

**Senedd Cymru’s Equality and Social Justice Committee:
Consultation on the Social Partnership and Public Procurement (Wales) Bill**

Written Evidence Submitted by Professor Alan Felstead, Cardiff University

This written response is based on over 35 years of carrying out labour research and advising national governments and international bodies on matters within my expertise.¹ Most notably, I sat on the Welsh Government’s Fair Work Commission as the independent expert advisor and have offered my views – in writing and verbally – on Welsh Government labour market policy to other Senedd Committees.²

The tabling of the Bill in the Senedd on 7 June 2022 has long been in the making and is the outcome of extensive consultation and engagement with stakeholders. Its origins date back at least five years when the former First Minister’s announced that he wanted ‘to make Wales a “fair work nation” ... in which more people can have access to good work and a secure income ... [thereby creating] more and better jobs closer to home’ (First Minister’s Speech to the Welsh Labour Conference, Llandudno, 25 March 2017).³

Shortly after this announcement, the Welsh Government set up the Fair Work Board and then the Fair Work Commission in July 2018. The latter was asked to:

- develop indicators and measures of fair work;
- explore the development of existing levers which might be used to promote fair work;
- suggest additional steps that might be taken, including legislation, to make Wales a fair work nation.

The Commission’s Report – *Fair Work Wales* – was published in March 2019. It was warmly welcomed by, among others, the Wales TUC, the Federation of Small Businesses Wales, ACAS and by Assembly Members. The Report also received critical acclaim from labour lawyers and industrial relations scholars – a group not accustomed to giving plaudits. Some referred to it as ‘groundbreaking’ and others suggested that it had wider applicability as a ‘manifesto for all’.^{4 5}

All 48 recommendations made by the Commission were accepted by Welsh Government in July 2019, shortly after the Report’s publication.⁶ The influence of the Report continues with one independent observer noting that it ‘appears to provide the policy framework for the Draft Bill’.⁷ Indeed, the Bill (both in draft and tabled form) represents a direct response to the Commission’s recommendation that its ‘observations and recommendations should inform the development of the proposed Social Partnership Act’.⁸

There is much to admire in the tabled Bill in terms of how it strengthens the general principles of social partnership working and promotes consensual decision-making which involves trade unions, employer representatives and government. However, the aim of this written submission is to provide critical, independent scrutiny of the Bill, thereby contributing the Committee’s role as scrutineer. The focus of the submission will be on the extent to which the Bill contributes to Welsh Government’s stated policy of building ‘an economy based on the principles of fair work’.⁹ In particular, the submission draws the Committee’s attention to how the draft Bill and the tabled Bill has changed in ways which may have inadvertently weakened the levers Welsh Government can use to make Wales a fair work nation.

The Importance of Fair Work

There was a growing concern – even before Covid-19 – about the quality of jobs in the UK. Concern over the growth of low paid, low skilled, insecure jobs, and the consequences of this for productivity, indebtedness, inequality and in-work poverty. Wales exemplifies problems of the wider UK labour market, but is also worse on other indicators.¹⁰ Productivity rates in Wales are lower. Workers in Wales are lower paid than in the UK as a whole and the prevalence of low pay is higher. Jobs are often of poorer quality in other respects too. In-work poverty in Wales is higher than elsewhere in the UK and projected to increase.¹¹

The wider context is challenging with a decade of cuts to public sector funding, the adverse economic effects of Brexit and the aftermath of Covid-19. The consequences of these wider events tend to fall disproportionately on those at the bottom of society, those already disadvantaged.¹²

There is a clear need, then, for Welsh Government to act so that jobs meet workers' needs for stable work, decent wages and development opportunities – these are all features of work with a proven link to well-being.¹³ Jobs also need to provide procedural fairness in decisions made at work. After all, about 35% of our waking hours over our lifetime is spent at work, so having some say over how work is carried out seems a reasonable ask. Finally, rewards need to be distributed fairly and not based on ascribed characteristics such as sex, age, ethnicity and so on.

Principles of Fair Work

For the Fair Work Commission: 'Fair work exists where workers are fairly rewarded, heard and represented, secure and able to progress in a healthy, inclusive environment where rights are respected'.¹⁴ Behind this definition are three principles.

- The first principle is that fair work is constituted by features of work which enhance worker well-being.
- The second principle is that fair work focuses on the attributes of the job occupied by the worker and not workers' personal circumstances or background. This is because workers' feelings about their jobs may differ, while the objective features of the job may not. For this reason, the definition of fair work focuses on observable features of the job, such as the level of pay offered, the presence of worker voice and representation, in-work security, safety, development opportunities and rights.
- The third principle is that there are a variety of job attributes which have the capability of enhancing or reducing worker well-being. The most straightforward and easiest to attribute to measure is pay. However, pay is not the only feature of work which matters for worker well-being, there are other factors too. The multi-faceted nature of fair work is reflected in the Fair Work Commission's definition.

Changes from Draft to Tabled Bill

In recognition of the link between fair work and well-being, the tabled Bill proposes to substitute 'decent work' with 'fair work' in the Well-being and Future Generations Act 2015. This is a welcome amendment and is in line with the Fair Work Commission's recommendation. Changes have also been made to the National Indicators which measure the well-being of Wales, again in line with the Commission's recommendations. Three of the new indicators

announced in December 2021 capture elements of fair work. One measures the percentage of people in employment who earn at least the Real Living Wage, while another focuses on the proportion of employees whose pay is set by collective bargaining, but data for both indicators are not available at the time of writing.¹⁵ The third measure focuses on the elimination of the pay gap for gender, disability and ethnicity by 2050.¹⁶ This target has been made a national milestone; eight out of the 50 national indicators have been given this status with more to follow.¹⁷ The equality indicator has also been extended from its previous focus on gender alone.

However, the tabled Bill in June 2022 has changed since it was published as a draft Bill for consultation in February 2021. It is to these changes that I would like to draw the Committee's attention in the hope that a full explanation may be sought given the Committee's role as scrutineer of the Bill tabled in June 2022.

- The draft Bill had an entire part (clauses 4, 5 and 6) devoted to fair work with a fair work goal, a fair work duty on Welsh Ministers and a requirement to report annually to the Senedd on progress towards building 'an economy based on the principles of fair work'.¹⁸
- Nevertheless, the draft Bill did not include a definition of fair work, but instead left a blank space for the characteristics of fair work to be inserted. As a result, respondents to the consultation were asked to frame a legal definition of their own instead of responding to one provided by Welsh Government.¹⁹
- In the tabled Bill, the original fair work clauses – definition, duty and reporting – have been completely removed along with mention of the fair work goal as one of the motivations for the Bill. This weakens the means to deliver fair work outcomes.
- The accompanying Explanatory Memorandum attached to the tabled Bill suggests that the integration fair work into the Well-being of Future Generations Act 2015 (WBFGA) will mean that 'fair work takes on its ordinary meaning', even though the term has very specific meaning which has been accepted by Welsh Government.²⁰ No definition of fair work is provided in either the tabled Bill or the Explanatory Memorandum.
- However, in other Welsh Government policy documents fair work is defined. In the recently published Plan for Employability and Skills, for example, fair work is frequently discussed and is precisely defined in the section on 'fair work for all'.²¹
- In addition, the Explanatory Memorandum notes that the Welsh Government is considering 'producing advice and guidance on how organisations can effectively think about fair work in the context of developing their well-being objectives'.²² This is a welcome development.
- Other organisations, such as Public Health Wales, have also begun to produce similar guidance with the Fair Work Commission's definition of fair work front and centre.²³ This serves to give clear and unambiguous advice to organisations seeking to align themselves with the policy goal of building 'an economy based on the principles of fair work'.²⁴

Alan Felstead,
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- ¹ <https://www.cardiff.ac.uk/people/view/38073-felstead-alan>
 - ² <https://business.senedd.wales/mgIssueHistoryHome.aspx?IId=34945>
 - ³ <https://www.walesonline.co.uk/news/politics/carwyn-jones-tell-welsh-labour-12795139>
 - ⁴ <https://academic.oup.com/ij/article/48/3/481/5550935>, page 481.
 - ⁵ <https://onlinelibrary.wiley.com/doi/epdf/10.1111/irj.12275>, page 564.
 - ⁶ <https://gov.wales/written-statement-welsh-government-response-fair-work-wales>
 - ⁷ <https://www.ier.org.uk/wp-content/uploads/IER-response-to-consultation-Social-Partnership-and-Public-Procurement-Wales-Bill.pdf>, page 3.
 - ⁸ <https://gov.wales/sites/default/files/publications/2019-05/fair-work-wales.pdf>, page 4.
 - ⁹ <https://gov.wales/sites/default/files/publications/2022-01/programme-for-government-update-december-2021.pdf>, page 4.
 - ¹⁰ <https://gov.wales/sites/default/files/statistics-and-research/2019-04/work-in-wales-2006-2017.pdf>
 - ¹¹ <https://gov.wales/sites/default/files/publications/2019-05/fair-work-wales.pdf>, page 80-96.
 - ¹² <https://ifs.org.uk/inequality/wp-content/uploads/2022/03/Labour-market-inequality-IFS-Deaton-Review-of-Inequalities-2.pdf>
 - ¹³ <https://onlinelibrary.wiley.com/doi/epdf/10.1111/irj.12241>
 - ¹⁴ <https://gov.wales/sites/default/files/publications/2019-05/fair-work-wales.pdf>, page 17.
 - ¹⁵ <https://gov.wales/wellbeing-wales-national-indicators>, indicator 16 and 20.
 - ¹⁶ <https://gov.wales/sites/default/files/publications/2022-05/technical-annex-stronger-fairer-greener-wales0.pdf>, page 10.
 - ¹⁷ <https://gov.wales/written-statement-consultation-shaping-wales-future-using-national-milestones-measure-our-nations>
 - ¹⁸ https://gov.wales/sites/default/files/consultations/2021-02/social-partnership-and-public-procurement-wales-bill_0.pdf
 - ¹⁹ https://gov.wales/sites/default/files/consultations/2021-07/summary-of-responses_0.pdf, Question 7.
 - ²⁰ <https://senedd.wales/media/hlelzegm/pri-ld15134-em-e.pdf>, section 78.
 - ²¹ <https://gov.wales/sites/default/files/publications/2022-05/stronger-fairer-greener-wales-plan-employability-and-skills0.pdf>, page 32.
 - ²² *ibid*, section 79.
 - ²³ <https://phw.nhs.wales/services-and-teams/wider-determinants-of-health-unit/fair-work-for-health-well-being-and-equity/resources/delivering-fair-work-for-health-well-being-and-equity-guide/>
 - ²⁴ <https://gov.wales/sites/default/files/publications/2022-01/programme-for-government-update-december-2021.pdf>, page 4.