.3.7) (emphasis added).

---

<sup>14</sup> TNA, CAB 129/18/46 (Consultation with the Trades Union Congress, Memorandum by the Prime Minister, 30 January 1947).

## RECOMMENDATIONS

1 Clause 1 should contain a declaratory statement on the importance of social partnership, social dialogue and multi-level collective bargaining for democracy, social and economic equality, and fair working conditions.

2 There should be an alignment between

- (i) the principle of decent work as used in the Well-being of Future Generations (Wales) Act 2015;
- (ii) the principle of decent work as developed by the ILO in two key instruments (2008 and 2019) and now reinforced by the Trade and Cooperation Agreement between the EU and the UK; and
- (iii) the fair work goals and fair work duties in the Draft Bill (para 6)

3 The Draft Bill should be amended to include at all strategic points a commitment to collective bargaining. Social partnership should be defined to include social dialogue, which in turn should be defined to include collective bargaining, which in turn should be defined to include principally sectoral collective bargaining (para 20).

4 Part 3 of the Draft Bill should be extended beyond procurement to make provision for Fair Work conditionality consistently with paragraph 4 below in relation to grants, loans, waivers, deferments of obligation, licences, authorisations, etc within the gift of government.<sup>15</sup>

5 The proposals for **public social works clauses** should be amended to require contractors to comply with (a) legal obligations in relation to employment rights (including the minimum and living wage), health and safety, and trade union representation, (b) any collective agreements which are generally applicable in the trade, sector or locality in which the contract is being performed, whichever is the higher, and (c) the general level of terms and conditions of employment in the trade, sector or locality in which the contract is being performed, whichever is the higher (para 23).

6 The proposals for **social public workforce clauses** in public services outsourcing contracts should be amended to require a contractor to comply with collective agreements and other more favourable terms and conditions in the sector in question where these are more favourable than those terms and conditions otherwise observed by the contractor, as in recommendation 5 above (para 25).

7 Procurement strategies should make it clear that a contracting authority may use only an ‘approved contractor’. For this purpose, it will be necessary to establish a register of ‘approved contractors’ if one does not already exist. Access to the register should be limited to employers who commit publicly and in writing to the Fair Work goals (para 27).

8 The provisions in the Draft Bill referring to value for money in the context of the procurement strategy should make it clear that value for money means value for money in a way which is consistent with the obligation to ensure that nothing is done to compromise the social responsibilities of the public authority and its contractors (para 27).

---

<sup>15</sup> For an example of a statutory obligation to this effect, see Public Passenger Vehicles Act 1981, s 28, including a now repealed obligation in relation to the wages paid by PSV operator’s licence holders.

9 There should be a formal and independent process for monitoring compliance by contractors. An independent panel should be established to which complaints could be made by a social partner that a contractor was not complying with socially responsible contractual obligations. In the event of a complaint being upheld, the independent body would report to the Senedd and the Welsh ministers. It would be for the former to decide whether the issue raised matters of public concern to merit further inquiry; and for the latter to take appropriate steps under the contract (para 28).

10 The jurisdiction of the Social Partnership Council should not be limited in the manner proposed in the Draft Bill but should be extended to include all macro-economic policy and all public service delivery (para 29).

K D Ewing, Lord Hendy QC, Carolyn Jones, and Geoff Shears

21 April 2021