



Llywodraeth Cymru
Welsh Government

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Agenda item 2: Use of Welsh Government financial support to ensure fair work

Use of Welsh Government financial support to ensure fair work - the next phase of fair work policy.

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Decisions required

The SPC is asked to agree to work on the three steps set out below:

- Adoption of red lines for funding
- Expand and standardise use of the Economic Contract
- Reviewing implementation

and to advise that the 'red line' criteria is submitted to Cabinet as soon as possible.

Issue

1. This paper was provided by Wales TUC on behalf of the worker representative's side.
2. The purpose of the paper is to develop the policy that sits behind Welsh Government's commitment to "use every lever [Welsh Government has] to promote and enable fair work, address labour exploitation and tackle modern slavery."
3. It builds on the work which has already created policy in this area, including the Economic Contract, guidance on fair work, work on modern slavery, sector social partnership arrangements, and amending the Well-being of Future Generations Act.

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Background

4. Trade Union partners recognise that the ability to leverage specific outcomes from procurement that go above statutory minimums is not something that Welsh Government believes it could legally mandate, but we understand that there are far fewer restrictions on what can be mandated as a result of grant funding and so we anticipate that this will be where the most ambitious fair work criteria is introduced.
5. There are also criteria that could be introduced which do not require additional spend, but seek to minimise the risk that public funding will end up with employers that do not uphold basic human rights, including labour rights, and that there should be at least a basic set of fair work criteria which apply across procurement and grant funding.
6. This paper proposes how the Social Partnership Council (SPC) can guide the next phase of fair work policy, so that there is a step-up in consistent application across the Welsh Government. It sets out a three-stage approach, beginning with the 'red lines' that should be introduced across all devolved public spend as contractual criteria to limit the risk of public spend going towards exploitative labour practices.
7. Making these straightforward, no-cost conditions a requirement of all public spend across the Welsh Government (in the broadest sense, including devolved bodies and arms-length organisations, such as the Development Bank for Wales) would be the first step in achieving the 'every lever' policy commitment made by the Welsh Government, and the next steps could look at how to eradicate exploitative contracts (especially zero-hour contracts) in workplaces that benefit from public investment.

The next phase of Fair Work policy

8. This paper seeks to start the process of the SPC producing a set of recommendations for the Welsh Government on how the 'fair work' element of the 'Prosperous Wales' Goal can be achieved more effectively, and how a whole government approach is necessary to do this.
9. It recommends that the **first step** to achieving comprehensive application of fair work policy is to create 'red lines' in the form of contractual obligations for public spend which starts to deliver on the commitment to "use every lever [Welsh Government has] to promote and enable fair work, address labour exploitation and tackle modern slavery."
10. The **second step** is to expand and standardise use of the Economic Contract as a gateway to public funding, setting out the Welsh Government's expectations in relation to pay, contract type and other employment practices that make work fairer. It will be inspired by the **Fair Work First approach** adopted by the Scottish Government, which mandates certain employment practices (such as payment of the Real Living Wage) through government grant funding. Alongside this, Trade Union partners suggest that awareness of labour exploitation – including which sectors and occupations it is more prevalent in and what it looks like – is raised across government, and that this learning is embedded into the Socially Responsible Public Procurement approach. By establishing a basic level of awareness of what labour exploitation looks like in Wales including who is at greater risk, based on individuals' characteristics, sectors, roles and geography, as well as how this can be addressed structurally, the Welsh Government can operate with a risk-based approach in all work which has repercussions for the workforce.
11. The **third step** is for the SPC to review implementation, understanding how all parts of government are delivering on fair work. Trade Union partners

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know that data is already published for the relevant National Indicators, and labour market data is analysed and collected routinely. This review would be more focussed on hearing from officials in different departments who are more likely to impact on workers at higher risk of exploitation (for example, construction), to understand the steps they are taking in their department to achieve the fair work policy aim, and strengthen relationships with social partners.

12. Trade Union partners suggest this phased approach as the SPC is in its infancy, and all sides are keen to see it swiftly make an impact. So rather than approach this as a lengthy review of fair work policy overall, these steps set out how the Welsh Government can fulfil its commitment to use 'all levers' and put the SPC in the position to advise on incremental progress.

Red lines

13. The SPC will first need to consider how fair work policy serves to minimise the risk of labour exploitation as a result of public spend, before we can consider how to raise employment standards through it.
14. Contractual 'red lines' will ensure that employers who are openly hostile to adhering to basic labour rights are put off from taking public funds, and there is route to claw back funding if an employer breaches employment law.
15. The Economic Contract in its current form is not the right lever for the 'red lines' we are proposing as it is not linked to the *conditions* of grant funding, it is not used by all Welsh Government departments for all grant funding, there have been numerous iterations and the wording is relatively ambiguous, and it is a *bipartite arrangement* between government and an employer. Trade Union partners recognise that it serves as a gateway to accessing funding, and can be quite a resource-intensive approach as it goes beyond headline

criteria and seeks to work with a business to improve certain practices, but we are not confident that it would ever result in an employer not being able to access public funds.

16. Instead, a core way to manage the risk of labour exploitation from public spend and indicate to employers that government will not tolerate it in organisations they have a financial arrangement with is to **set out explicitly** that a proven breach of employment law or a refusal to allow trade union access to workers would be deemed a breach of contract, and could therefore result in a contract being terminated or funding clawed back. This should be used across the Welsh Government as standard practice and not be seen as criteria which can be negotiated by an employer – this is a red line of public funding in Wales.
17. Funding contracts already contains a reference to illegal activity as a condition:
 - a. *“(d) You must not use any part of the Funding for any kind of activity which in our opinion could bring us into disrepute, including but not limited to ... (6) any kind of illegal activities.”*
 - b. This would expand on this to specify that a breach of employment law is something that Welsh Government is especially concerned about and would result in consequences linked to the contractual arrangement the employer has with the Welsh Government.
18. A declaration that an employer would permit and enable trade union access to the workforce comes with no cost, and is an indication that an employer is not hostile to unions. A refusal to commit to this is a clear indication that an employer is seeking to block their workforce from accessing their basic labour rights, so we cannot imagine this being a barrier to any employer that the Welsh Government would want to be in receipt of public funds. A more detailed, usable definition of ‘trade union access’ to make this meaningful could be developed via the SPC.

19. Trade Union partners recommend that the first step is implemented urgently, so that there is a basis for universal 'fair work' criteria across public spend. This must reach all parts of the Welsh Government, including the Development Bank for Wales, funding bodies and all departments.

To achieve this, it is necessary to create:

20. A set of red-line criteria that will apply to all public spend, requiring employers to at the very least commit to complying with employment law (so that an proven violation can result in a contract being withdrawn) and trade union access as a condition of contract.

The SPC is asked to agree to work on the three steps set out in this paper to support the Welsh Government to deliver the next phase of fair work policy, and to advise that the 'red line' criteria set out in this paper is submitted to Cabinet with the advice that it becomes Welsh Government policy as soon as possible.

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