

# Draft Social Partnership and Public Procurement (Wales) Bill

## National Education Union Cymru response

### Our response

NEU Cymru supports the Welsh Government legislating for social partnership and fair work and supports the Wales TUC response to this consultation, and would like the Welsh Government to consider each point within that consultation. NEU Cymru's response is an addition to the Wales TUC response, as we have chosen to highlight examples from education.

### Background

Whilst we welcome the Welsh Government proposing legislation in this area, we would be particularly keen to ensure that the Welsh Government is utilising all of the powers it currently has, to support fair work. The Fair Work Wales Report<sup>1</sup> contains a series of principles and is underpinned by the definition of Fair Work, which we support.

To that end, we urge the Welsh Government to use collective bargaining, part of the fair work definition, to determine school teachers' pay and conditions. We would also highlight that supply teachers should be included within school teachers pay and conditions (STPC) document, as they are in Scotland or how they are fairly rewarded within the Northern Ireland model. This is within competency of the current devolution settlement, and would be consistent with a Fair Work definition, as set out in the Fair Work Report.

We would seek greater clarity on redress and compliance.

We have outlined further examples, relating to employment in Wales, which we believe highlight the points made within the Wales TUC response, which relate specifically to education.

### Principles

NEU Cymru believes there are a series of underlying principles, which are highlighted within the Wales TUC response, which we would highlight have to be included in any legislation or guidance:

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<sup>1</sup> <https://gov.wales/sites/default/files/publications/2019-05/fair-work-wales.pdf>

- **No undermining of any current arrangements** – be they tri or bipartite. The proposed legislation must increase consultation with the trade unions, not undermine it.
- Social partnership, whilst really important for trade unions, as representatives of the workforce, will not always lead to agreement and conciliation. **It is important that any poor employment practices can be highlighted, challenged and addressed.**
- **Transparency is critical.** Clarity is needed in terms of decision making, and the status of the social partnership council. Will this be treated like a public appointment? Would the First Minister be able to veto an appointment?
- This legislation must be as explicit as possible about which employment models are consistent with social partnership, and desired through socially responsible procurement, **underpinned by a definition of Fair Work.**
- This legislation must not undermine any **unions right to be consulted individually**, as the representative body of its membership. It is not for the Welsh Government to decide which unions represent which sector of the workforce.

## **Fair work**

We support using the definition of fair work, as set out in the Fair Work Wales Report. We would agree with the Wales TUC that clarity is needed around an amendment to the Wellbeing of Future Generations Act (FGA).

## **Support staff**

We would particularly highlight the example of support staff, as an example of non-compliance with fair work, within the education system.

Support staff face challenges in terms of their employment rights. We are part of an ongoing piece of work with the local authorities, looking at how support staff contracts compare to those across other roles within the local authorities.

This is challenging. Whilst hourly-rates for support staff are often comparable to other roles, support staff are often employed on a **part-time, term-time only basis**. This is unfair and undermines their role and importance in supporting children and young people in our schools – helping vulnerable children with individual pastoral and learning support,

group work, and supporting our teaching professionals to make sure our young people can thrive.

During the pandemic, whilst teachers were sometimes required to work from home, for example to use their own home-broadband (as not all schools had enough bandwidth) to support children with online learning, many **support staff stayed in school**, helping vulnerable children and the children of key workers.

In a recent NEU Cymru member survey, **99% of respondents believe that support staff do a vital role for which they should be properly paid**. Now is the time for the next Welsh Government to recognise their invaluable contribution to the support of children, and make sure they are properly rewarded with salaried positions – in line with the recommendations in the fair work, which should be legislated for in this Bill.

**This legislation must address this issue and issues like this.**

### **Collective bargaining**

The Fair Work<sup>2</sup> Report, adopted by the current Welsh Government, supports collective bargaining as it recognises that collective bargaining not only allows for greater representation of the workforce, and better terms and conditions, but also “contributes to productivity and economic growth, while trade union weakness or absence contributes to inequality.”

We know that collective bargaining is supported as a right by both the International Labour Organization (ILO)<sup>3</sup> and Organisation for Economic Co-operation and Development (OECD)<sup>4</sup>, as well as Wales TUC<sup>5</sup>. A good example of collective bargaining in action is the Scottish approach to supply teachers<sup>6</sup>. The very aims of social partnership should support collective bargaining. It is a surprise to our members that collective bargaining is not already being used in Wales to determine school teachers pay and conditions (STPC) – so we believe it is critical this issue is addressed, supporting the spirit of this legislation.

A good example of collective bargaining in action is the Scottish approach which allows bargaining on pay and conditions for teachers

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<sup>2</sup> <https://gov.wales/sites/default/files/publications/2019-05/fair-work-wales.pdf>

<sup>3</sup> <https://www.ilo.org/global/topics/collective-bargaining-labour-relations/lang--en/index.htm>

<sup>4</sup> <https://www.oecd.org/employment/collective-bargaining.htm>

<sup>5</sup> <https://www.tuc.org.uk/making-wales-fair-work-nation>

<sup>6</sup> <https://www.snct.org.uk/>

and also extends those negotiations to cover, for example, systems for employing supply teachers.

We believe collective bargaining for STPC will save the Welsh Government money as they will not have to fund the Independent Wales Pay Review Body (IWPRB). Instead, it will mean building on existing tripartite arrangements, to be underpinned by the Social Partnership legislation, and sitting down with social partners to ensure a fair deal for teachers here in Wales.

**The Welsh Government must use collective bargaining for STPC, in keeping with plans for social partnership.**

### **Socially responsible procurement**

**We agree with the Wales TUC response on socially responsible procurement:**

“We propose a new definition of socially responsible public procurement which brings the focus to the outcomes of public procurement spend: *“Socially responsible public procurement is taking action, when purchasing goods, services and works to achieve the well-being goals, and the new fair work goal detailed below, to improve the economic, social, environmental and cultural outcomes that result from public procurement spend. These matters must be considered throughout the procurement and contract management processes.”* This is because the outcomes of procurement spend in relation to the well-being and fair work goals will be the measure of success, rather than the actions taken to achieve them, and it is linked to the principle that no worker should ever be exploited via public funds.”

It is absolutely critical that actions taken in procurement are evidenced, transparent and freely available, in order to support the socially responsible procurement and fair work objectives.

We agree with Wales TUC response:

*“Linking the socially responsible procurement goals to the fair work goal is critical to delivering better labour outcomes from procurement spend, as will requiring the in-scope public bodies to set and publish objectives on how it will achieve the socially responsible procurement goals.”*

We strongly agree with the Wales TUC proposals for duties on **‘In-house and in-sourced public services’** and the **‘Fair treatment of workers’**.

It is our view that supply staff are an example of where better procurement could ensure that staff have fair reward – as they are not currently paid alongside their peers, regardless of experience and qualifications.

### **Supply staff**

Supply staff do not currently receive ‘fair reward’ in terms of their work, a key element of the Fair Work Wales definition.

Rather than using and paying private supply agencies, we are asking the Welsh Government to include supply teachers within the arrangements for school teachers’ pay and conditions, and ensure they are paid based on their experience and trained alongside their peers – consistent with the aspirations set out in this legislation.

We know that the current Welsh Government have improved matters for some supply teachers who are new to teaching, by funding a cluster model<sup>7</sup>, to ensure they have access to training. But ensuring money goes into teachers’ pockets, rather than being wasted on supply agencies, is key to motivating and supporting the workforce. Training the whole workforce is vital, especially in the run-up to the new Curriculum 2022, which will see a move towards local curricula, being more appropriate for learners in specific settings, and not dictated to on a national level.

Scotland already includes supply teachers within pay and conditions<sup>8</sup>. This means that supply teachers cannot be employed for less than one whole day and provides a minimum daily rate of pay. The Northern Ireland Substitute Teacher Register (NISTR)<sup>9</sup> System allows teachers and schools to find each other online and could be adjusted to ensure it works well for Wales – by adding a degree of ‘matching’. In Northern Ireland schools cannot undertake unfair working practices like avoiding Agency Worker Regulations, as they are unable to employ long-term cover on a daily basis, a practice used by some agencies here in Wales.

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<sup>7</sup> <https://gov.wales/evaluation-school-based-supply-clusters-2>

<sup>8</sup> [https://www.snct.org.uk/wiki/index.php?title=Part\\_2\\_Section\\_1](https://www.snct.org.uk/wiki/index.php?title=Part_2_Section_1)

<sup>9</sup> <https://nistr.org.uk/>

Covid-19 has seen supply teachers struggling to find work and some agencies refusing to provide Furlough, and this included some agencies on the National Framework. Meanwhile, pay was guaranteed for those supply teachers in Northern Ireland:

*“All employees will receive normal pay across the range of circumstances that we are facing whether they remain in the workplace, are working from home, or are unable to carry on working due to circumstances beyond their control. Substitute teachers will also receive their normal pay for the period of time that they have been engaged to work.”*

The National Framework<sup>10</sup> has shown some improvements, but realistically, to ensure that we value our supply workforce, they need to be **included within school teachers’ pay and conditions**. Supply teachers need access to training, to be paid based on their experience, and to be able to contribute to the Teachers’ Pension Scheme, and not simply used as a means to line the agencies pockets.

The treatment of qualified teachers by private agencies is unacceptable. They have been, and continue to be, employed by these agencies to provide supply cover as Higher Level Teaching Assistants (HLTAs) rather than teachers, and agencies are therefore providing qualified teachers on the cheap. Meanwhile, support staff are also being exploited and are sometimes employed to teach rather than support, which they should not be doing. As we push forward with curriculum reform, it is vital that these employment practices are quickly dropped. Agencies who do not pay the minimum daily rate (M1, or ‘main pay scale point 1’) to their employees should be removed from the framework.

In a recent NEU Cymru member survey, only **92%** of respondents didn’t think, or didn’t know if, the National Procurement Service Supply Teachers Framework for Wales has been a success. When asked to give a reason why they thought it hadn’t been a success, some of the responses were:

*“Supply teachers were treated much more fairly when there were local authority pools - fair pay and conditions, training, and pension rights. Private agencies do not offer any of these.”*

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<sup>10</sup> <https://hwb.gov.wales/professional-development/supply-teachers#the-national-procurement-services-supply-teachers-framework-for-wales>

*“The pay and conditions of supply teachers undermines their role and exploits their professional qualifications.”*

*“Still offered work off framework and when I complain to NPS they just say it’s up to the schools. Therefore, what is the point. At very least needs to be compulsory or better still employed direct by schools / local authority.”*

A recent Welsh Government report showed that using different ways of employing supply teachers can have a benefit<sup>11</sup>. However, this ‘cluster’ model was not universally used, and does not ensure fair terms and conditions for everyone involved in supply teaching.

We estimate the extra cost will be £30 a day per supply teacher, based on assumptions made by a recent Welsh Government report<sup>12</sup>. We believe the cost is minimal, compared to the impact that current arrangements have in terms of support for the supply workforce and continuity of children’s learning.

**The legislation needs to address the situation for supply staff, to ensure they have access to fair work.**

Any questions, please contact:  
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<sup>11</sup> <https://gov.wales/sites/default/files/statistics-and-research/2020-07/evaluation-of-the-school-based-supply-cluster-model-project-follow-up-report.pdf>

<sup>12</sup> <https://gov.wales/sites/default/files/statistics-and-research/2020-07/evaluation-of-the-school-based-supply-cluster-model-project-follow-up-report.pdf>