

# Agenda – External Affairs and Additional Legislation Committee

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Meeting Venue:

Committee Room 3 – Senedd

Meeting date: 17 June 2019

Meeting time: 14.00

For further information contact:

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Committee Clerk

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## Private pre-meeting

(13.45–14.00)

### 1 Introductions, apologies, substitutions and declarations of interest

(14.00)

### 2 Common UK policy frameworks

(14.00–15.30)

(Pages 1 – 19)

Professor Jo Hunt, Cardiff University

Professor Michael Keating, University of Aberdeen

Akash Paun, Institute for Government

Hedydd Phylip, Cardiff University

### 3 Paper(s) to note

(15.30–15.35)

#### 3.1 Paper to note 1: Correspondence from the Minister for International Relations and the Welsh Language to the Chair regarding the report on the agreement on trade in goods between Iceland, Norway and the UK – 7 June 2019

(Pages 20 – 21)



- 3.2 Paper to note 2: Correspondence from the Chancellor of the Duchy of Lancaster to the Convener of the Finance and Constitution Committee, Scottish Parliament, regarding scrutiny of intergovernmental relations and common frameworks – 11 June 2019**  
(Pages 22 – 23)
- 3.3 Paper to note 3: Correspondence from the Counsel General and Brexit Minister to the Chair regarding the Joint Ministerial Committee (Europe) meeting – 12 June 2019**  
(Page 24)
- 3.4 Paper to note 4: Follow-up work on Brexit preparedness – written evidence from Food and Drink Wales**  
(Pages 25 – 27)
- 3.5 Paper to note 5: Follow-up work on Brexit preparedness – written evidence from Wales Trades Union Congress**  
(Pages 28 – 43)
- 4 Motion under Standing Order 17.42(vi) to resolve to exclude the public from the remainder of the meeting**  
(15.35)
- 5 Common UK policy frameworks – consideration of evidence**  
(15.35–15.50)
- 6 Follow-up work on Brexit preparedness – consideration of correspondence to the Counsel General and Brexit Minister**  
(15.50–16.00) (Pages 44 – 47)

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Llywodraeth Cymru  
Welsh Government

Our ref EM/2099/19

David Rees AM  
Chair of External Affairs and Additional Legislation Committee  
National Assembly for Wales  
Cardiff Bay  
CF99 1NA

[SeneddEAL@assembly.wales](mailto:SeneddEAL@assembly.wales)

7 June 2019

Dear David,

## **International Agreements: Report on the agreement on trade in goods between Iceland, Norway and the UK**

Thank you for your letter of 24 May 2019 and for drawing my attention to your report on the agreement on trade in goods between Iceland, Norway and the UK. I very much welcome the report and recommendation and believe that the analysis further strengthens the evidence base that we continue to develop.

In your report you recommended that the Welsh Government undertakes further analysis of the gaps in the continuity under this agreement with a view to understanding fully any negative impacts for Welsh businesses of these gaps and subsequently bringing such issues to the attention of the UK Government. I would like to reassure you that my officials have conducted a level of analysis that I consider proportionate to the importance of this agreement in trade terms and in relation to the trade policy priorities we face.

Any EU trade agreement that Welsh firms currently take advantage of is important and gaps in these agreements, once rolled over, will of course have implications here in Wales. I am afraid that I am unable to reassure you with absolute certainty that we are aware of every single issue might arise in every sector and sub-sector as a result of these gaps. However we have to be realistic and pragmatic about what level and detail of analysis we can undertake on these gaps given our current resources, expertise, data and firm level intelligence. As Minister for International Relations and Welsh language it is my responsibility to prioritise the resources available to us on trade policy and I believe that at this current time the analysis undertaken is sufficient.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

However, I want to assure you that there is a considerable amount of work going on internally within Welsh Government to set up the Governance structures that will be needed to support trade negotiations going forward. As part of this work we are undertaking a significant mapping exercise across Welsh Government. We are looking at where the current gaps exist in relation to data, business intelligence, expertise, knowledge and skills. The outputs of this work will allow us to further prioritise our resources to ensure that the analysis undertaken going forward provides the level of detail that we will all be more comfortable with.

If it would prove useful my officials would be happy to provide the committee with a face to face briefing session where we update you on all the analysis undertaken. This might provide you with the opportunity to drill down into areas that you are most concerned about. I also propose to follow-up this letter with the latest analysis of the 2018 disaggregated trade data. Of course I will be happy to pick up any of this when I appear in front of the Committee on June 10.

Yours,

A handwritten signature in blue ink, appearing to read 'M. E. Morgan'.

**Eluned Morgan AC/AM**

Gweinidog y Gymraeg a Chysylltiadau Rhyngwladol  
Minister for International Relations and the Welsh Language

# Agenda Item 3.2



Cabinet Office

Rt Hon David Lidington CBE MP  
Chancellor of the Duchy of Lancaster  
Minister for the Cabinet Office  
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Our Ref: CDL/3125

Bruce Crawford MSP  
Convener of the Finance and Constitution Committee  
The Scottish Parliament  
Edinburgh  
EH99 1SP

11 June 2019

Dear Bruce,

Thank you for your letter of 26 April on Parliamentary scrutiny of intergovernmental relations (IGR) and common frameworks. Parliamentary scrutiny is indeed essential to achieving accountability and I am grateful for your recommendations on the subject.

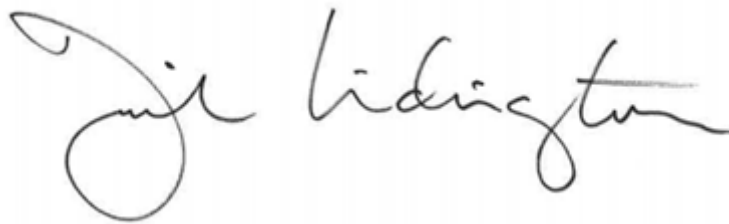
In your letter, you identify transparency, accountability and respect for the confidentiality of discussions as the three main principles governing the relationships between governments and their respective legislatures. The UK Government deeply values these core principles and remains fully committed to them.

You also highlight that both the Scottish and Welsh governments have reached agreements with their legislatures to commit to these principles and to report on IGR meetings, decision-making and the content of agreements. The UK Government acknowledges the importance of information-sharing between the executive and legislative and is currently investigating how to improve Parliamentary scrutiny. As you know, I regularly provide UK Parliamentary committees with updates on IGR. I most recently wrote on 3 May and, on this occasion, extended my updates to relevant committees of the devolved legislatures. Officials from all four administrations are working to develop a set of principles to underpin relations in the future, including transparency and effective communication. We will continue to promote collaboration and build close working relationships between the UK Government and the devolved administrations.

I welcome your recommendations on the role of Parliaments in the scrutiny of common frameworks. The UK Government acknowledges the key scrutiny role played by the devolved legislatures and has made clear we welcome increased Parliamentary scrutiny as this programme of work moves forward. Under the terms of the EU(Withdrawal) Act, we publish quarterly updates on progress in developing common frameworks, which are

laid before the UK Parliament. The most recent of these was published on 16 May. We also recently responded to the report of the Scottish Parliament Finance and Constitution Committee, and we recognise the contribution they are making to our work on common frameworks. As you note, different frameworks will be implemented according to the specific needs of the policy area and through different types of vehicle including primary and secondary legislation, Memoranda of Understanding, concordats or other mechanisms depending on the particular context. Officials from all administrations are currently developing more detailed proposals relating to the agreement and scrutiny of frameworks.

I welcome your continued interest in IGR and common frameworks and remain open to your suggestions on shaping the final IGR agreement as well as ensuring an appropriate level of parliamentary scrutiny of common frameworks.

A handwritten signature in black ink, reading "David Lidington". The signature is written in a cursive style with a large initial 'D' and a long, sweeping tail.

**Rt Hon David Lidington CBE MP**



# Agenda Item 3.3

Y Cwnsler Cyffredinol a Gweinidog Brexit  
Counsel General and Brexit Minister



Llywodraeth Cymru  
Welsh Government

David Rees AM  
Chair, External Affairs and Additional Legislation Committee,  
National Assembly for Wales,  
Cardiff,  
CF99 1NA

12 June 2019

Dear David,

I am writing to inform you that the Joint Ministerial Committee (Europe) will meet in London on 13 June.

The agenda will cover the upcoming European Council, the Finnish Presidency of the European Council and the Daylight savings directive.

I will report to the Committee on the outcome of the meeting.

Yours sincerely,



**Jeremy Miles AM**

Y Cwnsler Cyffredinol a Gweinidog Brexit  
Counsel General and Brexit Minister

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

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# Agenda Item 3.4

## Andy Richardson, Chair Food & Drink Industry Board Wales

1. What is your assessment of the current levels of Brexit preparedness in Wales, and in your sector in particular?

This depends on what the outcome will be. If you are asking whether Welsh food and drink businesses are prepared for a hard Brexit, then the answer varies from business to business but on average the answer is “no”.

If we take inputs, I don't think many businesses have completed a thorough input supply chain analysis to understand the upstream risks. Many are working on the assumption that their immediate suppliers can continue to supply and are not considering who supplies their supplier and even further up the chain to understand where the real risks are – this is really important work to ensure a business prepares thoroughly for Brexit.

Businesses who use UK inputs to manufacture products which they supply to the UK market often feel relaxed about the outcome of Brexit, but I would challenge the reliability of this assumption.

Those businesses which currently sell to the EU are often under prepared. An example of this is with the EORI number which all UK companies who sell to the EU will need to have when we leave the EU. Information given to me a few weeks ago indicates that only 1/3<sup>rd</sup> businesses who needed this certificate actually had one on 1<sup>st</sup> April which means they simply were not ready and able to export to the EU after this date.

Those businesses that were well prepared for a hard Brexit at the end of March often ran higher input stocks and stocked up export markets. This incurred significant costs which hit the P&L and cash flow. There are some who did this last time around who are considered not repeating this stock strategy for 1<sup>st</sup> Nov due to the significant cost implications.

2. What effect is the Article 50 extension period having on Brexit preparedness in Wales? How should the Welsh and UK Governments use the time? Are there any risks or opportunities that differ from the 29 March exit date?

I don't believe many businesses have taken the time to improve their level of preparedness.

Article 50 has only served to cause greater uncertainty, delaying of investment decision and loss of customers to overseas markets where they are not prepared to accept the risk of uncertain supply chains.

I believe the UK & Welsh Governments should use the extension time:

- 1) Reflect on those things which were not ready for 1<sup>st</sup> April and ensure they are delivered for 1<sup>st</sup> Nov
- 2) Stress test new system functionality (for example, I know of a business who regularly contacts the Health Certificate help line and it takes over 10 minutes to get through. This is not sustainable when you have multiple orders to process in one day. The same business recently experienced a health certificate being cancelled for no reason when a ship was mid Ocean enroute to a customer). We must iron out these problems now whilst we have time
- 3) Find new ways to engage with businesses to ensure they are ready for a hard Brexit

The biggest threat to a delayed Brexit is apathy – businesses are “losing the will to live” and many now intend to “wait to see” what happens before acting – this is a very real risk

Many businesses who stocked up inputs and export markets in preparation for 1<sup>st</sup> April incurred cost to their P&L and cash flow. For businesses whose year end was 31<sup>st</sup> March this has had a significant effect on their full year results.

For other businesses cash flow has been tight which caused some concern regarding bank loan agreements. For others business sales were buoyant in March which inflated 18/19 financial year results with a net negative impact on the following (current) financial year.

3. Have you received sufficient support and communication from the Welsh Government? How useful have the Business Wales Brexit Portal and Preparing Wales websites been to you?

Communication from the Welsh Government has been very good and helpful however many issues are out of their hands because accountabilities lie in London. Food Liaison Groups have worked well.

The websites mentioned are helpful but the most useful help would be a “helpline” manned by knowledgeable people who have the resolved to solve problems and follow up enquiries quickly.

There are a number of self-help industry websites which are helping to identify problems and questions and disseminate information quickly to industry members. [www.brexitfoodhub.co.uk](http://www.brexitfoodhub.co.uk) is a good example – I think it would be good for Government to engage and support these initiatives proactively which ultimately will lighten the load on government enquiry services

4. Has the impact of Brexit on supply chain businesses been considered sufficiently by the devolved public sector? What engagement have businesses had with local authorities to ensure they are involved in Brexit preparations?

I genuinely believe it has but the problem is still that Government cannot provide simple focused advice because the outcome is not known. If Government cover off all scenarios with their advice to businesses, then businesses will be swamped with information and will simply ignore it or miss vital information. Seeing the wood from the trees is an appropriate analogy.

I am not aware of many businesses who have engaged with their local authorities.

5. What impact has the uncertainty around Brexit had on your ability to inform your members in preparing for Brexit?

The Food & Drink Board Wales has run Brexit events for food and drink businesses, but attendance was average. The greatest problem is the sheer volume of information which needs to be disseminated to businesses to cover off all Brexit scenarios.

The Uncertainty has been the biggest barrier to giving accurate, concise and actionable information to businesses

6. Are you aware of any 'no deal' contingency plans having been tested ahead of 29 March and / or 12 April? How prepared are businesses for anything other than 'no deal'?

I am aware that some larger businesses have "no deal" contingency plans the medium and small businesses often don't have these plans. In many cases this is because they lack the physical resource and skills to complete this work.

Businesses are not prepared for a "no deal". Anything less than this should be easier to plan for but many businesses have assumed that anything that is not a "no deal" would be very similar to business as usual. This is not a good assumption as many things could change – for example, we may not have trade deals with countries such as Norway and Turkey at the point of leaving the EU because of their existing trade deals with the EU. These roll over trade deals may or may not apply to the UK

7. You have stated in the past that there are many small and medium-sized businesses in Wales that do not have the capabilities and resources to be able to react to, and plan based on, information published at the last minute. Do you think the information from the Welsh and UK Governments in relation to a 'no deal' Brexit was provided in sufficient time for these businesses?

To answer your specific question, I think the information was provided on time. However, for me, the other part of the equation is the quality of the information. Information provided was too complex and not easy to understand. We need to reply of the use of info graphics and social media as communication tool – actions need to be broken down and small businesses need to know who to go to. On idea would be to "parachute" in experts for short time periods to advice a business on their Brexit preparedness action plan. Even one day per business would be a help or an adviser could be share between two or more local business to enhance the efficiency of the process

8. Is the funding from the European Transition Fund sufficient to meet the needs of businesses across Wales? What impact has the fund had? Are you aware of any further plans for allocations from the fund?

I am not aware that it has had significant impact but the problem remains that businesses don't know what they are transitioning to yet – outcome and at all points of the spectrum.

I would be much keener to use the funds to parachure in Brexit experts in to businesses or groups of business to undertake a simple risk analysis and mitigation plan

# Agenda Item 3.5

## **Latest developments with regard to Brexit preparedness – response from the Wales TUC**

### **About the Wales TUC**

The Wales Trades Union Congress is the voice of Wales at work, our aim is to make Wales a fair work nation. As the largest democratic membership based civic body in Wales, we speak for the 350,000 union members of our 49 affiliated unions.

Proudly part of the TUC and the wider international union movement, the Wales TUC is the devolved authority for unions in Wales.

Our biennial Welsh Congress of unions decides on Welsh policy and elects the Wales TUC General Council to oversee delivery through the Wales TUC General Secretary and his staff.

**Below are our responses to the questions which we received from the Committee. Please get in touch if there's anything you'd like us to expand on or it you'd like us to arrange further consultation with some or all of our member unions.**

- **What is your assessment of current levels of Brexit preparedness in Wales and how have Brexit preparedness arrangements worked so far?**

We are satisfied that Welsh Government has done as much as it could within the limits of what it can do to support businesses in Wales prepare for Brexit. However, we are not so well informed about the work they have undertaken in the devolved public sector and third sector, and there is more that Welsh Government could be doing to make our workforce more resilient, including raising collective bargaining coverage and strengthening social partnership arrangements. This is set out in the attached briefing note.

We are engaged in Brexit preparedness work through several different social partnership meetings, including:

- Council for Economic Development (CED)
- EU Exit Working Group (a sub-group of the CED)
- Social Partners Strategy Group (SPSG)
- Workforce Partnership Council (WCP)

- European Advisory Group
- Regional Investment in Wales after Brexit

While Brexit preparedness work has been a point of ongoing discussion in the private sector/Economy department social partnership arrangements (SPSG and CED), we have not been so well informed about developments in the devolved public sector. This is primarily because the main mechanism for cross- (devolved) public sector social partnership engagement, the WPC, was under review in 2018 and the new structure is still in its infancy.

However, there is still work to be done in key areas (such as preparing EU nationals who are working in Wales) where we think there is more the Welsh Government could be doing with unions to ensure that the necessary communication is happening at a sufficient pace and in an accessible way, and we are currently discussing this with Welsh Government. There is also a role for Welsh Government to relay concerns about how initiatives are working in practice to UK Government from unions and other organisations who work with those impacted, and explore what it can do to mitigate any negative consequences. For example, the Settled Status Scheme puts workers who are in informal employment or without rental contracts at risk of losing their immigration status as they need to demonstrate five years of continuous residence to get 'settled status' - otherwise they get 'pre settled status' which is no guarantee of a permanent right to remain.

- **Have you had sufficient support from the Welsh Government? How should the time from the extension of Article 50 be used to improve Brexit preparedness in Wales?**

We have not requested support from Welsh Government on matters directly linked to Brexit preparedness yet, but are confident that Welsh Government is willing to engage with trades unions on this in future. It still depends on if and how the UK leaves the EU, but we have always said that Welsh Government would need to initiate a similar programme of support for at-risk workers that they made available during the recession and we have not had any push back to this proposal. We are also confident that Welsh Government is communicating any concerns we do raise in its discussions with UK Government.

The period we are in – including since the extension was announced – remains a period of uncertainty for employers. Consequently unions continue to be in a very

difficult position in terms of preparedness – we still do not know the terms on which the UK will leave the EU so we are unable to plan for a specific scenario. Similarly, many employers are unable to make long-term plans for the same reasons and where decisions are taken – particularly those which have negative implications for the workforce – they often only cite Brexit as a contextual factor and not the main reason. It is therefore very difficult to determine what sort of interventions are necessary from a workforce perspective in relation to preparedness, particularly in a climate where employers and investors are cautious about making long-term plans, beyond what is already available through programmes such as ReAct.

We are increasingly concerned about is how the uncertainty facing employers is being transferred to the workforce through greater use of insecure contracts, and that Brexit uncertainty can justify actions that may leave workers worse off. For example, union officers have reported that in the food manufacturing sector they have struggled to recruit the same volume of EU migrant workers. Rather than raise pay, terms and conditions and offer more permanent contracts, the firms have increased their use of agency workers to meet demand. This is one of the reasons why we are calling on Welsh Government to fulfil its commitment to make Wales a Fair Work Nation.

Similarly, maritime unions are reporting that some operators have switched from a UK flag to that of another EU country. They're doing this so that they can continue being covered by the preferential tax rules for EU shipping (this is how companies are interpreting the rules – that they need an EU member state flag to guarantee this). Operators claim it will not affect workers but we know that it can have implications for a worker's national insurance position and their employment rights (there is case law on this relating to place of work/contract based outside the UK).

- **Are there any risks or opportunities associated with leaving the EU by the end of October 2019 that differ from the original leaving date? Have no deal preparations been scaled down since the extension period was agreed?**

The extension gives more time to raise awareness amongst particular groups (EU nationals living and working in Wales, for example) about where accurate advice can be sourced and the sort of support which government and others can offer once the UK leaves the EU. It also gives organisations more time to prepare for how they will operate once the UK loses EU membership, although still without certainty about

how and if the UK will leave the EU. We have also heard from business organisations that stockpiling in preparation for leaving the EU in spring 2019 has been costly for some businesses and has resulted in market distortions.

The extension also offers us more time to strengthen social partnership arrangements in preparation for Brexit. Unions are concerned that when policy responsibility is held at a UK rather than EU level, the balanced input of social partners will be lost as there is no commitment to operate this way at a UK level (unlike at an EU level). It is therefore important that a Social Partnership Act is introduced as soon as possible to ensure that the voice of employers is balanced against the voice of the workforce in all relevant decision making.

- **How would you characterise communication between the Welsh Government and the public sector?**

We would want to consult with public sector unions before responding to this question and have not had sufficient time to do this. Please let us know if this is something you would like us to do.

- **How you are working with counterparts across the UK to prepare for Brexit?**

We work with colleagues in England and at a UK level through the TUC. We have long-established links with the Scottish Trades Union Congress (STUC) and Irish Congress of Trades Unions (ICTU), including through the Council of the Isles (and annual meeting for representatives of the TUC, Wales TUC, ICTU and STUC). The TUC's preparedness work has focussed on campaigning for a deal which must:

- Provide a binding guarantee that UK workers' rights will not fall behind those of workers in Europe, now and for generations into the future
- Protect jobs by providing tariff-free, barrier-free, frictionless trade with the rest of Europe
- Preserve peace by ensuring there is no hard border between Northern Ireland and Ireland.



Wales TUC has also worked with colleagues in the TUC in the work they are doing to influence UK Government activity, such as to provide feedback to the Home Office on the Settled Status Scheme, and to ensure a coherent position on the proposal for a Shared Prosperity Scheme.

Our member unions undertake more detailed work into how Brexit is impacting on their members and the sectors in which they work in. You may wish to consult with them about any particular sector or aspect that you would like more evidence on and we would be happy to facilitate this.

### **Preparing for different Brexit scenarios**

- **Has uncertainty over Brexit affected your ability to prepare for Brexit? How have you sought to mitigate this?**

Uncertainty over Brexit has made it very difficult for the TUC and our member unions to prepare for Brexit. Government and employers are rarely making long-term decisions, so there is little certainty or clarity about what sort of interventions unions should be preparing for at this stage. The uncertainty has become a factor in itself, with it being cited as a reason (mainly as a secondary reason) why firms are not investing, reducing the scale of their operations or withdrawing from Wales altogether. Given that there is nothing which Welsh Government can do to end this uncertainty, it remains a continuous threat which there is no Wales solution for.

In terms of mitigating this threat, we have considered vulnerability in Wales' labour market, how we can strengthen relationships with international organisations to ensure that we do keep pace with the EU on employment and other social rights, and supported Welsh Government's work with the Transition Fund to provide as much of a buffer as the Welsh Government can.

- **What is your response to the Auditor General for Wales' report on 'no deal' preparedness in the devolved public sector?**

We have not produced a union-side response to this report. We would be happy to consult with unions about this and provide this as follow-up evidence to the committee if this would be helpful.

### **Resources for Brexit preparedness**

- **Do you think the funding available for Brexit preparedness from the European Transition Fund is sufficient?**

We have not assessed whether it is sufficient or not and have not picked up any dissatisfaction from unions with regard to this.



## **1. Context & rationale for Wales TUC Social Partnership proposals**

1.1 Wales faces severe long term economic and public service challenges which are significantly worsened by the UK government austerity agenda. Casualised, low paid and insecure forms of employment dominate in some sectors and areas. Many communities suffer huge disadvantage having been failed by the free market and targeted by negative UK government policies around deindustrialisation, privatisation and cuts in welfare provision.

*The Wales TUC believes that social partnership provides the mechanism to assist Welsh government prioritise delivery of long term social and economic equality for Wales.*

1.2 The potential consequences for Wales of any form of Brexit - but particularly a no deal crash out – have been set out in Welsh government preparatory work. As First Minister, Rhodri Morgan identified the need for effective social partnership arrangements to deal with the financial crisis in 2008. This helped for example to maintain employment in Wales’ car components sector through the successful Proact scheme which was developed and delivered in social partnership.

*The Wales TUC believes that a similar approach is required now to secure Wales’ resilience in the face of the current potentially even more challenging situation.*

1.3 Brexit also means the end of the UK being party to the supra-national arrangements based on social dialogue which are at the heart of the EU constitution. Given the UK government track record on reducing workers rights and dismissing UN International Labour Organisation standards, it is unlikely that social dialogue arrangements will be replaced at UK level.

*The Wales TUC believes that Welsh government should see the continuity of social dialogue and social partnership for Wales as an essential democratic and constitutional function.*

1.4 At our 2010 special conference, Wales TUC agreed to work in partnership with Welsh Government to mitigate the impact in Wales of UK austerity policies. The tripartite social partnership approach adopted in Wales has led to many successes and benefits

for unions and for working people. Other parts of the UK would have done well to have followed that example. However there is need to ensure the universal and uniform delivery of social partnership agreements and the effectiveness and coverage of the partnership arrangements can be strengthened.

*The Wales TUC believes that - by underpinning, enhancing and consolidating our social partnership - the new administration can provide a massive legacy for Wales and set the agenda for the whole of the UK.*

## **2. Summary of Wales TUC proposals**

The Wales TUC proposes that the Welsh government takes the following immediate actions in order to deliver an effective and robust tripartite social partnership for Wales.

2.1 Make a formal declaration of social partnership principles and develop a binding protocol for Welsh government in working with the Wales TUC & unions.

2.2 Establish a tripartite Social Partnership Council - chaired by the First Minister - to provide an all Wales, all sector perspective for social partnership arrangements, to co-ordinate the sector partnership arrangements and to ensure consistency of approach and universal application.

2.3 Establish a Social Partnership Directorate to provide sufficient resource and expertise to ensure delivery of the social partnership arrangements.

2.4 Undertake a review of existing partnership arrangements to ensure that they are fit for purpose in the new context and are accommodated within the overarching structure.

2.5 Undertake a joint review with the Wales TUC to identify appropriate union membership of public boards and ministerial groups to ensure; consistency of approach to identifying when membership is required, a suitable appointment process or processes and methods of achieving accountability and diversity.

2.6 Deliver a Social Partnership Act to provide statutory underpinning to the structure, establish a public sector duty to deliver fair work through social partnership; place statutory fair work and social partnership requirements on procurement and business support; establish enforcement and monitoring mechanisms.

### **3. Declaration of social partnership principles and formal Welsh government protocol on working with the Wales TUC & unions**

- 3.1 The Wales TUC and our affiliate unions have welcomed the new positive and proactive approach articulated by the First Minister in the leadership election, his manifesto and since forming his new administration. We believe that, in the context set out above, this should now be delivered with some urgency.
- 3.2 To set the political direction more clearly we propose that the First Minister make a declaration of social partnership principles for his government – including clear statement on making the extension of collective bargaining & access to unions a Welsh government public policy objective in the context of global ILO obligations and central to the delivery of fair work in Wales. It is vital that this is accepted as core government business if a delivery focus is to be achieved.
- 3.3 To ensure this is delivered as core government business we therefore also propose the development of a formal government protocol which describes precisely the expectations for Welsh government engagement at all levels with the Wales TUC and unions.
- 3.4 We would be pleased to engage with Ministers/advisers/officials on the appropriate wording for both the declaration of principles and the formal protocol but believe this can run parallel with progress on the other proposals rather than have other elements delayed by this engagement.

### **4. Social Partnership Council**

- 4.1 Central to the declaration of social partnership principles - and in response to the Brexit and other challenges - should be the establishment of an overarching structure to ensure a whole government approach to social partnership. We propose that this should be established immediately with statutory underpinning to follow.
- 4.2 The definition of Welsh social partnership is that it is;
- a) tripartite – consisting of government, unions and employers,
  - b) representative - involving organisations providing the collective voice of workers and employers (not single issue groups or self-appointed individuals),
  - c) accountable - able to speak on behalf of their sectors/members by being fully accountable to them.

- 4.3 The purpose of the overarching tripartite Social Partnership Council would be:-
- a) To develop a more detailed all government framework policy for the delivery of fair work through social partnership. This would include being the forum for consideration of the Fair Work Commission report and for assisting in the development / review of relevant legislation (see section 8 below).
  - b) Incorporate and draw membership from the Workforce Partnership Council and the Council for Economic Development – ensuring consistency of approach and no gaps in implementation and setting the strategic objectives of the partnership model.
  - c) Co-ordination with labour market enforcement agencies – both non-devolved (HMRC, HSE, LPC etc) and devolved (aspects of local govt., EHRC, the Future Generations Commissioner and other Commissioners) – in order to see better enforcement of statutory standards in Wales.
  - d) Co-ordination of intelligence gathering and research to inform employment related policy including the relationship with academia, think tanks and campaign groups.

4.4 Appendix A (page 8) provides a Wales TUC proposed structure and membership for the social partnership which could deliver this purpose and could be established immediately - later being underpinned by legislation. Initially the Social Partnership Council could consist of the existing union and employer 'sides' of the Social Partners Strategy Council and the Workforce Partnership Council Executive Group. This would provide the central elements required to inform the government framework policy and legislation. It could also inform the development of the proposed enforcement board and policy advice group which could be established as part of the structure later. We would see the lead / chairs of these two elements as part of the government 'side' – potentially with an independent chair appointed to each of the Enforcement Board and the Policy Advisory Group.

## **5. Social Partnership Directorate**

5.1 The Wales TUC believes that this approach requires clear political direction as well as sufficient staff resource. We believe the approach adopted in establishing a tripartite secretariat for the Workforce Partnership Council is a good one and our approach builds on that. We propose the immediate establishment of a fair work directorate (or office of the social partnership) to ensure the social partnership has appropriate capacity to function as envisaged.

5.2 Staffing of the new office could be a mixture of the following:-

- a) Political appointment of the lead executive function through a tripartite appointment process. They would have the permission of the First Minister to act on his behalf on specific relevant matters and be seen as acting with the authority of the FM by senior civil servants.
- b) Specialist secondees from outside the civil service. They would need the skill set and experience to deliver a very specific set of delivery targets in a fixed two year term. To reflect and hold weight in the civil service hierarchy, they would need to be 'rate for the job' appointments equivalent to senior civil servants. They could possibly be specifically recruited from each of the partners as is the case at a lower level with the WPC secretariat.
- c) Substantive civil servants allocated to work full time on delivering the social partnership & fair work agenda and free of other departmental priorities/demands.
- d) The secretariat supporting the WPC and the Welsh Social Partners Unit (with some consideration as to how this can best support the economic partnership structure).

The interests of transparency and finding the best candidate can be served by open external advert and appointment process for the positions outlined in a) and b) with an explicit tripartite approach similar to that followed in the WPC secretariat.

## **6. Review of partnership arrangements**

6.1 The Government of Wales Act requires partnership arrangements which have been delivered through;

- a) the Local Government Partnership Council for Wales,
- b) the voluntary sector partnership,
- c) the Business Partnership Scheme and Council for Economic Development.

Each of these operates to a different remit and approach. For example the Local government partnership allows a Wales TUC observer to attend, the voluntary sector partnership has no union involvement and the Council for Economic Development has union side engagement organised through the Wales TUC.

6.2 In addition to these GoWA related bodies there are major partnership groups established by government for specific purposes eg European Union Advisory group, regional funding review & PMC.

6.3 The Wales TUC proposes that the government undertakes a review of existing partnership arrangements to ensure that they are fit for purpose in the new context and are accommodated within the overarching social partnership structure. In particular

there is a need to look again at the membership of the Council for Economic Development to ensure it meets the tripartite, representative and accountable criteria and to develop the Social Partners Strategy Group more formally into the CED Executive Group.

6.4 We believe that it would be appropriate to use the proposed Social Partnership Council as the forum to inform this government review.

## **7. Review of Wales TUC/union membership of public boards and ministerial groups**

7.1 In addition to the partnership groups discussed in section 6, there are a range of public boards and ministerial groups which have impact on employment in Wales. We list some of these in Appendix B (page 10) although this may not be an exhaustive list and may need to also include a range of task & finish groups, city deal groups etc. It is a complex picture and one which requires a review to ensure that the social partnership principles of the government are being properly implemented.

7.2 We believe that there is a need to fully 'map' these bodies and their remits with a view to establishing where there should be a workforce voice on the board through the appropriate unions and/or where there should be a collective strategic union voice on the board through the Wales TUC.

7.3 We propose a joint government/Wales TUC review of these structures to agree;

- a) when / what type of union representation is required,
- b) a suitable appointment process (or processes) to ensure accountability and diversity.

## **8. Social Partnership Act**

8.1 The Wales TUC has warmly welcomed the First Minister's commitment to introduce a Social Partnership Act in order to deliver social and economic equality in Wales. Our experience of non-statutory social partnership has been mixed, involving many examples of very positive progress but also a lack of universal and uniform delivery. We firmly believe that statutory underpinning is required to enhance and extend our social partnership model in Wales.



8.2 The Wales TUC has long experience of engaging with Welsh government on legislation impacting those employment issues which are substantially part of devolved matters. We gave major assistance in developing the Trade Union (Wales) Act – including providing barristers opinion on the areas which fell within competence and developing the rationale for, and detail of, the specific measures contained in the Act. We acknowledge that in moving to a reserved powers model without sufficient employment exemptions, the competence question has been more difficult in certain areas and we strongly believe that a better devolution settlement is required in this regard. However we maintain that there remains significant ability to legislate in this area and seek the delivery of this legislation in the shortest possible timeframe.

8.3 The Wales TUC has established our own legal advisory panel to provide some professional input in this regard and also have a wealth of expertise within the union movement. With the positive political will to legislate and a proactive executive team tasked with delivery, a very significant and hugely beneficial piece of legislation can be enacted. This administration can provide a massive legacy for Wales and set the agenda for the whole of the UK.

8.4 We strongly recommend that the structures identified under sections 4 and 5 above are utilised to provide the specialist knowledge and representative views required in developing a Bill.

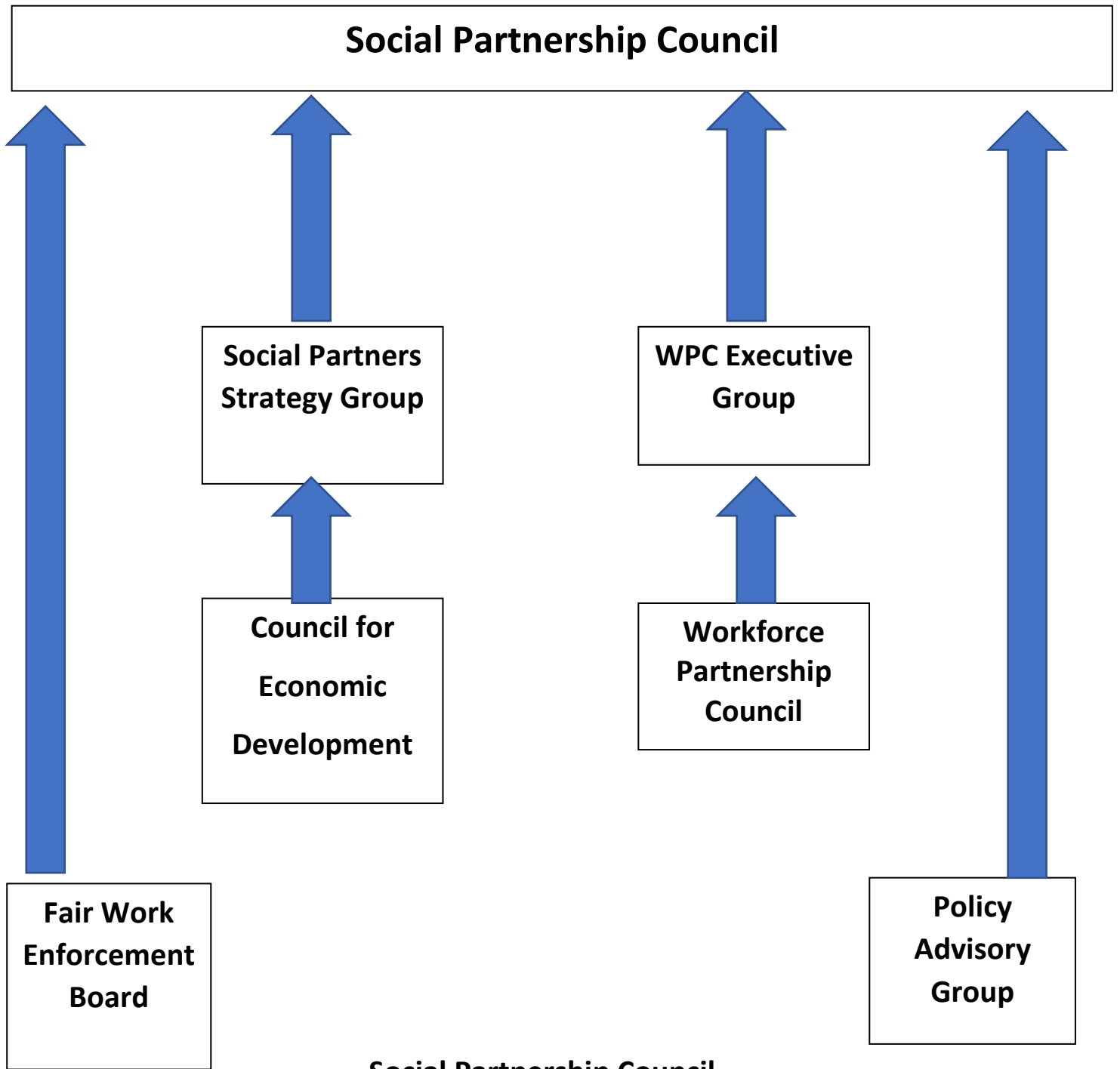
8.5 In summary we believe that the legislation should cover three areas:-

- a) Establishing a statutory social partnership structure and public sector duty to deliver fair work through social partnership.
- b) Making statutory the fair work outcomes required of procurement and business support.
- c) Establishing methods of enforcement (eg a Tribunal, Commissioner or a Welsh equivalent of UK Director for Labour Market Enforcement) and monitoring (eg utilising the functions of Welsh Audit Office, Well-being of Future Generations Commissioner, the EHRC etc).

8.6 We have a substantial evidence base and rationale to support legislating in this way and will be happy to engage with government and other partners in developing the proposed legislation.

*Martin Mansfield 1<sup>st</sup> March 2019*

Appendix A



**Social Partnership Council**

18 members

**Unions**

3 members of SPSPG  
3 members of WPC exec

**Government**

First Minister (chair)  
Economy Minister  
Public Services Minister  
Permanent Secretary  
Chair of Enforcement Board  
Chair of Policy Advisory Group

**Employers**

3 members of SPSPG  
3 members of WPC exec

## Social Partners Strategy Group

9 members

### **Unions**

3 members elected  
by the CED union side

### **Government**

Economy Minister (chair)  
Deputy Economy Minister  
Senior Civil Servant (DG)

### **Employers**

3 members elected  
by Commerce Cymru  
from CED reps

## Workforce Partnership Council Executive Group

9 members

### **Unions**

3 members elected  
by the WPC union side

### **Government**

Public Services Minister (chair)  
Deputy Minister  
Senior Civil Servant (DG)

### **Employers**

3 members elected  
by WPC employers

## Fair Work Enforcement Board

### **Independent Chair**

#### **Non-devolved agencies**

Director Lab Mrkt Enforcement  
HMRC/ Gangmasters licencing/ Agency workers  
HSE  
ACAS  
Employment Tribunals Office/law society  
EHRC  
Police

#### **Devolved agencies**

Local Govt regulatory  
WBFM Commissioners  
Other Commissioners  
Anti-slavery Coordinator  
NACABx  
NRW  
(Unions?)

## Policy Advisory Group

### **Independent Chair**

#### **Academic / think tank**

Welsh Centre for Public Policy  
WERS / WISARD / Universities  
KES/ Office of National Statistics  
EHRC policy team  
IWA & Bevan Foundation  
Policy teams of the Commissioners

#### **Single issue / campaign groups**

Chwarae Teg and similar  
Stonewall and similar  
Relevant charities (MENCAP etc)  
Joseph Rowntree Foundation etc  
Living Wage Foundation etc

## **Appendix B – examples of public boards and ministerial groups to form part of the joint review of union/Wales TUC membership**

- Ministerial boards and sub committees – for example the Economy & Transport MAG (with its foundation economy and fair work policy committees)
- Regional Economic fora /skills partnerships
- Public Service Boards
- Boards of the statutory Commissioners and Ombudsman
- Social Care Wales
- Health Education and Improvement Wales and Public Health Wales
- Geographic Health boards
- Velindre and Ambulance Health Boards
- Community Health Councils
- Teachers pay & conditions review
- WIDAB
- Qualifications Wales
- Careers Choices Dewis
- Higher Education Funding Council
- Development Bank of Wales
- Welsh Revenue Authority
- International Business Wales
- Natural Resources Wales
- Cardiff Airport/WGC holdco
- Transport for Wales
- Welsh Audit office
- National Library
- National Museum
- Sport Wales
- Arts Council
- National Parks

# Agenda Item 6

By virtue of paragraph(s) vi of Standing Order 17.42

Document is Restricted