Wales TUC response to:

Welsh Government
Green Paper

Consultation on
Working Together for Wales
The Public Service Workforce

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Introduction

The Wales TUC welcomes the publication of the Welsh Government’s Green Paper – Consultation on Working Together for Wales: The Public Sector Workforce.

We are an organisation that represents 400,000 workers in Wales through our affiliated trade unions. Those Trades Unions have come together to produce a joint response to this consultation exercise. The joint response demonstrates the importance that we place upon this Green Paper consultation and recognises the impact it could have on the public sector workforce in the future.

We have an unambiguous aim for public services in Wales: to keep them in the hands of the public. The members of our affiliated unions work tirelessly to deliver world-class public services for the people of Wales and it is only by ensuring the workforce are properly protected and engaged that those services will withstand the processes of reorganisation that are going on across the public sector.

The First Minister gave a firm commitment to the WTUC Special Conference in November 2010 that:

“I want to see best practice being shared and delivered across Welsh public services and that includes best practice in employee relations. Engagement, negotiation and agreement – not diktat.

“I want the Welsh way of Government – employers and unions working together to seek solutions – to be the only way in Welsh public services.

“And this means sticking to our principles – no two tier workforce, no knee jerk outsourcing, commitments to fair terms if transfers take place, and a continued adherence to our workforce code of practice from all sides…”

These commitments were reiterated in the Welsh Government publication ‘Working Together for Wales: A Strategic Framework for the Public Service Workforce in Wales’.

We welcomed these commitments at the time and we continue to support the Welsh Government in its social partnership model. To this end, we agree with the Green Paper that legislation is necessary. We look forward to seeing the delivery of the Green Paper’s fundamental aim – “the need for cultural and structural change in workforce relationships; in management, engagement and support in order to move from traditional employee relations towards an approach based on partnership, mutual respect and trust” (paragraph 4).
**QUESTION 1: Are these the right priorities for a statutory framework to enact the provisions of the Strategic Framework?**

The Strategic Framework sets out the Welsh Government’s priorities for the public service workforce in Wales. While we welcome the general direction of travel set out in this document we would like to focus on three specific areas where the document either does not go far enough, or does not represent our experiences on the ground.

Firstly, the First Minister made a commitment to ‘no knee-jerk outsourcing’ at our Special Conference in 2010. We have a long history of supporting the co-operative movement, however we have some nervousness about paragraph 1.13 in the Strategic Framework which highlights that the Mutual and Co-operative sector has an increasingly key role to play at a time when the Welsh Government is ‘exploring new and innovative ways of delivering services and improving economic performance’. We do not want this exploration to undermine the commitment to public services being delivered by the public sector. Substantial work has been undertaken by a number of our affiliates demonstrating there is no evidence that delivery of public services by mutual or co-operative owned businesses offer any benefits to the taxpayer, community, service users or workforce as an alternative to public services.

Second, we have concerns about the way in which the collaboration and regionalisation agendas are being implemented across the Welsh Government. Both the Green Paper and the Strategic Framework document reiterate the Government’s commitment to the role of the workforce and engagement with the workforce to ensure efficient delivery of the new policy agenda. We do not believe that this is happening on the ground and this is illustrated by a lack of consistency across different sectors and in different parts of the country - different approaches are being taken in relation to social services, transport and education. Within each of these different models, there are different terms and conditions, different levels of employee protection and overlapping pension schemes to be taken into account. There is a clear difficulty with school reorganisation where unions on the ground are being told that transfers can not take place under TUPE. This is not acceptable to the WTUC.

There has been a lack of early involvement with all TUs on the collaboration agenda and this undermines the principles of mutual trust enshrined in the Strategic Framework document.

The WTUC recommends the recent report from the Association for Public Service Excellence (APSE) entitled ‘Shared services and collaborative working in a Welsh context: Applying theory to practice’ which has looked extensively at different governance models for local government and found that there is little support for models of local government that ‘hollow out’ local councils. The report further recognises that there is a role for local government in acting in a stewardship role for local places and economies, as an arbiter of social justice and in providing public value, but only if it retains a strong core of directly delivered services. This is a view firmly endorsed by the Wales TUC and to be commended to the Welsh Government while it undertakes its reforms in relation to local authority services, including school, further and higher education and social services. The report states that the impact of the approach to shared services on the workforce and on the local economy are key...
– what may appear attractive in terms of the potential to deliver savings or achieve greater efficiencies may have unintended costs and consequences which will have an impact on the local authority as a whole.

Paragraph 1.11 of the Strategic Framework states that that ‘... to do this means a joined-up, continually improving approach to the workforce as a key enabler rather than a business overhead, in programmes of work right across the Welsh Government’. This sentiment is reiterated in paragraphs 7.3 and 7.4 which emphasise working across Government. The WTUC is apprehensive that this is not being delivered. One example of this is the apparent conflict between the aims of the Schools Standards and Organisation (Wales) Bill and the documents we are responding to here.

Finally, it is important for the Wales TUC to reiterate the commitment made by the Labour Party in their manifesto for the 2011 elections when they stated that ‘In valuing the stability and equity that comes from national pay bargaining we will do whatever we can to try and protect the link between teachers’ pay and conditions in Wales and those of their colleagues elsewhere in the UK.’

The Labour Welsh Government elected on this manifesto in 2011 has also made a commitment to: ‘work with trade unions and employers in Wales to ensure a replacement negotiating structure is in place if the UK or England and Wales bodies are dismantled’.

While explicit in the manifesto and in the Programme for Government 2011, these words are not replicated in the Strategic Framework and the document is weaker as a result.

It is vital that we are clear, when discussing a new way forward for the relationship between the employers and the workforce in the public services, that we are doing everything we can to ensure that these bodies are not dismantled and will not support any policy that may undermine them.

**QUESTION 2: Are there additional provisions within the Strategic Framework that would be better put on a statutory footing?**

No, although we believe it would be useful to clarify how the Strategic Framework and any changes in future provisions would sit or will be linked to changes in procurement statutory guidance, particularly at a UK or EU level such as ILO94 or the EU Public Procurement Directive changes and consequent UK alterations.
The first of three key proposals is ‘to provide Welsh Ministers with powers to issue statutory guidance on matters affecting the devolved public service workforce, including establishing a process to govern the adoption of agreements which arise out of the WPC and to give subsequent direction if required’.

**QUESTION 3: Do you agree that Welsh Ministers should have powers to give statutory force to decisions made by the Workforce Partnership Council? If not, why not?**

Yes. The Wales TUC has fully engaged with the Workforce Partnership Council since its inception in 2006. We have worked hard to deliver a co-operative approach but have been frustrated on occasions when agreements reached at the WPC have not been taken with the spirit they were intended when being delivered on the ground or indeed are actively ignored and undermined by individual rogue employers.

To this end, we fully support that Welsh Ministers should have powers to give statutory force to decisions made by the Workforce Partnership Council.

**QUESTION 4: Does the ability of Welsh Ministers to issue Wales-wide statutory guidance help us meet our ambitions about workforce mobility and responsiveness to public service demands?**

Yes. The WTUC believes that this is vital to ensure that where an agreement has been reached it is universally delivered in practice by all relevant employers and unions. There are many challenges facing the public sector workforce over the coming years, reduced budgets and restructuring being the two most obvious. Without workforce engagement these will be impossible to manage. We believe that the protection of jobs is key to delivering world-class public services in these times of austerity and uncertainty.

Wales-wide statutory guidance is needed to keep a Wales-wide public service. The WTUC believes that the interests of the employees and service-users are best delivered without fragmentation and this is particularly true in the current political context.

We will do nothing to undermine England and Wales or UK wide bargaining arrangements but recognise that there are more and more issues requiring pan-Wales union negotiation and the ability of Welsh ministers to issue statutory guidance will help deliver these.

We take the reference to workforce mobility in this question as a means of protecting jobs and reducing redundancy costs. This is not just about the mobility of the workforce between sectors but within sectors, for example education. There is huge potential for the Welsh Government to make progress in this area with the removal of the power of school governing bodies to hire and fire in schools. The WLGA put forward proposals in 2011 to reintroduce the redeployment of the school workforce
and this is something that the WTUC supports in the context of increased responsiveness to public service demands.

Again, the current implementation of the collaboration agenda in local government, education and social services are undermining the principles of mobility in one public service across Wales by setting up new but different terms in each consortium. Without the proper early engagement of the TUs and a consistency of approach across Wales there is the potential to weaken the new arrangements from the outset.

**QUESTION 5: Should such statutory provisions issued by Welsh Ministers be limited to proposals endorsed by the Workforce Partnership Council?**

Yes. The clear view of the Wales TUC is that only agreements reached by the Workforce Partnership Council should be able to be given legislative backing. We concur with paragraphs 28 and 29 of the Green Paper which state that ‘it is important that once a decision by the WPC has been taken Welsh Ministers can, where it is appropriate to do so, give them legislative force in an effective and an efficient way.

“Giving these decisions statutory force takes forward the Welsh Government vision of a Wales-wide public service approach to workforce issues extinguishing the need to seek separate contracted agreements with each individual employer within the host of different organisations in Wales.”

**QUESTION 6: Should the Workforce Partnership Council itself be put on a statutory basis?**

Yes. The Wales TUC speaks with one voice at the Workforce Partnership Council and will continue to do so, however we are an organisation made up of individual trade unions who represent their members interests. We recognise that putting the WPC on a statutory basis will lead to challenges in terms of membership and voting rights. The WTUC will engage fully in discussions about how to take this forward and recognise that the need for flexibility in the legislation will be paramount, it is therefore essential that the WPC remains a representative body rather than be made up from appointed individuals.
The second of the key proposals is ‘to place a duty on devolved public service organisations to promote and apply partnership working as it affects workforce matters and to collaborate on workforce matters’.

As Wales pursues its approach to public service transformation using collaboration and co-operation it is not surprising that the social partners are seeking a new narrative to conduct their affairs.

The use of partnership at work and the wider concept of social dialogue are beginning to have increasing currency within the fabric of government, public services and the wider economy.

Successful organisations recognise the value of engagement with the workforce through their trade unions and partnership working is a model that has proved to add value to business outcomes and create sustainable high performance workplaces.

Social dialogue and partnership in work are not a quick solution and require leadership and commitment over time from all stakeholders. It also requires new ways of working which are more suited to a partnership approach. Stakeholders will have to acquire new skills to create a successful partnership approach.

It is essential that the definition of partnership working is partnership between employers and recognised unions not some non-union alternative.

**QUESTION 7: Should a duty be placed on public service organisations to collaborate on workforce matters?**

Yes. The current arrangements for collaboration are patchy and the lack of consistency means that the workforce in some parts of Wales and in some sectors of public service employment get a worse deal than others. It would be useful to provide a basic minimum duty to ensure that all employees have the right to the same form of collaboration on matters affecting them. Again the duty to collaborate must reflect the duty to work in partnership with recognised trade unions and the duty should also cover mechanisms that enable social dialogue around procurement workforce issues. Enforcement of the duty would become key.

**QUESTION 8: Would such a duty to collaborate on workforce matters fully reflect our ambitions for a Welsh Public Service approach to the workforce in Wales?**

Yes. See question 4 above.

We recognise that there are currently a number of local authorities, for example, where there is positive workforce engagement; however, these are the exception not the rule. For these best practice workplaces a statutory requirement to collaborate would simply reinforce the existing approach. For the majority however, it would provide a safety net for all employees which, in turn, will give confidence to employees that they are part of an all Wales public service which carries out the partnership approach in practice.
QUESTION 9: Are there other ways to achieve greater partnership working, without the use of legislation?

The WTUC has been working with the Welsh Government on delivering a pilot programme of partnership training between unions and employer representatives on the ground in Torfaen local authority and Aneurin Bevan Health Board. The initial feedback from these pilots is extremely positive although there are concerns that all partners have not been made fully involved.

There is great potential in this joint training to deliver positive partnership based industrial relations in public sector workplaces. We should all recognise that you cannot legislate to create trust between individuals or between organisations. True partnership begins with the statutory underpinning of the approach but is only delivered through joint work on the ground.
The third and final Welsh Government key proposal in the Green Paper is ‘to prepare and issue a statutory code of practice on the Two-Tier workforce and TUPE code for devolved public service organisations’.

For the WTUC this is where the conversation with the Welsh Government about legislation began. The removal by the current UK Government of the statutory underpinning to the Welsh Code resulted in WTUC calls for new legislation in Wales nearly two years ago.

It is only since the referendum in March 2011 that this legislation has been possible and we welcome the Welsh Government’s clear intention to place the Welsh Code on a statutory footing and to apply this to devolved public service organisations as set out in paragraph 47 of this Green Paper.

The Wales TUC seeks to ensure that values of fairness and equality exist throughout the Welsh public service and that everyone in Wales receives equal pay for equal work.

The legislation proposed by the Welsh Government in the Green Paper is to provide for a code covering “two-tier” and “TUPE” workforce practice issues to be applied to devolved public service organisations in Wales, and to require those organisations to implement such a Code.

**QUESTION 10:** Do you agree that the Welsh Code should be placed on a statutory footing? Please give reasons.

The WTUC wholeheartedly agrees that the Welsh Code should be placed on a statutory footing. We have been calling for this since the first indications from the Tory-led coalition that they were going to withdraw the UK Code of Practice on Workforce Matters. The terms and conditions of new joiners to a local authority service that has been outsourced are now seriously compromised and there is no statutory requirement on authorities to specify in contracts that they should have terms and conditions which are overall no less favourable to the local authority transferred staff.

This situation undermines the fair treatment and equality of employees throughout the public sector and puts pressure on employers to race to the bottom - offering lower and lower pay and terms and conditions – a situation which is unacceptable in the delivery of public services in the 21st century.

**QUESTION 11:** Is the Code still fit for purpose?

We recognise that the Welsh Code negotiated in 2008 needs some updating. Having said that, the WTUC believes that the current Code is still fit for purpose and we would rather see the Welsh Code from 2008 given a legislative basis than there be no statutory footing at all.
We would, however, request the inclusion of Higher Education into the Code – a widely recognised omission.

One other area for consideration (although not necessarily in the context of legislation) would be the appeals procedure. While there is one in the current code, the mechanisms to deal with it within the Welsh Government are less than satisfactory.

The Wales TUC view is that there is an agreed Code in existence and this should be given immediate statutory force. Any changes desired by either side which require negotiation rather than simple agreement, should be done from the basis of a statutory code being already in place rather than allowing negotiations on contentious changes to delay the implementation of a statutory underpinning to the Code.
Towards 2016

This section of the Green Paper further expands upon the Welsh Government’s vision of the world class public services in Wales stating ‘it is not only about what we deliver, but how we deliver it’.

It concludes: “Part of our agenda for transforming employee relations includes progress towards a partnership model which includes employers sharing power through involving the workforce and their representatives in the running of their organisations – but this requires responsibility and leadership from all concerned. It is this culture shift we are attempting to facilitate” (paragraph 52).

The WTUC believes that this culture shift is possible and supports the Welsh Government in its attempts to make this happen. The Draft Public Audit Wales Bill includes an employee representative on their management board and this is a model we would welcome seeing replicated on all public sector bodies.

The WTUC has repeatedly questioned the use of the phrase ‘the workforce and their representatives’ which differentiates between the workforce and their trade unions. All references to this should be replaced with ‘a partnership between employers and recognised unions’ or ‘engagement with the workforce through their recognised unions’ – a principle explicitly agreed by the First Minister and the Workforce Partnership Council.

**QUESTION 12: Do the statutory measures outlined add value to our ambition for the public service workforce in Wales as outlined in the Strategic Framework?**

The WTUC believes that it is vital to give the public sector workforce reassurance and security at a time of deep uncertainty both in economic and policy terms.

**QUESTION 13: Are there any equality or regulatory impacts which arise from the proposals?**

The public sector is a predominantly female workforce and therefore any developments impacting the public sector workforce will have indirect equality impacts. The public sector also has the responsibility of setting the example as best practice employer on all equality issues. The Wales TUC believes that the equality impact of these proposals will be positive but that in common with all structures the Workforce Partnership Council must ensure all equality impacts of its discussions are fully considered and taken into account before agreement is reached.

**QUESTION 14: We have asked a number of specific questions. If you have any related issues which we have not specifically addressed, please use this space to report them:**

We have no additional issues to raise through this consultation process.